



Appeal Decision

Site visit made on 22 May 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 02 August 2024

Appeal Ref: APP/U5360/W/23/3329662

11-27a Barbould Road, London N16 0SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr R Berrisford against the decision of the Council of the London Borough of Hackney.
- The application Ref is 2023/1487.
- The application sought permission for erection of 10 x mansard-style roof extensions (1 x per property) within the terrace of houses comprising nos. 11-27a Barbould Road without complying with conditions attached to planning permission 2022/3095 dated 23 June 2023.
- The conditions in dispute are Nos. 3, 4, 5, 6 and 7, which state that:
 - 3) *Full details, with samples or product specification, of the materials to be used on the external surfaces of the development hereby approved, including glazing and doors, shall be submitted to and approved by the Local Planning Authority in writing before any work on the site is commenced. The development shall not be carried out otherwise than in accordance with the details thus approved.*
 - 4) *Detailed drawings/full particulars of the proposed development showing the matters set out below must be submitted to and approved by the Local Planning Authority, in writing, before any work is commenced. The development shall not be carried out otherwise than in accordance with the details thus approved which shall be implemented in full prior to the first occupation/use of the development. a) Details of windows comprising 1:20 elevations and 1:5 sections.*
 - 5) *Prior to the commencement of development a Phasing Plan shall be submitted to and approved in writing by the Local Planning Authority setting out the following: a) Details of the phasing of the development to ensure how the scheme will come forward in such a way that each phase commences before the previous one concludes b) Details should also be provided for contingency plans in the event of individuals opting out or individual properties changing ownership during the course of construction. Thereafter, the development shall be carried out in complete accordance with the approved Phasing Plan.*
 - 6) *Prior to the first occupation of the development hereby approved a minimum of one Swift nesting bricks and/or boxes shall be provided at or close to eaves level of each property within the development hereby approved. The bricks/boxes shall be retained thereafter in perpetuity.*
 - 7) *The development hereby approved shall be built out as one building operation with development not completing on one site before another mansard is commenced.*
- The reasons given for the conditions are:
 - 3) *To ensure that the external appearance of the building is satisfactory and does not detract from the character and visual amenity of the area.*
 - 4) *To ensure that the external appearance of the building is satisfactory and does not detract from the character and visual amenity of the area.*

- 5) To ensure that build-out of the development is phased so as to avoid adverse impacts on the visual amenity of the area.*
 - 6) In the interests of biodiversity*
 - 7) In the interests of safeguarding the character and appearance of the terrace and wider area.*
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Decision

1. The appeal is allowed in part and planning permission is granted for erection of 10 x mansard-style roof extensions (1 x per property) within the terrace of houses comprising nos. 11-27a Barbauld Road at 11-27a Barbauld Road, London N16 0SD in accordance with the application Ref 2023/1487, without compliance with condition numbers 3, 4, 5, 6 and 7 previously imposed on planning permission Ref 2022/3095 dated 23 June 2023 and subject to the conditions in the attached schedule.

Main Issues

2. The main issues are: whether condition nos. 3, 4 5 and 7 are reasonable and necessary in the interests of the character and appearance of the area; and whether condition no. 6 is reasonable and necessary in the interests of biodiversity.

Reasons

Character and appearance

3. The appeal site is a row of terraced dwellings which, despite variations in the finish of external facades, retain a high level of consistency in form and traditional Victorian appearance. The properties have a consistent roofline, with no extensions at roof level visible from Barbauld Road. However, surrounding streets feature similar terraces, within which certain dwellings have mansard roof features.
4. Policy LP1 of the Hackney Local Plan 2023, July 2020 (the Local Plan) states that all new development should respond to local character and be compatible with the existing townscape. Policies D1 and D3 of the London Plan 2021 also relate to design and seek to ensure the development responds to the context of the area.

Condition No. 3

5. Condition No. 3 attached to planning permission 2022/3095 requires the approval of external materials. The appellant argues that this is not necessary due to external materials being shown on approved plans. In this regard, the plans refer to 'brickwork to match existing' and 'grey coloured zinc cladding'. I note that the Officer's Report for the original planning permission states that the materials proposed for the mansard extensions are acceptable, but that details and samples of the selected zinc cladding material will be required.
6. The use of brickwork in the scheme to match the existing properties would comply with the aims of Policy LP1 of the Local Plan. Given that this brickwork is currently in place, further submission and approval of this material is unnecessary. Although Condition No. 3 also refers to details of glazing and doors, this is dealt with by Condition No. 4, which I shall address below.
7. However, the proposed zinc cladding would introduce a new feature to this section of Barbauld Road, visible along the front elevations of the properties. While this alone would not prevent the scheme from complying with Policy LP1, and even acknowledging the appellant's reference to joining using standing seams, given the

limited information on the approved plans regarding the precise nature of this cladding, there is little certainty as to how this would integrate within the streetscene. As such, I find it reasonable and necessary that a condition is attached requiring details and samples of this external material to be submitted and approved by the Council.

8. I acknowledge that the Council did not seek the appellant's approval to Condition No. 3 being a pre-commencement condition, and further note the Council comments that an alternative trigger could be acceptable. However, in allowing this appeal I am granting a new planning permission. Given the prevalence of the proposed cladding, and its importance to the final design of the scheme, I find that this should be drafted as a pre-commencement condition, and have sought the appellant's comments on such a condition.
9. For the reasons given, I find Condition No. 3 to be reasonable and necessary insofar as it relates to the external zinc cladding of the scheme, in the interests of the character and appearance of the area.

Condition No. 4

10. Condition No. 4 attached to planning permission 2022/3095 requires submission of further details on the windows of the proposal in the interests of the character and appearance of the area. The approved plans demonstrate the fenestration of the scheme, showing their scale relative to the mansard roof, and their positioning, largely aligned with the upper level windows below. The plans also dictate that these would be 'white timber sash windows', reflecting the prevalent style, colouring and materials of the fenestration of the appeal properties and of the mansard roof windows in surrounding streets.
11. Given the placement of the windows across the entirety of the terrace, the Council has referred to the requirement for a uniform and unified approach to be taken as justification for Condition No. 4. However, such uniformity is clear within the details provided in the approved plans which secure the positioning, scale and materials of the windows. In any event, I observed that the window detailing at the appeal site is not strictly uniform or unified at present, with the precise window design and materials varying at certain properties.
12. Based on my observations, the information on the approved plans provides certainty that the windows of the scheme would not result in adverse effects on the character and appearance of the appeal site or the area. There is nothing substantive to persuade me that these windows would only be acceptable with regard to such matters with Condition No. 4 in place.
13. For the reasons given, I find that Conditions No. 4 is neither reasonable nor necessary in the interests of the character and appearance of the area.

Condition Nos. 5 and 7

14. The Council's evidence is clear that Conditions Nos. 5 and 7 are attached to planning permission 2022/3095 to avoid piecemeal development of the proposed mansard extensions and to ensure that the scheme would be built out as one phased and coordinated operation, in the interests of the character and appearance of the area.
15. The current unbroken roofline of the appeal properties is a pleasing visual feature of the site, which would inevitably be altered should the proposed mansard extensions come forward individually, at various times across the site. In this regard, I further

note reference in the Council's Residential Extensions and Alterations Supplementary Planning Document 2009 (the SPD) to the continuity of the parapet line being an important townscape feature of early/ mid Victorian streets and typical of the street scene of large areas of residential Hackney.

16. However, this SPD is guidance rather than policy. On the site specific circumstances, elements of the proposal coming forward at different properties at different times such that certain roofs would feature mansard extensions while others in the group would not, would not be uncommon within the wider area. Sporadic mansard extensions exist within neighbouring terraced streets in close proximity to the appeal site, both as clusters of development and at individual properties without similar features at either side.
17. It is within this wider context that the proposal would be experienced. As such, even acknowledging the current consistency in the roofline at the appeal properties, if the mansard features were to be erected at different times across the site, or indeed simultaneously at certain properties, this would not cause undue harm to the character and appearance of either the appeal site or the wider area.
18. With particular regard to Condition No. 7, paragraph 124 of the National Planning Policy Framework (the Framework) is clear that a condition of simultaneous development should not be imposed on an application for multiple mansard extensions unless there is an exceptional justification. Based on my observations above, I do not find there to be an exceptional justification in this case.
19. For the reasons given, I find Conditions Nos. 5 and 7 are neither reasonable nor necessary in the interests of the character and appearance of the area.

Biodiversity

Condition No. 6

20. Condition No. 6 of planning permission 2022/3095 relates to the provision of nesting bricks or boxes at the appeal site in the interests of biodiversity. Policy LP47 of the Local Plan seeks to achieve a net gain in biodiversity, in line with national policy objectives, and states that all development schemes involving buildings with an eaves height or roof commencement height of 5 metres and above are required to provide nesting boxes for swifts, sparrows, starlings and/or bats as appropriate to help preserve endangered urban biodiversity.
21. As such, while little precise information has been provided on biodiversity as it relates to the appeal site, given that the appeal properties have an eaves height taller than 5 metres it remains that there is a clear policy position for the provision of such features, such that this condition is both reasonable and necessary. Although the appellant alleges that the form and nature of the appeal scheme simply does not offer suitable areas for successful placement, there is nothing substantive to demonstrate that this would be the case, with the condition wording referring to the eaves of the host properties. Furthermore, I do not find that the installation of such features would cause undue harm to the character and appearance of the area.
22. I note that Condition No. 6 is worded as requiring such boxes or bricks prior to occupation, which the appellant has highlighted is not possible given that the dwellings in the terrace are already occupied. As such, I have altered the wording of this condition to make it clear that this should occur prior to the occupation of each mansard extension.

23. For the reasons given, I find Condition No. 6 is reasonable and necessary with regard to biodiversity.

Conditions

24. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant and have reproduced these in the schedule below. In the event that some of these conditions have been discharged, that is a matter which can be addressed by the main parties. I have also amended the condition relating to the time to implement the permission to accord with the original planning permission.

Conclusion

25. For the reasons given, the appeal succeeds as detailed in my formal decision in paragraph 1 above.

C Rafferty

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than 23 June 2026, which is the expiration date of the approved planning permission ref: 2022/3095.
2. The development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.
3. No development shall take place until details/ samples of the grey coloured zinc cladding to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details/ samples.
4. Prior to the first occupation of each mansard roof extension hereby permitted, a minimum of one Swift nesting brick and/ or box shall be provided at or close to eaves level of the corresponding host property. The bricks/ boxes shall be retained thereafter in perpetuity.

END OF SCHEDULE