



Appeal Decision

Site visit made on 17 July 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2024

Appeal Ref: APP/F5540/W/23/3334442

94-98 Chiswick High Road, Chiswick, Hounslow, London W4 1SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Kim Gottlieb (Lochstill Limited) against the decision of the Council of the London Borough of Hounslow.
 - The application Ref is 00248/94-98/P11.
 - The application sought planning permission originally for change of use, refurbishment and extension of the properties to provide a mixed use development comprising a five screen cinema including an ancillary restaurant/cafe (incorporating a roof terrace), 3 self contained flats on the upper floors and associated facilities [application Ref 00248/94-98/P3].
 - This permission was varied by application Ref 00248/94-98/P7, dated 16 August 2022.
 - The appeal seeks to amend application Ref 00248/94-98/P7, without complying with conditions 2 and 23 to facilitate the provision of a roof terrace to approved flat 3, incorporating a glass balustrade at roof level and a new staircase leading internally from flat 3 to roof level, as well as the associated relocation of some of the previously approved roof-level PV panels.
 - The conditions in dispute are Nos 2 and 23 which state that:
 - 2. The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P3(4-22) in relation to the materials to be used in the construction of the external surfaces of the buildings hereby permitted.*
 - 23. The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P3(27) in relation to the energy strategy.*
 - The reasons given for the conditions are:
 - 2. In the interests of the visual amenity of the area and to satisfy the requirements of policies CC1 and CC2 of the adopted Local Plan.*
 - 23. To ensure that the development makes the fullest contribution to minimising carbon dioxide emissions in accordance with Local Plan policy EQ1 and London Plan policy SI2 and SI4.*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use, refurbishment and extension of the properties to provide a mixed use development comprising a five screen cinema including an ancillary restaurant/cafe (incorporating a roof terrace), 3 self contained flats on the upper floors and associated facilities [application Ref 00248/94-98/P3] at 94-98 Chiswick High Road, Chiswick, Hounslow, London W4 1SH in accordance with the application Ref 00248/94-98/P11, without compliance with condition numbers 1 and 2 previously imposed on planning permission Ref 00248/94-98/P7, dated 16 August 2022 to enable the provision of a roof terrace to approved flat 3, incorporating a glass balustrade at roof level and a new

staircase leading internally from flat 3 to roof level, as well as the associated relocation of some of the previously approved roof-level PV panels, subject to the following conditions in the attached Schedule.

Preliminary Matters

2. The condition which is under dispute in all documentation is condition 2 of application Ref 00248/94-98/P7. This was an application to vary application Ref 00248/94-98/P5, which was also a variation to the original planning permission, application Ref 00248/94-98/P3.
3. Condition 2 of application Ref 00248/94-98/P7 refers to the materials to be used in the construction of the external surfaces of the building. I requested clarification from the Council and the appellant if this was the correct condition which should be varied, given that condition 1 of application Ref 00248/94-98/P7 is the 'drawings' condition.
4. The appellant confirmed that condition 1 was the correct condition. The Council did not reply within the timescale given. I have the power under section 73 of the Act to consider the disputed conditions, along with attaching new conditions, to not attach conditions which were previously imposed or to attach modified versions of them. For this reason, and following confirmation from the appellant, I have considered the variation of condition 1. I have also considered the variation of condition 2, given that the Council requested that external materials were submitted to them for approval, if the appeal were allowed.
5. I do not consider there would be any prejudice to interested parties by considering condition 1, given that the proposal has not been changed and it is simply a procedural matter relating to a discrepancy on the condition numbers.
6. The application sought to amend condition No 23 of application Ref 00248/94-98/P7. However, the Council confirmed that this was unnecessary because the overall energy strategy would remain unchanged. This condition therefore remains the same.
7. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on application Ref 00248/94-98/P7 permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
8. The reason for refusal refers to a conservation area. However, the Appeal Questionnaire indicates that the site is not in one or adjacent to one. Aside from the officer report, which refers to the site lying just outside the Chiswick High Road Conservation Area, there is nothing in the Council's evidence to assess the effect of the proposal on the Conservation Area. Given the proposal is not adjacent to the Conservation Area, and based on the lack of evidence or any assessment, I have considered the effect of the proposal on the character and appearance of the area, but not the effect on the Conservation Area.

Main Issues

9. These are the effect of the proposal on the character and appearance of the area, and the living conditions of existing occupiers with specific regard to privacy.

Reasons

Character and appearance

10. The site is a small cinema and mixed use complex with 3 flats above, located on the high street in Chiswick. It is 5 stories in height. The proposal is for a roof terrace above Flat 3. This would consist of a square shaped staircase enclosure above roof level, clad in grey zinc to match the existing roof, with a centrally located domed rooflight. The glazing would be set back approximately 3.5 metres from the front elevation, and the staircase enclosure around 5.5 metres.
11. The front elevation of the building rises from the high street to the third floor. The fourth floor is set back considerably from the parapet detailing, with the fifth floor being a mansard roof design. The glass balustrade would be set back from the mansard roof edge and the stairwell enclosure set back to the centre of the roof.
12. From the street scene, the upper central parts of the roof are not overly visible, owing to the height of the building. Additionally, the adjoining building has tall grey screening to contain the roof plant structures along with a steel staircase, external flues, and lift shaft on the appeal roof, and the other adjoining building is undergoing construction works to facilitate a third and fourth floor roof extension. Some of these are visible from the street, especially to the rear, and the proposal would be contained centrally between these structures.
13. The glass balustrade would set back and have very little effect upon the wider street scene or host building due to its clear glazing. Additionally, the stairwell enclosure would be considerably set back, constructed from materials which match the existing mansard roof materials, and from my assessment on site, barely visible from the street at the front. In views from the rear, the materials, scale and height would ensure that the proposal has minimal impact, especially when compared to the adjacent roof plant screening and other roof top paraphernalia.
14. Therefore, the effect of the proposal on the character and appearance of the area would be acceptable. This would be compliant with Policies CC1 and CC2 of the London Borough of Hounslow Local Plan 2015-2030 (September 2015) (LP). These seek to retain, promote and support high quality urban design that improves and promotes the appreciation of character and qualities of distinctive areas. There would also be compliance with the National Planning Policy Framework (the Framework), which seeks to achieve well-designed and beautiful places.

Living conditions

15. The Council fail to refer to any specific properties that would be affected by the proposal. However, from my visit, which included assessing the impact and views from the roof itself, there would not be any adverse effect upon the living conditions of any nearby neighbouring residents from the proposal.

16. The roof terrace would be on the front of the building, such that views to the residential properties at the rear would be barely possible. This is due to the intervening distance and presence of other structures, such as the steel staircase and lift shaft. Additionally, given the width of the street, set back nature of the roof terrace, and location of residential properties across the road, views to properties at the front would also be barely possible.
17. Therefore, the proposal would have an acceptable effect upon the living conditions of the existing occupiers. This would be compliant with Policy CC2 of the LP, which in this regard, seeks to ensure proposals have a positive impact on the amenity of current and future residents. There would also be compliance with the Framework, which seeks to create places with a high standard of amenity for existing and future users.

Conclusion

18. For the reasons set out above, the appeal is allowed.

Katie McDonald

INSPECTOR

Schedule of Conditions

- 1) The proposed development shall be carried out in all respects in accordance with the proposals contained in the application and the plans submitted:

Original plans: (Design & Access Statement, Planning Statement and Transport Statement received 19th August 2016; Flood Risk Assessment incorporating Surface Water and Foul Water Drainage Strategy & Sustainability Statement incorporating Energy Statement received 2nd November 2016; Noise Impact Assessment received 7th November 2016; Daylight & Sunlight Report received 18th November 2016; drawing no's 155-A 2-GA 101B, 103C, 104C & 106B received 2nd November 2016; drawing no's 155-A 2-GA 102C, 105D, 201D, 202E, 301H & 302E received 16th November 2016. Technical Note to Vary Condition 30 (BREEAM) of planning reference 00248/94 - 98 / P3. Received: 04/11/2019. 1-LO 101 Rev. A, 2-GA 102 Rev. S, 3-ENH 304 Rev. E. Received: 03/10/2020. 2-GA 103 Rev. N, 2-GA 104 Rev. N, 2-GA 707 Rev. A, 2-GA-708 Rev. A, 2-GA 710, 2-GA 201 Rev. T, 3-ENH 305 Rev. F, 4-DET STAIR 104 Rev. B, 4-DET ROOF 109 Rev. E, 155-A 2-GA 709. Received: 21/01/2020. 2-GA 101 Rev. DD, 3-ENH 307 Rev. K, 4-DET DOOR 106 Rev. C. Received: 03/07/2020. 2-GA 104 Rev. X, 2-GA 301 Rev. HH, 2-GA 715 Received: 09/03/2021.

Revised plans subject to this permission: 2-GA 105 Rev. X, 2-GA 106 Rev. BB, 2-GA 301 Rev. LL, 2-GA 302 Rev. JJ, 2-GA 202 Rev. Y, SK-117 Revision B, SK-118 Revision B.

therewith and approved by the Local Planning Authority, or as shall have been otherwise agreed in writing by the Local Planning Authority before the building is used.

- 2) Prior to first installation of the glass balustrade to flat 3 and the staircase enclosure, full details of all external materials to be used in the construction of the glass balustrade and staircase enclosure (including product specifications and samples) shall be submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the agreed details.
- 3) No fans, louvres, ducts or other external plant shall be installed without the prior approval of the Local Planning Authority in writing.
- 4) No commercial deliveries or refuse collection shall be taken at or despatched from the site outside the hours of 08.00 to 18.00 Mondays to Saturdays, nor at any time on Sundays and Public Holidays without the prior agreement of the Local Planning Authority.
- 5) The commercial uses hereby permitted shall not be open to customers outside the following times:
 - Cinema screens: Sunday to Thursdays 08:00 - 00:00; Friday to Saturday 08:00 - 01:00.
 - Cafe/restaurant: Sunday to Thursday 08:00 - 23:30; Friday to Saturday 08:00 - 00:00.
 - Terrace: All week 08:00 - 22:30 (Fully vacated at 22:30).

- 6) Dining or drinking shall not take place anywhere on the site (commercial premises only) except within the building, or on the terrace within the approved hours of operation of this facility. No dining is to take place on the pavement.
- 7) The roof area to the north/adjoining unit 1 as shown on drawing no. 2-GA 707 Rev. A hereby permitted shall not be used as a terrace, roof garden or similar amenity area.
- 8) No windows or other glazed openings shall be formed in the northern elevation of unit 1 hereby approved without the prior written consent of the Local Planning Authority.
- 9) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(11) in relation to the fixed external privacy louvres to windows in the north/rear elevation of unit 3.
- 10) The external staircase to the rear of the premises (as shown on drawing no. 2-GA 301 Rev. X hereby permitted) shall only be used as a fire escape access.
- 11) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(13,26) in relation to the agreed naming and numbering of the proposed dwellings.
- 12) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(14,18) in relation to the agreed Travel Plan.
- 13) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(15,21) in relation to the residential cycle parking. The approved details shall conform to current guidance such as the TfL London Cycling Design Standards in design and layout, and be fully implemented and be made available for use before the first occupation of the building hereby approved and thereafter retained for use at all times without obstruction.
- 14) No external lighting shall be installed on the site or affixed to any buildings unless the Local Planning Authority has first approved in writing details of the position, height, design, intensity and time restrictions.
- 15) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(14,18) in relation to the agreed Delivery and Servicing Plan.
- 16) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P3(4-22) in relation to the Construction Management Plan.
- 17) The refuse and recycling store as shown on the approved plans shall be retained for use at all times without obstruction.
- 18) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(15,21) in relation to the agreed residential waste and recycling storage, and the

approved facility shall thereafter be retained for use at all times without obstruction.

- 19) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P3(4-22) in relation to the final detailed drainage designs.
- 20) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(24,25) in relation to the agreed Noise Impact Assessment. The approved details shall be fully implemented before the commercial use is commenced.
- 21) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(24,25) in relation to the agreed scheme to insulate the premises against the transmission of airborne and impact sounds.
- 22) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(13,26) in relation to the agreed scheme for the control of fumes and odours.
- 23) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P3(27) in relation to the energy strategy.
- 24) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P3(28) in relation to internal water use.
- 25) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P3(29) in relation to sustainable materials standards.
- 26) The development shall be carried out in accordance with the details approved as part of planning application 00248/94-98/P5(31a) in relation to agreed BREEAM Refurbishment & Fit-out 2014 (Part 2, 3 & 4 assessment - Design Stage) certificate demonstrating a 'Very-Good' rating. All the measures integrated shall be retained for as long as the development is in existence. The development shall also be carried out in accordance with the details approved as part of planning application 00248/94-98/P3(31b) in relation to the BREEAM Refurbishment & Fit-out 2014 (Part 2, 3 & 4 assessment - Post Construction) certificate. All the measures integrated shall be retained for as long as the development is in existence.

*****End of Conditions*****