



Appeal Decision

Site visit made on 23 July 2024

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2024

Appeal Ref: APP/T2215/W/23/3331103

Car Park Rear of Two Brewers, 33 Lowfield Street, Dartford, Kent DA1 1EW

- 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 Bledi Pashollari (Green Facades Ltd) against the decision of Dartford Borough Council.
 - The application Ref is DA/23/00620/VCON.
 - The application sought planning permission for erection of a 5-storey building comprising 14 no. apartments (6 No. 1-bed and 8 No. 2-bed), with 3 No. car parking spaces, bin and cycle store without complying with a condition attached to planning permission Ref DA/19/00748/FUL, dated 13 March 2020.
 - The condition in dispute is No 12 which states that: *Before commencement of the development hereby approved above slab level, details and samples of all materials to be used externally shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.*
 - The reason given for the condition is: *To ensure that the development does not harm the character and appearance of the existing building or the visual amenity of the locality in accordance with Policy DP2 of the adopted Dartford Local Plan This information is required prior to commencement as it is (sic) may affect construction.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of a 5-storey building comprising 14 no. apartments (6 No. 1-bed and 8 No. 2-bed), with 3 No. car parking spaces, bin and cycle store at Car Park Rear of Two Brewers, 33 Lowfield Street, Dartford, Kent DA1 1EW in accordance with the application Ref DA/23/00620/VCON, without compliance with condition number 12 previously imposed on planning permission Ref DA/19/00748/FUL dated 13 March 2020 and subject to the conditions in the schedule below.

Preliminary Matters

2. Dartford Borough Council's Local Plan to 2037 (DLP) was under examination at the time of the Council's decision and relevant emerging policies were referred to in the reason for refusal. The DLP was adopted in April 2024, while this appeal was under consideration. The Council has confirmed that policies in the Core Strategy 2011 and the Dartford Development Policies Plan 2017 have been superseded. The adopted wording of the policies referred to in the reason for refusal has been provided and the appellant has had the opportunity to comment. I have had regard to the adopted development plan when determining the appeal.

Background and Main Issues

3. The appeal concerns the external materials used on the 1st, 2nd and 3rd floors of a five-storey building permitted on 13 March 2020¹. Condition 12 of the 2020 planning permission required that details of all external materials should be submitted to and approved in writing by the Local Planning Authority. The Council approved those details in a decision dated 28 May 2021². These included a specified facing brick and mortar colour on the 1st, 2nd and 3rd floors.
4. Condition 12 also requires that the development is carried out in accordance with the approved details. The application which is the subject of this appeal seeks variation of the condition to allow for use of an alternative external material and cladding system on the same three floors. No other changes to the approved external materials are proposed.
5. The building was under construction at the time of the planning application, but the external surfaces had not been completed. The application was accordingly made under s73 of the Town and Country Planning Act 1990, which provides for applications to be made for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. I have considered the appeal on that basis.
6. Since the application was determined, the external surfaces of the building have been completed, using the external materials and cladding system proposed in the application. I am therefore considering the appeal retrospectively. The Council's statement of case highlights that other alleged breaches of the 2020 planning permission are under investigation. However, any such breaches fall outside the scope of this appeal, which is limited to the proposed variation of condition 12 with regard to the materials used on the 1st, 2nd and 3rd floors of the building only.
7. The main issues are the effect of varying condition 12 to allow for an alternative external material on:
 - the character and appearance of the building and surrounding town centre environment, and
 - the setting of designated heritage assets.

Reasons

Character and Appearance

8. The appeal site is in Dartford town centre, behind the Two Brewers public house on Lowfield Street. There is access from Instone Road, which is also the approach to an existing multi storey car park and shopping centre. The building on the appeal site stands in front of these and is enclosed by access roads on all four sides. It is behind the buildings on Lowfield Street, but otherwise prominent in the street scene and occupies the whole site with no surrounding curtilage or boundary screening.
9. The Council is promoting active and transformational change in the built environment of the town centre, which is articulated in the DLP and the

¹ Dartford Borough Council ref DA/19/00748/FUL

² Dartford Borough Council ref DA/20/01052/CDNA

Dartford Town Centre Framework SPD³. Together with the adjacent shopping centre and car park, the appeal site is within a substantial site allocated for redevelopment in the DLP, the remainder of which is yet to be redeveloped.

10. There is no dispute between the parties that the external materials which have been installed on the 1st, 2nd and 3rd floors are those proposed in the application. I have therefore had regard to their appearance as observed on site, as well as the technical details provided, and the building design as shown on the approved plans.
11. The cladding system comprises individual fired clay components, which have the proportions of a conventional brick on the exposed surface, but are shallow in depth and attached to an underlying metal frame. The visible surface has the appearance and texture of facing brick. The approved brick was a red multi stock brick with a relatively light surface texture and the material used on the appeal building has a similar texture and comparably varied hue. It is neither uniform nor excessively bright in colour.
12. Buff coloured mortar has been applied, as per the approved details. The mortar joints are recessed and have been finished in a conventional manner. The upper elevations have a more varied texture and colour than the grey bricks and mortar on the ground floor, as they would if the approved facing bricks been deployed. The window openings and recessed balconies provide articulation on the upper floors. There are external reveals around the windows, which may be smaller than the approved details, but are sufficient to prevent the elevations looking unduly flat.
13. Technical information provided with the appeal includes evidence that the cladding system has been tested for its weathering capabilities. There is no indication that this relies on the application of any external sealant other than the mortar. While the Council has expressed concern about weathering, no substantive evidence has been cited that the specific system adopted will weather badly or deteriorate in quality over the lifetime of the building.
14. There are some subtle indications that full depth bricks have not been used, including discernible hairline joints at some outer corners. However, this is only apparent on close inspection. From the surrounding streets, the building appears to be constructed in facing brick and would be perceived as such by passers-by. The surface finish does not undermine the approved design, which largely relied on the fenestration and recessed balconies, rather than the areas of facing brick, to provide visual interest. While paragraph 140 of the National Planning Policy Framework (the Framework) supports decision-makers in ensuring that the quality of approved development is not materially diminished between permission and completion, including through changes to approved materials, in this particular case the quality of the building has not been materially diminished.
15. While I have concluded that the variation in materials as deployed on this particular building is not visually harmful compared to the approved design and materials, that does not imply that the same approach is acceptable on other elements of the allocated site. Much would depend on the particular design of the building(s) in question and the specific manner in which external materials

³ Dartford Town Centre Framework Supplementary Planning Document adopted July 2018

and other features are deployed to deliver the transformational design approach required in the DLP.

16. For the reasons given above, I conclude that varying condition 12 to allow for the alternative external material would not have a harmful effect on the character and appearance of the building and surrounding town centre environment. It would not conflict with relevant requirements in Policies D1, D2 and M1 in the DLP, and the Dartford Town Centre Framework SPD, which together set out a requirement for implementation of high-quality design in the transformation of Central Dartford, including a requirement that materials must support a sense of place and relate well to the local character. Nor would it conflict with relevant paragraphs in the Framework including the requirements relating to achieving well-designed places in paragraph 135 or the more specific requirements in paragraph 140 as summarised above.

Designated Heritage Assets

17. The appeal site is just outside the Dartford Town Centre Conservation Area (CA), which takes in the adjacent section of Lowfield Street including the Two Brewers and former Almshouses, both of which are Grade II listed buildings. According to the Dartford Town Centre Conservation Area Appraisal and Management Plan 2006 (CAAMP), the significance of the Conservation Area includes evidence of the staged growth of the town centre from its medieval core, including a period of southward expansion along Lowfield Street. There is a wide variety of buildings of various periods and styles, including some which are distinctive to the area.
18. Unusually, timber framed and weatherboarded buildings persisted into the 19th century, reflecting the ready availability of timber imports along the Thames. Yellow stock brick is also among the predominant materials, as well as some brown and red brick. However, inappropriate materials on some modern buildings are highlighted in the CAAMP as a jarring feature and the shopping centre near the appeal site is described as disrupting the character of Lowfield Street, leaving the listed buildings somewhat isolated.
19. The former Almshouses dates from the mid 19th century and its significance includes the historic use of the site for poor relief, which dates further back to the 16th century. The building is in yellow brick, with elaborate red brick detailing particularly to the front elevation. In contrast, the Two Brewers is a less elaborate 17th century timber framed building, refaced in the 19th century with glazed tiles and stock brick. Although the building is in poor condition, the weatherboarded side elevation is a distinctive feature, which contributes to its significance and links the building with others of a similar era.
20. The appeal site is no longer within the plot associated with the Two Brewers, being separated from the listed building by an access road. Both of the above listed buildings face mainly onto Lowfield Street and their significance is most readily appreciated within this varied commercial street scene. Similarly, the significance of the CA as a whole is most readily understood from within the main streets, which continue to follow the historic street pattern underlying the development of the town centre and reveal the varied architectural approach to such expansion. The modern buildings to the rear of Lowfield Street, where the appeal site is located, make no positive contribution to the setting of the listed buildings and in some cases detract from the setting and significance of the CA.

21. While the appeal building is partially visible from the passageway alongside the Two Brewers, it is in the background. Having concluded that the alternative external material does not harmfully affect its character and appearance, the effect on the setting of the listed buildings and CA would be neutral.
22. I therefore conclude that varying condition 12 to allow for the alternative external material would preserve the setting of designated heritage assets. The proposal would not conflict with relevant requirements in Policies D1, D2, M1, M5 and M6 in the DLP, which together require that close regard is had to the effect of development on the significance and setting of designated heritage assets, including preserving the setting of listed buildings and the character and appearance of Conservation Areas. Nor would the proposal conflict with the Framework's provisions for conserving and enhancing the historic environment or the statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings, their setting or any features of special architectural or historic interest which they possess.

Conditions

23. Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. The Council has provided an update clarifying which conditions on planning permission DA/19/00748/FUL have been discharged and has proposed updated wording for those which have been discharged in part only. The appellant has had the opportunity to comment on the proposed conditions.
24. Since the planning permission has been implemented, a condition specifying the date by which development must commence is not necessary. However, a condition requiring compliance with the approved plans is necessary, to avoid any ambiguity, in light of the Council's evidence that there may be outstanding points of non-compliance with those plans outwith the scope of this appeal.
25. I have imposed a revised version of condition 12 (now condition 11), specifying the external materials now approved. While the external surfaces appear complete, this remains necessary to avoid ambiguity. I have otherwise reimposed the conditions attached to planning permission DA/19/00748/FUL, omitting matters which the Council has confirmed to have been discharged. I have used the wording suggested by the Council, with some minor modifications in the interests of clarity and precision. I have included conditions which cover compliance matters relevant to the construction process, since I cannot be certain whether further works are likely to be required to implement the approved plans in full.

Conclusion

26. For the reasons given above, I allow the appeal and grant a new planning permission subject to the conditions detailed in the Schedule below.

Jane Smith

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with the following plans:
 - 10.001 Rev P3 - SITE PLAN & SITE LOCATION PLAN
 - 20.001 Rev P10 - GROUND FLOOR PLAN
 - 20.002 Rev P7 - FIRST FLOOR PLAN
 - 20.003 Rev P7 - SECOND FLOOR PLAN
 - 20.004 Rev P7 - THIRD FLOOR PLAN
 - 20.005 Rev P6 - FOURTH FLOOR PLAN
 - 20.006 Rev P4 - ROOF PLAN
 - 820-302 - VISIBILITY SPLAYS AND FOOTWAYS
 - 30.003 Rev P6 - NORTH ELEVATION
 - 30.001 Rev P7 - SOUTH ELEVATION
 - 30.002 Rev P6 - WEST ELEVATION
 - 30.004 Rev P6 - EAST ELEVATION
 - 820A-203A - PROPOSED GROUND FLOOR SHOWING VOID LOCATIONS
 - 820A-204A - VOID LOCATIONS ON EAST ELEVATION
 - 820A-205A - VOID LOCATIONS ON NORTH ELEVATION
 - 820A-206A - VOID LOCATIONS ON WEST ELEVATION
 - 820A-207A - VOID LOCATIONS ON SOUTH ELEVATION
 - 820A-208 - FLOOD WATER DISPLACEMENT AT FLOOD LEVEL
 - 820A-209 - FLOOD WATER DISPLACEMENT AT FLOOD LEVEL
 - 820A-210 - FLOOD WATER DISPLACEMENT AT FLOOD LEVEL
 - 820A-211 - VOID DETAIL
 - FLOOD TECHNICAL NOTE 26-11-19
 - GEO-ENVIRONMENTAL SITE ASSESSMENT 27638 R01 (00)
 - NOISE IMPACT ASSESSMENT Report No. MRL/100/1451.1v1 March 2019
- 2) The voids shall be managed and maintained (generally and after a flood) for the lifetime of the development in accordance with the details approved under 20/01013/CDNA unless prior permission has been obtained in writing from the Local Planning Authority.
- 3) Within 3 months of the date of this permission an archaeological report shall be submitted to and approved in writing by the Local Planning Authority containing the findings following the fieldwork, assessment, reporting, analysis and archiving.
- 4) The Construction Method Statement approved under 20/01045/CDNA shall be adhered to throughout construction of the development hereby permitted.
- 5) The ground floor eastern/south-eastern wall, as facing the access/carriageway into the Priory Shopping Centre, shall be set in a minimum 2m from the back edge of the carriageway and have a level footway 2m in width and shall be as per the details approved under 20/01046/CDNA. The footway shall be maintained thereafter for the lifetime of the development unless prior permission has been obtained in writing from the Local Planning Authority.
- 6) The glazing and ventilation strategy shall at all times be in accordance with the details approved under 20/01047/CDNA unless prior permission has been obtained in writing from the Local Planning Authority.
- 7) The details relating to the fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 1000mb) connections to multi point destinations approved under 20/01048/CDNA shall be at all times

- capable of connection to commercial broadband providers and maintained in accordance with the approved details unless prior approval has been obtained in writing from the Local Planning Authority.
- 8) The location of the electric vehicle charging points shall be installed and maintained at all times in accordance with the details approved under 20/01049/CDNA unless prior approval has been obtained in writing from the Local Planning Authority.
 - 9) The use of any external lighting for the development shall at all times be installed, maintained and operated in accordance with the details approved under 20/01050/CDNA unless the Local Planning Authority gives its written consent to the variation. Light trespass into the windows of any sensitive premises (e.g. residential properties) shall not have a Vertical Illuminance greater than 5 Lux.
 - 10) The drainage details shall be at all times in accordance with the details approved under 20/01051/CDNA unless prior approval has been obtained in writing from the Local Planning Authority.
 - 11) The external surfaces of the development hereby permitted shall be constructed in the materials specified on the External Materials Schedule and Balcony Details approved on 28 May 2021 pursuant to application DA/20/01052/CDNA, with the exception of the brick surfaces to the 1st, 2nd and 3rd floor elevations, which shall be constructed using Shackerley BrickClad System Saxony Range 'HIRB02' in place of the approved Ibstock 'Cissbury' red multi stock facing brick.
 - 12) The recommendations in the submitted Contamination Report 'Geo-Environmental Site Assessment 27638 R01 (00)' shall be fully implemented unless prior permission has been received in writing from the Local Planning Authority.
 - 13) The dwellings hereby approved shall be at all times in accordance with the details approved under 20/01053/CDNA unless prior permission has been received in writing from the Local Planning Authority.
 - 14) The windows shall be at all times in accordance with the details approved under 20/01054/CDNA and no further changes shall be made unless prior permission has been obtained in writing from the Local Planning Authority.
 - 15) Before installation details shall be submitted to and approved in writing by the Local Planning Authority of the appearance of the soil and vent pipes, rainwater goods or any similar external features. The building shall be completed in accordance with the approved details and maintained thereafter unless prior permission has been obtained in writing from the Local Planning Authority.
 - 16) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

- 17) No construction work shall take place on the site outside the hours of 0800 to 1800 Mondays to Fridays inclusive, and 0800 to 1300 on Saturdays with no working on Sundays and Bank Holidays, unless otherwise agreed in writing with the Local Planning Authority.
- 18) Prior to occupation a verification report shall be submitted to and approved in writing confirming that the voids have been provided in accordance with the approved details.
- 19) Prior to occupation of the development hereby approved, a contaminated land closure report shall be submitted to and approved by the Local Planning Authority. The closure report shall include details of the proposed remediation works and the quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. This shall include photographic evidence. Details of any post remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
- 20) The dwellings hereby approved shall not be occupied until evidence is submitted to the Local Planning Authority confirming that measures to achieve internal water usage rates of not more than 110 litres per person per day have been implemented.
- 21) Prior to occupation details shall be submitted to and approved in writing by the Local Planning Authority of the panels and balustrading to the balcony amenity areas and roof top amenity area. The panels shall be opaque or obscure. The panels shall be provided prior to first occupation and maintained thereafter for the lifetime of the development unless prior permission has been obtained in writing from the Local Planning Authority.
- 22) Prior to the occupation of the development hereby approved facilities for the storage and collection of waste and refuse shall be provided as per drawing 20.001-Rev P10 Ground Floor Plan and thereafter maintained in accordance with the approved details.
- 23) Prior to occupation of the development hereby approved, the cycle storage area shall be provided in the location shown on drawing 20.001-Rev P10 Ground Floor Plan and shall be maintained thereafter.
- 24) The three car parking spaces, turning areas, means of access and visibility splays shown on the approved plans shall be provided prior to occupation of the building hereby approved and kept available for such use at all times and no development, whether permitted by the Town and Country Planning (General Permitted Development) Order 2015 or not, shall be carried out on that area of land or to preclude vehicular access thereto.
- 25) Before occupation the dwellings shall comply with the National Space Standard/Building Regulations Optional Requirement. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans application or Building Notice to enable the building control body to check compliance.
- 26) The windows shall be installed to open inwards at all times.

- 27) No additional doors or openings shall be made in the ground floor, other than those shown on the ground floor plan 20.001-Rev P10.
- 28) The footway on the eastern/south-eastern part of the development shall at all times remain free of obstructions or enclosures unless prior permission has been obtained in writing from the Local Planning Authority.
- 29) The balconies shall not be enclosed at any time unless prior permission has been obtained in writing from the Local Planning Authority.
- 30) No structure, plant, equipment or machinery shall be placed, erected or installed on or above the roof or on external walls without the prior approval being given in writing by or on behalf of the Local Planning Authority.
- 31) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any other Order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in any elevation of the building, including the roof, other than as hereby approved, without the prior written consent of the Local Planning Authority.
- 32) No infiltration of surface water drainage into the ground is permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 33) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

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