



Appeal Decision

Site visit made on 9 September 2024

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/V5570/W/24/3343143

1 Hungerford Road, Islington, London N7 9LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Christian Eliades against the decision of the Council of the London Borough of Islington.
- The application Ref P2022/2765/S73, dated 25 July 2022, was refused by notice dated 21 December 2023.
- The application sought planning permission for erection of four storey building (appearing as a pair of semi-detached properties) containing 9 no. self-contained residential units (C3 use) (4x1BED; 3x2BED, 1x3BED and 1x4BED) together with ancillary private patios to rear elevation and communal rear garden, and front boundary wall and railings (following demolition of existing buildings on site) without complying with a condition attached to planning permission Ref P2018/2649/FUL, dated 30 April 2019.
- The condition in dispute is No 2 which states that: *The development hereby approved shall be carried out in accordance with the following approved plans: [Accommodation & areas schedule November 2018, Design and Access Statement Rev.A, Planning Statement ref. 848 dated November 2018, 33000/Rev.C, 33-001/Rev.D, 33-002/Rev.D, 33-300/Rev.B, 33-301/Rev.C, 33302/Rev.C, 33-303/Rev.C, 33-304/Rev.B, 103-001, 33-400, 33-401, 33-402, Sustainable Design and Construction Statement dated August 2018, Arboricultural Impact Assessment ref: ADD/1-3HNG/AIA/01 dated 2nd August 2018]*
- The reason given for the condition is: *To comply with Section 70(1)(a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.*

Decision

1. The appeal is allowed and planning permission is granted for erection of four storey building (appearing as a pair of semi-detached properties) containing 9 no. self-contained residential units (C3 use) (4x1BED; 3x2BED, 1x3BED and 1x4BED) together with ancillary private patios to rear elevation and communal rear garden, and front boundary wall and railings (following demolition of existing buildings on site) at 1-3 Hungerford Road, Islington, London N7 9LA in accordance with the application Ref P2022/2765/S73, without compliance with condition number 2 previously imposed on planning permission Ref P2018/2649/FUL dated 30 April 2019 and subject to the conditions in the attached schedule.

Preliminary Matters

2. The address in the banner heading above is taken from the planning application form. As the application boundary includes 1 and 3 Hungerford

Road, I have used this as the address in my formal decision. It is also the same address as that on the Council decision notice.

3. The appellant has submitted a deed of variation to a Section 106 agreement with the appeal. The Council has had the opportunity to comment on this.
4. The application form confirms that the development has started, and I observed this to be the case during my site visit. For clarity, I have based my decision on the submitted plans.

Background and Main Issue

5. The development has not been constructed in accordance with the plans approved under the original planning permission. The appellant sought permission to modify Condition 2 which includes various changes from the original approved development. The Council's concerns relate to the changes to the position of the front dormer windows.
6. The main issue with respect to Condition 2 is whether the proposal through changing the positioning of the front dormer windows preserves or enhances the character or appearance of the Hillmarton Conservation Area.

Reasons

7. As the appeal site is within the Hillmarton Conservation Area (the CA), I have had regard to Section 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) which requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area. The surrounding area is predominately residential.
8. The significance of the CA, as set out in the Hillmarton Conservation Area Design Guidelines 2002, is primarily derived from the historic and architectural quality of the buildings which includes three and four-storey semi-detached villas and terraces in wide streets. Although the development approved under the original planning permission reflects some of the architectural features found on the neighbouring buildings, it would have made a neutral contribution to the significance of the CA as a whole.
9. Within the street scene, there is a broad mix in terms of the size of the dormer windows and their alignment with the windows below. The development approved under the original planning permission included four front dormer windows within the mansard roof. Two of the outer edge dormer windows have been re-positioned to align with the second-floor windows.
10. The approved front elevation displayed a hierarchy of window proportions whereby the windows decreased in size moving up the building. The windows within the dormers are still smaller than the windows below and because of this, the re-positioning of the dormer windows does not disrupt the hierarchy of the façade. The dormers remain to be set up from the eaves and set in from the sides of the roof and sit comfortably in the roof. This reasonable separation also helps to minimise their bulk. Consequently, the dormer windows do not dominate the front elevation.
11. The mansard roof is large and stands out in the street scene as the roofs of the neighbouring buildings are of a different design. However, this would also

be the case with the originally approved development. The positioning of the outer dormer windows does not increase the perceived size of the mansard roof to such an extent that results in it appearing significantly more prominent or visually incongruent than the original approved development.

12. For these reasons, I conclude that changing the positioning of the front dormer windows does not detract from the overall appearance of the building and has a neutral effect on the contribution that the building makes to the significance of the CA. The proposal therefore preserves the character and appearance of the CA as a whole. Accordingly, it complies with Policies PLAN1, DH1 and DH2 of the Islington Local Plan Strategic and Development Management Policies 2023. These policies, amongst other things, require development within conservation areas to conserve or enhance the significance of the area.

Other Matters

13. St Luke's Church is a Grade II listed building¹ (The Church). Section 66(1) of the Act requires that special regard is had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The special interest and significance of The Church primarily derives from its mid-Victorian ecclesiastical architecture.
14. The Church is located at the junction of Hillmarton Road and Penn Road. Whilst it is on the same side of the road as the appeal site, it is separated by the buildings on Hillmarton Road. There is no intervisibility between the two sites. Where the appeal site is located, makes no contribution to the setting of The Church.
15. Having concluded that the proposal does not harm the overall appearance of the building and given the location and extent of the proposal, the positioning of the front dormer windows, preserves the setting of this listed building.
16. The original planning permission was accompanied by a Section 106 agreement to secure a financial contribution towards the provision of carbon offsetting and for the development to be car-free removing eligibility for parking permits.
17. As allowing the appeal would result in a new planning permission, standing alongside the original, but capable of being implemented in isolation, a variation to the principal agreement is necessary to secure the agreements should the latter permission be implemented in lieu of the original. The appellant has provided a completed Deed of Variation to the principal agreement.
18. The matters to be addressed by the Deed of Variation are in association with the principal agreement and are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. As such, they comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the National Planning Policy Framework. I have therefore taken it into account in reaching my decision.

¹ Historic England List Entry Number: 1207525

Conditions

19. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73A should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The conditions suggested by the Council clarify which conditions on the original planning permission have been discharged. I have reinstated the non-disputed conditions from the original planning permission.
20. As this is a grant of a new planning permission, I have removed the reference to the original planning permission from the Council's suggested approved plans condition. I have not reimposed the condition relating to the commencement of development as the development has started. In light of this, I have also not reimposed the tree meeting pre-commencement condition particularly as the Council has not explained why this condition would still be necessary.
21. For the sake of clarity and conciseness, I have merged some of the compliance conditions that refer to details having been approved under previous applications into one condition. It is not necessary to include the additional requirements of these conditions as suggested by the Council as the details have already been approved by the Council. The parties have been invited to comment on these conditions and I have considered their responses.
22. The Council has suggested additional conditions to require the roof brick dividers to be constructed and the front railings to be erected within 6 months as these are shown on the 'as built' plans but have not been installed. This would be unreasonable as the original permission did not require these features to be implemented within a certain timescale. Imposing these conditions would also be unnecessary as condition 1 requires the development to be carried out in accordance with the approved plans and the roof brick dividers and front railings are shown on the submitted plans.

Conclusion

23. For the reasons given above, I conclude that the appeal should be allowed. I will grant a new planning permission omitting condition number 2 replacing it with a new condition referencing the submitted plans with this appeal and restating those undisputed conditions that are still subsisting and capable of taking effect.

L Reid

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

103-001; 69-715 B; 69-711; 69-712; 69-713; 69-716 A; 69-780 C; 69-781 C; 69-100 A; 69-200 A; 69-300 A; 69-400 A; 69-500; 69-700 A; 69-701; 69-702; 69-703; 69-705; 69-800; 69-810; 69-811; 39-810; 39-811; 39-100; 39-200; 39-300; 39-400; 39-500; 39-700; 39-702; 39-703; 39-704 C3; 39-780 C; 39-781 C.
- 2) The development shall be carried out in full accordance with the details and samples approved under application ref. P2019/3265/AOD dated 8 January 2020, application ref. P2020/0470/AOD dated 6 August 2020, application ref. P2020/2241/AOD dated 15 October 2020, application ref. P2021/3283/AOD dated 6 April 2022 and shall be maintained as such thereafter.
- 3) The blue plaque removed from no.3 Hungerford Road attributed to Lillian Lindsay, Britain's first woman dentist, shall be reinstated to 3 Hungerford Road before the occupation of any flat within the development at the direction of Historic England.
- 4) The development shall be carried out in full accordance with the tree protection details and Arboricultural Method Statement approved under application ref. P2019/1465/AOD dated 5 September 2019.
- 5) The bicycle storage area hereby approved, shown on drawing no. 39-100 for 17 no. cycles shall be provided prior to first occupation of the development hereby approved and maintained as such thereafter.
- 6) The development shall be carried out in full accordance with the Construction and Environmental Management Plan (CEMP) approved under application ref. P2019/1465/AOD dated 5 September 2019.
- 7) Prior to the occupation of the residential units within the hereby approved development details of the refuse/recycling shall be submitted and approved in writing by the Local Planning Authority. The approved details shall be stored within the dedicated refuse / recycling enclosure(s) shown on drawing no. 39-100 and shall be provided prior to the first occupation of the development hereby approved and shall be maintained as such thereafter.
- 8) The hereby approved development shall be carried out strictly in accordance with the approved Sustainable Design and Construction Statement dated August 2018.
- 9) For the hereby approved, a minimum of 3 no. nesting boxes / bricks shall be installed prior to the first occupation of the building to which they form, and shall be retained into perpetuity.
- 10) The proposed railings to the front boundary shall be constructed in accordance with the drawing no. 69-705. Each bar shall be individually

set into the coping/upstand. The approved railings and gates shall be painted black in colour.

- 11) The window on the side (west) elevation at first floor level, facing no. 5 Hungerford Road, on the plans hereby approved shall be obscurely glazed up to a height of 1.7m and fixed shut prior to the first occupation of the development and retained thereafter.
- 12) The windows on side elevations facing towards the rear garden (being associated with Units 1 and 4 on the west elevation and Units 3 and 5 on the east elevation), on the plans hereby approved shall be obscurely glazed up to a height of 1.7m and fixed shut prior to the first occupation of the development and retained thereafter.
- 13) For the hereby approved development the access ramps located to the front garden shall have a gradient between 1:12 and 1:20. These ramps shall be installed prior to the occupation of the approved residential units and retained thereafter.
- 14) The second floor flat roof area shown on plan no. 39-300 hereby approved shall not be used as an amenity or sitting out space of any kind whatsoever and shall not be used other than for essential maintenance or repair, or escape in case of emergency.
- 15) The project design team shall be made up of a chartered architect, chartered structural engineer and project manager (all recognised by their awarding bodies) and shall be retained for the design development phase of the project unless otherwise agreed in writing by the Local Planning Authority.

END OF CONDITIONS