



Appeal Decision

Site visit made on 21 January 2025

by **D J Barnes MBA BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12th February 2025

Appeal Ref: APP/T0355/W/24/3354147

29 Bolton Avenue, Windsor SL4 3JE

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs T Hadwen against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref is 24/01796.
 - The application sought planning permission for the erection of a detached dwelling and garage following the demolition of the existing dwelling without complying with a condition attached to planning permission Ref 23/01117, dated 15 February 2024.
 - The condition in dispute is No. 19 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed below.
 - 2615-PL-010-00, version no.: , received on 5 May 2023
 - 2615-PL-100-00, version no.: , received on 5 May 2023
 - 2615-PL-200-00, version no.: , received on 5 May 2023
 - 2615-PL-201-00, version no.: , received on 5 May 2023
 - 2615-PL-202-00, version no.: , received on 5 May 2023
 - 2615-PL-203-00, version no.: , received on 5 May 2023
 - 2615-PL-204-00, version no.: , received on 5 May 2023
 - 2615-PL-300-00, version no.: , received on 5 May 2023
 - 2615-PL-301-00, version no.: , received on 5 May 2023
 - 2615-PL-400-00, version no.: , received on 5 May 2023
 - The reason given for the condition is: To ensure that the development is carried out in accordance with the approved particulars and plans.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached dwelling and garage following the demolition of the existing dwelling at 29 Bolton Avenue, Windsor SL4 3JE in accordance with the application Ref 24/01796, without compliance with condition number No. 19 previously imposed on planning permission Ref 23/01117 dated 15 February 2024 and subject to the conditions set out in the Schedule.

Procedural Matter

2. The National Planning Policy Framework was revised in December 2024 but its contents do not alter the assessment of this appeal.

Main Issues

3. It is considered that the main issues are whether condition 19 is necessary to (a) preserve the character and appearance of the surrounding area and (b) secure appropriate levels of carbon emissions.

Reasons

Character and Appearance

4. Planning permission was granted by the council for a replacement dwelling (Ref 23/01117) which included condition 19 that identifies the approved drawings. This permission remains extant and represents a fallback position available to the appellants and to which significant weight is given in the determination of this application.
5. The appellants are seeking to vary condition 19 by the substitution of alternative drawings which would enable amendments to the design of the replacement dwelling. These amendments include changes to the roof height, roof pitch, fenestration and external materials together with the erection of an external chimney. However, the amendments proposed are not such that they would result in a development that would conflict with the original planning permission.
6. Further amended drawings have been submitted by the appellants as part of this appeal. These drawings seek to address some of the concerns raised by the council when refusing permission for the appeal scheme. These further amendments include further changes to the fenestration, a change to the roof pitch and a reduction in the projection of the external chimney. The appellants have requested that these further amended drawings are assessed as part of this appeal and have cited Case Law¹ to support this proposition.
7. The further amendments do not materially alter the refused scheme assessed by the council and also do not represent substantial differences from the scheme subject of consultation with the occupiers of neighbouring properties. In the absence of any material changes associated with the further amended scheme, the interests of neighbouring occupiers and other consultees would not be prejudiced and, as such, this appeal has been assessed based upon the amended drawings submitted with the appeal.
8. The principle of the proposed development has already been established through the extant planning permission. When comparing the approved and appeal schemes, the general layout, siting and form of the replacement dwelling would be similar. The crown roof style of the appeal scheme with hipped roof slopes has been established by the consent albeit the overall height of the replacement dwelling would be taller than the approved scheme and add to its bulk.
9. However, along this part of Bolton Avenue there are examples of properties which have large roofs with dormers which include accommodation within the roof slope. Within the context of these properties, the bulk, hipped form and design of the proposed replacement dwelling's roof would not be a particularly conspicuous nor incongruous form of development. Rather than appearing to be a mansard roof as claimed by the council, the proposed roof would not appear materially different to

¹ Holborn Studios Limited v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

the approved scheme. The proposed roof lantern would not be particularly visible when travelling along the road. Overall, the scale and massing of the proposed roof would neither visually nor physically dominate the proposed dwelling with the main visual interest from the road being the gable projection and the Georgian style fenestration, including the 2 roof dormers.

10. The appeal scheme would not include stone quoins which do add some visual interest to the approved scheme. However, their omission from the proposed replacement dwelling would not alone be a sufficient reason for this appeal to fail.
11. Accordingly, it is concluded that the variation of condition 19 as sought by the appellants would not result in unacceptable harm being caused to the character and appearance of the surrounding area and, as such, it would not conflict with Policy QP3 of the Borough Local Plan 2013-2033 (LP) and Policy DES.01 of the Windsor Neighbourhood Plan. Amongst other matters, these policies seek a high quality of design which respects and enhances the local character of the environment, paying particular regard to scale, bulk, massing, height and materials.

Carbon Emissions

12. LP Policy SP2 refers to developments demonstrating how they have been designed to incorporate measures to adapt to and mitigate climate change. It does not specify environmental standards for new developments to achieve. Reference is made in the policy to the guidance contained in the council's *Sustainable Design and Construction Supplementary Planning Document* (SPD) which seeks new dwellings to achieve a net zero carbon rating. As mitigation if there is a shortfall, the SPD seeks a financial contribution to the council's carbon off-setting fund.
13. As summarised in the Planning Officer's report, the appeal scheme would only reduce carbon emissions by 59.98% when compared to the approved scheme's 60.69%. Further, the amount of on-site energy produced by the appeal scheme would be 3% less than the approved scheme. The appellants have advised that updated information has been provided to enable a Deed of Variation to be agreed with the council to address the different financial contributions sought by the SPD between the approved and appeal schemes. However, this Deed of Variation has not been provided at the time of this appeal being assessed.
14. Whilst the SPD provides guidance, it does not have the same status as LP Policy SP2 which has been fully consulted on and adopted. The wording of LP Policy SP2 does not reference the requirement to achieve net zero carbon emissions. This limits the weight which can be attributed to the SPD to require net zero carbon emissions to be demonstrated.
15. The Planning Practice Guidance (PPG) sets out that policies for planning obligations should be set out in plans and examined in public, and that local requirements for a building's sustainability should form part of a local plan. Consequently, I am not satisfied that the proposed financial contribution towards the council's carbon off-set fund would meet the tests set out in the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
16. From the evidence available, the appeal scheme would include renewable energy technologies, and although there would be some limited conflict with the SPD, it would align with the aims of LP Policy SP2 and the Framework insofar as they

expect development to incorporate measures to adapt to, and mitigate, climate change. Accordingly, it is concluded that the variation of condition 19 as sought by the appellants would incorporate suitable measures to adapt to and mitigate climate change secure acceptable levels of carbon emissions and, as such, it would accord with LP Policy SP2.

Conditions

17. In addition to condition 19 subject of this appeal, the other conditions have been assessed against the tests in the Framework and the PPG. With the exception of one condition, these conditions have generally been incorporated into this appeal decision albeit with some drafting changes for reasons of precision. A condition securing electric vehicle charging is considered unnecessary because this matter is addressed in the Building Regulations. The appellants have previously accepted the pre-commencement conditions when the original planning permission was granted.

Conclusion

18. Accordingly, it is concluded that condition 19 (now number 18) should be varied and this appeal should be allowed.

D J Barnes

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be commenced within three years from 15 February 2024.
- 2) The materials to be used on the external surfaces of the development shall be in accordance with those specified in the application. Development shall be carried out in accordance with the approved details.
- 3) The first floor window in the north side elevation of the new dwelling shall be of a permanently fixed, non-opening design, with the exception of an opening top-light that is a minimum of 1.7 metres above the finished internal floor level and fitted with obscure glass and the window shall not be altered.
- 4) No window(s) shall be inserted at first and second floor level in the flank elevations of the dwelling.
- 5) No development shall take place above slab level until full details of both hard and soft landscape works, have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved within the first planting season following the substantial completion of the development and retained in accordance with the approved details. If within a period of five years from the date of planting of any tree or shrub shown on the approved landscaping plan, that tree or shrub, or any tree or shrub planted in

replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted in the immediate vicinity.

- 6) Prior to the commencement of the development above slab level, details of biodiversity enhancements, to include integral bird and bat boxes, tiles or bricks on the new building, and native and wildlife friendly landscaping (including pollen-rich and fruit-bearing planting, and gaps at the bases of fences to allow hedgehogs to traverse through the gardens), shall be submitted to and approved in writing by the local planning authority. The biodiversity enhancements shall thereafter be installed as approved.
- 7) No development above slab level shall commence until a report detailing the external lighting scheme, and how this will not adversely impact upon wildlife, has been submitted to and approved in writing by the local planning authority. The report (if external lighting is to be installed) shall include the following figures and appendices:
- a) A layout plan with beam orientation
 - b) A schedule of equipment
 - c) Measures to avoid glare
 - d) An isolux contour map showing light spillage to 1 lux both vertically and horizontally, areas identified as being of importance for commuting and foraging bats, and locations of bird and bat boxes.

The approved lighting plan shall thereafter be implemented as approved.

- 8) Works which could affect any PRFs (as identified in the PEA report (Arbtech, March 2023)) shall be undertaken under the supervision of an appropriately qualified ecologist being a full member of CIEEM and or a Natural England Bat licence holder with experience of supervising works/demolitions where there is a risk of bats being present. Works are to follow a method statement agreed between the ecologist and the contractor detailing techniques, including the careful removal of tiles by hand, and the procedure to follow should bats or signs of bats be found. A closing-out report, including details of the methods used, and any bats or signs of bats found, is to be issued to the local planning authority. If works do not commence before April 2025, an updated bat survey, to include a building inspection, and dusk emergence or dawn re-entry bat detector survey, is to be undertaken and a report detailing the findings submitted to and approved in writing by the local planning authority.
- 9) The development is to be carried out in accordance with the precautionary methods detailed in the 'recommendations' column of Table 8 (within section 4.2 of the PEA (Arbtech - dated 13/03/2023 issue 2.1)) in relation to hedgehogs and nesting birds, unless otherwise agreed in writing by the local planning authority.
- 10) No part of the development shall be occupied until vehicle parking and turning space has been provided, surfaced and marked out in accordance with the approved drawing No. 2165-PL-100 Rev 01. The space approved shall be kept available for parking and turning in association with the development.
- 11) No part of the development shall be occupied until covered and secure cycle parking facilities have been provided in accordance with details that have first

been submitted to and approved in writing by the local planning authority. These facilities shall thereafter be kept available for the parking of cycles in association with the development at all times.

- 12) The garage accommodation shall be retained for the use of the parking of vehicles at all times, unless otherwise agreed in writing by the local planning authority.
- 13) No part of the development shall be occupied until a refuse bin storage area and recycling facilities have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. These facilities shall be kept available for use in association with the development at all times.
- 14) No building hereby permitted shall be occupied until a means of access to the front door and rear garden for pedestrians and cyclists has been constructed in accordance with the approved plans.
- 15) The development hereby approved shall be fully implemented in accordance with the sustainability measures outlined within the submitted Sustainability Statement and Water efficiency report, all received by the local planning authority on 5 May 2023, prior to occupation of the development. The measures shall be retained and maintained thereafter throughout the lifetime of the development.
- 16) The erection of fencing for the protection of any retained tree and any other protection specified shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site, and thereafter maintained until the completion of all construction work and all equipment, machinery and surplus materials have been permanently removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 17) Prior to the commencement of the development, details of the biodiversity net gain which will be delivered as part of this development (including a clear demonstration through the use of an appropriate biodiversity calculator such as the Defra Metric 4.0 that a net gain would be achieved), together with the timescales to implement these shall be submitted to and approved in writing by the local planning authority. The agreed net gain measures shall be implemented/installed in full in accordance with the approved details and timescales and thereafter be retained in perpetuity.
- 18) The development hereby permitted shall be carried out in accordance with the approved plans listed below:

Drawings Submitted with the Appeal:

2615-PL-100 Rev 01 Proposed Site Plan

2615-PL-200 Rev 01 Proposed Ground Floor Plan

2615-PL-201 Rev 01 Proposed 1st Floor Plan

2615-PL-202 Rev 01 Proposed 2nd Floor Plan
2615-PL-203 Rev 01 Proposed Roof Plan
2615-PL-300 Rev 01 Proposed Elevations
2615-PL-400 Rev 01 Proposed Sections

Other Drawing:

2165-PL-010 Rev 00 Location Plan
2165-PL-204 Rev 00 Proposed Garage dated June 2022

Schedule Ends