



Appeal Decision

Site visit made on 17 February 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th March 2025

Appeal Ref: APP/P4605/W/24/3354378

Land to the rear of 229-285 Shenstone Road, Soho, Birmingham B16 0PG

- 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 Andrew Cooper of Gardiner & Theobald against the decision of Birmingham City Council.
 - The application Ref is 2024/00768/PA.
 - The application sought planning permission for the erection of 2 no. residential apartment buildings each comprising 9 no. 1-bed apartments (18 in total) to provide assisted living accommodation (sui generis) without complying with a condition attached to planning permission Ref 2019/04425/PA, dated 30 January 2020.
 - The condition in dispute is No 2 which states: Requires the scheme to be in accordance with the listed approved plans. The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers 19-2214-001 B, 19-2214-002 B, 19-2214-003 B, 19-2214-004 B, 19-2214-005 B, 19-2214-006 B and 19-2214-LP ('the approved plans').
 - The reason given for the condition is: In order to define the permission in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 no. residential apartment buildings each comprising 9 no. 1-bed apartments (18 in total) to provide assisted living accommodation (sui generis) on land to the rear of 229-285 Shenstone Road, Soho, Birmingham B16 0PG without complying with condition No 2 attached to planning permission Ref 2019/04425/PA, dated 30 January 2020 and subject to the attached Schedule of Conditions.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published in December 2024 and further updated in February 2025. In this instance, the issues most relevant to the appeal are unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by this.

Background and Main Issues

3. Planning permission was granted, subject to conditions for erection of two residential apartment buildings to provide assisted living accommodation (sui generis). The appeal requests the variation of Condition 2 imposed on that permission, to amend the approved plans to enable the installation of the access-controlled security gates (the proposed gates).

4. The description of development on the Council's decision notice also refers to the variation of condition 3 (sample materials). This appears to be an error as condition 3 relates to the submission of a hard and/or soft landscape details whereas condition 1 relates to sample materials. Even so, it is clear from the application form, that the appellant seeks to vary the approved plans listed under Condition 2 and I have determined the appeal on that basis.
5. The application form indicates that development has commenced in relation to the original permission referred to in the heading above. I saw on my site visit that this is the case. However, the installation of the proposed gates had not been carried out and temporary construction fencing was in situ at the site entrance at the time of my visit.
6. The main issues are the effect of varying Condition 2 on:
 - the character and appearance of the area; and
 - access to the development including for refuse collection and deliveries.

Reasons

Character and appearance

7. Shenstone Road is a wide residential street characterised mainly by two-storey terraced dwellings, although apartments, semi-detached and detached dwellings are also present. The facades are typically brick with some use of render and many buildings are set behind similar sized small front gardens enclosed by brick walls and/or railings. Most dwellings do not have off-street parking, although some have driveways to their side. Despite this variety, there is an overall order and consistency in development rhythm, materials and boundary features.
8. Vehicle and pedestrian access to the appeal site is located immediately to the side of No 229 which is an end terrace dwelling located close to a bend on Shenstone Road. The appeal site comprises a cul-de-sac with turning head and parking spaces adjacent to two apartment buildings. Its boundaries include the rear garden/yard boundaries of dwellings adjoining No 229 and railings separating the appeal site from an adjacent area of open space. The open space contains a footpath link leading to a play area and Barley Road. To the rear of the apartment buildings is a narrow woodland area. The appeal site is not widely appreciable from Shenstone Road and has a neutral relationship with the area's character and appearance.
9. The proposed gates at the site access would have a separate vehicle and pedestrian access and would be constructed from metal railings with brick pillars. They would appear as a continuation of metal railings that form the shared boundary with the adjacent open space. This use of materials combined with its set back position from the access point onto Shenstone Road would ensure that the proposed gates would sit comfortably within the street scene. Furthermore, the gaps between railings would enable intervisibility between the appeal site and Shenstone Road and this would help to ensure that the development would not feel secluded from the rest of the community.
10. I conclude that the effect of varying condition 2 would not result in harm to the character and appearance of the area. In this regard, it would comply with Policy PG3 of the Birmingham Plan 2031: Birmingham Development Plan (2017) (BDP)

that requires new development to demonstrate high design quality. It would also accord with the guidance contained in city note SS-10 of the Birmingham Design Guide: Streets and Spaces City Manual (2022) (BDG) which advises that proposals should promote local character and sense of place.

Access

11. City note SS-10 of the BDG advises that gated forms of development will not normally be acceptable and proposals should seek to create pedestrian and cycle routes that continue through, enhancing permeability across a scheme and linking with wider existing networks where possible. With the exception of the access as existing, the appeal site is secure along all of its boundaries and so is already not permeable. Consequently, permeability through the site for the surrounding community would not therefore be restricted as a result of the proposed gates.
12. Furthermore, the appellant's submissions provide adequate rationale for the proposed gates, indicating that the apartments would provide purpose-designed supported housing to enable people with lifetime care needs to live within their community rather than in a hospital or institutional setting. The appellants state that some of the residents may be vulnerable and the proposed gates would enable occupants of the apartments to freely use the outdoor spaces within the site whilst ensuring that access to the site is monitored and controlled. It is therefore reasonable to expect the proposed gates to be operated via a staff intercom. Controlled access for refuse, delivery and other vehicles enabling them to turn and exit the site in a forward gear with space to wait whilst using the intercom off the highway, could also be facilitated on this basis.
13. It is unlikely that motor vehicles would access the site by mistake, as the proposed gates would likely be visible prior to entering the site. On the rare occasion that drivers cannot gain access, reversing into the road would be required. However, the effects of such a manoeuvre would not be dissimilar to vehicles reversing out of driveways or reverse parking into parallel parking spaces along Shenstone Road.
14. Overall, there is no substantiated evidence to suggest that the provision of the proposed gates would equate to an unacceptable impact on highway safety or a severe residual impact on the highway and there would be no conflict with paragraph 116 of the Framework on this basis. Furthermore, no clear justification for the Council's request for a comprehensive Transport Assessment (TA) has been provided since the addition of the proposed gates would not directly result in increased traffic levels or material harm to the free-flow of traffic.
15. I conclude that the effect of varying condition 2 would not result in a harmful effect on access to the development including for refuse collection and deliveries. In this regard, the proposed development would comply with Policy PG3 and TP44 of the BDP that requires new development to create safe environments that encourage people to move around by cycling and walking and to promote an efficient, effective and safe use of the existing transport network.
16. Whilst not referred to in the Council's decision, a copy of the Birmingham Plan 2031: Development Management in Birmingham Development Plan Document (2021) has been provided. The proposed development would not conflict with the policies most pertinent to this appeal, including Policies DM14 and DM15, which require new development to ensure that the operational needs of the development

are met and to ensure that safe, convenience and appropriate access arrangements are made for all users.

Other Matters

17. The Council suggests that alternative security measures such as CCTV, lighting, secure buildings and staff presence could be utilised. Even so, I have identified no harm in relation to the proposed gates. The technicalities of how the proposed access-controlled security gates would link to the staffed area within the apartment buildings is a matter for the appellant.
18. Whilst there may be other housing development near the application site on Maynard Road and Herbert James Close which have communal parking facilities that are not gated, these schemes are not directly comparable to the appeal proposal as they are not for supported accommodation. These examples do not therefore alter my observations in respect of the site-specific circumstances of the appeal proposal.
19. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I am satisfied that the proposed development would allow persons with protected characteristics which may include age and/or disability to use the premises thereby advancing equality of opportunity for those persons and fostering good relations between them and others.

Conditions

20. 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. I have limited information before me about the status of the other conditions imposed on the original planning permission. Having regard to the Council's list of suggested conditions, I shall impose all those that I consider remain relevant and I have made changes to wording to add precision as appropriate. In the event that some have in fact been fully discharged, that is a matter which can be addressed by the parties.
21. As the application form refers to the variation of the approved plans to replace the proposed site layout drawing only, Condition 2 has been amended accordingly and retains reference to all other plans originally listed. Conditions 7 and 8 have been merged given that the Council has confirmed that a contaminated land assessment pursuant to the requirements of Condition 7 has previously been approved.
22. Wording referencing 'notwithstanding the proposed gates' has been added where necessary to ensure no conflict with any details previously approved by the Council (including Conditions 3 and 5).
23. Implementation clauses have also been added where appropriate to ensure that the conditions are enforceable (including Conditions 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, and 15).
24. Condition 19 of application ref: 2019/04425/PA relating to timescales for implementation has been deleted as the development has already commenced.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission substituting Condition 2 and restating (and amended as required) those undisputed conditions that are still subsisting and capable of taking effect.

H Marriott

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be implemented in accordance with the sample materials approved by the local planning authority as part of the discharge of condition application reference: 2020/06929/PA.
- 2) The development hereby permitted shall be implemented in accordance with the details submitted with the application and shown on drawing numbers 19-2214-001 B, 19-2214-002 B, 19-2214-003 B, 19-2214-004 B, 19-2214-005 F, 19-2214-006 B and 19-2214-LP ('the approved plans').
- 3) Notwithstanding the entrance gates shown on drawing number 19-2214-005 F, the hard and/or soft landscape shall be undertaken in accordance with details approved by the local planning authority as part of the discharge of condition application ref: 2020/06929/PA (pursuant to Condition 3 of application ref: 2019/04425/PA). The approved hard landscaping shall be implemented prior to occupation of the development. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 2 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 4) The hard surfacing materials approved by the local planning authority as part of the discharge of condition application ref: 2020/06929/PA (pursuant to Condition 4 of application ref: 2019/04425/PA) shall be implemented prior to the occupation of development.
- 5) Notwithstanding the entrance gates shown on drawing number 19-2214-005 F, the boundary treatment details approved by the local planning authority as part of the discharge of condition application ref: 2020/06929/PA (pursuant to Condition 5 of application ref: 2019/04425/PA) shall be implemented on site prior to the occupation of development and retained as such thereafter.
- 6) The architectural details approved by the local planning authority as part of the discharge of condition application ref: 2020/02077/PA (pursuant to Condition 6 of application ref: 2019/04425/PA) shall be implemented prior to the occupation of development and retained as such thereafter.
- 7) Prior to occupation of any part of the development hereby permitted, a contaminated land verification report demonstrating completion of the works set out in the approved remediation strategy (approved by the local planning authority under discharge of condition application ref: 2020/02077/PA pursuant to Condition 7 of application ref: 2019/04425/PA) and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages,

maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority. Development shall be undertaken in accordance with the approved details.

- 8) The cycle storage details approved by the local planning authority as part of the discharge of condition application ref: 2020/06929/PA (pursuant to Condition 9 of application ref: 2019/04425/PA) shall be implemented on site prior to the occupation of development and retained as such thereafter.
- 9) The ecological management plan approved by the local planning authority as part of the discharge of condition application ref: 2020/02077/PA (pursuant to Condition 10 of application ref: 2019/04425/PA) shall be implemented on site prior to occupation of the development and retained as such thereafter.
- 10) An Ecological Enhancement Strategy including timescales for implementation shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development. The development shall thereafter be implemented in accordance with the approved details.
- 11) The lighting scheme approved by the local planning authority as part of the discharge of condition application ref: 2020/06929/PA (pursuant to Condition 12 of application ref: 2019/04425/PA) shall be implemented prior to occupation of development and retained as such thereafter.
- 12) The drainage scheme approved by the local planning authority as part of the discharge of condition application ref: 2020/02077/PA (pursuant to Condition 13 of application ref: 2019/04425/PA) shall be implemented prior to the occupation of development and retained as such thereafter.
- 13) The CCTV scheme approved by the local planning authority as part of the discharge of condition application ref: 2020/06929/PA (pursuant to Condition 14 of application ref: 2019/04425/PA) shall be implemented prior to occupation of development and retained as such thereafter.
- 14) Prior to the occupation of the development hereby permitted, no fewer than one charging point for electric vehicles shall be provided at each residential unit with dedicated parking and no fewer than 10% of non-dedicated parking spaces shall be provided with electric vehicle charging points.
- 15) The details of refuse storage approved by the local planning authority as part of the discharge of condition application ref: 2020/06929/PA (pursuant to Condition 16 of application ref: 2019/04425/PA) shall be implemented prior to the occupation of development and retained thereafter.
- 16) The development shall be undertaken and maintained in accordance with the submitted Arboricultural Method Statement prepared by Weddle Landscape Design dated July 2019 and Tree Protection Plan 942 SRB04 A.
- 17) The use hereby approved is restricted to a maximum of 18 occupants at any one time.

- 18) The sustainable drainage scheme approved by the local planning authority as part of the discharge of condition application ref: 2020/02077/PA (pursuant to Condition 20 of application ref: 2019/04425/PA) shall be implemented prior to the occupation of development and retained as such thereafter.
- 19) Prior to the occupation of the development hereby permitted, a Sustainable Drainage Operation and Maintenance Plan (including details of agreement with an adopting body and proposed inspection and maintenance actions) shall be submitted to and approved in writing by the local planning authority. The approved drainage system shall be implemented in accordance with the approved details prior to the use of the buildings commencing and maintained thereafter for the lifetime of the development in accordance with the Sustainable Drainage Operation and Maintenance Plan.

===== END OF SCHEDULE =====