



Appeal Decision

Site visit made on 25 July 2018

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 August 2018

Appeal Ref: APP/E5900/W/18/3199690

Site at North East Junction of Cable St & Ratcliffe Cross St. E1.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Peter Magri against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/17/01633, dated 14 June 2017, was refused by notice dated 30 November 2017.
 - The application sought planning permission for outline application for a mixed use development containing 57 apartments and 970sqm of commercial space for A1, B1/D1 use as a part 7, part 8 storey development without complying with a condition attached to planning permission Ref PA/11/01818, dated 5 July 2013.
 - The condition in dispute is No 11 which states that:
No development shall take place until details of a Code for Sustainable Homes pre-assessment, where the development shall seek to achieve a Code Level 4 rating, has been submitted to and approved in writing by the local planning authority.
 - The reason given for the condition is:
To ensure a reduction carbon dioxide emissions in accordance with the requirements of policy DM29 of the Manging Development Document 2013, SP11 of the Tower Hamlets Core Strategy 2010 and policies 5.2 and 5.3 of the London Plan (Spatial Development Strategy for Greater London) 2011.
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Decision

1. The appeal is allowed and planning permission is granted for outline application for a mixed use development containing 57 apartments and 970sqm of commercial space for A1, B1/D1 use as a part 7, part 8 storey development, at Site at North East Junction of Cable Street & Ratcliffe Cross Street, Cable Street, London, without complying with condition No 11 previously imposed on planning permission Ref PA/11/01818, dated 5 July 2013, but subject to the attached schedule of conditions.

Preliminary Matter

2. In the interests of accuracy and completeness, the address used in paragraph 1 above is taken from the appeal form.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of addressing climate change and achieving sustainable development.

Reasons

4. The appeal comprises an overgrown area of land surrounded by a mixture of uses, including a railway viaduct to the north. Changes made to Planning Practice Guidance¹ (PPG) withdrew the Code for Sustainable Homes (CSH) from national planning policy.
5. The Council contend that the withdrawal of the CSH relates to planning conditions for new approvals only. I also note that the Council's sustainability team do not support the removal of CSH conditions that are attached to developments before the Written Ministerial Statement². However, the PPG sets out that the CSH has been withdrawn, aside from legacy cases. In this light, as the original permission was before the government direction, the Council contend that the scheme would be classed as a legacy case and as such the requirements of Condition 11 remain. Legacy cases are defined as residential development that are legally contracted to apply a code policy such as affordable housing through the National Affordable Housing Programme 2015 to 2018 or earlier programme, or where planning permission has been granted subject to a condition stipulating discharge of a code level which a developer is not appealing or seeking to have removed or varied. As the developer is appealing the condition and seeking to have it removed, it cannot be considered a legacy case. No other grounds have been put forward to contend that the proposal comprises a legacy case.
6. The starting point for the decision maker is the development plan as outlined at Section 38 (6) of the 2004 Planning and Compulsory Purchase Act and Section 70 (2) of the Act. Policy DM29 of the Managing Development Document (MDD), Policy SP11 of the Core Strategy (CS) and policies 5.2 and 5.3 of the London Plan (LP) are cited by the Council as of relevance to the proposal. Combined, these policies seek to minimise carbon dioxide emissions, achieve carbon reduction targets and ensure residential development is built to be zero carbon by 2016 in accordance with Government guidance.
7. Based on the PPG, the proposal would not be required to be built to zero carbon. Nonetheless, there would be an element of conflict with the above noted development plan policies. However, in the context of Section 38 (6) of the Planning and Compulsory Purchase Act and Section 70 (2) of the Act, the great weight I attribute to the PPG outweighs the weight I afford to the conflict with the above noted development plan policies. Moreover, owing to Building Regulations Part L (2013) requirements, despite the removal of the condition, the proposal would still address climate change and achieve sustainable development.
8. Therefore I conclude that the condition is not reasonable or necessary in the interests of addressing climate change and achieving sustainable development.

Other Matters

9. The site is located partly within the York Square Conservation Area and the Council's Officer Report notes that two Grade II* buildings are within the site vicinity, which includes The Royal Foundation of St Katherine's. However, in the light of my statutory duty³, I note that the proposal relates to the removal

¹ Dated 27 March 2015, Paragraph: 001 Reference ID: 56-001-20150327.

² Dated 25 March 2015.

³ Under the Planning (Listed Buildings and Conservation Areas) Act 1990.

of a condition and that no concern has been raised by the Council in this respect. Consequently the proposal would not result in any harm to heritage assets.

10. I have also considered the recent revised version of the Framework⁴. However it does not alter my conclusions in respect of the above main issue.

Conclusion

11. The PPG makes it clear that decision notices for the grant of planning permission under section 73 of the Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me or an agreed position about the status of the other conditions imposed on the original planning 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.
12. Section 73 (5) the Act and the PPG⁵ are clear that planning permission cannot be granted under this section of the Act to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Consequently condition 1 of the original planning permission is not included below.
13. For the reasons given above I conclude that the appeal should succeed. As a result I will vary the planning permission by deleting the disputed condition.

B Bowker

INSPECTOR

⁴ Dated July 2018.

⁵ Paragraph: 014 Reference ID: 17a-014-20140306.

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Schedule to this planning permission: E100 rev E, P100 rev N, P101 rev N, P102 rev N, P103 rev N, P104 rev N, P105 N, P106 rev N, P107 rev N, P108 rev N, P109 rev N, P110 rev N, P111 rev N, P112 rev N, P113 rev N, P114 rev N, P115 rev N, P116 rev N, P117 rev N, P118 rev N and P119 rev N.
- 2) Full particulars of the following reserved matters shall be submitted to and approved in writing by the local planning authority before the development hereby permitted is commenced and the development shall not be carried out otherwise than in accordance with the particulars so approved:
 - a) The landscaping of the site, including child play space and green walls.
- 3) No development shall take place until samples and full particulars of the following part(s) of the development have been submitted to and approved in writing by the local planning authority.

All External Facing Materials, other than the green walls as required by condition 2.

The development shall not be carried out otherwise than in accordance with the details thus approved.

- 4) No development shall take place, including any works of demolition, until a Contaminated Land Scheme has been submitted to and approved in writing by the local planning authority.

Details of the scheme shall include:-

- I. A detailed 'desk study report'.
- II. A proposal to undertake an intrusive investigation at the site based on the findings of the desk study.
- III. A detailed 'site investigation report' to investigate and identify potential contamination (including water pollution potential).

The scheme and any identified remediation measures shall be implemented in full accordance within a timetable specified in the approved scheme.

- 5) Prior to the first occupation of the development details of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - I. Proposals for any necessary remedial works to contain treat or remove any contamination.
 - II. A Monitoring Plan recording which areas of the site have been remediated.

The scheme and any identified remediation measures shall be implemented in full accordance within a timetable specified in the approved scheme.

- 6) Prior to the commencement of the development a scheme for satisfactorily mitigating the noise and vibration issues associated with the railway should

be submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved details.

- 7) Prior to the commencement of the development a scheme of noise insulation between the commercial units and the first floor residential units 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.

- 8) Prior to the commencement of the development details of the layout of the three bedroom social rented units shall be submitted to and approved in writing by the Local Planning Authority.

The details shall show that, where possible, separate living rooms and kitchens are provided.

The development shall be carried out in accordance with the approved details.

- 9) The information to be submitted with any subsequent reserved matters application for development at this site shall include a detailed 'energy strategy' and 'sustainability statement' to demonstrate the development is in accordance with the policies at the time of the application. The reserved matters application 'energy statement' and 'sustainability strategy' must follow the appropriate guidance and methodology and be approved in writing by the local planning authority.

- 10) Prior to the commencement of the development details of the cycle parking shall be submitted to and approved in writing by the Local Planning Authority. These details shall include an area for staff of the commercial units to park bicycles.

Details of the cycle stands shall also be provided and their means of enclosure.

The development shall be carried out in accordance with the approved details.

- 11) Prior to the commencement of the development details of the design for the shopfronts shall be submitted to and approved in writing.

The development shall be carried out in accordance with the approved details.

- 12) Prior to the occupation of the development a servicing management strategy shall be submitted to and approved in writing by the Local Planning Authority.

Details shall include the anticipated size and frequency of the proposed vehicles and swept paths showing how they would enter and exit Cable Street in a forward gear.

The development shall be carried out in accordance with the approved details.

13) You must only carry out the development allowed by this permission within the following times:-

- I) 8.00am Hours to 6.00pm Hours, Mondays to Fridays
- II) 9.00am Hours to 1.00pm Hours on Saturdays
- III) You must not carry out the works permitted on Sundays or Bank Holidays.

14) No development shall take place until a Scheme of Highway Improvement Works necessary to serve this development (being the closure of the existing access, reconstruction/resurfacing of the carriageway/footway along Cable Street and Ratcliffe Cross Street and erection of the new footway on the eastern side of Ratcliffe Cross Street) has been submitted to and approved in writing by the local planning authority.

The development shall not be occupied until the Scheme has been completed in full accordance with the approved details.

15) The dwellings hereby approved shall be constructed in accordance with "Lifetimes Homes" standards unless otherwise agreed in writing by the local planning authority.

16) The refuse store(s) and recycling facilities shown on approved drawing No. P102 rev N shall be provided prior to the occupation of the development and thereafter shall be made permanently available for the occupiers of the building.

17) The external glazing to be used for the residential element of the scheme shall have a transmittance figure no lower than 0.68.

18) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:

- I. the parking of vehicles of site operatives and visitors.
- II. loading and unloading of plant and materials
- III. storage of plant and materials used in constructing the development
- IV. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- V. wheel washing facilities
- VI. measures to control the emission of dust and dirt during construction
- VII. a scheme for recycling/disposing of waste resulting from demolition and construction works.

- 19) The development hereby approved shall meet the aims and objectives of 'Secured by Design'. Details of which 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.
- 20) If a D1 use is implemented on this site it shall not take place other than between the hours of:-
- 0800 -22:00, Mondays – Saturdays
1000 – 1800 Sundays or Bank Holidays.