



Appeal Decision

Site visit made on 2 November 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24/11/2022

Appeal Ref: APP/B5480/W/21/3286852

1 & 2 Central Cottages, Romford RM14 2TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 (the Act) 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 Kevin Williams against the Council of the London Borough of Havering.
 - The application Ref P1666.21 is dated 22 August 2021.
 - The application sought planning permission for demolition of existing building and erection of replacement pair of semi-detached houses without complying with conditions attached to planning permission Ref P0297.17, dated 6 June 2017.
 - The conditions in dispute are Nos 4, 5 and 11 which state that:
 - 4 *No building shall be occupied or use commenced until refuse and recycling facilities are provided in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The refuse and recycling facilities shall be permanently retained thereafter.*
 - 5 *No building shall be occupied or use commenced until cycle storage is provided in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The cycle storage shall be permanently retained thereafter.*
 - 11 *The necessary agreement, notice or licence to enable the proposed alterations to the Public Highway shall be entered into prior to the commencement of development.*
 - The reasons given for the conditions are:
 - 4 *Insufficient information has been supplied with the application to judge how refuse and recycling will be managed on site. Submission of this detail prior to occupation in the case of new building works or prior to the use commencing in the case of changes of use will protect the amenity of occupiers of the development and also the locality generally and ensure that the development accords with the Development Control Policies Development Plan Document Policy DC61.*
 - 5 *Insufficient information has been supplied with the application to demonstrate what facilities will be available for cycle parking. Submission of this detail prior to occupation in the case of new building works or prior to the use commencing in the case of changes of use is in the interests of providing a wide range of facilities for non-motor car residents and sustainability.*
 - 11 *In the interests of ensuring good design and ensuring public safety and to comply with policies of the Core Strategy and Development Control Policies DPD, namely CP10, CP17, and DC61.*
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Decision

1. The appeal is dismissed and planning permission for demolition of existing building and erection of replacement pair of semi-detached houses without complying with conditions attached to planning permission Ref P0297.17, dated 6 June 2017, is refused.

Application for Costs

2. An application for costs was made by Kevin Williams against the Council of the London Borough of Havering. This application is the subject of a separate Decision.

Procedural Matters

3. There is some variation in the address of the appeal site in the application and appeal documentation. However, it is clear that the original planning permission related to 1 and 2 Central Cottages, and the appellant has confirmed that the appeal relates to both of those properties. I have proceeded to determine this appeal on that basis.
4. In its reasons for some of the disputed conditions, the Council refers to the Core Strategy and Development Control Policies DPD. This document has since been superseded by the Havering Local Plan 2021 (the Local Plan). A new London Plan 2021 has also been adopted. The Council has confirmed which policies from the Local Plan and London Plan it considers to be relevant to the appeal. The appellant has been afforded the opportunity to comment on these policies. I have therefore assessed the proposal against the adopted development plan.
5. The Council requested that I view the appeal site from both Nos 1 and 2, and I was able to do so at my visit.

Background and Main Issues

6. Planning permission for development including the erection of a pair of semi-detached houses was granted in June 2017 subject to conditions. It was clear from my site visit that houses have been erected on the site and are occupied.
7. The conditions which form the basis of this appeal require the submission of details prior to the commencement of development and the occupation of the buildings. The appellant has previously sought to discharge these conditions, although the Council has refused to do so due to insufficient information being provided. The appellant has indicated that they want to discharge the conditions as part of this appeal.
8. However, the application which has led to this appeal was submitted for the removal or variation of conditions, not whether they ought to be discharged. I have to determine this appeal on the basis of what was actually applied for, rather than the appellant's intentions. It is not within my powers under Section 73A of the Act to determine if the conditions ought to be discharged. Indeed, section 73(2) of the Act states "*...the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted...*" (my emphasis).
9. The appeal was submitted following the Council's failure to give notice of its decision within the prescribed period. In its Appeal Statement, the Council has

indicated reasons for refusal had it resolved to determine the application. The appellant has been given the opportunity to comment on these matters.

10. The main issues are:

- Whether the conditions are reasonable and necessary in the interests of the living conditions of residents and the amenity of the area (Condition 4), sustainable transport (Condition 5) and highway safety (Condition 11); and
- Whether the conditions could be varied, with due regard to a planning obligation.

Reasons

Whether the conditions are reasonable and necessary

11. Condition 4 relates to how refuse and recycling will be managed on site. The provision of details for dedicated refuse and recycling storage is appropriate to prevent insanitary conditions, such as from the open storage of refuse bags. Details in relation to the placement of waste on collection days are also required to ensure that it can be placed in an accessible location which does not lead to insanitary or unsightly conditions when viewed from the public realm. Condition 4 is therefore reasonable and necessary in the interests of the living conditions of residents and the amenity of the area. In this regard, the proposal would be contrary to the amenity and waste storage requirements of policy 7 of the Local Plan and policy D6 of the London Plan. The proposal would also be contrary to the National Planning Policy Framework (the Framework) which seeks to create a high standard of amenity for existing and future users of development.
12. The Framework and the policies of the development plan seek to promote sustainable transport, including through providing residents with options to travel sustainably and enabling cycling. The provision of details to ensure that cycles can be stored on the site in a secure and convenient manner would meet that requirement and avoid the reliance of residents on the private car. Condition 5 is therefore reasonable and necessary to ensure that these details are provided in the interests of sustainable transport. The proposal would therefore be contrary to policy 23 of the Local Plan and the Framework with regard to promoting sustainable transport.
13. The site is accessed from the public highway, and I saw that the road to the front of the site was well-trafficked. It is therefore appropriate to require further details beyond those submitted with the original application to ensure that alterations to the highway are undertaken in accordance with appropriate standards. Condition 11 is therefore reasonable and necessary in the interests of highway safety, and the proposal would therefore be contrary to the highway safety requirements of policy 23 of the Local Plan and the Framework.

Variation of conditions, and Planning Obligation

14. Based on what I have seen and read, the development has commenced and the dwellings are occupied. I have considered whether it would be appropriate for me to vary the wording of the conditions to reflect that, for example by specifying a timescale for the submission of the details required by the conditions. However, I am mindful that this would not address the appellant's concerns as this would still require the submission of details to discharge the

conditions. There are other methods open to both main parties to address this matter, such as a further application to discharge the conditions or enforcement action.

15. Furthermore, the effect of rewording the conditions would be to create a new planning permission. The original permission was subject to a planning obligation in respect of education contributions. The appellant submits that the education contribution has been paid in full. However, this has not been formally confirmed by the Council which refers to the need for a deed of variation. Therefore a new planning obligation may need to be submitted to cover the new permission, or the original planning obligation varied to reflect changes in circumstances since the original planning permission. On the basis of the evidence before me, it would not be appropriate to vary the conditions in the absence of formal confirmation in respect of the obligation.

Other Matters

16. I note the frustrations expressed by the appellant in relation to the level of communication from the Council leading up to this appeal. I have also had regard to the screenshots of the Council's website which indicate that the status of an application to discharge the conditions was stated to be 'discharge complete', although this wording was changed subsequently. However, this is not a matter for this appeal which I have determined on its planning merits.

Conclusion

17. Drawing the above together, the appellant seeks to discharge the disputed conditions, and has submitted details in an attempt to do so.
18. However, given the form of the original application, it is not within the remit of this appeal to discharge the conditions. I have concluded that the conditions are reasonable and necessary in respect of the original planning permission, and that they must therefore not be removed. Given the matter of the planning obligation, it would not be appropriate to reword the conditions as part of a new permission, and in any event this would not meet the appellant's intentions on this matter.
19. I have concluded that the conditions are reasonable and necessary, and that their removal would be contrary to the provisions of the policies of the development plan and the Framework. It would also not be appropriate for me to vary the conditions for the reasons stated. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR