Appeal Decisions
Inquiry held on 27 - 30 September 2016
Site visit made on 27 September 2016
by P N Jarratt  BA DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government
Decision date: 11 October 2016

Appeals by Solehawk Ltd against Newcastle-upon-Tyne City Council, in respect of Ashton Court Nursing Home, 376 West Road, Newcastle upon Tyne, Tyne and Wear, NE4 9RJ

Appeal A Ref: APP/M4510/A/15/3136351
- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The application Ref 2015/0881/01/DET, dated 8 June 2015, was refused by notice dated 9 September 2015.
- The development proposed is the retention of a four storey care home (Use Class C2), including demolition of part of existing building with associated landscaping and car parking.
- Summary of Decision: Appeal allowed and planning permission granted subject to conditions.

Appeal B Ref: APP/M4510/C/15/3136479
- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is against an enforcement notice.
- The enforcement notice, numbered 15/00046/ENF, was issued on 15 September 2015.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised erection of a four storey building.
- The requirements of the notice are:
  1. Remove the whole of the unauthorised building
  2. Evenly re-grade the surface of the land to form a uniform flat area to be at a level between 116.5 and 116.7 metres above ordnance datum.
  3. Remove from the land all waste, materials, equipment and debris including that arising from compliance with steps 1 and 2 above, from the site.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g)
- Summary of Decision: Notice varied, appeal dismissed and planning permission refused.

Appeal C Ref: APP/M4510/X/16/3143110
- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The application Ref 2015/1680/LDC, dated 11 November 2015, was refused by notice
appeal decisions app/m4510/c/15/3136479, app/m4510/a/15/3136351, app/m4510/x/16/3143110

dated 18 January 2015.

- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful development is sought is that planning permission 2011/1713/01/DET (Erection of 4 storey (max) care home (C2 use) (44 bedrooms) following demolition of existing care home with associated landscaping and car parking, as amended by plans received on 20 January 2012 and 24 January 2012), has been lawfully commenced and can be lawfully built out in strict accordance with the terms of that permission.

- **Summary of Decision: Appeal dismissed.**

Procedural matters

1. A Statement of Common Ground was submitted prior to the inquiry. This included a comprehensive list of Core Documents, including CD.A relating to the first approved planning application; CD.B, the second refused application; CD.C, the third refused application (Appeal A); CD.D, refused LDC application (Appeal C); CD.E, core strategy and misc. guidance; CD.F, legal authorities; CD.G, appellant’s statements of case; unilateral undertakings and agreed measurements

2. The appellant’s description of the proposed development in Appeal A was ‘retrospective planning application for erection of 42 bed care home (Use Class C2) (resubmission of application 2015/0099/01/DET’. The Council amended the description to ‘removal of part of fourth-storey and reduction in height of northern element to retrospective four storey (max) care home (C2 use) (42 bedrooms) with associated landscaping and car parking (amended description) as amended by plans received on 19 August 2015’. However it became evident at the inquiry that a more accurate description of development is ‘retention of a four storey care home (Use Class C2), including demolition of part of existing building with associated landscaping and car parking’. I have used this description in the banner heading above.

3. The appellant submitted a proof of evidence by J Sneddon of Tetlow King Planning regarding the need for a care home. However, as the Council did not challenge this evidence it was taken as read.

4. Separate completed unilateral undertakings in respect of Appeals A and B were submitted at the inquiry (Documents 1 and 2).

5. In Appeal B an appeal on ground (b) was made originally although this was withdrawn before the inquiry.

Relevant Planning History

6. The detailed planning history is set out in the SoCG. In brief these are:

   i) Planning application one (PA1) – on 23 March 2012 permission was granted for the erection of 4 storey (max) care home (C2 use) (44 beds) following demolition of existing care home with associated landscaping and car parking, as amended by plans received on 20/1/12 and 24/1/12 subject to 19 conditions. Condition 12 required the development to be carried out in accordance with approved plans in order to achieve a satisfactory form of development. (Ref 2011/1713/01/DET).
ii) Planning application two (PA2) - on 17 March 2015 permission was refused for the retention of 4 storey (max) care home (C2 use) (44 bedrooms) with associated landscaping and car parking (retrospective). The reasons for refusal related to the impact on the living conditions of 2 Two Ball Lonnen and on the character and appearance of the area. (Ref 2015/0099/01DET). This decision was not appealed.

iii) Planning application three (PA3) – permission was refused on 28 August 2015 (contrary to officer recommendation) for the removal of part of fourth-storey and reduction in height of northern element to retrospective four storey (max) care home (C2 use) (42 bedrooms) with associated landscaping and car parking (amended description) as amended by plans received on 19 August 2015. (Ref 2015/0881/01/DET). The reason for refusal related to the effect of the development on the character and appearance of the area and is the subject of Appeal A.

iv) An enforcement notice was issued on 15 September 2015 and is the subject of Appeal B.

v) Certificate of Lawfulness (LDC) – LDC refused on 18 January 2016 for the development described in the banner heading under Appeal C.

The appeal site and its surroundings

7. The site is on the corner of West Road and Two Ball Lonnen within an established residential area with nearby local shopping facilities. An unfinished four storey building occupies the site which was previously occupied by the now demolished 37 bed Aston Court Care Home. Hoardings surround the perimeter of the site and sit behind a stone wall. There are a number of protected trees around the site, including a double trunked sycamore which is prominent on the corner.

8. The site is relatively flat although there is a change in ground level between the appeal site and the properties on Two Ball Lonnen and West Road. To the north of the site at 2 Two Ball Lonnen is a dormer bungalow which has a bedroom window facing the appeal site.

Planning Application 1: the approved scheme

9. The approved scheme in PA1 has been built at a higher level than the Council considers was permitted. Condition 12 includes Drawing No 2052 A (0) 13 Rev B which clearly shows that on the west, east and south elevations that the ground floor level of the proposed building would be built at pavement level although the appellant takes a different view. However, rather than being at pavement level, it was built at the ‘plateau’ level formed by the ground floor of the demolished care home. The Council estimates the total difference to be 2.48m higher than approved at the Two Ball Lonnen elevation made up by the plateau level being 1.39m higher than pavement level and an additional 1.09m arising from what the appellant’s describe as a construction error leading to increased ceiling heights. At the West Road elevation the height difference is 1.98m.

10. In February 2016 and after the serving of the enforcement notice the appellant demolished the upper floor of the northern element of the building adjacent to
2 Two Ball Lonnen, involving the loss of two bedrooms. This is now single storey and has a temporary roof.

11. In addition to the height differences between the approved scheme of PA1 and what was subsequently built, the footprint is marginally different and there have been many changes to the fenestration arrangements and the creation of additional openings. However, the Council does not consider these changes to be significant.

**Appeal A: the s78 appeal**

12. Following the refusal of PA2, the appellant appointed different architects who sought to arrive at a solution that overcame the reasons for refusal relating to the living conditions of the adjoining dormer bungalow and massing of the building. The submitted PA3 would reduce the height of the building immediately adjacent to the dormer bungalow by the removal of a storey (this work has been carried out as described above) and the removal of a 4m deep section of the upper floor on the Two Ball Lonnen elevation, together with changes to external elevations to reflect what had been built on site. The Council is satisfied that the reduction in the height of the building element adjacent to 2 Two Ball Lonnen overcomes their concerns in respect of any significant impact on the living conditions of the occupants.

13. From my inspection of the site and its surroundings, and from representations made at the inquiry and in writing, I consider the main issue in Appeal A to be the impact of the development on the character and appearance of the area, principally arising from the height, scale and massing of the building.

14. The Council has sought over many years to upgrade and enhance the key major approach roads into the city centre with regard to townscape quality. The Council has accepted that a landmark building is appropriate for the site in view of its location on a main arterial road leading to the city centre and which follows the line of Hadrian’s Wall. It has also supported the construction of a four storey building on the site rather than a lower development.

15. The area does not possess any exceptional townscape characteristics. If anything it is somewhat nondescript and the Council’s wish to see a landmark building introduced is entirely understandable as this is an accepted method of applying the principles of urban design in a constructive way. By its very nature a landmark building is designed to make a statement in terms of scale, design, materials or other features which contrast with nearby buildings. Whilst it may appear to be out of context with its immediate surroundings, it nevertheless respects the wider context as a landmark on a node in the highway network. Furthermore, there is no reason why a landmark building cannot be achieved whilst respecting the living conditions and amenities of its neighbours.

16. As built, the building is prominent from viewpoints on the roads leading to the crossroad junction, being higher than nearby buildings, largely rendered white, being of contemporary design with a distinctive roof arrangement. This is in contrast to the more suburban architecture of the predominantly two storey residential and commercial properties in the immediate vicinity, with the exception of the contemporary design of the car showroom on West Road.

17. I find that there would be no harm caused to the character and appearance of the area when approaching the site along West Road from the city centre,
which is a relatively wide highway. With the building having a predominantly white rendered east elevation and being higher than its neighbours, it is prominent in the street scene but not harmful to it. It identifies the key road junction and provides a sense of identity to the corner. It is inappropriate to describe the development as towering above its neighbours, as this is an exaggeration of what has been constructed on site and as proposed to be modified.

18. As built, the building’s elevation to Two Ball Lonnen has considerable mass but the proposal is to set back the third floor by 4m and to subdue the window treatment on the lower floors and to use vertical solar fins. This would reduce the mass of the building on this elevation and achieve a proportioned relationship between the white rendered element and the darker brickwork behind. As Two Ball Lonnen is a relatively wide street, the scale of the building could be accommodated without harm to the street scene.

19. When approaching the building along Two Ball Lonnen, the flat roof of the north elevation above the plant room and lift is clearly visible. This element of the building appears prominent due to the flat roof and its white rendered finish. It is a weak element in the overall design of the scheme. Whilst the proposed third floor setback would achieve greater articulation in the profile of the building when viewed from further up the road of Two Ball Lonnen, it would draw greater attention to the roof over the plant room. Whilst the harm caused to the street scene is limited, its appearance could have less visual impact by the application of a different colour or material treatment. This could be achieved through the imposition of an appropriately worded condition.

20. The building appears more prominent when viewed from a distance which in some respects is an expected consequence of the design objective of creating a landmark building. Closer too, or next to the building, whether from the viewpoint of a pedestrian, from within a vehicle or as a neighbour, I do not consider that the building as proposed to be modified would have an over-bearing or oppressive character.

21. I acknowledge that some local residents and members of the Planning Committee regard the building as contextually inappropriate and over-bearing through its height and massing but the building as proposed to be modified would achieve its purpose as a landmark building and would not cause harm to the street scene.

22. There is no issue with the principle of a care home on the site and I attach some weight to the benefits arising from the scheme, primarily to the need for palliative care in the area and secondarily to the number of jobs arising.

23. Having had regard to all relevant matters and having considered the proposal on its own merits, I conclude that with the imposition of appropriate conditions, the proposed development would not have an adverse impact on the character and appearance of the area and it would make a positive contribution to the street scene.

Conditions

24. Conditions 1 and 2 define the permission for the avoidance of doubt and in the interests of proper planning. Condition 3 is necessary to ensure that the external materials are appropriate to the character and appearance of the area.
Conditions 4 and 5 are necessary to prevent nuisance during construction or from noise following occupation of the care home. Condition 6 is required in the interests of amenity and highway safety. Conditions 7 and 8 will ensure that risks from land contamination are minimised. Visual amenity would be protected by Conditions 9, 10 and 11. Conditions 12 and 13 are necessary in the interests of highway safety.

25. With these conditions, the development would accord with section 7 of National Planning Policy Framework (NPPF). It would also meet the requirements of the saved policies of the Newcastle upon Tyne Unitary Development Plan and policies of the Gateshead and Newcastle Core Strategy 2010-2030. Although a number of policies are relevant to the development, the principal ones are UDP Policies EN1.1 (design), H.2 (residential amenity) and H4 (design and landscaping in housing developments) and Policy CS15 relating to place making.

Planning Obligation

26. The appellant has submitted a unilateral undertaking (Document 2) which would restrict the operation of the care home, it specifies the number and use of bedrooms and makes provision for meeting the needs of ethnic and religious minorities.

27. The original care home was not restricted in its use, nor did the Council require any planning obligation for the approved scheme (PA1). Furthermore the development can be made acceptable through the imposition of conditions. Accordingly the obligation appears to be more of a personal undertaking by the appellant as it fails the tests set out in paragraph 204 of the Framework. I therefore attach no weight to it in reaching my decision.

28. For the reasons given above I conclude that the appeal should be allowed.

Appeal B: The appeal on ground (a) and the deemed planning application

Main issues

29. I consider that the main issues in Appeal A to be the effect of the development on the living conditions of the occupants of nearby dwellings and its impact on the character and appearance of the area, principally arising from the height, scale and massing of the building.

Living Conditions

30. At the time the notice was served, a two storey section of the building had been constructed close to the neighbouring dormer bungalow at 2 Two Ball Lonnen which would have had an overbearing impact upon outlook from, and light to, the first floor side window adversely affecting the living conditions of the occupants.

Character and appearance

31. The overall massing and height of the building when compared to the approved scheme is exaggerated due to it being constructed at ‘plateau’ level and also because of the increase in floor to ceiling heights which, in the opinion of the Council, gives the impression of a 5 storey building. The building in its totality is up to 2.48m higher than the height as approved and has created a building that tips the balance between what contributes to the townscape as a landmark building and one that creates harm.
32. In particular, the four storey elevation on Two Ball Lonnen appears overly prominent in the street scene due to its overall height and massing, the relationship of white rendered wall to brickwork and the design of the projecting three storey glazed element. Additionally, when viewed at an angle along that street, the massing of the building becomes increasingly evident with a large flat roof dominating the side elevation.

33. The height and massing of the development as it stood at the time the notice was served was not inconsequential and it would have been harmful to the living conditions of neighbours and to the character and appearance of the area contrary to the Framework, and to those saved policies of the UDP and to the Core Strategy referred to above.

Fall-back position

34. The appellant considers that there is a legitimate fall-back position through the implementation of the approved scheme (PA1) which has been lawfully commenced and can be built out. The appellant has costed out the demolition of the building to ground floor level and its rebuilding in strict accordance with the approved scheme and considers this to be financially preferable to leaving the site undeveloped. However for the reasons set out later in this decision the permission has expired and cannot be regarded as a legitimate fall-back.

35. The permission granted through my decision on Appeal A is likely to be implemented if the notice is upheld. However that would not represent a fall-back position as it would not produce a less desirable or broadly similar development than the development the subject of the allegation as there are positive townscape and neighbour benefits arising from the reduction in the height of the element next to 2 Two Ball Lonnen and the 4m setting back of the top floor on the Two Ball Lonnen elevation.

Alternative

36. Although s177(1)(a) allows me to grant permission in respect of the matters stated in the enforcement notice constituting a breach of planning control, whether in relation to the whole or any part of those matters, it would not be appropriate for me to do so in view of the planning harm caused. Whilst the harm could be mitigated through the implementation of the proposals in Appeal A and the conditions to be attached to that permission, I refer to alternatives in the ground (f) appeal below.

Unilateral undertaking

37. The appellant has submitted a unilateral undertaking (Document 1) in similar terms to that submitted with Appeal A. For the same reasons I attach no weight to it in reaching my decision.

38. For the reasons given above I consider that the ground (a) appeal should not succeed.

Appeal B: The appeal on ground (f)

39. An appeal on this ground is that the steps are excessive and lesser steps would overcome the objections.
40. Tapecrown\textsuperscript{1} indicates that the planning system is not intended to be punitive and if there is an obvious alternative which would overcome planning difficulties, at less cost and disruption than total demolition.

41. The appellant states that an attempt has been made to remedy the alleged harm through the submission of PA3.

42. As an alternative to the complete demolition of the building and the restoration of the site, the appellant considers that the existing structure could be demolished to ground floor level and rebuilt in accordance with the approved scheme (PA1). However, for the reasons set out in Appeal 3, I do not consider this to be an alternative.

43. The Council has indicated that an acceptable alternative lesser requirement would be the removal of the complete top floor of the development. Although the appellant at one time put such an option forward, it is not an alternative that they now wish to pursue. In any event, this would exceed what is necessary to overcome the planning harm.

44. The appellant refers to a further alternative that would be to alter the as-built structure in accordance with the PA3. In view of my decision on Appeal A where I have concluded that no planning harm would arise from the proposed development subject to various conditions, this would be a lesser alternative to the requirements of the notice.

45. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or, as is the case in this appeal, to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that whilst the requirements of the notice in this case do not exceed what is necessary to remedy the breach, an alternative exists which would overcome the harm caused.

46. I therefore intend to vary the notice to require, as an alternative to Steps 1, 2 and 3 set out in the notice, compliance with the planning permission granted in relation to Appeal A and to its conditions.

47. The appeal on this ground succeeds.

\textbf{Appeal B: The appeal on ground (g)}

48. The appellant considers that the compliance period is too short and should be extended to 12 months in order to carefully deconstruct the building to sort, recycle and recover materials, rather than for it to be demolished. This would reduce the overall environmental impact of compliance with the notice.

49. A balance needs to be struck between the harm caused by the unauthorised development and the appellant’s desire to salvage materials. I agree with the Council’s view that a period of 6 months strikes that balance.

50. The appeal on this ground fails.

\textsuperscript{1} Tapecrown Ltd v FSS & Anr [2006] EWCA Civ 1744
Appeal C: The LDC

51. For the avoidance of doubt, the planning merits of the proposed development are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. I consider that the main issue is whether the Council’s decision to refuse to grant a lawful development certificate was well-founded.

52. The application did not include a description of the development for which a certificate was sought, but the Planning Statement (CD – D3) indicated that the purpose of the application was to confirm that the planning permission (PA1) remains extant and capable of implementation, not that the as-built structure was lawful.

53. The appellant contends that by virtue of demolition the permission for the approved scheme (PA1) has been lawfully commenced and remains extant despite the later unauthorised above ground works, whereas the Council believes that as the development was not built in accordance with the approved plans, the permission was not implemented and expired on 23 March 2015.

54. It is not disputed that all the relevant conditions had been discharged prior to demolition of the original care home and that there had been an interval of about a year between demolition and work commencing on a replacement building. The appellant cites the Whitley principle, Greyfort Properties\(^2\) and other cases in respect of conditions and the commencement of development. Notwithstanding this, Condition 12 of PA1 requires that the development to which the permission relates shall be carried out in accordance with the approved plans, the references of which are listed and they include Drawing No 2052 AL (0)12 Rev B.

55. Considerable time was spent at the inquiry over the interpretation of Drawing No 2052 AL (0)12 Rev B and the implications it had in respect of approved levels. On the face of it, the drawing clearly shows that the ground floor level of the approved building should have been at pavement level at the northwest corner of the site. The Council believe that building from this level would have provided a building of acceptable height. It was not considered that a levels condition was necessary and the Council contends that the case officer would have been aware of the variation in pavement levels and the fact that the ground floor level of the former building was at a higher level. The implications of this interpretation would require the digging down of the entire site producing a large quantity of spoil, the need to reconsider pedestrian and vehicular access levels, possibly leading to impacts on the root system of the protected sycamore tree and on the protective ditch of Hadrian’s Wall.

56. The drawing is clearly ambiguous when considered in the context of the application as a whole. However, it was nevertheless submitted by the appellant and the Council could reasonably have expected to rely on it, despite the standard disclaimer regarding not scaling drawings and using figured dimensions (Document 7). Whilst the appellant may now describe the drawing as ‘wrong in illustrative detail’ is perhaps accurate but this does not change the requirement of condition 12. The appellant did not challenge the condition or

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\(^2\) Greyfort Properties Ltd v SSLGC and Torbay Council [2001] EWCA Civ 908
seek to formally amend the scheme to reflect either the raised floor level, the increased floor to ceiling heights or the other changes from the approved plans.

57. This case illustrates the importance to both the appellant and to the Council, that where overall height is of significance in a decision, there is a need for great care in understanding the consequences of what has been or has not been approved and where there is any scope for different interpretation, a levels condition would be necessary.

58. I consider that the approved plans require the ground floor to have been at pavement level at the northwest corner of the site and consequently any scheme that has a ground floor level above this cannot be authorised by PA1.

59. In considering whether demolition lawfully commenced the development despite the subsequent erection of an unauthorised building, reference has been made by the parties to case law including Green\(^3\), Commercial Land\(^4\), Silver\(^5\) and other cases. The Court held in Commercial Land that the assessment of whether a material operation was ‘comprised in the development’ such that it could be said to implement a planning permission involved ‘looking at what has been done as a whole and reaching a judgement as a matter of fact and degree upon the whole. It does not entail any artificial process of ignoring part of what has been done’.

60. There are numerous and significant differences between the approved and the as-built schemes. The building has been built substantially higher than approved both in terms of the ground floor slab level and the floor to ceiling heights. There are differences in the positioning of the window openings, to the footprint of the building and other design variations. The material operations carried out were not comprised in the permission and the building as erected was unauthorised. Whilst the appellant accepts this to be the case, I have some difficulty with the contention put forward by the appellant that demolition alone was sufficient to lawfully commence the development as this represents a selective choice that relates to only a modicum of the development. As was held in Sage\(^6\), ‘... if a building operation is not carried out, both externally and internally fully in accordance with the permission the whole operation is unlawful.’

61. I conclude on the balance of probability that the demolition works did not lawfully commence the development such that PA1 remains extant and is capable of implementation.

62. The Council refers to s191(2) which provides that operations will only be lawful if no enforcement action can be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. The Council contends that the retention of any part of the building would contravene the requirements of the enforcement notice which was served prior to the LDC application. However the provisions of s175 (4) suspend the effect of a notice pending the final determination of the appeal.

\(^3\) Green v SSCLG [2013] EWHC 3980 (Admin)
\(^4\) Commercial Land Ltd v SSTLGR [2002] EWHC 1264 (Admin)
\(^5\) Silver v SSCLG [2014] EWHC 2729 (Admin) and comment in Journal of Planning and Environmental Law 2015
\(^6\) Sage v SSETR [2003] UKHL 22
Conclusions

63. For the reasons given above I conclude that the Council’s refusal to grant a lawful development certificate in respect of planning permission 2011/1713/01/DET having been lawfully commenced and thereby remaining extant and capable of implementation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Formal decisions

Appeal A Ref: APP/M4510/A/15/3136351

64. The appeal is allowed and planning permission is granted for the retention of a four storey care home (Use Class C2), including demolition of part of existing building with associated landscaping and car parking at Ashton Court Nursing Home, 376 West Road, Newcastle upon Tyne, Tyne and Wear, NE4 9RJ in accordance with the terms of the application, Ref 2015/0881/01/DET, dated 8 June 2015, and the plans submitted with it, subject to the conditions attached as an appendix to this decision.

Appeal B Ref: APP/M4510/C/15/3136479

65. The appeal is allowed on ground (f), and I direct that the enforcement notice be varied by the addition of the following requirement after paragraph 5.3 in the notice:

“Or, amend the development as built to accord with planning application 2015/0881/01/DET, dated 8 June 2015, as granted planning permission on appeal APP/M4510/A/15/3136351 and the conditions attached to it.”

Subject to this variation the enforcement notice is upheld and planning permission on the deemed application is refused.

Appeal C Ref: APP/M4510/X/16/3143110

66. The appeal is dismissed.

P N Jarratt
Inspector
APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY: Ms I Tafur of Counsel

She called
A Dobinson Booth MRTPI Principal Planning Officer, North Tyneside Council seconded to Capita

FOR THE APPELLANT: P G Tucker QC

He called
A Wyatt BA(Hons) Director, +Plus Urban Design
L Taylor BA(Hons) Ryder Architecture
BArch(Hons MRIBA
Ms J Matchett BSc(Hons) Associate Director, Nathanial Lichfield and Partners
MA MRTPI

INTERESTED PERSONS:

Councillor Ms M Talbot, Ward Member

DOCUMENTS

1 Completed unilateral undertaking for Appeal B (Appellant)
2 Completed unilateral undertaking for Appeal A (Appellant)
3 Bundle: email 21 Sept 2016 Matchett to Browell; One Associates letter of 19 September 2016 re trees; The Archaeological Practice Ltd letter of 8 Sept 2016; drawings A.3807 P1, A.3808 P1, A.3809 P1, A.3810 P1, A3811 P1. (Appellant)
4 Applicants submission to Committee for the first planning application (LPA)
5 Opening submissions by the appellant
6 Opening submissions by the Council
7 Extract of disclaimer on drawings (appellant)
8 Draft conditions for Appeal B (LPA)
9 Draft conditions for Appeal A (LPA)
10 Extract from JPL 2015 Silver v SoSCLG, Camden LBC and Tankel (appellant)
11 Revised draft conditions for Appeal B
12 Revised draft conditions for Appeal A
13 Drawing A.0004 P1, site plan, Appeal B (appellant)
14 Drawing A.3006 P3, plans and elevations, Appeal B
15 Closing submissions on behalf of the appellant including annex of legal submissions
16 Closing submissions on behalf of the Council
Appeal A Ref: APP/M4510/A/15/3136351

Schedule of Conditions

1. The development to which this permission relates shall be carried out in accordance with the approved plans referenced:

Location Plan ASHCRT-RYD-00-ZZ-DR-A-0001 REV:01
Site Plan ASHCRT-RYD-00-ZZ-DR-A-0002 REV:01
Existing Plans and Elevations ASHCRT-RYD-00-ZZ-DR-A-0401 REV:04
Proposed Plans and Elevations ASHCRT-RYD-00-ZZ-DR-A-3005 REV:04
Existing and Proposed Context Elevations 1 of 2 ASHCRT-RYD-00-ZZ-DR-A-3601 REV:03
Existing and Proposed Context Elevations 2 of 2 ASHCRT-RYD-00-ZZ-DR-A-3602 REV:03
Existing and Proposed 3D Views: ASHCRT-RYD-00-ZZ-DR-A-9001 REV:04
Construction Details N169-10-0004 REV:A
Tree Removal, Retention and Protection: N169-74-0001 REV:C
Detailed Soft Landscape Proposals: N169-74-0003 REV:A

2. The premises shall be used for and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

3. Notwithstanding the details shown on drawing ASHCRT-RYD-00-ZZ-DR-A-3005 Rev. 4, details of proposed external materials (including to the northern elevation) shall be submitted to and approved in writing by the LPA prior to the development commencing.

4. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement 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
   viii. hours of operation

5. The building shall be constructed so as to provide sound insulation against external noise to achieve internal bedroom levels of 30dB(A) $L_{Aeq}$, 8 hours (45 dB $L_{Amax}$) and internal living room levels of 35dB(A) $L_{Aeq}$, 16 hours with windows shut and other means of ventilation provided. Thereafter, the sound insulation shall be
6. The development shall not be brought into use until the approved refuse storage area has been formed in accordance with the approved plans. The approved refuse storage area shall thereafter be retained for the storage of refuse at all times.

7. In the event that contamination is found at any time that was not previously identified, when carrying out the approved development it must be reported in writing immediately to the Local Planning Authority. A Risk Assessment must be undertaken in accordance with the requirements of the Investigation and Risk Assessment, and where remediation is necessary a Remediation Scheme must be prepared and submitted to the Local Planning Authority in accordance with the requirements of the submitted Remediation Scheme.

Following completion of measures identified in the Approved Remediation Scheme a verification report must be prepared and submitted.

8. The submitted Remediation Scheme shall be implemented in accordance with the approved timetable of works. Within three months of the completion of measures identified in the Approved Remediation Scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) must be submitted to the Local Planning Authority.

9. The approved hard and soft landscape works shall be completed no later than the end of the first planting season following first occupation of the development or in accordance with a programme agreed in writing with the Local Planning Authority. The approved landscape works shall be maintained in accordance with the current version of British Standard 4428 for a period of five years commencing on the date of Practical Completion and during this period any trees or plants which die or become diseased shall be replaced in the first available planting season with others of similar size and species and any grass that fails to establish shall be re-established.

10. Tree protection fencing and other measures (including special construction techniques) set out in the application will be erected on site in accordance with the approved details. The fencing and other measures shall be retained intact for the duration of the construction works and there shall be no access, storage, ground disturbance or contamination within the tree protection area. Where access is required into the tree protection area this shall be in accordance with the method statement provided as part of the approved details.

11. Unless in accordance with the approved plans, no trees shall be removed without the prior written permission of the Local Planning Authority during construction works.

12. The development shall not be brought into use until details of cycle parking have been submitted to and approved in writing by the Local Planning Authority. The approved cycle parking shall be implemented before the development is brought into use. Thereafter, the cycle parking shall be retained in accordance with the approved details and shall be kept available for the parking of cycles at all times.
13. The development shall not be brought into use until the car parking area indicated on the approved plans, including any disabled car parking spaces contained therein, has been hard surfaced, sealed and marked out in parking bays. Thereafter, the car parking area shall be retained in accordance with the approved plans and shall not be used for any purpose other than the parking of vehicles associated with the development.

_P N Jarratt_

Inspector