

4 December 2024

London Borough of Richmond
Civic Centre
44 York Street
Twickenham
TW1 3BZ

Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990

APP REFERENCE: 23/1819/FUL

3-4 NEW BROADWAY, TW12 1JG

I have been instructed by my Client to submit this application to vary condition U0165004 and DV50A on the above referred planning permission.

The variation to built form was twice refused by the Council (Planning Ref: 23/3065/VRC and Planning Ref: 24/1725/VRC), and in both instances there was no adverse reference to the variation to built form and instead by reference to other matters already within the conditional control of the Council. The variation to the energy condition relies on the wording of LP 22, Mayor of London's Energy Assessment Guidance (June 2022), the change to Building Regulations and London Plan policy SI2 as justification.

Legal Framework & Guidance

Section 73 of the 1990 Act makes provision for, "the determination of applications to develop land without compliance with conditions previously attached".

By section 73(2);

"On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and-

- (a) *if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*
- (b) *if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”*

Accordingly, pursuant to section 73(2)(a), a local planning authority may grant planning permission subject to conditions that differ from those attached to a previous permission and the legal power enjoyed by local planning authorities pursuant to section 73 of the 1990 Act is broad.

The Government has published guidance within its National Planning Practice Guidance (“NPPG”) stating that;

“An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission.

When determining any such application, the LPA are restricted to only the conditions within the application, pursuant to this advice:

In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.

Application of Legal Principles and Guidance

S72 of the Town and Country Planning Act 1990 contains a general power to impose conditions on a planning permission regulating the development or use of land for which planning permission is granted. This power is in wide terms but has been curtailed by judicial decisions and for a condition to be lawful it must satisfy the tests set out in *Newbury DC vs. SSE 1981 A.C. 578* and other cases. In summary these are that a planning condition must be imposed for a planning purpose, it must be fairly and reasonably relate to the development permitted by the planning permission and should not be so unreasonable that a reasonable planning authority could not have imposed it.

When determining a s73 planning application the decision maker must not consider the description of the development to which the conditions are attached, because s73(2) expressly requires the planning authority to "*consider only the question of conditions*". The Court of Appeal judgment has found that "*the natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development*".

The NPPG also restricts any consideration to that solely related to the condition, stating:

In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application. A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.

Variations Sought – U0165004

The amendments sought under this Section 73 application are as follows;

External Changes:

1. As outlined in the most recent Section. 73 refusal (Planning Ref: 24/1725/VRC), an extension to the rear at second floor improves the internal accommodation of the two second floor dwellings and in doing so uplifts their internal areas from 39 sq m to 52 sq m, and from 44 sq m to 56 sq

m respectively. This improves efficiency and delivers an additional public benefit, particularly addressing urgent local and strategic housing requirements. By altering the second floor one bed, one person dwellings into one bed, two person dwellings, these second floor dwellings will be suitable for local couples whilst affording them the benefit of space to work from home.

The approved unit mix is as follows: 4 one-bed, one-person units
2 one-bed, two-person units
1 two-bed, four-person unit

With this amendment, the unit mix will be as follows: 2 one-bed, one-person units
4 one-bed, two-person units
1 two-bed, four-person unit

Hampton Road and its neighbouring streets lack uniformity in building height, scale, and appearance, with many buildings in the vicinity benefiting from second-floor rear extensions.

With this amendment, the overall roof height remains unchanged and the addition of a mansard to the rear will enhance the visual balance of the building and roofscape.

The addition of a second floor rear mansard will not be visible from Hampton Road, as illustrated in the attached images. The minimal additional massing, only visible from the rear, integrates seamlessly within the host building.

Materials, such as slate roofing, will match the approved mansard to the front and will be consistent with the local context meaning the design and material selection are aligned with the area's character.

Discreet dormer windows in the rear mansard are proportionate in size and scale, blending seamlessly with the roof, and match dormers to the front. The dormers will also align with lower-level windows for consistency.

The Applicant is cognisant that Officers of the Borough consider that amenity space is required for the units, but this goes against their own previous determinations where applications for external amenity space was refused at local level. Recognition must also be had to the additional internal space available as a material consideration in favour of the scheme, as the additional space improves the quality of accommodation.

In summary, the amendment is well designed and optimises the use of this small and accessible site. The design exhibits high-quality architectural design consistent with the approved plans and is carefully considered in relation to the area's character, a matter which the Borough has previously agreed was the case.

2. Proposed change to a higher quality external facing brick which improves the quality and appearance of the proposed scheme. This is outlined in further detail on p. 4 of Mark Smith Architect's Design and Access Statement.

3. Introduction of rear first floor terraces which improves the amenity of flats 4 and 5. This is outlined in further detail on p. 8 of Mark Smith Architect's Design and Access Statement.

4. Introduction of roof terraces which responds to a previous s. 73 refusal (Planning Ref: 24/1725/VRC) where amenity space was cited as a reason for refusal. This is outlined in further detail on p. 9 of Mark Smith Architect's Design and Access Statement.

5. Introduction of ground floor rear gate outlined further on p. 11 of Mark Smith Architect's Design and Access Statement.

6. Repositioning of main front door entrance outlined further on p. 11 of Mark Smith Architect's Design and Access Statement.

7. Removing courtyard windows outlined on p. 11 of Mark Smith Architect's Design and Access Statement.

8. Introduction of roof lights on main roof outlined on p. 11 of Mark Smith Architect's Design and Access Statement.

9. Raised parapet on rear ground floor roof extension as outlined on p. 11 of Mark Smith Architect's Design and Access Statement.

Internal Changes:

1. Repositioning and rotation of internal staircase as outlined on p. 12 of Mark Smith Architect's Design and Access Statement.

2. Introduction of walk-in showers on flats 1 and 2 as outlined on p. 12 of Mark Smith Architect's Design and Access Statement.

3. Removal of bikes from first floor landing and relocated to flats 6 and 7 as outlined on p. 12 of Mark Smith Architect's Design and Access Statement.

Variation Sought - DV50A

The applicant seeks a variation to the condition to read:

The dwelling(s) hereby approved shall achieve a 10% reduction in Carbon Dioxide emissions beyond Building Regulations requirements (2011)

As outlined in the accompanying Energy Statement dated 20 June 2024 and further explanatory letter dated 1 November 2024 from my Client's Energy Assessor, this hybrid development of refurbishment and new build can deliver carbon offsets in excess of 10% for the refurbished flats within the proposed scheme and in excess of 35% on the new build flats within the proposed scheme against the most recent 2021 Building Regulations, through use of PV panels, electric combi boilers and enhanced building fabric (on the new build elements).

Considering London Plan Policy SI2, it is categorical that the 35% reduction only relates to major development, with the text reading:

A minimum on-site reduction of at least 35 per cent beyond Building Regulations¹⁵² is required for major development.

The Policy does onto state that for other residential development:

Residential development should achieve 10 per cent, and non-residential development should achieve 15 per cent through energy efficiency measures

Policy LP 22 of the London Borough of Richmond's Local Plan 2018 reads as follows:

'Developers are required to incorporate measures to improve energy conservation and efficiency as well as contributions to renewable and low carbon energy generation. Proposed developments are required to meet the following minimum reductions in carbon dioxide emissions:

1. *All new major residential developments (10 units or more) should achieve zero carbon standards in line with London Plan policy.*
2. *All other new residential buildings should achieve a 35% reduction.*
3. *All non-residential buildings over 100 sqm should achieve a 35% reduction. From 2019 all major non residential buildings should achieve zero carbon standards in line with London Plan policy.'*

The scheme is only partially new build, with the remainder to be a conversion and refurbishment of the existing building. As the LP 22 directs the reader towards the London Plan, and as the more recently adopted standard, it is to be utilised ahead of LP22 given the marked change in Building Regulations and the fact that LP 22 states itself that:

Targets are expressed as a percentage improvement over the target emission rate (TER) based on Part L of the 2013 Building Regulations. The relevant of this has not been considered by Officer's as the Mayor of London's Energy Assessment Guidance (June 2022) specifically states that for conversions:

It is generally acknowledged that the level of carbon savings that can be achieved through a refurbishment can vary considerably, however every effort should be made to improve the energy performance of the building in line with London Plan carbon targets and to follow the energy hierarchy.

And

For developments consisting of a refurbishment with a new build extension, the CO2 savings for the new and refurbished elements should be presented separately within the energy strategy. The new build elements should be assessed in line with

the methodology for new build development and will be expected to comply with London Plan policy.

Conclusion

The variation to the consented built form has already been determined by the LPA as acceptable, with no objections on either townscape or amenity grounds. The additional external and internal changes are minor in nature and vastly improve the quality of the scheme in terms of external appearance and also from an amenity point of view. The change to the carbon emissions is based on newer policy and conflicts with current Building Regulations.

The application should be uncontroversial, but should you have any queries regarding the above, please do not hesitate to contact me on 07545 264 252 or at Kieran@krplanning.com.

Yours Faithfully



Kieran Rafferty

BA(URP)