



Appeal Decision

Site visit made on 23 June 2010

by **John Felgate BA (Hons), MA, MRTPI**

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

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**Decision date:
7 July 2010**

Appeal Ref: APP/R5510/A/10/2119817

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- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Hans Rader against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 65653/APP/2009/1146, dated 6 January 2009, was approved on 24 July 2009 and planning permission was granted subject to conditions.
- The development permitted is a 2-storey, 6-bedroom dwelling with habitable roofspace and associated parking and vehicular crossover.
- The conditions in dispute is No 17 which states: "*No development shall take place until an initial design stage assessment by an accredited assessor for the Code for Sustainable Homes and an accompanying interim certificate, stating that each dwelling has been designed to achieve Level 3 of the Code, has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it has been issued with a final Code certificate of compliance.*"
- The reason given for the condition is : "*To ensure that the objectives of sustainable development identified in policies 4A.1 and 4A.3 of the London Plan (February 2008)*" [sic].

Decision

1. I dismiss the appeal.

Procedural matter

2. In the appeal form, the appellant indicates that that the appeal is against a condition imposed on an approval of matters reserved under an outline planning permission. However, it appears that in fact the condition in question relates to a full planning permission, rather than a reserved matters approval. I have therefore dealt with the appeal on that basis.

Main issue

3. The main issue is whether the disputed condition is reasonable in the light of the relevant policies in the London Plan.

Reasons for decision

4. Policy 4A.1 of the London Plan seeks to ensure that developments make the fullest contribution to tackling climate change and minimising carbon emissions. Policy 4A.3 requires schemes to meet the highest standards of sustainable design and construction. It is not disputed that Condition 17 is consistent with these policies.
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5. I appreciate that, under the Building Regulations, compliance with the Code for Sustainable Homes remains voluntary at this stage. But that does not mean that the imposition of the disputed condition is premature. Indeed, if any planning condition were merely to duplicate the effects of other legislation, that condition would be unnecessary, and therefore should not be imposed. But that is not the case here, since the condition in question is intended to achieve standards of building specification and performance that cannot be secured by other means currently available.
6. I accept that compliance with Condition 17 would involve some significant expense. But the condition is not exceptional in that regard. Based on the appellant's estimated figures, I do not consider the likely costs disproportionate to the potential benefits. I note the appellant's argument that paying fees for obtaining certificates of compliance with the condition would not contribute directly to producing any energy savings. But without some means of proving compliance, the condition would be ineffective, and no alternative mechanism has been suggested. I have no reason to doubt that the appellant would comply willingly in any event, but planning permission runs with the land. I acknowledge the appellant's readiness to accept alternative conditions. But it appears that these would not secure the full benefits of Condition 17.
7. Had the original application been an application for approval of reserved matters, then I agree that it would have been unreasonable for the Council to have imposed Condition 17, when no similar condition was imposed at the outline stage. But, as I have explained earlier, that is not the case, because the application made was for full planning permission, and the permission was granted in those terms. I appreciate that an outline permission did exist at the date when the application was made. But since that permission has now expired, it no longer offers a fallback option, and thus cannot affect my decision.
8. Based on the evidence and arguments that are before me therefore, I conclude that the retention of the disputed condition would help to achieve the aims of the London Plan policies referred to above, and is justified in the light of those policies. The appeal is therefore dismissed.

John Felgate

INSPECTOR