

Our Ref: 3096/TS/LT20240129

30th January 2024



The Planning Inspectorate
Room 3/OP
Temple Quay House
2 The Square
Temple Quay
Bristol, BS1 6PN

Dear Sir/Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
APPEAL (PURSUANT TO S.78(1)(b)) AGAINST THE REFUSAL (OF 13305/APP/2023/3181) TO
DISCHARGE CONDITION 3 (MATERIALS) OF PLANNING PERMISSION 13305/APP/2021/1007
DEVELOPMENT AT 25 THE AVENUE, NORTHWOOD, LONDON, HA6 2NJ**

We act on behalf of Montague Estates UK Ltd in the above matter and have received instructions from our client to lodge an appeal against the refusal by the London Borough of Hillingdon to discharge condition 3 (external materials) of the above planning permission.

Background

Planning permission was granted by the London Borough of Hillingdon on 7th March 2022 for the demolition of the existing dwelling here (Wyldewoode) and the erection of "Four x 2 storey semi-detached dwellings with associated amenity space, parking and 4 x vehicular crossovers" (13305/APP/2021/1007), subject to 16 conditions, including Condition 3, which states:

"No development shall take place until details of all materials and external surfaces have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details and be retained as such. Details should include information relating to make, product/type, colour and photographs/images."

REASON

To ensure that the development presents a satisfactory appearance in accordance with Policy DMHB 11 of the Hillingdon Local Plan Part 2 (2020)."

An application was submitted by Seabrook Architects on 3rd August 2022 to discharge conditions 3, 6, 7, 8, 9, 11, 13 and 14 of permission 13305/APP/2021/1007. This was allocated reference 13305/APP/2022/2466 and a statutory determination deadline of 18th November 2022. The submission included a 'materials sheet' with specifications for bricks, tiles, doors and windows, pursuant to condition 3.

It is understood that initial dialogue between Seabrook Architects and the Council lead to disagreement on aspects of the materials, primarily the proposed bricks and tiles. On 11th November 2022, acting on the instructions of Montague Estates UK Ltd, Westbournes submitted to the Council an 'Advice Note' regarding the interpretation of condition 3, its relationship to the wider consent and the acceptability of the proposed buff yellow brick. Despite this and further endeavours by Seabrook Architects to secure a positive decision from the local planning authority, no decision on condition 3 (nor in fact the other seven conditions comprised in the application) were made.

Despite the passage of nearly a year and the operative consent having been implemented, the application remained undetermined. On client instructions, Westbournes served upon the Council on 12th July 2023, a 'Notice of Deemed Discharge' (pursuant to Articles 27-30 of the DMPO 2015). This led to the refusal of application 13305/APP/2022/2466 by notice dated 17th July 2023. This is despite objections only being raised in respect of condition 3 (materials) and it being open to the Council to issue a 'split decision' in respect of non-contentious matters.

In respect of condition 3 (materials), the reason for refusing the application was said to be:

"The proposed brick and roof tiles, by reason of their colour and appearance are incongruous and fail to respect the character and appearance of the original building and the street scene of The Avenue, contrary to Policy DMHB 11 of the Hillingdon Local Plan Part 2 (2020), Policy D3 of the London Plan (2021) and Chapter 12 of the National Planning Policy Framework (2021)."

Westbournes wrote to the Council's Planning Services Manager on 22nd August 2023, seeking the discharge of the seven uncontentious conditions and clarity on the Council's position in respect of condition 3. Accompanying the letter was a further 'Analysis of External Materials' note, arising from a comprehensive study of nearby dwellings with regard to their character, form and external materials. The relevant properties were identified, described and photographed. The intention of the note was to highlight the considerable variation in the external materials defining the dwellings on this part of The Avenue.

The Council chose to treat the letter of 22nd August 2023 as a formal complaint, for which Hillingdon has devised a specific procedure. Several extensions of time were requested (and given) in order for the Council to formulate a substantive response, which was provided eight weeks later on 23rd October 2023. The Council rejected all matters raised, including the possibility of a split decision and ultimately, dismissed the complaint (notwithstanding that no complaint had been made).

In response to the Council's position, two further applications to discharge the relevant conditions were submitted. The first (13305/APP/2023/3164) was, in effect, resubmission of application 13305/APP/2022/2466 with the exception being condition 3 (i.e., details of external materials). This was handled in a second, separate application (13305/APP/2023/3181). The former was approved on 27th December 2023. However, the latter was refused (on the same day) for ostensibly the same reason as application 13305/APP/2022/2466. This is despite the application being accompanied by a Planning Statement justifying the particular approach (containing, amongst other things, the aforementioned Analysis of Local External Materials).

Two further applications (13305/APP/2023/3709 and 13305/APP/2023/3710) have recently been submitted to the Council relating to conditions 15 (Water Management) and 16 (Sustainability and Energy) and remain to be determined (deadline of 21st February 2024).

Attention is further drawn to an undetermined minor material amendment application (13305/APP/2023/3711) seeking retrospective approval for minor changes to the completed building. The Council is aware of these and that the current application provides an opportunity to regularise the situation, as well as ensuring a single, contemporaneous consent for the development.

The development pursuant to planning permission 13305/APP/2021/1007 is now approaching completion. The appellant is acutely aware that three conditions precedent have not been satisfied. However, there is every prospect that conditions 15 and 16 will be discharged before this appeal is determined, leaving only condition 3 in respect of external materials. Our client is loathed to impose upon the planning appeals system in respect of a matter evidently capable of resolution locally. However, the Council is adamant in its position, however well unfounded, that the dwellings here should repeat materials inherent with the original building at 25 The Avenue. Our client is left with no choice but to test that position in a forum beyond the Council.

Our client's grounds of appeal are that: (i) the principal external materials here (bricks and tiles) have already been established through the grant of planning permission (and that, accordingly, condition 3 is limited to finer details); (ii) seeking any material other than that prescribed by the approved drawings and details would cause an inner tension within the planning permission; (iii) if the Council had been adamant about the requirement for external materials to match those of the existing dwelling, then condition 3 should have been specific in that regard (or the relevant drawings amended ahead of determination).

Even if our client is incorrect in their position in respect of (i) to (iii) above, there is no good planning reason to insist upon retaining a particular style or type of material here; the site is not within a Conservation Area or Area of Special Local Character, nor are there any relevant design codes or other prescription beyond the need for good design.

The appellant's position is that the character of this part of The Avenue is defined not just by the pattern of development, but the eclecticism and frequently contrasting nature of materials, as identified by the study of local external materials. The chosen materials are entirely consistent with this, securing a high-quality, visually interesting development.

With no legitimate basis to restrict the use of yellow buff brick and slate tiles, the appeal must be allowed and condition (3) discharged accordingly.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tom Strachan', with a stylized, flowing script.

Tom Strachan
Graduate Planner

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Cc: Planning Appeals – The London Borough of Hillingdon
John Prichard – Director, Montague Estates UK Ltd
Julian Seabrook – Director, Seabrook Architects Partnership Ltd

Encs

Schedule of Information Submitted to the Local Planning Authority

A. Original Grant of Planning Permission (13305/APP/2021/1007)

- Application Form
- Decision Notice
- Committee Report
- Location Plan
- TS19-486-1 Existing Site Plan
- 5802-A100 Proposed Site Plan (Superseded)
- 5802-A100 (Rev B) Proposed Site Plan
- Arboricultural Impact Assessment (Drawing)
- TS19-486-2 Existing Street Elevation
- 5802-A101 Proposed Ground and First and Second Floor and Roof Plans (Superseded)
- 5802-A101 (Rev A) Proposed Plans
- 5802-A102 Proposed Elevations (Superseded)
- 5802-A102 (Rev A) Proposed Elevations
- 5802-A103 Proposed Street Elevations
- 5802-A105 Block Plan (Superseded)
- 5802-A105 Block Plan (Rev B)
- 5802- A106 Proposed Sections
- Planning, Design and Access Statement
- Arboricultural and Planning Integration Report
- Ecological Impact Assessment

B. Application to Discharge Conditions (including Condition 3 - Materials) (13305/APP/2022/2466)

- Application Form
- Materials Details Sheet
- Materials Advice Note
- Decision Notice
- Officer Report
- Deemed Discharge Notice (Prior to Refusal)
- Deemed Discharge Letter

C. Second (Separate) Application to Discharge Condition 3 - Materials (13305/APP/2023/3181)

- Application Form
- Application Covering Letter
- Planning Statement
- Schedule of External Materials
- Decision Notice
- Officer Report

D. Other Correspondence between the Appellant and Local Planning Authority

- Letter from Westbournes to Roz Johnson of 22nd August 2023 (Ref: LT20230822-Johnson)
- Letter from Noel Kelly to Westbournes of 23rd October 2023 (Ref: 9248-7045-4187-9323)
- Email from Westbournes to Christos Chrysanthou of 30th November 2023

Westbournes
30th January 2024