

DELEGATED APPLICATION REPORT

Application No's: 170696/VARIAT

Address: 75-77 London Street, Reading, RG1 4QA

Proposals: Variation of condition 3 (BREEAM) of planning permission 160957, dated 21/10/2016 (for conversion to six flats and associated works), namely to alter the sustainability measures.

Applicant: Bexter Ltd

Case officer: Jonathan Markwell

Date received (valid from): 03/05/2017

Target decision date: Originally 28/06/17, but owing to consultations expiring on 29/06/17, an extension of time was requested on 26/06/17 until 30/06/17. A response was requested from the agent on either 26/06/17 or 27/06/17 or otherwise it would be assumed that the requested extension of time was agreed. No response was received and therefore the extension of time until 30/06/17 was agreed by default.

1. Site Description and Surrounding Area:

- 1.1 The application site comprises basement and three storey mid terrace buildings located on the east side of London Street, close to the junction with South Street (to the north). The buildings are in active use as a private function hall, with a large open plan area to the rear of the site. There is also a small parking area to the rear (east of the site), fronting onto East Street.
- 1.2 The site is located within Market Place / London Street Conservation Area. The building is grade II* listed, albeit the Historic England listings are somewhat unclear in that they refer to Nos. 73 and 75 London St (grade II*) and Nos. 75 and 77 (grade II). The listing description for Nos. 73 and 75 are as follows:

LONDON STREET 1. 5128 (East Side) Nos 73 and 75 SU 7173 SE 3/195 22.3.75. II GV 2. 1748, house of Dr Addington, physician to George III, father of the later Prime Minister. (Lead rainwater head with initials AM and date 1748 removed since previous list). An imposing pair of houses of the same general design. 3 storeys and basement. Stucco plinth, red brick, header bond. Painted stone string at 1st floor level, and painted stone cills to 1st and 2nd floor windows. Moulded and painted stone cornice, plain brick parapet with stone coping. Old tile roof, taller hipped part to left with shaped chimney. Glazing bar sash windows (No 75 has a vent now to 2nd floor left hand window), scalloped blind boxes to No 75. Central doors with stone steps (only No 73 retaining moulded nosing). No 73 has 6 panelled door with radiating fanlight over deep plain painted wood architrave with ovolo moulding. Moulded open pediment on half scroll fluted brackets with acanthus ornament, repeated at right angles on wall face. No 75 has double 6 panelled door with rectangular fanlight (oval and star glazing pattern); wood case with panelled reveals, architrave surround, plain frieze, msulded cornice and half scroll fluted brackets with acanthus ornament. Recently a further door has been inserted to left of No 75, smaller with isolated brackets (probably intended for a flat hood). C18 or early C19 ramped spearhead cast-iron railings with panel standards topped with small urns and segmental bar and ball across front of both houses. No 73 retains a pair of sphinx footscrapers. Interior of No 75 altered to cinema. No 73 has original staircase with fluted balusters and plaster panelling in principal rooms, hall and staircase. Flagged hall with black diamond corners. Rear altered.*

- 1.3 The listing description for Nos. 77 and 79 are as follows:

LONDON STREET 1. 5128 (East Side) Nos 77 and 79 SU 7173 SE 3/194 22.3.57. II GV 2. Mid C18. 3 storeys, symmetrical pair. Silver grey brick headers with red quoins and dressings. Stucco strings at 1st and 2nd floors. Moulded stucco cornice, part over No 19 replaced by string. Parapet, now with concrete coping. Modern tile, concealed roof. Glazing bar sash windows, 5 on upper floors. Paired doorways in centre with 4 panelled doors, rectangular fanlights (with rectangular glazing patterns) and plain wood surround with cornice on square console brackets, lost on No 77 (cinema).

- 1.4 The site is also within an Air Quality Management Area and the Reading Central Area Action Plan boundary. The surrounding area contains a mix of uses, predominantly commercial at ground floor level and residential on the upper floor levels.

2. Proposals:

- 2.1 The proposal involves an application to vary condition 3 (BREEAM) of planning permission 160957, to alter the sustainability measures secured in the implementation of the development.

- 2.2 Condition 3, as originally included on permission 160957, was as follows

3. (i) No development shall take place until a final design stage BREEAM Domestic Refurbishment assessment has been submitted to and approved, in writing, by the Local Planning Authority, demonstrating through a BREEAM interim certification that the development achieves at least a 'Very Good' rating.

(ii) Prior to the first occupation of any residential unit hereby approved, a final BREEAM Domestic Refurbishment certificate shall be submitted to and approved, in writing, by the Local Planning Authority, demonstrating that the development achieves at least a 'Very Good' rating.

Reason: To ensure that the development contributes adequately towards environmental sustainability, in accordance with Policy CS1 of the Reading Borough LDF Core Strategy 2008 (Altered 2015) and Policy DM1 of the Sites and Detailed Policies Document 2012 (Altered 2015).

- 2.3 The only indication as to precisely how this condition would be altered, despite clarifications being sought from the agent (see discussions with agent section below), is provided at section 6 of the application form, as follows:

6. Condition(s) - Removal Please state why you wish the condition(s) to be removed or changed: We wish to replace the onerous report as it is a Grade II listed building it is almost impossible with the BREEAM requirements. If you wish the existing condition to be changed, please state how you wish the condition to be varied: We wish to replace the Condition 3 wording to comply with report from Property and Energy Services Ltd.
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- 2.2 Given a response is provided to the 'how you wish the condition to be varied' it is assumed that the applicant is seeking for the condition to be varied rather than removed entirely. Based on attempted correspondence with the agent (see 'discussions with agent' section below), it has been interpreted that the applicant is seeking to alter the wording of condition 3 to:

The proposed development shall be carried out in accordance with 'Re 75 - 77 London Street, Reading, RG1 4QA' by Property and Energy Services Ltd, as received 02/05/2017'.

2.3 This is the basis on which the application has been considered and assessed.

2.4 Discussions with agent:

1) Further to the submission of the application on 02/05/2017, the agent of the applicant was contacted via email by the case officer on 11/05/17 seeking clarification about the exact intention / purpose of the application submission, as follows:

Prior to possibly registering the application I would appreciate your clarification on the exact intention / purpose of your submission.

More specifically, having read the application form and report from Property and Energy Services Ltd, I have interpreted this to mean that you are seeking for the condition to be varied from:

3. (i) *No development shall take place until a final design stage BREEAM Domestic Refurbishment assessment has been submitted to and approved, in writing, by the Local Planning Authority, demonstrating through a BREEAM interim certification that the development achieves at least a 'Very Good' rating.*

(ii) *Prior to the first occupation of any residential unit hereby approved, a final BREEAM Domestic Refurbishment certificate shall be submitted to and approved, in writing, by the Local Planning Authority, demonstrating that the development achieves at least a 'Very Good' rating.*

Reason: To ensure that the development contributes adequately towards environmental sustainability, in accordance with Policy CS1 of the Reading Borough LDF Core Strategy 2008 (Altered 2015) and Policy DM1 of the Sites and Detailed Policies Document 2012 (Altered 2015).

To:

The proposed development shall be carried out in accordance with 'Re 75 - 77 London Street, Reading, RG1 4QA' by Property and Energy Services Ltd, as received 02/05/2017'.

Reason: To ensure that the development contributes adequately towards environmental sustainability, in accordance with Policy CS1 of the Reading Borough LDF Core Strategy 2008 (Altered 2015) and Policy DM1 of the Sites and Detailed Policies Document 2012 (Altered 2015).

In the first instance, I would be grateful for your clarification that this is the intention of your submission?

If so, I do not consider it possible for the condition to be altered for the development to comply with this report, as per section 6 of the application form. As the report itself states, it:

"shows briefly why the application of BREEAM refurbishment adds little or no value to the project" and "below is a list of all the sections investigated by BREEAM refurbishment and a note as to why it does not add value"

In my opinion, in no way does the report explicitly specify any measures the development would actually commit to (in order to ensure that the development contributes adequately towards environmental sustainability), so your suggested variation of the condition to comply with this report does not meet all of the required six tests of a condition (in particular in terms of precision and enforceability). Put another way, the manner in which you are presently seeking to vary the condition cannot be considered acceptable by the local planning authority, for it effectively commits the development to no actual requirements and the replacement condition would not meet the six tests of a planning condition.

As such, I suggest you have the following options:

- 1. Apply to remove the condition in its entirety (I would state at this juncture that this approach is very unlikely to be supported by officers)*
- 2. Specify that you wish for the application to be considered on the basis it has been submitted, without the submission of any further information (as per the above, I would state at this juncture that this approach is very unlikely to be supported by officers)*
- 3. Submit clear and precise information as to the exact measures the development will commit to, which follow the BREEAM Refurbishment parameters, but without following the formal BREEAM submission/certification procedure set out by the condition (this would then be considered in due course by officers)*
- 4. Actually decide to submit details seeking for condition 3i or both 3i & 3ii to be discharged (this would require a separate approval of details application, rather than the variation/removal of condition application)*

I would be grateful for your response as to which option (1) to 4)) you wish to follow in this instance. If I have not heard from you by 22nd May on this matter, I will presume you will wish to follow option 2) and would thereafter undertake the necessary public consultation prior to determining the application.

I hope that this information is of assistance to you and look forward to hearing from you.

2) The agent replied later on 11/05/17, specifying that advice was being sought from the author of the Property and Energy Services Ltd report and that “I will get back to you on this once I hear back but please bear in mind this is a Listed Building”.

3) No further response was received by 22/05/17, so a further email was sent by the case officer on 23/05/17, seeking a response either on 22/05/17 or 23/05/17, or otherwise the application would be registered and the necessary public consultation would be undertaken based on the original submission.

4) The agent replied later on 23/05/17, as follows:

I think your Council is being unreasonable with this especially seeing it is a Listed Building, I am quite happy to produce a more detailed report but as it stands you are looking at wasting some £5000 in fees for what?

The Code has gone on new build, the building regulations deal with these matters now.

I think we need a conversation with you & the area team leader.

5) The case officer replied to this response from the agent on 24/05/17, as follows:

Thank you for your reply. I am sorry that you consider that the Council is being unreasonable in this instance. However, I would point out that all I am seeking to do is apply the Council’s adopted planning policies.

More specifically, although Code for Sustainable Homes is no more, that is of no relevance in this instance as this proposal involves a refurbishment of an existing building and not a new build. The BREEAM regulations are still in force and are therefore being applied accordingly. Furthermore, I am also seeking to ascertain the exact basis for your proposal (hence my options 1-4 in my original email), as I would respectfully consider this to be unclear based on the information which you have submitted. In addition, although officers are likely to be able to apply flexibility in the future assessment of your proposal on the basis of this being a listed building, the format of the report presently submitted does

not commit you to carry out any measures (hence my question as to whether you are actually seeking to remove the condition, rather than vary it).

Please feel free to give me a call should you wish to discuss this further.

If I do not hear from you today/tomorrow, I will proceed to register the application as per my email of yesterday.

Please note that I have discussed this matter with my manager prior to replying to you.

6) No response was received to this email and the application was duly registered on 31/05/17.

7) On 26/06/17, the case officer contacted the agent via email as follows:

Further to my emails below (for which I received no response from you to my most recent email of 24th May), the application was duly registered. The public consultation for the application is underway and the statutory public consultation period expires on Thursday 29th June. So far one objection has been received, which is attached for your information.

At present, based on your submission, I can confirm that the condition will not be able to be varied and will instead be refused. You are advised of your right of appeal. Should you wish to withdraw the application prior to a decision being made, please advise me of this via return email by Wednesday 28th June.

Should you wish to instead receive the formal decision of the local planning authority, this will only be able to be issued on Friday 30th June (once the public consultation period expires on Thursday 29th June) and not the statutory 8 week deadline of Wednesday 28th June. I will presume that you are agreeable to this short extension of time for the local planning authority to determine the application by Friday 30th June, unless I hear otherwise from you by Wednesday 28th June.

I trust that this is clear. Please feel free to contact me should you wish to discuss this further.

8) No response has been received.

It is noted that an automated out of office response was received from the agent. The original message was therefore forwarded to the contact specified on the out of office response. Again, no response has been received.

3. Information Considered:

- 'Re 75 - 77 London Street, Reading, RG1 4QA' Report by Property and Energy Services Ltd, as received 02/05/17
- Location and Block Plan 8651.16-PL-01 Rev A, as received 02/05/17
- Application form PP-06024411, dated 28/04/17, as received 02/05/17

4. Relevant Planning History:

- 4.1 The application site has an extensive planning history. Only application 160957/FUL is considered to be relevant in this instance, but all of the following are referenced for completeness:

- 4.2 960831 - Demolition of later additions and conversion and refurbishment of listed buildings for residential use comprising 1 four bed house and 4 flats (2 three bed, 2 one bed) with associated garden and parking. Erection of 6 two bed houses with access to rear. Granted 16/01/97.
- 4.3 960832 - Demolition of all later additions, conversion of listed buildings to residential use and erection of 6 new build houses to rear. (Application for Listed Building Consent) Granted 16/01/97.
- 4.4 061310 - Conversion of first and second floors to 6 flats. Withdrawn 19/01/2007.
- 4.5 061156 - Conversion of upper floors to residential use. Withdrawn 19/01/2007.
- 4.6 070474 - Conversion of first and second floors to residential use. Withdrawn 18/07/07.
- 4.7 070475 - Conversion of upper floors to residential use. Withdrawn 18/07/07.
- 4.8 070842 - Refurbishment of ground floor to include change of use from D2 to sui generis private function hall to include rear single storey extension (part retrospective). Granted 10/03/16.
- 4.9 071245 - Refurbishment of ground floor. Change of use from D2 (Formerly cinema) to sui generis - private function hall with single storey rear extension (part retrospective). Granted 10/3/2008
- 4.10 091689 - Listed building application for retrospective 1st Floor alteration to internal non-load bearing partitions. Granted 29/01/2010.
- 4.11 160957/FUL - Change of use of part-ground, first and second floors from sui generis to 6 (4x1 & 2x2-bed) residential units (Class C3) and associated works, including fenestration alterations on rear elevation at first floor level and cycle/bin storage areas at ground floor level.
- 4.12 160958/LBC- Internal and external works associated with change of use of part-ground, first and second floors from sui generis to 6 (4x1 & 2x2-bed) residential units (Class C3) and associated works, including fenestration alterations on rear elevation at first floor level and cycle/bin storage areas at ground floor level.

5. Public Consultation:

- 5.1 Consultation letters were sent to nearby occupiers on 31/05/17. A site notice at the front (London Street) of the site was erected on 01/06/2017, expiring on 22/06/2017. A press notice was published on 08/06/17, expiring on 29/06/17.
- 5.2 No responses have been received from nearby occupiers.
- 5.3 Reading Conservation Area Advisory Committee (CAAC) was formally consulted on 31/5/17. Reading CAAC objects, as follows (in full):
 - 1. 75-77 London Street is Grade II* listed and within the Market Place /London Street Conservation Area.
 - 2. It is a prominent building on the street and the rear of the building is also visible from East Street. Reading Borough Council (RBC) is committed to conserving and

enhancing Reading's heritage. Part of that commitment is to ensure that heritage buildings are also sustainable buildings.

3. The building is one which residents of Reading expect to be looked after as they have fond memories of events held there.

4. Reading CAAC would hope that having been granted planning permission to refurbish this landmark building, the developer would also wish to consider the environmental impact of the work in the expected manner and reach the stipulated standards.

5. BREEAM has five standards: outstanding, excellent, very good, good and pass. The standard required of this development was "very good".

6. Rather than meeting this condition, the developer has commented in the application letter:

"We wish to replace the onerous report as it is a Grade II listed building it is almost impossible with the BREEAM requirements."

7. Reading CAAC does not accept this excuse. When the application was made, the developer was aware that it was a listed building which will always present a challenge to refurbish compared with a modern building.

8. We note that RBC planning officers allowed certain concessions such as size constraints because the project was the conversion of a historic building. Environmental standards should not be added to the list.

9. Reading CAAC would like to be able to highlight the development as a successful example of the application of the principles of environmental sustainability in a heritage building.

10. Reading CAAC object to this application.

6. Equality Act 2010:

In determining this application the Council is required to have regard to its obligations under the Equality Act 2010. However, there is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application. Therefore in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the development.

7. Relevant Planning Policy and Guidance

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. Material considerations include relevant policies in the National Planning Policy framework (NPPF) - among them the 'presumption in favour of sustainable development'. However the NPPF does not change the statutory status of the development plan as the starting point for decision making (NPPF paragraph 12).

In this regard, the NPPF states that due weight should be given to the adopted policies of the Local Development Framework (LDF) (Core Strategy, Sites and Detailed Policies Document and Central Area Action Plan) according to their degree of consistency with the NPPF (the

closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given).

Accordingly, the National Planning Policy Framework and the following development plan policies and supplementary planning guidance are relevant:

Reading Borough LDF Core Strategy (Adopted January 2008) (Altered 2015)

CS1 Sustainable Construction and Design

Sites and Detailed Policies Document - (Adopted October 2012) (Altered 2015)

DM1 Adaption to Climate Change

Supplementary Planning Documents

Sustainable Design and Construction SPD (2011)

8. Appraisal

8.1 Condition 3 of planning permission 160957 states:

3. (i) No development shall take place until a final design stage BREEAM Domestic Refurbishment assessment has been submitted to and approved, in writing, by the Local Planning Authority, demonstrating through a BREEAM interim certification that the development achieves at least a 'Very Good' rating.

(ii) Prior to the first occupation of any residential unit hereby approved, a final BREEAM Domestic Refurbishment certificate shall be submitted to and approved, in writing, by the Local Planning Authority, demonstrating that the development achieves at least a 'Very Good' rating.

Reason: To ensure that the development contributes adequately towards environmental sustainability, in accordance with Policy CS1 of the Reading Borough LDF Core Strategy 2008 (Altered 2015) and Policy DM1 of the Sites and Detailed Policies Document 2012 (Altered 2015).

8.2 At application stage of permission 160957, the officer delegated report specified the rationale for this condition, as follows (paragraph 9.11 of the officer report):

9.11 Sustainability - Given the nature of the proposals a sustainability statement, incorporating a BREEAM domestic refurbishment pre-assessment, should have been submitted with the application, to demonstrate how the proposals would seek to comply with policy CS1 and SPD requirements. No substantial details have been submitted and therefore it is considered necessary to secure a two-part condition. The first, a pre-commencement condition, seeks a final design stage assessment and certificate to demonstrate that the units would achieve the required 'very good' rating. The second element, secured prior to first occupation, will secure final BREEAM domestic refurbishment certificate of compliance with the 'very good' rating.

8.3 It has been interpreted that the applicant is seeking to vary the condition noted above at paragraph 8.1 to the following (see section 2 of the report for a full explanation as to how this interpretation was reached):

The proposed development shall be carried out in accordance with 'Re 75 – 77 London Street, Reading, RG1 4QA' by Property and Energy Services Ltd, as received 02/05/2017'.

8.4 Accordingly, the 2 page report by Property and Energy Services Ltd has been duly considered. It is considered that this report has a number of shortcomings, most specifically

that it does not commit the applicant to carrying out any sustainability measures whatsoever (and therefore contrary to policies CS1, DM1 and the adopted SPD on Sustainable Design and Construction). Instead, as the report itself states, it: “shows briefly why the application of BREEAM refurbishment adds little or no value to the project” and “below is a list of all the sections investigated by BREEAM refurbishment and a note as to why it does not add value”. Accordingly, owing to the adopted policies and guidance, such an approach cannot be supported by officers. Officers had indicated to the agent that some flexibility would be likely to be able to be applied in the assessment of the proposal on the basis of the building being listed, but the form and nature of the report presently submitted does not commit the applicant to carry out any measures, and no such updated report has been submitted.

8.5 Furthermore, by consequence of the content of the report submitted, it is considered that the proposed varied condition would not meet all of the required six tests (as per paragraph 206 of the NPPF) of a condition, in particular in terms of precision and enforceability. In terms of precision, it is not clear which measures would / would not be carried out based on the report submitted, and consequently, this would cause extreme difficulties in terms of detecting a breach of such a condition (making it impossible to detect a contravention & thereby unenforceable). Thereby, it is considered that the varied condition would not be a lawful condition.

8.6 The agent was specifically asked to clarify whether it was proposed to vary or remove the condition. No clear response was received. On the basis of the information submitted it has been interpreted that the condition was sought to be varied in the nature discussed, rather than be removed. The application has therefore been considered and assessed in this manner.

8.7 It is also relevant to note that in other listed buildings within the borough, similar conditions have been included on residential conversion permissions (similar to this context) and subsequently these conditions have been discharged with the BREEAM targets met.

8.8 Conclusion

It is considered that the condition cannot be varied in the nature proposed, and if it were to be it would be contrary to policies CS1 and DM1, for the reasons set out in this report.

10. RECOMMENDATION:

Refuse variation of condition 3.

11. Reason for refusal

The proposed altered condition does not pass the precision or enforceability tests of a planning condition and results in the development which does not contribute adequately towards environmental sustainability, contrary to Policy CS1 of the Reading Borough LDF Core Strategy 2008 (Altered 2015) and Policy DM1 of the Sites and Detailed Policies Document 2012 (Altered 2015).

Informatives:

1. It has been interpreted from the information provided that the proposal is to vary, rather than remove, condition 3, to the following:

The proposed development shall be carried out in accordance with 'Re 75 - 77 London Street, Reading, RG1 4QA' by Property and Energy Services Ltd, as received 02/05/2017'. This is the basis on which this application has been considered and assessed. Please see the officer delegated report for more information.

2. The decision relates to the following drawings and documents:

- 'Re 75 - 77 London Street, Reading, RG1 4QA' Report by Property and Energy Services Ltd, as received 02/05/17
- Location and Block Plan 8651.16-PL-01 Rev A, as received 02/05/17
- Application form PP-06024411, dated 28/04/17, as received 02/05/17

3. The decision to refuse the variation of condition 3 follows the positive and proactive consideration of the application, including outlining the issues of concern with the agent of the applicant prior to a decision being issued.