

1. Introduction

- 1.1 This appeal relates to the London Borough of Camden's decision to refuse an application to discharge condition 4 of planning permission reference 2013/6388/P
- 1.2 Planning permission reference 2013/6388/P (the Planning Permission) authorised the erection of three storey roof extension to provide 4 self contained flats (2x2beds and 2x3beds), single storey extension to east elevation for new entrance, installation of balconies to all flats together with insulated cladding to all elevations, landscaping works throughout the site, erection cycle store for 50 cycles to the south of the building and provision of two disabled car parking spaces at Kings College Court, 55 Primrose Hill Road, London NW3 3EA
- 1.3 Condition 4 of the Planning Permission provided that:

"No development shall take place until samples and manufacturers details of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted and approved in writing by the local planning authority. The materials panel must include an on-site facing brickwork panel demonstrating the proposed colour, texture, face-bond and pointing. Development shall be carried out in accordance with the approved details.

Reason: In order to safeguard the character and appearance of the area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies."

- 1.4 The Appellant submitted an application to the Council to discharge Condition 4 (as well as other conditions that are not the subject of this appeal) on 6th Jan 2016. The application proposed the use of brick slips manufactured by Sto to clad the external insulation that formed part of the development authorised by the Planning Permission.

2. Reasons for Refusal

- 2.1 By a decision dated 6 October 2016 the Council refused to discharge Condition 4 for the following stated reasons:

"The synthetic render Sto-brick slip material, by reason of its appearance, quality and material properties, would cause harm to the appearance of the host building and the setting of the Primrose Hill Conservation Area. contrary to policies CS14 (Promoting high quality places and conserving our heritage), DP24(Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Core Strategy and Development Policies 2010."

- 2.2 The Council have previously agreed in writing¹ that the proposed Sto acrylic brick slips were suitable in terms of appearance and texture. The Appellant therefore assumes that the Council has rejected the proposed Sto acrylic brick slip cladding due to concerns over its long term durability, more specifically its long term weathering, colour fastness and long term adhesion to the substrate (a justification that the Council put forward prior to refusing the application).

¹ See Appendix A - emails JG to PM 03/08/16 and PM to JG 04/08/16

- 2.3 In any event, the Council's reason for refusal is without any merit or foundation, and ignores the evidence base submitted by the Appellants to address the Council's stated concerns about the long term durability of the proposed STO brick slips. The Appellant asks the Secretary of State to approve the proposed STO brick slips and allow the appeal.

3. Grounds of Appeal

Appearance and Texture of the proposed Sto Brick Slips

- 3.1 Both Policy CS14 and Policy DP24 (which are cited in condition 4) seek to protect the visual amenity of the area, by securing good design. The applicant has used a Sto render on a previous project and found it to be a far superior system to the rendered cladding systems installed on earlier projects; in its application, performance and weathering. Research carried out by the Appellant's professional team confirmed that the Sto brick slip system would likewise best meet the technical and visual requirements of being applied to an existing building, and provide the longevity associated with Sto products. It is telling that the extensive installation of Sto Brick Slips at the Whiston Hospital², which the applicants agent inspected first hand, was to replace a failing clay brick slip system.
- 3.2 Condition 4 does not prescribe the type of external cladding to be used, so long as the type does not harm the visual amenity of the area. Had the Council wanted to limit the cladding to a particular type or manufacturer, it would have needed to make this explicit in the condition. As the Council did not limit the type of cladding to a particular type, the appellant is entitled to put forward any type of cladding, and the Council's discretion in determining the submission is limited to the question of whether the submission gives rise to visual harm, which officers have confirmed it would not (other than the unsubstantiated concern about the long term weathering of the product discussed below).
- 3.3 It is therefore submitted that, contrary to the Council's reasons for refusal, the use of the Sto Brick Slips would safeguard the character and appearance of the area in accordance with the requirements of Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and Policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

Long term durability of the proposed Sto Brick Slips

- 3.4 The Appellant has submitted to the Council, substantial objective evidence regarding the durability of the proposed brick slip system, including a BBA certificate³ stating under "**Durability** - *with appropriate care, the system should remain effective for at least 30 years*", and case studies⁴ demonstrating its long term performance. BBA certification means that a product has gone through full independent product and process control testing, with data to prove the product meets the standards required. This includes
- Laboratory based testing
 - Onsite evaluation
 - Product inspections
 - Life expectancy assessment
 - Quality Management System review
 - Training review

² See Appendix A - email JG to CR 27/06/16 and attachment

³ Vario BBA.pdf

⁴ Brick Slip Durability.pdf and JG email 27/06/16

The Council has put forward no counter evidence that suggests that the proposed Sto Brick Slips will not perform in the way objective testing demonstrates.

- 3.5 The Council has ignored the evidence, and instead appears wedded to the use of a clay brick slip system. The Appellants pre-application research found that most clay brick systems were not technically suitable for use above 18m, and those that were, lacked any certification for use in conjunction with external wall insulation. As such, they were found to be unsuitable for use on this project.

Environmental Benefits of the proposed Sto Brick Slips

- 3.6 The Design & Access Statement⁵ for the original planning application stated in Para 3.1 that:

"The vertical cladding will remain as brick, in the form of slips applied over new insulation. This presents the opportunity to reclad with more appealing brick colour and texture, details of which can be a reserved matter."

- 3.7 A key benefit of the development authorised by the planning permission is that it secures the upgrading of the woefully poor thermal performance of the external walls to the 48 existing flats by the addition of an external wall insulation (EWI)

- 3.8 This was recognised in the Members Briefing note⁶, Para 4.3:

"The proposed works to the existing façade would improve the energy efficiency of the building and in principle could enhance its appearance."

and Para 4.10

"The development also proposes to clad the building with new insulation cladding to improve its appearance and energy efficiency whilst preserving its appearance. The success of the cladding will depend largely on the detailed design the appropriate use of high quality materials and finished appearance. This can be dealt with by way of condition."

- 3.9 The Sto Brick Slip is designed to be used on external insulation, in contrast to clay brick slips which are generally not suitable for use over external wall insulation on buildings exceeding 18 metres in height. Therefore the use of clay brick slips would necessitate the abandonment of external insulation, with a consequent negative impact on the environmental benefits of the development. The use of the Sto Brick Slips therefore facilitates sustainable development, whilst safeguarding the character and appearance of the area. Sto is a market leading manufacturer established in Germany in 1835 and has been manufacturing external wall insulation systems since 1966; over 51 years. Sto is active in over 87 countries with over 4000 staff and a 1 billion Euro sales turnover. There is no evidence that brings the durability of their products into question.
- 3.10 As with any form of external finish, there is always a risk that it will need to be renewed from time to time, but an 'at least 30 years' service life represents a high level of durability. Where the condition of a building becomes such that it is causing harm to the amenity of an area, the Council have powers under Section 215 of the Town and Country Planning Act 1990, requiring a person to take steps to remedy that harm. If contrary to the technical evidence put forward, the brick slips do degrade over time (for which there is no evidence), the Council would be entitled to take enforcement action by serving a Section 215 notice.

⁵ See Appendix B

⁶ See Appendix C

4. Application for Costs Award

- 4.1 The Appellant asks the Secretary of State to make an award of costs against the Council arising from their unreasonable behaviour which has resulted in an appeal that could have otherwise been avoided. The Council's handling of the application, which led to its ultimate decision to refuse it has been wholly unreasonable.
- 4.2 An application to discharge the various conditions attached to PP 2013/6388/P was made on 6th Jan 2016. It was transferred via the Planning Portal to the Council that same day, see confirmation below.

Name	LPA	Ref	Version	Date Transferred	Actions
ACC - Conditions	Camden Council	PP-201309041	1	06 Jan 2016 - 09:37	Copy, Amend, Download, Archive
WGL - minor amendments	Camden Council	PP-04704197	1	18 Dec 2015 - 11:52	Copy, Amend, Download, Archive

- 4.3 Para 27 (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, requires the Council to give notice to the applicant of their decision ... within a period of 8 weeks beginning with the day immediately following that on which the application is received by the authority, or such longer period as may be agreed by the applicant and the authority in writing.
- 4.4 Notice of their decision by Camden should therefore have been given by 03/03/16.
- 4.5 In the event, the first response received from the Council in respect of Condition 4 was an email⁷ from the Case Officer, Patrick Marfleet (PM) on the 04/03/16. His email included the concerns expressed by Charles Rose (CR), one of the Council's Heritage and Conservation Officers. His one line response to the proposed brick slip cladding was "
- "We will not accept render which is assimilated to look like brick"*
- and offered no justification for his stance. CR's email did state that he would be *"happy to discuss the proposal and details with the applicant if necessary."* As CR's emailed comments contained a number of factual errors regarding other elements which suggested that he had not been to site, the Appellant felt that a meeting on site would be the most appropriate way forward and emailed 6 possible dates that might be suitable.
- 4.6 No response was received, and so a voice message was left on 16/03/16 for CR's attention. This too was ignored, and so a letter and supporting information was sent to CR by post and email on 22/03/16, also asking that he make contact to arrange a meeting.
- 4.7 The letter of 22/03/16 was followed up with voice messages to CR on the 24/03/16 and 29/03/16. Having received no reply, the letter of 16/03/16 was resent on the 04/04/16. A further voice message for CR was left on the same date.
- 4.8 Finally on the 06/04/16, an email was received from CR asking whether he is able to inspect the brick sample at his convenience. The Appellant's agent, Jim Garland (JG) replied by return to advise that he would prefer to meet and at CR's convenience. CR's emailed response of the same date was that he was too busy to meet and would rather just drop in on the site. JG responded by return with details of where the samples could be found, and also reminding CR of his initial offer to discuss the details with the applicant, and registering disappointment that this appeared to no longer be an option.

⁷ See Appendix A - email PM to JG 04/03/16

- 4.9 Some 5 weeks passed with no further contact from the Council, so JG emailed PM on the 11/05/16 expressing his concern as to the lack of progress. An auto response from the Council informed him that PM was on holiday until 31/05/16, and so JG therefore copied his email to Seonaid Carr (SC), case officer for the original application, who was looking after urgent matters during PM's absence. SC responded by return advising that she would follow the matter up with CR and PM.
- 4.10 Having heard no more almost 2 weeks later, JG emailed SC on 24/05/16 advising that a start on site had been made as the Appellant could not defer any longer.
- 4.11 Finally, on the 06/06/16 a response was received from PM, incorporating revised comments from CR, approving all of the conditions bar the brick slip finish. CR's comment was again a one line stating "We will not accept render which is assimilated to look like brick" with no further justification. PM advised that "An alternative facing material that accords with the requirements of condition 4 will need to be provided."
- 4.12 The Appellant's agent (JG) emailed PM 14/06/16 requesting that CR expand on the reasons underpinning his comments, and a response was received 10 days later on the 24/06/16 outlining the Council's concerns with acrylic brick slips.
- 4.13 Additional information was emailed by JG on 27/06/16 to CR which addressed the Council concerns. The request for a site meeting was also reiterated.
- 4.14 After a further 2 weeks had passed without a response from either CR or PM, the Appellant's agent emailed a letter dated 14/07/16 to SC asking for her help in resolving the impasse, and enclosing a schedule of contact between himself and the Council. This had the desired effect and a meeting on site was arranged with PM and CR for the 26/07/16.
- 4.15 At the site meeting, the Appellant's agent was able to show CR and PM the bespoke sample panel⁸ against the existing brickwork, and point out the poor condition of the existing brickwork with staining from overflow pipes etc. Over the next couple of days there was an email exchange with CR regarding technical matters.
- 4.16 PM emailed 02/08/16 advising that the Council still had serious concerns regarding the durability of the Sto brick slip system, and that the Council felt that clay brick slips would be more appropriate.
- 4.17 The Appellant's agent then responded on 03/08/16 asking:

"For clarity, I assume that Charles does not object to the appearance or texture of the sample panel you saw on site last week, and that his concerns are solely in relation to long term durability of the system. I have asked Sto if they can provide any more information in this respect, however it would be useful if Charles could specify the basis for his concerns so that they can be addressed. For instance, is it the long term weathering, or the colour fastness of the brick slips, or their long term adhesion to the substrate that concerns him?"

The Appellant's agent also reiterated the previous advice to the Council that the Appellant was unable to find a clay brick slip system which was certified for use above 18 metres with External Wall Insulation.

- 4.18 PM replied 04/08/16 confirming that JG's interpretation was correct.

"Our only concerns are with the durability of the rendered slips, specifically their long term weathering, colour fastness and long term adhesion to the substrate."

⁸ See attachment to JG email 27/06/16

- 4.19 The Appellant's agent responded 05/08/16, enclosing a brochure⁹ from Sto regarding the durability of their brick slip system, and which addressed the concerns expressed by the Council.
- 4.20 An email was then received on 11/08/16 from PM, completely ignoring the evidence put forward by Sto. Instead, the Council advised that there was at least one clay brick slip system that could be used at the required height. The Council warned of enforcement if clay brick slips were not used.
- 4.21 The Appellant's agent emailed PM on 12/08/16 asking for details of the system the Council suggested would be suitable, and followed that with a chasing email 15/08/16.
- 4.22 PM emailed back on 16/08/16 proposing the FastClad system. Following enquiries about this system, the Appellant's agent responded to PM on the same day noting that the Para 3.10 of the FastClad BBA certificate¹⁰ advises that:

"The Product has not been assessed for use with external wall insulation"

The FastClad system was therefore unsuitable for the proposed application.

- 4.23 Receiving no further comment from the Council, a letter of complaint dated 31/08/16 enclosing a deemed discharge notice was served on the Council, although it is accepted that the deemed discharge notice had no legal effect due to the transitional arrangements set out in the relevant legislation allowing for deemed discharges.¹¹ However, the letter of complaint set out the appellant's grievances with the Council's approach to determining the application.
- 4.24 Alex Bushell of the Council replied to the letter of 31 August 2016 by email and advised
- "We can issue a split decision and allow the elements that we consider acceptable and refuse those that we do not (the material finish) to allow an appeal. Alternatively, we can continue to negotiate. Please let Patrick (cc) know as soon as possible which option your client would prefer."*
- 4.25 On 23/09/16 the appellant's agent emailed AB requesting a meeting with himself, CR and PM at their offices to attempt a final negotiation
- 4.26 The idea of further negotiation was dismissed by AB in his email 26/09/16.
- 4.27 The Appellant's agent therefore asked that the application be determined with a split decision, and this was received on the 06/10/16.

5. Conclusion

- 5.1 It has been acknowledged by the Council that the appearance and texture of the Sto brick slips are acceptable.
- 5.2 The Appellant has provided compelling evidence to the Council that the Sto brick slips are considered as durable as alternative clay brick slip systems (a comparison of each product's respective BBA certificates confirms this). The Council have not substantiated their reasons for refusal.

⁹ Brick Slip Durability.pdf

¹⁰ FastClad Agreement certificate 04/4165

¹¹ See appendix A - Letter dated 31/08/16 RS to EB

- 5.3 The Council should have approved the proposed Sto brick slip system. Instead, they have behaved unreasonably, frequently not returning calls or emails, and unwilling to engage in any meaningful discussions. For these reasons the Appellant asks that the appeal be upheld, the Sto brick slip system be approved, and that costs are awarded for an appeal which should have been wholly unnecessary.