



Appeal Decision

Site visit made on 4 October 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal Ref: APP/B1550/W/21/3287300

Bullwood Hall (former HMP), Bullwood Hall Lane, Hockley, Essex, SS5 4TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Steve O'Neill against the decision of Rochford District Council.
 - The application Ref 20/01156/FUL, dated 27 November 2020, was refused by notice dated 19 May 2021.
 - The application sought planning permission for redevelopment of former prison complex to provide 72 dwellings comprising 14 No. five bedroomed, 13 No. four bedroomed, 18 No. three bedroomed, 9 No. two bedroomed houses, and 9 No. two bedroomed and 9 No. one bedroomed apartments without complying with a condition attached to planning permission Ref 17/00964/FUL, dated 17 December 2017.
 - The condition in dispute is No 5 which states that: The first floor windows to house types A1, A2, A3, B2 and D1 shall be glazed in obscure glass and to window designs not capable of being opened below a height 1.7 metres above finished floor levels. The windows shall be retained as such thereafter for the duration of the development.
 - The reason given for the condition is: In the interests of safeguarding privacy between adjoining occupiers.
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment of former prison complex to provide 72 dwellings comprising 14 No. five bedroomed, 13 No. four bedroomed, 18 No. three bedroomed, 9 No. two bedroomed houses, and 9 No. two bedroomed and 9 No. one bedroomed apartments at Bullwood Hall (former HMP), Bullwood Hall Lane, Hockley, Essex, SS5 4TE in accordance with the terms of the application, Ref 20/01156/FUL, dated 27 November 2020, without compliance with condition number 5 previously imposed on planning permission Ref 17/00964/FUL, dated 17 December 2017, subject to legal agreement dated 17 December 2018 pursuant to planning permission reference 17/00964/FUL and the conditions set out in the attached schedule.

Preliminary Matter

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. I have had regard to the revised Framework in reaching my decision.

Background and Main Issue

3. The proposal seeks to vary the wording of condition 5 to read "*any first floor side windows to plots 3, 4, 25 (west elevation), 31 (west elevation), 3, 44 and*

46 shall be glazed in obscure glass and the window designs not capable of being opened below a height of 1.7 metres above finished floor level. The windows shall be retained as such thereafter for the duration of the development”.

4. The main issue is the effect that varying the condition would have on the living conditions of neighbouring occupiers.

Reasons

5. Condition 5 essentially required the first floor windows to the side elevation of some property styles to be glazed in obscure glass and to window designs not being capable of being opened below a height of 1.7 metres above finished floor level. Condition 5 to some extent has been applied in blanket form taking into account the juxtaposition of dwellings. This proposal is more specific and relates to plot numbers.
6. The Council has identified that this application relates to plot numbers 19, 20, 21, 34 and 36 (House Type A1), 11, 14, and 31 (House Type A2), 15, 18, 22, 33, 35 and 37 (House Type A3), 12, 13, 23, 25, 26, 32, 52 and 53 (House Type B2) and 1, 2, 3, 38, 39, 40, 41, 42 and 43 (House Type D1). The application is accompanied by plans and drawings that illustrate the treatment of the windows coinciding with the condition that is proposed to be changed. The drawings annotate which windows are to remain obscure glazed and non-openable below a height of 1.7 metres to the floor level, those windows that are to be obscure glazed and openable and those windows that are to be clear glazed and openable. The Council has highlighted that the way in which the revised condition has been worded would not reflect the detail provided within the application.
7. Following an assessment of the plans and drawings Council officers recommended the proposal to its Planning Committee for permission having found the alterations to the specified windows to be, in the main, acceptable in respect of the living conditions of neighbouring occupiers with the exception of a small number of those windows. In doing so two alternatively worded conditions to that of the applicant's suggested wording were put forward. One required implementation in accordance with the plans and drawings provided and another that articulated those specific windows on the submitted plans and drawings required to be obscured glazed and non-openable below a height of 1.7 metres above finished floor level. The latter condition also required all windows that would serve bathrooms and en-suite rooms relating to plots 11-14, 15, 17, 18, 19, 22, 23, 24, 25-30, 31-34, 36, 37, 38-43, 51- 53 to incorporate obscure glazing, together with a restricted hinge mechanism (as shown by Drawing Number 839 (Section)) to prevent those windows opening further than 13 degrees. These restrictions were to ensure that acceptable privacy would be provided to neighbouring occupiers.
8. Notwithstanding the officer recommendation, Members of the Council's Planning Committee resolved to refuse planning permission due to concern regarding the limits of the hinges which it is said in the Council's reason for refusal could be undone and substituted. If this were to take place this would give rise to loss of privacy between adjoining occupiers and, as such, this would undermine Council policy and requirements. However, there is no clear indication that hinges would be undone or substituted. If the windows were altered, I see no substantive reason why the Council could not utilise its powers

of enforcement to regulate compliance with such a condition. I have not been provided with any substantive information or evidence that might lead me to a different view on this matter.

9. Council officers have found the alterations to the specified windows to be acceptable subject to those conditions put forward. The available evidence before me does not lead me to a contrary view. However, the suggested re-worded condition provided by the appellant would not go far enough to achieve those safeguards as illustrated on the plans that support the application. Alternatively, the re-worded condition put forward by officers within the Council's committee report would ensure that appropriate privacy would be afforded to neighbouring occupiers and there would thus be no substantial harm to the living conditions of the occupiers of the residential development.
10. Policy DM1 of the Council's Local Development Framework Development Management Plan 2014, the Framework's Supplementary Planning Document 2 (House Design) 2007 and the Essex Design Guide 2018 require development, amongst other matters, to avoid overlooking and to maintain privacy. I do not consider the proposal would compromise this to a degree that might undermine Council policy or requirements. As such, the proposal would not conflict with the development plan.

Conditions

11. The Council has advised that many conditions pertaining to the original planning permission have been discharged and, therefore, there would be no requirement for imposition of those discharged conditions. However, compliance conditions remain relevant as allowing this appeal would grant a new planning permission.
12. The Council has provided a list of conditions within its planning committee report that it considers should be imposed or transferred as they remain relevant to the development. I have considered the conditions provided by the Council in light of paragraph 56 of the Framework and the advice in the Planning Practice Guidance.
13. As the development has been implemented the need to reattach a start date condition is unnecessary. In the interests of certainty and for the avoidance of doubt a condition requiring the development to be carried out in accordance with the approved plans is necessary. A condition requiring specific windows to be obscured glazed and not capable of being opened below a height of 1.7 metres above finished floor level is necessary to protect the living conditions of neighbouring occupiers. In the interest of privacy a condition is required that would prohibit the insertions of additional side windows. A yearly log pertaining to the maintenance of the surface water drainage system is required to ensure mitigation against flood risk over the lifetime of the development. In the interests of highway safety conditions relating to the surface treatment of the vehicular access along with timing of construction delivery vehicles are necessary. In promoting sustainable development and travel it is necessary for the developer to provide each household with a residential travel information pack. To ensure the protection of species and woodland a wooded fence boundary buffer is required. To protect heritage assets the development should be implemented in accordance with a construction management plan.

14. In the event that some of the above conditions have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

15. I conclude that withholding planning permission would not be reasonable or necessary. Therefore, I grant planning permission albeit this decision is subject to the legal agreement dated 17 December 2018 pursuant to planning permission reference 17/00964/FUL and to those conditions listed within the attached schedule.

Nicola Davies

INSPECTOR

SCHEDULE

CONDITIONS

1. The development hereby permitted shall not be carried out other than in accordance with the approved plans listed in the Drawing Register and Issue Sheet dated 29 March 2018 and the plans referenced 011, (proposal showing effect of rewording condition), Drawing Number 839, (A1) 210, (A2) 210, (A3) 210, (B2) 210, (C1) 210 and (D1) 210.
2. Notwithstanding the details of the submitted Drawing Reference 011, 839 (window opening sections) (A1) 210, (A2) 210, (A3) 210, (B2) 210, (C1) 210 and (D1) 210 the east elevation window at Plot 11 (furthestmost forward facing the frontage of Plot 12 together with the southern flank window within the development at Plot 21 and the northern flank window within the adjacent development at Plot 20 (as annotated in green by plan reference 011) shall be glazed in obscure glass and to window designs not capable of being opened below a height of 1.7m above finished floor level. The windows shall be retained as such thereafter for the duration of the development. Prior to the occupation of any dwelling pertaining to plots 11-14, 15, 17, 18, 19, 22, 23, 24, 25-30, 31-34, 36,37, 38-43, 51- 53 all windows which serve bathrooms and en-suite rooms shall incorporate obscure glazing, together with a restricted hinge mechanism (as shown by Drawing Number 839 (Section)) such that all windows be incapable of being opened further than 13 degrees. The windows shall be retained as such thereafter for the duration of the development. Any replacement windows over the lifetime of the residential use shall be the same as those required by this condition.
3. No further side windows other than those shown to the approved designs of the dwellings hereby approved shall be provided.
4. The applicant or any successor in title must maintain yearly logs of maintenance for the surface water drainage scheme which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon request by the Local Planning Authority.
5. No unbound material shall be used in the surface treatment of the vehicular access and parking areas within 6 metres of the highway boundary.
6. Prior to the occupation of the proposed residential development, the developer shall provide a Residential Travel Information Pack for every household for sustainable transport, to include six one day travel vouchers for bus travel.
7. The existing outer wooded fence shall be retained to provide a buffer between the development boundary and the extent of the adjoining ancient woodland. The buffer shall be retained as semi-natural habitat.
8. The development shall be implemented in accordance with the details of the submitted Construction Management Plan dated 17 November 2017

Reference: SJT/18422-03_CTMP in particular the controlled management of the flow of construction traffic entering and leaving the site.

9. Construction delivery vehicles shall not access or exit the site between the hours of 08:00 and 09:30 and 14:30 and 15:30 hours Monday to Friday during local school term days.

End of schedule