



Appeal Decision

Site visit made on 7 November 2022

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd January 2023

Appeal Ref: APP/M5450/W/22/3297090

1, 3 and 5 Bacon Lane and Kilbys Industrial Estate, Bacon Lane, Harrow HA8 5AS

- 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 Polycarpou against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/3522/21, dated 23 August 2021, was refused by notice dated 19 January 2022.
 - The application sought planning permission for *redevelopment to provide 23 houses; associated landscaping and parking; refuse storage* without complying with a condition attached to planning permission p/3667/19 dated 11 March 2021.
 - The condition in dispute is No 2 which states that: *Save where varied by the other planning conditions comprising this planning permission, the development hereby permitted shall be carried out, completed and retained in accordance with the following approved plans and documents: Site Location Plan, 1294/50, 1294/51, 1294/52, 1294/53, 1294/54, 1294/55, 1294/56, 1294/57, 1294/58, 1294/59, 1294/60, 1294/61, 1294/62, 1294/63, 1294/64, 1294/65, LLDD1210-LAN-DWG-100 Rev 04, 1294/71, 1294/72, 1294/73, 1294/73, LLDD1210-LAN-DWG-101 Rev 05, LLDD1210-LAN-DWG-102 Rev 05, LLDD1210-LAN-DWG-200 Rev 03, LLDD1210-LAN-DWG-201 Rev 05, LLDD1210-LAN-DWG202 Rev 05, Design and access statement, Planning Statement, Energy and Sustainability Assessment, Phase 3 Remediation Strategy, Air Quality Impact Assessment, Contamination Assessment Report, Report on a Phase 2 Ground Investigation, Extended Phase 1 Habitat Survey, Food Risk Assessment and Drainage Strategy, Construction Management Plan with supporting plans, Construction Logistics Plan, Transport Statement Addendum, Illustrated Schedule of Materials and Planting, Soft Landscape Specification, Daylight Sunlight and Overshadowing Assessment, Detailed Plant Schedule and Specification, Financial Viability Assessment*
 - The reason given for the condition is: *For the avoidance of doubt and in the interests of proper planning.*
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. The appellant seeks a varied planning permission which would include the erection of additional rear dormers to 10 houses.
3. On my visit I noted that 10 additional dormers are built or are in the process of being built on the site. The 5 dormers on the rear elevation of Block A appear to match those on the proposed plans. The remaining 5, on the rear elevations of Blocks B and C, differ from those shown on the proposed plans. For the

avoidance of doubt, I have determined the appeal on the basis of the plans submitted.

Main Issues

4. The main issues are:

- The effect that varying the condition would have on the living conditions of the occupants of nearby properties with particular reference to their privacy; and
- Whether or not planning obligations are necessary to make the development acceptable and, if so, whether or not any necessary agreements have been entered into.

Reasons

Living Conditions

5. The appeal site is located within an area which is predominantly residential in character although some industrial units are adjacent to the south. House types in this part of Bacon Lane and the surrounding streets vary but principally consist of traditionally designed semi-detached properties and short rows of terraces. Some properties are served by dormer windows. Properties in the area are generally served by spacious plots with large rear gardens.
6. The dormers proposed to the rear of Block A would be opposite a gable end, front driveways and rear gardens of Block B within the appeal site. The dormers would be separated from Block B by lengthy rear gardens. Recessed from eaves level, and set part way up the rear roof slopes of Block A, the dormers would be located farther from Block B than the approved first floor windows serving Block A. The dormer windows would be smaller than the rear elevation first floor windows. Therefore, whilst occupants of the study rooms would have some views across the gardens and drives of Block B they would be at a distance and views would be no more invasive than those which would be available from first floor rooms. The gable end of Block B would contain windows but condition 16 of the existing planning permission requires that these windows be obscurely glazed and non-opening below 1.7m above the internal floor level. Had the appeal been allowed, such a condition could be reimposed, and no views into those rooms would be available from the proposed dormers.
7. The proposed dormers to Block A would not be orientated toward the rear elevations of houses on neighbouring The Chase or Vancouver Road, or the adjacent properties on Bacon Lane. Some views would be possible from the study rooms across the rear gardens of these properties. However, these would be at acute angles and at a distance slightly farther away than would be the case from the approved first floor windows.
8. The additional dormers proposed to Blocks B and C would be directly opposite the rear of some houses on The Chase. However, the gardens of Blocks B and C and those on The Chase abut, and this would ensure that there is separation. The recess from eaves level and siting up the roof slope would mean that the dormers would be situated farther from properties on The Chase than the approved first floor windows. The dormer windows depicted on the plans would be smaller than those approved at first floor level. As approved, 13 dormers

would be sited on the roof slopes of Blocks B and C. These dormers would be quite evenly distributed along the length of the terraces. As a result of this distribution, properties on The Chase, which back onto the site, would already be opposite dormers in the approved scheme.

9. Consequently, the development would provide windows that would be no closer to neighbouring properties than has already been established under the existing planning permission or provide for any substantially different property relationships than would, regardless, prevail as a result of the existing planning permission. Therefore, I find that no increases in overlooking or loss of privacy of significance for neighbouring occupants would result and acceptable living conditions would be preserved. It follows that the development would be compliant with Policy CS1 of the Harlow Council Core Strategy and Policy DM1 of the Harlow Council Development Management Policies document. In summary, and amongst other matters, these policies require that development responds positively to local density and spacing and ensures a high standard of privacy. I find that Policy D1 of the London Plan, 2021, referred to by the Council, which principally focuses upon the undertaking of area assessments and preparation of development plans for London boroughs, is not particularly relevant to living conditions.

Planning Obligations

10. The application subject to the appeal was recommended for approval by Council Officers. That recommendation, which was overturned by Members of the Planning Committee, was subject to a schedule of conditions and a variation of a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) (the Planning Act). On this basis, it appears that planning permission p/3667/19 is subject to a Section 106 agreement and it has not been shown to me that the revised scheme subject to this appeal would not also require those obligations to make it acceptable in planning terms through a varied agreement. It has been confirmed that no such varied Section 106 agreement has been completed and therefore, the required obligations have not been secured.

Conclusion

11. Whilst I have concluded that the development would have acceptable effects upon the living conditions of the occupants of nearby properties, I have no reason to conclude that a planning obligation under Section 106 of the Planning Act is not necessary to make the development acceptable in planning terms. No such Section 106 agreement has been completed and, in its absence, the development as a whole is not acceptable. The appeal is therefore dismissed.

H Jones

INSPECTOR