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# Appeal Decision

Site visit made on 10 October 2023

**by Rachel Hall BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22<sup>nd</sup> November 2023**

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**Appeal Ref: APP/N5660/W/23/3318634**

**247-251 Sternhold Avenue, London SW2 4PG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Casey O'Donovan of Indigo Scott against the decision of the Council of the London Borough of Lambeth.
- The application Ref 21/03714/VOC, dated 7 September 2021, was refused by notice dated 2 December 2022.
- The application sought planning permission for redevelopment to provide 4 residential dwellings together with a replacement Class D1 (non-residential institution) facility without complying with conditions attached to planning permission Ref 20/00430/RG4, dated 18 November 2020.
- The relevant conditions are Nos 27, 28 and 29 which state that:
  - 27. Prior to commencement of the development hereby permitted, a BREEAM pre-assessment shall be submitted to and approved in writing by the local planning authority demonstrating that a rating of 'Excellent' can be achieved, unless it is demonstrated that it is not technically feasible or viable to do so, in which case the development should demonstrate a 'Very Good' rating with a minimum score of 63 per cent.
  - 28. Within six months of work commencing on site, a BREEAM Design Stage certificate and summary score sheet shall be submitted to and approved in writing by the local planning authority demonstrating that a rating of 'Excellent' has been achieved (unless it is demonstrated that it is not technically feasible or viable to do so, in which case the development should demonstrate a 'Very Good' rating with a minimum score of 63 per cent).
  - 29. Within six months of first occupation, a BREEAM Post-Construction certificate and summary score sheet shall be submitted to and approved in writing by the local planning authority demonstrating that a rating of 'Excellent' has been achieved (unless it is demonstrated that it is not technically feasible or viable to do so, in which case the development should demonstrate a 'Very Good' rating with a minimum score of 63 per cent).
- The reason given for the conditions is: To ensure that the development has an acceptable level of sustainability (Policy EN4 of the Lambeth Local Plan (2015)).

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## Decision

1. The appeal is dismissed.

## Background and Main Issue

2. Planning permission was granted for the development of four dwellings and a community facility (the original permission). The development has taken place, but without complying with conditions 27, 28 and 29 in respect of the BREEAM rating. Consequently, the appellant sought to amend those conditions to reduce the required BREEAM rating from very good, to good. In the particular

circumstances of this case the proposed variations to those conditions would be acceptable. The main parties are agreed on this matter.

3. The original permission was accompanied by a section 106 planning obligation (the S106). The Planning Practice Guidance confirms that renegotiation of planning obligations can occur where the local planning authority and developer wish to do so. Also, that where there is no agreement to voluntarily renegotiate, an application may be made under Section 106A of the Town and Country Planning Act 1990<sup>1</sup>. However, that would be a matter to be addressed outside of this appeal through the appropriate S106 application, and appeal if needed. In the absence of a deed of variation to the S106, its obligations, including in respect of the affordable housing contribution, would remain unchanged by the outcome of this appeal.
4. A new unilateral undertaking (UU) is submitted with the appeal. Consistent with the S106 it requires implementation of a car club scheme, and payment of a monitoring fee. However, it excludes the S106 requirement for payment of the affordable housing contribution. In any event, as the UU has not been signed, it remains in draft. As such it does not carry any weight in this decision.
5. The Council refused permission due to the absence of a deed of variation to the S106. Therefore, the main issue is whether the proposed variation of conditions 27, 28 and 29 is acceptable in the absence of a suitable planning obligation.

## **Reasons**

6. When the original planning permission was granted, Policy H2 of the Lambeth Local Plan (September 2015) (former Local Plan) required an affordable housing contribution on proposals of fewer than 10 units. However, the Lambeth Local Plan 2020-2035 (September 2021) (new Local Plan) was adopted subsequent to that decision. Therefore, Policy H2 of the former Local Plan has now been superseded. Policy H2 of the new Local Plan establishes a revised affordable housing threshold. As such, the development plan no longer requires housing schemes of fewer than 10 homes to deliver or contribute to affordable housing.
7. The Council considers that the affordable housing contribution would still serve a useful purpose in helping to address an acute need within the borough and the Council's commitment to delivery of affordable homes. However, the provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 57 of the Framework state that planning obligations must only be sought where they meet all of the following tests (the three tests): a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
8. Therefore, on the evidence before me and in light of Policy H2 in the new Local Plan, the affordable housing contribution is no longer necessary to make this development acceptable in planning terms. Accordingly, and whether or not the affordable housing contribution would still serve a useful purpose, the contribution would no longer meet all three tests under Regulation 122(2) and the Framework.

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<sup>1</sup> Planning Practice Guidance Paragraph: 020 Reference ID: 23b-020-20190315

9. Both the S106 and the draft UU include a commitment to providing free car club membership for a period of three years from occupation of the development. This was supported by Policy T7 of the former Local Plan. Policy T6 of the new Local Plan similarly requires that developments make car club membership available for occupants of developments involving provision of new housing. Therefore, the UU clause relating to car club membership meets the three tests and is required to make the development acceptable.
10. The Planning Practice Guidance confirms that monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. Therefore, the inclusion of a monitoring fee in the UU is necessary. In the absence of substantive evidence to the contrary it also appears proportionate and reasonable in this instance.
11. Accordingly, the draft UU is acceptable and would accord with the three tests. However, very exceptional circumstances<sup>2</sup> have not been provided to justify delaying the decision to wait for the obligation to be executed. In the absence of an executed UU, there is no mechanism in place in respect of this appeal by which the required mitigation can be secured.
12. Therefore, the proposed variation of conditions 27, 28 and 29 is not acceptable in the absence of a suitable planning obligation. Consequently, the appeal scheme conflicts with Policy T6 of the Local Plan, which generally seeks to reduce car ownership and minimise parking demand. It would also conflict with chapter 9 of the Framework which generally seeks to maximise sustainable travel.

### **Conclusion**

13. For the above reasons, the appeal is dismissed.

*Rachel Hall*

INSPECTOR

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<sup>2</sup> As required in paragraph 18.2.1 of the Procedural Guide: Planning Appeals (last updated 5 October 2023)