
Appeal Decisions

Site visit made on 13 February 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2024

Appeal A Ref: APP/N1540/W/23/3324549

297 Long Banks, Harlow, Essex CM18 7PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Chrispin Mbuthia against the decision of Harlow District Council.
 - The application Ref HW/FL/23/00038, dated 6 February 2023, was refused by notice dated 24 March 2023.
 - The development proposed is the change of use of the land from public to private.
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Appeal B Ref: APP/N1540/W/23/3324553

319A Long Banks, Harlow, Essex CM18 7PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mihail Florian Lucan against the decision of Harlow District Council.
 - The application Ref HW/FUL/23/00034, dated 1 February 2023, was refused by notice dated 24 March 2023.
 - The development proposed is the change of use of the land from public to private.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. There are two appeals relating to the sites as set out above. The sites neighbour each other and, the appeals broadly, present the same issues. I have considered each scheme on its individual merits but, to avoid duplication, I have dealt with the two schemes together here as the land in question is the same.
4. The proposal as nominated in the banner heading above is not development within the definition of s55 of the Town and Country Planning Act 1990 as it does not involve a change of use, merely a change in ownership. The Council nominated and advertised the proposed developments as:
 - A. "Change of use of land to rear of 297 Long Banks from public amenity land to private garden area."
 - B. "Change of use of land to rear of 319A Long Banks from public amenity land to private garden area."

Accordingly, I shall consider the change of use as it has been described by the Council. Moreover, the Council's site description, as 'land to the rear', is a more accurate description as neither area presently forms part of the listed addresses. I am satisfied both parties have had the opportunity to treat the development as such given that this was described in this manner in the decision notice, appeal forms and statements.

Main Issues

5. The main issues in both appeals A and B are:

- the effect of the development on the character and appearance of the area,
- whether the proposed development would result in the loss of public amenity space, and
- the effect on the living conditions of local residents.

Reasons

Character and appearance

6. The site is set within an estate of mid-20th century houses and flats. These are arranged in an unconventional manner and address roads and footpaths with intervening areas formed of open plan green space and garage courtyards. This form of layout is characteristic of Sir Frederick Gibberd's original design for Harlow New Town. The site itself is rectangular and was a playground. It, however, is presently overgrown and no longer features any play equipment. Indeed, its unkempt condition implies it may not have been used for this purpose for quite some time. Nevertheless, it formerly had this use and, in the recent past, has been used for some limited local community purposes.
7. The land is subject to the provisions of policies PL6 and L2 of the Harlow Local Development Plan 2020 (HLDP). Policy PL6 of the HLDP relates to 'Other Open Spaces' and requires development to meet various criteria where its loss is proposed. Of most relevance here is that the development would not compromise the landscape character, openness, biodiversity or urban design principles of the town and/or the surrounding area.
8. Policy L2 of the HLDP concerns 'The Provision and Loss of Recreational, Sporting, Cultural and Community Facilities' and states that development that will result in the loss of all or part of any recreational, sporting, cultural and community uses and/or facilities will not be supported unless, amongst other things, it can be demonstrated that the use and/or facility is surplus to requirements and an alternative replacement is not required.
9. I have had regard to the supporting text to policy PL6 which comments that the preservation of 'Other Open Spaces' is fundamental to ensuring the original master plan for Harlow is respected, which planned the district to be interspersed with many open spaces to offset the provision of small private gardens. These 'Other Open Spaces' can be of public value where they have a role or function which makes a positive contribution to the character of the area. Such spaces often provide opportunities for recreational uses and also provide landscaping and visual buffers.

10. The site constitutes such an area of land and therefore, notwithstanding its present condition, does represent an important element in the make up the areas' character and appearance. It follows that its loss, without strong justification, would therefore be detrimental to the character and appearance of the area and urban design principles of the town. This is therefore a reason for conflict with policies PL6(a) and L2(a) of the HDLP insofar as these policies seek to maintain the character of the area.

Public amenity space

11. It has been put forward by the appellants that the site has been abandoned and is therefore no longer high quality and/or high public value. Whilst I accept that the site is run-down and clearly no longer in normal or general use for its intended purpose, this does not necessarily equate to abandonment. Moreover, I have not been provided with any indication as to how long the use is regarded as having been abandoned for. Indeed, this suggestion conflicts with the views of the landowner, Harlow Council, and those of neighbouring residents' that the site has, from time-to-time, been used for gatherings. I am therefore unable to regard this site as having been abandoned simply because the originally intended activity has dwindled away and given the evidence of subsequent alternative public use.
12. I have had regard to the poor condition of the site and have further noted the proximity to other public open space and recreational areas that are larger and more frequently used. However, no firm evidence has been provided to me to indicate that the site could not be brought back into a more productive community use as some form of public amenity space and that it is surplus to requirements. No other uses or facilities have been nominated as a replacement. Moreover, I am unable to regard the green fingers and wedges which punctate the estate as general amenity areas. These are clearly part of the design ethos of the estate and are of benefit to the character and appearance as opposed to being of functional recreational value.
13. The proposed development would, therefore, result in the unacceptable loss of an area of public amenity space in conflicts with policies PL6(a) and L2(a) of the HDLP and the provisions of the National Planning Policy Framework.

Living conditions

14. The provision of small amenity spaces, such as this site, provides the potential opportunity for informal recreational opportunities, and therefore contributes to the health and wellbeing of local residents by providing nearby spaces for outdoor activity. Therefore, the removal of this site would have a modest, but not insignificant, effect on the living conditions of nearby residents. It would therefore be contrary to the requirements of policies PL6(a) and L2(a) of the HDLP in this respect.

Other Matters

15. I am aware that the site, in its present condition, attracts anti-social behaviour. I recognise that using the land as private gardens may be one resolution to this issue and would benefit the living conditions of the occupants of both 297 and 319A Long Banks. However, the change of use of the land to private garden areas is not the only solution to this issue and such concerns could be tackled

with other measures that do not result in the loss of public amenity land. These matters attract limited weight in favour of the proposals.

Conclusion

16. For the reasons given above I conclude that the proposed developments would result in the loss of an area of public amenity space where such loss has not been justified to the detriment of the character of the area and living conditions of local residents. The proposed developments would therefore conflict with the provisions of the development plan, read as a whole, and the other considerations before me do not indicate that I should make my decisions other than in accordance with the development plan.
17. Both appeals A and B are dismissed.

Nick Bowden

INSPECTOR