



Appeal Decision

Site visit made on 8 January 2025

by **G Pannell BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 January 2025

Appeal Ref: APP/C1950/W/24/3353922

Highfield House, Roe Green Lane, Hatfield, Hertfordshire, AL10 0FP

- 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 Mr Harpal Tamber against the decision of Welwyn Hatfield Council.
 - The application Ref 6/2024/0183/VAR, dated 30 January 2024, was refused by notice dated 30 April 2024.
 - The application sought planning permission for Erection of a 2 storey (plus loft) building to provide 16 two-bedroom (4 person) residential units together with provision for 20 car parking spaces to the rear, a bicycle store to the rear for 10 bicycles and a bin store fronting on to Roe Green Lane, following demolition of two existing dwellings without complying with a condition attached to planning permission Ref 6/2016/0345/MAJ, dated 16 March 2016.
 - The condition in dispute is No 17 which states that: The solar photovoltaic panels must be fully installed in accordance with the details hereby approved and shown on Drawing Nos. 478-A1-103 Rev D & 478- A1-120 Rev E. Subsequently, the solar photovoltaic panels must be fully operational prior to the first occupation of the building and maintained as such for their operational lifetime.
 - The reason given for the condition is: To ensure the solar photovoltaic potential is achieved in the interest of tackling climate change and creating sustainable development in accordance with the objectives of Policy SD1 of the Welwyn Hatfield District Plan 2005 and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a 2 storey (plus loft) building to provide 16 two-bedroom (4 person) residential units together with provision for 20 car parking spaces to the rear, a bicycle store to the rear for 10 bicycles and a bin store fronting on to Roe Green Lane, following demolition of two existing dwellings at Highfield House, Roe Green Lane, Hatfield, Hertfordshire, AL10 0FP in accordance with the application Ref 6/2024/0183/VAR, without compliance with condition number 17 previously imposed on planning permission Ref 6/2016/0345/MAJ dated 16 March 2016 and subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Harpal Tamber against the decision of Welwyn Hatfield Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The development of 16 2-bedroom flats has been completed and is now occupied. However, the appellant has not complied with the requirements of condition 17 to install solar photovoltaic panels and for them to be fully operational prior to the first occupation of the building. They have applied to remove the condition on the basis

that it can no longer be complied with as they state it is not possible for the solar panels to be installed retrospectively.

Main Issue

4. The main issue is the effect that removing condition 17 would have on the interests of tackling climate change and creating sustainable development.

Reasons

5. The requirement for solar panels to be installed was in accordance with Policy SD1 of the Welwyn Hatfield District Plan 2005 (DP), which has subsequently been superseded following the adoption in October 2023 of the Welwyn Hatfield Borough Council Local Plan 2016-2036 (LP). The Council have considered the appeal on the basis of both policy SP10 and SADM13 of the LP.
6. Superseded policy SD1 set out that sustainable development proposals will be permitted where it can be demonstrated that the principles of sustainable development are satisfied and applicants were expected to submit a statement with their planning application demonstrating how their proposal addresses the sustainability criteria, linked to the Supplementary Design Guide 2005 (SDG).
7. The Council have referenced the SDG and therefore I have assumed that despite its age it still forms part of the adopted development plan, albeit I have given it limited weight noting that it sets out it is written to provide guidance to supplement, and should be read in conjunction with, the now superseded District Plan. The SDG states that major development should minimise heat loss and maximise energy efficiency through building design e.g. using sources of renewable energy, solar panels, insulation, using lobbies and conservatories as buffer zones, draught proofing, localised temperature controls and weather-breaking planting.
8. Adopted policy SP10 of the LP requires the layout and design of the site and building(s) to reflect the energy hierarchy to maximise opportunities to reduce carbon emissions; the use of renewable and low carbon energy infrastructure is used where it is appropriate and consistent with other policies; proposals are responsive to how the climate will change over their lifetime and minimise their contribution to the urban heat island effect.
9. Adopted policy SADM13 sets out the sustainability requirements, including for major developments, that they must demonstrate that they have sought to maximise opportunities for renewable and low carbon sources of energy supply, consistent with other Local Plan Policies.
10. Therefore, both the previous local plan policy, linked to the SDG and the adopted policies seek to ensure that proposals accord with the principles of sustainable development and look to take opportunities to use methods to maximise energy efficiency, including through the use of solar panels.
11. In accordance with policy SD1 of the DP the original application was accompanied by a design statement dated 25 February 2016 which set out within chapter 8 that energy conservation would be addressed through a number of measures, including that the roof had access to provide for future solar panels. The document concluded that the proposal contributed to the regeneration and redevelopment of the site and provided a more sustainable environment.

12. The Council have set out how a number of renewable technologies were considered as part of the initial proposal, including biomass, ground/water source heat pump, air source heat pump, wind energy and solar thermal and photovoltaic panels. It was concluded however that solar photovoltaics would be most suited to this development. The approved roof plan (478-A1-103 rev D) indicated how the roof would be populated with solar panels.
13. I consider that, at the time of determination, the condition was reasonable, necessary and relevant, to ensure that the development was in accordance with the approved plans and implemented prior to occupation of the units. It was in accordance with the evidence available to the Council at that time that solar panels would be part of the development's sustainability criteria in accordance with the DP and SDG. There was no indication that the solar panels were to be an optional part of the development.
14. The appellant has set out that a gas-boiler fed gas central heating system was installed as it was more efficient and environmentally friendly, as it emitted less carbon than electric heating that was intended to be fed by the solar panels. Furthermore, the electrical supply to the development posed a risk to its feasibility, as the low voltage mains running along Roe Green Lane was at capacity and therefore this risk was mitigated following the switch to gas fired heating.
15. The original proposal suggested that in line with the three-step energy hierarchy the regulated CO2 emissions from the development would be reduced by approximately 12.17% once energy efficiency measures and photovoltaics were taken into account. The development, as built, has been assessed by Dynamic Energy Consultants, as achieving a 31.83% reduction in carbon emissions as a result of the highly efficient weather compensation gas combi boilers feeding gas central heating.
16. Therefore, I am satisfied that the effect that removing condition 17 would not be detrimental to the interests of tackling climate change and creating sustainable development and would not conflict with the overarching aims of policies SP10 and SADM13, noting the development was completed prior to the adoption of the LP.

Other Matters

17. Whilst it has been put to me that further reductions could have been sought if alternative measures were implemented, this would go beyond the scope of this appeal, noting my findings in relation to the lack of identified harm from removing condition 17 in the interests of tackling climate change and creating sustainable development.
18. The original permission REF 6/2016/0345/MAJ included a S106 agreement which included obligations relating to contributions for green space contributions outside of the site, an early years services contribution for expansion of the existing provision at Birchwood Nursery School, a highway contribution towards subway improvements works on routes between the application site and Hatfield Town Centre, a play facilities contribution towards the costs of a new climbing frame at St Albans Road East Recreation Ground and a waste and recycling contribution towards the provision of a mini recycling bank.
19. The payments were to be made prior to commencement of development, with the monies being required in full, with the exception of the green space contribution

and play facilities contribution whereby 50% was to be paid prior to commencement and 50% prior to occupation.

20. The appellant has provided a letter from the Council, dated 28 November 2018, which acknowledges that the second green space and play facilities contribution had been paid and confirms that this fully satisfies and discharges the Owner's obligations in regard to the S106 contributions due to the Council. Therefore I am satisfied that the original S106 is not required to be appended to this decision via a deed of variation.

Conclusion & Conditions

21. For the reasons set out above I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed condition but retaining those non-disputed conditions from the original permission Ref 6/2016/0345/MAJ that appear to still be relevant.
22. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
23. A condition relating to the commencement of development is not needed since the development has already been carried out. The conditions relating to external materials, sustainable urban drainage, structural design certificates, submission of an arboricultural method statement, details of a works compound, details of the acoustic fencing, provision of secure cycle parking, construction hours, details of any external lighting, have been complied with and are no longer required, therefore do not need to be re-imposed. The landscaping condition required a five-year period for replanting and replacement of any plants that are damaged or die but this period has now expired and therefore I have not re-imposed this condition.
24. I have re-imposed the condition requiring the acoustic fence to be retained, external lighting to be as per any approved details, the pedestrian visibility splay to be retained and the existing crossover and dropped kerb serving No. 41 Roe Green Lane to remain solely for access to the bin store. Conditions requiring the retention of the parking areas and refuse bin and recycling store and obscure glazing, which are necessary in order to safeguard the amenity of adjacent residential properties and to ensure the development retains appropriate levels of parking and bin storage have also been re-imposed.

G Pannell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos 478-A1-102 D Proposed Loft Plan; 478-A1-110 F Proposed Front and Rear Elevations; 478-A1-101 E Proposed First Floor Plan; 478-A1-103 F Proposed Roof Plan; 478-A1-100 G Proposed Ground Floor & Location Plan; 478-A1-111 F Proposed Side Elevations.
- 2) The drainage scheme approved under Condition 03 of 6/2016/0345/MAJ, shall be retained permanently.

- 3) The acoustic fencing, which has been installed in accordance with the previously approved details, shall be retained permanently.
- 4) Any external lighting shall be installed in accordance with details which have previously been approved under Condition 10 of 6/2016/0345/MAJ and shall be retained permanently thereafter.
- 5) A 2m x 2m pedestrian visibility sight splay, free obstruction between a height of 600mm and 2m and relative to the back of the footway/edge of the carriageway, shall be provided on both sides of all vehicular accesses and retained permanently.
- 6) The existing crossover and dropped kerb, previously serving No 41 Rose Green Lane, shall remain permanently closed to vehicular traffic, pedestrians and cyclists, however a dropped kerb shall remain to enable access to the existing bin store.
- 7) The area set aside for car parking must be retained permanently for the parking of vehicles for the residents/occupiers of the hereby approved building and shall not be used for any other purposes.
- 8) The refuse bin and recycling materials storage areas must be retained permanently to serve the residents/occupiers of the hereby approved building and shall not be used for any other purpose.
- 9) Any upper floor window located in a wall or roof slope forming a side elevation of the building hereby approved must be obscure glazed and non-opening unless the parts of the windows which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.
- 10) The development hereby permitted shall be used for Class C3 dwellinghouses only, notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification).

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