Purpose of Report / Proposal

The purpose of this report is to set out the Officer recommendations to Strategic Development Committee regarding an application for planning permission relating to the following proposal.

Section 73 application to remove Condition 6 (permitted development rights), attached to planning permission 82/24240/1 dated 11/10/1982 which granted full planning permission for:

"Erection of 118 dwellings."

Recommendations

The Strategic Development Committee is asked to resolve to refuse planning permission for the reasons set out below.

1. The removal of condition 6 would make permissible forms of development which would have a harmful impact on the high quality and broadly uniform character of the estate. As such, the proposal is contrary to the following policies:

- The National Planning Policy Framework (MHCLG, February 2019)
- Policies S6, SP1, SP2, SP3 and H1 of the Newham Local Plan (December 2018)
- Housing Supplementary Planning Guidance (GLA, March 2016)

2. The removal of condition 6 would make permissible forms of development which would have a harmful impact on the residential amenities of neighbouring occupiers. As such, the proposal is contrary to the following policies:

- The National Planning Policy Framework (MHCLG, February 2019)
- Policies S6, SP1, SP2, SP3, SP8 and H1 of the Newham Local Plan (December 2018)
- Housing Supplementary Planning Guidance (GLA, March 2016)

**NAME OF LEAD OFFICER:** Amanda Reid  
**POSITION:** Director of Planning and Development, Chief Planning Officer

Originator of report: Harriet Beattie  
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**Human Rights Act**

The provisions of the Human Rights Act 1998 have been taken into account in the processing of the application and the preparation of this report.

**Equalities**

In determining this planning application the Council has regard to its equalities obligations including its obligations under section 149 of the Equality Act 2010.
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PLANNING APPLICATION FACT SHEET

The Site

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>Bibi</td>
</tr>
<tr>
<td>Ward</td>
<td>Beckton</td>
</tr>
<tr>
<td>Local Plan allocation</td>
<td>N/A</td>
</tr>
<tr>
<td>Conservation Area</td>
<td>N/A</td>
</tr>
<tr>
<td>Listed Building</td>
<td>N/A</td>
</tr>
<tr>
<td>Setting of Listed Building</td>
<td>N/A</td>
</tr>
<tr>
<td>Building of Local Interest</td>
<td>N/A</td>
</tr>
<tr>
<td>Other</td>
<td>Epping Forest Special Area of Conservation (SAC) Zone of Influence (3-6.2km Zone)</td>
</tr>
</tbody>
</table>
1.0 SITE & SURROUNDINGS

1.1 The application site is a housing estate consisting of a 118 houses built in the 1980s. This residential development was one of a series of large housing estates within the Becton area, each with its own unified architectural theme.

1.2 The character of this estate consists of two storey terraced dwellinghouses with dual pitched roofs. The buildings exhibit a largely uniform character with few additions or alterations having taken place since the development was constructed.

1.3 In order to preserve the visual unity of each of these estates the Council imposed a condition on the original planning permissions removing the permitted development rights which would usually be afforded to individual dwelling houses. This means that any new building development or extensions to existing dwellings automatically require planning permission from the Council and the development is subsequently assessed against the original established character of the area and relevant planning policy.

1.4 It should be noted that although one residential occupier, No. 23 Tansy Close, has made this application to vary this condition, by reason of the extent of the original permission the removal of this condition will affect all 118 properties on this estate.

2.0 PROPOSAL

**Detailed proposal:**

<table>
<thead>
<tr>
<th>Proposed Amendment:</th>
<th>Reasoning:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition 6 to be removed from the permission. This condition restricts permitted development rights.</td>
<td>The properties that are affected by this condition are not in a conservation area nor in any special interest category under an Article 4 direction.</td>
</tr>
<tr>
<td></td>
<td>This condition was applied many years prior to the introduction of permitted development rights therefore its intention could not have been to specifically remove such rights.</td>
</tr>
<tr>
<td></td>
<td>It should also be noted that recent developments in the local area are not subject to such condition.</td>
</tr>
</tbody>
</table>
In response to the provisions of Section 73 Town and Country Planning Act 1990, the application is to be assessed to consider the question of the conditions subject to which planning permission should be granted. S.73 States:

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

Specifically, s.73 does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun. Further to this, s.73 does not permit a change to a condition subject to which a previous planning permission was granted by extending the time within which the development must be started or an application of reserved matters to be received.

The National Planning Practice Guidance directs the Local Planning Authority to consider the application against the development plan and material considerations, under section 38(6) of the Planning and Compulsory Purchase Act 2004 (determination shall be made in accordance with the plan unless material consideration indicates otherwise), and conditions attached to the existing permission. Local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.

3.0 RELEVANT HISTORY

3.1 Planning Application History

3.2 A summary of the relevant planning application history is set out in the table below:

<table>
<thead>
<tr>
<th>Ref No.</th>
<th>Description</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>82/24240/1</td>
<td>Erection of 118 dwellings.</td>
<td>Approved</td>
</tr>
</tbody>
</table>

3.3 Planning Enforcement History

3.4 A search revealed there is no enforcement history relevant to the application site.

3.5 Planning Appeal History
3.6 A search revealed there is no appeal history relevant to the application site.
4.0 CONSULTATION

Application Publicity

4.1 Site Notices erected on Tansy Road on 20th September 2019, expiring on 11th October 2019.

4.2 A total of 39 letters of support were submitted with the application from properties at Tansy Close, Alison Close, Heather Close and Pennyroyal Avenue.

4.3 In summary the statements of support to the application relate to the following issues:

- Condition deprives properties of freedom and flexibility afforded by permitted development rights
- Adverse effect on value of properties
- The removal of permitted development rights in an unintentional consequence of the planning condition.
- Does not feel that this condition would be used if application had been made today.
- Note that developments in locality do not have similar conditions removing permitted development rights.

4.4 The Officer provides the following response to these letters of support:

- The reason given for the implementation of this condition was to protect local amenity. Although the restriction prohibits extensions and alterations under permitted development, this does not prohibit these being applied for under full planning permission. Over recent years a number of extensions and alterations have been approved under planning.
- Impact on the value of a property is not a material planning consideration.
- The removal of permitted development rights is explicitly reference in this condition and is not considered to be unintentional.
- Similar conditions are still used for the same purposes on other development sites constructed at the same time, including the following residential schemes:

  - Cyprus 2C (N/84/82)
  - Former Nursery Site, Newham Way, Beckton (N/93/42)
  - Site 3G, Tollgate Road, London, E6 (N/92/101)
  - North Beckton 1, Tollgate Road, E.6 (N/84/73)
  - 1000 Newham Way and adjoining lands, North Beckton (N/85/68 and N/89/121)
  - Site 3A, North Beckton, Tollgate Road, E6 (N/86/129)
5.0 PLANNING POLICIES AND GUIDANCE

5.1 The Local Development Plan comprises:

- the London Plan (the spatial development strategy for London consolidated with alterations since 2011 and published March 2016);


- the London Borough of Newham Local Plan (2018)


- the Joint Waste Development Plan for the East London Waste Authority Boroughs (adopted 27th February 2012);

5.2 Material weight has been given to the National Planning Policy Framework (Feb 2019) and the National Planning Practice Guidance.

5.3 The following policies are relevant to the assessment of this application:

National Planning Policy Framework (February 2019):


Policy 7.4 - Local Character
Policy 7.5 - Public Realm
Policy 7.6 - Architecture


Policy D1 - London’s form and characteristics
Policy D2 - Delivering good design

The London Borough of Newham Local Plan (2018)

Policy S6 - Urban Newham
Policy SP1 - Borough-wide Place-making
Policy SP2 - Healthy Neighbourhoods
Policy SP3 - Quality Urban Design within Places
Policy SP8 - Ensuring Neighbourly Development
Policy SC4 - Biodiversity
Policy H1 - Building Sustainable Mixed Communities

Additional Guidance

London Borough of Newham
5.4 London Plan Review

Through the course of this application, the Mayor of London’s London Plan: The Spatial Development Strategy for Greater London (Draft for public consultation December 2017) was published for public consultation. Having regard to NPPF paragraph 216 the emerging document is now a material consideration and limited weight has been given to the emerging document in decision-making, unless other material considerations indicate that it would not be reasonable to do so.
6.0 THE COMMUNITY INFRASTRUCTURE LEVY (CIL) REGULATIONS 2010 (AS AMENDED)

6.1 From 1st of April 2019 Mayoral CIL2 (Permissions granted on or after 1 April 2019).

6.2 The Mayor has adopted a new Charging Schedule MCIL2, which came into effect 1st of April 2019. Like MCIL1, MCIL2 will be charged on all development except for education and health.

6.3 The Mayor has increased the Mayoral rate for Newham within Band 3 to £25 per sqm from £20 per sqm.

6.4 The Mayoral CIL Charging Schedule (MCIL1) (adopted 2012) and the Section 106 Crossrail Funding from Planning Obligations Supplementary Planning Guidance (adopted 2016) is superseded by the revised MCIL Charging Schedule.

6.5 The Newham Community Infrastructure Levy is chargeable in line with the Newham CIL Charging Schedule, which came into effect on 1st January 2014.

6.6 The Newham Community Infrastructure Levy was adopted by full Council on 30th September 2013, which came into effect on 1st January 2014. The Newham CIL Charging Schedule per gross internal sq. m is as follows:

<table>
<thead>
<tr>
<th>Use Class</th>
<th>Charging Zone1 – Post codes E15 (exclusive of the LLDC area), E16 and E3 (part)</th>
<th>Charging Zone 2 – Post codes E6, E7, E12, E13 and IG11 (part)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>£80</td>
<td>£40</td>
</tr>
<tr>
<td>Retail</td>
<td>£30</td>
<td>£30</td>
</tr>
<tr>
<td>Office</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>Hotel</td>
<td>£120</td>
<td>£120</td>
</tr>
<tr>
<td>Industrial</td>
<td>£0</td>
<td>£0</td>
</tr>
<tr>
<td>Student Accommodation</td>
<td>£130</td>
<td>£130</td>
</tr>
</tbody>
</table>

6.7 Under Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended), the London Borough of Newham has published a list of infrastructure projects or types of infrastructure that it intends to be funded in whole or in part by the Newham CIL. This allows the continued use of planning obligations (S.106 agreements) for other projects or types of infrastructure. Individual developments will not be charged for the same items through S106 and CIL. The Newham Regulation 123 list can be viewed on the Council’s website.
7.0 ASSESSMENT

7.1 The key issues relevant to this application are
- Design (7.2);
- Impact upon Amenity (7.3);
- Reasons for Refusal (7.4)

7.2 Design

7.2.1 Chapter 12 of the NPPF outlines that planning decisions should aim to ensure that developments function well and add to the overall quality of an area not just for the short term, but over the lifetime of the development. It additionally recognises that considerations regarding the appearance and the architecture of individual buildings should go beyond aesthetic considerations, and consider the connections between people and places and the integration of new development into the natural, built and historic environment.

7.2.2 London Plan Policy 7.1 states that the design of new developments and the spaces they create should help reinforce the character of the neighbourhood. Policy 7.4 additionally requires development to have regard to the form, function, and structure of an area, place or street and the scale, mass and orientation of surrounding buildings. In areas of poor or ill-defined character, new development should build on the positive elements that can contribute to establishing an enhanced character for the future function of the area. Policy 7.6 seeks the highest quality materials and design appropriate to its context. It also advises that buildings and structures should be of the highest architectural quality and comprise details and materials that complement the local architectural character. This is bolstered by the Draft London Plan which speaks about high quality design through Chapter 3. In particular, Policy D1 states that development design should respond to local context by delivering buildings and spaces that are positioned and of a scale, appearance and shape that responds successfully to the identity and character of the locality, including to existing and emerging street hierarchy, building types, forms and proportions.

7.2.3 Policies S6, SP1, SP2, SP3 & SP5 of the London Borough of Newham Local Plan (2018) all echo the same principles in requiring a high quality of design and a development which responds well to local character and the established pattern of development yet does not detrimentally effect neighbouring amenity. Policy SP8 of the Local Plan supported by the above policies outlined above, seeks to ensure the environmental, social, and design impacts of all development are neighbourly.

7.2.4 It should be noted that removing condition 6 would allow a range of works, developments and extensions to take place without requiring formal planning permission. This ranges from rear, side and roof extensions to the installation of satellites on front elevations.

London Borough of Newham
7.2.5 The original permission gave the reason for restricting permitted development rights as the potential adverse impacts on the amenities of the area.

7.2.6 In one regard this is considered to relate to the character of the estate. The houses constructed under the scheme encompassing Tansy Close, the property belonging to the applicant, and the surrounding properties built under permission 82/24240/1 were designed with particular architectural characteristics, specific layouts and space sufficient to accommodate moderate sized families and on the premise they would not need further extension alteration in the future.

7.2.7 It is acknowledged that extensions to existing houses can provide for an improved standard of accommodation for occupants in terms of the provision of further living space and storage areas. However such development is expected to be of a high quality and appropriate in the context of its surroundings preserving the particular architectural features and detailing within the existing dwelling and surrounding properties. As such developments should be limited in scope. By introducing permitted development rights, the Local Planning Authority's ability to ensure the extensions are modest, of high design quality and that they do not have unneighbourly impacts is relinquished. Although applications for 6-8 metres extensions under prior approval require a public consultation, under this provision the Local Planning Authority is only enabled to make a planning assessment if a response is received from neighbouring properties.

7.2.8 It should be noted that the retention of condition 6 does not preclude the application for and approval of extensions and works to these properties under planning applications.

7.2.9 Due to the tight urban grain of the estate and the uniform character of the properties, the Local Planning Authority finds that the removal of condition 6 would result in development which would have a harmful impact on the character and appearance of the estate. As such, refusal is recommended on this ground.

7.3 Impacts to neighbouring amenity

7.3.1 The NPPF details that new development should seek to enhance and improve the economic, social and environmental conditions of the area. This is further supported by the London Plan Policy 7.4 and Policy SP2 of the Local Plan (2018), which seek to specifically ensure that new development promotes healthy lifestyles and create healthier neighbourhoods which people are comfortable within. This is supported by Draft London Plan Policy D1.

7.3.2 Policies 7.1 and 7.6 of the London Plan additionally state that development should not cause unacceptable harm to neighbouring residential buildings in relation to loss of privacy and overlooking whilst Policy SP3 of the Local Plan (2018) requires development to create sociable and inclusive places that people feel proud of. Policy SP8 of the Local Plan (2018) supported by the
policies outlined above seeks to ensure the environmental, social and design impacts of all development are neighbourly.

7.3.3 It is noted that releasing permitted development rights would result in various forms of development, including extensions of up to 6-8 metres in depth without the automatic requirement for planning officer appraisal including assessment of the proposal on neighbouring amenities.

7.3.4 The density of the development and small plot sizes at this particular site results in a built vernacular which is more susceptible to impact from neighbouring development.

7.3.5 It should be noted that the rear garden areas of these properties are modest when compared to other properties within the borough, with some rear gardens having a depth of less than 6.5 metres. Not only is it of key importance to ensure that an adequate quantum of private amenity space is retained, but also that the quality of gardens adjoining residential development is not compromised by unneighbourly development. Extensions permissible under permitted development will have a detrimental impact on the quality of garden spaces by reason of this estate’s small plot sizes and garden areas and its open character.

7.3.6 The works that could be carried out with the removal of condition 6 would have multiple impact on residential amenities including loss of light, overshadowing, loss of outlook and overbearing impact. As such, in favour of protecting residential amenity, the Local Planning Authority recommends refusal of this application on this ground.

7.4 Reasons for Refusal

7.4.1 The application is recommended for refusal on the following grounds:

1. The removal of condition 6 would make permissible forms of development which would have a harmful impact on the architectural quality and uniform character of the estate, undermining the visual amenity of the streetscene. As such, the proposal is contrary to the following policies:

   - The National Planning Policy Framework (MHCLG, February 2019)
   - Policies S6, SP1, SP2, SP3 and H1 of the Newham Local Plan (December 2018)
   - Housing Supplementary Planning Guidance (GLA, March 2016)
2. The removal of condition 6 would make permissible forms of development which would have a harmful impact on the residential amenities of neighbouring occupiers. As such, the proposal is contrary to the following policies:

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- Policies S6, SP1, SP2, SP3, SP8 and H1 of the Newham Local Plan (December 2018)
- Housing Supplementary Planning Guidance (GLA, March 2016)