

Appeal Decision

Site visit made on 31 October 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 November 2016

Appeal Ref: APP/V2723/W/16/3155950

Land Adjacent to 77 Richmond Road, Brompton on Swale, Richmond, North Yorkshire

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr N La'Borde against the decision of Richmondshire District Council.
 - The application Ref 16/00297/VAR, dated 19 April 2016, was refused by notice dated 3 August 2016.
 - The application sought planning permission for Full Planning Permission for Erection of Dwelling without complying with a condition attached to planning permission Ref 14/00190/FULL, dated 27 February 2015
 - The condition in dispute is Condition 1 which states that: "The development hereby permitted shall be carried out precisely in accordance with the approved drawings and particulars as set out below, together with any conditions attached to this approval which may require any variation thereof:
 - a) planning application forms and certificates.
 - b) design and access statement.
 - c) flood risk assessment.
 - d) flood zone analysis and drainage dwg. no. PL03 Rev D.
 - e) proposed site block plan dwg. no. PL02 Rev C.
 - f) proposed garage plans and elevations dwg. no. PL06 Rev A.
 - g) proposed ground floor and first floor layouts dwg. no. PL04 Rev C.
 - h) site block plan as proposed dwg. no. PL01 Rev C.
 - i) proposed OS Site Plan dwg no. L01.
 - j) topographical survey dwg. no. S01.
 - k) proposed elevations dwg. no. PL05 Rev B."
 - The reason for Condition 1 is "To ensure that the development is carried out in accordance with the approved particulars and plans."
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr N La'Borde against Richmondshire District Council. This application is the subject of a separate Decision.

Procedural Matter

3. Although the proposed gabions are partly in situ, the appeal is decided on the basis of the application plans, evidence and what I have observed on site.
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Main Issues

4. The main issues in this appeal are whether or not the proposed development would:
 - a. Make adequate provision for affordable housing; and
 - b. Present unacceptable flood risks.

Reasons

Affordable Housing

5. The appeal seeks a variation in the design of a single dwelling on the appeal site that was granted planning permission on 27 February 2015 under Ref 14/00190/FULL. A section 106 planning obligation was completed which provided for the payment of £23,600 towards the provision of affordable housing in the locality to meet the requirements of Policy CP6 of the Richmondshire Local Plan 2012 – 2028: *Core Strategy* 2014 (CS).
6. Under the CS's spatial principles Brompton on Swale is in the Central Richmondshire sub area. Policy CP6 sets a target of 40 per cent affordable housing in all developments with a net gain in dwellings in this sub area, which includes the appeal site. In small schemes such as the appeal scheme the policy provides for commuted sums to be made in lieu of on-site provision. All proposals are subject to economic viability assessment so that affordable housing provision and/or a commuted sum would not be required where the development would otherwise be unviable. The developer is expected to demonstrate lack of viability through an open-book approach.
7. The Inspector who examined the CS before finding it sound, concluded that there was a significant shortage of affordable housing in the district, house prices were well above the national average and over the next five years 260 households per year are estimated to be in housing need but cannot afford to move to address that need.¹ Lack of affordable housing is a key strategic issue in the CS, whose objectives include supporting rural sustainability by meeting locally generated needs for market and affordable housing.
8. The Richmondshire Affordable Housing Viability Assessment 2011 (AHVA) demonstrated that there was capacity in property values to maintain viability while incorporating costs associated with higher standards. During 2004 – 2011 23% of planning permissions granted were on sites for single dwellings, with an average of 57 per annum, mostly in smaller settlements.
9. The CS describes evidence of the SHMA on the type and tenure of affordable housing, indicating that the greatest need is for one and two bedroom properties in all sub areas. It confirms the high level of local housing need and the severe problems of affordability.²
10. CS paragraph 4.6.5 reasons that given: the lack of evidence that a lower site size threshold would not normally affect viability; that smaller sites can generate 'exclusivity' and hence higher residual values; and the extent of single dwelling sites granted permission, contributions should be sought from all housing developments regardless of size to maximise the affordable housing

¹ CS Paragraph 2.10, and 4.6.3 citing the North Yorkshire Strategic Housing Market Assessment 2011 (SHMA).

² CS Paragraphs 4.5.7, 4.6.2

- provision and in effect set the threshold at a single dwelling net gain. The Council will pool commuted sums in support of furthering affordable housing provision across the district.
11. The detailed methodology for calculating off-site affordable housing contributions is found in CS Paragraph 4.6.7 and is not disputed. The appellant does not take issue with the Council's calculation of affordable housing needs, the current unmet gross need for affordable housing, the current total affordable housing supply or the total need for affordable housing.
 12. The case for the appellant on this issue rests on the assertion that Policy CP6 has been superseded by the Court of Appeal decision of 11 May 2016³ (*West Berkshire*) as a result of which the government reinstated its policy regarding affordable housing requirements on developments of 10 or less units. The Court of Appeal and High Court decisions were referred to by the main parties.
 13. Policy CP6 is not supplanted by government policy. It should however be assessed as to its relevance and weight, against other material considerations, including the National Planning Policy Framework (Framework) and the Written Ministerial Statement (WMS) of 28 November 2014 which was reinstated as government policy following *West Berkshire*. National policy on affordable housing thresholds is now contained in the National Planning Practice Guidance (nPPG). It includes that outside designated areas "*contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm (gross internal area).*"⁴
 14. The Framework, together with nPPG and WMS are material considerations of substantial weight. Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to how consistent they are with the Framework. Whilst the development plan is, under s38(6) of the 1990 Act the starting-point in assessing the proposal, greater weight is not necessarily to be attached to it than to other considerations.
 15. The recent appeal decision⁵ has also been considered in which greater weight was given to the WMS and nPPG as against the affordable housing policy of the Cheshire West and Chester Local Plan. Reliance is placed on the Inspector's view that there is "a clear direction in national planning policy terms not to require affordable housing on sites of less than 10 residential units". The High Court decision that was appealed in *West Berkshire* was of the view that the national policy equated to "*an express direction to decision-makers that they should disregard adopted local plan policies to require affordable housing contributions on small developments when determining planning applications*".⁶ The Court of Appeal however said that it was unnecessary for the Secretary of State to "*spell out the legal fact that the application of the policy must allow for the possibility of exceptions.*"⁷
 16. The Inspector nevertheless viewed the matter as one of a balance to be made, in the circumstances of the individual case, between competing considerations of national and local policy. That is only right for although national policy may

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441.

⁴ Paragraph: 031 Reference ID: 23b-031-20160519

⁵ APP/A0665/W/16/3155185

⁶ [2015] EWHC 2222 (Admin) paragraph 133

⁷ *West Berkshire*, paragraph 17

be expressed in clear unequivocal terms⁸, it may be unfair and/or unreasonable to not to take into account what affected persons have to say on the issue.⁹ Furthermore the appeal decision does not disclose what were the comments made by the Council, so it is of limited assistance in this appeal.

17. Turning back to whether the CS, which was adopted on 9 December 2014, is consistent with the Framework, the latter requires that Councils: ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing; set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified; and ensure policies are sufficiently flexible to take account of changing market conditions over time (Paragraphs 47 and 50). From what I have read the Council's policies and in particular Policy CP6, which allows for a viability test of individual cases, are fully consistent with this approach.
18. Reference can be made to the WMS for the rationale behind the guidance in the nPPG which is simply stated as being "due to the disproportionate burden of developer contributions on small-scale developers".¹⁰ *West Berkshire*, together with the judgment in the High Court, reveals that this phrase would have been understood by those consulted on the policy as an excessive demand on small scale developers in the context of all the burdens, financial and legal, that they had to fulfil in order to bring forward a development. The WMS also stated that by lowering the construction cost of small-scale new build housing the new policy would help to increase housing supply.
19. However the national policy sets out uniform thresholds which would be difficult to justify compared with the evidence-based Policy CP6 which I consider to be consistent with the Framework and which deals with the specific characteristics of different parts of the Council's area. The information supplied does not suggest that the development plan policy is out of date. From it one can appreciate the rationale and methodology to be applied. It has not been shown that the viability of the development would be affected by complying with the policy. No case for waiver exists as the proposed dwelling would not help those with a need for affordable housing.
20. The policy takes a fair and equivalent approach to small sites such as the appeal site in accepting a commuted sum where the calculation applied would not require whole units. Whilst it may be that national policy is based on wider considerations than viability issues, the local policy is based on relevant evidence designed to meet the Council's objectives to redress the severe affordable housing shortage as set out in the CS. I conclude that the proposal is contrary to CS Policy CP6 whose application as an exception to the national policy is justified by local circumstances in this appeal.

Affordable housing: designated rural areas

21. The WMS states that for designated rural areas under Section 157 of the Housing Act 1985, authorities may choose to implement a lower threshold of 5 units or less, beneath which affordable housing and tariff style contributions should not be sought. Although the Council suggests that Brompton on Swale should be treated as a rural area for these purposes, I have read nothing to

⁸ The Unqualified Articulation of Policy (*West Berkshire*, paragraph 21)

⁹ The Rule against Fettering Discretion – Flexibility (*West Berkshire*, paragraph 19)

¹⁰ WMS, 5th paragraph

support this view.¹¹ In any event its case does not depend on rural designation as set out in the WMS or nPPG, since Policy CP6 is based on a district wide analysis of housing needs and supply resulting in a threshold of one or more units across its area, albeit with differing contributions sought in each sub area.

Flood Risk

22. The site has two levels: the flat upper part, next to the main road, where the new dwelling would be sited, and a lower part that falls away to the western boundary at the river Swale. Gabion baskets have been installed around mature trees on the bank between the river and the new dwelling plot, primarily to protect the root systems. Further gabions are proposed to define a boundary between the appeal plot and host property.
23. Without an updated flood risk assessment (FRA) the Council felt unable to follow the Environment Agency's advice to make an informed judgement in respect of flood risk relating to these proposed alterations. I saw that the gabions offer some stabilisation of the bank at the rear of the site and have read the revised FRA now submitted. It concludes that the area of flood plain that would be lost by the gabion baskets would be restricted to the lower tier closest to the river Swale. Based on its calculations, those in the higher tier take no additional volume when compared to the previous bank grading, thus the impact on flood risk would be neutral.
24. The proposal would therefore comply with CS Policy CP2 (Responding to Climate Change), Paragraph 103 of the Framework and nPPG in addressing issues of climate change and flood risk.

Other Matters

25. A single new dwelling would make a small contribution to the continued vitality of the village and thus be supported by CS Policy CP4 in providing for the social and economic needs of the local community. However this benefit would not outweigh the harm caused by the failure to comply with the affordable housing policy in CS Policy CP6.
26. The appeal site is outside the Brompton on Swale Conservation Area (CA) although adjacent to its northern part. The Council does not consider the amended design of the dwelling to have a harmful impact on its setting. Whilst I have considered the comments of the Parish Council, I see no reason to disagree and in my view the proposal would preserve the character and appearance of the CA and its setting.

Conclusion

27. For the above reasons and having regard to all other matters raised the appeal is dismissed.

Grahame Kean

INSPECTOR

¹¹ The area may be "rural" for a number of purposes such as census output areas, but no evidence is supplied of its designation as set out in the nPPG.