
Appeal Decision

Site visit made on 10 January 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 24th January 2017

Appeal Ref: APP/V5570/W/16/3160780

Flat A, 471 Hornsey Road, Islington, London N19 3QL

- 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 Brinner, Honeyfield Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2016/2741/FUL, dated 6 July 2016, was refused by notice dated 31 August 2016.
 - The development proposed is described as 'property extended by addition of an extra floor of accommodation, providing an extra 2 no residential flats. Ground floor commercial unit to be retained along with existing 3 no residential units'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Brinner, Honeyfield Ltd against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Procedural Matters

3. An application for a very similar proposal on the appeal site was dismissed at appeal (APP/V5570/W/15/3084364) on 16 November 2015 on grounds relating to affordable housing contributions.

Main Issue

4. The main issue in this case is whether the proposal should make appropriate provision for affordable housing.

Reasons

5. Criterion G of Policy CS12 of Islington's Core Strategy requires that 50% of additional housing to be built in the Borough over the Plan period should be affordable. In addition, all sites capable of delivering 10 or more units gross should provide affordable homes on-site. Schemes below this threshold will be required to provide a financial contribution towards affordable housing provision elsewhere in the Borough.
 6. The requirement to meet the affordable housing need identified in the Islington's Housing Needs Study 2008 is consistent with paragraph 47 and 50 of the National Planning Policy Framework (the Framework) which requires
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local planning authorities to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area and where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly identified. Furthermore, the Policy is consistent with Policy 3.13 of the London Plan which states that boroughs are encouraged to seek a lower threshold through the LDF process where this can be justified in accordance with guidance.

7. The London Borough of Islington Affordable Housing Financial Viability Assessment-Sub-Threshold Contributions 2011 examined the level of financial contribution likely to be viable for the majority of developments in the Borough with fewer than 10 residential units. It provides the evidence base for the Islington Affordable Housing Small Sites Contributions Supplementary Planning Document (SPD) 2012. The SPD requires all minor residential developments resulting in the creation of one or more additional residential unit(s) to provide a commuted sum of £50,000 per unit towards the costs of providing affordable housing units on other sites within the Borough.
8. The supporting text of Policy CS12 recognises the need for a flexible approach taking account of economic circumstances. In addition the SPD recognises that there may be site-specific circumstances which give rise to viability issues and states that, in such circumstances, the Council will accept viability assessments. This flexibility ensures that the policies and guidance are consistent with paragraph 173 of the Framework which sets out that, to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
9. The proposed development would create two new residential units and thus in accordance with Policy CS12 and the SPD, a contribution of £100,000 towards the cost of providing off-site affordable housing would be required unless it can be demonstrated that it would not be viable to make the full contribution. The appellant has not provided written confirmation of an agreement to make this contribution and has not submitted a viability assessment. Consequently, the appeal proposal does not accord with Policy CS12 of the SPD.
10. The Written Ministerial Statement¹ (WMS) stated that for developments of 10 units or less and which have a maximum combined gross floor space of no more than 1000sqm, no affordable housing or tariff style contributions should be sought. The previous appeal Decision was determined at a time when the WMS had been ruled unlawful following a legal challenge². However, on 13 May 2016 the Court of Appeal³ overturned the High Court decision so that the WMS is now Government policy. This is reflected in subsequent alterations to the Planning Practice Guidance (PPG)⁴ in respect of planning obligations for affordable housing and social infrastructure contributions.

¹ House of Commons: Written Statement (CWS50) 28 November 2014

² West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government CO/76/2015 [2015] EWHC 2222 (Admin)

³ Secretary of State for Communities and Local Government v West Berkshire District council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

⁴ Planning Practice Guidance paragraphs 013-017, 019-023 and 031.

11. In light of the conflict between Government policy and development plan policy the appellant points to Section 38(5) of the Planning and Compulsory Act (the Act) 2004 in support of his case and contends that the proposal should be considered in the context of the WMS, the latest policy to be published. However, Section 38(5) applies only where a policy of one development plan is in conflict with that of another development plan.
12. Section 38(6) of the Act requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Furthermore, paragraph 196 of the Framework states that the planning system is plan-led. The WMS is a material consideration which should be afforded considerable weight and which needs to be addressed alongside development plan policy. Where there is conflict between Government policy and the development plan it is for the decision maker to decide how much weight to give to relevant policies with regard to material considerations including local circumstances.
13. The Council's statement sets out updated information relating to housing need and affordability in the Borough and the significance of small sites to the Borough. The information draws on the evidence base assembled to inform the Mayor's Housing Strategy⁵ which shows that the average house price of a residential property in Islington has increased by 56% since 2007 and at June 2016 was £657,755, amongst the highest in England and Wales. Median and lowest quartile incomes are both around 16 times below the median and lowest quartile house prices which represents a considerable affordability gap. Furthermore, the Council's evidence shows that approximately one third of new housing delivery in the Borough comes from small sites of 10 units or less. The evidence of affordable housing need has not been disputed by the appellant.
14. The WMS seeks to reduce the disproportionate burden of contributions on small scale developers. Whilst the proposal would make a contribution to housing supply, I have not been provided with any substantive evidence such as a viability appraisal to demonstrate that making the required contribution would render the appeal proposal unviable or that the contribution would be a disproportionate burden. I, therefore, have no evidence that a payment of a contribution towards the cost of providing off-site affordable housing would prevent the development from coming forward.
15. Overall, there is substantial evidence of considerable affordable housing need in Islington and it has been demonstrated that small sites make an important contribution to affordable housing delivery in the Borough. I attach very significant weight to this consideration.
16. Consequently, on the basis of the evidence before me the contribution sought would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The contribution would, therefore, meet the 3 tests set out in Regulation 122(2) of The Community Infrastructure Levy Regulations 2010.
17. Whilst the WMS is a material consideration of very considerable weight, based on the local circumstances of this case, in this instance the WMS does not

⁵ GLA Housing in London 2014: the evidence base for the Mayor's Housing Strategy (April 2014)

outweigh the relevant development plan policy, which I have found to be consistent with the Framework. For the reasons given above, the appeal proposal would not make appropriate provision for affordable housing. Consequently, I conclude that the appeal proposal is contrary to the affordable housing aims of Policy CS12 Part G of Islington's Core Strategy and the SPG.

Conclusion

18. For the reasons stated and taking all other considerations into account, the appeal should be dismissed.

Caroline Mulloy

Inspector