

Appeal Decision

Site visit made on 24 January 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 15th February 2017

Appeal Ref: APP/V3310/W/16/3160042

139 Berrow Road, Burnham on Sea, Somerset TA8 2PN

- 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 Mrs Diane Taylor-House against the decision of Sedgemoor District Council.
 - The application Ref 11/15/00031, dated 28 February 2015, was refused by notice dated 17 August 2016.
 - The development proposed is described as: "Change of use and extension from an elderly persons residence to 11 No self-contained flats and associated parking".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's Development Committee resolved to grant planning permission on 18 August 2015. The resolution was subject to, amongst other things, the applicant first entering into an Agreement under Section 106 of the Town and Country Planning Act 1990 (the Act) to secure a financial contribution for affordable housing equivalent to a 15 per cent on-site provision. However, due to a delay in securing the required Section 106 agreement, the Council subsequently refused the application.
3. A Unilateral Undertaking, dated 26 January 2017, has been submitted as part of the appeal documentation. The Council has had the opportunity to provide comments on the Unilateral Undertaking and I have taken these comments into account in my consideration of the appeal.

Main Issue

4. The main issue is whether the proposed development should make provision for affordable housing.

Reasons

5. The appeal property is an elderly persons' residence located within the town of Burnham on Sea, in a predominantly residential area. The proposed development is the conversion and extension of the building to create 11 self-contained flats.
6. Policy D6 of the Core Strategy¹ seeks to secure affordable housing provision on sites of five dwellings or more on a site by site basis. In relation to the appeal

¹ Sedgemoor Local Development Framework: Core Strategy 2006– 27

- proposal, the Council is seeking a 15 per cent affordable housing developer contribution which is the minimum level considered acceptable, taking into account viability, delivery and overall plan objectives. The provision of affordable housing in the District is necessary to meet an identified housing need and to ensure the delivery of the Council's development strategy.
7. The Section 106 Unilateral Undertaking aims to provide the required 15 per cent which is the equivalent of 1.65 units, split between on-site provision and a financial contribution towards providing affordable housing elsewhere in the District. The Council has justified the on-site provision and the sum sought with reference to Policy D6. The affordable housing provision is therefore necessary to make the development acceptable in planning terms. I consider the measures in the Undertaking are directly related to the development, and fairly and reasonably related in scale and kind. As such, it accords with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the National Planning Policy Framework.
 8. As stated above, a signed and executed Unilateral Undertaking has been submitted. However, the Council has concerns about the document itself and there is doubt as to whether it could be relied upon to secure the on-site provision and the contributions. In particular, Section 106(9) of the Act sets out that the obligation must identify the person entering into the obligation and state what his interest in the land is. The obligation identifies C and K Homes Ltd ("the Leaseholder") but the Recitals indicate that the Owners are registered as proprietor with freehold title to the development site. The Leaseholder is not listed in the Recitals, which is a discrepancy. Consequently, I am concerned that the failure of the Section 106 deed to state what interest the contracting party has in the land would invalidate it.
 9. Also, the landowner and other relevant parties have entered into the obligation unilaterally, without the Council. Nonetheless, the obligation seeks to bind the Council to only use the Off Site Affordable Housing Contribution for the provision of Affordable Housing within the Benefiting Area. As the Council is not a party to the Unilateral Undertaking, it cannot be bound by it which invalidates this provision.
 10. I conclude on this issue that the Unilateral Undertaking cannot be relied upon to secure the required on-site provision and the contributions. I appreciate that the development would make a valuable contribution to the local housing supply, but this would not outweigh the harm to the delivery of the Council's development strategy due to the lack of affordable housing provision. Consequently the scheme would not meet the affordable housing aims of Policy D6 of the Core Strategy or Policy S2 of the Core Strategy which seeks to secure the provision of infrastructure, including affordable housing, through the use of planning obligations.
 11. The appeal is therefore dismissed.

Debbie Moore

Inspector