
Appeal Decision

Site visit made on 24 January 2017

by R J Marshall LLB DipTP MRTPI

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

Decision date: 13 March 2017

Appeal Ref: APP/E0345/W/16/3160582

79, Henley Road, Caversham, Reading RG4 6DS

- 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 David Howells (Shanly Homes Ltd.) against the decision of Reading Borough Council.
 - The application Ref 150151, dated 23 January 2015, was refused by notice dated 9 September 2016.
 - The development proposed is erection of two dwellings with associated hard surfacing and landscaping.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether a financial contribution towards affordable housing provision is necessary to make the proposed development acceptable in planning terms.

Reasons

Affordable Housing contributions

3. Policy DM6 of the *Sites and Detailed Policies Document (SDPD)* (October 2012 – revised January 2015) requires affordable housing provision to be made on development sites of less than 15 dwellings. The degree of provision required and the manner in which it is to be made depends upon the scale of the development. On schemes of 10-14 dwellings there should be 30% affordable provision and on schemes of 5-9 dwellings 20% provision. Ideally that provision should be made on site but if justified a financial contribution in lieu of such provision may be acceptable. For sites, such as the appeal site, of between 1-4 dwellings, the Policy requires a financial contribution that will enable the equivalent of 10% of the housing to be provided as affordable housing elsewhere in the Borough.
4. The Council's adopted *Affordable Housing Supplementary Planning Document (SPD)* (2013) is cross referenced to Policy DM6 and also refers to *Core Strategy* Policy CS16 which requires 50% affordable housing on sites of 15 dwellings or more. The *SDPD* refers to a very high level of need for affordable housing, in particular for families, in the Borough. It says that lack of affordable housing is seen as a significant constraint on new employment

investment in the area. Increasing affordable housing provision is seen as critical to enable economic growth in the area.

5. The appellant has made no financial provision for affordable housing. There is, therefore, conflict with Policy DM6 of the development plan. The development plan is the starting point for any determination. However, account must be taken of any material considerations which may indicate that a decision should be made other than in accordance with the development plan. A key such consideration is Government Policy as expressed in the *Written Ministerial Statement (WMS)* dated November 2014 to be read alongside the *National Planning Policy Framework (the Framework)*. The Framework requires Council's to ensure that their Local Plans meet the need, amongst other things for affordable housing and set Policies accordingly. However, the WMS says that, due to the disproportionate burden of developer contributions on small scale developers, for sites of 10 units or less affordable housing contributions should not be sought.
6. An application for judicial review into the WMS was initially successful. However this decision was overturned in the Court of Appeal decision *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council*. Subsequent to this decision updated and new paragraphs have been added to the Planning Practice Guidance (PPG) section on planning obligations. They re-iterate that national planning policy defines the specific circumstances where contributions for affordable housing contributions should not be sought from small scale development. Government Policy, therefore, is that for development of the scale proposed affordable housing contributions should not be sought.
7. The Council has provided a substantial body of evidence to support its contention that, notwithstanding the WMS, SDPD Policy DM6 should prevail. In large part this evidence is on the need in the Borough for affordable housing. A recent Housing Market Needs Assessment (HMNA) indicates Reading to have an Objectively Assessed Housing Need (OAN) of 699 dwellings per annum of which 406 should be affordable. Thus approximately 58% of the AON is for affordable housing, a figure higher than for all but one of the other Berkshire Councils. A further analysis by the Council shows that, where comparison can readily be made, in other neighbouring Councils in the south east beyond Berkshire only Oxford, Guildford, Waverley and Woking have a higher proportion of OAN that should be affordable. Adding weight, says the Council, to the need for affordable housing is a record level of homelessness and high average house prices. There is in Reading an average price/earnings ratio of 13.36 compared to the national ratio of 11.62.
8. Turning to the supply of affordable housing the Council is an almost wholly urban area and thus a very high percentage of development is on previously developed land. The high costs of development of such sites, compared to greenfield land, has limited the affordable housing contributions that could be sought on many sites to significantly less than the Council's target figure. It is not anticipated that the review of the Local Plan, which is at an early stage, would lead to much if any greenfield development. Moreover, Council figures show that around 25% of annual housing completions in the Borough are on sites of 10 dwellings or less. Thus small scale sites make up a substantial proportion of the housing land supply. From past surveys the Council

anticipates that contributions from schemes of 10 units or less would add around 21% to the average overall supply of affordable housing .

9. The appellant criticises the Council for: making no reference to how many developments of over 10 houses made a financial contribution to affordable housing; providing no information on potential contributions from committed sites that have planning permission but have not been implemented; and not taking into account future affordable housing contributions from potentially emerging sites arising from a new Local Plan at consultation stage and calls for sites. However, whilst the information provided by the Council may be lacking in some respects no evidence has been provided which would run counter to the Council's key claims on the notably high level of affordable housing need when comparison is made with other authorities, the higher than average house prices compared to income, the limitations placed on affordable housing contributions by an absence of greenfield sites and the important contribution small sites make in affordable housing provision.
10. I consider the case above made by the Council to point strongly towards there being local circumstances to support seeking an affordable housing contribution in this case in accordance with the development plan but as an exception to national Policy. In arriving at this view I appreciate that the intention behind the *WMS* was to reduce the burden for small scale developers and I acknowledge the role such development makes in housing provision. However, a Council viability study tested a range of developments and found that the requirements of Policy DM6 would enable competitive returns and for development to be deliverable. Moreover, Policy DM6 is worded in such a way that a lower level of contributions may be acceptable if justified by developers. Finally, given the ability to deal with such contributions by fairly standardised legal agreements I see no reason why requiring such payments should lead to undue delays determining applications.
11. On the case before me the Council is seeking a £50,000 contribution. The appellant has provided no evidence that this would place an undue burden upon him. Given the above I consider that the application of Policy DM6 need not place an undue burden on this small scale development. Indeed it would seem that until the Court of appeal decision upholding the *WMS* the appellant was willing to pay this sum.
12. Both parties have referred to appeal decisions in their favour. Those in the same District as the case before me are clearly the most relevant. In this regard the appellant referred to appeal decisions APP/E0345/W/16/3143453, APP/E0345/15/3141752 and APP/E0345/W/3154081 on proposals for between 1 and 3 houses. In these cases it was held that local circumstances did not justify an exception to national policy. The Council make reference to appeal decision APP/E0345/W/16/3153661. Here, whilst acknowledging some of the decisions above, it was found that the Council had provided considerable evidence to indicate that specific local circumstances in the Borough justifies a lower threshold for affordable housing contributions as an exception to national Policy. I have no means of knowing precisely the nature of the evidence provided in these cases. However, in the case submitted by the Council reference is made to substantial evidence as it is in one of the cases provided by the appellant. In regard to these 2 cases there may be a difference between the approaches adopted that cannot be explained in terms of the nature of the evidence submitted. However, given my findings in the preceding

paragraphs I find the reasoning in the case submitted by the Council to be the more compelling and to add weight to my conclusions.

13. It is concluded that a financial contribution towards affordable housing provision is necessary to make the proposed development acceptable in planning terms. The Council is justified in seeking an affordable housing contribution and its absence runs contrary to *SDPD* Policy DM6.

Other matters

14. The appeal site is located in garden land to the rear of Nos. 79 and 77 Henley Road. It is a parcel of land that lies between substantial backland estate development off Queen Annes Gate and Fairfax Close. Access would be from a private drive off Fairfax Close which already serves 6 dwellings. Third parties have raised concerns which go beyond those of the Council.
15. Turning to those concerns the proposed houses, although of greater depth than adjoining houses and slightly taller than those to the west, would be of a scale acceptably in keeping with development in the locality. Their front elevations would accord with the appearance of houses in the vicinity.
16. Although on slightly higher ground than the adjoining house at No. 40 Fairfax Close the proposed dwelling on plot 1 would not extend so far to the rear at 2 storey level as to be unacceptably detrimental to the neighbour's living conditions by reason of loss of light or visual impact. The potential for loss of privacy arising from a kitchen window facing No 40 Fairfax Close could have been prevented by a condition requiring the use of obscure glazing had I been minded to allow the appeal. Concerns over damage to the access road would be addressed by means other than the planning system but concerns over noise and disturbance during construction work could have been dealt with by a construction management statement. There is no substantial evidence to support concerns on drainage. A condition requiring details of rear garden levels and boundary fencing would have overcome concerns on the variation of levels on the appeal site and adjoining land.

Conclusion

17. I have found no harm in relation to the third party concerns above. And the proposed houses in a sustainable location would be of some economic and social benefit. However, this would be outweighed by the economic and social disadvantages of an absence of provision for affordable housing. Thus seen in the round this would not, in terms of *the Framework*, be sustainable development and would be contrary to the development plan when read as a whole.
18. For the reasons given above it is concluded that the appeal should be dismissed.

R J Marshall

INSPECTOR