
Appeal Decision

Site visit made on 13 December, 2016

by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 21st April, 2017

Appeal Ref: APP/B5480/W/16/3158178

15 St Andrews Avenue, Havering, Hornchurch, RM12 5DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr and Mrs Jon Williams against the Council of the London Borough of Havering.
 - The application Ref: P0851.16 is dated 20 May, 2016.
 - The development proposed is a change of use of annex to a self-contained dwelling.
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Decision

1. The appeal is dismissed and planning permission for a change of use of annex to self-contained dwelling is refused.

Main Issues

2. The Council states that had it have been in a position to do so, it would have refused planning permission for the appeal development. Taking into account the two notional refusal reasons set out in its statement of case, I consider that the main issues in this appeal are the effect on the living conditions of future occupiers, with particular regard to internal living space, and whether the appeal proposal makes adequate provision towards education in the borough.

Reasons

3. No. 15 St Andrews Avenue is a modest detached house with modest front and rear gardens. It has a two-storey flank extension, and it is this extension to which appeal proposal relates.

Living space in terms of the nationally described space standards

4. The Council considers that the proposed dwelling would be a three person, two-bedroom dwelling on two storeys for the purposes of the nationally described space standards, and would therefore require 70m² of gross internal floor space, including 2m² of built-in storage. As set out by the Council, the development proposal would have a total of less than 67m² of gross internal floor area, and the submitted plans show no built-in storage. These figures have not been contested by the appellants.
 5. While the shortfall in floor space would be relatively small, the layout shown on the submitted plans contains very little circulation space, with access to the reception area directly from the shared lobby, staircase rising directly from the
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reception area, and a small landing on the upper floor. The bathroom appears very small, and although fittings are not shown in the plans, appears unlikely to accommodate more than a toilet and shower. As a result the accommodation to be provided by the development appears very confined. No built-in storage space is shown to accommodate fixed services or equipment such as a boiler, hot water cylinder or heat exchanger, and further floor space would be likely to be taken up for such installations, which would thereby exacerbate the cramped nature of the accommodation.

6. Although the appellant suggests that there would be scope to extend the house, this is not before me. In any case, the garden area shown on the submitted plans would be the width of a single room, and relatively short, and any extension into this space would produce an extremely small garden area with very limited potential for outdoor activities.
7. I conclude that the development would fail to provide adequate internal living space for future occupiers of the appeal dwelling and would harm their living conditions. It would therefore fail to comply with Policy 3.5 of the London Plan, which seeks housing development which meets adequate space standards, incorporating the nationally described space standards, following amendment in 2016.

Whether the proposal makes adequate provision towards education in the borough

8. By reference to Policy DC72 of the Core Strategy and Development Control Policies Development Plan Document 2008 (the CS) the Council is seeking contributions towards infrastructure, specifically education. This includes provision for primary and secondary education facilities, in relation to Policy DC29 of the CS. The appellant has challenged the need for an obligation to be provided, on the grounds that the Council in this case is seeking a tariff-style contribution and that subsequent to changes to national planning policy, contributions should not be sought from developments of 10 units or less. No completed Undertaking or other form of legal agreement in respect of such a payment has been put before me.
9. The CS policies pre-date the National Planning Policy Framework (the Framework) and must be considered in light of government policy as expressed in a Written Ministerial Statement dated 28 November, 2014 (the WMS), to be read alongside the Framework.
10. Paragraph 203 of the Framework indicates that planning obligations may be sought in order to mitigate the impact of new development, provided the tests set out in paragraph 204 are met. These tests reflect those set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations). However, the WMS defines specific circumstances where tariff-style planning obligations should not be sought. This is supported by the Planning Practice Guidance (PPG) revised following a Court of Appeal judgement concerning the WMS 11 May, 2016¹, which itself overturned a previous Court judgement dated 31 July, 2015². The WMS sets out that for sites of 10 units or less, and which have a maximum combined gross floor

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

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)

space of 1,000 square metres, affordable housing and tariff style contributions should not be sought.

11. The Council refers to its Planning Obligations Supplementary Planning Document 2013 (the SPD) which sets out its approach to planning obligations, and acknowledge that the approach based on pooling such contributions is now out of date. I concur and conclude also that Policies DC72 and DC29 are inconsistent with national policy as set out in the Framework and the WMS.
12. Nonetheless, the Council also directs me towards the evidence contained in Technical Appendix 1 of the SPD, which sets out a methodology for calculating a full standard charge, and in Technical Appendix 2, which contains the approach to testing financial viability as part of the Council's planning obligations strategy. Although contributions for other forms of infrastructure are now funded through CIL payments, S106 obligations in this Borough are still used to obtain contributions for education. The Council argues that this does not represent a tariff-style contribution as it is not based on a fixed list of charges, but on the financial impact of the residential proposal.
13. To this end the Council's "Commissioning Plan for Education Provision 2015/16 – 2019/20" 2015 confirms the shortage of school places in most parts of the borough and the lack of capacity in existing educational provision to accommodate demand for additional school places generated by new development. On the basis of the evidence before me, the Council is not intending to identify a specific project for their requested contribution, but would allocate it, when received, together with a maximum of four other contributions to a specific project at a later date.
14. To my mind, the proposal clearly falls considerably below the threshold set in the WMS. Therefore, while I accept that Policies DC72 and DC29 do seek contributions to education facilities, this is contrary to national policy on this matter. In absence of convincing evidence that there would be no impact on the viability of this small-scale proposal or indeed that such contributions would not place a disproportionate burden on small-scale developers in the area, or that the education needs of the Borough would not be met by appropriate obligations associated with large-scale schemes, the WMS remains a material consideration of significant weight. In this case, I am satisfied that it is sufficient to set aside the conflict with the relevant policies in this instance.
15. Furthermore, the PPG defines a tariff-style contribution³ as being where an authority seeks planning contributions to pooled funding 'pots' intended to provide common types of infrastructure for the wider area. Therefore, even were it acceptable to seek such a contribution, that the Council is now seeking an obligation which relates solely to education infrastructure does not, to my mind, take it out of being a tariff-style payment. It is clearly intended to be pooled with other payments, and in absence of an identified project at the time of the submission of any obligation, I am not satisfied that this approach, nor one, as suggested by the Council, where agreement is reached with the appellant as to a range of possible schools where such a contribution could be spent, accords with CIL Regulation 122(2).
16. Moreover, CIL Regulation 123(3) sets out that a maximum of five obligations may be sought for a specific infrastructure project or a particular type of

³ Paragraph 014 Ref ID:23b-014-20160519

infrastructure. I am not satisfied that a deferred approach to unidentified projects, whether overseen by the Council or not, accords with the regulations. Such an obligation, if made, could not therefore represent a reason for the grant of planning permission.

17. While my decision is in accordance with that of an Inspector in a case referred to me by the appellant⁴, which was decided at a time prior to the first challenge made against the WMS, I note that the Council has supplied a number of more recent appeal decisions⁵ in which the Inspectors have concluded that the approach of Policy DC29, combined with the Council's monitoring arrangements in relation to payments, would not engage the provision of Regulation 123 of the CIL regulations. I note that a further decision⁶ addresses a scheme in excess of the WMS threshold and is not therefore similar to that before me.
18. I have had regard to those decisions of which only two post-date the Court of Appeal finding on the WMS, and in both cases the contributions were not challenged by the appellant. Consequently, I cannot be sure of the evidence presented to the Inspectors in those cases. I have considered this case on the evidence presented to me; in any case each application or appeal must be considered on its own merits.

Other Matters

19. I note the appellant's argument that the proposed house is already a separate dwelling, but I have been asked to determine this application for a change of use to a separate dwelling, that this may already have taken place does not alter my conclusions on the proposal before me.
20. I note also the appellant's concern at the Council's handling of the case, but this is not a matter for my determination in this case.

Conclusion

21. For the reasons given above, and taking into account matters raised, I conclude that the appeal should be dismissed.

S J Buckingham

INSPECTOR

⁴ APP/B4580/A/14/2228985

⁵ APP/B5480/W/15/3140418; APP/B5480/W/16/3152013; APP/B5480/W/3153735.

⁶ APP/B5480/W/16/3153011