

Appeal Decision

Site visit made on 19 April 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 9 June 2017

Appeal Ref: APP/L5810/W/16/3161871

4A New Broadway, Richmond upon Thames, Hampton Hill TW12 1JG

- 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 Cormac Dolan against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/0983/FUL, dated 4 March 2016, was refused by notice dated 26 October 2016.
 - The development proposed is conversion of existing 3 bed flat into 2 x 1 bed flats.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of existing 3 bed flat into 2 x 1 bed flats at 4A New Broadway, Richmond upon Thames, Hampton Hill TW12 1JG in accordance with the terms of the application, Ref 16/0983/FUL, dated 4 March 2016, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing no 0983/001 Existing location and site plan; drawing no 0983/010 existing ground and first floor; drawing no 0983/11 existing roof plan and section AA; drawing no 0983/12 existing front and rear elevations; 0983/110 proposed ground and first floor; drawing no 0983/111 proposed roof plan and section AA; 0983/112 Proposed front and rear elevations.
 - 3) No dwelling shall be occupied until arrangements for the storage and disposal of refuse have been made in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The refuse facilities shall be thereafter maintained.

Application for costs

2. An application for costs was made by Mr Cormac Dolan against the Council of the London Borough of Richmond-upon-Thames. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this case is whether or not the proposal would make adequate provision for affordable housing.
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Reasons

4. Policy CP15 of the Council's Local Development Framework Core Strategy (Core Strategy) 2009 expects 50% of all new units will be affordable housing. Some form of contribution towards affordable housing will be expected on all new housing sites. Where it is not proposed to provide affordable housing on site, Policy DM HO 6 of the Development Management Plan 2011 (DMP) and the Affordable Housing Supplementary Planning Document (SPD) 2014 provide for a financial contribution to the affordable housing fund on sites proposing less than 10 units at a level which is commensurate with the scale of contribution.
5. The requirement to meet the affordable housing need identified in the Strategic Housing Market Assessment is consistent with paragraph 47 and 50 of the National Planning Policy Framework (the Framework) which requires local planning authorities to ensure that their Local Plan meets the full, objectively assessed need 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 approach is consistent with Policy 3.13 of the London Plan (2016) which states that boroughs are encouraged to seek a lower threshold through the LDF process where this can be justified in accordance with guidance.
6. The Council's policies recognise the need for a flexible approach taking account of economic and site specific circumstances which may give rise to viability issues. Where viability is an issue the Council will accept viability assessments which must be independently reviewed. This flexibility ensures that 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.
7. The appeal proposal would create two residential units and thus in accordance with paragraph 8.3.3.7 of the Core Strategy, Policy DM HO 6 of the DMP and the SPD a contribution of 8% or £16,576 would be required. The appellant has not provided written confirmation of a section 106 agreement to secure such a contribution. Whilst a viability assessment has been provided, at the time the Council made its decision the appellant would not agree to pay for the assessment to be independently reviewed as required by Policy CP15, paragraph 5.1.44 of the DMP and paragraph 2.75 of the SPD.
8. The Written Ministerial Statement¹ (WMS) states 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 Written Ministerial Statement was 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.

9. 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.
10. The Council refers to the Borough's Strategic Housing Market Assessment (SHMA) which demonstrates a net deficit of 964 affordable homes per annum in the Borough in 2014/15, and that only 2% of the net gain in total completions were affordable. Furthermore, the Council's evidence shows that a significant proportion of housing supply/delivery in the Borough comes from small sites. The evidence of affordable housing need or the contribution which small sites make to housing delivery has not been disputed by the appellant. Overall, there is substantial evidence of considerable affordable housing need in the Borough and it has been demonstrated that small sites make an important contribution to affordable housing delivery. Thus, on the basis of the evidence put to me in this case, I find that the Council's approach of seeking affordable housing contributions from this development is reasonable.
11. Having said that, as the appellant was not willing to have the financial viability assessment independently assessed, the Council could not be certain that either the maximum financial contribution towards off-site provision could be made or that a contribution would render the scheme unviable. The requirement for a viability assessment to be independently assessed is clearly set out in the Council's policies. As such, at the time of determination by the Council the proposal was contrary to development plan policy. However, in order to inform the appeal the Council has since commissioned an independent review of the financial viability assessment which shows that the proposed scheme is not viable and could not provide an affordable housing contribution. Consequently, I am satisfied that in light of viability issues that the proposal could not sustain an affordable housing contribution in this specific case.
12. Reference is made to a number of appeal decisions which support both the Council's and the appellant's case. However, I am not aware of the evidence which was before the Inspectors in those cases and cannot, therefore, be certain that they are directly comparable to the appeal proposal which limits the weight which can be attached to them in my Decision. I have determined the appeal on the basis of the evidence before me and the particular circumstances of this case.
13. I, therefore, conclude on the basis of the evidence before me, that whilst a contribution towards affordable housing would normally be justified, as the contribution in this case would render the proposal unviable, an exception to the requirements of Policy CP15 of the Core Strategy, Policy DM HO 6 of the DMP and the SPD can be justified and a contribution to off-site affordable housing is not required.

Other matters

14. The Council has suggested a condition requiring the submission of details of cycle parking facilities in accordance with Policy DM TP7 of the DMP. However, the appellant considers that there would be no room for such facilities. Whilst there is a garden to the rear this is outside the red line boundary of the application. Due to

the first floor location and lack of external space I agree that the proposal would not be able to accommodate cycle parking facilities within the development. As the condition would not be achievable, imposing it would render the permission unimplementable.

15. Whilst no vehicular parking provision is proposed the Council acknowledge that the parking requirements of the proposal are consistent with that of the existing unit. Furthermore, the appeal site is situated approximately a seven minute walk from Fulwell Station which has regular services into the city. There is also a bus stop situated immediately outside the site which offers direct services to Heathrow, Teddington and Hampton Court Palace. Consequently, I consider that the development would be served by other means of sustainable transport. In any event, I consider that the benefit of providing an additional housing unit would outweigh the lack of cycle parking provision.

Conditions

16. The Council has suggested conditions some of which I have imposed subject to minor amendments. In addition to the standard time limit (1) I have imposed a condition (2) specifying the relevant drawings as this provides certainty. For the reason stated above, I have not imposed the suggested condition requiring the submission of details of cycle parking facilities.
17. A condition (3) requiring details of arrangements for the storage and disposal of refuse/waste is required in order to ensure appropriate provision is made and to protect the living conditions of existing and future occupiers and in the interests of the character and appearance of the area.
18. The Council have suggested a condition requiring the proposal to achieve BREEAM Domestic Refurbishment Rating Excellent in accordance with the terms of the application & the requirements of the BREEAM Guide. BREEAM could previously be applied to domestic conversions and changes of use; however, as BREEAM is a technical standard, it can no longer be applied to housing, as set out in the written ministerial statement⁵. Consequently, I have not imposed the suggested condition.

Conclusion

19. For the reasons stated and taking all other considerations into account the appeal should be allowed subject to the conditions in paragraph 1.

Caroline Mulloy

Inspector

⁵ New National technical standards, Eric Pickles statement to Parliament 25 March 2015 "Steps the government is taking to streamline the planning system, protect the environment, support economic growth and assist locally-led decision making"