
Appeal Decision

Site visit made on 1 August 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 17th August 2017

Appeal Ref: APP/E0345/W/17/3173270

Land to the rear of 52 Norcot Road, Reading, Berkshire, RG30 6BU.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr S Sharma against the decision of Reading Borough Council.
 - The application Ref. 151144, dated 20 November 2015, was refused by notice dated 12 October 2016.
 - The development proposed is the erection of two 2-bed semi-detached houses including landscaping and vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two 2-bed semi-detached houses including landscaping and vehicular access, at Land to the rear of 52 Norcot Road, Reading, Berkshire, RG30 6BU, in accordance with the terms of the application, Ref. 151144, dated 20 November 2015, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural matter

2. A Unilateral Undertaking made as a Planning Obligation under section 106 of the Act, dated 11 July 2017, and signed by the appellant and another landowner has been lodged with the appeal. In summary, the Obligation covenants the landowners to make a financial contribution to the Council of £23,000 for the provision of affordable housing off-site, in the event of the appeal being allowed. I have had regard to the Obligation as a material consideration subject to my comments in paragraph 13 below.

Main Issue

3. The main issue is whether the residential development proposed should contribute to the wider provision of affordable housing taking account of the policy of the development plan, national guidance and Ministerial advice.

Reasons

Background

4. The appeal site comprises an area of vacant land which lies adjacent to new residential development and a high and ornate water tower now converted into apartments, all located to the rear of properties fronting Norcot Road. It is proposed to build a pair of semi-detached properties on the land and have three parking spaces.

5. The Council's reason for the refusal of planning permission confirms that there is no site specific objection to the development proposed. The sole reason against the scheme is the lack of an appropriate financial contribution put forward towards the provision of affordable housing off-site. In resolving to grant planning permission for the development the Council had specified that a contribution of £23,000 would be appropriate. Until recently, the appellant had declined to pay this level of contribution and referred to the legal position regarding Ministerial advice on the issue (see paragraph 8 below).

Policy context

6. The development plan for the area includes the Council's Core Strategy adopted in 2008 and the Sites and Detailed Policies Document (SDPD) adopted in 2012.

Provision for affordable housing

7. Policy DM6 of the SDPD relates to development proposals of less than 15 dwellings and indicates that for schemes of between 1-4 dwellings a financial contribution should be made to enable the equivalent of 10% of the housing to be provided as affordable housing off-site. The appellant had offered a lesser amount taking into account the Ministerial statement set out below. Further, his Financial Appraisal indicated that with the higher contribution the development would not be financially viable. Notwithstanding the issue of viability, without an appropriate financial contribution the scheme proposed would have conflicted with the specific requirement of the development plan.
8. The appellant's agent refers to the Written Ministerial Statement (WMS)¹ as reasoned justification for not making the financial contribution. The WMS indicates, in summary, that in order to free-up the planning system and reduce disproportionate burdens on small-scale developers, affordable housing contributions should not be sought from developments of 10 housing units or less (subject to other specific factors that do not apply here). Although successfully challenged in the High Court in July 2015, the Court of Appeal subsequently upheld the government's challenge to that legal decision in May 2016. Further, paragraph 31 of the national Planning Practice Guidance (PPG) was amended in November 2016 to reflect the WMS. Therefore the WMS and the current guidance in the PPG are material considerations in the appeal and to which I attach significant weight.
9. The critical issue is whether the more recent WMS and formal national guidance outweigh the conflict of the proposal with the provisions of the development plan.
10. On the basis of the Council's representations put forward in this case, I am satisfied that there is substantial evidence to demonstrate that there is an acute housing need for affordable housing in the Borough and that this need is ongoing. Further, this need for special provision for affordable housing has a reliance on the financial contributions for off-site provision which arise from development proposals, and has been robustly justified in accordance with the policy contained in paragraph 50 of the National Planning Policy Framework.
11. Balanced with this, it has not been demonstrated by the appellant that the application of policy DM6 has frustrated small scale development proposal coming forward and the appellant's action in now submitting a Unilateral Undertaking for the agreed contribution of £23,000 supports my view on this. Further the appellant's initial financial appraisal contains general submissions on costs which

¹ As issued by the Minister of State for Communities and Local Government on the 28 November 2014

are not substantiated by evidence and even then it is submitted that the proposal would still give rise to an overall 'developers profit' profit of 10%.

Planning Balance

12. Overall, in the circumstances of the case, I find that the local evidence on housing need provides clear justification that a decision on the proposal should accord with the requirements of the development plan on affordable housing and this is not outweighed by the other material consideration of the WMS and the general guidance of the PPG.
13. Further, the Undertaking now put forward by the appellant satisfies the requirements of Policy DM6 and there is now no conflict with the development plan. I also find that the requirement for a contribution through an appropriate obligation satisfies the three tests set out in paragraph 204 of the Framework. I will therefore allow the appeal.

Conditions

14. In terms of conditions, the Council recommends 18 which I will consider under the same numbering.
15. In addition to the statutory condition on the timing of the implementation of the development, conditions no's 2 and 3 are necessary to define the plans that are approved and to agree the external materials in the interests of clarity and to ensure that the development fits in with the site. It is also necessary to impose condition no.4 to ensure that the occupiers of existing houses are not overlooked by side facing windows. As the proposal involves the redevelopment of a brown field site I will impose conditions 5, 6, 7 and 8 to ensure that any contamination of the land is removed prior to residential development taking place in the interests of good health and to avoid pollution. As there are residential properties in close proximity to the site I will impose conditions 9, 10 and 11 so as to avoid problems of noise, dust or with air quality during the construction period. Further, conditions 12, 13, 14 and 15 are reasonable and necessary to ensure that the development encourages sustainable transport, and retains sufficient parking and proper access, in the interests of highway safety. The provision of a landscaping scheme is also necessary to ensure that the appearance of the development is acceptable, and I will impose conditions 16 and 17.
16. The Council also recommend that a condition is imposed to take away the rights applying generally to use the dwellings as 'houses in multiple occupation' however, no special and specific justification has been put forward to establish why such a restriction is reasonable and necessary for this development and I will not impose this condition.

Conclusion

17. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of 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: 097 05-02 01P; 097 02-02 P5; 097 - 03-11 P2; 097-05-10 P2; 097 03-10 P1.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development including all external fixtures, fittings, window frames and mortar and details of window and doorway reveals have been submitted to and been approved in writing by the local planning authority. The development shall be carried out using only the approved materials.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the proposed first floor side facing window shall be *non-opening and glazed with obscure glass* before occupation of that room, and shall be permanently maintained thereafter as non-opening and obscure glazed.
- 5) No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments.
- 6) No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 7) The remediation scheme shall be implemented in accordance with the approved timetable of works. A validation report (that demonstrates the effectiveness of the remediation carried out) must be submitted to and approved by the Local Planning Authority prior to construction of the development.
- 8) In the event that contamination not previously identified is found at any time when carrying out the approved development, development

must be halted on that part of the site and it must be reported in writing to the Local Planning Authority. Following that an assessment of the nature and extent of contamination must be undertaken and where remediation is necessary a remediation scheme, together with a timetable for its implementation, must be submitted to and approved in writing by the Local Planning Authority. The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved remediation scheme a validation report must be submitted to and approved in writing by the Local Planning Authority.

- 9) No development shall take place before a scheme has been submitted to and approved in writing by the Local Planning Authority, which specifies the provisions to be made for the control of noise and dust emanating from the site during the demolition and construction phase. Thereafter, the use shall not commence until the approved scheme has been fully implemented.
- 10) The hours of noisy construction, demolition and associated deliveries shall be restricted to the hours of 08:00hrs to 18:00hrs Mondays to Fridays, and 09:00hrs to 13:00hrs on Saturdays, and not at any time on Sundays and Bank or Statutory Holidays without prior approval from the Local Planning Authority.
- 11) No materials or green waste produced as a result of the clearance of the site, demolition works or construction works associated with the development hereby approved shall be burnt on site.
- 12) No dwelling/building hereby permitted shall be occupied until the vehicle access serving it has been constructed in accordance with the approved drawing.
- 13) The dwellings hereby permitted shall not be occupied until all vehicle parking spaces have been provided in accordance with the approved plan. The spaces shall be kept available for parking at all times thereafter.
- 14) No dwelling/building hereby permitted shall be occupied until the bicycle parking facility for that dwelling/building has been provided in accordance with the approved plan. The facility shall be kept available for bicycle parking at all times thereafter.
- 15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and been approved in writing by the local planning authority to provide for:
 - space on site where vehicles of site operatives and visitors can be parked;
 - location on site for storage of plant and materials used in constructing the development;
 - the erection and maintenance (including removal of any graffiti or fly posters) of security hoarding around the site;
 - any footpath closures or road closures needed during construction
 - wheel washing facilities on site;
 - a scheme for recycling waste resulting from the construction works.The measures within the approved Construction Method Statement

shall be maintained and adhered to throughout the course of the development unless changes

- 16) No development shall take place until full details of both hard and soft landscaping have been submitted to and been approved in writing by the local planning authority. The submitted details shall include:
- (a) hard surfacing materials; and
 - (b) proposed and existing functional services above and below ground (e.g drainage, power, communications cables, pipelines etc. indicating lines, manholes etc); and
 - (c) planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/planting densities where appropriate.
 - (d) Tree pit specifications.
- 17) The hard and soft landscaping of the development hereby permitted shall be carried out, in accordance with the approved landscaping plans and documents. The soft landscaping shall take place no later than during the first planting season following the date when the development hereby permitted is ready for occupation or in accordance with a timetable agreed in writing with the Local Planning Authority.

*** END OF CONDITIONS ***