



Appeal Decision

Site visit made on 18 December 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 18 January 2018

Appeal Ref: APP/R5510/W/17/3181349

1 Brookdene Drive/20 Watford Road, Northwood, London HA6 3NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Greenaway of Clearview Homes Limited against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 71665/APP/2016/3363, dated 6 September 2016, was refused by notice dated 24 April 2017.
 - The development proposed is described as "demolition of existing dwellings on site and erection of a residential building that will provide 10 flats with access from Brookdene Drive (outline application to include access, layout, landscaping with scale and appearance reserved)".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with matters of scale and appearance reserved for subsequent approval. I have dealt with the appeal on this basis, treating the following plans as indicative only: Floor Plans (Ref 16-3416-11) and Street Scene (16-3416-12).
3. I have taken the site address from the appeal form as this is more accurate than that given on the application form.
4. The Council has confirmed that the Energy Statement¹ submitted by the appellant is acceptable and, as a consequence, the fourth reason for refusal has been addressed. However, the Council requests a financial contribution to its carbon offset fund, which would be secured through a planning obligation.
5. The appellant has submitted a signed and executed planning obligation by way of a Unilateral Undertaking, pursuant to Section 106 of the Town and Country Planning Act 1990. As the planning obligation was provided as part of the appellant's final comments, I have taken it into account, and consulted the Council accordingly. The obligations relate to a construction training scheme, a carbon offset contribution and affordable housing. The planning obligation does not provide for highway works or the project management and monitoring fee, which formed part of the Council's fifth reason for refusal.

¹ Energy Statement Stroma Tech, 27 July 2017

6. The planning obligation must give details of each person's title to the land, which should be checked by the local planning authority. In cases where the local planning authority is unable to give its assurance, as in this case, the appellant will need to provide evidence of title to the Inspector.² This information has not been submitted although I note that the planning obligation identifies the owners of the land as having a freehold interest, and title numbers are provided.
7. In respect of the construction training scheme, schedule 1, the Council has proposed draft alternative wording to that provided. Also, the Council indicates that the affordable housing review mechanism, schedule 4, should be 18 months following the reserved matters application, as opposed to the grant of planning permission. It is at that time that the affordable housing obligation, schedule 3, would be triggered.
8. Finally, the Council refers to the need for numerous changes to the definitions section and other amendments. It is noted that the number formatting of the document does not flow in sequence, and there is a gap between clause 7 and clause 9.
9. Overall, I have some concerns about the planning obligation, its execution and thus whether the Council could rely on it to secure the contributions / obligations. Consequently, I afford the planning obligation little weight.

Main Issues

10. From all that I have seen and read, I conclude that the main issues are:
 - (i) whether a planning obligation is required in respect of affordable housing provision, carbon offsetting, highway works, construction training, and project management and monitoring;
 - (ii) the effect of the development on the character and appearance of the area, in particular, whether the development would result in an over-concentration of flatted development on this part of Watford Road, and the effect of the proposed area of hard surfacing;
 - (iii) whether the development would provide a suitable standard of outdoor amenity space.

Reasons

Planning Obligation: Affordable housing

11. Although the planning application was made in outline, it is clear that the development proposed would provide 10 homes, and possibly more. As such, the Council is seeking affordable housing provision, which it considers would be required to make the development policy compliant. The London Plan (March 2016) highlights the provision of new affordable homes to meet London's very pressing need as a particular priority. Accordingly, Policy 3.13 states that boroughs should normally require affordable housing on sites which have capacity to provide 10 or more homes. Policy H2 of the Hillingdon Local Plan: Part 1 – Strategic Policies (November 2012) seeks to secure affordable housing on all sites. It continues that, for sites with a capacity of 10 or more units, the Council will seek to ensure that the affordable housing mix reflects local needs.

² Procedural Guide: Planning Appeals – England, Annex E

12. The appellant acknowledges a Court of Appeal judgement,³ the result of which is that the policies in the Secretary of State's Written Ministerial Statement of 28 November 2014 (WMS), and subsequent alterations to the Planning Practice Guidance (PPG), should once again be considered as national planning policy. This defines the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build developments. The WMS seeks to relieve the disproportionate financial burden from small scale developers. For sites of 10-units or less, and which have a maximum combined gross floor space of no more than 1,000 square metres, affordable housing and tariff style contributions should not be sought. The appellant suggests that the WMS appears to be reflected in the draft New London Plan, policy H2, which refers to the threshold of ten units or fewer, although it is recognised that this emerging policy carries limited weight at the present time.
13. The statutory position is that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The development for 10 flats, as described, would be in conflict with development plan policy. However, the WMS is a material consideration to which I attach significant weight as Government policy, to be read alongside the National Planning Policy Framework (the Framework). The Council has submitted only very limited evidence to demonstrate that specific local circumstances are such that the conflict with the relevant development plan policies would outweigh the WMS in this instance, and therefore I find that national policy would prevail.
14. However, as the application was made in outline, the number of units is not certain. It may be that, at the reserved matters stage, the proposal is for eleven flats or more, which would trigger a consideration of affordable housing provision in line with the WMS. On this basis, I am satisfied that the obligation sought in respect of affordable housing would meet the tests of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 namely: (i) it is necessary to make the development acceptable in planning terms; (ii) is directly related to the development and; (iii) fairly and reasonably related in scale and kind to the development. Consequently, I conclude on this matter that a planning obligation in respect of affordable housing would be justified and necessary.
15. As set out above, a planning obligation has been submitted, worded such that if, at reserved matters stage, the proposal is for eleven flats or more or the gross floor space exceeds 1,000 square metres then provision for affordable housing would be required. However, I am not satisfied that the obligations, as drafted, could be relied upon to secure what is intended.
16. The appellant suggests that these matters could be addressed at reserved matters stage. However, the outline permission would be the planning permission, thus the planning obligation would need to be secured at this stage. I appreciate that a viability assessment may be submitted, but this is not before me.
17. Overall, I find that the appeal must fail for this reason, as set out in the paragraphs above.

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

Planning Obligation: Carbon Offsetting

18. Policy 5.2 of the London Plan requires housing development schemes of 10 units or more to achieve zero carbon emissions for regulated energy demands. Major development proposals should include a detailed energy assessment to demonstrate how the emissions reduction would be achieved. The carbon reduction targets should be met on site but, where this is not possible, any shortfall may be provided off-site or through a financial contribution to secure delivery of carbon dioxide savings elsewhere.
19. The Council states that the appellant's Energy Statement demonstrates a 35 percent reduction in carbon dioxide and the development meets the minimum requirements on site. However, to achieve zero carbon, the shortfall would need to be accommodated elsewhere and a contribution to the Council's carbon fund would be required in order for the development to become policy compliant. The amount of contribution has been calculated using the predicted annual emissions and using the carbon off-set price of £60 per tonne, which the Council states, is in accordance with relevant guidance.⁴ However, no detailed information has been provided to show how and where the contributions would be spent. Accordingly, I cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, and notwithstanding the aims of the development plan policy, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the CIL Regulations, and the Framework.
20. The appellant has indicated that this obligation would not meet the requirements of the pooling restriction under Regulation 123(3) of the CIL Regulations. When the levy is introduced (and nationally from April 2015), the regulations restrict the use of pooled contributions towards items that may be funded via the levy. At that point, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.
21. The evidence in respect of the pooling contribution is not conclusive. The Council states that the obligation would appear to meet Regulation 123 and argues that the fund would not be used to deliver infrastructure projects. However, the PPG advises that the levy can be used to fund a wide range of infrastructure, including district heating schemes. The Council's examples of projects that come forward from its carbon fund are varied and include improved lighting. I am not persuaded that such projects are not types of infrastructure capable of being funded by the Levy. It is unclear how many projects have been entered into since 6 April 2010. Consequently, I am not satisfied that the obligation can be lawfully taken into account.
22. I have already concluded above that the planning obligation, as submitted, carries limited weight. Given that I am not satisfied that the contribution sought would comply with the CIL Regulations, the absence of a planning obligation does not weigh against the development.

⁴ GLA's Guidance on Preparing Energy Assessments

Planning Obligation: Construction Training

23. The Council's Supplementary Planning Document: Planning Obligations (July 2014) states that housing developments on sites capable of accommodating 10 or more units would create the potential for a construction training scheme. I appreciate that the Council will seek to secure employment strategies with developers in kind, rather than as a financial contribution. However, the wording of the obligation as suggested by the Council would allow for a contribution to be paid in lieu.
24. No detailed information has been provided to show how and where the contributions would be spent. Accordingly, I cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the CIL Regulations. Therefore, although I have afforded the submitted planning obligation little weight, this does not weigh against the development.

Planning Obligation: Highway works and Project Management and Monitoring

25. The Council refers to the need for an obligation under Section 106 of the Planning Act to secure highways works, and project management and monitoring. No planning obligation is before me in respect of these matters. The decision notice refers to Policies R17 and AM7 of the Hillingdon Local Plan: Part 2 – Saved Unitary Development Plan Policies (November 2012), but there is limited explanation in the Council's evidence as to why these policies are relevant.
26. I have not been provided with sufficient evidence to show that the obligations sought in respect of these matters are necessary, having regard to development plan policy, the statutory tests in Regulation 122 of the CIL Regulations and the tests of the Framework. Therefore, it has not been demonstrated that a contribution towards highways works, or project management and monitoring is necessary.

Planning Obligation: Conclusion

27. To conclude on this issue, I find that the development should make provision for affordable housing. In the absence of such provision, the development would be contrary to Policies 3.13 and 8.2 of the London Plan, Policy H2 of the Local Plan: Part 1, and national policy as set out in the WMS, and the Council's Supplementary Planning Document: Planning Obligations (July 2014) which, amongst other things, require the provision of affordable housing to meet local needs.
28. I have considered whether the unacceptable impacts of the development could be addressed through planning conditions. However, I do not consider that such conditions would meet the tests set out in paragraph 206 of the Framework.

Character and Appearance

29. The appeal site is located on Watford Road (A4125), at the junction with Brookdene Drive. It comprises two detached houses and their associated gardens. Watford Road is residential in character, the houses tend to be detached and set back from the road, with front gardens containing trees, shrubs and hedges. The development layout has evolved over time and the area is interspersed with newer infill and piecemeal development of various styles and age. Several plots have been re-developed and there are flat developments in the immediate vicinity of the site, Saxon Court and Chestnut Court. There are also flats further south on Watford Road and a similar development to the north.
30. The proposed development would provide a residential building containing flats. It would be sited within the centre of the plot with car parking at the rear, accessed via Brookdene Drive.
31. I am referred to the Council's Supplementary Planning Document (SPD): Residential Layouts,⁵ which seeks to avoid an over-concentration of flatted development in order to protect the character of traditional residential areas. The guidance advises that the redevelopment of large numbers of sites in close proximity to each other is unlikely to be acceptable, including large numbers of redevelopment on any one street. Further, the SPD states that redevelopment of more than 10 percent of properties on a residential street is unlikely to be acceptable. The Council calculates that the redevelopment along Watford Road already exceeds this and considers that further such development would erode the character of the area, contrary to the SPD.
32. The overall aim of the SPD and related development plan policy is to protect the character and appearance of existing residential areas. As explained above, Watford Road has a mix of development types and its character has evolved from a traditional residential area comprising large, detached dwellings. The flats and other forms of development contribute to the character of the area and are compatible in form and layout.
33. The development proposed would result in the loss of two relatively modern houses, but these are not remarkable or worthy of retention in their own right. Moreover, the Council acknowledges that the impact of the development on the street scene would be acceptable. Although the development would add to the number of flatted developments along the road, the overall appearance of the area would remain that of a mixed residential area with detached houses being the more common form of development. Consequently, I conclude on this issue that the proposal would not result in an over-concentration of flatted development on this part of Watford Road to the detriment of the established character of the area.
34. The Council is also concerned about the loss of the rear garden area and the extent of hardstanding proposed. The appeal site contains a number of trees, hedges and shrubs located on the site boundaries. These make a positive contribution to the streetscape and the majority of the existing landscaping would be retained. The rear gardens would be replaced by the car park, but the retained landscaping would soften the appearance of the hardstanding.

⁵ Hillingdon Design and Accessibility Statement (HDAS): Supplementary Planning Document – Residential Layouts (July 2006)

35. The gardens themselves are not visible in the wider area and their loss would have minimal impact on the character and appearance of the locality. Consequently, the development would meet the aims of Paragraph 1.2.44 of the Mayor's Housing Supplementary Planning Guidance (March 2016), which is concerned with retaining greenspace that makes a positive contribution to the area.
36. To conclude on this issue, I find that the development would not have an adverse effect on the character and appearance of the area. Consequently, it would accord with Policy BE1 of the Local Plan: Part 1 – Strategic Policies, Policies BE13 and BE19 of the Local Plan: Part 2 and Policies 2.6, 3.5 and 7.4 of the London Plan. The policies seek, amongst other things, to enhance local distinctiveness through high quality design that complements the area and harmonises with the street scene.

Amenity Space

37. The development would incorporate communal amenity space to the front and side of the building, in a similar arrangement to that provided at Saxon Court opposite. The amenity space would be adjacent to the roads and it would be likely to be overlooked by windows to habitable rooms within the development.
38. I appreciate that the open space would be relatively narrow, and there is likely to be noise and overlooking that would affect the use of the space. However, the amenity space would be for communal use and, therefore, it would not be 'private' even if it were to be located away from the windows and the street. Consequently, I do not consider it unreasonable to locate communal open space where it would be visible from within the development. The space would be subject to some noise from vehicles, especially those on Watford Road. There is no evidence that the road is especially busy and noise levels are likely to be consistent with a residential area. Furthermore, I saw that other flatted developments in the vicinity had a similar layout with open space fronting the roads, and the proposal would be consistent with this pattern of provision.
39. I conclude that the development would provide a suitable standard of outdoor amenity space for future occupiers. Consequently, it would accord with Policy BE23 of the Local Plan: Part 2 and the Council's SPD: Residential Layouts, which seek to ensure the provision of adequate garden space.

Conclusion

40. I conclude that the development should make provision for affordable housing. However, I am not satisfied that the planning obligation could be relied upon. In the absence of such provision, the development would be contrary to Policies 3.13 and 8.2 of the London Plan, Policy H2 of the Local Plan: Part 1, national policy as set out in the WMS, and the Council's Supplementary Planning Document on Planning Obligations (July 2014) which, amongst other things, require the provision of affordable housing to meet local needs.
41. For the reasons given above, the appeal is dismissed.

Debbie Moore

Inspector