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## Appeal Decision

Site visit made on 8 May 2019

**by Stuart Willis BA Hons MSc PGCE MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 July 2019**

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### **Appeal Ref: APP/E5900/W/18/3217909 53 Grove Road, London E3 4PE**

- 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 Liam Panormo of Plaistow Broadway Filling Stations Ltd against the Council of the London Borough of Tower Hamlets.
  - The application Ref PA/17/03278 is dated 22 December 2017.
  - The development proposed is the demolition of existing structures and buildings associated with the petrol station (sui generis) and erection of 19 no. residential apartments (C3) comprising 2 x 3 bed, 11 x 2 bed, 6 x 1 bed. Together with associated amenity space, refuse store, cycle store, landscaping, and related works.
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### **Decision**

1. The appeal is dismissed, and planning permission is refused.

### **Procedural Matters**

2. The details before me indicate that the scheme was amended prior to the appeal being submitted. This was to alter one of the 3-bed units to a 2-bed unit. These amendments resolved issues relating to the living conditions of future occupiers. I have therefore dealt with the appeal on the basis of the amended scheme and taken the description of development from the appeal form.
3. Following the appeal's submission, the appellant submitted a unilateral undertaking (UU) dated 8 May 2019. This included securing a proportion of the properties as affordable housing and of a post planning permission viability review. It also included several financial contributions and other requirements.
4. Subsequently a draft Section 106 Agreement (S106) was submitted, signed by the appellant, with changes to definitions and the viability review mechanism. While the Council indicated they were satisfied with its contents, they had not signed it. The appellant then submitted a further unilateral undertaking (UU2) dated 26 June 2019 based on the S106.

### **Application for costs**

5. The appeal form indicates that an application for costs was sought by the appellant and it was stated that details of this application would follow. The Planning Practice Guidance sets out the timescales for making an application for costs, being no later than the final comments stage for this type of appeal.

No further details have been provided and therefore no case for an award of costs has been made.

### **Main Issue**

6. The main issue of the appeal is the effect of the proposed development on the provision of affordable housing in the Borough.

### **Reasons**

7. The scheme proposes 3 of the 19 units as affordable housing. Having assessed the appeal on the basis of the revised plans, this would comprise 2 affordable rental homes and 1 intermediate unit. The level of provision is clearly, and considerably below the 35%-50% target of affordable homes on sites providing 10 or more residential units set out in Policy SP02 of the LDF Tower Hamlets Core Strategy (CS).
8. The appellant has provided detailed financial information that has been independently reviewed by the District Valuer. The Council has accepted the recommendation of the District Valuer and consider that the viability evidence at this stage indicates that the proposed development offers the maximum amount of affordable housing that can be viably afforded. I therefore, see no need to question the robustness of the evidence presented.
9. There is little dispute that this represents the most affordable housing that the scheme can provide. Development plan policies are clear that the level of affordable housing provision will be subject to viability considerations. Falling below the target level does not automatically lead to the refusal of planning permission. However, the viability of the proposed development is not the only consideration of whether the scheme is acceptable. There is no presumption that such circumstances will be accepted, if other benefits do not outweigh the failure of a site to contribute towards affordable housing provision.
10. I note the acute housing need in the area that has been evidenced through the Strategic Housing Market and Needs Assessments and Housing Strategy. The Council has acknowledged their own concern in relation to meeting their housing and affordable housing targets. The evidence presented to me in relation to the affordable housing need in the Borough serves to emphasise the small, but important contribution the proposal would make to this and to the overall housing supply in the area.
11. The Council has not raised concerns over the nature and mix of the affordable units put forward. Although the number of units are limited, the provision includes units of different sizes and types. Consequently, it would add to the choice of homes in the area and would assist in creating a mixed, balanced and sustainable community.
12. I appreciate that the S106 was provided and signed by the appellant. However, it has not been signed by the Council and therefore carries no weight. Moreover, UU2 has removed the areas of dispute between the parties over the affordable housing review mechanism. It would set the proposed contribution as the minimum level of affordable housing and ensure that there would be some on site provision.
13. The review mechanism gives potential for additional contributions to be provided subject to further viability assessments. However, UU2 seeks to

impose certain requirements and actions on the Council. This includes requiring any surplus profits as a result of the review mechanism to go towards affordable housing. A unilateral undertaking can only bind the parties who make it and their successors in title. Therefore, the Council is not bound by UU2 and not obligated to spend or repay contributions as is stated. As such, I cannot be certain that the scheme would maximise the level of affordable housing in line with the aims of development plan and national policies.

14. The PPG advises (Paragraph: 010) that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. Given the scale of the scheme, and absence of any detailed information to suggest otherwise, the proposal is not a complex or strategically important development. In addition, no exceptional circumstances have been demonstrated. Consequently, the use of a planning condition would not be appropriate in this instance.
15. I conclude that the proposed level of affordable housing would not be appropriate. It would fail to accord with Policies SP02 of the CS, Policy DM3 of the Tower Hamlets Local Plan Managing Development Document and Policies 3.3, 3.8, 3.9, 3.11, 3.12 and 3.13 of the London Plan. The nub of these seek to achieve and exceed housing targets and maximise the provision of affordable housing with a genuine choice of tenures to create socially mixed and balanced communities.

## **Other Matters**

16. While there are certain similarities between the appeals quoted to me by both main parties and this one, there are also elements that make the cases materially different. The Council of the Royal Borough of Kensington & Chelsea appeal<sup>1</sup> considered the loss of existing social housing and the Council of the London Borough of Redbridge appeal<sup>2</sup> related to a scheme where the starting point for contributions was zero. The Mid Suffolk District Council appeal<sup>3</sup> related to a review mechanism that has now been agreed in this appeal and provided a higher proportion of affordable housing. In any event, individual appeals are decided on their own particular merits and I have determined the appeal in this way.
17. The appeal site is adjacent to the Clinton Road Conservation Area and the Tredegar Square Conservation Area. The Council has not raised any concerns over the proposal's impact on these or their setting. The building would not replicate the nearby built form. However, given the existing site also does not do this, I see no reason to reach a different finding from the Council. The proposal would therefore preserve the character and appearance of the setting of the Conservation Areas and weighs neither for nor against the proposal.
18. The Council has not suggested they would have refused the application on matters other than affordable housing provision. The appellant contends that the development would not give rise to issues including impacts on living

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<sup>1</sup> APP/K5600/W/16/3149585

<sup>2</sup> APP/W5780/W/18/3200299

<sup>3</sup> APP/W3520/W/18/3194926

conditions of nearby residents, biodiversity, air quality, traffic or highway safety, character and appearance or contamination. Nonetheless, the absence of harm in other matters is a neutral factor.

19. I appreciate the appellant engaged in pre-application discussions. However, I have dealt with the appeal on its planning merits.

### **Conclusion**

20. Even if I were to conclude that there is a 5 year supply of housing land, this is not to be considered as an upper limit. The proposal would align with the aim of the Framework to significantly boost the supply of housing (Paragraph 59) and that small scale developments can make an important contribution to meeting the housing requirement (Paragraph 68). There would be benefits to the local economy arising from the construction period and future spend of occupants. Moreover, the site would utilise previously developed land in a location with good accessibility to public transport, services and facilities. These factors weigh in favour of the scheme, as do the other contributions included in UU2.
21. In some respects, the development aligns with local and national policy. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found that the appeal scheme would conflict with development plan policies and I afford this conflict significant weight. Any benefits of the scheme, even when taken collectively, would not outweigh the significant and demonstrable harm that would arise from the scheme by not maximising the provision of affordable housing.
22. Therefore, for the above reason the appeal is dismissed, and planning permission refused.

*Stuart Willis*

INSPECTOR