

Appeal Decision

Site visit made on 13 August 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2019

Appeal Ref: APP/D5120/W/19/3230529
106 Bexley Road, Erith DA8 3SP

- 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 P Kang against the decision of the Council of the London Borough of Bexley.
 - The application Ref 18/01564/FULM, dated 14 June 2018, was refused by notice dated 6 June 2019.
 - The development proposed is alterations and extensions to existing building to provide 13 apartments comprising 4 x 1 bed and 9 x 2 bed units with associated parking and amenity space.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr P Kang against the Council of the London Borough of Bexley. This application is the subject of a separate Decision.

Procedural Matters

3. I have taken the address and description of the proposal from the appeal form, as these are clearer than those provided on the application form.
4. A Unilateral Undertaking (UU) was provided as part of the appellant's appeal submissions. As the UU was not before the Council at the time of the application, I have given the Council the opportunity to comment on it as part of the appeal process, and have subsequently given the appellant the opportunity to respond to further comments received, in the interests of fairness, and to avoid prejudice to either party.
5. The draft London Plan has been subject to examination in public and the appointed Panel's report is awaited. While it is a material consideration, little weight can be given to it at this stage.

Main Issue

6. The main issue is whether or not the proposed development would make adequate provision for affordable housing.

Reasons

7. Policy CS10 of the London Borough of Bexley Core Strategy 2012 (CS) sets out a requirement for 35% of units in residential schemes of ten units or more to be affordable housing, of which 70% should be social rented and 30% should be intermediate housing. The proposal would replace one dwelling with 13 flats, and therefore there is a requirement for 35% of them to be affordable, in order to comply with the development plan. The policy also states that where a developer suggests that site viability does not permit full provision at the level required by the policy, this position will need to be demonstrated through a full financial appraisal before any agreement is made to amend the mix of tenures and then to reduce the proportion of affordable housing.
8. The appellant has provided a viability appraisal, which indicates that the proposal would not generate sufficient surplus to support any affordable housing provision, and the Council does not dispute this. In nonetheless requiring a financial contribution towards off-site affordable housing provision, the Council refers to paragraph 64 of the National Planning Policy Framework (the Framework), which expects at least 10% of the homes provided in major developments to be available for affordable home ownership. However, footnote 29 clarifies that this provision would be as part of the overall affordable housing contribution from the site. The definition of affordable housing in Annex 2 of the Framework includes housing for sale and housing that provides a route to home ownership. I therefore do not agree that this requirement of 10% affordable home ownership is not also subject to viability considerations.
9. Paragraph 62 of the Framework in relation to the provision of affordable housing on-site, off-site, or an appropriate financial contribution, is therefore relevant. I am also mindful of paragraph 57 which states it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment. The weight to be given to it is a matter for the decision maker. I am satisfied that on the basis of the evidence before me, the provision of affordable housing would render the scheme unviable.
10. The Council has provided evidence of a high level of demand for affordable homes, and a current and backlog level of unmet need in the Borough. The Homes for Londoners Affordable Housing and Viability Supplementary Planning Guidance 2017 (Homes for Londoners SPG) states that where the provision of affordable housing is shown not to be viable, schemes should be subject to early and late stage review mechanisms, in order to ensure that affordable housing contributions are made if viability improves over time. This accords with the advice in the Planning Practice Guidance¹. In this context, early and late stage reviews of the viability of the scheme are necessary.
11. The submitted UU includes a mechanism which seeks to establish whether, at an early stage and late stage of implementation of the development, viability has improved such that affordable housing could be provided, in the form of a financial contribution towards off-site provision. However, this does not make any provision for the affordable housing to be provided on-site, whereas the Framework and the Homes for Londoners SPG indicate that consideration should only be given to off-site provision where this is robustly justified. No

¹ Paragraph: 009 Reference ID: 10-009-20190509

such justification has been provided. I therefore find that the UU would not ensure that affordable housing would be provided in an appropriate manner, that gives preference to on-site provision.

12. I have further concerns with the enforceability of the UU. There is no provision for the resolution of any disputes between the appellant and the Council in relation to the early or late stage reviews. In addition, it has not been executed by the mortgagee, it includes signatures on separate pages which do not form part of a certified copy, and no evidence of the title to the land has been provided. Some of the definitions within the UU are insufficient and there are some drafting errors. These shortcomings undermine the clarity and enforceability of the UU.
13. A revised UU has been received which corrects the drafting errors, but this has not been signed or executed. Moreover, it does not overcome the shortcomings identified above. The appellant has suggested that a pragmatic way forward would be to impose a negatively worded Grampian condition requiring the UU to be lawfully executed by all relevant parties prior to the commencement of the development. However, I am not satisfied that the submitted draft UU is sufficient to secure affordable housing. Moreover, the PPG² advises that such a condition should only be used in exceptional circumstances. I have seen no evidence that such circumstances exist in this case. Consequently, the imposition of a Grampian condition would not overcome my concerns.
14. For the reasons set out above, I am not satisfied that the UU would provide an enforceable mechanism for ensuring the delivery of affordable housing, as may be required. Accordingly, I conclude that adequate provision would not be made for affordable housing. The proposal would therefore be in conflict with CS Policy CS10, which seeks to provide affordable housing as a proportion of all provision. It would also conflict with the Homes for Londoners SPG and the provisions of the Framework.

Other matters

15. A series of concerns have been raised by local residents. These do not have any bearing on the main issue, and as I am dismissing the appeal, I have not pursued them further.
16. I am aware that the appellant is frustrated at the Council's change in approach to the question of affordable housing, during the consideration of the application. However, I have considered the proposal on its own merits.
17. The Council states that the building is locally listed. Paragraph 197 of the Framework advises that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. The Council has concluded that the historic value of the building would be retained as the proposal would include the retention of the shell of the building and the front elevation. I have no reason to disagree, and accordingly conclude that the proposal would have an acceptable effect on the significance of the heritage asset.

² Paragraph: 010 Reference ID: 21a-010-20190723

Planning Balance and Conclusions

18. The appellant states that the Council has failed to deliver its housing requirement over the previous three years, as demonstrated by the 2018 Housing Delivery Test. The Council maintains that it can demonstrate sufficient supply to meet its five year housing target, including an appropriate buffer, and I have no reason to disagree. Accordingly, the 'tilted balance' of paragraph 11d of the Framework is not engaged.
19. The proposal would deliver 13 new houses within an urban location, which would be a small contribution to the supply of housing. There is support in the Framework for the provision of housing on small sites and the efficient use of land. However, this does not outweigh the conflict with the development plan and the Framework through the lack of adequate provision of affordable housing. For the reasons set out above, I conclude that the appeal should be dismissed.

N Thomas

INSPECTOR