



Appeal Decision

Site visit made on 24 September 2019

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal Ref: APP/K0425/W/19/3231499

73a Gayhurst Road, High Wycombe HP14 7XJ

- 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 Red Kite Community Housing against the decision of Wycombe District Council.
 - The application Ref: 18/05416/FUL, dated 12 February 2008, was refused by notice dated 12 February 2019.
 - The development proposed is the demolition of existing building and erection of 5 one bed dwellings and 19 two bed dwellings with car parking spaces.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council amended the description of the proposed development from 'the demolition of existing building and erection of 5 one bed dwellings and 19 two bed dwellings with car parking spaces' to 'demolition of existing buildings and erection of a three storey block of 8 x 1-bed and 16 x 2-bed flats (24 in total) with associated bin/cycle stores, landscaping & 24 parking spaces'. The revised description has also been used by the appellant on the appeal form. I consider the revised description to more precisely describe the proposed development and have therefore determined the appeal on this basis.
3. The Council has confirmed that the Wycombe District Local Plan (2019) (the Local Plan) has now been adopted and that, in consequence, the policies of the Wycombe District Local Plan (2004) and Core Strategy Development Plan Document (2008) have been superseded. I am mindful that all parties have had the opportunity to comment on this change in circumstances and have therefore determined the appeal on this basis.

Main Issues

4. The main issues are:
 - whether the proposed development makes appropriate provision for affordable housing; and
 - whether the development would provide adequate access to retail and community facilities.

Reasons

Affordable housing

5. The appeal site consists of a building containing vacant commercial units with residential accommodation on the upper floors. The surrounding area is residential in character and contains varying types of dwelling.
6. I have been directed towards Policy DM24 of the Local Plan and the Developer Obligations Supplementary Planning Document (2013). Amongst other matters, these seek to ensure the provision of a mixture of house types, including securing a provision of certain developments for occupation on affordable tenures. This approach is consistent with the National Planning Policy Framework. In consequence, the planning policy position is that certain larger developments should include a proportion of dwellings for occupation on affordable tenures, and for this to be secured in perpetuity.
7. A signed Unilateral Undertaking (UU) has been submitted, however, the evidence before me is indicative of there being a chargee on the land. This chargee is not a signatory to the UU. In consequence, I have been unable to establish that the appellant has enough interest in the land to bind it to the provision and retention of the required affordable housing.
8. Whilst the documentation before me is indicative that it is the intention of the appellant for the entirety of the development to be made available for affordable housing, the submitted UU identifies the development as being made available for occupation on an affordable rented tenure. This conflicts with the requirements of the above adopted planning policies, which state that affordable housing should comprise a combination of affordable/social rented accommodation and intermediate tenures. The fact that the UU does not achieve this means that this objective has not been met.
9. Therefore, there is no suitable mechanism by which the appropriate affordable housing tenures would be secured. As a result, there is a likelihood that, in the future, all dwellings could be occupied on market tenures. This is of concern as the evidence before me is indicative of there being a significant need for affordable housing in the locality.
10. I have had regard to the National Planning Practice Guidance. This advises that a negatively worded condition, limiting the development that can take place until a planning obligation or other agreement has been completed, is unlikely to be appropriate. Furthermore, as affordable housing tenures would need to be enforced in the event of future changes in ownership of the site, I am of the view that a condition cannot provide sufficient precision or certainty.
11. I therefore conclude that owing to the lack of an appropriate legal agreement, the development would not make adequate provision for affordable housing. The development would therefore not comply with Policy DM24 of the Local Plan and the Developer Obligations Supplementary Planning Document (2013).

Access to retail and community facilities

12. The ground floor of the appeal site features several units that are currently vacant, apart from one unit used by a youth action group. The units have been used for a number of activities including retailing and a gym. The surrounding area features several retail units, including convenience stores, in addition to

other facilities, such as a café and takeaways. The topography of the appeal site and its environs is varied.

13. Given the current vacant nature of the units within the appeal site, the development would not result in any existing retail business from being displaced. Furthermore, there are several facilities available within the surrounding area that offer appropriate convenience retailing, in addition to other commercial activities. Accordingly, residents of the proposed development, and its immediate environs, would have appropriate access to such facilities.
14. I am conscious that the surrounding topography is varied and that, in some places, the road and pavement network is steep. However, such sections are short and this is, in my opinion, an accessible urban area where residents do not need to rely upon the use of private cars to reach various facilities. In addition, I note that the nearby pavements are wide and feature numerous street lights. Accordingly, I believe that there is a suitable pedestrian network to facilitate access to convenience retailing and other facilities.
15. My attention has been drawn to Community Facilities Supplementary Planning Document (2011) (the SPD). Whilst I note that this document specifies maximum distances that residents should be from facilities, this document does not vary these distances depending on topography.
16. Whilst it appears that there have been no recent attempts to market the units for a commercial occupier, the evidence before me is indicative that previous attempts did not result in occupations of the units. The Council's concerns that more contemporary advice by letting agents is not directly applicable to the appeal site are acknowledged, however, given that I have found that residents would have appropriate access to comparable facilities, I do not believe that this matter should impede the redevelopment of the site. Additionally, some submitted evidence is indicative of the current retail units being unsuitable for contemporary business needs.
17. I note that a previous occupier of one of the units has indicated that they would be willing to commence retailing at the appeal site, should appropriate terms be offered. Whilst this may be the case, this would not secure occupiers for the remainder of the site and as such, would not result in significant benefits to the general vitality of the immediate vicinity. I have also had regard to the suggestion that the appeal scheme could be redesigned to feature a retail unit. However, it is incumbent upon me to assess the scheme based upon the information before me.
18. The Council has also suggested that the nearest retail unit to the appeal site does not offer utility 'top-up' cards. Whilst this may be the case, there is no mechanism within the planning system to ensure that any retail unit within either the existing units, or any future redevelopment, offers such a facility. Accordingly, it is not possible to give a significant amount of weight to such a matter.
19. One of the units has been, in the past, used as a gymnasium and, more recently, by a youth group. Should the development proceed, this use would be lost, however, I note the presence of comparable facilities within relatively easy reach. In addition, the appellant has marketed the premises, but has been unable to find suitable occupiers.

20. I note that the submitted Community Needs Assessment does not include all of the alternative uses listed in support of Policy DM29 of the Local Plan, however, the policy's supporting text to which I have been directed does not specify a minimum number of uses that should be considered. Notwithstanding this, some of the specified uses would fall within a retail classification. I have already established that the proposed development would not cause a shortage of such facilities in the vicinity. Furthermore, it is likely that some of the other uses would require planning permission or are unlikely to be sited in a suburban residential area. Accordingly, there does not appear to be certainty that the site could be developed for an alternative community use.
21. I therefore conclude that future residents of the appeal site, and the surrounding area, would have adequate access to retail and community facilities. The development, in this regard, would be in conformity with the requirements of Policy DM29 of the Local Plan and the SPD, which, amongst other matters, seek to ensure that new developments are adequately served by new, or existing, community facilities; and that such facilities should only be lost in instances where they are surplus to requirements.

Other Matters

22. I acknowledge the Government's objective of increasing housing supply and that the definition of Permitted Development has been amended in order to allow the change of use of some shops to residential uses. Whilst the proposal is of some benefit in meeting this objective, it does need to be assessed against the harm as identified in respect of one of the Main Issues.
23. I have had regard to the efforts made by the appellant in designing a scheme that would result in improvements to the public realm; the provision of more energy efficient homes; offer improved waste storage and recycling facilities; and provide cycle storage. It is acknowledged that the development, if permitted, would generate employment opportunities during the construction process as well as, potentially, contributing to increased Council Tax revenue and increased spending within the local economy. However, such matters are only some of all those that must be considered in assessing a development and the benefits are likely to be relatively small scale and localised in impact. In consequence, significant weight cannot be attributed to them.

Planning Balance and Conclusion

24. Whilst I have found that residents of the development, and those within the wider area, would have adequate access to retail and community facilities and that the proposal would increase the supply of housing, I have been unable to identify a means by which an appropriate level of affordable housing could be secured in the absence of a legal agreement. The under provision of affordable housing amounts to significant, unmitigated, harm which outweighs my findings in respect of the second Main Issue. Accordingly, for the preceding reasons, the appeal is dismissed.

Benjamin Clarke

INSPECTOR