



Appeal Decision

Site visit made on 11 November 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2019

Appeal Ref: APP/A2280/W/19/3225215

4, 16, 20 and 22 High Street, Rainham, Kent ME8 7JE

- 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 Churchill Retirement Living against The Medway Council.
 - The application Ref MC/18/2864, is dated 25 September 2018.
 - The development proposed is described as 'detailed planning application to form 54 No. apartments for older people (sixty years of age and/or partner over fifty-five years of age), guest apartment, communal facilities, access, car parking and landscaping'.
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Decision

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

Preliminary Matters

2. An amended drawing has been deposited with the appeal which shows alterations to the proposed access. The amendments, whilst potentially significant, are not extensive. Moreover, the drawing was submitted at the outset of the proceedings, so all parties have had ample opportunity to consider the changes. I have therefore accepted the amended drawing and considered it as part of my overall assessment.

Background and Main Issues

3. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit this appeal. The Council has confirmed that, had it been in a position to do so, it would have refused the proposal due to concerns over highway safety, particularly the layout of the access, and the absence of a planning obligation securing financial contributions towards affordable housing and infrastructure. Accordingly, the main issues in this appeal are: 1) Whether the proposed development would make adequate provision for affordable housing and infrastructure; and 2) The effect of the proposed development on highway safety.

Reasons

4. Policy H3 of the Medway Local Plan (LP) seeks to secure a proportion of the number of homes proposed as part of a residential development as affordable housing. This requirement is evidenced by the North Kent Strategic Housing Assessment 2015. The appeal scheme is for 54 homes and the Council suggests this would ordinarily result in a requirement for 14 affordable homes to be provided. The appellant does not dispute this. Policy H3 is consistent with

Paragraphs 62 and 63 of the National Planning Policy Framework (the 'Framework') and can therefore be given significant weight.

5. However, for management purposes the 14 affordable homes would need to be in a separate block. The Council and appellant agree that this would not be feasible given the constraints imposed by the size and layout of the site. Instead, the appellant has offered a financial contribution of £225,000 towards the provision of off-site affordable housing. This reduced provision would be reasonable given the site constraints and because the scheme, by its very nature, would be addressing a specific housing need. Moreover, I have seen nothing of substance to suggest such a contribution would render the scheme unviable and the Medway Guide to Developer Contributions and Obligations 2018 (DCG) permits such an approach. Thus, the contribution would enable the scheme to make adequate provision for affordable housing and is therefore necessary and proportionate.
6. Policy S6 of the LP seeks to secure the infrastructure needed to make a development acceptable. This is consistent with Paragraph 92 of the Framework, which seeks to enhance the sustainability of local communities. To this end the Council is seeking a financial contribution of £33,320.70 towards the Rainham Healthy Living Centre, which would support the provision of local care. This is based on a contribution of £617.05 per home, which is in line with the tariff in the DCG. This in turn is based on HUDU modelling. Accordingly, there is an evidence-based rationale behind the requirement. There is a likelihood that future residents of the appeal scheme may need additional support from care facilities given their age profile, and without the contribution this would place a burden on local care infrastructure. The appellant has not provided substantive evidence to challenge the necessity of this contribution or to indicate it is disproportionate or unrelated to the proposal.
7. The DCG references the Council's Playing Pitch and Outdoor Sports Facilities Study, the Open Space PPG17 Study and the Ward Open Space Improvement Plan, which collectively identify a need to improve the quantity and quality of public open space. Thus, the Council seeks a contribution from all development towards the provision of new facilities, or the improvement of existing facilities and sites, to create additional capacity. This is because such development would otherwise place unmitigated pressure on existing facilities. Specifically, the DCG states that retirement flats/housing will be expected to contribute. To this end the Council is seeking a contribution of £23,660 towards the enhancement of facilities at several stated sites¹. Given the evidence base behind the contribution, I am satisfied it would be necessary and appropriate and I note the appellant has not challenged it.
8. The Council are also seeking £13,230 towards public realm improvements in Rainham but it is unclear how this contribution has been calculated and what it would be spent on. Although the appellant has not objected to this contribution I cannot, in the absence of adequate evidence justifying it, conclude that it is either necessary or proportionate. That said, the other contributions would be consistent with the tests in Paragraph 56 of the Framework as well as those in Regulation 122 of the Community Infrastructure Levy Regulations.

¹ Holding Street, Cozenton Park, Rainham Recreation ground, Berengrave nature Reserve, Old Bloor Lane Allotment and Great Lines Heritage park

9. The appellant states in Paragraph 3.6 of their statement that they will submit a completed s106 legal agreement to secure the requested financial contributions i.e. those sought by the Council and discussed above. However, a planning obligation in the form of either an agreement or undertaking is not before me and this is despite me requesting an update on this matter.
10. The Planning Practice Guidance advises² that in exceptional circumstances a negatively worded planning condition requiring a planning obligation or other agreement to be entered into before development can commence may be appropriate in the case of more complex and strategically important development. The appeal scheme is neither complex nor strategic and therefore a planning condition along these lines cannot be imposed. The PPG also states³ that a positively worded planning condition cannot be used to secure a financial contribution, so this is not an option either.
11. As such, there is no mechanism before me that would secure the necessary financial contributions towards affordable housing and infrastructure. I therefore conclude that, save for the public realm contribution sought by the Council, the appeal scheme would not make adequate provision in respect of affordable housing and infrastructure and therefore it would be at odds with Policies H3 and S6 of the Medway Local Plan 2003 (LP).

The effect on highway safety

12. As already set out, a revised drawing has been submitted with the appeal and this has altered the layout of the access. The revised drawing confirms that the highway access would be widened to around 5.5m so that two vehicles can pass one another. This is significant, as vehicles turning left into the site would not be in the middle of the access, thereby minimising the risk of sudden braking and reversing manoeuvres back into the A2 if motorists met one another. In addition, a 'Keep Clear' sign would be applied outside the access. This should ensure that it remains clear and unobstructed so that vehicles turning right into the appeal site would not hold up traffic on the A2.
13. The revised drawing also shows a slight revision to the alignment of the driveway, whereby it would be moved a little off the western boundary with a kerb provided. This would in turn facilitate the provision of adequate pedestrian visibility splays, so motorists and pedestrians would be able to see one another and react to their presence. Moreover, the proposal would include rumble strips to slow vehicles using the driveway when approaching the exit. These measures would ensure pedestrian safety is maintained.
14. The Council has confirmed that these measures have been incorporated into a subsequent revised application⁴. This has a resolution to approve with the Council finding no harm in respect of highway safety due to the amendments described in the foregoing paragraphs. The committee report outlining the Officer's assessment of the scheme confirms that there were no technical objections from highway specialists and that the revisions were informed by an independent Road Safety Audit. This analysis is of significant weight to the appeal scheme before me, which proposes an identical highway layout. I

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

³ Paragraph: 005 Reference ID: 21a-005-20190723.

⁴ Council reference MC/19/0797 – This is effectively the same scheme as that before me

therefore conclude that the appeal scheme would not harm highway safety and therefore a conflict with Policies T2 and T3 of the LP would not occur.

Other Matters

15. The Council has not disputed the appellant's proposition that the Council is currently unable to demonstrate a five-year housing land supply as required to by the Framework. Paragraph 11 of the Framework states that in these circumstances, permission should be granted unless the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
16. The appeal scheme would provide economic benefits to the construction industry and from the spend of future occupants. It would also provide support to housing supply, choice and need by providing a specific type of accommodation for which there is an identifiable local need. It would do so in an efficient way close to services in a modern purpose-built building. This in turn could result in under occupied stock being released. Given the scale of the proposal these would be notable benefits.
17. However, the benefits of the proposal would be realised in a way that failed to mitigate for its impacts on infrastructure and no affordable housing would be provided. No justification has been provided explaining these shortcomings, which would be at odds with the development plan and the Framework. This would be an adverse impact that would significantly and demonstrably outweigh the benefits of the proposal, a finding that does not indicate the proposal should be determined other than in accordance with the development plan.
18. The Council have suggested that the appeal scheme would have a significant adverse effect through recreational disturbance on the Medway Estuaries and Marshes Special Protection Area. However, given my overall conclusion that the appeal should fail, the proposal would have no effect on the SPA and therefore I have not considered this matter further. Various concerns have been raised by interested parties including reservations regarding the design of the proposal, traffic generation and noise and disturbance. However, given my overall conclusion it has not been necessary for me to address these matters further. This is because my findings would not alter the outcome of the appeal, the absence of harm being a neutral matter.

Conclusion

19. The proposed development would not harm highway safety. However, it would fail to provide affordable housing and place unmitigated pressure on local infrastructure. Therefore, the proposal would not accord with the development plan taken as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Graham Chamberlain
INSPECTOR