



Appeal Decision

Site visit made on 3 June 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2020

Appeal Ref: APP/Q3820/W/19/3243650

42-44 Brighton Road, Southgate, Crawley RH10 6AT

- 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 Chris Maunders (Turnbull Land Ltd) against the decision of Crawley Borough Council.
 - The application Ref CR/2019/0214/OUT, dated 25 March 2019, was refused by notice dated 19 November 2019.
 - The development proposed is the demolition of 42-44 Brighton Road, Crawley and the erection of a new residential building comprising of 20 no. 1 and 2 bedroom apartments and the creation of a new vehicular access from Stonefield Close and associated works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Turnbull Land Ltd against Crawley Borough Council. That application is the subject of a separate Decision.

Procedural Matters

3. The description of development in the heading above has been taken from the planning application form. At Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered which largely replicates the description of development that has been used by the Council in the decision notice. Although the description used in the appeal form and the decision notice are similar, neither of the main parties has provided written confirmation that a revised description of development has been agreed. Therefore, I have used the one given on the original application.
4. The application sought outline planning permission for the development described above with the matters of appearance, landscaping and scale reserved for future consideration. I have considered the appeal on that basis.
5. The Council refused the application that is the subject of this appeal for two reasons, with the second reason relating to the absence of a mechanism to secure financial contributions towards tree planting and open space facilities. The appellant has submitted a planning obligation in the form of a completed Unilateral Undertaking (The UU) to address those matters. I shall address this further in the second main issue below.

Main Issues

6. The main issues are whether or not the proposed development makes appropriate provision for affordable housing and tree planting and open space.

Reasons

Affordable Housing

7. Policy H4 of the Crawley Borough Local Plan 2015-2030 (CBLP), adopted 2015, states that 40% affordable housing will be required from all residential developments and that an additional 10% of units should be low cost housing. However, the proposed development would involve the erection of 20 flats, with no affordable housing being provided on-site or off-site and no financial contribution being made in lieu of such a provision.
8. Policy H4 of the CBLP allows for a flexible approach to be taken towards the provision of affordable housing where evidence is provided to show that the site cannot support such a provision from a viability perspective and that the development clearly meets a demonstrable need. In this regard, no case has been made to demonstrate that the development would meet an identified need. Moreover, it appears to be uncontested between the main parties that the Council can demonstrate the existence of an adequate supply of housing land and that housing is being delivered in line with the targets of the CBLP.
9. The main parties agree that the development would be unviable if it were to include affordable housing. However, this is only one of the requirements of policy H4 of the CBLP and the case that has been made in respect of viability does not alter the requirement of Policy H4 for it be shown that the development would meet a demonstrable need. Therefore, the development would neither meet the affordable housing target contained within Policy H4 of the CBLP nor would it meet both criteria contained within Policy H4 that is required to be met in order for a flexible approach to be taken towards the provision of affordable housing.
10. Policy H4 of the CBLP was adopted prior to the publication of the revised National Planning Policy Framework (The Framework). Whilst the primary focus of both main parties appears to have been on paragraphs 57 and 64 of The Framework and their implications for the proposed development, the Framework is to be taken as a whole and, therefore, I consider it necessary to consider The Framework in that context. Moreover, in line with paragraph 213 of The Framework, it is necessary to consider the degree of consistency between pre-existing policies and The Framework in order to establish the weight that the development plan policies should be afforded.
11. The Framework provides a definition of affordable housing that includes different tenures to those referred to in Policy H4. Furthermore, The Framework creates a different threshold for requiring affordable housing and sets out different grounds to take a flexible approach towards the provision of affordable housing. However, Policy H4 of the CBLP is consistent with Paragraphs 57 and 62 of The Framework in terms of identifying that viability is a relevant consideration and that there is a preference for affordable housing to be provided on-site. For these reasons, whilst Policy H4 is not entirely consistent with The Framework, the level of divergence is limited. Accordingly,

I afford Policy H4 of the CBLP, and the conflict with that policy, substantial weight.

12. Whilst creating an expectation that affordable housing is provided on site, Paragraph 62 of The Framework also allows for an off-site provision or a financial contribution in lieu of an on-site provision where this is robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities. However, the development would not make any form of provision or a financial contribution towards affordable housing and no case has been made that the proposal would enable the creation of a mixed and balanced community.
13. Neither would the development accord with Paragraph 64 of The Framework which states that planning decisions should expect at least 10% of the homes provided in major development involving housing to be available for affordable home ownership. In this regard, none of the exemptions contained within Paragraph 64 are applicable to the proposed development.
14. Paragraph 64 includes the words 'expect' and 'requirement'. Therefore, whilst I have had regard to the contentions of both parties and the appeal decisions in the London Borough of Redbridge¹ and Luton Borough² that have been brought to my attention, I do not find it crucial to distinguish between the meaning of those words. Even if I proceed on the basis that providing 10% affordable home ownership is an expectation rather than a requirement, this still represents a clear indication that The Framework seeks such a provision to be made.
15. Paragraph 61 of The Framework identifies that planning policies should reflect the housing needs of different groups. It appears to be uncontested that Policy H4 of the CBLP is reflective of local affordable housing needs and the evidence of the Council indicates that affordable housing has been forthcoming at an overall rate of 27%. As such, the evidence before me indicates that the identified affordable housing targets have not been met. A similar conclusion was reached in an appeal decision³ that has been brought to my attention and the need for affordable housing within the Crawley Borough has not been contested by the appellant in this case.
16. Therefore, for the reasons set out above and in the absence of evidence to the contrary, it appears that there is an identified need to provide affordable housing, but no heightened need to provide housing of the type proposed. In this context, the proposal would not reflect the aims of paragraphs 61, 62 and 64 of The Framework and the harm arising from the inclusion of no affordable housing within the proposed development weighs significantly against the proposal.
17. Paragraph 57 of The Framework states that the weight to be given to a viability assessment is a matter for the decision taker having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date and any changes in circumstances since the plan was brought into force. In this regard, the main parties agree that the

¹ APP/W5780/W/18/3200299

² APP/B0230/W/19/3235438

³ APP/Q3820/W/19/3236721

development would be unviable if affordable housing were incorporated. However, the viability assessment does not refer back to the viability of the CBLP or demonstrate that there has been a change in circumstances since it was adopted. In this case, as the evidence before me does not demonstrate that the proposed development would meet a particular housing need, I do not conclude that the content of the viability assessment outweighs the importance of providing affordable housing in accordance with the abovementioned paragraphs of The Framework.

18. Three appeal decisions⁴ from outside the Crawley Borough have been brought to my attention where affordable housing was not sought or was not deemed to be required and Paragraph 64 of The Framework was not referred to. However, those decisions do not represent a reason for Paragraph 64 to be disregarded in this case. Furthermore, as none of those appeal decisions relate to land within the Crawley Borough and I have no basis to conclude that the relevant planning policies or other relevant considerations are comparable, they do not represent a reason to reduce the weight that I afford to the importance of providing affordable housing. Therefore, those decisions appear to be of limited relevance other than where they augment the uncontested point of the appellant that viability is a relevant consideration.
19. The content of the London Borough of Redbridge appeal decision that is referred to above indicates that there are very few similarities between that proposal and the proposal that is the subject of this appeal. I have therefore had regard to the manner in which Paragraph 64 of The Framework was referred to in that decision, but do not consider that case to be directly relevant in any other respect.
20. An appeal decision⁵ within the Crawley Borough has been brought to my attention where an affordable housing contribution was not pursued by the Council due to the development being unviable. However, I have insufficient details before me to be satisfied that the developments or the relevant considerations are comparable. As such, I have no basis to conclude that the same approach should be taken in respect of this development.
21. I acknowledge that a financial contribution towards the off-site provision of affordable housing was offered by the appellant prior to the determination of the application. However, that offer has been rescinded and is not, therefore, a matter that needs to be addressed any further.
22. For the reasons given above, the proposal would not make appropriate provision for affordable housing. The development would, therefore, be contrary to policy H4 of the CBLP, the requirements of which are set out above. The proposal would also be contrary to The Framework which states that, where affordable housing is identified to be required, it should be provided on site with 10% of the homes within major developments being available for affordable home ownership. The proposal would also be contrary to the Council's Affordable Housing Supplementary Planning Document (2017) which aims to enable the delivery of affordable dwellings in order to meet identified housing needs.

⁴ APP/C3620/W/18/3219235, APP/T1410/W/19/3229465 and APP/P1750/W/19/3233290,

⁵ APP/Q3820/W/18/3199581

Tree Planting and Open Space

23. Policy CH6 of the CBLP requires that trees are planted at a development site at a rate of one tree per dwelling. Furthermore, any trees that are removed as a result of development are required to be replaced at a rate that is proportionate to the size of the trees that are removed. The appellant's submissions indicate that replacement trees would be included within the development and The UU that has been submitted by the appellant includes a formula to enable a financial contribution to be made in lieu of an anticipated shortfall of tree planting at the site.
24. Policy ENV5 of the CBLP and the Council's Green Infrastructure Supplementary Planning Document (GISPD), adopted 2016, combine to require that, in addition to the contributions that are made under the terms of the Community Infrastructure Levy, developments of between 10 and 49 dwellings should include play space and amenity green space on-site. They also identify that contributions may be required towards other provisions including allotments. As no provision is included within the development, the Council sought a contribution of £11,575 towards three separate types of open space in accordance with the GISPD method of calculating off-site financial contributions.
25. In both of these respects I consider that the obligations are necessary in order to make the development acceptable in terms of compliance with the abovementioned policies, directly related to the development and fairly and reasonably related in scale and kind to the development. As such, they would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
26. The Council has stated that the terms of The UU reflect the obligations that were sought but they have not assessed the content of The UU in detail. Whilst The UU indicates that the identified owners have title absolute in respect of the land within the appeal site, this has not been confirmed through the submission of title details or any other records of land ownership. Furthermore, the reference to a Landscape Details Plan within The UU does not correlate with the titles of any of the plans that accompanied the application and as such The UU lacks precision. In this respect, plans 0268-P021 Revision A and 0268/P031 show some landscaping details, but are inconsistent in terms of the number of individual trees that are proposed and imprecise in terms of showing two areas where an unspecified number of trees are proposed. Plan 0268/P031 also shows the planting of a tree outside the appeal site and it is unclear whether this would count towards the on-site provision.
27. In the event that I were minded to allow the appeal, it appears that these matters would be straightforward to remedy and I have, therefore, taken the potential benefits in terms of tree planting and open space provision into account. Nevertheless, as I am dismissing the appeal for other reasons, I have not pursued this matter further with the main parties.

Other Matters

28. I acknowledge that the appellant sought pre-application advice from the Council and is frustrated with the conduct of the Council. However, these factors do not alter my assessment of the main issues.

Planning Balance and Conclusion

29. The proposed development would result in a boost of housing supply at a site that currently contains two dwellings, thereby representing an increase of the efficiency of the use of land. However, the existence of an adequate supply of housing and there being no evidence before me to demonstrate that the proposal meets a particular housing need leads me to conclude that the benefit arising in this regard is moderate. The location of the development relative to public transport connections and the services, facilities and employment opportunities that are available within Crawley Town Centre is a positive factor of the proposed development. Furthermore, the potential to achieve a net increase of trees within the Borough and the improvement of off-site open space also represent potential benefits to the wider community.
30. However, by not making any form of contribution towards the supply of affordable housing, the proposal would not address an identified need that exists within the Crawley Borough. Although I acknowledge that including affordable housing would render the development of the scale and configuration proposed unviable, I consider that the absence of affordable housing weighs heavily against the proposal. This also leads me to conclude that the development would not accord with The Framework when taken as a whole.
31. Therefore, I conclude that the lack of affordable housing provision and the associated conflict with the development plan is not outweighed by other material considerations, including The Framework. Accordingly, I conclude that the appeal should be dismissed.

Ian Harrison

INSPECTOR