



Appeal Decision

Site visit made on 18 January 2021

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 February 2021

Appeal Ref: APP/R5510/W/20/3259526

54a - 64a The Broadway, Joel Street, Northwood HA6 1PA

- 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 Haven Properties Ltd against the Council of the London Borough of Hillingdon.
 - The application Ref 63833/APP/2020/1280, is dated 16 April 2020.
 - The development proposed is a two storey rear extension and conversion of roof space to habitable use to include 3 side dormers and conversion from 6 x 3 bed flats to 4 x 2 bed and 8 x 1 bed flats and 3 studio flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made against the Council's failure to determine the application within the relevant time period. The Council has indicated that, had it been in a position to do so, it would have refused the application. The Council's putative reasons form the basis for the main issues, set out below.
3. The Council indicates that the description of the proposal used by the appellant is slightly inaccurate, as 3 of the units are studio flats and have been described by the appellant as 1 bedroom flats. I have used the amended description above.
4. The proposal is identical (although a slightly inaccurate description of the units sizes was used) to a previously allowed appeal (Ref: APP/R5510/W/17/3172079) dated 10 July 2017. That permission has now lapsed and works have not started.

Application for costs

5. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues in this appeal are;
 - The effects of the proposal in relation to air quality

- Whether the proposal should contribute to affordable housing.

Reasons

Air Quality

7. The Council's Local Plan Part 2 Development Management Policies (DMP) of 2020, includes Policy DMEI 14, which states that proposals should demonstrate appropriate reductions in emissions. It adds that, development proposals should, as a minimum: i) be at least "air quality neutral"; ii) include sufficient mitigation to ensure there is no unacceptable risk from air pollution to sensitive receptors, both existing and new; and iii) actively contribute towards the improvement of air quality, especially within the Air Quality Management Area. Policy DMCI 7 relates to Planning Obligations, and states that to ensure that development is sustainable, proposals must demonstrate that there will be sufficient infrastructure of all types to support it. It adds that planning obligations will be sought to ensure that development proposals provide or fund improvements to mitigate site specific impacts made necessary by the proposal; applications that fail to secure an appropriate planning obligation to make the proposal acceptable will be refused.
8. The Council has published its Air Quality Action Plan (AQAP) of May 2019, which identifies the appeal site as falling within an Air Quality Focus Area (AQFA). These are defined as locations where pollution levels are already high and there is public exposure in a high population density, with current measures not being sufficient to improve air quality. The Council states that within the AQFAs, where the limit levels of pollution are already being exceeded, further action and mitigation is necessary. The AQAP identifies a number of issues, including pollution arising from development and buildings, and seeks to mitigate these by measures including contributions for damage calculation costs, applying the DEFRA damage cost approach. The Council indicates that the proposal gives rise to a requirement for a contribution to help to evaluate and reduce emissions and exposure within the locality, by way of a planning obligation. No such measures for a contribution have been submitted by the appellant.
9. I can see that this issue was not under specific consideration within the previous appeal, referenced above. However, I note that the decision pre-dated the publication of the AQAP. The appellant also states that this issue was not raised during the application stage. However, the Council's officers have made specific reference to local and London-wide policies which are supported by the NPPF. In the absence of a mechanism to make a contribution in relation to air quality, the proposal is contrary to the above policies.

Affordable Housing

10. Policy DMH 7 of the DMP states that developments with a capacity to provide 10 or more units will be required to maximise the delivery of on-site affordable housing; subject to viability, a minimum of 35% should be delivered. The policy adds that the requirement for affordable housing will apply to "*i) sites that are artificially sub-divided or partially developed; ii) phased developments where a housing development is part of a much larger development of 10 or more units (gross), affordable housing will be required as part of the overall scheme; and iii) additional units created through or subsequently amended planning applications, whereby the amount of affordable housing required will*

be calculated based on the new total number of units on the site. Affordable housing will be required where a development under the 10 unit threshold is amended to have 10 or more housing units in total (gross)."

11. The existing 3 storey building is not recently built and currently accommodates retail units at ground floor level with residential accommodation in the form of 6 maisonettes above, with parking provided in the rear yard area. The maisonettes are accessed from a rear first floor terrace via an external staircase leading from the yard. The proposal seeks approval to extend and add an extra floor to the building to provide an additional 9 units; a total of 15, including the existing units.
12. The Council's position is that the proposal is for a gross number of 15 units which exceeds the threshold for an affordable housing requirement, and none is proposed. The appellant's position is that the scheme is for 9 additional units, which is under the threshold.
13. The requirements of Policy DMH 7 seek to stop developers from being able to avoid making a legitimate contribution to affordable housing by splitting sites or applications into individually smaller schemes, which cumulatively exceed the threshold; I can fully understand the need for such a provision. The case before me is an existing building of some age where there is a single planning application covering the whole site for an additional 9 units. I consider that this does not fall within any of the 3 scenarios set out in Policy DMH7: the site has not been artificially sub-divided; it has not been phased and does not form part of a larger scheme; it does not seek to amend an existing planning permission. It is in the context of those scenarios that the Policy uses the word "gross" but I consider that it is not appropriate to use it in the specific circumstances of the appeal scheme. In conclusion on this issue, I find that there must be an acknowledgement of the existing 6 units and the relevant figure to consider here is the 9 additional units. As a consequence, the proposal would not generate a requirement for affordable housing.

Conclusion

14. Whilst I have agreed with the appellant in relation to affordable housing, I consider that there is now a legitimate and justified need for a contribution in relation to air quality and no such contribution can be secured for this proposal. As a consequence, the appeal is dismissed.

S T Wood

INSPECTOR