



Appeal Decision

Site Visit made on 1 July 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Appeal Ref: APP/M5450/W/20/3264968

Sixth Floor, Queens House, Kymberley Road, Harrow HA1 1PT

- 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 Harrow Holdings against London Borough of Harrow.
- The application Ref P/4455/18 is dated 12 September 2018.
- The development proposed is two additional floors to the existing building to provide 16 flats, provision of 2 parking spaces and associated cycle and refuse stores.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal is submitted in relation to the Council's failure to give notice within the prescribed period of a decision on an application for the construction of two additional floors at the appeal property to create 16 flats, and other associated works. The Council's Planning Committee resolved¹ to approve the proposal subject to completion of a section 106 legal agreement to secure a financial contribution towards off-site affordable housing provision or, should agreement not be reached in that respect, refuse the proposed development for failure to make appropriate provision for, inter alia, affordable housing.
3. The main parties are agreed that there is no objection to the proposal on grounds relating to the scale, mass and height of the development, the detailed design of the development or the impact on the amenity of others. However, no agreement was reached in respect of a financial contribution towards off-site affordable housing and the appeal was subsequently submitted prior to the Council formally determining the application in those circumstances.
4. The appellant refers to the Council's request in relation to a series of planning obligations, including parking permits, travel plan, carbon offset and a review mechanism. However, it is also clear that there is no dispute between the parties in relation to these matters other than in respect of the effect of the financial contribution towards off-site affordable housing on the overall viability of the scheme. The Council's Statement of Case sets out draft Heads of Terms for a section 106 agreement in respect of parking permit restriction; affordable Housing Cash In Lieu Contribution, Early and Late Stage Review, Travel Plan; Carbon Offset Contribution; Planning Administration Fee and Legal Fees. I return to this matter below.
5. I am also advised that an application for the development of a revised scheme, comprising only a single storey extension to the existing building has been

¹ 22 January 2020

submitted². This, the appellant states, provides a realistic alternative use valuation (AUV) against which to compare the appeal proposal and a fallback which would not deliver any affordable housing. I have considered the appeal accordingly. Thus, the main issue is whether or not the proposed development should make provision for affordable housing.

Reasons

6. It is broadly agreed that the development plan³ seeks to secure a proportion of affordable housing on sites which provide 10 or more homes. It is also agreed that the development plan provides for the provision of an in lieu off-site affordable housing contribution and that the appeal scheme is suitable for such consideration given the nature and nature of use of the existing building, and the proposed resulting housing mix.
7. The appellant's 'Viability Review'⁴ sets out an extended range of matters agreed between the parties or where the appellant seeks to meet halfway in terms of earlier assumptions and conclusions, and those set out on behalf of the Council, principally in relation to the BNP Paribas Real Estate 'Review of 'Affordable Housing Viability Report'⁵ (BNP review). However, three broad areas of continued dispute between the parties are identified by the appellant in relation to constituent parts of the viability assessment which inform the overall viability, or otherwise, of the proposed scheme.
8. The Council's resolution in respect of the appeal proposal was clear that, upon resolution of the outstanding section 106 agreement matters, the appeal building is capable of accommodating a development of more than ten homes. As such, in line with Harrow Core Strategy (HCS) policy CS1(J) the maximum amount of affordable housing will be sought on all development sites with a capacity to provide ten or more homes.
9. I am satisfied that that is the case with the appeal property and scheme which, both parties accept, would otherwise have resulted in a high-quality form of residential development. Whilst I am mindful of the alternative scheme for a quantum of development that would fall below the Council's threshold for affordable housing provision, it seems to me that reliance upon it is a clear attempt to manipulate that quantum of development.
10. On the balance of the evidence therefore, I am persuaded by the Council's argument that to rely upon the implications of this for the benchmark land value and alternative use value (AUV) would skew the scheme's viability towards one of deficit. The Council's approach to these matters is compelling and, as a significant contributor to the Council's surplus conclusion, adoption of the lower AUV figure is reasonable, with the consequential effect that this would have on the balance of deficit / surplus.
11. The recent period of COVID-19 related restrictions and the attempts to recover from it has highlighted the significance of risk in on-going projects. The main parties are not significantly divergent in terms of developer's profit, and I have noted the appellant's reassessment of the level of profit as a response to the BNP review. It seems to me that this represents a pragmatic approach to on-

² LPA Ref No: P/0600/21

³ London Plan policies H4 and H5 and Harrow Core Strategy policy CS1(J)

⁴ S106 Affordable Housing dated 14 April 2021

⁵ March 2021

going uncertainties, the upshot being that it would revise the appellant's appraisal to a small degree in terms of the calculation of the scheme's deficit.

12. The provision for incorporating review mechanisms are set out in London Plan (LP) policy H5 and have been a feature of previous iterations of the latest London Plan. Given the uncertainties underpinning the appellant's position of developer profit, it seems equally pragmatic to ensure provision for appropriate review mechanisms, in the manner set out in LP policy H5. The Council's approach in this respect is not unjustified and is in accordance with LP policy H5 and HCS policy CS1(J) in seeking to secure the maximum possible affordable housing provision.
13. Thus, for the reasons set out, I am not persuaded that the appellant has robustly or adequately demonstrated that the proposal could not, and should not, make appropriate provision for affordable housing. As such, the proposal would fail to comply with London Plan policy H5, Harrow Core Strategy policy CS1(J) or policy DM50 of the Harrow Development Management Policies Local Plan which together seek to ensure that appropriate provision is made for the provision of affordable housing.

Other Matters

14. It is noted that the Council has no other concerns or objections to the proposal, other than matters related to viability and the ability of the proposal to deliver affordable housing. It is also clear that the matter of the viability of the proposal to deliver a contribution to affordable housing remains the only outstanding matter amongst other planning considerations, including other section 106 elements referred to by the appellant and as set out within the Council's draft Heads of Terms.
15. However, there has been no section 106 agreement presented as part of this appeal. Therefore, even if I were to conclude that the proposal could viably deliver an affordable housing contribution, there is no mechanism to secure either that contribution, or indeed the other matters agreed by both parties to fall within the scope of a section 106 agreement.
16. The alternative scheme would provide additional homes and, as such, would contribute to the development plan and Framework's aims of delivering additional homes. However, the weight I give it as a fallback is limited as it would amount to a clear attempt to ensure that the proposal would avoid the development plan's requirements for affordable housing provision. It is agreed by both parties that the appeal scheme would provide a high-quality form of development and, whilst this and the other matters set out herein weigh positively in support of the proposal, they are not sufficient to overcome the harm arising from the proposal's failure to make appropriate provision for affordable housing.

Conclusion

17. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR