



Appeal Decision

Site visit made on 19 April 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th April 2022.

Appeal Ref: APP/E0345/W/21/3289345

Land off Venetia Close (rear garden of 49 Kiln Road), Emmer Green, Reading RG4 8UG

- 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 Mr Kenan Mursal against the decision of Reading Borough Council.
 - The application Ref 211667, dated 7 October 2021, was refused by notice dated 8 December 2021.
 - The development proposed is described as "Retrospective application for the erection of a 4 bedroom two storey detached house at land off Venetia Close, pursuant to APP/E0345/W/16/3143453 with altered boundary, access arrangements and dwelling design".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An outline planning application was allowed at appeal¹ in 2016 for the erection of a 4 bedroom two storey detached house at the site. The Council state that subsequently the dwelling was built without seeking discharge of pre-commencement conditions or having been regularised by a S73 application. The Council also state that the plans submitted vary from those previously approved and the development is a material departure. Therefore, the application subject to this appeal was determined as a new planning application.
3. The appellant has questioned why an affordable housing contribution is being sought when they believe that the previous permission has been implemented, at least in part. However, the appellant submitted the development as a new application and has acknowledged that the red line site boundary has changed, along with the access and some extensions. These changes are also reflected in the description of development.
4. This appeal has been determined on the basis that the application subject to the appeal was a new and distinct application. At the time of my site visit, a dwelling had been erected in the location indicated on the submitted drawings. Notwithstanding what has been erected on site, the appeal has been determined on the submitted drawings.

¹ APP/E0345/W/16/3143453

Main Issue

5. The main issue is whether the proposed development provides an acceptable contribution towards the delivery of affordable housing.

Reasons

6. Policy H3 of Reading Borough Local Plan 2019 (LP) states that on sites of one to four dwellings a financial contribution will be made that will enable the equivalent of 10% of the housing to be provided as affordable housing elsewhere in the Borough. This is supported by the Council's Affordable Housing Supplementary Planning Document (SPD) which sets out how the financial contribution will be calculated and secured. The proposal relates to one dwelling and the appellant has stated a willingness to pay legal fees but not an affordable housing contribution. A unilateral undertaking or Section 106 legal agreement has not been provided with this appeal.
7. The appellant has stated that an affordable housing contribution would make the development unviable and submitted a summary development appraisal with the appeal. With regard to development viability, the Planning Practice Guidance (PPG) sets out that the role for viability assessment is primarily at the plan making stage, where plans should be informed by evidence of affordable housing need and a proportionate assessment of viability to ensure that policies are realistic. It goes on to state that it is up to the applicant to demonstrate the need for a viability assessment at the application stage, with reference to the assessment which informed the plan, and evidence of what has changed since then. Any viability assessment should reflect the government's recommended approach. The PPG also states that the weight to be given to a viability assessment is a matter for the decision maker. This approach is reflected in Policy H3 of the LP which sets out that in all cases where developments fall short of the policy target as a result of viability considerations, the onus will be on the developer to clearly demonstrate the circumstances justifying a lower affordable housing contribution.
8. The Council state that the property valuation in the summary development appraisal is low. In my assessment of the information presented to me, the appraisal lacks detail, is unsupported by evidence and does not refer to the viability assessment which informed the local plan. Therefore, I have no evidence which would lead me to conclude that an affordable housing contribution would result in the development being unviable.
9. In the absence of a legal agreement or accepted viability assessment, the proposed development would not comply with Policy H3 of the LP. Planning law requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise. A material consideration in this instance is paragraph 64² of the National Planning Policy Framework (the Framework) which states that the provision of affordable housing should not be sought for residential developments that are not major developments³. Consequently, there is a conflict between the national threshold for the provision of affordable housing, as set out in the Framework, and the local thresholds, set out in Policy H3 of the LP.

² Paragraph 63 in previous versions of the Framework.

³ Major development is defined in the Glossary of the Framework as, for housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.

10. The Council have provided evidence of exceptional need for affordable housing in the Borough, as well as challenging circumstances, which together justify the need for small sites to make contributions to affordable housing, as an exception to national policy. The Council also make reference to a number of appeal decisions in the Borough which support this approach. I also note that the Local Plan was adopted in 2019, after the threshold was added to the Framework. Therefore, whilst I afford considerable weight to the conflict between the thresholds set out in local and national policy, given the evidence of exceptional need for affordable housing, this is not a material consideration of sufficient weight to indicate that the appeal should be determined otherwise than in accordance with the development plan.
11. The development would provide an additional sustainably located dwelling, in an area of housing need and is acceptable in terms of all other matters. However, this does not outweigh the failure to comply with Policy H3 of the LP.
12. On the basis of the evidence before me, it appears that the need for an affordable housing contribution would in principle satisfy the three tests in Regulation 122(2) of the CIL Regulations 2010 and the tests for planning obligations set out in Paragraph 57 of the Framework.
13. In the absence of a completed legal agreement, I conclude that the proposed development would not provide an acceptable contribution towards the delivery of affordable housing. Consequently, the development would not comply with Policy H3 of the LP, and the Council's Affordable Housing SPD, which together seek to ensure that residential development makes an appropriate contribution towards affordable housing, to meet the needs of Reading.
14. Policy CC9 of the LP is listed in the Council reason for refusal but is not elaborated on in their evidence. I find no specific conflict with the requirements of Policy CC9 which seeks to secure infrastructure and does not directly relate to affordable housing.

Other Matters

15. The appellant makes reference to comments made by the inspector in the 2016 appeal at the site. However, there have been material changes in both national and local policy since then, as well as changes to local evidence of housing need. This appeal has been determined on the basis of current policy and the individual merits of this case. The appellant also refers to a government consultation document titled 'Changes to the current planning system' but this is not part of current planning policy.

Conclusion

16. For the reasons given above and taking into account the development plan as a whole and all other matters raised, I conclude that the appeal should be dismissed.

Helen Davies

INSPECTOR