



Appeal Decision

Site visit made on 4 January 2023

by P J Staddon BSc, Dip, MBA (Distinction), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/L5810/W/21/3288148

52 Ringwood Way, Hampton Hill, HAMPTON, TW12 1AT

- 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 Pegrid Ltd against Richmond Upon Thames London Borough Council.
 - The application Ref 21/3181/FUL is dated 9 September 2021.
 - The development proposed is the 'erection of a 3 bed detached dwelling house with associated off-street parking and amenity space'.
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Decision

1. The appeal is dismissed.

Background and the Main Issues

2. No 52 Ringwood Way is a semi-detached house at the end of this residential cul-de-sac. The appeal site is a triangular plot of land comprising part of the existing garden to the side of the house and including parking areas at the front of the property.
3. On 24 June 2021, Richmond Upon Thames London Borough Council (the Council) granted planning permission¹ for the erection of a 3 bedroom house on the appeal site. The appellant company had made a deed of unilateral undertaking under Section 106 of the Act² dated 1 June 2021 which secured the payment of an 'affordable housing contribution' of £15,695 (indexed) prior to the occupation date or sale date of the new house (whichever is the sooner). The permission has not been implemented, but remains extant for 3 years from the date of its granting.
4. On 9 September 2021, the appellant sought to submit the same scheme but without the undertaking to make the affordable housing contribution. On 29 September 2021, the Council issued a letter stating that the application was incomplete as it did not include an 'affordable housing statement/commuted sum calculation pro-forma'. The appellant then submitted a validation dispute notice under the provisions of the Order³.
5. On 2 November 2021, the Council issued a non-validation notice which acknowledged the appellant's case, set out in its planning statement

¹ Richmond Upon Thames London Borough Council planning application reference 20/2411/FUL

² Town and Country Planning Act 1990

³ Article 12(3)(ii) of the Town and Country Planning (Development Management Procedure) Order 2015

addendum, that an affordable housing contribution should not be made. It explained that affordable housing was a material consideration for the Council and that its local validation checklist requires all applications for new residential units to provide information about an affordable housing contribution or a viability report. The notice explained that if this information was provided, the Council would still be able to consider the case concerning whether a contribution should be made.

6. In the light of the above, the main issues are:

- Whether the application contained sufficient information to enable it to be validated.
- Whether the proposal would make adequate provision for affordable housing.

Reasons

Validation

7. The Planning Practice Guidance states that a local planning authority may request supporting information with a planning application and that its requirements should be specified on a formally adopted 'local list' which has been published on its website less than 2 years before an application is submitted.
8. The Council has published such a list and the current version is dated April 2021, and therefore it is less than 2 years old. The section on affordable housing requires all small housing schemes (1 – 9 units) to provide an Affordable Housing Statement (AHS) which includes a 'commuted sum calculation pro-forma' and an 'agreement to pay affordable [the] housing financial contribution'. Alternatively, a Viability Report (VR) can be provided if the proposal does not include policy compliant provision/payments for affordable housing and this being justified on viability grounds.
9. The appellant did not provide either of the requested documents, although the planning statement addendum did set out its case on affordable housing policy and its view that a contribution should not be sought. However, the Council's local list is clear and, notwithstanding the appellant's case on policy matters, the economic viability of a development proposal is a material planning consideration, which links directly to a relevant development plan policy concerning affordable housing. The Council is therefore justified in requiring up to date information to enable it to make its planning assessment against development plan policies and other relevant material considerations. I have noted the appellant's submissions that it should not be expected to agree to pay a contribution which it disputes, but that does not appear to be what the Council sought through its 2 November 2021 notice.
10. I conclude that insufficient information was provided and that the Council was justified in not validating the application. However, I will, for completeness, examine the second main issue below.

Affordable housing

11. Policy LP 36 of the Council's Local Plan (adopted July 2018) addresses affordable housing. Part B of the policy states that a contribution towards affordable housing will be expected on all housing sites and requires 'on sites

below the threshold of 'capable of ten or more units gross', a financial contribution to the Affordable Housing Fund commensurate with the scale of development...'. However, paragraph 64 of the National Planning Policy Framework (the Framework), states that provision of affordable housing should not be sought for residential developments that are not major developments.

12. I have noted and considered the appellant's case, as set out principally in its planning statement addendum and its final comments document, which is, in essence, that the Framework's policy approach should prevail. I have also considered the Council's submissions, including its reference to the Local Plan Inspector's reasoning, and various appeal decisions which have considered this same issue.
13. On the face of it, there is a variance between the development plan policy approach and that set out in the Framework. However, whilst the Framework is a significant material consideration, planning law⁴ requires that applications are determined in accordance with the development plan, unless material considerations indicate otherwise. Moreover, the Framework's paragraph 2 repeats the presumption that the development plan is the starting point for decision making, and its paragraph 9 states that planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.
14. With regard to local circumstances in this case, the explanatory text⁵ to policy LP 36 explains that the borough has one of the highest average house prices in the UK and a significant and continuing need for affordable housing. It also explains that, in the context of the borough, small sites make a significant contribution to housing supply and the cumulative impact of these sites should contribute to affordable housing provision, justified by the evidence base and local circumstances.
15. Consequently, whilst the Framework's approach to affordable housing is a significant material consideration, it does not outweigh the substantial weight which I attach to local evidence of affordable housing need and to the provisions of policy LP 36. Moreover, there is no VR evidence before me that would suggest that the appeal proposal would be rendered economically unviable as a result of the policy LP 36 requirement for a financial contribution towards affordable housing. The proposal would therefore be in conflict with the development plan policy LP 36 and should not be permitted.

Other matters

16. I have noted the views of some interested parties concerning a range of matters including parking, traffic generation and drainage.

Conclusion

17. For the reasons stated above, the appeal is dismissed.

P. Staddon

INSPECTOR

⁴ S.38(6) Planning and Compulsory Purchase Act 2004 and s.70(2) Town and Country Planning Act 1990

⁵ Paragraph 9.3.1 of the Richmond Upon Thames London Borough Council Local Plan (adopted July 2018)