



Appeal Decision

Site visit made on 5 January 2024

by Jonathan Bore MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2024

Appeal Ref: APP/C3810/W/22/3308857
2-10 Queensway, BOGNOR REGIS, PO21 1QT

- 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 Regent Property Holdings Ltd against the decision of Arun District Council.
 - The application Ref BR/294/21/PL, dated 23 December 2021, was refused by notice dated 8 July 2022.
 - The development proposed is a three storey upward extension and redevelopment of the existing first and second floor delivering 43 flats.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs was made by the local planning authority. This is the subject of a separate decision.

Preliminary Matters

3. The appeal scheme was refused planning permission by the Council in July 2022 for reasons of massing, bulk and design, the impact on its surroundings, and parking; also, because there was no obligation under s106 at the time, it was refused because no provision was made for affordable housing, various aspects of social and physical infrastructure, or for mitigation measures to avoid potential damage to Pagham Harbour Special Protection Area.
4. However, an almost identical scheme was granted planning permission on 1 March 2023 under Council reference BR/238/22/PL. This was subject to a planning obligation under s106 which provided for 9 affordable rented dwellings, 1 shared ownership dwelling and 3 first homes and for contributions towards the other items referred to above.
5. As the Council granted planning permission for that development, they no longer maintain an objection to the appeal scheme in respect of its massing, bulk and design, its impact on the surroundings, or parking.
6. A s106 agreement relating to the appeal scheme, which includes the provision of 30% affordable housing, was signed by all parties in error, it being mistaken for the s106 agreement for scheme BR/238/22/PL. The appellant has made it clear that it does not consider itself bound by the terms of that agreement. Instead, it has produced a unilateral undertaking, dated 6 June 2023, which

provides for contributions towards a range of facilities and for mitigation measures to avoid potential damage to Pagham Harbour.

7. The unilateral undertaking does not, however, provide for any affordable housing, and that is now the sole dispute between the parties.

Main Issue

8. The main issue is whether the scheme is acceptable in not making provision for any affordable housing.

Reasons

9. The National Planning Policy Framework seeks to ensure that the needs of groups with specific housing requirements are addressed. In the case of Arun, the adopted Arun Local Plan 2011-2031 states that housing affordability is a major issue due to the relationship between house prices and incomes. Studies of local housing need have revealed that very many households are unable to afford accommodation at normal market values. Local Plan Policy AH SP2 therefore requires a minimum of 30% of the homes on developments of 11 residential units or more to be affordable homes. Less than 30% is only permitted in exceptional circumstances if supported by robust evidence including viability evidence where appropriate.
10. The appellant's affordable housing viability report, submitted as an appendix to its rebuttal statement dated 6 June 2023, points among other things to an overall downturn in the housing market; the removal by the Homes and Community Agency of support for grant applications on s106 schemes; rent reductions under the Welfare Reform and Work Act 2016; increased build costs; and relatively depressed values in the local market for one and two bed homes. The report concludes that the residual land value from the development would be insufficient to support the policy requirement for affordable housing including First Homes; that the scheme would technically be in deficit even with no level of affordable housing; and that the use of development contributions in lieu of on-site provision would result in a worse residual value than on-site provision. Appended to the viability report is evidence of the responses of affordable housing providers on Arun District Council's list. These show a lack of interest in taking up the units, for a variety of reasons including the number of units available, the high proportion of one bed flats, the type and tenure of the units and the location above a public house.
11. However, this viability report has not been subjected to an independent appraisal. By the time the report was submitted, the unilateral undertaking had been completed, so an appraisal exercise at that stage would have served no practical purpose in informing discussions between the appellant and the Council about the contents of the scheme. The report does not contain any self-evaluation exercise, in which the robustness of its assumptions and inputs and the potential impact of different economic outlooks are critically examined. For example, in respect of its assumptions about sales values, affordable housing rental values, build costs and a range of other matters, it is notable that the report's conclusions focus on the impact of the recent short term negative factors influencing the market, not adequately recognising the fact that markets can fluctuate quite quickly. Moreover, whilst sales values have been derived from a number of comparators in the area, the exercise applies a relatively modest new build adjustment which may not reflect the full potential

of this key site to regenerate the locality and uplift values. There has been no consideration of ways in which the scheme might have been made more attractive to affordable housing providers, through different levels and forms of affordable housing or a different mix. Nor has there been any opportunity for the Council and appellants to re-evaluate s106 priorities to see whether a different balance of commitments might have enabled some off-site affordable housing to be provided through contributions, because the s106 planning obligation has already been completed. For all these reasons, the valuation exercise cannot be given full weight.

12. The Local Plan takes a longer view. Its affordable housing objectives, which aim to ensure consistency of approach in seeking to meet the significant need for affordable housing in the district, carry very significant weight. A community's need for affordable housing is an important planning consideration, and the submitted viability evidence is not convincing enough to set aside the important policy requirement for affordable housing.
13. The proposed scheme does not therefore meet the exceptional circumstances criterion in Policy AH SP2 and does not accord with that policy. The scheme would fail to meet the objective of the Arun Local Plan to seek to address the significant need for affordable homes in the District.

Other Matters

14. My assessment of the impact of the scheme on the town centre and its surroundings accords with that of the officer's report for the almost identical permitted scheme BR/238/22/PL. The proposal would accord with Local Plan policies D DM1, D SP1, HER DM3 and T SDP3. The unilateral undertaking would ensure that contributions were made towards appropriate social and physical infrastructure, and towards mitigation measures to avoid potential damage to Pagham Harbour Special Protection Area. However, that does not alter the force of my conclusions on the main issue.

Conclusion

15. I have considered all the other matters raised but they do not alter the balance of my conclusions. For the reasons given, I dismiss the appeal.

Jonathan Bore

INSPECTOR