



Appeal Decision

Site visit made on 12 September 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal Ref: APP/Q5300/W/23/3319952

Church Hall, Grove Road, Enfield, Southgate N11 1LX

- 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 Beverley Homes Ltd against the Council of the London Borough of Enfield.
 - The application Ref 22/02415/FUL, is dated 7 July 2022.
 - The development proposed is redevelopment of site involving demolition of vacant church hall and construction of a part 5 and part 6 storey residential building to provide 4 maisonettes and 20 apartments with associated external works.
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Decision

1. The appeal is dismissed and planning permission for redevelopment of site involving demolition of vacant church hall and construction of a part 5 and part 6 storey residential building to provide 4 maisonettes and 20 apartments with associated external works is refused.

Preliminary Matter

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.

Background and Main Issue

3. The planning application has been presented to the Council's Planning Committee where it was resolved to grant planning permission subject to the finalisation of a Section 106 Agreement. A completed Unilateral Undertaking (UU) Under Section 106 of the Act has been provided during the course of this appeal. However, the Council has raised a number of concerns in relation to the wording of the submitted UU, and the focus of dispute between the main parties relates to the provision of on-site affordable housing.
4. On that basis, the main issue in this appeal is whether the proposal would make suitable provision in respect of affordable housing.

Reasons

5. Policy H4 of the London Plan 2021 and Core Policy 3 (CP3) of the Council's Core Strategy 2010 set out that affordable housing must only be provided off-site or

as a cash in lieu contribution in exceptional circumstances. The Framework also states that where a need for affordable housing is identified, planning policies should expect it to be met on-site unless an appropriate financial contribution in lieu can be robustly justified.

6. The appellant refers to paragraph 5.22 of the supporting text for Policy CP3 of the Core Strategy which states that a financial contribution in lieu of on-site provision is considered to be the most appropriate option to ensure the effective management of new properties. However, this only relates to developments with less than 10 dwellings and does not therefore apply to the appeal proposal.
7. The proposal includes the provision of 10 new affordable homes, with a tenure mix of 70% social/affordable rent and 30% intermediate units. There is no dispute between the parties that this mix would meet policy requirements.
8. The application was supported by an Affordable Housing Statement that identified expressions of interest from 2 Registered Social Landlords (RSLs) who would deliver the affordable housing. However, the UU includes a fallback position where if after a 6 month period there remains an absence of interest from RSLs then an equivalent off-site contribution can be made towards off-site affordable housing as an in lieu contribution. In support of the fallback, the appellant has submitted evidence with the appeal referring to a lack of meaningful interest from RSLs in providing affordable housing on-site, due to factors including the small number of affordable units and a lack of funding. Without this fallback the appellant considers that the scheme would be unviable and undeliverable.
9. The Council has expressed concern that the appellant's assessment of interest is not robust, as an adjustment in the proposed tenure mix may have attracted more interest. Although the proposed tenure mix is policy compliant, it would be appropriate to assess interest in an alternative mix to establish if affordable housing could be provided on-site.
10. The list of RSLs contacted by the appellant includes the Council's Housing Development Team, although the Council's Head of Regeneration and Growth has confirmed that officers would be willing to work with the developer in potentially brokering a deal with a registered provider or exploring an acquisition. Therefore, even having regard to the history of correspondence between the appellant and the Council, it would appear the appellant has not fully explored potential support from the Council in identifying an RSL to deliver affordable housing on-site.
11. On the basis of the above, the evidence provided by the appellant in respect of interest from RSLs does not represent a robust justification that affordable housing cannot be provided on-site, or that the circumstances of the proposal are of an exceptional nature.
12. The Council has also expressed concern about the effect of the fallback position in the UU. The UU refers to the use of "*all reasonable endeavours*" to achieve an exchange of contracts with an RSL, though this does not require the acceptance of an offer that is "*not a viable offer that is reflective of prevailing market conditions from time to time*". However, the assessment of whether these criteria have been met would in effect be left to the developer. There is

- no mechanism for the Council to see what negotiations have taken place and whether these have been undertaken on a reasonable basis.
13. The 6 month period in respect of triggering the fallback has also not been fully justified, as even allowing for previous contacts with RSLs this period may not allow sufficient time to consider interest in alternative tenure mixes and other matters including potential acquisition from other parties.
 14. I also note the Council's concerns in respect of other aspects of the UU, including the lack of an early-stage viability review and reference to a site plan as well as suggested alternative wording for elements of the UU.
 15. Although the appellant confirms that they are fully committed to providing affordable housing within the proposed development, I consider that the Council's concerns in respect of the fallback in the UU are well-founded, and that the fallback does not ensure that a decision regarding the provision of on-site housing would be transparent and robust.
 16. The appellant refers to the approach of the UU being accepted in other London Boroughs and elsewhere, such as Brighton and Hove. However, it has not been demonstrated that the provisions of those other UU's are the same as the one before me, or that the circumstances of those other sites are a direct parallel to the appeal proposal in respect of planning policy in place in that location at that time regarding the provision of on-site affordable housing.
 17. I therefore conclude that the proposal would not make suitable provision in respect of affordable housing, in that the principle and form of the fallback scheme and the provision of a contribution in lieu of affordable housing have not been robustly justified. The proposal would therefore conflict with Policies H4 of the London Plan and CP3 of the Core Strategy as well as the Framework with regard to the delivery of affordable housing.

Planning Balance and Conclusion

18. The Council's Officer Report sets out that the Council is unable to demonstrate a 5-year housing land supply. The 2022 Housing Delivery Test (HDT) results also specify that the HDT consequence for the Council is 'presumption'. The tilted balance of paragraph 11(d) of the Framework is therefore engaged, which sets out that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
19. I am mindful of the benefits of the proposal. It would add to the supply and mix of housing in the area, and given the number of dwellings proposed as well as the council's housing land supply position and history of delivery this would normally carry significant weight as a benefit. It would also remove a vacant building in a poor state of repair and replace this with residential development of a suitable design and appearance, which would normally also carry moderate weight in favour of the proposal. The development would also contribute to employment, training and investment in the area during construction, and given the scale of the proposal this could carry moderate weight as a benefit, although I note the Council's concerns in respect of the UU on this matter.
20. However, it has not been robustly demonstrated that these benefits cannot be provided along with the provision of affordable housing on-site. I have also

concluded that the submitted UU does not give a suitable degree of certainty that affordable housing would be provided on-site if it is possible to do so. On that basis, the benefits referred to above do not weigh in favour of the appeal, as it may be that these benefits could arise from a proposal complying with planning policy in respect of on-site affordable housing. Although the UU could ensure that a contribution to affordable housing is made in lieu of on-site provision, this carries only limited weight as a benefit given the lack of robust evidence to justify an in-lieu contribution and the strong policy support for on-site provision.

21. For the above reasons, the benefits arising from the proposal would carry no more than limited weight in favour of the appeal.
22. I have concluded that the proposal would conflict with local and national planning policy in respect of the delivery of affordable housing on-site. Given the identified need for affordable housing and the strong policy position that this should be provided on-site, I give the conflict with local and national planning policy significant weight as an adverse impact of the proposal.
23. I therefore conclude that the adverse impact of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, including with regard to the provision of affordable housing. The proposal would not represent sustainable development and the appeal should therefore be dismissed.

David Cross

INSPECTOR