

Appeal Decision

Site visit made on 23 May 2017

by **G J Fort BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 June 2017

Appeal Ref: APP/V5570/W/17/3169770

Parkhurst Court, Warlters Road, Islington, London N7 0SD

- 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 Leon Faust (Ableworld Ltd) against the decision of the Council of the London Borough of Islington.
 - The application Ref P2015/0040/FUL, dated 23 December 2014, was refused by notice dated 6 January 2017.
 - The development is described as "The proposal is to remove the garages apart from one and one parking bay (existing garage removed) and to build a new mews made up of residential accommodation. The development will consist of seven houses: three courtyard houses, a semi-detached pair of houses, and two family houses bridging the entrance to the mews, all with gardens. These would include sustainable features such as 'green roofs'."
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Leon Faust (Ableworld Ltd) against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Main Issues

3. I consider the main issues in this appeal to be firstly, whether the proposed development would make an adequate contribution towards the provision of affordable housing; and secondly, whether the proposed development's contribution towards carbon offsetting measures would be necessary in the light of the local and national policy.

Reasons

Site, surroundings and proposed development

4. The appeal site is a broadly level and rectangular area of land, currently occupied by brick-faced apparently disused garages in a state of some disrepair. It is bounded by residential buildings of various scales, but predominantly comprising flatted accommodation. The appeal scheme would redevelop the site in the manner described in the banner heading above.
-

Affordable Housing

5. Amongst other things, Policy CS12(G) of Islington's Core Strategy (adopted February 2011) (the Core Strategy) requires residential developments providing less than 10 units to make a financial contribution towards the off-site provision of affordable housing. This policy is supported by Islington's Affordable Housing Small Sites Contributions Supplementary Planning Document (adopted October 2012) (the Small Sites SPD). Based on viability evidence the Small Sites SPD sets a requirement of £50,000 per new dwelling towards the provision of affordable housing. The Small Sites SPD makes it clear that site-specific circumstances could render such a contribution unviable, however that in such cases proposals should be accompanied by viability assessments that justify a lower contribution.
6. The proposed development is not accompanied by a legally binding mechanism to secure contributions towards affordable housing as set out in Policy CS12. Moreover, I have not been supplied with site-specific evidence to suggest that such a contribution would render delivery of the appeal scheme unviable. As a result, in these regards the proposed development would clearly conflict with Policy CS12(G), and the Small Sites SPD.
7. My attention has been drawn, however, to the national planning policy expressed in the Written Ministerial Statement of 28 November 2014 (the WMS), which states that "Due to the disproportionate burden of developer contributions on small-scale developers, for sites of 10-units or less... affordable housing and tariff style contributions should not be sought". This WMS, taken together with the related sections of the Government's Planning Practice Guidance (PPG) are clear and unequivocal statements of national policy in these regards, and as a consequence are considerations to which I attach very considerable weight.
8. I have also been referred to the recent judgement of the Supreme Court¹, particularly paragraph 21, wherein Lord Carnwath held that planning inspectors "exercise their own independent judgement... within the framework of national policy". Whilst this is the case, the judgement makes clear, in that same paragraph, that national policy² "cannot and does not purport to, displace the primacy given by statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme." Accordingly, whilst the WMS and PPG are both material considerations in this case they do not automatically displace the statutory primacy of the development plan in my assessment of the planning merits of the appeal.
9. Moreover, I have been supplied with a considerable amount of substantive evidence by the Council regarding the local housing market circumstances that pertain in Islington and these details have not been substantially contested by the appellant. The evidence shows that Islington has the 7th highest median house price³ in the country, and that over the past 8 years average house prices have risen by 182% compared to a national rise of 24%. Median and lower quartile house prices in the Borough are around 16 times median and

¹ *Secretary of State for Communities and Local Government v Hopkins Homes Ltd; Richborough Estates Partnership LLP v Cheshire East Borough Council also known as Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37 (Admin)

² The national policy referred to in the judgement is the National Planning Policy Framework rather than the WMS

³ Office of National Statistics House Price statistics for Small Areas (HPSSAs) 2016

lower quartile incomes⁴. Census data shows that the proportion of private rented properties in the Borough increased from 18.6% to 28.2% from 2001 to 2011. Moreover, Valuation Office statistics show that monthly rents are considerably in excess of the Greater London average, and this serves to limit the affordability of suitable housing in this sector for median income households.

10. Islington also has a significant problem of overcrowding in its housing stock⁵, has a high rate of child poverty⁶, and is the 13th most deprived local authority area in England⁷. The Borough consistently has around 8,500 people who qualify for housing on its register. Taken together, these and other statistics, which have not been challenged by the appellant, show a clear and growing affordability gap, and consequent need for affordable housing.
11. What is more, Islington has the highest population density of any local authority in England, and due to the density of its development a substantial proportion of new housing is built on smaller sites providing less than 10 units. As a result, a considerable proportion of the Borough's affordable housing supply derives from contributions from these smaller developments.
12. Whilst I am conscious that the development plan policy and the Small Sites SPD both pre-date the WMS and the PPG, the clear and compelling evidence supplied to me in this case adds strong support to the local policy approach. Moreover, as the Small Sites SPD makes provision for viability testing to establish that contributions could render a site's development unviable, it ensures the proportionality of any financial sums required in this regard. The continued delivery of houses on smaller sites subject to affordable housing contributions over the period since the adoption of the Small Sites SPD adds further weight to the view that the affordable housing contributions it requires are not disproportionate. For these reasons too, Policy CS12 and the Small Sites SPD ensure that affordable housing contributions are directly related to proposed developments, and fairly and reasonably related in scale and kind to them.
13. Consequently, these considerations lead me to the view that, in this instance Policy CS12 of the Core Strategy, taken together with the Small Sites SPD, and the compelling and substantive evidence produced to support their approach, are material considerations that clearly outweigh the WMS and PPG.
14. In arriving at this view I have been mindful of the recent appeal decision⁸ referred to me by the appellant, and whilst the Inspector in that case found that the Council's viability evidence was not scheme specific, they had been provided with a site-specific viability assessment of the proposed development by the appellant. Therefore the considerations in that previous case can be clearly differentiated from those before me in this current appeal, wherein I have not been supplied with site-specific viability evidence to demonstrate that the required affordable housing contributions would render delivery of the proposed development unviable. In any event each proposal needs to be considered on its own planning merits, including the evidence presented in each case.

⁴ DCLG Ratio of House Prices to Earnings 2016

⁵ Islington Council Tackling Overcrowding Plan 2012

⁶ Islington's Child Poverty Needs Assessment 2013

⁷ DCLG English Indices of Deprivation 2015

⁸ Appeal reference: APP/V5570/W/16/3161415

15. For the reasons given above, the proposed development would not make a contribution towards affordable housing necessary to make the development acceptable in planning terms. It would thus fail to make an adequate contribution towards the provision of affordable housing. For these reasons it would clearly conflict with Policy CS12(G) of the Core Strategy and the Small Sites SPD insofar as they seek, amongst other matters, to ensure that residential development sites of less than 10 dwellings provide financial contributions towards affordable housing provision.

Carbon Offsetting

16. Policy CS10 of the Core Strategy requires development to offset CO₂ emissions associated with their building through a financial contribution to measures that reduce such emissions in the existing building stock. Islington's Environmental Design Planning Guidance Supplementary Planning Document (the Environmental Design SPD) sets a flat fee of £1500 per house for carbon offsetting on smaller development sites. The appellant has supplied a unilateral undertaking to secure £10,500 towards carbon offsetting measures, and the Council⁹ has indicated that this is acceptable. The proposed development would thus meet the requirements of Policy CS10 in this regard, insofar as it seeks to ensure that new development minimises Islington's contribution to climate change.
17. However, in this context, I am again mindful of the WMS policy particularly as it relates to tariff-based contributions from small sites. Whilst I note that the flat fee established in the Environmental Design SPD is based on figures derived from an analysis of the costs and carbon savings of retrofit measures within Islington, and an established price per tonne of CO₂, I have been supplied with no substantive evidence to indicate how these figures have been arrived at, and to what extent they would be proportionate to the proposed development. As a result, it has not been demonstrated that the contribution would be fairly and reasonably related in scale and kind to the development. Therefore, on the basis of the evidence before me, I consider that the requirement for a planning obligation of this type would thus be at odds with the national policy as expressed in the WMS. Consequently, in this instance, I consider that the policy of the WMS clearly outweighs the development plan requirements.
18. For these reasons the planning obligation would not meet the tests of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 or paragraph 204 of the National Planning Policy Framework. Accordingly, it has not been established that the contribution towards carbon offsetting measures would be necessary in this case.

Other Matters

19. The proposed development would supply a mix of houses on previously developed land in a highly accessible location. It would improve the character and appearance of the site, and help to address anti-social behaviour issues that may have been associated with it. In these regards the proposed development would contribute to national and local policy objectives and would deliver moderate benefits. However, it has not been established that to do so with an affordable housing contribution would be demonstrably unviable, and

⁹ In an e-mail to the Planning Inspectorate dated 22 May 2017

as a result, these considerations, either taken together, or individually do not outweigh the proposed development's conflict with the development plan in this regard.

20. As I have found the contribution towards carbon offsetting measures would be unnecessary in this case, I am unable to take account of any benefits that could flow from it in arriving at my decision.
21. The proposed development could avoid material harm to the living conditions of the occupants of adjacent properties. The loss of parking that would result from the proposed development would also not cause any significantly harmful effects to residential amenity or highway safety more generally. However, these matters merely point to an absence of harm in these regards, rather than positive benefits of the scheme and thus only have a neutral effect on the overall planning balance.
22. Consequently, the above matters, either taken cumulatively or individually, are not material considerations of sufficient weight to indicate a departure from the development plan in this instance, or alter my conclusions in respect of the main issues given above.

Conclusion

23. For the reasons given above, and notwithstanding my conclusions regarding the weight of WMS in this regard, the proposed development's contribution towards carbon offsetting would meet the requirements of Policy CS10 of the Core Strategy. However, I have found that the proposed development would not make an adequate contribution toward the provision of affordable housing. In this latter regard the proposed development would clearly conflict with Policy CS12(G) of the Core Strategy. In the overall planning balance this conflict clearly outweighs the proposed development's compliance with Policy CS10, and the other aspects of the development plan insofar as they have been drawn to my attention. In arriving at this view, I am mindful of the High Court judgement¹⁰ referred to me by the appellant which established, amongst other things, that the breach of one key policy is not sufficient to found conflict with the development plan as a whole.
24. Consequently, as no material considerations have been advanced of sufficient weight to justify a departure from the affordable housing requirements of the development plan in this instance, I conclude, for the reasons given above, and taking into account all other matters raised, that the appeal should be dismissed.

G J Fort

INSPECTOR

¹⁰ *Tiviot Way Investments Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 2489 (Admin)