

Appeal Decision

Site visit made on 28 March, 2017

by **G. Rollings, BA(Hons) MA(UD) MRTPI**

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

Decision date: 16th June, 2017

Appeal Ref: APP/V5570/W/16/3165633

798-804 Holloway Road, Islington, London, N19 3JH

- 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 TPS Brighton Developments Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref: P2015/4343/FUL dated 7 October, 2015 was refused by notice dated 25 October, 2016.
 - The development proposed is demolition of the existing building and redevelopment of the site to provide a part two, part four, part five storey mixed use building (plus basement) comprising 598sq.m. A1 retail floorspace at ground floor and basement level and no.13 (C3) residential units at first to fourth floors (6 x 1 beds, 5 x 2 beds, 2 x 3 bed), with associated amenity space and cycle storage.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development makes adequate provision for delivering the maximum reasonable amount of affordable housing.

Reasons

3. Having granted in-principle approval for the appeal proposal in early 2016, subject to the completion of a section 106 agreement, the Council refused the application following the failure of the parties to agree on its affordable housing delivery terms. Two main areas of concern were identified by the Council in its reason for refusal, and I shall examine each of these in turn.

Suitability of the proposed affordable housing cascade mechanism

4. The Council's intention in requiring a 'cascade mechanism' clause derived from its concerns relating to a potential lack of interest from registered housing providers willing to accept management responsibilities for a small number of affordable housing dwellings within a larger scheme of market housing. It seeks a mechanism that would enable the developer to make a payment in lieu of affordable housing provision, should this situation occur.
 5. The Council's adopted *Core Strategy* (2011) Policy CS 12 requires all sites capable of delivering 10 or more units to provide affordable homes on site. Policy 3.12 of the London Plan (2016) prioritises on-site affordable housing and states that off-site provision should only be provided in exceptional
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circumstances where it can be robustly demonstrated that on-site provision is not appropriate. I consider the Council's policies to be broadly consistent with the London Plan in this instance. The appellant's financial viability assessment indicates that it is possible to deliver the affordable dwellings as on-site provision.

6. However, when considering the practicality of the delivery, the evidence from the parties regarding the amount of interest from registered housing providers is contradictory, with the Council citing at least one provider responsible for similar levels in other schemes. The appellant has compiled a larger number of negative responses, suggesting difficulties in transferring a small number. Under these circumstances, I agree that the planning obligation should incorporate a period of marketing to providers. However, whether this should occur during the build stage or after completion is a matter of disagreement.
7. I note the strong policy preference for on-site provision. As such, it is preferable to ensure that the opportunity for marketing extends as widely as possible. Taking into account the appellant's comments that some marketing of the dwellings will effectively occur prior to completion, it is appropriate to require a formal period of marketing to occur after completion of the scheme, should it be necessary. In these circumstances, the Council's suggested three-month period is appropriate.

Suitability of an advanced stage viability review

8. The Council's requirement of a late-stage viability review partly derives from its *Development Viability Supplementary Planning Document (2016) (SPD)*, which suggests that all schemes requiring review should be subject to such a review, on the sale of 75% of units in residential-led schemes. The appellant notes that the Council is overreliant on SPD guidance, rather than development plan policy, in determining the acceptability of the affordable housing component of the proposed scheme. The Glossary to the *National Planning Policy Framework* sets out the importance of such guidance within the decision-making process, noting that they add details to development plan policies and are not part of the plan, but are capable of being a material consideration. In this instance, the SPD was subject to extensive public consultation with draft versions widely available and the subject of comment prior to adoption.
9. It is common for SPDs to provide technical guidance not otherwise specifically referenced in development plan policies, and in this instance I consider that the SPD is consistent with Core Strategy Policy CS 12, in that it seeks to provide the maximum reasonable amount of affordable housing, in respect of local circumstances. I do not consider the Council's evidence to be overreliant on the SPDs, or that in this instance it has unreasonably applied them, or the policies of its development plan.
10. The submitted planning obligation sets out two opportunities for a viability review, which would be triggered in the event of a delay to the scheme's implementation or completion. The Council's preferred approach would base the reappraisal on the completed unit price, thereby reflecting up-to-date evidence, prior to disposal of the final units. This is a robust approach that would enable the development to achieve the maximum reasonable provision of affordable housing.

11. The appellant has suggested that the Council's approach would result in financial uncertainty. However, the viability assessment submitted at the application stage demonstrated that the proposed scheme, including two affordable housing units, was viable. I acknowledge that there might be changes in circumstances during the scheme's development, but given the appellant's identified lower risk on a scheme of this size and nature, consider that the Council has been flexible in offering terms that are proportionate to the development and the level of financial risk involved and are consistent with its adopted policies. For these reasons, I consider the Council's approach to be appropriate.

Other considerations

12. Given the financial concerns outlined by the appellant, it is likely that the fallback position would be to implement the extant permission for the site, which was granted on appeal¹ and subsequently amended². I appreciate that this would result in fewer homes being delivered, and that it would offer no on-site affordable housing. However, it would still deliver an off-site contribution towards affordable housing. There is a possibility that such a contribution would also occur were I to allow this appeal. Under such circumstances, the scheme before me would not result in benefits that would outweigh those of the fallback scheme, or would deliver the maximum reasonable amount of affordable housing.

13. I have taken into account the appellant's comments on inhibiting development, but given the extant status of the fallback scheme, I do not consider that dismissing the appeal would be contrary to the advice given within the Framework on such matters (paragraphs 176 and 205). Moreover and for similar reasons, I acknowledge that the Unilateral Undertaking contains a number of other undertakings which would provide various benefits, but these are not sufficient cause for me to allow the appeal.

14. I have also considered the effect of the supply of additional units on local housing demand, including the five-year supply. However, the additional units, although beneficial in terms of reducing demand, would provide only a small overall benefit in terms of contributing to the borough's housing supply target. Given that the Council does not currently have an undersupply, nor has it consistently demonstrated one in recent years, I do not consider this provides sufficient reason to allow the appeal.

Conclusion on main issue

15. I therefore conclude that the proposed development makes inadequate provision for delivering the maximum reasonable amount of affordable housing. It would conflict with Core Strategy Policy CS 12, and the Council's adopted Development Management Policies (2013) Policy DM9.2, which together require the Council to seek appropriate levels of affordable housing delivery, with the inclusion of planning obligations if required. These policies are consistent with the relevant strategic policies set out in the London Plan.

¹ Appeal ref: APP/V5570/W/15/3133776; date of decision: 14 October, 2015.

² Council ref: P2016/2059/S73; approved 30 March, 2017.

Conclusion

16. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

G Rollings

INSPECTOR