



Appeal Decision

Site visit made on 4 September 2017

by **L Gibbons BA (Hons) MRTPI**

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

Decision date: 29 September 2017

Appeal Ref: **APP/Q1445/W/17/3177496** **48-50 Western Road, Brighton BN1 2EB**

- 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 Western Road Ltd against Brighton & Hove City Council.
 - The application Ref BH2017/01183, is dated 4 April 2017.
 - The development proposed is the change of use from (A1) to 6no one bedroom flats and 3no two bedroom flats at basement, first and second floors (C3).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from (A1) to 6no one bedroom flats and 3no two bedroom flats at basement, first and second floors (C3) at 48-50 Western Road, Brighton BN1 2EB in accordance with the terms of the application, Ref BH2017/01183, dated 4 April 2017, subject to the conditions set out in the schedule at the end of this decision.

Background and Main Issue

2. The appeal site has a planning history which includes an approved planning application in September 2016 for change of use from retail use to residential subject to a section 106 agreement (s106) of the Town and Country Planning Act 1990 (as amended) relating to affordable housing contributions.
3. The Council's Appeal Statement indicates that had it been in a position to determine the application, it would have been refused for the lack of contributions towards affordable housing within the City.
4. The main issue is whether the contribution sought in respect of affordable housing is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

Reasons

5. As part of the appeal the appellant submitted a copy of a signed s106 Unilateral Undertaking (UU) dated 25 August 2017 in relation to a contribution towards affordable housing. I have considered the UU in the light of the statutory tests at paragraph 204 of the National Planning Policy Framework. This sets out that any contributions sought should be necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

6. Policy CP20 of the Brighton and Hove City Plan (CP) Part 1 2016 requires an affordable housing contribution from all types of residential development where the net gain is over 5 units. A sliding scale is applied which means that a contribution of 20% will be sought from sites between 5 to 9 units. Policy CP20 was supported by a viability assessment and the policy allows for site specific circumstances to be taken into account.
7. However, a material consideration of considerable importance and weight is Government policy as set out in the Written Ministerial Statement (WMS) of 28 November 2014. In relation to planning obligations and affordable housing this indicates that for 10 units or less and which have a maximum combined gross floor space of no more than 1000 sq. metres no affordable housing or tariff style contributions should be sought. Therefore, there is conflict between the national threshold in the WMS and the Planning Practice Guidance (the Guidance), and the local thresholds set out in Policy CP20 of the CP.
8. The Council refer to over 24,000 households on the housing register with a large number of these in priority need. From the information before me, average property prices are also much higher than that for England and Wales. The City is also a physically constrained location and I note that small sites contribute more than 50% of the housing delivery within the City. It seems to me that the combination of these factors result in a significant need for affordable housing within the City. On the basis of the evidence before me, I consider that the WMS does not outweigh the development plan in this instance and an affordable housing contribution is required.
9. Policy CP20 of the CP indicates that the targets relating to the sliding scale may be applied more flexibly where the Council considers this to be justified. This includes criteria relating to the costs of the development using an approved viability model. The Council refers to calculations of affordable housing contributions being based on a Zoned approach, and that the amount required for the scheme before me would be £374,500. However, I have not been provided with the details of this calculation or how it would relate to the scheme before me.
10. The appellant proposed an alternative figure which was much lower than the Council's calculations. As part of the appeal process the Council submitted a viability appraisal by the District Valuer dated August 2017. This was undertaken to assess the viability study submitted by the appellant in respect of concerns about the inputs and justification, and to advise whether the scheme would be able to make affordable contributions.
11. The District Valuer's viability appraisal concluded that an affordable housing contribution could be made. However, this was also at a lower figure with £173,235 being identified as a surplus. This is the amount now included within the submitted UU. The Council consider the figure within the UU is compromised and refer to potential margins of error in the figures provided by the District Valuer. However, this is not explained further. Moreover, the Council does not dispute the conclusions of the Valuer's viability appraisal. Taking account of the lack of reasoning or justification in the viability study submitted by the appellant, and the methodology and inputs used within the Council's viability assessment, I consider that the District Valuer's assessment is sufficiently robust, and therefore that the figure within the UU is justified.

12. I conclude that the affordable housing contribution as set out in the UU would be necessary to make the development acceptable in planning terms, is directly related to the development and fairly related in scale and kind. It would meet the tests at paragraph 204 of the Framework.

Other matters

13. The Council does not object to the proposed scheme in respect of the principle of the conversion, the effect on neighbours and standard of accommodation. Based on the evidence before me, I see no reason to disagree with this view. The appeal site is located within the Regency Square Conservation Area. The design of the external changes to the building would be seen in context with the original design and those of nearby buildings when seen from Western Road and Clarence Square. The proposal would preserve the character and appearance of the Conservation Area.

Conditions

14. I have considered the conditions in the light of the tests set out in paragraph 206 of the Framework and the Planning Practice Guidance. Where necessary, I have amended the suggested conditions in order to comply with the tests. I have imposed a condition specifying the relevant drawings as this provides certainty.
15. The Council suggested conditions which would be either before commencement of development or before the occupation of the development. I have amended the order of the conditions to reflect this.
16. No parking is proposed within the scheme. The site is located within the city centre. The Highways Authority indicates that the site is suited to car free housing due to accessibility, and existing on street parking controls. In order to promote sustainable transport choices and to prevent parking congestion a condition requiring submission of details or a scheme to exclude residents from residents' permit schemes has been attached. I have amended the condition to refer to implementation and retention.
17. To protect the living conditions of the occupiers of the flats a condition is needed relating to details for ventilation of the flats, the submission of details are required before the commencement of development. The condition has been amended to refer to implementation and retention. In the interests of protecting the character and appearance of the area, a condition is necessary relating to the materials for the rooflights and position within the roof. In relation to sustainability conditions are needed for storage of refuse and recycling, and secure cycle parking facilities.

Conclusion

18. For the above reasons and having regard to all other matters raised, I conclude that subject to the conditions set out in the attached schedule the appeal should be allowed.

L Gibbons

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A15504.01.04 Location and Block Plan; A15504.03.01 Rev E Proposed Basement and ground floor plans; A15504.03.02 Proposed first, second and third floor plans and A15504.03.03 Rev A Proposed elevations.
- 3) The development hereby permitted shall not commence until such time as a detailed scheme or agreement has been submitted to and approved in writing by the local planning authority that shall ensure that residents of the development, other than those residents who are Blue Badge Holders, have no entitlement to a resident's parking permit. Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.
- 4) Prior to the development commencing, a scheme on how and where ventilation will be provided to the approved flats shall be submitted to and approved in writing by the local planning authority. The details shall include the specifics of where the clean air is drawn from and that sufficient acoustic protection is built into the system to protect end users of the development. The scheme shall ensure compliance with Building Regulations as well as suitable protection in terms of air quality. The scheme shall be fully implemented in accordance with the approved details and thereafter retained at all times.
- 5) The rooflights hereby approved shall have steel or cast metal frames fitted flush with the adjoining roof surface and shall not project above the plane of the roof.
- 6) Prior to the first occupation of the development hereby permitted a scheme for the storage of refuse and recycling shall be submitted to and approved in writing by the local planning authority. The scheme shall be carried out in full as approved prior to first occupation of the development and the refuse and recycling storage facilities shall thereafter be retained for use at all times.
- 7) Prior to the first occupation of the development hereby permitted, details of secure cycle parking facilities for the occupants of, and visitors to, the development shall be submitted to and approved in writing by the local planning authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and thereafter be retained for use at all times.

---END OF SCHEDULE---