



Appeal Decision

Site visit made on 8 February 2018

by **Timothy C King BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2018

Appeal Ref: APP/Q1445/W/17/3187050 **39 Old Shoreham Road, Brighton BN1 5DQ**

- 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 Clapham Properties against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/00672, dated 9 February 2017, was refused by notice dated 6 October 2017.
 - The development proposed is Removal of existing single storey/two storey side extension and replace with a new single/two storey extension in order to facilitate conversion of the building from a single dwelling house to 7 flats.
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Decision

1. The appeal is dismissed.

Main Issue

2. The Council has raised no objections in terms of the conversion itself, the proposed extension, or the resultant standard of accommodation. I agree with this approach and, as such, the main issue is whether the proposal should provide for a contribution towards affordable housing.

Reasons

3. The appeal arises from the appellant's failure to provide a contribution towards affordable housing within the Brighton & Hove City area. In not providing a viability justification for the absence of such the Council considers it would cause harm to the wider interest of local affordable provision and be contrary to development plan policy.
4. Policy CP20 of the Brighton & Hove City Plan Part One (CPP1), adopted in March 2016, requires sites of between 5 and 9 dwellings, of which the proposal is a case in point, to provide 20% affordable housing in the form of a financial contribution. In this particular instance the contribution would total £238,750.
5. The Court of Appeal's judgement of May 2016 reinstated, and gave legal effect to, the Written Ministerial Statement (WMS) of November 2014 which states that affordable housing and tariff style planning obligations should not be sought from developments of 10 units or less. At this point the government's Planning Practice Guidance (PPG) was updated, accordingly. The intention of this is to prevent a disproportionate burden on small scale developments.

6. In the circumstances the PPG post-dates the adoption of CPP1 and is a weighty material consideration. Nonetheless, the WMS does not reduce the weight that should be given to the statutory development plan. The primacy of the development plan therefore remains in that planning applications must be decided in accordance with the development plan unless material considerations indicate otherwise. The WMS therefore represents a consideration which has to be balanced against the plan and the evidence base supporting the Council's application of the policy.
7. The Council considers that Policy CP20, and its requirements, should hold good because there are sufficient local circumstances to justify an appropriate exception to the government's approach. These circumstances include the significant need for affordable housing over the plan period to 2030, a constrained housing land supply, and that the delivery from smaller development sites has been a fairly constant source of supply whereas larger schemes are impacted by economic trends and housing market fluctuations.
8. In December 2016 a similar proposal at the appeal site was dismissed at appeal (*APP/Q1445/W/16/3158279*) although not due to the absence of any affordable housing contribution. In this specific regard the Inspector, in commenting on the inconsistency of CPP1 Policy CP20 with the most recent position set by the government, concluded that the PPG and policy within the WMS carry more weight than that of the said local policy. He indicated that a previous appeal decision (*APP/Q1445/16/3152366*) of November 2016, involving this same issue at another property in the Brighton & Hove City Council area, had reinforced his view.
9. The appellant in the current appeal relies heavily on the previous decision at the site, mentioning that there has been no planning policy change at either national or local level since this time. This Inspector, in his December 2016 decision, concluded that the WMS should outweigh Policy CP20. He would, though, have reached his decision on the evidence before him at that time and I cannot be certain that he had the same evidence before him as is now before me. Although he commented that the approach in Policy CP20 holds significant weight his reference to the local position regarding affordable housing is brief and would appear to summarise the extent of the Council's evidence offered on what was an appeal against the Council's failure to determine an application within the prescribed period. The decision letter makes no mention of the 'Objectively Assessed Needs for Housing : Brighton & Hove, 2015' (OANH) which explains the local situation in greater detail, nor is reference made to the Council's housing register.
10. Similarly, neither of these are raised in the other appeal decision letter provided by the appellant, issued in November 2016. However, this decision does make reference to the examination of CPP1 whereby the appointed Inspector, in endorsing Policy CP20, noted in her letter of 5 February 2016 that the approach was supported by a study into its effects on the viability of housing development. Although the WMS was not in force at this time she commented that the policy does include a degree of flexibility to allow site specific circumstances, including viability, to be taken into account. Accordingly, she acknowledged that the policy complies with paragraph 173 of the National Planning Policy Framework (the Framework) which requires that the scale of obligations and policy burdens should not threaten the viability of the development.

11. The OANH and the housing register were, though, raised by a subsequent Inspector in an appeal decision of June 2017 (APP/Q1445/W/16/3166012) relating to a proposal at another local site in the local planning authority's area. In this decision, referred to me by the Council, the Inspector concluded that given the development plan policy, the contribution is necessary to make the proposal acceptable and would satisfy the tests of Regulation 122 of the Community Infrastructure Regulations 2010 and paragraph 204 of the Framework.
12. Many appeals cited by the Council which post-date the 2016 decision at the appeal site also refer to the OANH and the housing register. Each involved the Inspector concluding that, from the evidence before them, the WMS should not justify a reduction in affordable housing in the light of Policy CP20.
13. The Council has referred to particular examples where lower contributions have been appropriately justified and, given that Policy CP20 has such flexibility built in, I do not consider that the purpose and stated aims of the WMS and PPG to this end would be adversely affected in this instance by a contrary decision.
14. The appellant has provided a table which indicates that an expected profit margin of 14.7% would, with the requested contribution factored in, be reduced to 2.5%. However, there is nothing to indicate the source of the figures given or the method of compilation used. Moreover, the experience of the firm that prepared the table in relation to viability matters has not been made clear. Indeed, there is a clear lack of any in depth analysis on this particular matter to justify the claim that the contribution would have such significant financial implications. Two separate Valuation Reports and certain other details have been provided but the information given is largely general. Although a somewhat unfavourable comparative valuation is drawn with 55 Old Shoreham Road it is also indicated that, unlike the appeal dwelling, this nearby property has had the benefit of an internal refurbishment.
15. By reason of the relevant information presented to me I consider that there is a substantive local need for affordable housing in the City of Brighton & Hove, that there is also a case for small market housing schemes to contribute to the provision of affordable housing. Furthermore, in this particular instance, in the light of the above concerns the appellant has not satisfactorily demonstrated that the appeal scheme would only be rendered viable if there was no contribution made.
16. Taking everything into account I have attached considerable weight to the WMS and PPG. I have also given due regard to the contents of the letter, referred to by both main parties, sent by PINS in March 2017 to the Planning Policy and Design Team Manager at Richmond and Wandsworth Councils, which highlights the approach to be taken in deciding such appeals. This says that the decision maker has discretion in applying his or her judgement as to where the balance should lie, drawing on the evidence presented.
17. I have found differently from the Inspector who determined the previous appeal at the site, but this is justified by the extent of the information before me and the findings of various Inspectors on more recent local appeals. Indeed, even if the evidence before me and that provided to the previous Inspector had been the same, I consider this would not have justified allowing the scheme in the face of the number of subsequent decisions elsewhere in the Borough.

18. I conclude, therefore, that the proposal would conflict with Policy CP20 and in this instance the WMS does not amount to a material consideration that indicates the decision should be otherwise than in accordance with the development plan. Consequently, a financial contribution towards affordable housing is required, and I find that such an obligation would satisfy the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework.
19. For the above reasons, and having had regard to all matters raised, the appeal is dismissed.

Timothy C King

INSPECTOR