The Planning Inspectorate

Appeal Decision

Hearing held on 27 January 2016
Site visit made on 27 January 2016

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

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

Decision date: 03 March 2016

Appeal Ref: APP/G5180/W/15/3135138
4 and 4a Oaklands Road, Bromley, London, BR1 3SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by South East Living Group against the decision of the Council of the London Borough of Bromley.
- The application ref. DC/14/04810/OUT, dated 4 October 2014, was refused by notice dated 2 September 2015.
- The development proposed is: demolition of existing building comprising 2 apartments known as 4 and 4a Oaklands Road and the erection of a new three and a half storey building comprising 7 one bedroom apartments and 4 two bedroom apartments with 11 off-road parking spaces.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building comprising 2 apartments known as 4 and 4a Oaklands Road and the erection of a new three and a half storey building comprising 7 one bedroom apartments and 4 two bedroom apartments with 11 off-road parking spaces in accordance with the terms of the application ref. DC/14/04810/OUT, dated 4 October 2014, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. The application form indicates that all matters of detail apart from access and layout are reserved for future determination. It was clarified at the hearing that drawing nos. 914:1022/PL201 and 914:1022/PL202 have now been superseded. I have determined the appeal on that basis.

3. At the hearing, the main parties confirmed that the valuation reports referred to in this decision (notwithstanding that they are marked as being confidential) are publically available documents.

Background

4. Planning permission was refused by the Council in September 2015 for two reasons. The first was, in summary, that inadequate evidence had been submitted to demonstrate that the development could not support affordable housing provision and sufficient contributions towards healthcare and education infrastructure in accordance with policies H2 and IMP1 of the London Borough of Bromley Unitary Development Plan (UDP) and policy 8.2 of the London Plan. The second was, in summary, the insufficient information had been provided to

demonstrate that that the development could feasibly achieve carbon dioxide reductions as required by policy 5.2 of the London Plan.

5. Subsequent to the Council's decision, the appellant submitted an Energy Statement (dated October 2015) setting out the potential for the appeal scheme to achieve a reduction in carbon dioxide emissions as a result of energy efficiency measures and the provision of photovoltaic panels. The Council accepts that, subject to the imposition of a planning condition, this is sufficient to address the concern raised in its second refusal reason.

6. Also in October 2015, the appellant submitted a unilateral undertaking (dated 13 October 2015) making provision for education and health contributions. Following the hearing, an amended unilateral undertaking was submitted (dated 12 February 2016). I address these further below.

Considerations

7. As a result of the above, the main issue dividing the two main parties at the time of the hearing was whether the development could support affordable housing provision in line with the above-noted policies. During the consideration of the planning application, the appellant had submitted a Financial Viability Appraisal (FVA) dated December 2014 (prepared by Affordable 106 Ltd). In summary, this concluded that the inclusion of a requirement to provide affordable housing would produce a substantial deficit between the proposed scheme's residual value output and the viability benchmark.

8. In order to enable it to engage consultants to assess the FVA, the Council requested that the appellant make a payment. This was done and an assessment was prepared on the Council's behalf by Lambert Smith Hampton (LSH), dated 6 May 2015. This raised three main areas of concern about the FVA's assumptions. In summary these related to (1) estimated construction costs, (2) the likely values that could be achieved from the sale of the proposed flats and (3) the robustness of the assumed benchmark land value.

9. In response to these concerns, the appellant submitted a further document (also prepared by Affordable 106 Ltd) dated July 2015 (the RFVA). This included a detailed cost plan (prepared by P2M UK Limited) indicating a markedly higher cost level than had previously been suggested. The RFVA stated that the developer believed that lower costs may be possible, but concluded that a scheme providing for affordable housing would in any event be unviable.

10. The Council requested the payment of a further fee to enable the RFVA to be assessed. The appellant declined to do so and the Council proceeded to determine the application as described above.

11. Nevertheless, for the purposes of the appeal the Council itself commissioned a review of the further evidence that had been submitted by the appellant. This document, also prepared by LSH and dated December 2015, reaches two conclusions[1]. Using the residual value output suggested by the RFVA, it concludes that the scheme would be viable with a surplus of some £235,000. However, when adopting the cost plan data from P2M UK Limited, referred to above, it concludes that the scheme would not be viable.

[1] In section 6 – Outputs and Results.

12. At the hearing, I sought to clarify which of these two conclusions represented the actual view of the Council and its advisors (LSH) as to the scheme's likely viability. The representative from LSH stated that a detailed and site specific assessment of costs was likely to represent a more robust analysis than one based upon BCIS data. As such, it was considered that the appeal scheme was likely to prove unviable. The Council did not depart from that assessment.

13. Accordingly, it is now common ground between the main parties that it would not be justifiable to seek to secure provision for affordable housing from the appeal scheme. Bearing in mind that I have seen no detailed challenge to the assumptions set out in the P2M UK Limited cost plan, and notwithstanding the comment in the RFVA that the development considered that lower costs may be possible – a comment that was not justified in any detail in that report – I have no reason to take a different view. I therefore agree that, on the evidence before me, the appeal scheme would be likely to prove unviable. It would therefore amount to an exception to the requirements of the above-noted UDP and London Plan policies, as is provided for in UDP policy H2.

Planning Obligations

14. Subsequent to the Council's decision to refuse planning permission, the appellant submitted a unilateral undertaking (dated 13 October 2015) in respect of education and health contributions. At the hearing, the Council stated that contributions were required in respect of facilities at St George's Bickley CE Primary School and the Dysart Surgery on Ravensbourne Road. It confirmed that these had not been the subject of five or more planning obligations. I have seen no evidence to the contrary and am satisfied that these projects are appropriately related to the appeal development.

15. At the hearing, the Council raised a concern that the original undertaking did not refer to these projects. In its view, its references to making provision for education and health contributions were insufficiently specific. I share that concern. Bearing in mind the limit placed upon the pooling of contributions by Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations 2010, it seems to me that the relevant obligations do not clearly specify the projects that are intended to be funded. As such, I consider that they do not accord with Regulation 122 of the CIL Regulations 2010. I am therefore unable to take them into account in this decision. Under clause 3.5 of the undertaking, the relevant obligations will not therefore come into effect.

16. In contrast, the second unilateral undertaking (dated 12 February 2016), which was submitted after the hearing, refers specifically to the above-noted projects. Given my comments above, I am satisfied that it accords with Regulation 122 of the CIL Regulations 2010 and I have taken it into account in this decision.

Conditions

17. The Council has suggested a list of possible conditions in the event that the appeal is allowed. I have considered, and where necessary amended, these in line with national policy and guidance. I have imposed a condition specifying the relevant drawings, so far as relevant to the matters to be determined, as this provides certainty. Given that further details will be considered at the reserved matters stage, those conditions relating to landscape works, boundary treatments, external materials (including the details of any green roofs) and crime prevention measures fail the test of necessity. Adequate justification has

not been provided for the suggested restriction of permitted development rights.

18. In order to ensure satisfactory provision in line with relevant development plan policies, details are needed of other matters that are not subject to reserved matters approval – namely drainage (although a single condition will suffice), external lighting, and refuse storage arrangements. Greater detail is needed about tree protection measures in order to ensure that trees are safeguarded. One condition is adequate for this. Provision and retention of parking spaces, turning areas and bicycle parking facilities, as well as the stopping up of the existing access, are necessary for highway safety reasons. Given the proximity of neighbouring residential properties, and notwithstanding that the scheme's appearance remains to be determined, I agree with the Council that it is necessary to ensure that adequate measures are put in place at the outline stage to prevent harmful overlooking and loss of privacy.

19. Also in order to safeguard neighbours' living conditions it is necessary for a construction management plan to be submitted, approved and implemented. There is therefore no need for a separate requirement in respect of wheel-wash facilities. For the reasons set out above, it is necessary to impose an energy efficiency condition: while an energy statement has already been submitted, this does not relate to the full details of the scheme which, as noted above, have yet to be finalised. Provision of electric car charging points is needed in line with London Plan policy 7.14. However, at the hearing the Council were unable to justify the dry NOx emission rate that they suggest should be set on any gas boilers: this requirement therefore fails the test of necessity.

Conclusion

20. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Schedule of Conditions

1) Details of the appearance, landscaping, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan (not numbered) 914:1022/PL202/A; 914:1022/PL203; 914:1022/PL205; 914:1022/PL206; 914:1022/PL207; 914:1022/PL208 but only in respect of those matters not reserved for later approval.

5) Development or demolition shall not commence until a detailed arboricultural method statement setting out protection measures for trees to be retained has been submitted to and approved in writing by the local

planning authority. All works shall be undertaken in accordance with the approved details.

6) Development or demolition shall not commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall include measures of how construction traffic can access the site safely, how potential traffic conflicts can be minimised, the route construction traffic shall follow for arriving at and leaving the site, and the hours of operation, but shall not be limited to these. The Construction Management Plan shall be implemented in accordance with the approved details.

7) Development or demolition shall not commence until a site-wide energy assessment and strategy for reducing carbon emissions has been submitted to and approved by the local planning authority. The results of this strategy shall be incorporated into the final design of the building prior to first occupation. The strategy shall include measures to allow the development to achieve a reduction in carbon emissions of 35% over the target emissions rate outlined in the Building Regulations 2013. The development should also aim to achieve a reduction in carbon emissions of at least 20% from on-site renewable energy generation. The final designs, including the energy generation shall be retained thereafter in operational working order, and shall include details of schemes to provide noise insulation and silencing for any filtration and purification to control odour, fumes and soot emissions of any equipment as appropriate.

8) Development shall not commence until details of drainage works, including an assessment of the potential for disposing of surface water by a sustainable drainage scheme, have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until drainage works have been constructed in accordance with the approved details.

9) Development shall not commence until details of the means of privacy screening for the western side of the balconies sited at the front of the building hereby permitted have been submitted to and approved in writing by the local planning authority before any work is commenced. The privacy screening shall be put in place in accordance with the approved details and shall thereafter be retained.

10) The development hereby permitted shall not be occupied until the windows in the east facing elevations of the first, second and third floors of the approved building have been obscure-glazed below 1.7m as measured from floor level in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority. The obscure glazing shall thereafter be retained.

11) The development hereby permitted shall not be occupied until the existing access is stopped up at the back edge of the highway in accordance with details of an enclosure that shall previously have been submitted to and approved in writing by the local planning authority. The approved enclosure shall thereafter be retained.

12) The development hereby permitted shall not be occupied until provision has been made for the storage of refuse and/or recycling bins in accordance with details that shall previously have been submitted to and

approved in writing by the local planning authority. The approved arrangements shall thereafter be retained for those purposes.

13) The development hereby permitted shall not be occupied until parking spaces and turning areas have been constructed in accordance with the approved details. They shall thereafter be retained for those purposes.

14) The development hereby permitted shall not be occupied until electric car charging points have been provided to a minimum of 20% of car parking spaces with passive provision of electric charging capacity provided to an additional 20% of spaces.

15) The development hereby permitted shall not be occupied until facilities for bicycle parking (including covered storage where appropriate) is provided at the site in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. They shall thereafter be retained for those purposes.

16) The development hereby permitted shall not be occupied until external lighting to serve the public areas of the development hereby permitted has been put in place in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. Development shall accord with the approved details. The approved lighting shall thereafter be retained.

M J Hetherington

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr C Hough BSc FRICS	Sigma Planning
Mr N M Styles	South East Living
Mr M Oliver	South East Living
Mr S Phillips BA(Hons)	Affordable 106 Ltd
Mr J Tilzey BA(Hons)	Proctors

FOR THE LOCAL PLANNING AUTHORITY

Ms C Harris BA(Hons) MSc	London Borough of Bromley
Mr A Murphy BSc(Hons) MRICS	Lambert Smith Hampton
Mr A Montgomery BSc(Hons) MRICS	Lambert Smith Hampton

DOCUMENTS TABLED AT THE HEARING

Document 1	Agreed Statement of Common Ground.
Document 2	Site location plan.
Document 3	Financial Viability Review prepared for the London Borough of Bromley (Lambert Smith Hampton, December 2015).