



Appeal Decision

Site visit made on 21 June 2011

by Mike Fox BA (Hons) Dip TP MRTPI

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

Decision date: 30 June 2011

Appeal Ref: APP/J1915/A/11/2146825

Tewin Garage, 41 & 41a Upper Green Road, Tewin, Welwyn, Herts, AL6 0LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Welwyn Homes Ltd against the decision of East Hertfordshire District Council.
 - The application Ref 3/10/1785/FP, dated 4 October 2010, was approved on 2 December 2010 and planning permission was granted subject to conditions.
 - The development permitted is the demolition of the existing garage, petrol filling station and workshops and existing house and erection of 3 detached houses and a two storey office building, with new vehicular access and associated off-street parking.
 - The condition in dispute is No 20 which states that: *The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of PPS3 or any future guidance that replaces it. The scheme shall include:*
 - (i) *the type and location on the site of the affordable housing provision to be made which shall consist of one dwelling;*
 - (ii) *the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;*
 - (iii) *the arrangements for the transfer of the affordable housing to an affordable housing provider;*
 - (iv) *the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and*
 - (v) *the occupancy criteria to be used for determining the identity of occupiers of the affordable housing, and thereafter occupied in accordance with the approved scheme.*
 - The reason given for the condition is: *to ensure that the proposed development provides for affordable housing in accordance with policies HSG3, HSG4 and OSV1 of the East Herts Local Plan Second Review April 2007 and SPD: Affordable Housing and Lifetime Homes.*
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Decision

1. I allow the appeal and grant planning permission for the demolition of the existing garage, petrol filling station and workshops and existing house and erection of 3 detached houses and a two storey office building, with new vehicular access and associated off-street parking at Tewin Garage, 41 & 41a Upper Green Road, Tewin, Welwyn, Herts, AL6 0LE in accordance with the terms of the application Ref 3/10/1785/FP, dated 4 October 2010, and the plans submitted with it, without compliance with condition 20.

Main Issue

2. In my view, the main issue is the effect of varying condition (20) in terms of the provision of affordable housing (AH).

Reasons

3. The appeal site is a disused garage within Tewin, which is designated in the *East Herts Local Plan Second Review (2007)* (LP) as a Category 1 village where the development of limited small scale infill housing may be permitted. The acceptability of the site for infill housing is not in dispute. LP policy OSV1 (II) criterion (b) requires proposals for housing development to make provision for up to 40% AH on such sites, whilst LP policies HSG3, HSG4 and HSG7 provide guidance on AH site suitability and AH criteria.
4. The appeal proposal is for 3 dwellings on a site which exceeds 0.09ha, the threshold identified in LP policy HSG3 for the expectation of 40% AH on suitable sites.
5. The Council's *Affordable Housing and Lifetime Homes* Supplementary Planning Document (SPD) states that there will always be exceptional circumstances that influence the provision of AH, which the Council will take into consideration, and that in order to determine whether the economics of provision are such that a site is not suitable for the provision of AH, the Council will require detailed information from the developer on the viability of the scheme. Both the local plan and the SPD's approach to AH targets and site suitability accord with national policy, as expressed in Planning Policy Statement (PPS) 3 *Housing*, and subsequent case law.
6. I therefore consider that the appeal site is a suitable site for the provision of up to 40% AH and that, in the absence of other material considerations, condition (20) would accord with LP policy HSG3. I am, however, aware of other material considerations. Firstly, the appellant has two extant planning permissions on the appeal site, for 1 and 2 detached dwellings and offices respectively, which in my judgment establishes a fall-back position. The retention of condition (20) would therefore mean that there would be nothing to stop the appellant implementing the extant permissions I have referred to, with no AH provision on the appeal site.
7. Secondly, the appellant's project costs show that the retention of condition 20 would significantly reduce the viability of the scheme, although its deletion would also result in a loss making scheme, albeit lower than the costs of implementing the two earlier planning permissions.
8. Thirdly, the Council considers that the proposal would achieve greater benefits than the earlier two planning permissions. In particular, the site would be developed comprehensively, whilst the office building would be moved further away from the next door dwelling at 39A Upper Green Road, to the south, and the residential units would relate to each other more satisfactorily.
9. I therefore conclude that, given the appellant's fallback position, the deletion of condition (20) would be unlikely to deliver the AH provision sought by the Council. Moreover, the better layout of the proposal would also weigh in favour of deleting condition (20). I have also taken account of the potential financial loss of the proposal, although it would appear to be less than for the other two options, whilst there would be a gross profit.

10. The appellant has also commented that the LP policy HSG3 threshold for 0.09 ha is set too low. It is not within my remit, however, to rewrite local plan policy; rather it is for the appellant to make this point at an appropriate opportunity at the next stage of the emerging development plan.
11. For the reasons given above and having regard to all other matters raised, I have found that condition (20) is not necessary. I will consequently vary the permission by deleting the disputed condition.

Mike Fox

INSPECTOR