



## Appeal Decision

Site visit made on 29 August 2019

**by K Stephens BSc (Hons), MTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 October 2019

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**Appeal Ref: APP/P1940/W/19/3230911**

**Rear of 67 & 69 St Georges Drive, Carpenders Park, Hertfordshire WD19 5HA**

- 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 Mr G Bishop against the decision of Three Rivers District Council.
  - The application Ref 19/0218/FUL, dated 1 February 2019, was refused by notice dated 11 April 2019.
  - The development proposed is detached bungalow to rear of No.67 and 69.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The application form gives the appeal site address as 69 St Georges Drive and the appeal form gives it as 67 St Georges Drive. However, it is clear from the submitted plans and the description of the development that the appeal site forms part of the rear gardens of both 67 and 69. Therefore I have used the Council's address on the decision notice as it more accurately describes the address of the appeal site.

### Main Issues

3. The main issues are i) whether the proposal would make adequate provision for affordable housing, and ii) whether the proposal would make adequate energy savings with particular regard to carbon dioxide (CO<sub>2</sub>) emissions.

### Reasons

#### *Provision for affordable housing*

4. The proposal is for the erection of a 2 bedroom bungalow intended for occupation by the appellants. It would be built in part of his parents' rear garden of Nos.67 and 69 St Georges Drive, with vehicular access off Compton Place. The site is in a predominately residential area where bungalows are the prevailing house type.
5. Affordable housing Policy CP4 of the adopted Three Rivers Core Strategy (CS) explains that due to above average house prices in the District, the requirement for affordable housing is exceptionally high. In order to increase the provision of affordable homes and meet local need, 45% all new housing development is expected to be affordable. On smaller sites that would deliver

between one and nine dwellings, a financial contribution or commuted sum towards provision of off-site affordable housing elsewhere will be considered instead. The commuted sum will vary depending on the particular circumstances of the site, the proposed scheme and viability. Using its Affordable Housing Supplementary Planning Document (SPD), the Council has calculated that the commuted sum for the appeal proposal would be £29,400.

6. In cases where the payment of a commuted sum would make the proposal unviable, applicants must support their reasoning for not providing the required commuted sum with financial evidence, which should be submitted alongside their planning application. The appellant has not made provision for a commuted sum for affordable housing, nor submitted a viability assessment to justify the non-payment.
7. Planning law requires that applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise<sup>1</sup>. Policy CP4 is therefore the starting point in this instance.
8. The appellant's case is that Policy CP4 should not apply to small sites in light of the Government's Written Ministerial Statement (WMS) published in November 2014, which dealt with thresholds beneath which affordable housing should not be sought, namely that developments of less than 10 units would not require affordable provision. The 2018 revised National Planning Policy Framework (the 'Framework') introduced this approach, and it remains in the 2019 updated version. I consider these are material considerations to be taken into account. Policy CP4 is at odds with government advice and national policy on this matter.
9. However, the Council has undertaken several housing-need analyses, the latest being July 2018<sup>2</sup>, to demonstrate the acute shortage of affordable housing in the District, especially in light of high house prices and that much of the District is also constrained by the Metropolitan Green Belt. It further highlights the importance small sites make to the contribution to the overall provision of affordable housing. Up until the end of March 2017 there has only been 22.6% of affordable housing provision, which falls short of the policy requirement of 45%. The shortfall demonstrates that the provision of affordable housing is still very much needed, such that Policy CP4 should continue to apply to small sites, despite the Framework and WMS. In light of the Council's body of evidence that demonstrates the particular local housing circumstances and needs of the District, I attach substantial weight to this local evidence and consider that the national policy position does not outweigh the development plan and Policy CP4 in this instance.
10. The Council has drawn my attention to a number of recent appeal decisions in the District (dated between May and June 2019, one of which was a Hearing) that deal with the tension between national policy and the development plan on this matter. Regardless of the outcomes of the particular appeals, those Inspectors came to a similar view that Policy CP4 is still capable of being applied to small housing schemes.

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<sup>1</sup> Section 38(6) of the planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, and as paraphrased in paragraph 47 of the National Planning Policy Framework.

<sup>2</sup> "Evidence for Re-Instating the Affordable Housing Threshold in Core Strategy Policy CP4: Affordable Housing" July 2018.

11. In light of the Council's housing evidence and my findings above, I consider a commuted sum towards affordable housing is therefore necessary. The required contribution would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations (2010) as amended, as it would be necessary, relevant and fairly related to the proposed development.
12. I am mindful that the appellants are a firefighter and a 'keyworker' on a low income. I am also aware of some of his personal circumstances, his need to live within a certain distance of London for call-out reasons and his aspirations for his family and career. I also acknowledge that the appellant is building a home for himself and is not a 'housing developer'. However, the policy does not exempt certain categories of people from demonstrating whether a housing proposal would be viable or not. The appellant claims that paying the commuted sum would eat into his limited budget for the build, as would paying for professional help, as has the cost of drawing up amended plans. That may well be the case, but those outgoings would need to form part of any viability assessment to justify why and how special circumstances apply.
13. Citing other examples of proposals that were found to be unviable does not demonstrate that the appeal proposal before me is or is not viable, as each assessment has to be specific to the proposal and its particular circumstances. The appellant has not submitted a viability assessment to justify why paying the commuted sum would make the appeal proposal unviable. As such, the proposal would be contrary to CS Policy CP4, whose aims are outlined above. It would also be contrary to the advice in the SPD.

#### *Energy saving*

14. CS Policy CP1 sets out a broad approach to sustainable development to tackle climate change by reducing carbon emissions and increasing energy and water efficiency of buildings, promoting the use of renewable energy systems and using natural resources wisely including sustainable building materials. The policy goes on to request that applications for all new residential development for one or more units are required to submit a 'CPLAN Energy and Sustainability Statement' to demonstrate sustainability principles have been incorporated in the design and construction. Development Management Policies Local Development Document (LDD) Policy DM4 takes this further and requires applicants to demonstrate that the development will produce 5% less CO<sub>2</sub> emissions than Part L of the Building Regulations (2013).
15. The appellant did not submit a CPLAN energy statement with the application to demonstrate that this will be achieved. The Design & Access Statement set out some measures, but did not contain the details required by the CPLAN.
16. However, the appellant has submitted an Energy Statement with his appeal. The Council has examined it and advises that it does not overcome the second reason for refusal. A more detailed Energy Report is required that would need to incorporate i) the development's predicted energy demand in kWh/year, based on SAP or SBEM calculations and separated by fuel type (this is the DER or BER value), ii) the total CO<sub>2</sub> emissions resulting from the above energy demand (kgCO<sub>2</sub>/year), iii) proposals to reduce the energy demand to include specifications of any decentralised energy source and/or low or renewable energy systems proposed for the development, and iv) the in CO<sub>2</sub> emissions resulting from the above measures.

17. Whilst the appellant's Energy Statement goes some way to show a reduction in CO<sub>2</sub>, it provides insufficient evidence and information to explain how the measures would realistically be achieved. Nor does it demonstrate the extent to which sustainable principles have been incorporated in the location, design, construction and future use of the proposal, together with expected CO<sub>2</sub> emissions and adequate CO<sub>2</sub> energy savings, as required by Policies. Accordingly, the proposal conflicts with CS Policy CP1 and LDD Policy DM4 whose aims are outlined above.

### **Other considerations**

18. The appellant refers to the appeal proposal being a self-build project because he is building it himself. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) places certain duties on planning authorities, including one of which is for them to keep a register of all individuals and organisations who are interested in acquiring a self-build/custom-build site. From the information before me, the appellant is not registered on the Council's self-build register, albeit his family own the appeal site. It is not a pre-requisite for occupants of any self-build property to be on the Council's self-build register. Whilst there may be reasons why not all of those with a genuine interest in acquiring such a site may not register, this cannot carry the weight that entries on the official register would carry, because only the latter would engage the statutory duty.

19. The appellant's examples of appeal decisions from different parts of the country are not directly comparable to the appeal proposal because of the particular housing circumstances facing Three Rivers District, as evidenced above. Other examples of appeal decisions in the appellant's Appendix D were made after the WMS and before the Council had undertaken its further housing needs analyses. Some examples document that s106 payments were indeed made for affordable housing. Others relate to extensions, garages and outbuildings for which there is no requirement for affordable housing or commuted sums.

20. The more detailed example in the appellant's Appendix C relates to a farm worker's dwelling at The Mulberry Bush. Farm workers' dwellings are typically determined on the basis of the needs of the farm. Furthermore, agricultural workers' dwellings are widely established as a form of affordable housing and are often subject to a condition restricting the occupation of the dwelling to a farm worker or someone related to one. I note the farm was located in the countryside, in the Green Belt and the Chilterns Area of Outstanding Natural Beauty, none of which apply to the appeal proposal. As such the example is not directly comparable to the appeal proposal. In any event, I must consider the appeal before me on its own merits.

21. I acknowledge the appellant's concerns with the Council's handling of the application and conflicting information he was told, but in reaching my decision I have been concerned only with the planning merits of the case.

### **Planning Balance and Conclusion**

22. The Council cannot currently demonstrate a five year supply of deliverable housing sites. Paragraph 11 of the Framework states that where the policies that are most important for determining applications are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against

the policies in the Framework taken as a whole. Whilst there would be a modest economic and social benefit from the provision of one dwelling towards the supply of housing, there would be no contribution towards affordable housing, a need strongly evidenced by the Council. Even if I were to apply the tilted balance, any benefits would be limited and the adverse impacts of granting planning permission on the supply of affordable housing and insufficient energy savings would significantly and demonstrably outweigh these limited benefits.

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

*K. Stephens*  
INSPECTOR