
Appeal Decision

Site visit made on 12 June 2014

by Timothy C King BA (Hons) MRTPI

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

Decision date: 4 July 2014

Appeal Ref: APP/D1590/A/14/2215759

Flats 1-8, Hawthorne House, The Maze, Leigh-On-Sea, SS9 5RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Christopher Cummins against the decision of Southend-on-Sea Borough Council.
 - The application Ref 13/01211/FUL, dated 20 August 2013, was refused by notice dated 18 October 2013.
 - The application sought planning permission for the demolition of existing flats and shop, clearance of the existing builder's yard and erection of eight flats with car parking, amenity space, refuse store and cycle store without complying with a condition attached to planning permission Ref SOS/08/01184/FUL, granted by appeal decision reference APP/D1590/A/09/2100478 dated 2 December 2009.
 - The condition in dispute is No 11 which states that: *"No flat hereby permitted shall be occupied until a scheme detailing how at least 10% of the total energy needs of the development is to be supplied from on site renewable sources has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include details of a timetable for the implementation of the supply of energy from on site renewable sources. The approved scheme shall be implemented in accordance with the approved timetable and retained as operational thereafter."*
 - The reason for the condition is given in paragraph 25 of appeal decision reference APP/D1590/A/09/2100478: *to reduce dependence upon energy from fossil fuels.*
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have considered the appeal, having regard to the Government's planning guidance which came into force in March 2014.

Main Issue

3. The main issue in this appeal is whether the said condition is reasonable or necessary in the interests of renewable energy provision.

Reasons

4. In allowing the appeal and imposing Condition 11 the Inspector saw no reason why small scale energy resources such as photovoltaic cells, solar panels or
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heat pumps, or a contribution of these, could not be provided within the site in order to meet the Council's renewable energy requirements. The wording of the condition reflects Policy KP2 of the Southend-on-Sea Core Strategy (CS) in requiring that details of the on site renewable sources be drawn up and implemented in accordance with an approved timetable prior to completion. This was, therefore, a consideration at the design and construction stage so as to enable the on-site renewable options to become an integral part of the wider scheme.

5. If properly thought out from the beginning of the development process I consider these other sources, either on their own or cumulatively, would allow the development to meet the Council's renewable energy requirements. The appellant, instead, went ahead and built the development without solving this issue. The accommodation is now fully occupied, the requirements of the condition have not been met and the planning permission has therefore been breached.
6. The policy requires that, wherever feasible, at least 10% of the energy needs of new development should come from on-site renewable options (and/or decentralised renewable or low carbon energy sources), such as those set out in Supplementary Planning Document 1 'Design and townscape Guide' (SPD).
7. Efforts have been made to address the condition's requirements since the block was built. Firstly, he was advised by an independent firm that the block's flat roof was not suitable for solar panels and, instead, the practicalities of installing an air source heat pump should be explored. However, this was discounted as ducting would be required to allow air into the building, negating its passivity. The cost of such was also a factor. Secondly, in view of the above, the Council then brought the appellant into contact with a 'Green Energy' representative who requested technical information from the appellant in order to advise on the strength and suitability of the Celotex roof for the installation of solar panels. The appellant claims that this was provided but he heard nothing further.
8. Finally, the appellant explored the possibility of purchasing electricity generated externally from natural resources and indicates that two of the eight flats have already signed up to this. However, this is to miss the point as the Council's renewable energy requirements clearly require that on-site measures be employed and the policy requirement is clear, complemented by the SPD advice.
9. The National Planning Policy Framework (the Framework) states that local planning authorities should expect new development to comply with adopted policies on decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development and its design, that this is not feasible or viable. Whilst the appellant has highlighted certain difficulties in this respect I have not been provided with any compelling evidence which would lead me to conclude that 10% of the energy needs of the development could not come from on-site.
10. I therefore consider that the requirement to provide at least 10% of the development's energy needs from renewable sources is in accordance with CS Policy KP2, the SPD and the Framework, and is thereby justified. I am also

satisfied that Condition 11 is reasonable and necessary in the interests of renewable energy provision and thereby meets the tests set out in the Government's planning guidance.

11. The appellant has indicated that the building conforms to Building Regulations, and mentions that it has a good quality of insulation. However, compliance with the Building Regulations has no bearing on the planning requirement. He also refers to, and provides figures, in respect of energy savings that could be achieved should all eight flats afford themselves of off-site renewable energy, and has offered to enter into a Section 106 agreement to this end. However, as I have mentioned, I do not consider this matter to be materially relevant to this appeal as such an approach would be inconsistent with the aims and objectives of CS Policy KP2.

Conclusion

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

Timothy C King

INSPECTOR

Richborough Estates