
Appeal Decision

Hearing held on 27 September 2016

by P W Clark MA MRTPI MCMI

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

Decision date: 18 October 2016

Appeal Ref: APP/Q1153/S/16/3146934

Land adjacent to Baldwin Drive, Radford Way, Okehampton, Devon

- The appeal is made under Section 106BC of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
 - The appeal is made by Leander Developments Ltd against the decision of West Devon Borough Council.
 - The development to which the planning obligation relates is for 43 dwellings.
 - The planning obligation, dated 29 June 2012, was made between West Devon Borough Council, Devon County Council and Leander Developments Limited.
 - The application Ref 0150/16/VPO, dated 2 December 2015, was refused by notice dated 27 January 2016.
 - The application sought to have the First Schedule of the planning obligation modified as follows:
 - Definition of Affordable Housing Scheme: "17" should be changed to "3" and "40%" should be changed to "7%".
 - Paragraph 1.5: "being 13 dwellings" should be changed to "being 1 dwelling".
 - Paragraph 1.6 should be changed to: "That 66% (being 2 Dwellings) of the Affordable Dwellings shall be one bedroom units and 34% (being 1 Dwelling) of the Affordable Dwellings shall be two bedroom units."
 - Paragraph 1.7 should be changed to: "That 100% (being 2 Dwellings) of the one bedroom units shall be Rental Units and 100% (being 1 Dwelling) of the two bedroom units shall be Shared Ownership Units."
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Decision

1. The appeal is allowed in varied form. For a period of three years from the date of this decision, the planning obligation, dated 29 June 2012, made between West Devon Borough Council, Devon County Council and Leander Developments Limited shall have effect subject to the modifications as set out in the Schedule appended to this decision.

Application for costs

2. At the Hearing an application for costs was made by Leander Developments Ltd against West Devon Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. Devon County Council is a party to the planning obligation the subject of this appeal. It was notified of the application by the appellant when first made to the Borough Council.
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4. A Supplemental Deed dated 3 January 2013 ties the provisions of the original deed to the approval of an amended scheme (omitting or varying certain conditions) which was the subject of a new planning permission but otherwise has no significance for this appeal. It is not suggested that the amended scheme is the cause of the claimed lack of viability.

Main Issues

5. The main issues derive from the provisions of the Town and Country Planning Act which govern this type of appeal. They are whether the affordable housing requirement means that the development is not economically viable and, if so, how the appeal should be dealt with so that the development becomes economically viable.

Reasons

6. There was no financial appraisal made at the time the planning obligation was entered into. Consideration of the request to modify the scheme's affordable housing requirement is therefore made by reference to current viability appraisals.
7. At the time the Council took its decision, both parties made notes of a meeting which identified their differences. These were
 - Gross Development Value (GDV) –open market housing (Council £7,000,000, appellant £6,810,000)
 - GDV – social/affordable rented housing (Council £1,050,000, appellant £817,200)
 - Marketing costs (Council 5% of open market GDV, appellant 3.5%) and legal fees (Council £600 per open market unit, appellant £650)
 - Financing costs (Council 5.5%, appellant 6%)
 - Allowance for developer's profit (Council 18% on open market housing, 6% on affordable, appellant 18% "blended")
 - Build period (Council 15 months, appellant 27 months)
 - Existing land value (Council £600,000-700,000, appellant £1,040,000)
8. The hearing established that the Council had calculated its expectation of existing land value by inference from other affordable housing schemes with which it had worked. By contrast, the developer submitted benchmarking evidence to substantiate an existing land use value of £1,040,000. By the close of the hearing, both parties agreed that, for the purposes of this appeal, the developer's figure should be used. I concur.
9. For the build period, both parties agreed that initial construction would take eight months and subsequent sales would be at a rate of two per month. The Council did not pursue its argument that a number would be sold off-plan to reduce the total roll-out period but it did argue and the appellant agreed that a six-month pre-construction lead-in was excessive and that three months was reasonable, leading to a total of 24 months. I concur.
10. Notwithstanding the reports of conversations which the Council had held with various banks and promises made, I take the view that there can be a

difference between what a bank promises in general terms and what it is prepared to offer a particular client in a particular circumstance. Taking into account recent reductions in bank rates, the appellant conceded that a rate of 5.75% was achievable. I have no reason to disagree. Both parties recalculated their appraisals using that rate, which reduces the difference between them on financing costs to £12,702. The Council allows a higher figure in its revised calculation but the difference between the parties is so small as to be well within the margins of error of the appraisal.

11. The only evidence of allowances for developers' profit to which the Council made reference was to figures at or above that which the developer claimed. I therefore have no reason to disagree with the developer's suggested 18% "blended".
12. Although the parties had originally disagreed about the different components of marketing costs and legal fees, at the hearing they agreed on a total figure of £192,930 for the scheme as enshrined in the planning obligation. However, this agreement does not appear to have been carried through to their recalculated appraisals which apply a 1.5% marketing fee and a 1.5% sales agent fee to their original (disputed) GDVs of £6,810,000 and £6,960,000 respectively rather than to their updated figures of £8,891,160 and £8,229,360 respectively for the market housing elements of each calculation.
13. Correcting for this omission adds about £72,205 to the costs of the scheme and so reduces its viability in both their respective appraisals which are otherwise only about £2,500 apart for marketing and fees. The Council again allows the slightly higher figure but the difference between the parties is again so small as to be well within the margins of error of the appraisal. The adjustment (which adds to the costs of the scheme and so reduces its viability) outweighs the difference in costs between the parties on both financing costs and fee costs.
14. There is also a mathematical error in the appellant's calculation of construction costs in his revised appraisal which results in a further £5,000 to be added to the costs in the appellant's revised calculation. This is again such a minor amount as to make little or no difference to the outcome.
15. During the hearing it became apparent that the appellant had adopted values for the rented affordable housing which were based on "social rent" rather than "affordable rent", despite using the latter term in the appraisal. It was also established that the planning obligation allowed for affordable renting and did not insist on social renting within the terms of the agreement. On that basis, both parties were able to agree on the GDV of the affordable rented properties. They had already agreed on the GDV of shared ownership properties, open market houses, flats and chalet bungalows. Their remaining principal difference concerned the GDV of the seventeen units which were to be open market bungalows.
16. The appellant substantiated his opinion of GDV by reference to data submitted with the original application to vary the planning obligation and which date variously between March 2013 and June 2015. The Council provided more up-to-date evidence dating between July 2014 and June 2016. The appellant's evidence relates solely to Baldwin Drive, close to the appeal site, whereas the Council's evidence ranges more widely and may include larger properties untypical of the appeal site.

17. However, there are five properties which are common to both sets of data, two of which have two successive transactions recorded. The appellant records number 42 Baldwin Drive being sold new in June 2013 for £195,000. Both parties record its sale second hand in December 2014 for £242,000, an increase of 24% in eighteen months. The appellant records number 41 Baldwin Drive being sold new in October 2013 for £219,950. The Council records its sale second hand in October 2015 for £230,000, an increase of 4.6% over twenty-four months.
18. In terms of price per square foot, these four transactions represent £255, £317, £288 and £301 at the dates concerned. Even allowing for a "new-build premium", this does tend to give rather more credence to the appellant's figure of £307.75 at current values than to the Council's £318.71. For this reason, I find the appellant's calculation of GDV in his revised development appraisal, more convincing than the Council's.
19. Adoption of the appellant's figure for GDV explains about £200,000 worth of the difference in the two parties' appraisals and far outweighs the minor differences in other parts of their respective appraisals. It is for this reason that I find the appellant's revised appraisal more convincing than the Council's.
20. I therefore conclude that the affordable housing requirement as originally agreed means that the development is not economically viable. I also conclude that a reduced requirement of 9% as appraised in the viability assessment on behalf of Leander Developments submitted during the Hearing represents the way the appeal should be dealt with so that the development becomes economically viable.

P. W. Clark

Inspector

**Schedule of Modifications to the First Schedule of the planning obligation
dated 29 June 2012**

- (1) Definition of Affordable Housing Scheme: "17" should be changed to "4" and "40%" should be changed to "9%".
- (2) Paragraph 1.5: "80% (being 13 dwellings)" should be changed to "50% (being 2) dwellings".
- (3) Paragraph 1.6 should be changed to: "That 50% (being 2 Dwellings) of the Affordable Dwellings shall be one bedroom units and 50% (being 2 Dwellings) of the Affordable Dwellings shall be two bedroom units."
- (4) Paragraph 1.7 should be changed to: "That 100% (being 2 Dwellings) of the one bedroom units shall be Rental Units and 100% (being 2 Dwellings) of the two bedroom units shall be Shared Ownership Units."

APPEARANCES

FOR THE APPELLANT:

Daniel Sharp MA (Hons) MA MRTPI	Principal Planner, Ian Jewson Planning Limited
Mark Walter MSc MRICS	Associate Director, Jones Lang LaSalle Limited
William Knapp	Leander Developments Limited

FOR THE LOCAL PLANNING AUTHORITY:

Pat Whymer BSc MRTPI	Lead Officer, Development Management, West Devon Borough Council
Alex Rehaag MCIH	Affordable Housing Specialist, West Devon Borough Council
Lionel Shelley PGDipTP MRTPI	Development Viability Lead, Plymouth City Council

Additional DOCUMENTS submitted at Hearing

- 1 Mr Shelley's benchmarking data of market housing GDV
- 2 Reserved matters decision notice
- 3 Revised viability assessment on behalf of Leander Developments*
- 4 Revised viability assessment on behalf of West Devon Borough
Council*

* Minor corrections to both these documents were submitted after the Hearing closed but they have no bearing on the decision.
