

Appeal Decision

Hearing held on 27 September 2016

Unaccompanied site visit made on 26 September 2016

by Karen L Ridge LLB (Hons) MTPL

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

Decision date: 25 October 2016

Appeal Ref: APP/R2520/S/16/3150756

Land off Poplar Close, Ruskington, Lincolnshire NG34 9TL

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
- The appeal is made by RJW Property Management Limited and NJA Property Management Limited against the decision of North Kesteven District Council.
- The development to which the planning obligation relates is an outline planning permission for residential development for 67 dwellings.
- The planning obligation, dated 26 June 2015, was made between North Kesteven District Council and Lincolnshire County Council and RJW Property Management Limited and NJA Property Management Limited and Svenska Handelsbanken AB (PUBL).
- The application Ref. 16/0120/S106BA, dated 25 January 2016, was refused by notice dated 1 April 2016.
- The application sought to have the planning obligation modified as follows: a reduction in the level of affordable housing from 35% provision to 15% provision.

Summary of Decision: The appeal is allowed and the obligation is modified to provide 25% provision of affordable housing.

Decision

1. The appeal is allowed. For a period of three years from the date of this decision the planning obligation dated 26 June 2015, made between North Kesteven District Council and Lincolnshire County Council and RJW Property Management Limited and NJA Property Management Limited and Svenska Handelsbanken AB (PUBL), shall have effect subject to the modification as set out in the schedule at the end of this decision.

Main Issue

2. The main issue is whether or not the affordable housing provision means that the development is not economically viable and if so, whether (and to what extent) the planning obligation should be modified.

Reasons

Background

3. The appeal site is an undeveloped parcel of land to the south of Poplar Close. On 6 July 2015 outline planning permission was granted for the erection of 67 dwellings. Approval of reserved matters was subsequently granted on 17 December 2015. The outline planning permission was issued following
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- completion of a planning obligation on 26 June 2015 which secured, amongst other things, the provision and construction of a minimum of 35% of the total housing on site as affordable housing, with fractions of 0.5 or more to be rounded up to give a whole number of dwellings.
4. The Appellants now seek a modification of the obligation to revise the amount of affordable housing down to a minimum of 15% of the total housing on site. There are no modifications sought to the terms or tenure split on which the affordable housing is to be provided.
 5. The policy position in relation to the provision remains unchanged. Saved policy H5 of the North Kesteven Local Plan requires the provision of 35% of dwelling units on new developments as affordable housing in the case of developments of 5 or more dwellings and subject to other criteria.
 6. National guidance is found in 'Section 106 affordable housing requirements Review and Appeal' dated April 2013 (the Guidance) which provides that the starting point for reassessing viability will be a review of the original viability appraisal (if any) at the time planning permission was granted. In this case, the Appellants confirm that there was no original full viability appraisal and therefore an open book review of the original appraisal is not possible. In such cases, the Guidance advises that the developer must clearly demonstrate through evidence why the existing scheme is not viable.
 7. The test for viability is whether the evidence indicates that the current cost of building out the development (including the affordable housing provision) at today's prices is at a level which would enable the developer to sell the market units at such a rate that a competitive return would be provided to a willing landowner and a willing developer. Both parties have used a residual appraisal method and utilised the Homes and Community Agency's Development Appraisal Tool. A series of scenarios have been modelled using different inputs which are in dispute.
 8. The parties have agreed a wide range of viability matters in their Statement of Common Ground and there was further agreement on other matters during the course of the Hearing. In particular the site value is agreed and many of the items of expenditure are agreed or are relatively close so as not to affect the final viability appraisal to a significant extent. At the outset the main areas of dispute which lead to the most significant numerical differences in the viability model have been the gross development value in terms of both the market housing and the affordable housing elements and the build costs. I shall begin by examining those matters.
 9. Gross Development Value (GDV) of Market Housing: the scheme comprises 67 two and three bedroom dwellings across a variety of house types. Assessing the likely value of the market homes is made more difficult by virtue of a lack of data in relation to comparable new builds in the area. Both experts have effectively had to examine local data in relation to second hand house sales and then make adjustments to reflect the date of the sale and the house price increases which have occurred. For the open market value units the Appellants estimate that the average sales value across all house types is £1,896psm and the Council estimates it to be £2,400psm.
 10. I make no criticism whatsoever of either approach given the paucity of comparable data. However, essentially taking a limited pool of data and then

extrapolating further to make allowances for house price inflation, age and condition of property and new house premium is a difficult and imprecise exercise designed really to provide ballpark figures.

11. Two bedroom bungalows form a large proportion¹ of the development and were looked at in some detail by the parties. The Appellants estimate that a type E bungalow would realise a value of £135,000 whereas the Council places it at some £155,279. Recent sales data in relation to terraced bungalows reveals sales averaging £2342psm².
12. At the Hearing there was agreement upon one example of a recent sale of a 2 bedroom terraced bungalow for £123,000 or £2372psm³. The parties agreed that this was similar to the type E bungalow and that there has been a 3% increase in local house prices in the last 12 months. Making adjustments for a slightly larger floor area and applying a 3% increase to bring the sales price up to date results in a projected sales price of £127,568 for a second hand bungalow of the same size as type E in today's market. Both parties accept that there should then be a premium applied to reflect the fact that new houses are generally more desirable than older, sometimes more dated, properties.
13. The Appellants advocate a premium in the order of 5 to 10% whereas the Council contend that the premium should be at least 15%. I note that there is a general lack of bungalows locally and that new bungalows would be particularly desirable. Having regard to all of the evidence I conclude that a premium of 10% would be the most appropriate because it recognises that there is only so much that purchaser would pay over and above the cost of second hand bungalow to enjoy a new property. It also takes into account the fact that two of each set of three bungalows would be end terraced. This would bring the average value of the type E bungalows to £140,324 or £2618psm. It also accords with the oral evidence of Mr Thomson when he confirmed that, albeit reluctantly, he would be prepared to market the bungalows for this figure. Further it is supported by the approach of the social housing provider ACIS who valued the two bedroom bungalows at £140,000.
14. A further difference arose in relation to the figures used for the floor-areas of the second hand properties. The Council had used data from Council tax records with Council Tax Assessors having calculated floor areas. The Appellant has used floor area figures from the Energy Performance Certificates (EPC) which have been produced following a home inspection by an accredited assessor. The differences were marked in some cases which resulted in consequential differences between the parties prices per square metre. I note however that there was no dispute about the floor area of the bungalows so the above conclusions remain valid.
15. In relation to the other house types, given that the EPCs are produced following a home visit and on-site measuring, on balance I consider these figures are likely to be more reliable. An acknowledgement that the floor areas used by the Council may have underestimated the size of the dwellings used as comparators, results in the price per square metre being inflated and renders the figures unreliable.

¹ Type E dwellings represent 30 of the 67 dwellings and 19 of the 44 market dwellings.

² As confirmed by Mr Newham at the Hearing based upon 13 terraced bungalow sales.

³ 3 Northfield Close Ruskington (51.85m²) which sold for £123,000 on 16.11.15.

16. In relation to the remainder of the dwellings the best evidence that I have remaining before me is the valuations provided by two local estate agents. These were largely within £5000 of each other with one or two notable exceptions. I have already concluded that the two bedroom bungalows should attract an asking price of around £140,000. The only other evidence before me was that of ACIS who valued type A properties and type D properties (as well as the bungalows). Its valuation of the type A and type D properties are in line with Winkworth's figures.
17. On this basis I conclude that the figures suggested by Winkworth are most likely to be representative of what could be achieved in relation to all house types with the exception of the bungalows. 19 of the market dwellings are type E bungalows at £140,324. Adopting the Winkworth figures but substituting a figure of £140,324 for the bungalows would result in a net increase in the Winkworth valuation of GDV⁴ for the market housing of £196,156 taking the overall GDV for this element to £6,238,397.
18. In coming to the above conclusion in relation to the GDV of the market housing I have used the best available data in relation to the bungalow element of the scheme and relied upon the valuations in relation to the remainder of the housing. I consider this to be the most pragmatic course.
19. Gross Development Value (GDV) of Affordable Housing: The Appellants' appraisal is based upon a 50:50 split between affordable rent and shared equity. The appraisal assumes affordable rents at 80% of market rents and capitalised at 6% to provide a yield. A 67.5% proportion of market value is used for shared ownership. The Council assumed the same split and the transfer value to be 50% of the market value for the affordable rented properties and 67.5% for the shared ownership properties.
20. Both methods are equally valid although I bear in mind that the Council's assumed market values may be inflated because of the difference in floor areas which I identified earlier. The Council place the GDV of the affordable housing element at £2,048,215 and the Appellants calculate it to be £1,902,395.
21. In addition to the above exercises there is one offer from a social housing provider, ACIS. Interestingly their offer uses assumptions and a methodology very close to those of the Council, albeit based on different valuations for the housing. When their offer in relation to 20 units is scaled up to 23 units it amounts to some £1,605,400. The ACIS valuation puts the value of the bungalows at £140,000 and attributes similar values to the other two house types (A and D) which are the same as those in the Winkworth valuation. I have already concluded that these values are to be preferred. Given that they have adopted the same methodology as the Council I accept the extrapolated ACIS valuation figure as the best evidence in relation to this element. I shall therefore use the figure of £1,605,400 as the GDV of the affordable housing.
22. Build Costs: the Appellants have utilised a blended average from the lower quartile of BCIS data for different house types. Applying a regional adjustment (or rebasing) to North Kesteven results in a build cost of £977psm (including a 2% contingency). The Council are concerned that the BCIS does not truly reflect the build costs of larger schemes. They have done an analysis which records that only 7.55% of BCIS data is derived from schemes involving 50 or

⁴ I.e 19 bungalows x £10,324=196,156

more houses. I agree that this is likely to skew the figures towards smaller schemes. In addition the BCIS data used by the Appellants relies on a small sample size of 8.

23. The District Valuer has had regard to data from other sources including tender information from 65 tender bids across a number of schemes. Adjusting the figures to North Kesteven results in a build cost of £918psm. When the BCIS data to Lincolnshire, rebased to North Kesteven is used, this results in figures of £824psm for the 2-storey semi-detached units and £888psm for the terraced bungalows. This data is based upon a much larger sample size of 87 and I consider it to be more representative of the likely build costs.
24. At the Hearing the parties confirmed that the total gross floor area across the scheme was 4428m² with the bungalows being 2144m² and the rest of the housing amounting to some 2284m². Utilising the rebased Lincolnshire BCIS data would result in total build costs of £3,785,888⁵. This is less than the total build costs used by the Council in its appraisal. I appreciate that market conditions may be such that large volume house builders may not wish to venture into the local market. Therefore, I conclude that the Council's higher figure of £918psm is likely to be representative of build costs for the scheme in this particular area. I therefore adopt the Council's figures in relation to build costs. At the Hearing these were confirmed to be £4,064,904 (excluding contingency)⁶.
25. Other Variables: the Council applied a 3% contingency to build costs with no allowance for archaeology matters and the Appellants applied a 2% contingency with archaeology as a separate item. Both parties agreed that the different methods resulted in roughly the same effect so made no difference to the overall appraisal. The Appellants' appraisal included a section headed 'Roads and Sewers' with various items included totalling £913,040. This is now supported by various quotations and is accepted by the Council with the caveat that the sum of £55,000 for archaeology (site preparation) should be excluded because this is within the Council's 3% contingency. In addition a revised quotation for gas services took the adjusted figure to £843,424 excluding the archaeology element or £898,000 with it.
26. Marketing costs were agreed at 1% which results in the Council's estimate of £167,648 being adopted. The Appellant indicated a willingness to accept 17.5% profit which was the figure put forward by the Council.

Overall Conclusions

27. At my request the parties modelled various scenarios prior to the Hearing to illustrate the effect of adopting different permutations of the main variables in dispute. At the outset of my conclusions I note that the Appellants' stated baseline position is that they wish to reduce the affordable housing element down to no less than 15% provision which essentially equates to some 10 affordable units. Provision at the rate of 35% specified in the obligation would result in 23 units. The Appellants' position is notwithstanding the fact that their own appraisal indicates that if the provision is adjusted to 15% provision the scheme would produce a deficit in the order of £195,460. They explained their position on the basis that the houses would be provided over a period of

⁵ Being bungalows £888psm x 2144m² = £1,903,872 plus other housing £824psm x 2284m²= £1,882,016.

⁶ Revised at the Hearing to reflect the agreed sales area.

time which would result in increased market values which in turn would improve the rates of return.

28. Scenario 3 produced by the Council adopted the Appellants' values for market value dwellings and the transfer values for the affordable units and uses the Council's construction costs and assumes the provision of 19 affordable units. This scenario most closely reflects the conclusions which I have come to on the 3 main elements in dispute. However I have increased the Appellants' values for market housing by some £196,156 to cater for my conclusions in relation to the probable values of the bungalows. In addition I have reduced the Appellants' figure for the GDV of the affordable units down by some £296,138⁷ in line with the ACIS offer.
29. The effect of these two adjustments to the identified surplus of £24,360 in scenario 3 results in a net deficit of around £75,000⁸. This indicates to me that the provision of 19 affordable units anticipated in scenario 3 is a little too high having regard to all of my conclusions. Scenario 3 helpfully notes that the cost of provision of each affordable house is some £60,579 so a reduction in 2 units from 19 units would take the scheme into surplus. I therefore conclude that the most appropriate modification would be to reduce the provision to 17 units or 25% provision. I shall modify the obligation accordingly.

Karen L Ridge

INSPECTOR

⁷ Appellants' estimate £1,901,538 - £1,605,400 (ACIS offer)= £296,138 differential.

⁸ Ie Increase surplus by £196,156 to reflect increased market GDV and then decrease it by £296,138 to reflect the reduced affordable housing GDV.

**SCHEDULE OF MODIFICATIONS TO THE PLANNING OBLIGATION DATED
26TH JUNE 2015**

Deletion of 35% from the requirement for affordable housing in Clause 1 of Part A
to the Second Schedule and its replacement with 25%

END OF MODIFICATIONS

APPEARANCES

FOR THE APPELLANT:

Mr James Rigby	Globe Consultants
Mr Andrew Martinelli	Devvia Property Consultancy Limited
Mr Thomson	Wentworth Estate Agents

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Newham	District Valuer Services
Mr Nick Feltham	Principal Planning Officer, North Kesteven District Council.
Mr Alan Oliver	Area Planning Officer, North Kesteven District Council.

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Schedule of GDV (market housing) with price comparisons, submitted by the Council.
- 2 Schedule of sale prices for comparator properties across all house types, submitted by the Appellants.
- 3 Energy Performance Certificates for various properties, submitted by the Appellants.
- 4 Email ACIS Group regarding offer for affordable housing element, submitted by the Appellants.
- 5 BCIS average build costs rebased to North Kesteven 26 December 2015 update, submitted by the Appellants.
- 6 BCIS average build costs rebased to North Kesteven 3 September 2016, submitted by the Council.
- 7 BCIS average build costs rebased to Lincolnshire 3 September 2016, submitted by the Council.
- 8 Quotation for construction of new roads and sewers from A1 Infrastructure and Building Limited dated 23 May 2016, submitted by the Appellants.
- 9 British Gas quotation for gas site services dated 6 April 2016, submitted by the Appellants.
- 10 Schedule of various scenarios submitted by the Appellants.
- 11 Memorandum Lincolnshire County Council regarding preparation of section 38 Agreement, submitted by the Appellants.