
Appeal Decision

Site visit made on 11 October 2016

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 15 November 2016

Appeal Ref: APP/A0665/W/16/3155185

Long Lea, Common Lane, Lach Dennis, Northwich CW9 7TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Garry Owen against the decision of Cheshire West & Chester Council.
 - The application Ref 15/03164/S73, dated 27 July 2015, was refused by notice dated 27 January 2016.
 - The application sought planning permission for an outline application for residential development – replace existing dwelling and provide an additional three dwellings without complying with a condition attached to planning permission Ref 13/05082/OUT, dated 2 July 2014.
 - The condition in dispute is No 5 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 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include: i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units; 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 or the management of the affordable housing (if no RSL involved); 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 the means by which such occupancy criteria shall be enforced"*.
 - The reason given for the condition is: *"to ensure the provision of affordable housing to meet local needs"*.
-

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 19 October 2016.

Decision

1. The appeal is allowed and planning permission is granted for an outline application for residential development – replace existing dwelling and provide an additional three dwellings in accordance with the application Ref 15/03164/S73 dated 27 July 2015, without compliance with condition number 5 previously imposed on planning permission Ref 13/05082/OUT dated 2 July 2014 and subject to the following conditions:
-

- 1) The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from 2 July 2014.
- 3) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development begins and the development shall be carried out as approved.
- 4) No development shall take place until a scheme for the provision of bird boxes within the site has been submitted to, and approved in writing by, the local planning authority. No dwelling hereby permitted shall be occupied until the bird boxes have been installed in accordance with the approved scheme and the bird boxes shall be retained thereafter.

Main Issues

2. The main issues are (i) whether or not condition No 5 of 13/05082/OUT can be justified with reference to local and national planning policies; and (ii) if so, whether or not there is adequate justification for deleting condition No 05 of 13/05082/OUT in respect of viability.

Reasons

3. On 11 May 2016, the Court of Appeal issued judgment on the Secretary of State's appeal against a previous High Court judgment of 31 July 2015 upholding a joint application by West Berkshire District Council and Reading Borough Council which challenged: (i) the Secretary of State's Written Ministerial Statement of 28 November 2014 (WMS) and his subsequent alterations to the Planning Practice Guidance on planning obligations for affordable housing and social infrastructure contributions; (ii) the Secretary of State's decision of 10 February 2015 to maintain those policy changes following an Equality Impact Assessment, after complaint was made by Islington LBC that he had not complied with his Public Sector Equality Duty pursuant to the Equalities Act 2010 at the time of his November 2014 statement. The Court of Appeal has now upheld the Secretary of State's appeal on all grounds.
4. As the High Court judgment from which the Order originated has now been overturned, the policies in the WMS should once again be considered as national planning policy defining the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development, including confirmation that those restrictions do not apply to development on Rural Exception Sites, and of those circumstances where the vacant building credit should be offered to developers. This advice is reiterated in paragraph 31 of the Planning Practise Guidance that accompanies the National Planning Policy Framework which states contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-build development "*of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm*". Whilst this appeal relates to a planning condition, and not a planning obligation, there is a clear direction in national planning policy terms to not require affordable housing on sites of less than 10 residential units.

5. Given the above national planning policy position, I attach very considerable weight to the WMS. I have carefully considered the comments made by the Council, but the WMS outweighs the affordable housing policy requirements of Policy SOC1 of the Cheshire West and Chester Local Plan (Part 1) Strategic Policies 2015 (Local Plan). As the development is for less than ten dwellings (and less than 1000 sq metres of floorspace), I conclude that there is no requirement to provide affordable housing on the site, or a financial contribution towards off-site provision.
6. As I have concluded above that there is no requirement for affordable housing, it has not been necessary for me to assess the proposal from the point of view of commercial viability, or in any other associated respect.

Other Matters

7. I have not been made aware of any other changes to planning policy, or any other material planning considerations, which would lead me to depart in any other way from the original outline planning permission granted in 2014. I note the comments made by other interested parties relating to possible flooding issues and the effect of the proposal upon the character and appearance of the area. However, these matters were properly considered as part of the outline and reserved matters applications: I am not aware of any compelling reasons to indicate why I should conclude any differently from previous decision making.
8. I acknowledge the comments made by the appellant relating to a "replacement dwelling" and hence that affordable housing would not be required in these circumstances. However, given my overall conclusions on the main issues, it has not been necessary for me to consider this matter further.
9. None of the other matters raised outweigh my conclusions on the main issues.

Conditions

10. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I have imposed the same conditions again apart from condition No 05. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
11. The PPG also states that planning permission must not be granted under section 73 to the extent that it has the effect of changing conditions which relate to development starting or the timescales for the submission of approval of reserved matters. Therefore, I have adjusted the relevant condition so that the submission of reserved matters runs from the date of the original permission.

Conclusion

12. In respect of affordable housing, I afford greater weight to the WMS and the Planning Practice Guidance when considered against the requirements of Policy SOC1 of the Local Plan. Consequently, there is no requirement to provide affordable housing either on or off the site. Given this conclusion, it has not

been necessary for me to consider matters of commercial viability. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Daniel Hartley

INSPECTOR