
Appeal Decision

Site visit made on 13 September 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 2 December 2016

Appeal Ref: APP/Y2003/W/16/3150393

Land off Burnside, Broughton DN20 0HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by European Property Acquisition Ltd against the decision of North Lincolnshire Council.
 - The application Ref PA/2014/1178, dated 17 October 2014, was refused by notice dated 18 November 2015.
 - The development proposed is described as 'Residential development and associated works'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by European Property Acquisition Ltd against North Lincolnshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline, with all detailed matters reserved for future approval with the exception of access. Whilst a site layout drawing was submitted (drawing number 983-BR-01) this is only indicative except insofar as it relates to access. The application form confirms that there would be 26 houses within the site, of which 23 would be for sale on the open market and 3 would be social rented.
4. At the time of my site visit, a draft planning obligation had been submitted covering affordable housing and open space provision, which had been signed by the Appellant and 19 persons with an ownership interest in the site. Signatures were still awaited from 3 mortgagors and the obligation had yet to be executed. There was also insufficient information, for example concerning relevant development plan policies, to enable me to ascertain what implications if any the absence of an executed obligation may have for my decision and whether the obligation would meet relevant statutory tests¹ if executed. Given these unusual circumstances I allowed the parties additional time, during which

¹ Under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (the 'CIL Regulations') a planning obligation may only constitute a reason for granting planning permission for a proposed development if the obligation is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.

the necessary information and an executed copy of the obligation could be submitted.

5. A further version of the obligation was subsequently submitted in the form of 3 duplicate documents which had been executed by the Council and signed in counterpart by the three mortgagors. However, these documents are not dated and therefore have no legal effect. I allowed a short further extension of time for this to be resolved, during which I also invited the views of the parties regarding some detailed drafting points within the obligation. This period has elapsed and a dated version of the obligation has not been submitted. I do however have before me the necessary information concerning the Council's policies relating to the matters set out in the obligation. Under the approach which is set out in the Planning Inspectorate's guidance² it would not be appropriate for me to allow further time for a dated and legally binding planning obligation to be submitted. I have therefore determined the appeal on the basis of the information before me.
6. Given the presence of relevant development plan policies concerning the matters covered by the proposed obligation (affordable housing and open space provision) I have considered these within a main issue in the appeal.

Main Issues

7. The main issues are the effect that the proposed development would have on:
 - (a) highway safety;
 - (b) the living conditions of occupiers of existing dwellings alongside the proposed access route to the site; and
 - (c) affordable housing and open space provision in the area.

Reasons

Highway safety

8. Paragraph 32 of the National Planning Policy Framework (the 'Framework') advises that development proposals should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
9. The proposed development would result in 26 dwellings being constructed, to which vehicular access would be obtained off the end of Burnside. Burnside is a cul de sac serving an estate of mainly detached dwellings, located alongside Burnside itself, Bruce Close, Beech Close, Craig Close and Sycamore Close. Interested parties have raised concerns regarding the effects of the proposal upon different aspects of highway safety and circulation in the area.
10. The width of Burnside has been estimated as being between 5m and 5.5m (this latter figure being in line with local resident's estimates of 'less than 17 feet'). The Government's Manual for Streets (MfS) does not identify any minimum width for roads in residential areas, although it includes diagrams illustrating what types of vehicle can typically pass each other within carriageways of different widths. From the information given in MfS, it is clear that Burnside is wide enough and of suitable design to enable the majority of vehicles likely to use it to safely and conveniently pass each other.

² Paragraph N.2.2 of the Planning Inspectorate's 'Procedural Guide: Planning Appeals – England' 2015

11. Some interested parties have stated that on street parking takes place on Burnside. I also note that driveways to a small number of the existing dwellings are short and steep, meaning that residents are likely to need to park vehicles on the highway. However, most of the dwellings alongside Burnside have adequate space for car parking available within their plots. Whilst there is no survey or similar evidence before me which quantifies the extent of any parking problems, the layout of the estate is not such as to in itself lead to on street parking to an extent which would seriously impede the free flow of traffic.
12. The highways evidence submitted by the Appellant states that the junction of Burnside and Brooklands Avenue has a visibility splay of 2.4 X 43 metres³, which is the recommended splay given in table 7.1 of Manual for Streets for a junction onto a road with a 30 miles per hour speed limit. Whilst visibility in a northerly direction from this junction is restricted to some degree by a high hedge in a neighbouring garden I do not consider it to be excessively so. The Appellant's evidence also states that, according to records on the Crashmap website, no injury accidents have been recorded along Burnside or at its junction with Brooklands Avenue over a ten year period up to the end of 2014. Whilst other accidents may have taken place which are not recorded on Crashmap, and the Crashmap records show that accidents took place further along Brooklands Avenue and on High Street, the evidence before me does not demonstrate that Burnside or the junction with Brooklands Avenue operate in an unsafe manner.
13. The Appellant's highways evidence, based upon the nationally recognised TRICS (Trip Rate Information Computer System) database, estimates that the appeal proposal would generate 14 additional vehicle movements within the morning peak period (0800 until 0900 hours) and 13 additional vehicle movements in the early evening peak period (1700 until 1800 hours). These figures equate to an average of one additional vehicle movement every 4 minutes or so.
14. Although the actual traffic levels may vary from these figures, they provide reasonable estimates based upon the number of dwellings proposed. Traffic generation caused by the new development outside peak periods would be lower. I consider that the additional traffic movements from the proposed development would not be sufficient to cause material harm to highway safety on Burnside or at its junction with Brooklands Avenue.
15. During the initial construction period, the proposal would cause a fairly substantial amount of construction traffic to enter and leave the site along Burnside, including heavy vehicles. However, this period would be temporary and any effects on highway safety which are caused during it can be controlled by conditions limiting the hours of working and requiring a construction phase traffic management plan to be implemented, which would cover matters such as any abnormal load movements and storage of materials. Such a plan could require that movements of large vehicles avoid peak traffic periods.
16. Following its completion, any additional movements of large vehicles to and from the site along Burnside that would result from the appeal proposal, for

³ This means that from a point 2.4 metres back from the carriageway edge drivers should be able to see oncoming traffic over a distance of 43 metres in either direction

example delivery vehicles to the proposed dwellings, would be limited in frequency.

17. Although part of Burnside does only have a footway along one side, this would be sufficient to allow pedestrians to walk to and from the site safely. Whilst parking may also take place along Brooklands Avenue, which is also a bus route, the proposed development would not cause a substantial increase in traffic flows on this route compared to those which exist at present. Although the Council states that it wished to explore other potential means of access to the site with the Appellant, I have considered the appeal on its own merits including, as it does, a proposal to form an access off Burnside.
18. For reasons which I set out above, I consider that the proposed development would not cause material harm to highway safety. The proposal would therefore accord with the provisions of saved Policy T2 of the North Lincolnshire Local Plan 2003 (NLLP) and the Framework related to this matter.

Living Conditions

19. The Council's reason for refusal expresses concern that, as a result of its proposed access arrangements, the proposal would cause harm to the living environment of occupiers of existing dwellings.
20. The proposed development would affect the living conditions of nearby residents during the construction period due to noise and disturbance from the coming and going of heavy construction vehicles. However, as already stated this period would be temporary. Subject to conditions being imposed limiting the hours of working and requiring a construction phase traffic management plan to be implemented, I do not consider that any such effects would be substantially greater than would typically be the case in relation to a housing development site of this size.
21. Following the completion of the construction works, the proposal would result in more vehicles passing nearby dwellings on Burnside than is the case at present. However, as already stated, such additional traffic even during peak periods would be limited in its amount and frequency. Furthermore, any increase in noise and fumes would also be limited by the fact that most of this additional traffic would be cars or other light vehicles.
22. For these reasons, I consider that the proposed development would not cause material harm to the living conditions of occupiers of existing dwellings alongside the proposed access route to the site.

Affordable housing and open space provision

23. Policy CS9 of the North Lincolnshire Core Strategy 2011 (the 'NLCS') requires proposals for new housing development which exceed specified size thresholds to make provision for affordable housing. The proposed development, being for 26 new dwellings, would be above the relevant size thresholds set out in this Policy and more recently in the Planning Practice Guidance (PPG)⁴. In the case of rural settlements such as Broughton, Policy CS9 seeks to achieve affordable housing provision of 10% within developments of the size proposed.

⁴ Paragraph: 031 Reference ID: 23b-031-20161116

24. The Council officer report on the application refers to studies⁵ which, although they are fairly dated now, identify a gross need of 78 affordable units per annum in Broughton and a need for 328 new affordable units per annum to meet needs in North Lincolnshire. The report also states that demand for affordable housing in Broughton itself is very high, and there is no substantive evidence before me to refute this or to indicate that affordable housing needs in the area have reduced in recent years.
25. In the light of the advice in paragraph 203 of the Framework I have considered whether the affordable housing requirement could be secured by means of a condition instead of a planning obligation. However, a condition could not for example set out legal covenants governing the expected actions of individuals and their successors in title during future transactions. It would therefore be likely to be less effective than an obligation in ensuring that the affordable housing would remain available as such in the long term. Such an approach would also be contrary to paragraph 8.53 of the NLCS. The Appellant has accepted that this matter should be dealt with by an obligation and I agree that this is the case.
26. Given these circumstances, I consider that in the absence of a dated and legally effective obligation, the appeal proposal fails to adequately secure delivery of affordable housing as required by Policy CS9. Due to the extensive need for affordable housing in the area, the emphasis in paragraph 50 of the Framework on delivery of affordable housing where a need exists and the resultant conflict with the development plan, the absence of such a legally effective obligation carries substantial weight against the proposal.
27. Policy H10 of the NLLP states that, to the extent that any existing public open space provision in an area cannot meet the needs of additional residents, new housing developments on sites of 0.5 hectares or more must include provision for recreational open space. The Council officer report on the application confirmed that a Local Area of Play (LAP) of 100 square metres should be provided plus casual open space of 260 square metres. This approach is needed to comply with the Council's Supplementary Planning Guidance Note 10 'Provision of Open Space in New Housing Developments'.
28. I have considered whether open space provision could be secured by means of a condition instead of an obligation. Policy H10 of the NLLP confirms that the Council will seek to enter into an agreement with developers covering this matter. The PPG⁶ advises that it would also not be appropriate to use a positively worded condition requiring the payment of a commuted sum to the Council to cover future maintenance. However, the proposed obligation indicates that the parties would also accept a private maintenance arrangement as an alternative to future adoption by the Council.
29. In my opinion, the provision and future maintenance of the open space could, given these circumstances, be appropriately secured by condition. The lack of an executed obligation covering open space does not therefore weigh against the proposal. This point does not, however, outweigh the harm that would be caused in relation to affordable housing which I have set out earlier.

⁵ The Rural Needs Survey 2009 and the Strategic Housing Market Assessment 2012

⁶ Paragraph: 031 Reference ID: 23b-031-20160519

Other Considerations

30. The proposal would deliver 26 new dwellings, and thereby contribute to meeting the Government's objective, set out in the Framework, of boosting significantly the supply and choice of housing. Whilst the submitted evidence does not confirm whether a 5 year deliverable land supply exists, this contribution would nevertheless represent a notable benefit, albeit one which would be limited by the lack of a legally binding obligation securing the provision of affordable housing.
31. Whilst an interested party has raised concerns regarding drainage provision on Burnside, the Council officer report on the application confirms that there is adequate capacity in the foul sewerage system to accommodate the needs of the development. This matter can in any event be suitably addressed through the imposition of a suitable condition. There is no significant evidence before me to demonstrate that any other matter raised by objectors would carry substantial weight against the proposal.

Conclusion

32. I have found that the proposed development would not cause material harm to highway safety or to the living conditions of occupiers of existing dwellings alongside the proposed access route to the site. These and the other matters raised by interested parties do not carry any substantive weight against the proposal.
33. I have found that the proposal would help to meet the Government's objective of significantly boosting housing supply. However, in the absence of a dated and effective planning obligation the proposal cannot secure the delivery and future retention of affordable housing in the manner required by the development plan. Given the extensive need for affordable housing in the area the absence of such an obligation carries substantial weight against the proposal, which is sufficient to significantly and demonstrably outweigh the benefits of granting permission.
34. By failing to adequately secure the delivery of housing which would meet local needs the granting of permission would also not promote the social role of sustainable development as defined in paragraph 7 of the Framework or jointly and simultaneously promote the three dimensions of sustainable development as required by paragraph 8 of the Framework. For these reasons, I dismiss the appeal.

Jonathan Clarke

INSPECTOR