

Appeal Decision

Hearing held on 2 February 2017

Site visit made on 2 February 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 28 February 2017

Appeal Ref: APP/H0928/W/16/3158080

Paddock to the North of Helm Bar, Melmerby, Penrith, Cumbria CA10 1HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Lewis Faith against Eden District Council.
 - The application Ref: 14/0808, is dated 12 September 2014.
 - The development proposed is 8 units, in the form of four flats (two bedroom), two houses (three bedroom) and two cottages (three bedroom).
-

Decision

1. The appeal is dismissed and planning permission for 8 units, in the form of four flats (two bedroom), two houses (three bedroom) and two cottages (three bedroom) is refused.

Procedural matters

2. The development was submitted in outline with approval sought for access, layout and scale. Appearance and landscaping were reserved for future approval. Drawings have been submitted which show the arrangement of the houses and flats on the site and the position and layout of the access and roadway into the development. A drawing has also been provided which shows elevations of the proposed dwellings although, as appearance is reserved for future approval, I have treated this as indicative only.

Main Issue

3. The Council has resolved that it is minded to approve the planning application subject to the completion of an agreement under Section 106 of the Town and Country planning Act 1990 to secure a contribution towards the provision of affordable housing. The parties have been unable to reach agreement on the level of the contribution.
4. Therefore, the main issue in this appeal is whether the proposed development is required to make a contribution towards the provision of affordable housing.

Reasons

Common ground between the parties

5. An agreed Statement of Common Ground could not be arrived at prior to the opening of the hearing. At the hearing it was established that, with the
-

exception of whether the proposed development is required to make a contribution towards the provision of affordable housing, it was common ground between the parties that there were no objections to the principle of the development; the proposed means of access, layout and scale of the development were acceptable; and that there were no other technical matters in dispute.

6. It was also agreed at the hearing that with the exception of the site value and the Gross Development Value (GDV) of the scheme, all of the other inputs into the viability assessment: construction costs (£1,031,288); professional fees (£96,240); cost of finance (£68,023); and developers profit (£267,000), were common ground and not in dispute.

Policy Context

7. Policy CS10 of the Eden District Council Core Strategy Development Plan Document 2010 (Core Strategy) sets a target of achieving 30% affordable housing share on each development above the minimum size threshold of 4 units. It also sets out that this proportion can be varied where this is justified by a site based viability assessment.
8. Policy CS10 predates the Written Ministerial Statement of November 2014 (WMS) which sets out Government policy in respect of what planning obligations can be imposed on small scale developers in respect of affordable housing and tariff based contributions. This has been subsequently incorporated into the Planning Practice Guidance (the Guidance). The WMS and the Guidance set a threshold of 10 units below which contributions to affordable housing should not be sought, although this contains a proviso that within designated rural areas a lower threshold of 5 units can be set with affordable housing contributions to be sought as a cash payment only, and commuted until after completion of units within the development.
9. The appeal site is within the North Pennines Area of Outstanding Natural Beauty which is a designated rural area and, following the publication of the WMS, in terms of implementing Policy CS10 the Council has formally adopted an approach of seeking a financial contribution for affordable housing on sites of 5 to 10 units based on a commuted sum equivalent to 12% of the GDV of the scheme. The level of the commuted sum is subject to a viability assessment where it is sought to provide a reduced level of contribution.
10. This approach is not challenged by the appellant and at the hearing it was agreed that there is a policy requirement for the proposed development to make a financial contribution towards the provision of affordable housing, subject to a viability assessment.

Viability of the scheme

11. The appellant has produced a number of viability assessments in respect of the proposal which have been audited by the Council. These assessments vary in their conclusions on GDV and site value but generally conclude that the site is not capable of making a financial contribution towards affordable housing.
12. At the beginning of the hearing the parties confirmed their current positions with regard to GDV and Site Value. The appellant's market values of the properties were calculated as:
 - 2no. 3 bedroom houses at £300,000 each

- 2no. 3 bedroom cottages at £225,000 each
- 2no. Ground floor flats at £137,500 each
- 2no. First floor flats at £127,500 each

Resulting in a GDV of £1,580,000 with the site value being £275,000.

13. The Council's market values were calculated as:

- 2no. 3 bedroom houses at £330,000 each
- 2no. 3 bedroom cottages at £270,000 each
- 2no. Ground floor flats at £140,000 each
- 2no. First floor flats at £150,000 each

Resulting in a GDV of £1,780,000 with the site value being £200,000.

14. From the evidence, and from the discussion at the hearing, it is not entirely clear how the appellant's valuations were arrived at. In respect of the GDV, whilst there are some examples of comparable developments cited, there is little analysis of how these were used to arrive at the property valuations other than reliance on the surveyor's knowledge of the local housing market. The Council's analysis of the information provided by the appellant is more rigorous and indicates that, on the basis of the sites used as examples, that the expected property values, and hence GDV, for the appeal site should be higher than that suggested by the appellant.
15. The appellant has questioned the methodology used for this analysis, namely calculating values on the basis of average sale price per square metre, stating that these do not take into account other factors such as site location, size of gardens, number of bedrooms and bathrooms, parking facilities, background noise levels, building materials and design and access to employment opportunities. At the hearing the Council's advisor on viability matters confirmed that the pound per square metre figure does take into account these additional factors as part of the valuation process.
16. The properties on appeal site have larger floor areas than three bedroom houses on the other developments used for comparison and both parties agree that there is also little evidence in respect of the prices of flats outside of the town of Penrith. Although a large number of property details were presented in evidence which suggest that within Penrith the asking prices for flats are perhaps closer to the appellant's valuations, there is no evidence in respect of prices of flats outside of the town. Within this context, whilst recognising that there are possibly some limitations to the use of price per square metre figures, this approach does allow an objective approach to be taken in the absence of directly comparable properties.
17. On the balance of the evidence, I consider that the Council's assessment of the values of the properties has more credibility, as it is clear how these values have been arrived at.
18. In terms of the site value, the appellant's valuation is based on offers which have been made for the site and a valuation provided by a local surveyor. Only one of these offers is supported by documentary evidence. The surveyor's valuation is supported by reference to three transactions which have been interpreted by the appellant. The Council's interpretation of this differs only in respect of the consideration of the value of the plots on the development occupied by flats, with the appellant counting these as four plots and the

Council as two. Whilst there are four flats, in terms of the capacity of the site to accommodate the footprint of the development, each pair of flats occupies an area of the site which could, alternatively, be occupied by a single dwelling house. This results in the appeal site consisting of six housing plots, four of which contain a single dwelling house and the remaining two each accommodate a pair of flats. Logically, it cannot be the case that the same area of undeveloped land would have twice the intrinsic value if it is proposed to develop two flats on it as opposed to a single dwelling house.

19. Before the hearing the appellant provided an additional seven examples of other sites which have been sold. However of these, three are for single plots which do not provide an accurate guideline, and two are in Carlisle which is a significant distance from the appeal site and would not, in my view, accurately reflect land values in the locality of the appeal site. The Council advised that of the remaining two sites, one at Kirkby Stephen contains listed buildings which would result in a higher than average land value and the other, at Iccold Road in Greystoke relates more closely to the Lake District than the North Pennines and consequently a different market area. This was not challenged by the appellant. Therefore, I do not consider that these sites provide comparable land values.
20. Using the three sites provided to support the appellant's valuation of £275,000, both parties arrive at essentially similar plot values, which lead me to conclude that the Council valuation of £200,000 is the more accurate of the two.
21. On basis of the appellant's GDV and site valuation the proposed development would not be viable even if it were to be comprised wholly of market housing. The appellant suggested that a developer could take a reduced profit and the potential variation between the asking price and achieved price would make the risk worthwhile. I am not persuaded that this is robust reasoning. The present 15% level of developer profit is at the low end of the normally accepted range for developer profit and even relatively modest reductions in the achieved prices for the units would result in the development making a loss. This reinforces my view that the appellant's valuation of the site is not realistic.
22. In terms of the overall viability of the site, the balance of the evidence leads me to conclude that there would be some residual value in the site that could be used as a contribution towards the provision of affordable housing. Even if the appellant's lower value for the flats are used, the site still produces a positive residual value.

Conclusion on viability

23. Whilst I accept that there are a number of approaches to assessing the viability of a development proposal, and that there have been difficulties in respect of identifying comparable developments to the appeal scheme, on the balance of the evidence before me, I find that the scheme would be viable and is required to make a contribution towards the provision of affordable housing as required by Core Strategy Policy CS10, although this would be less than the 12% of the GDV required by the Council's policy. As there is not currently a defined proposal to provide such a contribution, the development is therefore contrary to Core Strategy Policy CS10.

Alternatives to a financial contribution

24. The appellant suggests that as the development contains four flats that would be sold at lower than the average house price in the village, these should be considered as low cost housing which would meet the requirement to provide affordable housing. The Framework defines affordable housing as "Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market". It goes on to state that "Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision".
25. There is no substantive evidence for the need for flats in the area, and the appellant stated at the hearing that the composition of the development is based on his knowledge as a resident of the village and what it needs for the future. The Council advised that Registered Housing Providers are not seeking flats and that there are currently only two people on the housing list seeking discount market housing. It was added that that these applicants for housing are only looking for properties in the town of Alston and are not seeking flats.
26. The proposed flats do not meet the definition of affordable housing in the Framework and no mechanism is proposed to ensure that they would remain as low cost housing in the future, or to prevent them from becoming second or holiday homes. Consequently, I am not satisfied that, despite their initial lower cost, the flats would be an appropriate alternative to the provision of a contribution to affordable housing so as to represent a material consideration that would justify making a decision contrary to the requirements of Core policy Strategy CS10.

Other Matters

27. There is no draft or completed S106 agreement or unilateral undertaking before me for consideration, and there is therefore no mechanism in place by which a financial contribution towards the provision of affordable housing would be secured. For this reason the appeal must also fail.
28. I have considered whether this matter could be addressed by using a planning condition to require a contribution of affordable housing. However, the Guidance advises that, in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development and where there is clear evidence that the delivery of the development would otherwise be at serious risk. Due to its small scale, I do not consider that the proposed development can be considered strategically important and therefore would not meet this test in order to be considered as an exceptional circumstance.

Conclusion

29. Section 38 of the Planning and Compulsory Purchase Act 2004 requires that planning applications and appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. Following the WMS of November 2014, Core Strategy Policy CS10 seeks a financial contribution towards the provision of affordable housing from all new

residential developments of more than five units, unless doing so would render the scheme economically unviable.

30. I have found that the scheme would be viable and is required to make a financial contribution towards the provision of affordable housing, but that there is no mechanism in place or proposed that would ensure that it would do so. I have also found that there are no material considerations which would justify making a decision contrary to the requirements of Policy CS10.
31. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed and planning permission refused.

John Dowsett

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Lewis Faith Appellant

FOR THE LOCAL PLANNING AUTHORITY

Kevin Hutchinson Eden District Council Planning Services

Joanna Smailes Eden District Council Housing Services

Matt Messenger Lambert Smith Hampton

INTERESTED PERSONS

Chris Jones The Tower House, Melmerby, CA10 1HE

DOCUMENTS SUBMITTED AT THE HEARING

1. Margins of error in valuation disputes article from RICS website
2. Property Details: 2 Elseghyll Barn, Melmerby