
Appeal Decisions

Site visit made on 28 March 2017

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Decision date: 27 June 2017

Appeal A: Appeal Ref: APP/P1045/W/16/3163678

37 Windmill Lane, Ashbourne, Derbyshire DE6 1EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr R Purewal (Pearl Developments Ltd) against the decision of Derbyshire Dales District Council.
 - The application Ref 16/00411/FUL, dated 10 June 2016, was refused by notice dated 12 August 2016.
 - The development proposed is proposed change of use to create 1 no dwelling.
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Appeal B: Appeal Ref: APP/P1045/Q/16/3166502

37 Windmill Lane, Ashbourne, Derbyshire DE6 1EY

- 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 Pearl Developments Ltd against the decision of Derbyshire Dales District Council.
 - The development to which the planning obligation relates is erection of 14 apartments, detached garages and associated access and parking.
 - The planning obligation, dated 22 January 2008, was made between Hugh Gavin Broadbent, Carla Louise du Rose, Thorpe Cloud Developments, Clydesdale Bank Plc and Derbyshire Dales District Council.
 - The application Ref 16/00429/S106M, dated 10 June 2016, was refused by notice dated 23 September 2016.
 - The application sought to have the planning obligation modified as follows: omit 37A Windmill Lane from the plan attached to (and referred to within) the original obligation.
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Decisions

1. Appeal A: the appeal is allowed and planning permission is granted for change of use to create 1 no dwelling at 37 Windmill Lane, Ashbourne, Derbyshire DE6 1EY in accordance with the terms of the application, Ref 16/00411/FUL , dated 10 June 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i. Details of all vegetation to be retained, including details of the canopy spread of all trees, hedgerow within or overhanging the site;
 - ii. earthworks showing existing and proposed finished levels or contours;
 - iii. means of enclosure;

- iv. vehicle parking layouts;
 - v. refuse storage;
 - vi. hard surfacing materials.
- 3) The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development.
- The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

2. Appeal B is dismissed.

Procedural matters

3. Within the banner headings I have used the correct address of the appeal site as agreed by the appellant and Council.
4. There is a clear link between the two appeals before me as without the modification of the planning obligation, the proposed change of use to create an additional market dwelling cannot be implemented.
5. Nonetheless, I must consider each appeal on its own merits and conclude on each appeal separately.
6. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
7. In considering Appeal B, I was aware that the appropriate notice under the provisions of Regulation 4 of The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 had not been served on all parties against whom the planning obligation is enforceable. Such notice has now been served and I am therefore able to determine the appeal.

Background and Main Issues

8. There is no dispute between the main parties that policies within both the Derbyshire Dales Local Plan (2005) (LP), and the emerging Derbyshire Dales Local Plan (e LP), are supportive of residential development within the main market towns, such as Ashbourne.

9. Appeal A: I consider the main issue to be whether or not the loss of the employment site is justified.
10. Appeal B: I consider the main issues in this case are whether the planning obligation continues to serve a useful planning purpose in relation to the requirement for any additional housing on site to be affordable housing.

Appeal A: Employment land

Reasons

11. The appeal site is not allocated for employment uses. Saved Policy EDT4 of the LP protects existing employment sites, such as the appeal site, from other uses unless the continuation of the use of the land is no longer required, or the current use is incompatible with the surrounding area.
12. I understand that the building has lain empty for over five years. The adjacent converted office building is linked to the appeal site by a direct pedestrian link via a maintained gap in a hedge. At my site visit, I observed people coming and going to the offices, not only from cars parked on the street, but from cars parked on the appeal site.
13. Planning permission for a change of use of a day nursery to an office (15/00275/FUL) had been granted, and the appeal site subsequently marketed. However, the letter from the appellant's marketing agent has not provided me with sufficient details of the marketing exercise, for example, whether the site had been marketed at a reasonable rate to enable me to conclude whether there would be a demand for the property. Moreover, given the evident commercial success of the neighbouring converted offices, it seems unlikely that the appeal site's location within a predominantly residential area would make it less attractive to the market. Therefore, I am not convinced that the use of the land is no longer required for employment uses. In addition, the use of the site would not adversely impact on the living conditions of neighbouring occupiers and the operation of the adjacent offices.
14. Therefore, I conclude that the proposal to convert the building to residential would be contrary to the provisions of Saved Policy EDT4 of the LP. However, the policy predates the publication of the Framework. Consequently, in line with Paragraph 215 of the Framework, due weight should be given to the policy according to its degree of consistency with the policies in the Framework.
15. I note the broad core planning principle set out in Paragraph 17, bullet point three of the Framework, to deliver the thriving local places that the country needs. However, Paragraph 51 of the Framework is clear that planning applications for change to residential use from commercial buildings should be approved where there is an identified need for additional housing in that area, provided that there are not strong economic reasons, which I have not been provided with, why such development would be inappropriate.
16. I note that the Council considers that it is able to provide a five year supply of affordable housing which is dependent on housing sites within the emerging Local Plan. However, I have not been provided with details of the progress of the Plan and the level of representations relating to its individual housing policies and allocations, as such I must accord its policies limited weight and therefore, I am not convinced that it is able to provide a five year supply of deliverable housing. Consequently, in the context of the Council's position that

it considers its housing policies to be out-of-date, I conclude, for the purposes of this appeal that there is an identified need for additional housing.

17. I have been referred to emerging policy relating to the change of use of existing employment premises, which the Council considers to be supported by evidence. However, as I have not been provided with details relating to the policy's progress, and the extent to which there are objections to the emerging policy, I am unable to give it great weight. Consequently, for the reasons set out above, whilst I consider that the proposal would be contrary to both adopted Policy EDT4 of the LP, and emerging Policy EC3 (e LP), in the absence of strong economic reasons, and my conclusions relating to housing need I accord little weight to this conflict.

Appeal A: Planning Balance and Conclusion

18. S38 (6) of the Planning and Compulsory Purchase Act and Paragraph 2 of the Framework is clear that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. I have concluded that the proposed development would be contrary to saved Policy EDT4 of the LP. However, I accord limited weight to this conflict. Paragraph 49 of the Framework states that housing applications should be considered in the context of sustainable development. Paragraph 14, states that, for decision-taking, this means, where relevant policies are out- of- date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole: or specific policies in the Framework indicated development should be restricted.
19. I have not found that level of harm to outweigh the benefit of the dwelling to the housing supply. The proposed development can therefore be considered to be sustainable development for which the Framework presumes in favour. Taken as a whole, this is a material consideration such that determination may be made other than in accordance with the development plan.

Appeal A: Conditions

20. A schedule of conditions, with attached reasons was submitted with the Council's Statement of Case for consideration if I were minded to allow the appeal. I have considered those conditions, having regard to the six tests set out in the Planning Practice Guidance and have introduced some rewording and re-ordering in the interests of clarity and precision.
21. To control the appearance of the area I have attached conditions controlling the details of soft and hard landscaping, and to protect residential amenity I have required a Construction Method Statement. I have not however imposed conditions relating to access provision as the residential use would raise fewer access matters than the permitted use. Therefore, such a condition would be unreasonable.

Appeal B: Planning obligation

Reasons

22. The appeal site lies within the built up settlement of Ashbourne. Planning permission was granted in 2008¹ for the erection of 14 apartments, detached garages and associated access and parking. This development has since been implemented (Tissington Court). It, together with the appeal site and the neighbouring offices were part of a wider site formerly used as a residential and day school. At the time of the planning permission, a planning obligation was entered into by the landowners and their successors. This, amongst other matters, stipulated that, were 15 or more residential properties to be permitted on the wider application site, of which the appeal site and the now converted St Monica's School formed a part, at least 45% of the total units on the property would be affordable housing, and that the next 12 units to be built would be affordable housing units.
23. I note that the appellant states that at the time of purchasing the site that they were unaware of the planning obligation which relates to the site and subsequently paid more money than they would otherwise have done. For whatever reason this was the case, which is not a matter of relevance to me, the current owner is bound by the provisions of the Obligation, irrespective of whether the original site had been split and sold into separate ownerships.
24. The planning purpose of the obligation is clear, to ensure that, the wider site would not be developed for housing in a piecemeal manner, and thereby circumvent the requirement contained within saved Policy H10 of the Derbyshire Dales Local Plan adopted 2005, that development of 15 or more units would require 45% of the units to be affordable.
25. I have been referred to Policy HC4 of the emerging Derbyshire Dales Local Plan. This proposes that for developments of over 10 dwellings that 30% of them should be affordable. I have not been given any information as to the progress of the plan, and whether there have been objections to the policy. Nonetheless, the principle of requiring a contribution towards affordable housing provision of developments over 10 units is consistent with the national policy, and the objective of providing affordable housing as part of developments of market housing remains current. As such, notwithstanding whether or not it would be practicable to retrospectively require a proportion of the apartments which have already been built on the site to become affordable housing, I conclude that the objective of the Obligation remains relevant and broadly consistent with the policies of both the adopted local plan and the emerging local plan. Consequently, the planning obligation continues to serve a useful planning purpose and the appeal site should continue to be bound by its provisions.
26. In coming to this conclusion I am aware that the site has been marketed for other uses. In addition, the appellant argues that it would not be viable, a position accepted by the Town Council, at the price at which the site was purchased, to construct an affordable dwelling on the site, and even if it was, that no affordable housing provider would be willing to take on a single unit. However, I have not been provided with detailed evidence, relating to viability matters and the practicalities of managing the property as affordable housing,

¹ 07/00186/FUL

to support this position. Nor is it necessarily evident that the provision of a single residential unit would be the only option open to the appellant in developing the site. Moreover, the appellant's ignorance of the provisions of the obligation when purchasing the land is not relevant to any viability assessment which should reflect an informed market value of the land.

27. The proposed modification of the planning obligation would run contrary to its planning purpose to ensure, over time, that there would not be a piecemeal development of the wider site for housing, to avoid the requirement set out within the development plan that market housing over a certain threshold should provide an element of affordable housing. Accordingly, I conclude that the Obligation continues to serve a useful planning purpose and therefore should not be modified.

Appeal B: Conclusion

28. For the reasons set out above I conclude the appeal should be dismissed.

L. Nurser

INSPECTOR