
Appeal Decision

Site visit made on 22 May 2017

by Jonathan Hockley BA(Hons) DipTP MRTPI

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

Decision date: 29 June 2017

Appeal Ref: APP/N1920/W/16/3165942

2 & 4 Steeplands and 1 & 3 Claybury, Bushey, Hertfordshire WD23 1BT

- 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 planning permission.
 - The appeal is made by County Homes (Herts) Ltd against of Hertsmere Borough Council.
 - The application Ref 16/0127/FUL is dated 26 January 2016.
 - The development proposed is described as 'The proposals are for a new build development to include 24 flats within 3 blocks over part 3 and part 4 storeys with associated car parking proposed at new basement level'.
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Decision

1. The appeal is allowed and planning permission is granted for a new build development to include 24 flats within 3 blocks over part 3 and part 4 storeys with associated car parking proposed at new basement level at 2 & 4 Steeplands and 1 & 3 Claybury, Bushey, Hertfordshire WD23 1BT in accordance with the terms of the application, Ref 16/0127/FUL, dated 26 January 2016, subject to the conditions set out at the end of my decision.

Preliminary Matters, Background and Main Issue

2. The appeal was made against the failure of the Local Planning Authority to give notice of their decision on the application within the statutory period. The site has a fairly detailed history with a previous appeal against the non-determination of an application dismissed in July 2016. The application that the current appeal considers was recommended for approval by Council Officers. The Planning Committee of the Council agreed with this approach and resolved to delegate the power to the Head of Planning and Economic Development to grant permission subject to a Section 106 agreement being received, with this agreement to include a deferred payment 'clawback' clause in respect of affordable housing provisions.
 3. Negotiations have continued between the parties over the provision of the clause and a monitoring fee. Such negotiations have been unsuccessful, and the Council have confirmed that they would have refused the application due to the lack of such provisions. I have treated the Council's appeal statement as the decision the Local Planning Authority would have made, had they been empowered to do so.
 4. The Council statement considers that this provides the sole main issue in this case. Based on all that I have seen and read I have no reason to disagree with this analysis.
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5. Subsequently I consider the main issue in this case to be whether the proposal makes adequate provision for affordable housing.

Reasons

6. Policy CS4 of the Core Strategy¹ and the Affordable Housing SPD² (the SPD) requires schemes on sites of more than 0.2 hectares or for developments of 5 units or more in the appeal site area to provide 35% affordable units. The SPD provides a hierarchy of alternative provision including the provision of land or existing homes by the applicant to Registered Providers at a discount or, if this is not possible, the provision of a payment in lieu. The scheme is for 24 flats and so would fall within such range; 9 affordable homes, or an equivalent proportion off site, would be required.
7. The appellant submitted a viability report concluding that the scheme would be economically unviable with an on-site provision. This has been agreed by the Council who have confirmed that in line with Policy CS4, exceptional circumstances have been demonstrated so that an alternative to on site provision is appropriate. Their independent viability assessors considered that the scheme could provide a payment in lieu of affordable housing of £77,000. The appellant has offered £120,000.
8. The Council have also requested a clause in the Section 106 legal agreement (s106) offered requiring the developer to provide a deferred payment which would be 60% of any surplus in profit subject to the maximum sum (which is the policy compliant figure for the total amount that is required in lieu of affordable housing). This accords with the SPD, which states that where a commuted sum of less than the target amount has been agreed, the Council will seek an arrangement in the s106 to seek a higher amount should the development viability improve.
9. A signed and dated s106 has been submitted with the appeal. This proposes two sets of covenants; either a payment of £120,000, or an overage arrangement. The overage clause would provide for a final sales report to be submitted to the Council following occupation of 14 units and not before the occupation of 16 units. The sales report would confirm the actual prices received for the 14 units and provide an estimate of values for the remaining units. An overage payment would then be worked out based on any uplift in the gross development value of the scheme demonstrated by the sales report.
10. In effect therefore the s106 provides either for £120,000 to be paid prior to the commencement of the development, or an unknown overage sum to be paid once agreed following occupation of around 14 units of the scheme. The payment up front of £120,000 as opposed to the overage clause would be contrary to the SPD, and I note that the National Planning Policy Framework states that to widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should, where they have identified that affordable housing is needed, set policies for meeting this need on site unless off site provision or a financial contribution can be robustly justified.
11. However, I consider that in this one particular case the commuted sum would be solely necessary to make the development acceptable in planning terms,

¹ Hertsmere Local Plan Development Plan Document Core Strategy, January 2013.

² Hertsmere Local Plan Affordable Housing Supplementary Planning Document, November 2015.

would be directly related to the development, and would be fairly and reasonably related in scale and kind to the development. I come to this view considering that the commuted sum would be some £43,000 more than the Council's independent viability assessors considered was affordable and that this sum therefore already includes a degree of overage. I also note that the site itself is smaller than the 0.2 hectares that policy CS4 refers to in terms of developments where affordable housing is required, and that the site only falls into consideration by the policy by virtue of the number of units proposed. Furthermore, I have some sympathy given the size of the scheme and the viability evidence submitted that the proposed overage clause would be overly complicated.

12. When considering all these factors together I consider that the proposal, with the commuted sum in place, would make adequate provision for affordable housing. With the commuted sum the proposal would comply with Policy CS4 of the Core Strategy, in that the scheme would make provision for affordable housing, and that the evidence submitted has demonstrated the exceptional circumstances that an alternative to on site provision is appropriate, with appraisals demonstrating the alternative affordable housing provision to be justified. I also note that Planning Practice Guidance stresses that where affordable housing contributions are being sought obligations should not prevent development from going forward
13. My findings should not be taken as an indication that I disagree with the thrust of the Council's SPD regarding affordable housing contributions. However, each proposal must be considered on its own merits, and I consider that factors in this case, including the commuted sum, have outweighed the conflict of the scheme with the SPD. I have also concluded that the proposal with the commuted sum would comply with the development plan.

Other Matters

14. There is also disagreement between the parties concerning a monitoring fee. The SPD states that considerable monitoring of residential schemes and their associated s106 agreements can be required when the full amount of affordable housing is not provided on site from the outset. However, in this case given my conclusions above very little monitoring would be required by the Council, and I consider therefore the payment of a fee is not necessary to make the development acceptable in planning terms. I also note that evidence submitted by the appellant from the Council's solicitor states that the Council does not apply a blanket monitoring fee but that one is required where viability is to be reassessed as part of any clawback stage. This is not the case in this instance.
15. The previous appeal concluded the scheme would provide insufficient waste storage provision. However, both parties are now in agreement that this matter has been overcome and based on all that I have read I have no reason to disagree with this view.
16. I note concerns of local residents regarding parking, considering that the scheme would underprovide parking spaces, particularly given the proximity of local schools and that the proposed underground parking would constitute a risk to highway and pedestrian safety. Council guidelines state that 39-46 car parking spaces should be provided for a scheme of this size. The proposal includes 29 parking spaces, a shortfall of some 10 to 17 spaces. This is clearly

a significant shortfall. However, I note the sustainable location of the proposal and that the Highways Authority did not object to the scheme and I also agree with both parties that the spaces provided, at 29 for 24 flats would be adequate for the proposal and that any marginal increase in parking pressure would not be sufficient to withhold permission.

17. Concerns are also expressed regarding local drainage and foul sewage issues, particularly given the underground car parking proposal. No objection has been made to the scheme by the Council on such grounds and I consider on the evidence provided that with the imposition of conditions concerning on-site storage, regulated discharge of surface water and off site foul and surface water works, the proposal would not cause harm to such matters.
18. A previous application was partially refused on the grounds of the effect of the scheme on the living conditions of the residents of No 5 Claybury. However, there would be little chance for overlooking of this property due to the design of the rear of Block A of the proposal, which in this area contains angled rooflights and one bedroom window which would be offset from a direct view over the rear garden of No 5. I am therefore in agreement with both parties that the scheme would not have an adverse effect on the living conditions of neighbouring residents. Conditions requiring details of finished floor and ridge levels and confirming bathroom windows to be of obscure glass would also assist in this regard and that of protecting the living conditions of the future residents of the proposal.
19. Concern is raised over the capacity of local infrastructure, such as doctors, dentists and educational facilities to cope with the increased number of local residents that the proposal would provide. However, I have no firm substantive evidence on this point and note that the scheme will provide a community infrastructure levy.
20. The scheme, in providing 24 flats set over a basement car park will clearly increase the density of development in the area. However, the area is already characterised by fairly high density residential development and I do not consider that the proposal would constitute the overdevelopment of the site.
21. Concerns are raised over the effects of construction, and the adverse effects this could have on the living conditions of local residents. Given the tight nature of the site and the surrounding residential environment I agree with the Council that a condition regarding the need for a construction management plan, covering items such as traffic management, compounds, wheel washing facilities, timing of construction activities to avoid school pick up / drop off times and on-site parking is necessary and desirable.

Conditions

22. Aside from conditions mentioned above, I have also imposed standard conditions concerning time for implementation and construction in accordance with the submitted plans, to provide certainty. Conditions are also imposed covering material samples and landscaping and an associated management plan, in the interests of the character and appearance of the area. I also agree with the Council that a condition to ensure highway works are carried out in accordance with the approved details is necessary.

Conclusion

23. To summarise, I conclude that the proposal, with the commuted sum in place, would make adequate provision for affordable housing. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission be granted.

Jon Hockley

INSPECTOR

SCHEDULE OF CONDITIONS

- 01) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 02) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 03) No development shall take place before the following have been submitted to, and approved in writing by, the Local Planning Authority:
 - a. a scheme of hard (including access roads, driveways and parking areas) and soft (including a schedule of plant species) landscaping, phased in relation to any phasing of the development, which shall include details of both hard and soft landscape works and earthworks; and
 - b. details of all walls (including retaining walls), fences, gates or other means of enclosure to be erected in or around the development.

The development shall be carried out in accordance with the approved details.

- 04) No development shall take place before details of the proposed finished floor levels; ridge and eaves heights of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. The submitted levels details shall be measured against a fixed datum and shall show the existing and finished ground levels, eaves and ridge heights of surrounding property. The development shall be carried out as approved.
- 05) The bathroom windows to be created in the ground, first and second floor side elevations indicated on Plan Nos. 4295/P010B, 4295/P011C 4295/P012B and 4295/P013B shall be in obscure glass (to Pilkington Level 3 or equivalent) and non-opening below a height of 1.7 metres measured from the internal finished floor level. The windows shall not thereafter be

altered in any way without the prior written approval of the Local Planning Authority.

- 06) Prior to the commencement of development a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned, domestic gardens) shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved management plan.
- 07) Before first occupation of the approved development, all access and junction arrangements serving the development shall be completed in accordance with the approved in principle plans and constructed to specification of the Highway Authority and Local Planning Authority's satisfaction.
- 08) Construction of the development hereby approved shall not commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority in consultation with the highway authority. Thereafter, the construction of the development shall only be carried out in accordance with the approved Plan. The Construction Traffic Management plan shall include details of: Traffic management requirements; Construction and storage compounds (including areas designated for car parking); Siting and details of wheel washing facilities; Cleaning of site entrances, site tracks and adjacent public highway; Timing of construction activities to avoid school pick up / drop off times; Provision of sufficient on-site parking prior to commencement of construction activities; Post construction restoration / reinstatement of the working areas and temporary access to the public highway.
- 09) No development shall take place before a scheme for the on-site storage and regulated discharge of surface water run-off has been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.
- 10) Development shall not commence until a drainage strategy detailing any on and / or off-site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
- 11) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 4925/P001; Flood Risk Assessment (Hemsley Orrell Partnership October 2015); Design & Access Statement dated 23.09.15, 4295/P008, 4295/P009B; 4295/P010B, 4295/P011C, 4295/P012B; 4295/P013B; 4295/P014B; 4295/P015B; 4295/P020, 4295/P021B, 4295/P022C, 4295/P023B; 4295/P025, 4295/P026; Transport Statement (TPA, 15 August 2016), Drainage Strategy (Hemsley Orrell Partnership August 2016).