The Planning Inspectorate

Appeal Decision

Site visit made on 13 June 2017

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 12 July 2017

Appeal Ref: APP/E2734/W/17/3168204
Kingsley Farm, Kingsley Road, Harrogate, HG1 4RF

- 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 consent, agreement or approval to details required by a condition of an outline planning permission.
- The appeal is made by Mr N Chippindale and Stonebridge Homes against Harrogate Borough Council.
- The application Ref. 16/05114/DISCON, dated 22 November 2016, sought approval of details pursuant to condition no. 17 of planning permission Ref. 14/00128/OUTMAJ, granted by notice dated 18 May 2015.
- The development permitted was described as outline application for residential development with access and scale considered (site area 3.31 ha).
- The details for which approval is sought are a detailed assessment of the requirement for the provision of Affordable Housing as part of the development.

Decision

1. The appeal is dismissed.

Preliminary matters

2. Condition no. 17 requires that:

   The development shall not be begun until a detailed assessment of the requirement for the provision of affordable housing as part of the development with regard to the Planning Practice Guidance 'Planning obligations' (or any guidance or legislation revoking and re-enacting that Guidance with or without modification), has been submitted to and approved in writing by the Local Planning Authority. The assessment shall include where appropriate a scheme of provision of affordable housing which shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it and the affordable housing shall be provided in accordance with the scheme as approved by the Local Planning Authority. The scheme shall include:

   a. *The numbers, type, tenure and location on the site of the affordable housing provision to be made. This shall be based on a contribution of not less than 40% of housing units/bed spaces where no reduction in the contribution is allowed for in the Planning Practice Guidance;*

   b. *The timing of construction of the affordable housing and its phasing in relation to the occupancy of the market housing;*

c. *The arrangements for transfer of the affordable housing to an affordable housing provider (or the management of the affordable housing if no such provider is involved);*

d. *The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and,*

e. *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 development shall not be occupied until the approved scheme has been carried out and it shall thereafter be retained.

3. The reason given for condition no. 17 is to ensure that Affordable Housing is provided on site, in accordance with 'saved' Policy H5 of the Local Plan.

4. Whilst the Council failed to give notice within the prescribed period of its decision on the application for approval of details required by condition no. 17 of planning permission Ref. 14/00128/OUTMAJ, in its appeal statement, the Council has suggested that the application should be refused on the basis that the details submitted made inadequate provision for Affordable Housing.

Main Issue

5. I consider that the main issue in this case is whether the details provided by the appellants are sufficient to satisfy the requirements of condition no. 17.

Reasons

6. In response to the requirements of condition no. 17, the appellants have submitted a detailed assessment of the requirement for the provision of Affordable Housing for the Council's consideration, in the form of its *Application to Discharge Condition 17 of Planning Permission 14/00128/OUTMAJ-Supporting Statement* (SS). Criteria a. of condition no. 17 indicates that the level of Affordable Housing provision *shall be based on a contribution of not less than 40% of housing units/bed spaces where no reduction in the contribution is allowed for in the Planning Practice Guidance* (PPG).

7. The appellants' SS identifies the *Planning Practice Guidance* (PPG) states that '*national policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable Housing contributions may be required for any increase in floorspace'*. Furthermore, the appellants have suggested that the floorspace of relevant vacant buildings on site exceeds the floorspace of the proposed buildings the subject of planning permission Ref. 14/00128/OUTMAJ. Therefore, they argue that, as there would be no increase in floorspace, no Affordable Housing contribution is required under the terms of the PPG.

8. I understand that the appellants have calculated, with reference to a reserved matters application which was pending at the time of the SS, that the gross floorspace of the proposed dwellings would be around 8,182 m^2. This has not

been disputed by the Council. However, there is disagreement with respect to the qualifying 'gross floorspace of relevant vacant buildings'.

9. The appellants have indicated, with reference to a Lawful Development Certificate dated 17 November 2010, that the last use to which the 5 buildings within the site were put was sui generis. This has not been disputed by the Council in its appeal submissions. However, it does dispute that 2 of the 5 buildings on the appeal site are relevant vacant buildings. The Council considers that, unlike the other buildings, the 'main building' and 'store 1', which formed part of the former egg-packing facility, do not comply with the definition of a vacant building set out in the *Harrogate Borough Council: Guidance Note on Changes to Affordable Housing and Planning Obligations (August 2016) (GN)*. The GN indicates, amongst other things, that a building is not vacant if it has been occupied for more than 6 months within the period of 3 years ending on the application date. There is no dispute that the egg packing facility was still in use on 1st August 2013 and that the application for planning permission Ref. 14/00128/OUTMAJ was made to the Council on 10 January 2014. It follows that those 2 buildings would not constitute relevant vacant buildings under the terms of the GN.

10. However, the GN does not form part of the Development Plan and it is not clear that it has been subject to public consultation. Furthermore, whilst my attention has been drawn to the Written Ministerial Statement of 28 November 2014, which gave encouragement to the application of the vacant building credit in a manner consistent with the *Community Infrastructure Regulations 2010* (as amended) (CIL Regs), in my judgement, the approach set out in the GN to determine whether a building can be regarded as vacant is not consistent with the definition of an 'in-use building' set out in the CIL Regs. Under the CIL Regs the period used to judge whether a building is 'in-use' is '*3 years ending on the day planning permission first permits chargeable development*', as opposed to '*3 years ending on the date of the planning application*' used by the GN to judge vacancy. To my mind, the GN approach is also inconsistent with the PPG, which indicates that the vacant building credit should be based on '*the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought*'. In this particular case, the point at which the level of Affordable Housing contribution to be sought would be determined by the local planning authority would be when it considers the details submitted pursuant to condition no. 17. Under these circumstances, I consider that little weight should be afforded to the conflict with the definition of a vacant building set out in the GN.

11. There is no dispute that construction of the new facility to which the appellants' egg packing operation moved was nearing completion in the summer of 2013 and the company started paying rates on the new premises in August 2013. There is no evidence to support the Council's assumption that the transfer may have taken months to complete. Although the egg packing facility was still operational on 1 August 2013, the appellants have indicated that the remaining operations transferred to the new facility over the following weekend, between 2 and 5 August 2013, in order to avoid any down-time and the buildings were all vacant by the end of August 2013. Based on the evidence presented, in my judgement, at the point in time when the appellants sought approval of details pursuant to condition no. 17, which was 22 November 2016, it is unlikely that

any of the 5 buildings within the appeal site had been occupied for more than 6 months within the preceding period of 3 years.

12. The PPG indicates that in considering how the vacant building credit should apply to a particular development, local planning authorities should have regard to the intention of national policy, which is to incentivise brownfield development, including the reuse or redevelopment of empty and redundant buildings. In doing so, it may be appropriate for authorities to consider: whether the building has been made vacant for the sole purposes of the development; and, whether the building is covered by an extant planning permission for the same or substantially the same development.

13. In their Statement of Case, the appellants have confirmed that the former occupier of the site, Chippendale Foods, had experienced growth over the years which created problems, with particular reference to traffic travelling to and from the site on the edge of a residential area. This led to a proposal for relocation of Chippendale Foods, which was encouraged by the Council. These matters have not been disputed by the Council. Against this background, I am satisfied that buildings have not been made vacant for the sole purposes of re-development. Furthermore, application of the vacant building credit would be likely to incentivise implementation of extant planning permission Ref. 14/00128/OUTMAJ, as it would be likely to have the effect of reducing the level of Affordable Housing required and increase the level of development profit.

14. Under the circumstances set out above, I consider that it would be reasonable to regard all 5 buildings within the appeal site as relevant vacant buildings for the purposes of calculating vacant building credit. However, I have concerns regarding the appellants' assessment of the *'existing gross floorspace'* of those relevant vacant buildings.

15. I have particular concerns in relation to the allowances made for poultry shed 1 and store 2. The appellants have indicated that in the past, both buildings included a mezzanine floor level. However, whilst it appears that some supporting steelwork remains, any mezzanine flooring that existed in the past in those buildings has been almost entirely, if not entirely, removed. In correspondence with the Council on 1 May 2015, Fordy Marshall Limited (FML), acting on behalf of the appellants, estimated that the actual mezzanine floor areas would have been likely to be in the range of 50%-75% of the gross internal areas set out in an attached schedule (VBC Schedule). It suggested that a 60% allowance would be fair, which would result in a total gross internal floor area for: poultry shed 1 of around 1,014 m²; and, store 2 of some 856 m². This resulted in a combined gross floorspace of 5,028 m² for the 2 poultry sheds together with stores 2 and 3, which was agreed to by the Council in its response, dated 14 May 2015. Taking this together with the appellant's SS estimate for the main building (2177.2 m²) and store 1 (522 m²) would indicate an overall gross floorspace of around 7,727 m² (GF1). This is less than the anticipated floorspace of the proposed dwellings, indicating that the proposal would result in an increase in floorspace and so Affordable Housing would be required.

16. In contrast, the overall figure relied upon in the appellants' SS for the 'existing gross floorspace' of the 5 buildings is around 8,326 m² (GF2). This includes an allowance for store 2 of 1085 m² and for poultry shed 1 of 1343 m².

With reference to the VBC Schedule, it appears to me that these figures are based on the gross external areas of those buildings, rather than internal floorspace, and, unlike the GF1 estimate, no correction has been made to account for the likelihood that the mezzanine floors did not take up the whole of the space. Under these circumstances, in my judgement, little weight can be attributed to GF2.

17. Furthermore, the PPG makes clear that the VBC should be based on *existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution.* In this context, I consider that no account should be taken of mezzanine floorspace that has been removed. Whilst in its email to the Council, dated 1 May 2015, FML suggested that it would not be difficult to replace the flooring, I have no reason to believe that that would be likely and give little weight to the assertion. Under these circumstances, even if it is reasonable to regard all 5 of the buildings on the appeal site as relevant vacant buildings, the appropriate figure for existing gross floorspace would be significantly lower than both GF2 and GF1.

18. I conclude it is likely that the approved scheme would result in an increase in floorspace and so some level of Affordable Housing would be required. The absence of any provision for Affordable Housing in the details submitted by the appellants is contrary to the aims of Policy H5 of the *Harrogate District Local Plan, 2004* and does not meet the requirements of condition no. 17. I conclude that the details provided by the appellants are not sufficient to satisfy the requirements of condition no. 17.

Other matters

19. The appellants have drawn my attention to a previous appeal decision associated with a poultry farm in Cornwall (Ref. APP/D0840/W/16/3142537), which included consideration as to whether vacant building credit would apply. However, there is no evidence before me to show that the circumstances were directly comparable to those in the case before me, which include disputes regarding whether some of the buildings constitute 'relevant vacant buildings' and the extent of the floorspace of the buildings. Therefore, I have found that decision to be of little assistance.

Conclusion

20. I conclude that the proposal would not make adequate provision for Affordable Housing, contrary to the aims of the Development Plan and the *National Planning Policy Framework* as regards the creation of sustainable, inclusive and mixed communities. For the reasons given above, I conclude that the appeal should be dismissed.

I Jenkins

INSPECTOR