
Appeal Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 12th July 2017

Appeal Ref: APP/G3110/W/16/3165091

8 Hollybush Row, Oxford, Oxfordshire OX1 1JH

- 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 Linea OX1 Ltd against Oxford City Council.
 - The application Ref 16/01541/FUL is dated 7 June 2016.
 - The development proposed is demolition of existing public house; redevelopment of the site to erect a four storey building, providing seven flats (five one bed and two, two bed flats), including bin and cycle storage and amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the banner heading is taken from the application form. However, it is common ground between both main parties that the proposed development would actually consist of five, two bed flats and two, one bed flats. I have therefore dealt with the appeal on that basis.

Main Issue

3. The main issue in this appeal is whether the proposed development would contribute to creating sustainable, inclusive and mixed communities, having regard to:
 - Affordable housing, the Development Plan and the Planning Practice Guidance.
 - Development viability.

Background

4. The appeal site consists of a two storey building last used as a public house, together with its outbuildings and a rear yard. There are modern offices on one side, with a modern high density residential development to the other side and at the rear. The site fronts onto a busy urban road.
 5. The Council granted planning permission for demolition of the public house and erection of five one bed and two, two bed flats together with provision of
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private amenity space, bin and cycle storage on 27 May 2016¹. At the hearing it was confirmed that the Council had also granted planning permission on 15 May 2017, for demolition of the public house and erection of five, two bed and two, one bed flats². Both of these planning permissions followed the completion of a Planning Obligation undertaking to pay a financial contribution equating to 15% of the total sale value of the development towards the provision of off-site affordable housing, to accord with Policy HP4 of the Council's adopted Sites and Housing Plan Development Plan Document (DPD).

Reasons

Affordable housing

6. DPD Policy HP4 requires sites with capacity for four to nine dwellings to make a financial contribution towards delivering affordable housing in the city. The DPD was adopted in February 2013. There is no firm evidence to suggest that DPD Policy HP4 is not consistent with the National Planning Policy Framework (the Framework).
7. However, the Planning Practice Guidance (PPG) section 'Planning Obligations' at paragraph 031 advises that financial contributions should not be sought from developments of ten dwellings or less³. This follows the order of the Court of Appeal dated 13 May 2016, which gave legal effect to the Written Ministerial Statement of 28 November 2014 (WMS). The PPG restriction on seeking contributions should be given significant weight.
8. The Council's Position Statement (PS) published in March 2017 concluded that the level of need for affordable housing in Oxford is extremely high, both as a proportion of the Objectively Assessed Need (OAN) for the city and also in comparison with the need for affordable housing in the rest of the County and the wider region. According to the PS, Oxford has the highest house price to earnings ratio in the country and very high private rent levels, meaning that many households cannot afford to buy or rent in the city. In addition, as a largely built-up area with tightly drawn administrative boundaries, Oxford is reliant on the development of small sites for its housing supply.
9. The PS is informed by evidence from a number of sources including the DPD, the Inspector's Report on the DPD Examination, the Council's 2014 Strategic Housing Market Assessment (SHMAA) and the 2015/16 AMR. Although the PS itself does not appear to have been subject to public consultation, at the hearing the Council said that the information in the PS was also in its draft replacement local plan. Consequently, the information in the PS has previously been available for public consultation.
10. Some of the problems identified in the PS will be experienced in other cities and areas across the country, particularly in the south of England. Nevertheless, it would be unusual for a combination of all of the above factors to be present at the same scale and magnitude as the evidence clearly shows exists in Oxford. Therefore, the available evidence is strongly indicative of an exceptional level of need for affordable housing in Oxford. In turn, this supports the continued seeking of contributions pursuant to DPD Policy HP4. I am satisfied that this would not undermine the WMS/PPG objective of reducing

¹ Council reference 15/02694/FUL.

² Council reference 16/03189/FUL.

³ Reference ID: 23b-031-20161116.

the burden of contributions on developers of small sites more generally, where such factors as have been shown to apply in Oxford would not occur to a similar extent.

11. The appellant suggested that the Council's Annual Monitoring Reports (AMR) and other anecdotal evidence indicated that DPD Policy HP4 had been counterproductive in terms of delivering housing on smaller sites and collecting financial contributions towards affordable housing contributions, as it has generally made such sites not viable to develop. However, the Council supplied tables of housing completions and housing permissions which demonstrated that significant numbers of small sites were still being brought forward for development in the years following adoption of the DPD. The low level of financial contributions received in the same period might reflect a number of factors, including the implementation of pre-DPD permissions and an uptake in residential conversions under recently introduced permitted development rights. Also, the Council had adopted a position of not requiring contributions from 2 February 2015 until 25 July 2016, when it considered the Court of Appeal judgment regarding the WMS. I am satisfied that the terms of the judgment warranted the Council reviewing its position as to whether it should seek contributions pursuant to DPD Policy HP4 in future.
12. The appeal scheme would make a small but significant contribution to the city's supply of market housing. Even so, there was no firm evidence produced to suggest that the Council's housing land supply figure of 6.3 years in the 2015/16 AMR was significantly out of date. The 2015/16 AMR also shows that only one residential conversion was undertaken on a site of less than ten dwellings pursuant to permitted development rights during that period, with 270 dwellings receiving prior approval since 2013/14. However, there is no breakdown to show how many of these were on sites of less than ten dwellings. A good proportion are likely to be on larger sites. Moreover, there has been a significant tail-off in the number of prior approvals received by the Council since adoption of the DPD. This all suggests that an ability to undertake permitted development without paying affordable housing contributions is unlikely to be a significant factor in determining whether a site is brought forward for housing.
13. In reaching the above conclusions, I have also taken account of the recent appeal decisions referred to by the appellant. In the 20 Blenheim Drive appeals⁴, more weight was given to the PPG. Although the Inspector appears to have had some information regarding the affordability of housing in Oxford, the appeal pre-dates the more detailed evidence available in the PS. In the Hawkswell Gardens appeal⁵, there was no substantive evidence before the Inspector concerning the need for affordable housing. The Red Lion, Church Street, Theale appeal⁶ was in a nearby Council's area. Whilst a Development Plan policy required affordable housing provision in that case, there appears to have been no evidence before the Inspector which could have outweighed the PPG. Consequently, the circumstances before me are materially different to those appeals.
14. For all the above reasons, the exceptional level of need for affordable housing in Oxford warrants full weight being applied to DPD Policy HP4. Therefore, a

⁴ References APP/G3110/W/15/3139468 & APP/G3110/W/15/3139945.

⁵ Reference APP/G3110/W/16/3162190.

⁶ Reference APP/W0340/W/16/3161019.

financial contribution towards the provision of affordable housing elsewhere in Oxford would satisfy the tests in Section 122(2) of the Community Infrastructure Regulations 2010 and paragraph 204 of the Framework. As a result, in the absence of a completed Planning Obligation the proposed development would not accord with DPD Policy HP4 and it would not contribute to creating sustainable, inclusive and mixed communities as required by paragraph 50 of the Framework.

Viability

15. Paragraph 173 of the Framework advises that to ensure the viability of a development, the costs of any requirements to be applied including affordable housing, should when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and developer to enable deliverability. It is common ground between the main parties that the principal difference between them in terms of whether the proposed development would be viable if a contribution were made to accord with DPD Policy HP4, concerns the estimated costs of construction.
16. The Council's Affordable Housing and Planning Obligations Supplementary Planning Document (SPD) was adopted in September 2013 and therefore carries some weight. Appendix 3 provides guidance on viability appraisals. It indicates that the basic build costs should normally align with that of current Building Cost Information Service (BCIS) costs, with site servicing and infrastructure costs also based on BCIS data. Robust and detailed justification is required where different assumptions have been applied. This is consistent with the PPG section 'Viability', which advises amongst other matters that assessment of development costs should be based on robust evidence which is reflective of market conditions; all development costs should be taken into account including build costs based on appropriate data, for example BCIS, and abnormal costs, including those associated with treatment for contaminated sites or listed buildings, or historic costs associated with brownfield, phased or complex sites⁷.
17. According to the Development Appraisal (DA) prepared by Savills on behalf of the appellant, the proposed development would achieve a profit of 20% of the Gross Development Value (GDV) provided no affordable housing contribution was made. The Council have accepted that a 20% GDV figure is a reasonable level of return for the developer. It is consistent with the figure accepted by adjacent Councils in viability assessments. Whilst the Council had initially been critical of a lack of a reference to ground rents in the GDV, at the hearing it confirmed that the revised DA of 2 May 2017 had addressed this matter.
18. The DA is based on amongst other matters, a detailed estimate of construction costs prepared by Rosewood Project Services Ltd (Rosewood). The Council's consultants (White Land Strategies-WLS and Rider Levett Bucknall-RLB) confirmed that they had undertaken a review of the Rosewood costs estimate by checking quantities and rates and comparing them against their own expectations for the scheme and BCIS benchmarks. According to RLB, the Rosewood estimate of the total build cost including services was significantly above the BCIS upper quartile value based on recently tendered projects, whilst taking account of the location and abnormal costs. Based on the RLB estimate of a substantially reduced build cost, WSL said that a 15% affordable

⁷ Paragraph: 022 Reference ID: 10-022-20140306

housing contribution could be made whilst still achieving a 20% GDV. Prior to the hearing, RLB also submitted a more detailed commentary on highlighted areas of the estimate where they felt construction costs were unusually high in the Rosewood estimate, including the piling, external elevations, internal construction and internal specification. However, RLB made it clear that this was not a detailed estimate of the overall costs of the project.

19. Rosewood explained that there were several site-specific, abnormal factors which resulted in significantly increased construction costs over the BCIS average for three to five storey flats in Oxford. These included a requirement for piled foundations due to the ground conditions; inefficiencies due to the small-scale of the project compared with the amount of construction in the central core; the disproportionate amount of external façade per flat; the high standard of external design and the internal specification; the physically constrained nature of the site which prevented use of a crane and limited on site storage; as well as delivery restrictions on the adjacent highway. Some of the factors influencing the abnormal costs were readily apparent when I visited the site.
20. The construction costs estimate prepared by Rosewood is site-specific, it provides a fully costed breakdown of the construction programme and it has been reconciled; it is not solely based on assumptions from other projects from the BCIS and goes into a much greater level of detail, including the abnormal costs detailed above. Rosewood largely disputed the reduced construction costs and contingency figure produced by RLB on the basis that they were too low. Rosewood explained that BCIS is a benchmarking tool more suitable for use at the early stages of a project. RLB agreed that BCIS is not sufficient for more advanced schemes such as the proposed development. The costs in terms of external materials are in part informed by the Council's requirement for a high quality design to comply with its West End Design Code. Therefore, I do not doubt that the Rosewood estimate is an accurate costing of how the appellant intends to develop the site.
21. Nevertheless, RLB's evidence of what they regard as some unusually high, overall and detailed costs according to BCIS benchmark data does lead me to question whether the cost of the proposed development would inevitably equate to the Rosewood estimate. In particular, WLS and RLB pointed out that the developer's choices in terms of the specification of internal construction and fitting out were significant factors in driving up overall costs. I understand that the internal specification is similar to other schemes the appellant has built elsewhere as it is aimed at increasing the marketability of the units, having regard to factors such as their size and location. However, there is no firm assurance that the internal specification would not change in future, perhaps in response to changes in the local housing market or market conditions generally. Moreover, planning permission runs with the land. Therefore, there is no firm assurance that the site would be developed in accordance with the appellant's specifications and not sold with planning permission to another developer who would subsequently build to a different, lower internal specification.
22. Consequently, although I have no reason to doubt the appellant's intentions or to question that the estimated construction costs based thereon, I am not convinced that I have been provided with sufficiently robust and detailed evidence to suggest that the site could not be developed at a lower cost

enabling an affordable housing contribution to be made, whilst still providing a reasonable rate of return to the developer.

23. I am also mindful that DPD Policy HP4 provides for the Council to accept a lower level of affordable housing contribution, if it can be shown that the full contribution would otherwise not make the development viable. There is no evidence before me of any exploration by the appellant as to whether a reduced level of contribution might be acceptable to the Council, possibly generated by reviewing aspects of the internal construction and specification. This reinforces my above views.
24. Therefore, whilst I fully acknowledge that there will be a point at which the level of return from developing this site means that it would not be viable, the evidence before me is inconclusive as to whether development of the site would not be viable if a financial contribution towards affordable housing was made. Consequently, to accept the appellant's viability evidence would be inconsistent with the advice in the Framework, the SPD and the PPG and it would not justify determining the proposal other than in accordance with DPD Policy HP4.

Conclusion

25. The PPG restriction on seeking affordable housing contributions carries significant weight. However, due to the exceptional level of need for affordable housing in Oxford I have afforded full weight to the Development Plan. Moreover, it has not been adequately demonstrated that development of the site would not be viable if a contribution towards affordable housing were made. Consequently, the proposed development would not accord with the Development Plan and it would be inconsistent with the Framework objective of creating sustainable, inclusive and mixed communities.
26. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Henry Venners, BsC Hons MA MRTPI	JPPC
Sean Godfrey, MRICS	Rosewood Project Services Ltd
Matt Davis MRICS	Savills
Gavin Sherman	Appellant
Anthony Stark	Appellant

FOR THE COUNCIL:

Natalie Dobraszczyk, BA (Hons) MsC MRTPI	
Lyndsey Beveridge, BA (Hons) MsC MRTPI	
Mark Jaggard BA (Hons) Dip TP MRTPI	
Paul Beeston FRICS	Rider Levett Bucknall UK Ltd
Chris White	White Land Strategies Ltd

DOCUMENTS

SUBMITTED AT THE HEARING:

1. Copy of planning permission reference 16/03189/FUL.
2. Table of housing completions by size from 2011/12 to 2015/16.
3. Table of housing permissions by site size from 2011/12 to 2015/16.
4. Copy of appeal decision reference APP/G3110/W/16/3162190.