
Appeal Decision

Hearing Held on 7 December 2016 and 3 May 2017

Site visit made on 7 December 2016

by Olivia Spencer BA BSc DipArch RIBA

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

Decision date: 18 July 2017

Appeal Ref: APP/N1920/W/16/3142931

South Medburn Farm, Watling Street, Elstree, Hertfordshire WD6 3AA

- 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 Mr M Smyth of Relic Homes against Hertsmere Borough Council.
 - The application Ref 15/1268/FUL, is dated 20 July 2015.
 - The development proposed is demolition of the existing equestrian complex and redevelopment of the site to comprise 14 new houses, 1 conversion of the listed barn, associated parking and landscaping.
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Decision

1. The appeal is dismissed and planning permission for demolition of the existing equestrian complex and redevelopment of the site to comprise 14 new houses, 1 conversion of the listed barn, associated parking and landscaping refused.

Application for costs

2. At the Hearing an application for costs was made by Hertsmere Borough Council against Mr M Smyth of Relic Homes. This application is the subject of a separate Decision.

Preliminary matters

3. The Council stated that had it still been in a position to do so it would have refused the application for the following reasons:
 - The proposed development would fail to provide on-site affordable housing and has failed to advance any convincing economic argument as to why a reduced commuted sum should be considered contrary to Policy CS4 of the Hertsmere Core Strategy (CS) 2013 and the Affordable Housing Supplementary Planning Document (SPD) 2015.
 - The proposed development would detrimentally harm the setting of the grade II listed barns.
4. In August 2016 the Council resolved to grant planning permission for a parallel proposal subject to completion of a section 106 planning obligation for the provision of off-site affordable housing by means of a commuted sum of £2,242,244.05. No planning obligation was provided and the application was subsequently withdrawn.

5. In August 2016 Listed Building Consent for conversion of the barn was granted by the Council. As a result the Listed Building Consent appeal that originally accompanied this appeal has been withdrawn.

Procedural matter

6. The appeal was made in January 2016, confirmed as valid in February 2016 and a hearing set for 19 May 2016. A postponement of the hearing was agreed to allow time for negotiation on the parallel application. The hearing was opened on 7 December 2016. The appellant had thus had some 10 months since validation to prepare and submit evidence to support their case. At the hearing the appellant asked to submit new evidence relating to alternative use and benchmark land values. Having warned the appellant of the risk of a costs application from the Council I accepted the bundle of documents¹ and agreed to an adjournment to enable the Council to consider and respond to the evidence. It was agreed also that during the adjournment the appellants would provide supplementary evidence in order to lay out clearly their position and allow the Council to respond. The appellant requested an adjournment to January 2017. The hearing was set to resume on 3 May 2017.
7. No further evidence was submitted until Friday 28 April 2017 when the appellant requested permission to submit additional evidence on alternative use values. Monday 1 May was a Bank Holiday leaving only one working day before the resumption of the hearing on 3 May 2017. The appellant was informed by the Planning Inspectorate that I would consider whether or not I would accept this late evidence at the resumed hearing.
8. The *Planning Inspectorate Procedural Guide: Planning appeals – England* states at section 1.6 that all available evidence should be sent by the appellant with their full statement of case when they make their appeal and that documents sent after the relevant statutory time limits will normally be returned and not seen by the Inspector. The evidence which the appellant sought to submit did not fall within any of the exceptions set out in sections 1.7 to 1.9.
9. Paragraph B.2.2 of the Guide states that new evidence will only be exceptionally accepted where it is clear that it would not have been possible for the party to have provided the evidence when they sent their full statement of case. There is nothing to indicate that evidence on benchmark land values could not have been provided with the statement of case or in good time prior to the opening of the hearing in December 2016. Further an adjournment requested by the appellant was granted specifically to allow submission of this evidence and for the Council to respond. The appellant has had every opportunity to provide this evidence in a timely manner and has failed to do so. Consequently I did not accept the late evidence and have determined the appeal on the basis of material submitted up to that point.

Main Issue

10. The application site lies within the Green Belt. The existing farm comprises a number of buildings and areas of hard surfacing. The Council consider the proposal would be redevelopment of a previously developed site and having regard to the extent and scale of the proposed buildings consider it would have

¹ Document 1

no greater impact on the openness of the Green Belt. I agree. It would not therefore be inappropriate development in the Green Belt.

11. The parallel application included amendments made to the height and to detailed elements of the proposed housing to address the Council's concerns in respect of the setting of the listed building. The Council concluded as a result that the setting of the listed building would be preserved. I have no reason to disagree. The amended scheme was subject to consultation and no party would be prejudiced by acceptance of these as amendments to the appeal proposal. I have considered the appeal on this basis and consequently the main issue is whether or not the proposed development would make adequate provision for affordable housing.

Reasons

12. CS Policy CS4 and the Affordable Housing SPD require developments of 5 units or more, or on sites of 0.2 hectares or more to deliver, in this location, 35% of the development as affordable housing, or subject to a hierarchy of alternative provision, a payment in lieu. Whilst the principal objective is to achieve on-site provision, payment in lieu to fund provision elsewhere has been agreed with the Council in this case. That there is a need for affordable housing in the district is not disputed.
13. At the hearing on 7 December 2016 it was agreed that a full affordable housing contribution for the appeal proposal in accordance with the October up-date to the SPD would be £2,133,619.90. The SPD provides for periodic review of the sums required to reflect the changing local housing market. The full sum sought therefore changed to a limited extent during the course of the appeal.
14. The SPD sets out the procedure, based on an open book approach, by which a reduction in contribution on scheme viability grounds may be negotiated with the Council. This reflects advice in the Planning Practice Guidance (PPG) by taking into account gross development value, costs, land value and a competitive return to developers and landowners.
15. A Financial Appraisal by Pioneer Property Services Ltd dated August 2015 submitted by the appellant shows a nil affordable housing contribution and a residual land value (RLV) of £3,293,522. This it is argued, by reference to SPD calculations and reported site sales figures in the area, is both significantly less than the sum the landowner can reasonably expect and that with payment of any commuted sum for affordable housing the scheme would not be viable.
16. The Council's consultants BNP Paribas have used the same Argus Development Software to arrive at a RLV of £3.639 million with full policy compliant contributions. That this is a not dissimilar to the Pioneer RLV does not however indicate acceptance of this figure as the site value for the purposes of calculating the viability of the proposal. Rather it is the outcome of the costs and gross development value applied.
17. BNP Paribas in this case used Royal Institution of Chartered Surveyors (RICS) Build Cost Information Service (BCIS) build costs rather than the higher figure derived from the appellant's costs prepared by a quantity surveyor, and adjusted some other costs. The *RICS: Financial Viability in Planning* advises against the use of BCIS for nonstandard developments where figures from a quantity surveyor are available and BNP Paribas accepted this as an error

immediately prior to the hearing. BNP Paribas re-ran the Argus analysis on a 'without prejudice basis to the individual inputs' basis with a policy compliant affordable housing contribution (in this instance £2.113 million) allowing for all of the appellant's build costs with the exception of inflation and the extended sales period. This produced a RLV of £1.921 million.

18. The PPG states that: *Central to the consideration of viability is the assessment of land or site value. Land or site value will be an important input into the assessment. The most appropriate way to assess land or site value will vary from case to case but there are common principles which should be reflected. In all cases, land or site value should:*

- *reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;*
- *provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and*
- *be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise.*

19. By including the cost of policy compliant planning obligations the Council's viability assessment complies with the PPG guidance and even allowing for the appellant's build costs shows a positive figure for RLV. Having regard to the PPG the question then is whether this is sufficient to provide a competitive return to a willing developer and landowner. The appellant's case is that it is not.

20. To establish this, comparison must be made with a suitable benchmark land value (BLV) and, in accordance with the PPG and SPD, this must be supported with comparable market based evidence. The site is currently used for an equestrian business and the Council has identified this as Greenfield land with an as Existing Use Value (EUV) or Current Use Value (CUV) of some £555,000. However, on the basis that the parallel application had a resolution to grant permission for a residential development is agreed between the parties that the site has a realistic residential alternative use and thus I accept almost certainly a higher Alternative Use Value (AUV).

21. The evidence submitted by the appellant included details of Lot 1 Wood Farm, Hemel Hempstead which consisted of a farmhouse in need of modernisation with 37 acres and 27,568 sq ft of modern agricultural buildings which sold for £2.3 million. As a Lot this is not comparable to the appeal site. In his letter dated 6 December 2016 submitted at the hearing Mr McArdle of Pike Smith & Kemp Rural, a professional valuer, states that he was advised by the agents for Wood Farm that the house would attract an individual value of £800,000 and the 37 acres a value of £350,000. From this a value for the barns alone was derived and from this a square foot value taken and applied to the buildings at the site. These together with a value of £786,885 for the traditional barn would give it is said a total value for the appeal site of £2,421,403. However there is no evidence for the valuation given for the farmhouse at Wood Farm, and adjustment to this figure would affect the valuation given for the barns. And there is also no evidence whether the permission for conversion of Building 9 to two residential units was taken into consideration in valuing the

barns. The weight I give to this as a comparison for the appeal site and an indication of its EUV agricultural value is therefore limited.

22. Details of barns to let at Halfway House Farm, Hunsdon were submitted for comparison of storage use of the barns at the appeal site with a resulting equivalent site value including the traditional barn for conversion of £3,641,739. However the Council stated that such a use could conflict with highway policies and that there is no certainty therefore that it would be given approval. Given that this was a single example offered on 'flexible terms' I cannot place significant weight on the rental figures suggested nor, given the planning uncertainty, can I have confidence that this is a realistic alternative use.
23. As a result I consider the site values and BLV put forward by the appellant are not informed by comparable or robust market evidence. Therefore whilst I accept that the site value is likely to be higher than £555,000 Green Field value suggested by the Council, the appellant has failed to demonstrate that a full or partial contribution to affordable housing would result in a development that would not be viable and that would fail to provide a competitive return to the developer and landowner. In the absence of an undertaking to make any contribution towards the provision of affordable housing I conclude therefore that the proposed development would fail to make adequate provision for affordable housing contrary to CS Policy CS4. The benefit of providing market housing would not on its own be sufficient to outweigh this harm.

Conclusion

24. I conclude therefore that the appeal should be dismissed and planning permission refused.

Olivia Spencer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Abel Bunu BSc HRUP MSc MRTPI
Shelley Woods BSc

Relic Homes
Relic Homes

Tom McArdle BSc (Hons) MRICS
MNAEA

Pike Smith & Kemp Rural
(7 December 2016 only)

FOR THE LOCAL PLANNING AUTHORITY:

Karen Humphries
Sacha Winfield – Ferreira BSc
(Hons) MSc MRICS
Emma Wood BSc (Hons)

Senior Planner
Associate Director BNP Paribas
Graduate Surveyor BNP Paribas

Ola Duyile MTP MRTPI

Development Team Manager
(3 May 2017 only)

DOCUMENTS SUBMITTED AT THE HEARING 7 December 2016

- 1 Bundle of documents – existing and alternative use submitted by the appellant

DOCUMENTS SUBMITTED AT THE HEARING 3 May 2017

- 2 Costs application by the Council
- 3 SPD Table D2 Standard Financial Contributions – update 4 submitted by the Council