



Appeal Decision

Site visit made on 9 August 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 1 September 2017

Appeal Ref: APP/M0933/W/17/3171775

Land west of Oxenholme Road, Kendal, Cumbria LA9 7RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Oakmere Homes (North West) Limited against the decision of South Lakeland District Council.
 - The application Ref SL2016/0398, dated 24 April 2016, sought approval of details pursuant to condition Nos (1a) (1b) and 1(c) of a planning permission Ref SL/2015/0085 granted on 19 November 2015.
 - The application was refused by notice dated 5 January 2017.
 - The development proposed is erection of 69 dwellings (Phase 2).
 - The details for which approval is sought are: internal access arrangements, layout, scale, appearance and landscaping.
-

Preliminary Matters

1. The plans to which the appeal relates are those included in the relevant elements of the comprehensive list submitted on behalf of the appellant by Steven Abbott Associates LLP numbered to correspond with the specified sections of the appeal form. The relevant elements of that list for the purposes of this appeal decision comprise those hereinafter identified as '*The Schedule of Relevant Submitted Plans*'. This schedule comprises plan 1653-LOC and those plans included in sections 06(b)¹ and 09(b)², together with those listed in section 5(c)³ unless superseded as intended by one of the former.
2. Bearing in mind the context of the reserved matters at issue and the progress made to date on the site as a whole subject to outline planning permission, I do not consider, applying the so-called *Wheatcroft* principles⁴, that the changes introduced for the purposes of the appeal would cause material prejudice to any interested party and I therefore proceed to my decision accordingly.

Decision

3. The appeal is allowed and the reserved matters are approved, namely internal access arrangements, layout, scale, appearance and landscaping details submitted in pursuance of condition Nos (1a) (1b) and 1(c) attached to planning permission Ref SL/2015/0085 dated 19 November 2015, subject to the conditions set out in the Annex hereto.

¹ Drawings which did not form part of the original application

² Drawings not previously seen by the LPA

³ Drawings upon which the LPA made its decision

⁴ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 p37]

Main Issues

4. The main issues are:-

- Whether the proposed inclusion of a high proportion of the affordable requirement policy would unacceptably compromise intentions for a mixed and inclusive community;
- The effect of the layout on living conditions of occupants by reason of disturbance by parking activity; and
- Whether it is possible on the information supplied to adequately consider the effect of the proposed development on biodiversity, with particular reference to the tributary to the River Kent.

Reasons

Affordable housing

5. The appeal site is effectively the second phase of a development which is substantially underway in the sense that the first phase is partially occupied and nearing completion. I understand that for viability reasons, given upfront costs, it was agreed that the affordable housing element should be deferred to subsequent phases. The relevant planning obligation provides for a number of thresholds for occupation of open market dwellings which must not be passed before specified numbers of affordable dwellings are provided.
6. The obligation does not prevent early delivery of affordable dwellings relative to open market provision and this is effectively what is now proposed in that the lion's share (49 out of 52) of the affordable dwellings planned for the 148 house scheme as a whole are proposed to be located within the phase of reserved matters subject to appeal. 30 of these are to be provided in two apartment blocks on a low-lying part of this undulating site close to the Westmorland General Hospital. The remaining 19 are to be provided as semi-detached and terraced building forms along the boundary to the hospital site north of the apartments, the boundary with the existing 'Oaks' housing development to the north and overlooking an attenuation basin within open space below the western extremity of the largely completed first phase.
7. Nevertheless, on the latest layout for Phase 2 (Dwg 1847-10 Rev M) there is proposed to be intermixing with open market housing along the access road serving apartments which would face detached and semi-detached dwellings in this category across the access road. In the vicinity of the attenuation basin there would also be close physical proximity between affordable and open market dwellings. There is no obvious physical separation between affordable and open market housing, therefore, beyond the fact that 30 affordable dwellings are to be in the form of apartments, as is often the case where smaller dwellings are to be provided, albeit individual houses with gardens would form the balance of the affordable provision.
8. Policy CS6.3 of the South Lakeland Core Strategy ('the SLCS') concerns the provision of affordable housing consistent with the Framework's intentions to provide for sustainable, inclusive and mixed communities. But in creating a local policy framework to that effect it simply states that "*the affordable housing shall be mixed within the development*". There is no more specific requirement than that in either policy CS1.1 or policy CS8.10 of the same

document, which respectively concern sustainable development principles and design. The Council's decision notice and statement make no reference to any form of supplementary guidance that would amplify what is meant by that phrase. I do not consider that on, its face, it can reasonably be equated with the concept, for example, of "pepper-potting" or "clustering" of affordable housing, i.e. sprinkling individual or small groups of such dwellings throughout a layout.

9. Moreover, there is no evidence that the arrangement proposed would result in "marginalisation" of the occupiers of the affordable dwellings. In physical design terms it seems to me appropriate to locate the relatively bulky apartment buildings adjacent to the hospital site and low down in the forming townscape and the two storey housing would sit comfortably at this level alongside similar development at the Oaks. The latter development also contains a variety of development types and it is not possible to outwardly distinguish affordable from open market in that development, even assuming it to contain a mix of tenures. Moreover, given that apartments and smaller dwellings are routinely developed for open market purposes as well as affordable dwelling provision, there is no reason to suppose that the apartment blocks or the smaller dwellings proposed for the purpose would necessarily be identifiable as affordable housing.
10. Notwithstanding some design differences which might or might not be perceived as distinctive, but which in practical terms appear to serve requirements (the proposed form being supported in this case by the relevant provider of affordable dwellings), I do not consider the concentration of affordable dwellings in this case would serve to unduly marginalise or stigmatise their occupiers, who would share common access roads with occupiers of open market housing in any event and a design theme that would tend to unify the estate visually, notwithstanding necessarily more communal parking arrangements at the apartment buildings. There is no evidence to suggest that breaking the affordable element of the housing development into smaller pockets across all the remaining phases of this development would necessarily produce a better outcome in social terms.
11. There is nothing to suggest that the concept of mixed inclusive communities in the Framework is somehow synonymous with individual housing estates, discretely considered. The level at which affordable and open market housing is mixed must vary according to circumstances and it seems to me that the primary consideration is to ensure that private housing developers deliver a range of accommodation in both affordable and open market categories in sustainable locations without artificially creating physical barriers between the two.
12. With this in mind I consider connectivity with the hospital and the Oaks by way of the pedestrian links proposed would assist integration of the affordable housing into the community as a whole in any event; so taking a perspective broader than the development immediately and prospectively at issue, there would be mixing with open market housing on the adjacent existing development and within the town beyond.
13. The parties cite various appeal decisions in support of their respective cases but the circumstances of those development proposals are not necessarily replicated here and they are therefore of general but nevertheless limited

relevance to those of this appeal, albeit illustrative of some general principles outlined above. For the reasons I have given, I find no demonstrably harmful conflict with the specific intentions of intentions of policy CS6.3 of the SLCS or those more generally expressed in policies CS1.1 or CS8.10 in any event.

14. Taking all of the above into account, it seems to me that, as the appellant contends, the advantage, in the local circumstances, lies very much in delivery of the affordable housing at an early date even if that does not accord with what appear to be pre-conceptions of an ideal “mix” within an individual scheme. The lack of a prescriptive policy to substantiate what appears to be simply a preference for a more fine-grained scatter of affordable dwellings across the layout of all the phases of this particular development means that the delay and risk to delivery implicit in the Council’s stance is not justifiable.

Living conditions

15. The Council’s concern is that living conditions of residents would be compromised by proximity of living space to parking spaces, with resulting potential for disturbance by manoeuvring, headlight intrusion and noise. Bearing in mind that higher density housing commonly results in a potentially uncomfortable relationship between parking and domestic quietude which must be balanced against people’s desire to access their cars conveniently, I am satisfied that the detailed changes introduced by the appellant should bring the potential for parking to impact on living conditions within the bounds of acceptability. On that basis, conflict with one of the core principles of the Framework, to secure a good standard of amenity for the occupants of buildings, would be avoided.

Biodiversity

16. The site subject to the outline permission and the first phase of construction underway contains a tributary of the River Kent which flows westward through the Oaks development. A stand-off from the bank is required, as are measures to protect the beck during construction. Condition 6 of the governing outline permission concerning this has already been discharged and I am satisfied, bearing in mind that Environment Agency consents will be specifically required for any work within 8m of the beck in any event, that the method statement submitted by Envirotech in March 2017⁵ forms an adequate basis for protecting biodiversity interests. On that basis there would be no conflict with the intentions of policy CS8.4 to protect biodiversity or equivalent intentions of the Framework.

Other matters

17. Matters of a practical nature in addition to the main issues have been raised by local residents but the comprehensive suite of conditions to which the original outline consent is subject is, in the main, sufficient to ensure that development is carried out to an acceptable standard without adverse consequences for neighbouring residents. The matter of drainage detail is dealt with below.

⁵ Appendix I to appellant’s statement

Conditions

18. Reserved matters approval can be subject to further conditions and the Council in this case suggests a number of such conditions, all of which are necessary but require amendments to wording in the interests of precision.
19. The first suggested condition concerns phasing in the context of condition (1b) of the outline permission. A phasing strategy is embodied in the submitted Design and Access Statement but, given that early and certain delivery of the affordable housing in close juxtaposition to open market housing is a primary justification of concentrating it in Phase 2, I consider it would be necessary to ensure that delivery by preventing implementation of any subsequent phase absent all the housing proposed in Phase 2. Although the appellant company has indicated it is content to comply with such a requirement, I consider it desirable and necessary to cater for unforeseen circumstances and faster delivery overall (subject to approval by the Council) by leaving an opportunity available to vary this by the specific discharge of condition 1b of the governing permission; which the Council says has not been discharged adequately notwithstanding the content of the Design and Access Statement referred to by the appellant. The Council is concerned that the open market values on the submitted affordable housing schedule are not agreed but these are ephemeral matters subject to revision as indicated and not subject to any form of approval via this determination.
20. The second suggestion concerns drainage details and I have reviewed the responses of the County Council as Lead Flood Authority. It seems to me that notwithstanding the acceptability in planning terms of the layout there remains a residual lack of clarity over certain drainage performance criteria and detailed arrangements that must be addressed before the specification for construction is finalised; with the possibility still of minor adjustments to approved drawings should that prove necessary. Therefore, bearing in mind the scope, intention and mechanics of conditions (9a) and (9b) of the governing outline permission, a condition of the type requested by the Council is in my view necessary; albeit in view of the work undertaken so far its discharge should not be unduly onerous.
21. The third suggested condition concerns the harmonisation of landscaping details with revised plans and is a necessary mechanism to ensure certainty of acceptable implementation. The appellant does not disagree.
22. The remaining suggestions from the Council concern materials and parking spaces for the dwellings in Phase 2 and are necessary to ensure satisfactory implementation. Again the appellant does not disagree. For the avoidance of doubt it is also necessary to condition the reserved matters to accord with *The Schedule of Relevant Submitted Plans* as previously defined.

Conclusion

23. For the above reasons, and having taken all other matters raised into account, I conclude that the appeal should succeed.

Keith Manning

Inspector

Annex: Schedule of Conditions

- 1) The reserved matters hereby approved for Phase 2 of the outline planning permission SL/2015/0085 shall be carried out in accordance with the plans listed in *The Schedule of Relevant Submitted Plans* as defined.
- 2) No subsequent phase of development beyond Phase 2 of the outline planning permission SL/2015/0085 shall be commenced until all the dwellings in Phase 2 have been completed ready for occupation unless a phasing strategy pursuant to Condition (1b) of the outline planning permission SL/2015/0085, containing an alternative sequence and programme, has been submitted to and approved in writing by the local planning authority.
- 3) Notwithstanding the generality of Conditions (9a) and (9b) of the outline planning permission SL/2015/0085, no development in Phase 2 shall be commenced until a fully detailed scheme of surface water drainage specifically relating to it has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4)
 - a) No dwelling in Phase 2 shall be occupied until full 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:-
 - proposed finished levels or contours;
 - means of enclosure (fences/walls);
 - hard surfacing materials;
 - minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.);
 - communications cables, pipelines etc. indicating lines, manholes and supports; and
 - retained landscape features including trees together with details of how they will be protected during construction.
 - b) Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities; and an implementation programme
 - c) The approved scheme shall be carried out in accordance with the approved programme. Any trees/shrubs which are removed, die, become severely damaged or diseased in the opinion of the local planning authority within five years of their planting shall be replaced in the next available planting season with trees/shrubs of similar size and species unless the local planning authority gives written consent to any variation.
- 5) No dwelling in Phase 2 of the outline planning permission SL/2015/0085 shall be occupied until a landscape management plan for that phase, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas has been submitted to and approved by the local planning authority in writing. The landscape management plan shall be implemented in accordance with the approved details.
- 6) No building or structure subject to this reserved matters approval for Phase 2 of the outline planning permission SL/2015/0085 shall be erected unless details of the materials to be used in the construction of its external surfaces have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with those approved details.
- 7) No dwelling in Phase 2 of the outline planning permission SL/2015/0085 shall be occupied until the approved parking layout and turning space associated with it has been constructed, marked out and made available for use. The parking spaces shall thereafter be retained and used for no other purpose than the benefit of the occupants and visitors of the associated dwellings.

* * *