The Planning Inspectorate

Appeal Decision

Hearing Held on 22 March 2018

Site visit made on 22 March 2018

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 May 2018

Appeal Ref: APP/M0655/W/17/3181024
Payne Brother Co, 20 Beatrice Street, Latchford, Warrington WA4 1DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of outline planning permission subject to conditions.
- The appeal is made by Mr D Payne, Payne Bros UK Ltd against the decision of Warrington Borough Council.
- The application Ref 2016/27350, dated 22 January 2016, was approved on 29 March 2017 and outline planning permission was granted subject to conditions.
- The development permitted is described as "Outline Planning (Major) - Outline application for the construction of 4, two-bedroom houses and 14, three-bedroom houses including ancillary parking (matters of appearance, layout, access, and scale to be considered) (landscaping is a reserved matter)".
- The condition in dispute is No 18 which states that: "*Prior to the first occupation of any dwelling hereby approved a scheme for the provision of the affordable housing shown on drawing 2910 PL31 shall be submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it.*

  The scheme shall include:
  i the tenure of the 2 affordable houses;
  ii the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  iii the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
  iv the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  v 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 affordable housing shall be provided and retained in accordance with the approved scheme."
- The reason given for the condition is: "*In order that the proposal provides affordable housing in accordance with the requirements of Policy SN2 of the Warrington Core Strategy and the Planning Obligations SPD."*

Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by Mr D Payne, Payne Bros UK Ltd against Warrington Borough Council and by Warrington Borough Council against Mr D Payne, Payne Bros UK Ltd. These applications are the subject of separate Decisions.

Background and Main Issue

3. Outline planning permission was granted for eighteen dwellings subject to a number of conditions including No 18 which requires that a scheme to deliver two affordable homes is provided and sets out detailed requirements of such a scheme. The appellant contends that providing the affordable homes to comply with the condition would make the development economically unviable.

4. It follows that the main issue raised by this appeal is whether condition 18 is necessary and reasonable with particular reference to whether the proposed development would be economically viable if it remains subject to the affordable housing requirement of that condition.

Reasons

5. The site is currently occupied by a range of industrial or warehouse buildings and associated hardstanding. A car wash facility separates the site from Knutsford Road to the north and the site is largely surrounded by residential properties. The proposed semi-detached and terraced houses would be configured in a cul-de-sac arrangement.

6. Local Plan Core Strategy[1] (LPCS) Policy SN 2 sets out requirements for affordable housing at a proportion of 20% on sites such as the appeal site which it presumes will be provided on site. It states that provision in each case will be based on negotiation and agreement on a site by site basis, and that a lower proportion may be permitted where it can clearly be demonstrated that development would otherwise not be financially viable. This policy is supported by the Council's Planning Obligations Supplementary Planning Document, 2017 (POSPD) which advises that a Viability Assessment will be evaluated independently in accordance with recommended practice set out in the Royal Institution of Chartered Surveyors Financial Viability in Planning Guidance Note (1st Edition) (FVPGN) and other sources.

7. The Planning Practice Guidance (PPG) advises that sites are viable if the value generated by their development exceeds the costs of developing it and also provides sufficient incentive for the land to come forward and to be developed. It identifies key factors that an assessment of viability needs to take into account including costs, Gross Development Value (GDV) and a competitive return to developers and land owners. The National Planning Policy Framework (the Framework) highlights that costs of requirements such as affordable housing should enable developments to provide competitive returns to a willing land owner and willing developer to ensure viability and enable development to be deliverable, when taking account of the normal costs of development and mitigation.

8. The appellant provided financial viability information during the consideration of the planning application which was considered by the Council's independent

[1] Warrington Borough Council Local Plan Core Strategy, 2014.

assessor, District Valuer Services (DVS). An initial DVS assessment considered that the scheme could support three affordable homes but this was subsequently revised to two. The Council considers that the development of the site could support the provision of these affordable dwellings (less than the 'policy compliant' equivalent level of 3.6 dwellings) and remain viable.

9. The appellant advises that although having concerns with the DVS assessment at the time he nevertheless accepted the Council's requirement for affordable housing because a failure to do so could have altered a favourable recommendation from officers. The appellant contends that development would not be viable with such a requirement, although he is also of the view that even without a requirement for affordable housing, just providing market housing, the proposed development would not be financially viable. The Council considered that the proposal would not be viable if an education contribution were also to be sought. A requirement for upgrading access to the site and the associated costs is not a matter of dispute between the main parties and is required by a condition not in contention.

10. The appellant and DVS used different methodologies to assess the viability of the development. Variables and assumptions made about costs and values on which the parties' assessments were made also differed resulting in their respective figures being a considerable way apart from one another in some respects and there were few figures or assumptions that the parties agreed upon.

11. The PPG points out that viability assessments should be based on current costs and values. I agree with the parties that construction costs are a key component in assessing the viability of the scheme. Construction costs had a major influence on the parties' respective conclusions on viability both in themselves as being a major component of costs and on other aspects derived directly or indirectly as a proportion of those costs. Along with an assessment of a competitive return they are a key component to consider against the GDV in determining whether sufficient value remains to support a matter such as affordable housing. Construction Costs were a main area of disagreement and DVS estimated these to be considerably lower than the appellant with consequent differences in their respective assessment of the scheme's viability.

12. The appellant's construction cost figure was at a level DVS considered to more reflective of a premium house product whereas the DVS felt a more typical build cost would be more appropriate given the site's location and size of development. It was confirmed at the hearing that the costs in the appellant's Viability Assessment were the view of a quantity surveyor although there was no substantive evidence of the basis on which that figure was reached and this does not assist the appellant's case. The appellant's revised Viability Assessment (January 2017) was supported by an 'approximate budget costing' by a building consultancy. However, I note amongst the assumptions of building consultancy's view was to establish if the build rate in the appellant's viability statement was justified rather than being a neutral starting point. This also detracts from the appellant's case.

13. The DVS approach included using costs from the Building Cost Information Service (BCIS), a source that the PPG gives as an example of appropriate data to base such costs upon, which strengthens the Council's case. The Council

pointed out at the hearing this can be considered up to date and they also took account of other information.

14. The site is largely surrounded by terraced and semi-detached houses, along with some modest late C20 houses. The Council consider these to be low to mid value housing which lends support to the DVS view that costs should be based on a typical house product likely to be associated with a small regional developer. The DVS consider that the considerably higher rate adopted by the appellant would reflect a 'premium' product. The proposed palette of materials of brick, render, tile and plastic windows would reflect those of existing properties in the area and would appear to be of a 'typical' nature. The appellant considers the houses would be built to a high quality specification and that their proximity to a park would support housing being built to a higher specification that the DVS assumption. However, there is little substantive evidence to back up the appellant's assumptions and this reduces the weight I can give to his costs estimate.

15. Although the appellant advises that costs used in his assessment are specific to the development as opposed to the more generalised nature of BCIS costs, I cannot conclude that the appellant's construction costs are based on the robust evidence reflective of market conditions that the PPG recommends. On balance, I find the DVS and Council's approach to construction costs, which reflects the Framework's requirement to take account of normal costs of development, a more realistic assumption taking the site's location and the proposed scale and configuration of the scheme into account.

16. The appellant's assessment assumes a profit of 20% whereas the DVS have made a lower 17% or 17.5% assumption on market housing and a reduced percentage reflecting the lower risk of providing affordable homes (for a social landlord) and have used a blended profit. However, the two approaches cannot be directly compared as the appellant's figures show a 100% market housing scheme and not the approved scheme. This in itself does not support the appellant's position and it is not certain that whatever factors which he considers may make the unviable (according to his figures) all market housing scheme potentially subsequently deliverable could not also improve the viability of a scheme providing affordable housing.

17. The appellant's assumptions of sales values of the units are not only higher as they assume all would be market housing but are also markedly higher than the DVS estimate. The appellant has referenced a number of new build sites in the wider area from local estate agents. However the information is limited and there is little specific evidence of how the appellant's anticipated sales figures have been derived. There is very limited analysis as to whether values, housing products and situations of these other sites would be reasonably comparable developments taking the configuration of proposed dwellings and their location into account. It has not been satisfactorily demonstrated that specific evidence from comparable developments, taking into account the form of properties and their scale and location, have been used to support the appellant's figures. In light of this the DVS assumptions for lower likely sales values and their consequent impact on the GDV would appear a more realistic assumption.

18. Whilst the FVPGN does not advocate a particular financial model, I cannot agree with the appellant's view that that used by the DVS is inappropriate,

particularly as it is clear that the variables and assumptions made and inputs into the respective assessment models are key to the outcomes. The DVS revised their assessment after inaccuracies were pointed out by the appellant during the consideration of the planning application. This does not lead me to consider that the later evidence of DVS to be flawed. The appellant stresses that both the modelling and assumptions are bespoke to the scheme but bearing in mind the PPG guidance I do not consider that DVS approach or assumptions are inappropriate in evaluating the appellant's figures and scheme.

19. There are other differences in approaches, assumptions and figures between the parties' assessments, although they are less critical in assessing the differences between the parties. Having considered these they do not persuade me that the scheme would necessarily be unviable. By varying the policy compliant 20% requirement for affordable housing and not pursuing an education contribution the Council have taken an approach which takes account of the viability of developing the site in accordance with the flexibility provided by LPCS Policy SN2.

20. It has not been demonstrated that the development of the site would clearly be incapable of economically viable development with the requirements of condition 18 in place. The removal of condition 18 would therefore mean that the development would not accord with the requirements of LPCS Policy SN 2 as supported by the POSPD.

21. The approach of the condition in seeking affordable housing is not an issue between the parties, only the level of affordable housing to be provided. I have therefore not considered whether the principle of the condition itself accords with national policy.

22. I consider that the condition is necessary, relevant to planning and to the development which has been permitted, enforceable, precise and reasonable in all other respects and therefore meets the six tests that the Framework requires conditions to accord with.

Conclusion

23. For the above reasons condition 18 is necessary and reasonable, it has not been demonstrated that the development would be economically unviable remaining subject to its requirements and its removal would be contrary to the development plan as supported by Council guidance. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Amer K Hirmis, PhD T&CP	Capital Business Strategies Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Cecelia Reed, BSC Hons, MRICS	District Valuer Services
Johndaniel Jaques	Warrington Borough Council

PLANS AND DOCUMENTS SUBMITTED AT THE HEARING

1. Summary of Points of Disagreement, provided by Amer Hirmis, 22 March 2018.
2. Beatrice Street Viability Review table, provided by Cecelia Reed.
3. Updated Beatrice Street Viability Review table, provided by Cecelia Reed.
4. Financial Viability Assessment, Capital Business Strategies, December 2015.
5. Cecelia Reed's response to Amer Hirmis' Summary of Points of Disagreement.
6. Council's letters of notification of the appeal and the Hearing, 2 and 3 January 2018.