



Appeal Decision

Inquiry Held on 29 January 2019 Site visit

made on 29 January 2019 **by Rory**

Cridland LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12th March 2019

Appeal Ref: APP/U1105/W/18/3204680 Green Close, Drakes Avenue, Sidford EX10 9JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Churchill Retirement Living against the decision of East Devon District Council.
 - The application Ref 17/2850/MFUL, dated 27 November 2017, was refused by notice dated 4 May 2018.
 - The development proposed is demolition of former residential care home and construction of 39 sheltered apartments for the elderly including communal facilities, access, car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended description of development was agreed by the main parties prior to the Council's determination of the application. I have used the amended description in the banner above.
3. The Sid Valley Neighbourhood Plan (SVNP) is at an advanced stage, having recently been submitted for examination. Nonetheless, the representation from the SVNP Steering Group does not refer to any policies in the emerging plan. In addition, the main parties agreed at the Inquiry that the SVNP's policies are not relevant to the matters in dispute and, thus, that the SNVP is not a material factor in the determination of this appeal. I have no reason to conclude otherwise and, as such, I have not considered it further in my reasoning below.

Main Issue

4. The main issue is whether or not the proposed development would make adequate provision for affordable housing.

Reasons

5. Strategy 34 of the East Devon Local Plan 2013-2031¹ (LP) requires on-site affordable housing to be provided on all residential developments unless, amongst other things, off-site provision of equivalent value is justified by the circumstances. In such cases, it provides for financial contributions to be made towards off-site provision in the form of a commuted sum. It does not, however, set out how such sums are to be calculated. Some guidance can be found in paragraph 16.26 of the explanatory text, which indicates that in such cases an off-site affordable housing calculator will be used as a starting point for negotiation.
6. The parties agree on the percentage of affordable housing required, that onsite provision is not appropriate and that a financial contribution towards off site provision is justified. They do not, however, agree on the amount or the means by which it should be calculated.
7. As a means of calculating such contributions, the Council has adopted a Commuted Sum Calculator ("the CSC") which is based on an Affordable Housing Viability Study ("the AHVS") carried out in 2011². Using a number of default values³, the CSC calculates the commuted sum payable by deducting the residual land value of a scheme with the requisite affordable housing contribution from one with 100% market housing. In both cases, the residual values are calculated by deducting the costs of delivery⁴ from the revenue value.
8. I do not find anything wrong in principle with the Council seeking to develop a calculator based on its evidence base for the LP. Likewise, I find nothing objectionable to that calculator being used as a starting point for negotiations between the parties. However, although I accept that the Council is merely seeking to establish a consistent and transparent method of calculating such contributions, I do not agree that a policy compliant scheme can only be achieved using the CSC.
9. The calculator is, as paragraph 16.26 of the LP supporting text notes, merely a method of generating a starting point for negotiations. Strategy 34 is not prescriptive in its use and makes clear that, whichever method is used, the key principle is that of equivalence; that is, that the developer of a scheme should be no worse or better off financially, whether they provide the affordable housing on-site or as a commuted off-site sum. This is explicitly recognised both in the background information to the CSC itself as well as in the report to the Council's Development Management Committee, dated 21 April 2015, which sought approval for its use.
10. Nevertheless, where site-specific circumstances exist which would justify a lower figure than that generated by the CSC, the applicant must

¹ (2016).

² Roger Tym & Partners/Three Dragons – East Devon Affordable Housing Viability Study 2011.

³ Updated in October 2018 to take account of market changes.

⁴ Calculated as being the basic costs of build, fees and interest in the case of affordable housing with the costs of the developer return and marketing fees added in the case of market housing.

demonstrate, with evidence, that any alternative methodology or sitespecific data is sufficiently robust that it would result in an off-site contribution of equivalent value.

11. In the present case, the appellant has put forward an alternative method of calculating the commuted sum, which seeks to demonstrate that the costs to the developer of providing affordable housing on-site would be approximately £430,678. This would result in a significantly lower contribution towards off-site provision than that identified by the Council using the CSC. This is in part due to the capitalisation rate applied by the appellant, which, at 4%, is considerably lower than the 6% applied by the Council as part of the CSC.
12. The appellant has argued that the 6% figure is out of date and that their 4% figure is preferable, as it is based on more up to date information from registered affordable housing providers (RPs). However, it is clear that the precise rates payable will vary and can have a considerable impact on the outcome of any such calculation.
13. I heard evidence from both parties as to why they had opted for a particular rate. The Council explained that their 6% rate had been taken from the AHVS⁵ and updated based on considerable stakeholder engagement with developers, RPs and others. Furthermore, they point to a viability workshop held in 2017 with stakeholders, including representatives of the appellant, where a 6% capitalisation rate was put forward without attracting any comment or concerns that it was too high. I accept that it is notable that no issues were raised, particularly in view of the considerable impact that such rates will have on the contributions sought. This provides a good indication that the Council's 6% figure is reasonably robust, and it is unlikely to be significantly out of kilter with prevailing market rates.
14. In contrast, the evidence provided by the appellant to justify the 4% rate is limited. It consists of two emails provided by RPs at least one of whom does not operate in the area. Even though I note the appellant did seek details of rates from a number of other providers, responses were not forthcoming and were not available at the Inquiry. While I accept that the rates that RPs are willing to pay may have hardened in recent years, in the absence of more robust evidence, I am not persuaded that the 4% capitalisation rate put forward by the appellant has been fully justified.
15. Consequently, I favour the Council's evidence and conclude that the proposed contribution of £430,678 is insufficient to provide an off-site affordable housing contribution of equivalent value to on-site provision. As such, it would fail to make adequate provision for affordable housing and would, therefore, conflict with the requirements of LP Strategy 34.

Other Matters

16. The appellant's written evidence also suggests that LP Strategy 34 may be considered out of date. However, this was not pursued at the Inquiry and I

⁵ which identifies a capitalisation rate of 6.25%.

was informed that this argument was no longer being advanced as part of the appellant's case. Accordingly, I have not considered it further.

Conclusion

17. The site is located within a sustainable location and the Council considers the scheme to be acceptable in principle. In view of the identified need for affordable housing in the district, however, I regard it as essential that an appropriate affordable housing contribution is made in order to meet the aims and objectives of the LP.
18. Consequently, for the reasons set out above and having had regard to all other matters raised, I find that the proposal would conflict with the development plan when taken as a whole. Accordingly, I conclude that the appeal should be dismissed.

Rory Cridland

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Neil Cameron

of Queen's Counsel

Instructed by Andrew Burgess, MRTPI, FRSA

He called:

Mr Simon Mitchell BA(Hons), FCIH, ARTPI

Head of Affordable Housing,
Planning Issues Limited

Mr Andrew Burgess BA(Hons), MRTPI, FRSA

Managing Director, Planning
Issues Limited. Group Land
and Planning Director,
Churchill Retirement Living.

FOR THE COUNCIL

Mr Hugh Flannagan

of Counsel

Instructed by Mr Henry Gordon-Lennox

He called:

Mr Darren Roberts

Planning Officer

OTHER INTERESTED PARTIES

Mr Kelvin Dent

Sidmouth Town Council

ADDITIONAL DOCUMENTS SUBMITTED AT THE INQUIRY.

1. Section 106 Unilateral undertaking dated 24 January 2019 (Exhibit LE1).
2. Various Emails from Islington & Shoreditch Housing Association regarding Capitalised Rental Income (Exhibit LE2).
3. Various emails from Places for People regarding Capitalised Rental Income (Exhibit LE3).

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