
Appeal Decision

Site visit made on 29 August 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2019

Appeal Ref: APP/V3120/W/19/3228667

Land to the rear of 10 Halls Close, Drayton, Abingdon OX14 4LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Blue Cedar Homes Limited against the decision of the Vale of White Horse District Council.
 - The application Ref P18/V2931/FUL, dated 28 November 2018, was refused by notice dated 2 May 2019.
 - The application sought planning permission for up to 28 no. dwellings with all matters reserved except access, without complying with a condition attached to planning permission granted under appeal Ref APP/V3120/W/16/3144811, dated 2 November 2016.
 - The condition in dispute is No 14 which states that: the 11 dwellings hereby permitted that form part of the retirement element of the scheme shall only be occupied by persons:
 - a) Aged 60 or over;
 - b) Living as part of a single household with such a person or persons;
 - c) Who were living as part of a single household with such a person or persons at the property who have since died.
 - The reason given for the condition is: as the proposal has been assessed and considered on that basis.
-

Decision

1. The appeal is allowed and planning permission is granted for up to 28 no. dwellings with all matters reserved except access at land to the rear of 10 Halls Close, Drayton, Abingdon OX14 4LU in accordance with the application Ref P18/V2931/FUL, dated 28 November 2018, without compliance with condition number 14 previously imposed on allowed appeal Ref APP/V3120/W/16/3144811, dated 2 November 2016, and subject to the conditions in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Blue Cedar Homes Limited against the Vale of White Horse District Council. This application is the subject of a separate decision.

Background and main issue

3. An appeal against an application for outline planning permission for 28 dwellings was allowed in 2016. The Inspector applied a qualified, occupancy
-

condition restricting the occupation of 11 of the dwellings to people aged over 60, which the appellant now seeks, in order to have flexibility, to remove. There is no dispute, as the appellant indicates, that the development provides a range and mix of house types that would be appropriate for older people, including affordable housing. The issue between the parties is whether the condition is necessary and reasonable having regard to the development plan.

Reasons

4. The Council considered the proposal the subject of this appeal against Core Policy 26 of the Local Plan 2031 Part 1 (LPP1). This requires, subject to a viability assessment, that i) houses designed for older people should be provided in the strategic site locations and other suitable locations; ii) where possible, they be located within close proximity to public transport routes, retail and other local facilities including health care; iii) that they be provided wherever possible on a mixed tenure basis; and iv) where standards that would apply to general housing have been relaxed in response to the special needs of the occupiers of the scheme, the occupancy will be limited to accord with the nature of the scheme.
5. The development provides houses for older people, in accordance with criterion i). The preamble to the policy acknowledges the need for suitable accommodation for older people, but nowhere in the policy is it suggested that a planning condition restricting the occupancy of development to older people should be applied generally. Indeed, criterion iv) indicates the very specific circumstances where an occupancy restriction will be applied, which does not apply to this development.
6. I understand that the development already includes provision for affordable housing, and there is no evidence to suggest that housing standards need to be relaxed. The site is around 300m from the centre of the village, which is well served with local facilities including convenience shops, pubs and a post office, churches and a primary school as well as a bus service to Didcot, Abingdon and Oxford. There is no evidence that the site is not in a suitable location, indeed, it is well located in terms of facilities and services. Against all four of its criteria, I can find no conflict from the development with LPP1 Core Policy 26, and no justification for condition No 14.
7. I also note that while the appellant has referred to recently permitted housing development without any occupancy restriction condition, and despite the LPP1 having been adopted for almost 3 years, the Council is unable to give any examples of housing schemes where a similar condition has been considered necessary. I conclude that there is no evidence of the necessity of condition No 14, and that to continue to apply it would be unreasonable.

Other matters

8. At the time of the last appeal, the Council was unable to demonstrate a five year supply of deliverable housing sites. In applying the tilted balance as required in the Framework, the Inspector concluded that the adverse impacts of the proposal did not significantly and demonstrably outweigh its benefits, in particular the delivery of housing, the older people's component of which clearly factored in his conclusion, and to the degree that it was necessary to be secured by condition.

9. At that time the LPP1 had not been adopted, and the Inspector gave its policies only limited weight. I appreciate that the Council can now demonstrate a five year supply of deliverable housing sites, and that the tilted balance no longer applies. However, taking into account the extant permission with its range and mix of house types, and the current development plan the most relevant policy of which the Council cited in its decision notice, there is nothing which now justifies the condition in planning policy terms.
10. I have taken into account the representations from interested parties, but there is no substantive evidence that the removal of the condition would make the site access or local roads unsafe. I have had regard to policies CP4a and DP2 of the Council's emerging Local Plan 2031 Part 2, however, the removal of the condition would not change the range and mix of house types, or their layout, which the Council acknowledges is in accordance with the Oxfordshire Strategic Housing Market Assessment 2014, and it would not prevent older people from occupying the houses.

Conditions

11. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no substantive information before me about the status of the other conditions imposed on the original planning permission, I have imposed all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
12. It should be noted that in accordance with Section 73(5) the time limit for the commencement of the development specified in the original planning permission still applies. Therefore, the development permitted by my decision on this appeal must be commenced within 6 months of the date of the approval of the reserved matters or the last reserved matter to be approved, and the applications for the approval of all reserved matters shall be made to the local planning authority within a period of two years from the date when appeal Ref APP/V3120/W/16/3144811 was allowed, on 2 November 2016.

Conclusion

13. For the reasons set out above, the appeal should be allowed and condition No 14 be removed, with all other conditions imposed.

Patrick Whelan

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called the "reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) The development to which this permission relates shall be begun within a period of 6 months from the date of the approval of the reserved matters or, in the case of different dates, the date of the approval of the last reserved matter to be approved. The application(s) for the approval of all reserved matters shall be made to the local planning authority within a period of two years from 2 November 2016.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans in so far as those plans relate to matters not reserved for future determination: Location Plan - Dwg No 14.070.SI.01; Proposed Site Access Arrangement drawing - Figure 3.1 from within the Transport Statement (TPA, Aug 2015).
- 4) All works and development on site, including demolition, shall be carried out in accordance the Arboricultural Impact Assessment and the Tree Protection Plan and Arboricultural Method Statement (both Bosky Trees, 27 August 2015) and the identified tree protected areas shall not be used at any time to park or manoeuvre vehicles, for site temporary offices or other structures, store building materials or soil, mix cement/concrete or light bonfires.
- 5) Prior to the commencement of development, a fully detailed scheme for the sustainable surface water drainage of the development shall be submitted to and approved in writing by the local planning authority. The sustainable surface water drainage strategy shall include the following:
 - a) The undertaking of permeability tests to determine the soakage potential of the site, to inform the design;
 - b) Design calculations relating to the proposed SuDS drainage system for pervious pavements and soakaways;
 - c) Design to be based on a 1:100 +climate change event with discharge restricted to Greenfield run off rate;
 - d) Information on overland flood flow paths and their maintenance;
 - e) Detailed arrangements for the future maintenance and management of the SuDS; and
 - f) Monitoring results of seasonal groundwater levels.The surface water drainage scheme shall be developed and implemented in accordance with the Flood Risk Assessment and Drainage Strategy (Ref: 1507-45/FRA/01, TPA, August 2015). The approved scheme shall be implemented prior to any occupation of the development to which the scheme relates and be retained and maintained thereafter in accordance with the approved details.
- 6) Development shall not commence above slab level until a foul water drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by the local planning authority. No discharge of foul water from the site shall be made into the public system until the drainage works referred to in the strategy have been completed.

- 7) Prior to the commencement of any development a Construction Traffic Management Plan shall be submitted to and approved in writing by the local planning authority. The approved Plan shall be complied with throughout the construction period.
- 8) Prior to the commencement of development, a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include a programme of implementation and proposals to promote alternative forms of transport to and from the site, other than by the private car and provide for periodic review. The approved Travel Plan shall be fully implemented, maintained and reviewed.
- 9) The applicant, or their agents or successors in title, shall be responsible for organising and implementing an archaeological investigation to be undertaken prior to development commencing. The investigation shall be carried out by a professional archaeological organisation in accordance with a Written Scheme of Investigation that has first been approved in writing by the local planning authority.
- 10) Prior to the commencement of the development and following the approval of the Written Scheme of Investigation, a staged programme of archaeological investigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the local planning authority.
- 11) Elements of public art shall be incorporated into the development in accordance with a scheme that shall be submitted in support of the reserved matters application. Thereafter, the public art elements shall be provided and maintained in accordance with the approved reserved matters.
- 12) Prior to the commencement of development, details of vehicular access to the site and visibility splays at that access shall be implemented in full accordance with the approved plans and supporting information accompanying the planning application. The access and visibility splays shall be provided prior to the occupation or use of the new development and, thereafter, the visibility splays shall be permanently maintained free from obstruction to vision.
- 13) The development hereby permitted shall be implemented in full accordance with the scheme of mitigation, compensation and enhancement contained in Section 6 of the Ecological Appraisal (Malford Environmental Consulting, 3 July 2015). Any variation shall be agreed in writing by the local planning authority before such change is made. This condition will be discharged on receipt of a letter from the project ecologist providing evidence to demonstrate that the mitigation, compensation and enhancement measures have been implemented in accordance with the approved report.

END OF SCHEDULE OF CONDITIONS