



Appeal Decision

Hearing Held on 27 November 2019

Site visit made on 27 November 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/N1730/W/19/3232779

Pioneer House, Barley Way, Fleet GU51 2QU

- 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 Mountley Ltd against the decision of Hart District Council.
 - The application Ref 17/00054/FUL, dated 9 January 2017, was refused by notice dated 3 June 2019.
 - The development proposed is described as 'create two additional floors of development creating 25 new flats (net increase in 16 units) including external alterations.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. There are extant prior approval schemes for a total of 33 units at the appeal site (made up of 26¹ and 7²). The appeal scheme would provide 25 units in the two storey extension proposed, which would be at the expense of the 7 that could be provided in the roof space of the aforementioned extant prior approval scheme. The appeal scheme therefore could, along with other commitments, result in a total of 51 units which would actually be a net increase of 18. Indeed, this is set out on the Council's decision notice. During discussion at the hearing, the main parties confirmed that this is the basis on which the appeal scheme was considered. I have done the same.
3. During the appeal process, the Fleet Neighbourhood Plan (FNP) was made. As such, it forms part of the development plan for decision making purposes at the time I determine the appeal. The appellant was aware of the situation and it was discussed at the hearing. I have been provided with a copy. Where relevant, I shall take the FNP into account in my decision.

Main Issues

4. There are two main issues. These are a) whether the appeal scheme would make appropriate provision for affordable housing; and b) the effect of the appeal scheme on the Thames Basin Heaths Special Protection Area (TBHSPA).

¹ Local Planning Authority Ref 19/01010/PRIOR

² Local Planning Authority Ref 19/01269/PRIOR

Reasons

Affordable Housing

5. Saved Policy ALT GEN 13 of the Local Plan³ sets out the Council's approach to the provision of affordable housing on qualifying developments. It states that, in respect of the appeal scheme, its requirements apply to sites that would provide 15 or more dwellings. In terms of the extent of the requirements, ALT GEN 13 explains that the Council will seek to negotiate the proportion of affordable housing on a site by site basis based on an overall guideline target that 40% of new dwellings should be affordable. It goes on to explain how such can be provided in tenure terms as well as stating that the Council will take into account, amongst other things, the nature and character of the site and development costs.
6. The Council have sought a full 40% contribution from the appeal scheme on the basis that their own viability work concluded it could be stood. The appellant disagrees and concludes, supported by their own viability assessments, that such a contribution would render the proposed development unviable. For the most part, and some minor differences aside that do not greatly affect the outcome as far as each main party is concerned, there is general agreement over the methodology for calculating construction costs, finance costs, the build period, contingency and professional fees and developer profit. The two key areas that seem to make the most difference to the end result for the two sides of the viability work appear to be the sales values of the units and the matter of Existing Use Value (EUV).
7. The Council's viability work, in regard to establishing individual sales values and thus working out the Gross Development Value (GDV), takes into account what they consider to be accurate comparable values achieved at Oak House. Oak House is a similar multi floor former office building that has been converted to residential flats through the prior approval process. It is part of the wider industrial estate known as Ancells Business Park. Oak House is located on the corner of Harvest Crescent and Ancells Road, a short distance from Pioneer House. It seems from both the written evidence and discussion that the appellant's viability work has assumed lower sales values and thus a subsequent lower GDV by applying a discount based partly on the fact that Pioneer House is closer to the M3 motorway and thus occupiers would be subject to a greater effect from noise. Whilst this discount was not a substantial one, amounting to in the region of £30 per square foot, when extrapolated over the entirety of the scheme, this would make a noticeable difference to the outcome and specifically the GDV all other matters considered.
8. I was able to consider this matter as part of my site visit. Firstly, it does not seem that Oak House is much further south of the M3 than Pioneer House. In addition, Oak House finds itself on a junction of two reasonably trafficked roads. Furthermore, and as I found on site, noise from the M3 did not strike me as so substantially different at Oak House than it was at Pioneer House to the extent that I could conclude occupiers thereof would be any more disturbed given also that road noise, particularly arising from an arterial motorway such as the M3, is of a constant and migratory nature. In essence, I experienced on

³ Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006

site no materially lesser an effect from M3 road noise at one end of the Ancells Business Park to the other.

9. With these factors in mind, I feel that the appellant's conclusions on GDV are a little too conservative with particular regard to sales values and I am more drawn to the Council's, using Oak House as a reasonable comparable to set them out for the reasons I have explained.
10. The other area in which there is disagreement with regard to viability work is the matter of EUV. The appellant has established this to be offices and the Council have taken into account a residential Alternative Use Value (AUV) based on the extant prior approval schemes and the fact that substantial works have taken place to the interior of Pioneer House. I can concur with this having seen the shell of approved units spread across the existing two floors which, for the most part, have first fix plumbing and electrics installed. I am also aware of the appellant's intention that should I dismiss the appeal, the building would be completed as per the extant prior approval schemes. The EUV and the AUV inherently affect the end result of what comes out as the Benchmark Land Value (BLV) and ultimately the GDV.
11. I feel that, with these factors in mind, an AUV for the use of the site as residential is entirely reasonable as one of the starting points and a conclusion of a scheme being unviable based solely on an office EUV would not tell all of the story.
12. Given the above, it seems sufficiently clear to me that the appellant's viability work would, taking the Council's approach on the two matters I have considered, result in a higher output and thus the scheme would likely be viable with some contribution to affordable housing. The exact nature of that contribution would be up for further discussion since I feel there is sufficient room within the wording of ALT GEN 13 for a compromise. In essence, the policy establishes a trigger point, but is looser on the exact nature of the provision per development, stating that the 40% is an 'overall guideline target' and not a strict, non-negotiable position. However, a nil contribution as suggested by the appellant would not be sufficient given my view on the inputs into the viability work in the first instance. Given what I have found here, and taking into account other variables in the parties' viability work being if not the same then close, it would seem a reasonable contribution would be somewhere between nil and 40%.
13. As well as the above, I note that during the life of the planning application the appellant was willing to meet part way between their position and the Council's on the extent of the affordable housing contribution. This strikes as odd since it casts at least some doubt on their maintained position that the appeal scheme would be unviable with any form of affordable housing contribution at any level.
14. The proposed development would not, for the above reasons, make appropriate provision for affordable housing and subsequently it would be contrary to Policy ALT GEN 13 of the Local Plan which seeks to enable the provision of such through development in the interests of a mix of house types and tenures in qualifying schemes.

The Thames Basin Heaths Special Protection Area (TBHSPA)

15. The appeal site lies within the 5km zone of influence as it applies to the TBHSPA, of which the Castle Bottom to Yateley and Hawley Commons Site of Special Scientific Interest (SSSI) is a part. The SSSI is within 1km of the appeal site itself. The TBHSPA supports habitats of species protected under European Law.
16. In terms of how the proposed development may have a likely effect either in isolation or in combination with other projects it is through the increased pressure for recreational use of the designated areas caused by the increase in population. In this case by virtue of 25 new households and noting just how close the appeal site is to one of the TBHSPA's component parts. The Council's adopted avoidance strategy for mitigating potential harm to the designated area is set out in measures comprising in two parts. These are the provision of Suitable Alternative Natural Green Space (SANG) and a contribution towards Strategic Access Management and Monitoring (SAMM).
17. The appellant has worked with a third party landowner with a view to providing SANG commensurate with the scale of the proposed development. The Council have expressed concerns over the general state and accessibility of the area that has been identified albeit I take on board the appellant's comments made at the hearing concerning the expansive nature of the site to which the proposed SANG would relate and the problems identified by the Council not being insurmountable or particularly widespread across it. It was also agreed that there was 'headroom' in respect of the third party situation and thus capacity for the use associated with the proposed development whereas the areas identified for SANG on Council owned and controlled sites are experiencing capacity issues.
18. There was some discussion over the detail of the appellant's management strategy but again it does not seem that such issues could not be overcome and agreed. Particularly since it seemed from discussion that the appellant had indeed advanced things further in this regard since the written evidence was produced. I do not think therefore that, as a matter of principle, providing SANG in the way the appellant suggests would be inappropriate given what and where it would be in relation to the proposed development.
19. The Council would normally secure SANG provision and SAMM contributions through a planning obligation. I do not have one before me as part of the appellant's evidence. The appellant explained that there was something of a catch 22 situation in regard to completing an obligation given that the third party involved in providing the SANG required the security of a planning permission or a resolution to grant such to be party to one and one of the reasons for the withholding of planning permission, for the Council at the time, was concerned with a lack of mitigation in regard to the TBHSPA.
20. In this light, I have given some thought to the possibility of using a condition. For that I turn to Planning Practice Guidance. Paragraph 010 sets out that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other

agreement in a timely manner and is important in the interests of maintaining transparency. However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. This may apply in the case of particularly complex development schemes.

21. I am not however convinced that the above circumstances would apply to the appeal scheme. The proposed development is not particularly complex and whilst its delivery would depend on agreeing an appropriate strategy for the delivery of mitigation for the TBHSPA, there are other issues with the proposed development that would result in the withholding of planning permission. Referring to my findings on the first main issue. In addition, PPG sets out that such circumstances should be exceptional which is a high test. One which, based on what I have read and heard, would not be passed. Furthermore, and as I set out earlier, there are extant schemes for the development of the site for the appellant to fall back on should this one be unsuccessful.
22. It also became clear through discussion at the hearing and written evidence that the appellant had already paid a commuted sum contribution to the Council in respect of SANG and SAMM for the for a prior approval scheme that pre dated the extant ones referred to above. This scheme was not implemented and the funds remain with the Council. As far as I understand the situation, the funds in this case were allocated to a specific Council owned and controlled site which had the capacity to accommodate SANG for the 33 units that would have been provided. I was not advised that it would not be possible for these funds to be returned and thus capacity then be available at an alternative site to the third party one advanced by the appellant. Provision could then, theoretically, be agreed between the appellant and the Council, eliminating the impasse on the matter of a planning obligation that currently exists.
23. This and the reasons for the lack of a completed planning obligation aside, the absence of any appropriate mitigation would lead to harm to the integrity of the TBHSPA and accordingly the SSSI. Which would also mean the appeal scheme would be contrary to saved Policies CON1 and CON2 of the Local Plan, saved Policy NRM6 of the South East Plan and Policy 17 of the FNP. Between them, and amongst other things, these policies seek to ensure that development that adversely affects the nature conservation value of designated national and European sites will not be permitted and new development which is likely to have a significant effect on the ecological integrity of the TBHSPA will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects.
24. Notwithstanding the above, I have not pursued the completion of a planning obligation since there are other issues with the proposed development that would prevent a planning permission being granted in any case.

Other Matters

25. I accept that the appeal scheme would provide for new housing but that would also be true of the extant prior approval schemes which it seems the appellant has every intention of bringing forward regardless of the outcome of this appeal. In any event, it does not seem based on what I have seen that the

Council are in an undersupply situation where housing sites are concerned. A matter which the appellant does not appear to disagree with. I am also mindful of the fact that, affordable housing and appropriate mitigation for the TBHSPA aside, the appeal scheme would be acceptable in other planning terms subject to conditions. Be this as it may, these factors would represent a lack of harm and thus incapable of weighing against harm. They would accordingly be neutral in any balance.

Conclusion

26. For the reasons set out above, and having regard to other matters that have been raised, the appeal is dismissed.

John Morrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Anthony Allen	Allen Planning
Mr Simon Corp	S106 Affordable Housing
Mr Tim Goodwin	Ecology Solutions
Mr Nigel Phillips	Taylor Wimpey
Mr H Schneck	Mountley Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Fraser Castle	Bruton Knowles
Mr Peter Lee	Hart District Council