



Appeal Decision

Site visit made on 21 January 2020

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 04 March 2020

Appeal Ref: APP/W4325/W/19/3234924

Ashton Court, Banks Road, West Kirby CH48 0RJ

- 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 Mr Stacey Chappell (Hilbre Homes) against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/18/01625, dated 6 December 2018, was refused by notice dated 18 April 2019.
 - The development proposed is 14No new build residential properties.
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Decision

1. The appeal is allowed and planning permission is granted for 14No. new build residential properties at Ashton Court, Banks Road, West Kirby CH48 0RJ in accordance with the terms of the application, Ref APP/18/01625, dated 6 December 2018, subject to the conditions set out in the attached Schedule of Conditions.

Procedural Matters

2. The Council's Statement of Case confirms that the development plan for Wirral consists of the saved policies of the Wirral Unitary Development Plan (WUDP). Although the officer's report to the Planning Committee considered the proposals against the provisions of the WUDP, the Council's reason for refusal refers instead to a policy from the 'Core Strategy for Wirral – Proposed Submission Draft (December 2012)' (the CS) which the Council approved as a material consideration for development control purposes in October 2012.
3. The Council accept that full weight cannot yet be accorded to the CS, but the appellant suggests that the weight afforded to it should be less, with only limited weight given to it. This, the appellant argues, is because the policy referred to in the reason for refusal in respect of affordable housing provision¹ does not align with the National Planning Policy Framework (the Framework) in its approach to seeking affordable housing. The CS predates the Framework by a considerable length of time and does not, as the appellant points out, fully align with its provisions. I have therefore afforded it limited weight and have determined the appeal accordingly.
4. For completeness I have included 'Ashton Court' in the development site address as set out in the Council's decision notice and adopted by the appellant in subsequent appeal submissions.

¹ CS policy CS22

Background

5. The appeal proposal is the third in a succession of identical applications for the residential redevelopment of this site. The Council have refused all three² and there have been two previous appeals³, both of which were dismissed. The matters have therefore been well-rehearsed and, although interested parties and neighbours raise a number of concerns in relation to the proposed development, I have had particular regard to the conclusions of previous Inspectors. To this end, I have noted the conclusions reached in the first of these previous appeal decisions where an identical scheme was found to have no harm to neighbouring or prospective living conditions. However, in both previous appeals it was found that a failure to provide a completed planning obligation, or an obligation which did what it was supposed to do, resulted in them both being dismissed.
6. In this, the third submission and identical to the two that have preceded it in terms of the scheme's design, the appellant has submitted a completed and executed unilateral undertaking (UU) under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). The UU obliges the payment of a commuted sum of £9,291 for use by the Council towards the provision of affordable housing and ensures that the development would not commence until such time as the commuted sum has been paid in full to the Council. I will return to this matter, below.

Main Issue

7. Thus, having regard to the above, the main issue is whether or not the proposal makes adequate provision for affordable housing provision.

Reasons

8. Policy CS22 of the Core Strategy for Wirral (Proposed Submission Draft 2012) (the CS) states that new market housing of more than 5 dwellings will normally be required to provide affordable housing at either 10% or 20%, depending on whether it lies within or beyond 'areas of greatest need'. Although for the reasons I have set out above, I concur with the appellant's assessment that the weight that I should give to the provisions of CS22 is limited, it is nevertheless clearly set out in the Framework and is thus well-established convention that schemes of more than 10 dwellings should make provision for affordable housing.
9. The appeal scheme is for the provision of 14 dwelling units, thereby exceeding the 10 unit threshold set out in the Framework. That the proposal should make provision for affordable housing is not a point of dispute between the main parties, nor indeed was it previously and the appellant has reiterated that point in their Statement of Case (SofC) in the current instance. The appellant's SofC also reiterates that Vacant Building Credit (VBC) should apply to the proposal in this instance, as indeed the previous Inspector also considered.
10. Planning Practice Guidance (the Guidance) explains⁴ that VBC is an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is to be demolished to be replaced with a new building, VBC

² The current appeal proposal, and LPA Ref Nos: APP/16/00823 and APP/17/01222

³ APP/W4325/W/17/3168876 and APP/W4325/W/18/3205371

⁴ Paragraph: 026 Reference ID: 23b-026-20190315

allows for a financial credit equivalent to the existing gross floorspace of the vacant buildings in calculating any affordable housing requirements or contributions. However, the Guidance is also quite clear⁵ that VBC should not apply where the building has been abandoned, explaining that the concept of abandonment is well established in the courts, where account should be taken of; the condition of the property; the period of non-use; where there is an intervening use; and any evidence regarding the owner's intention. Consideration should also be given to whether the building has been made vacant for the sole purposes of re-development.

11. It has been stated by the appellant that the buildings within the appeal site have not been abandoned. Unlike the comments of interested parties regarding the appeal proposal, the Council do not advance a case that the buildings within the appeal site have been abandoned. Although the comments of interested parties suggest otherwise, I have little in the way of evidence beyond unsubstantiated statements to this effect. Having considered the buildings as I saw them during my visit to the site, and in the light of the advice set out in the Guidance regarding such matters, I am not persuaded that the buildings have been abandoned. Although in a poor state of repair, their obvious external physical condition assessed visually does not indicate abandonment. Nor has my attention been drawn to any intervening use of the buildings and, whilst there are references to extended periods of non-occupation, I have no evidence before me which would lead me to conclude that non-use or non-occupancy is so substantial as to amount to abandonment.
12. With regard to the owner's intentions, recent planning history⁶ indicates an intention to redevelop the site. However, I take these indications of intent in the context of the appellant's statement that the buildings have not been abandoned, my observations of the site and buildings during my visit, and my assessment and conclusions as set out above. It seems that evidence is scant on all sides regarding these matters but, having considered these factors as a whole and on the basis of the available evidence, I cannot conclude that the buildings have been abandoned. This matter does not, therefore, form an impediment to the appellant's wish to seek to apply VBC to the appeal proposal.
13. However, the Council, rather than claiming abandonment instead submit that the building has been made vacant for the sole purposes of re-development. The Guidance states that such matters may be appropriate to consider in the application of VBC.
14. It is stated by the Council, and referred to by interested parties, that the flats within the existing appeal site buildings have deliberately been made vacant, with sitting residents relocated, in order to facilitate the redevelopment of the site. I have no evidence before me of this. Nor do I have any substantiated evidence to support third party claims that rents have been increased by 500% since 2011, or whether such claims refer to the appeal site buildings or more widely. However, other than relying on the unsubstantiated comments of interested parties, the Council have not submitted any compelling or substantive evidence to support their position.

⁵ Paragraph: 028 Reference ID: 23b-028-20190315

⁶ APP/W4325/W/17/3168876 & APP/W4325/W/18/3205371

15. Whilst the appellant's evidence is also somewhat scant in these regards, I am not persuaded that the Council (or third parties) have adequately made the case to support their argument, particularly with the Council having previously and repeatedly accepted that VBC could be applied to the appeal scheme (and its predecessor schemes), that the buildings have been made vacant for the sole purpose of redevelopment.
16. Taken together, these factors suggest to me that VBC should apply to the proposal. Although the Council consider that the resulting financial contribution⁷ as a consequence of the application of VBC would not be an acceptable level of affordable housing provision, the calculations used to derive this figure have not been contested. Rather, it seems to me that the Council's concern in this respect is more as a consequence of the application of VBC which, for the reasons I have set out, I do not consider to be inappropriate.
17. Whilst the weight that I give to CS policy CS22 is limited, for the reasons set out above, the proposal is for more than 10 units and so, insofar as CS policy CS22 applies to schemes of 10 or more units, its provisions are broadly consistent with the Framework. The Framework also makes provision⁸ for the reduction of affordable housing contributions where vacant buildings are redeveloped and so the application of VBC is justified and in line with the Framework and Guidance, for the reasons I have set out.

Planning obligation

18. As with the previous appeal scheme⁹ the appellant has submitted a UU that obliges the payment of £9,291 as a contribution towards affordable housing provision. The sum of £9,291 being the VBC-amended equivalent of 20% affordable housing as required by CS policy CS22. Although the Council describe the affordable housing percentage as a modest policy requirement, 20% provision is the level set out in the emerging CS.
19. The commuted sum is the same as that considered previously at appeal⁶. However, whereas previously it was found that the UU would not 'do what it [was] supposed to do', the latest version of the UU accompanying this appeal has tightened up the interpretation of 'commuted sum' and the obligation conferred by Schedule 1 of the UU. The UU is quite clear that the commuted sum is to be for use by the Council only towards the provision of affordable housing within the Council area.
20. Although the Council are not bound by the terms of the UU as they would be a bi-lateral planning agreement under section 106 of the Act, the UU does remedy the failing of the previous scheme's UU in direct where and for what the monies should be spent. As such, the UU provides a clear and certain contribution towards affordable housing in line with CS policy CS22, as re-calculated by the application of VBC. The UU would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for obligations set out in the Framework, and I have therefore taken its provisions into account in reaching my decision.

⁷ £9,291

⁸ Paragraph 63 and footnote 28

⁹ APP/W4325/W/18/3205371

Other Matters

21. I have carefully considered the interested parties' representations and their objections to the proposal. With regard to living conditions of adjacent occupiers and in relation to future occupiers of plot 14, I note that these were considered in detail in relation to the first of the appeal schemes¹⁰ and did not form part of the Council's reasons for refusal in the subsequent application (and appeal) or in relation to the current proposal. I have not been presented with any compelling evidence, nor have there been any material alterations in the subsequent schemes, that would persuade me to reach an alternative conclusion in these respects.
22. Neighbours and interested parties object to the proposal on a range of wider grounds, including the management of former Council housing stock since the stock transfer of that housing from the Council; drainage; scale, design, siting and landscaping provision; and highway safety matters including car parking provision. However, the matter of stock transfer and the subsequent management of those units, whether specifically in relation to the appeal site or more widely across the Borough is not a material consideration to which I can attach any significant weight.
23. With regard to other concerns raised, I note that these did not form part of the Council's reason for refusal. Furthermore, I have also noted that matters relating to scale, design, siting and landscaping and highway safety matters were previously before an Inspector in relation to an earlier scheme¹⁰. Nor have I been presented with any further compelling or substantive evidence that would lead me to an alternative conclusion. I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal and the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be over-riding issues warranting dismissal of the appeal.

Conditions

24. I have carefully considered the conditions set out in the Council's Planning Committee report dated 17 April 2019, which the Council have requested forms the basis of their suggested conditions. I have considered the suggested conditions in light of the Framework and the Guidance. Where necessary and in the interests of precision and accuracy, I have made minor amendments and revisions to the conditions. I have removed references to conditions being discharged '...in consultation with...' as it is the local planning authorities responsibility to consider and subsequently discharge conditions. It is not for the condition to specify other parties to whom they may seek advice in that process.
25. Time limit (1) and plans (2) conditions are necessary in the interests of proper planning and to provide certainty, whilst materials (3), boundary treatments (5) and landscaping (4) conditions are necessary in the interests of character and appearance. It is necessary for drainage details, including the final design details of the sustainable drainage facilities, to be submitted prior to commencement and conditions (9 and 10) to this effect are necessary in the interests of appropriate treatment of surface water and to minimise the risk of, and from, flooding. Given the proximity of the site to existing residential

¹⁰ APP/W4325/W/17/3168876

properties and the desire to re-use resources, a site waste management plan (8) is a reasonable condition and is one which I agree should be attached to any permission.

26. The Guidance is quite clear that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness of necessity. Where applied, however, the scope of such conditions needs to be precisely defined and clear as to which rights are limited or withdrawn. The suggested conditions to ensure the installation of obscurely glazed windows on the first floor rear windows on plot 14 (6), and restrictions on the construction of garages, outbuildings or other extensions (7) is not unreasonable given the proposal's position in the context of an existing urban environment with residential properties around it.

Conclusion

27. For the reasons I have set out, and having considered all other matters raised, I conclude that this appeal should be allowed.

Graeme Robbie

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: EX01; EX03 Revision C; GA22, R/1876/1 and revised plans received on 28th March 2019 and listed as: GA10 Revision A; GA11 Revision B; GA12 Revision B; GA13 Revision A; GA14 Revision A
- 3) Before any construction above ground level commences, samples of the materials to be used in the external construction of this development shall be submitted to and approved in writing by the local planning authority. The approved materials shall then be used in the construction of the development.
- 4) The hard and soft landscaping scheme hereby approved (Drawing R/1876/1) shall be carried out prior to the occupation of any part of the development or in accordance with a timetable to be first agreed in writing with the local planning authority. Any trees or plants that within a period of five years after planting, are removed, die or become, in the opinion of the local planning authority, seriously damaged or defective shall be replaced with others of a species, size and number as originally approved in the first available planting season.
- 5) Prior to first occupation, full details of all proposed boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to first occupation.
- 6) The first-floor rear windows in the dwelling shown as Plot 14 shall be obscurely glazed and non-opening up to a height of 1.7m above finished floor level and retained as such thereafter
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any subsequent Order or statutory provision revoking or re-enacting the provisions of that Order), no garages, outbuildings or other extensions to a dwelling shall be erected.
- 8) No development shall take place until a Site Waste Management Plan, confirming how demolition and construction waste will be recovered and re-used on the site or at other sites, has been submitted to and approved in writing by the local planning authority. The approved site waste management plan shall be implemented in full.
- 9) No development shall commence until the final detailed sustainable drainage design, for the management and disposal of surface water from the site based on the principles and details identified in the following documents has been submitted to and approved in writing by the local planning authority: Sustainable Surface Water Drainage Strategy(Nov 2017/ Ref: 13375-5025-DIA-02/ Rev 02 / Met Engineers Ltd).
- 10) The development hereby permitted by this planning permission, including all components of the sustainable drainage system, shall be carried out in accordance with the approved final Sustainable Drainage Strategy,

including any phasing embodied within, and maintained in perpetuity in accordance with an agreed Operation and Maintenance Plan, to be submitted for each development phase, approved by the local planning authority. The approved drainage scheme shall be fully constructed prior to occupation in accordance with the approved details, phasing and timetable embodied within the approved final Sustainable Drainage Strategy, or within any other period as may subsequently be agreed, in writing, by the local planning authority. 'As built' drainage design/layout drawings and a final Operation and Maintenance Plan, confirming asset details and maintenance arrangements, shall be submitted to the local planning authority, in accordance with any approved phasing, prior to occupation.

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