
Appeal Decision

Hearing Held on 7 October 2020

Site visit made on 8 October 2020

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2020

Appeal Ref: APP/G2713/W/20/3249357

Land off Calvert Way, Bedale Easting: 426341 Northing: 487713

- 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 Arncliffe Homes Ltd against the decision of Hambleton District Council.
 - The application Ref 19/01511/FUL, dated 4 July 2019, was refused by notice dated 20 September 2019.
 - The development proposed is residential development comprising 14 dwellings (resubmission).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are: a) whether the proposal makes adequate provision for affordable housing arising from the development; b) whether or not the proposal needs to provide an alternative location for the allotments; and c) whether the proposal would make adequate provision for any additional need for pedestrian and cycle access in the area.

Reasons

3. The appeal site is to the east of Masham Road at the southern end of Bedale which contains a range of facilities and services. Access to the site would be gained from Calvert Way which serves a relatively new residential development that joins up to Masham Road. The appeal site is roughly 0.49 hectares in size. Most of the appeal site is part of a wider housing allocation under Policy BH1 of the Allocations Development Plan Document (ADPD). The rest of the allocation extends to the north of the site and to the west where there are allotments. Residential properties surround the housing allocation, while pedestrian footpaths link through to Masham Road from the north and south of the site.

Affordable housing

4. The development plan for the District comprises of the Core Strategy Development Plan Document (CS) and the ADPD. I agree with the main parties that CS Policy CP9 and ADPD Policy BH1 are both relevant and up to date having regard to the National Planning Policy Framework (the Framework).
5. ADPD Policy BH1 allocates the site and land to the north and west for housing development "subject to the development being at a density of approximately 35 dwellings per hectare, resulting in a capacity of around 55 dwellings (of

- which a target of 40% should be affordable).” CS Policy CP9 permits “housing development of 15 or more dwellings (or sites of 0.5ha or more) in Service Centre...must make provision for an element of housing which is accessible and affordable to those unable to compete in the general housing market.”
6. I agree with the main parties that the quantum of dwellings proposed, nor the site area trigger the provision of affordable housing through CS Policy CS9. I recognise the parties agreement about the three factors explored in *The City of Westminster v First Secretary of State & Brandlord Limited* judgement¹, which relates to a windfall site and not an allocated site. Nevertheless, the proposal would accord with CS Policy CP9 which deals with affordable housing in a specific development. There is nothing within the policy or supporting text to say that it only applies to either allocated or non-allocated sites. It is on this basis the appellant company does not propose any affordable homes.
 7. However, ADPD Policy BH1 specifically applies to the appeal site by setting out how housing development should be brought forward on the allocated site. Despite their points about the *Brandlord judgement*, the appellant company confirmed at the Hearing that ADPD Policy BH1 does not say that the allocation must be brought forward as a single entity. I agree.
 8. I am mindful of criterion iv of Policy BH1 and the separate extra care housing scheme for 59 dwellings², subject of an appeal, for land to the north of the appeal site within the same site allocation. Whether the proposed access from Firby Road in this scheme is acceptable is a matter for the decision-maker to consider. The extra care housing scheme may have come forward independent of the appeal scheme, but this does not alter the conflict that the proposal would cause with criterion i of ADPD Policy BH1 due to the lack of any affordable housing even though the proposal’s density would respond to the character and appearance of the surrounding area.
 9. The main parties agreed that the mix of dwellings would be good for the area and could be of the type and size suitable as affordable homes. However, even if I were to agree and that a proportionate number of these would need to be affordable to meet the target 40% threshold, there is no mechanism before me to secure any of the units as affordable homes. They would be market homes and there is no certainty that those unable to compete in the general housing market would be able to access or afford them. The viability of a development may mean that the target of 40% may not in practice be achievable, but no viability case has been made by the appellant company.
 10. Reading both CS Policy CP9 and ADPD Policy BH1 together there is a clear vision envisaged which was examined as part of the local plan process. The policies are the outcome of two bodies of extensive work subject to scrutiny. This is the plan-led approach advocated by the Framework and ADPD Policy BH1 was prepared and subsequently adopted in accordance with CS Policy CP9, adopted some three years prior. The delivery of affordable homes through these policies is a component of delivering housing in Hambleton and an approach emphasised by the Framework in meeting the needs of different groups in the community.
 11. Although the appeal scheme would accord with CS Policy CP9, this is outweighed by the harm that the proposal would cause through its conflict with

¹ The City of Westminster v First Secretary of State & Brandlord Limited 3088/2002 [2002] EWHC 2725 Admin

² Council Ref: 19/02128/FUL

ADPD Policy BH1 which seeks to ensure the allocated site is brought forward in a manner to address local housing needs. This is important and emphasised by the site's location within an existing residential area close to a range of facilities and services. As such, I conclude on this issue that the proposal would not make adequate provision for affordable housing arising from the development.

The allotments

12. Allotments until a few years ago occupied part of the appeal site and land to the west of it. ADPD Policy BH1 iii sets out that the site is allocated for housing development subject to: an alternative location being provided for the current allotments occupying the site. The associated text to the policy explains that the existing allotments were to be satisfactory relocated. This would help realise the quantum of dwellings on the allocation set out.
13. Several alternative locations have been considered in conjunction with the Bedale Allotments Association, who are now the Bedale Allotments Society (BAS). Some of the sites did not offer suitable soil conditions, while landowners for others were unable to part with the land. Another site did not offer long-term assurances about the allotments ability to remain here or whether a new location would need to be found at a later date. The members of the BAS voted against this site and also expressed a view about its accessibility and its proximity to the community.
14. The policy also seeks to ensure the continued allotment provision for the community to use. Works have taken place to consolidate them in size which has resulted in the allotments remaining on land to the west of the site. Unlike the alternative sites considered, the retained and consolidated allotment facility will offer long-term provision in Bedale as the land is to be gifted to the BAS. While the works have taken place outside the scope of the appeal scheme, they have community support, are more productive, easier to run and suitable for modern day requirements despite the reduction in individual plot sizes. The facility has also been designated as a Community Asset. CS Policy CP3 supports the protection, retention and enhancement of such assets.
15. The retention of the existing allotments, albeit consolidated and improved, would not strictly be an alternative location as they still occupy part of the former site and as a result, they would affect the delivery of part of the allocated site. Conflict would therefore arise with ADPD Policy BH1 iii. However, circumstances have moved on since the adoption of the ADPD and in my view the considerations raised in this case indicate that any conflict insofar as finding an alternative location would be outweighed by the protection, retention and enhancement of the allotments within the heart of the community. On this basis, I conclude that the proposal does not need to provide an alternative location for the allotments given CS Policy CP3, which when read alongside the thrust of ADPD Policy BH1, seeks to ensure the retention of community assets.

Pedestrian and cycle provision

16. Since the ADPD was adopted the Council has adopted its Community Infrastructure Levy (CIL). The Council accepts that CIL is the only mechanism by which the improvements envisaged in the first part of criterion v of ADPD Policy BH1 can be secured, which it would do to the tune of £55,000.
17. The second part of criterion v refers to a public right of way across the site. Despite Members concerns about two routes linking the site with Masham Road

and Firby Road respectively, neither are a public right of way. The north/south route is overgrown and inaccessible due to fencing and hedgerows. It is unclear who owns the land linking the allotments to Masham Road, but anecdotal evidence suggests that no one does. The track is well trodden and has likely existed for some time. The evidence would suggest that this would not change.

18. Comments were expressed at the Hearing about the facilities on Firby Road for pedestrians and cyclists. Nevertheless, no changes are proposed to the route along Firby Road. In any event, no section 106 agreement or substantive evidence to demonstrate that the three tests for doing so as set out in Framework paragraph 56 could be met are before me.
19. On this basis, I conclude on this issue that the proposal would make adequate provision for any additional need for pedestrian and cycle access in the area. As such, the appeal scheme would accord with criterion v of ADPD Policy BH1.

Conclusion

20. Despite my findings on the second and third main issues, these matters do not outweigh the harm that would arise from the proposal due to its conflict with the development plan in respect of the first main issue. Nor do the material considerations presented in this case indicate that I determine the proposal other than in accordance with the development plan.
21. For the reasons set out above, I conclude that the appeal is dismissed.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Stafford

Lee Stafford

Alistair Flatman

Graham Whiteford

Josh Kitson

Appellant

Appellant

Alistair Flatman Planning

Walker Morris

Walker Morris

FOR THE LOCAL PLANNING AUTHORITY:

Peter Jones

Hambleton District Council

INTERESTED PERSONS:

John Burton

Bruce Stainsby

Chairman, Bedale Allotments Society

Secretary, Bedale Allotments Society

DOCUMENTS

- 1 The City of Westminster v First Secretary of State and Brandlford Limited
3088/2002 [2002] EWHC 2725 Admin
- 2 Housing and Economic Development Needs Assessment, June 2018