



Appeal Decision

Site visit made on 5 February 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2021

Appeal Ref: APP/W0340/W/20/3256178

11 Pond Close, Newbury RG14 6JH

- 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 A, D & E Property Ltd against the decision of West Berkshire Council.
 - The application Ref 20/00014/FULD, dated 23 December 2019, was refused by notice dated 9 June 2020.
 - The development proposed is described as "removal of derelict garages and erection of 2 no dwellings and 4 no flats, together with associated landscaping and parking".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council have referred to Policy SP19 of the West Berkshire Council Local Plan Review 2020-2037: Emerging Draft (December 2020) within their submissions. In accordance with paragraph 48 of the National Planning Policy Framework (the 'Framework'), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework. The Council explain that the emerging plan is at an early stage and it is yet to be examined for soundness. For this reason, I attribute this policy very limited weight as a material planning consideration.
3. During the appeal, the Council published the West Berkshire Local Plan Annual Monitoring Report 2019 (January 2021) (the 'AMR'). It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis. The main parties have had an opportunity to address this matter as part of the appeal process.

Application for costs

4. An application for costs was made by A, D & E Property Ltd against West Berkshire Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is whether it is necessary for the proposal to provide affordable housing, and, if so, whether there is a suitable mechanism in place to ensure that such a requirement is properly controlled and achieved.

Reasons

6. The appeal site comprises of several existing garage buildings and a large area of hardstanding, which is located on Pond Close. It is proposed to demolish the existing buildings and erect a pair of semi-detached dwellings and a block of four flats with associated landscaping and parking.
7. Policy CS6 of the West Berkshire Core Strategy (2006-2026) (the 'CS') states subject to the economics of provision, the following levels of affordable housing provision will be sought by negotiation: On development sites of less than 15 dwellings a sliding scale approach will be used to calculate affordable housing provision, as follows:- 20% provision on sites of 5 – 9 dwellings.
8. The policy wording goes onto state that if the proposed provision is below the levels set out above, this should be fully justified by the applicant through clear evidence set out in a viability assessment (using an agreed toolkit) which will be used to help inform the negotiated process.
9. Given that no viability assessment was provided as part of the planning application, the Council argue that the proposed development should provide one on-site affordable dwelling.
10. The supporting text to Policy CS6 explains that the West Berkshire Housing Need Assessment (2007) identified a shortfall of between 560 and 850 new affordable homes across the District per year to 2011. However, this must be placed in the context of the West Berkshire housing requirement set out in CS Policy CS1 of an average of 525 new dwellings (both market and affordable) each year to 2026.
11. The supporting text goes on to state, that whilst the level of affordable housing need will be kept under review throughout the Plan period and may alter, the level of need remains extremely high, and the policy must therefore seek to maximise opportunities for increased affordable housing delivery.
12. During the plan period, the affordable housing need of West Berkshire was reviewed as part of the Council Strategic Housing Market Assessment¹ (the 'SHMA'). The SMHA shows a net need of 189 affordable homes per annum to be provided within the District. The Council's AMR demonstrates that there is a significant overall shortfall in affordable housing completions within the District, when compared to the need established by the SHMA. This has not been disputed by the appellant.
13. The Council have also drawn my attention to 2019 data from the Office for National Statistics which shows that median house prices in West Berkshire are approximately 44% higher than the national average, with the median house price 9.6 times the median income level. The Council explain the high housing prices relative to the median income level creates a high demand for affordable housing within the District. This data has not been disputed by the appellant.

¹ Berkshire (including South Bucks) Strategic Housing Market Assessment by GL Hearn Limited (February 2016)

14. Notwithstanding the above, the appellant disputes the need to provide affordable housing as part of the development and refers to paragraph 63 of the Framework, which states that the "Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer)".
15. Planning law², as noted by paragraph 2 of the Framework, dictates that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. The policies with the Framework are material considerations which should be taken into account in dealing with applications.
16. The Framework defines major development as ten or more homes or where the site has an area of 0.5 hectares or more. The appeal proposal, which is for six homes on a site of approximately 0.09 hectares, would not be a major development. Therefore, there is a significant degree of inconsistency between paragraph 63 of the Framework and Policy CS6 of the CS, which is a material consideration in this case.
17. The evidence put forward by the Council demonstrates that there is a significant unmet need for affordable housing in West Berkshire, and, that the importance of small sites, which includes non-major development, such as the appeal proposal, in contributing to the provision of such affordable housing through on-site delivery, is part of the Council's plan-led strategy to meet unmet demand. As such, I consider that the exceptional local need for affordable housing outweighs national policy set out in the Framework.
18. Given the above, the circumstances in this case warrant determining the appeal based on the affordable housing approach set out in the development plan. Hence, the material consideration of the Framework does not outweigh the requirements of the development plan in this instance.
19. The appellant has drawn my attention to an appeal decision³ in South Buckinghamshire from January 2020 where an Inspector afforded a local planning policy which required non-major developments to provide affordable housing 'non-determinative weight' due to serious inconsistencies between the local policy and paragraph 63 of the Framework. In reaching this view, the Inspector found that locally specific evidence had not been provided to justify the Council's approach. This is not the case in respect of the current proposal, where it has been demonstrated that there is a significant unmet need for affordable housing. As such, I have given limited weight to this appeal decision.
20. The appellant also refers to a recent planning application⁴ for nine dwellings in West Berkshire, where the Council concluded that on-site affordable housing was not required because the proposal was not a major development, in accordance with paragraph 63 of the Framework. This approach differs from the Council's current position in relation to Policy CS6 of the CS. However, I am not aware of the particular circumstances in relation to the previous case. In any event, I must consider the appeal proposal on its individual planning merits. Therefore, given the significant affordable housing need which I have

² Section 38(6) of the Planning and Compulsory Purchase Act 2004

³ PINS Ref: APP/N0410/W/19/3237373

⁴ Council Ref: 19/00504/FUL

identified, this previous application does not provide a compelling precedent for allowing the appeal.

21. The appellant has not provided a suitable mechanism, such as a planning obligation, to secure the delivery of on-site affordable housing as part of the development. Furthermore, the appellant has not submitted a viability assessment to demonstrate that the provision of affordable housing would make the development unviable. As such, the appeal proposal would not accord with Policy CS6 of the CS.
22. In addition to the above, the proposal would be inconsistent with guidance on affordable housing provision contained within the Council's Planning Obligations Supplementary Planning Document (2014).

Other Matters

23. The provision of six dwellings within the settlement of Newbury would make a positive contribution to the Council's housing land supply which weighs in favour of the proposal. Furthermore, I am cognisant that the proposal would lead to the development of previously developed land as distinct from greenfield land. However, none of these matters would overcome or outweigh the very weighty conflict with Policy CS6 of the CS as outlined above.

Conclusion

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Christopher Miell

INSPECTOR