



Appeal Decision

Site visit made on 24 March 2021

by Stephen Wilkinson BA(Hons) DIP LA BPI MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 12 July 2021

Appeal Ref: APP/C1570/W/20/3264407

Land behind the Old Cement Works, Thaxted Road, Saffron Waldon, Essex

- 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 Barkby Real Estate Limited against the decision of Uttlesford District Council.
 - The application Ref UTT/20/0864/FUL, dated 6 April 2020, was refused by notice dated 23 November 2020.
 - The development proposed is erection of 35 dwelling houses.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 13 May 2021.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 35 dwelling houses on land behind the old cement works, Thaxted Road, Saffron Waldon, Essex in accordance with the terms of the application, Ref UTT/20/0864/FUL, dated 6 April 2020, and the documents and plans submitted with it, subject to the conditions included in the schedule to this decision.

Procedural Matters

2. An application for costs was made by Barkby Real Estate Limited against Uttlesford District Council. This application is the subject of a separate Decision.
3. The appeal has been submitted with a Unilateral Undertaking dated 16 March 2021. This includes obligations in respect of the provision of capital moneys towards education, health and 7No. affordable housing units. I address this matter later in this decision.

Main Issue

4. Whether or not the inclusion of a policy compliant amount of affordable housing would be viable.

Reasons

5. The appeal site comprises part of a former cement works. It has the benefit of 3 planning permissions, one of which was an outline scheme for 8 blocks of

- live/work units¹. This permission was partially implemented with the erection of 2 blocks.
6. Outline permission was granted in 2017 for a residential development for up to 49 dwellings². A reserved matters permission for part of the scheme for 35 dwellings (21 market homes and 14 affordable dwellings) was approved³.
 7. The appeal scheme replicates that submitted in respect of the approved reserved matters but instead of 14 affordable units includes 7 units. The under provision of affordable units is the only issue between the parties.
 8. The Council do not contest the method and assumptions which underpin the appellants valuation apart from those which underpin the benchmark values (BM) which are a principal component of the site's existing use value (EUV). The appellants have modelled the EUV on the extant scheme for the live work units.
 9. The basis of the Council's decision reflects its concerns that live/work units have proved an unpopular form of development with increasing numbers of such units within the permitted scheme now converted to dwellings.
 10. The appellant's purchase price for the site was based on the extant permission and reflects the viability decisions they faced. Furthermore, the appellant has followed published Guidance on this matter⁴ given the extant permission. On this basis the valuation based on live work units is not obsolete as the Council states. The Council has not suggested an alternative approach to this matter.
 11. I acknowledge that the Council's Policy H9, requiring the inclusion of affordable housing, is consistent with the National Planning Policy Framework (the Framework). However the policy recognises that affordable housing will be negotiated on a site by site basis allowing for variables including site conditions. This is what the appellants have sought to do through negotiation. The proposal is not therefore in conflict with this policy.
 12. The approach adopted is consistent with Paragraph 57 of the Framework.

Unilateral Undertaking

13. A Section 106 agreement has been submitted with the appeal. This includes contributions towards education, health and affordable housing. A Community Infrastructure Compliance (CIL) Schedule submitted by the Council identifies the policy basis for each of the items included in the agreement.
14. Overall, the obligations included are related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme in line with paragraph 56 of the Framework.

Interested parties

15. The original outline permission for the development of the whole site was accompanied by a transport assessment which indicated that the adjoining

¹ UTT/1382/01/FUL

² UTT/16/1444/OP

³ UTT/17/3038/DFO

⁴ Planning Practice Guidance

highway would have sufficient capacity to accommodate the additional traffic generated by the proposed scheme.

Conclusions

16. Saved Policy H9 of the Uttlesford Local Plan 2005 requires that affordable housing is negotiated on a site by site basis. The viability evidence demonstrates that a policy compliant provision would render the whole scheme unviable. For this reason, the appeal scheme does not conflict with Saved Policy H9 of the Uttlesford Local Plan 2005 and the appeal is allowed.

Conditions

17. I have considered the list of suggested conditions supplied by the Council and have made changes in line with the Guidance.
18. I have imposed conditions in respect of the time limits and the approved plans for reasons of certainty. A condition has been imposed regarding the surface water drainage across the site to minimise the potential for flooding.
19. Conditions in respect of materials, landscaping and surface materials are required to ensure the character and appearance of the proposed development responds appropriately to its immediate context. For the same reason, I have included a condition regarding the general a relationship between dwellings in order to protect the character and appearance of streetscene within the site.
20. I have imposed a biodiversity enhancement strategy in order to minimise the impacts of the proposed scheme on areas of biodiversity and to protect priority species.
21. Conditions have been imposed in respect of surveys for land contamination given the recent history of this site. A condition requiring appropriate remediation, in the event of contamination being discovered has been imposed as well. A further condition has been imposed, to ensure that if, in the event the discovery of further contamination, appropriate measures can be taken to the protect health of surrounding and future occupiers.
22. I have imposed a condition requiring the parking spaces, serving each dwelling to be fully completed in advance of them being occupied in order to prevent overspill parking into surrounding highways which could prejudice highway safety.
23. I have imposed a standard condition in respect of a travel pack of information in order to encourage future occupiers to use public transport and other means of sustainable transport. I have imposed a condition to ensure that the dwellings hereby approved are fully accessible for all occupiers. For the same reasons, conditions requiring the completion of cycle parking in advance of the dwellings hereby permitted being provided and the inclusion within the scheme of a single electric charging point have been imposed.

24. In order to protect the health and well being of surrounding occupiers and ensure highway safety, I have imposed a condition requiring a construction method statement. This requires a range of matters to ensure that adequate controls are agreed in advance of construction proceeding.

Stephen Wilkinson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 90416.01; 90416.02; 90416.03; 90416.04; 90416.05; 90416.06; 90416.07; 90416.08; 90416.09; 90416.10; 90416.11; 90416.12; 90416.13; 90416.14; 90416.15 Rev A; 90416.16 Rev A; 90416.17 Rev A; 90416.18 Rev A; 90416.19 Rev A; 90416.20; 90416.21; 90416.22; 90416.23; 90416.24; 90416.25; 90416.26 Rev A; 90416.30 Rev G; 90416.31 Rev A; 90416.32 Rev A; 90416.33 Rev C; 90416.34 Rev C; 90416.35 Rev C; 90416.40.
- 3) Prior to commencement of the development, details of the following hard and soft landscaping works must be submitted to and approved in writing by the local planning authority:
 - Retained features
 - New planting
 - Hard surfaces
 - Boundary treatment
 - External lighting
 - Pedestrian and cycle access to PROW byway 18 (Saffron Walden)

All hard and soft landscape works must be carried out in accordance with the approved details prior to occupation of the thirty-fifth dwelling.

All planting, seeding or turfing and soil preparation comprised in the above details of landscaping must be carried out in the first planting and seeding seasons following the occupation of the buildings, the completion of the development, or in agreed phases whichever is the sooner, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased must be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation. All landscape works must be carried out in accordance with the guidance contained in British Standards, unless otherwise agreed in writing by the local planning authority.

- 4) The dwellings in the proposed development shall not be occupied until such time as their associated vehicle parking areas indicated on the approved plans (90416.30 Rev G), has been hard surfaced, sealed and marked out in parking bays. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development unless otherwise agreed with the Local Planning Authority.
- 5) The cycle parking facilities as shown in principle on drawing number 90416.33 Rev C are to be provided prior to the first occupation of the dwellings which they serve, they shall be secure, convenient, covered and retained thereafter.

- 6) Prior to slab level of the development hereby approved a biodiversity enhancement strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) persons responsible for implementing the enhancement measures;
- e) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

- 7) Each dwelling hereby permitted must not be occupied until such time as its associated vehicle parking area has been developed and provided in accordance with Drawing No. 90416.30 Rev G.
- 8) The eaves and ridge heights of the permitted dwellings relative to each other and to existing buildings must be constructed as shown on the following drawings:
- Drawing No. 90416.40
 - Drawing No. 90416.26 Rev A
- 9) Prior to the construction of the development hereby approved above slab level a scheme for on-site foul and surface water drainage works, including connection point and discharge rate, shall be submitted to and approved in writing by the Local Planning Authority.
- 10) A minimum of a single electric vehicle charging point shall be installed at each of the houses. These shall be provided, fully wired and connected, ready to use before first occupation.
- 11) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;

- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 12) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority] before the development [or relevant phase of development] is occupied.
- 13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 14) The dwellings hereby approved shall be built to Category 2: Accessible and adaptable dwellings M4(2) of the Building Regulations 2010 Approved Document M, Volume 1 2015 edition.
- 15) Prior to occupation of the proposed development, the Developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for sustainable transport, approved by Essex County Council.
- 16) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) The construction programme and phasing
 - ii) Hours of operation and delivery;
 - iii) Details of any proposed piling operations including a vibration impact assessment together with suggested mitigation measures;
 - iv) the parking of vehicles of site operatives and visitors;
 - v) loading and unloading of plant and materials;

- vi) storage of plant and materials used in constructing the development;
- vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- viii) wheel and underbody washing facilities;
- ix) measures to control the emission of dust, noise and odours and dirt during construction;
- x) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- xi) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.