



## Appeal Decision

Site visit made on 29 October 2021

by **James Blackwell LLB (Hons) PgDip**

an Inspector appointed by the Secretary of State

**Decision date: 11 January 2022**

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**Appeal Ref: APP/Q3115/W/21/3277768**

**Steven Orton Antiques, Shirburn Road, Watlington OX49 5BZ**

- 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 Beechcroft Developments Ltd against the decision of South Oxfordshire District Council.
  - The application Ref P21/S0003/FUL, dated 18 December 2020, was refused by notice dated 25 May 2021.
  - The development proposed is the redevelopment of part of the site on Shirburn Road to create a new block of 34 affordable apartments for people aged 55 and over.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal site forms part of a former Ministry of Defence (MoD) site, which has planning permission for 37 retirement apartments and a 66-bed care home<sup>1</sup> (Site Wide Planning Permission). A planning agreement was entered into in connection with the Site Wide Planning Permission, which secures payment of an off-site affordable housing contribution of £1,071,076 (Off-Site Affordable Housing Contribution). This contribution was secured in lieu of any on-site affordable housing provision.
3. The appeal application seeks to substitute the care home consented under the Site Wide Planning Permission with 34 on-site affordable retirement apartments. The appeal application was determined by the Council on the basis that the on-site affordable housing now proposed would be provided instead of the Off-Site Affordable Housing Contribution. The appellant's grounds of appeal and response to the Council's statement of case also confirmed this position.
4. The appellant has now made representations which state the Off-Site Affordable Housing Contribution will remain payable in conjunction with the Site Wide Planning Permission, and would be paid in addition to delivery of the on-site affordable housing now proposed under the appeal application. Given that the quantum of affordable housing to be delivered in conjunction with the development of the MoD site (whether on-site or off-site) is central to the main issues in this appeal, this is a fundamental change in approach.
5. Given the significance of the change, I consider that accepting the appellant's evidence at such a late stage would unfairly prejudice the interests of third parties, as they have not been consulted properly on the changes to the overall

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<sup>1</sup> Outline permission P18/S0002/O and reserved matters approval P19/S2380/RM

scheme. As per the principles set out in *Wheatcroft*<sup>2</sup>, I have therefore determined the appeal on the basis that the on-site affordable housing proposed under the appeal application will be provided in lieu of the Off-Site Affordable Housing Contribution, as originally set out in the parties' evidence. This is to ensure fairness and transparency to all interested parties.

6. Since determination of the planning application, the 2019 iteration of the National Planning Policy Framework (Framework) has been superseded. The main parties have had the opportunity to comment on the changes. I have therefore determined this appeal with regard to the current version, published in July 2021.

### **Main Issues**

7. The main issues in this appeal are:
  - whether the proposed development would secure an acceptable provision of affordable housing in terms of distribution, design and tenure;
  - the effect of the proposed development on the character and appearance of the wider development site, with particular regard to layout, design and levels of outdoor amenity space; and
  - whether the proposal would secure the infrastructure necessary to meet the needs of the wider development.

### **Reasons**

#### *Affordable Housing Provision*

8. The proposed development would introduce 34 retirement apartments in place of the care home originally consented under the Site Wide Planning Permission. Although the proposed development relates to the care home site only, the Off-Site Affordable Housing Contribution was secured in connection with the development across the whole of the MoD site. Provision of the affordable retirement apartments in lieu of the Off-Site Affordable Housing Contribution must therefore be considered in the context of the whole development site, and not the care home site in isolation. This approach is consistent with Policy H9 of the Council's Local Plan<sup>3</sup> (Local Plan), which states:

*"To prevent the artificial subdivision of sites with the same landowner, where land is subdivided to create separate development schemes that cumulatively meet the thresholds of this policy, the Council will consider the site as a whole and will seek affordable housing on each part."*

9. Irrespective of the ownership position between the care home site and the wider MoD site, the thrust of this policy is to ensure sites are not artificially subdivided to escape provision of affordable housing within certain parts of the site.
10. In this context, the 34 affordable retirement apartments now proposed to meet the policy requirement across the whole of the MoD site, would be provided in a single block to the south of the site. This would conflict with Policy H9 of the Local Plan, which requires affordable housing to be distributed evenly across a

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<sup>2</sup> *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

<sup>3</sup> South Oxfordshire Local Plan 2011 – 2035 (adopted December 2020)

development in clusters of no more than 15 homes. As a result, the entirety of the affordable housing would be physically separate from the market housing, within a discrete location at the southern edge of the site. This lack of physical integration between the affordable housing units and the market housing poses a clear risk for segregation between the two.

11. This risk is exacerbated by the clear visual differences between the affordable housing units and the market housing. The market housing is being provided in a number of smaller separate buildings, with parking and amenity space interwoven throughout. Conversely, the affordable units would be provided in one large block, with the bulk of the outdoor amenity space being provided within a central courtyard, and the entirety of the car parking being laid out in a large car park immediately adjacent. Together, these factors mean that the affordable housing would be markedly different in appearance to the market housing, further exaggerating the distinct lack of integration between the two. Once again, this would directly conflict with the requirements of Policy H9, which is explicit that affordable housing units should be indistinguishable in appearance from the market housing.
12. In terms of tenure mix, all of the affordable housing would be provided as an affordable rent product. This would further conflict with the provisions of Policy H9, which require a tenure mix of 40% affordable rented, 35% social rented and 25% other routes to home ownership (except where otherwise agreed). Whilst the 2014 report from the All-Party Parliamentary Group on Housing and Care for Older People does highlight a particular need for "*the middle market*" (which affordable rent units would cater for), this in itself does not demonstrate that this need is at the exclusion of any other types of affordable product. As a result, the proposal would fail to achieve a balanced tenure mix across the appeal site.
13. For these reasons, the development would fail to provide an acceptable provision of affordable housing in connection with the whole of the MoD site. As set out above, the proposal would conflict with Policy H9 of the Local Plan in terms of distribution across the site, tenure mix and design. The development would also conflict with Policy SA1 of the Pyrton Neighbourhood Plan 2019 – 2034 (Pyrton Neighbourhood Plan), which requires development of the MoD site to secure affordable housing in line with the Council's adopted Local Plan requirements. Finally, the development would conflict with the objectives of the Framework (2021), which places a great emphasis on the need for balanced and mixed communities which promote social inclusion.

#### *Character and Appearance*

14. In design terms, the proposed development would be very similar to the care home originally consented under the Site Wide Planning Permission. During consideration of this scheme, officers commented that "*the architectural language that has been used in the proposal reflects the character of the wider area and the traditional Chilterns vernacular has informed the design process. A variety of ridge and eaves levels would create a varied roofscape and [...] the architectural details would create some attractive spaces across the scheme*". Given the clear similarities in external design between the extant care home and the proposal, when considered in isolation, I am satisfied that the built elements of the proposal would be in-keeping with the prevailing character of the area.

15. However, the clear disparity that would arise between the arrangement of the market housing and the new affordable housing units would be significantly more problematic. The outdoor amenity space to serve the market housing has been carefully interspersed throughout the entire development, which ensures there is an attractive green and open backdrop permeating throughout the 37 market housing apartments already under construction. Similarly, the parking spaces to serve these dwellings are scattered and integrated throughout the scheme, which ensures no particular area of the site is dominated by hardstanding or parking areas. This helps conserve the rural credentials of the site and its wider surroundings.
16. Conversely, whilst the proposal would achieve the minimum levels of amenity space to serve the new affordable apartments, this is primarily concentrated in a single central courtyard, rather than being interspersed more evenly throughout the development. As a result, the appeal site would appear substantially more dominated by built form than the wider site. Moreover, the entirety of the parking to serve the new affordable apartments would be laid out as one large car park immediately west of the new block. This means the car park would dominate a substantial area of the appeal site, which would significantly undermine the prevailing green and rural character of the wider development site. Irrespective of the design merits of the appeal proposal when considered in isolation, it is this significant disparity between the market housing and the affordable housing which is problematic. The proposal would create a development of two distinct halves, and the clear and significant discordance between the two would be visually harmful to the site's overriding character.
17. The development would therefore harm the character and appearance of the wider MoD development site. It would conflict with Policy DES1 the Local Plan, which seeks to ensure new development does not differentiate between the design quality of market and affordable housing or the adjacent public realm. This Policy also requires development to ensure a sufficient level of "*well-integrated and imaginative*" parking solutions. The development would also conflict with Policies H2 and D1 of the Pyrton Neighbourhood Plan, which together seek to ensure new development achieves high-quality design which responds properly to the prevailing character of its surroundings and the wider area. Finally, the development would conflict with the overarching objectives of the Framework (2021), which seek to ensure appropriate levels of cohesion between market and affordable housing.

### *Infrastructure*

18. The appellant has now submitted a completed unilateral undertaking which would secure payment of a number of financial contributions in conjunction with the development. These include contributions to health services, street naming and waste and recycling, all of which would help meet the infrastructure needs necessitated by the development. On this basis, the proposal would be consistent with Policies INF1 and EP3 of the Local Plan and Policy C2 of the Pyrton Neighbourhood Plan, which together seek to ensure necessary infrastructure is secured in conjunction with new development. The development would also meet the corresponding infrastructure objectives of the Framework (2021).

## **Other Matters**

19. Policy H9 of the Local Plan requires sites with 10 or more new homes to deliver 40% affordable housing. When factoring in the 34 retirement apartments under consideration, the proposal would result in a total of 75 units across the whole of the MoD site (the remaining units being made up of the 37 retirement apartments and 4 units of staff accommodation already under construction). As such, the affordable housing provision for the whole site would equate to 45%, which in practice, would be 4 affordable units over and above the policy requirement.
20. Whilst these additional 4 affordable units would indeed be a benefit of the scheme if delivered, the unilateral undertaking submitted in conjunction with this appeal only secures the ongoing affordability of 14 of the 34 retirement apartments. It is understood that the affordability of the remaining units on the appeal site would be secured via grant funding from Homes England. However, there is no evidence of such funding agreement before me, and without any formal legal mechanism to secure the long-term affordability of all 34 units, I can only attach limited weight to the potential benefit of these additional units over and above policy requirement. This benefit alone would not outweigh the harm arising from the substantial conflict with the Council's affordable housing policies.
21. Whilst there is little substantive evidence before me regarding the Council's 5-year land supply (5YHLS), and in particular the extent of any under provision, even if paragraph 11(d) of the Framework were engaged, the Framework is clear that due weight should be given to existing development plan policies according to their degree of consistency with the Framework. In this instance, Policy H9 of the Local Plan reflects the objectives of the Framework that development should seek to achieve mixed and balanced communities which promote social integration. I would therefore attach significant weight to the conflict with this Policy. Whilst 4 additional affordable units over and above policy requirement would be a benefit of the scheme, the harm attributed to the conflicts with policy H9 alone, which are both numerous and extensive, would significantly and demonstrably outweigh this benefit when assessed against the policies in the Framework as a whole. As a result, even if the Council cannot demonstrate a 5YHLS, I am satisfied that the presumption in favour of sustainable development would not apply in this instance.
22. Whilst the density of the proposal is broadly acceptable given the proximity of the site to Watlington and its reasonable levels of accessibility to public transport links, again this factor would not outweigh the harm arising from the conflict with the affordable housing policies identified above.

## **Conclusion**

23. The proposal would conflict with the development plan as a whole and there are no other considerations nor benefits, including the provisions of the Framework, which are sufficient to outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

*James Blackwell*

INSPECTOR