The Planning Inspectorate

Appeal Decision

Site visit made on 30 March 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Land East Of Forest Heights, Forge Weir View, Halton LA2 6FG
Appeal Ref: APP/A2335/W/21/3285794

- 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 W Cadman of Wrenman Lancaster Ltd against the decision of Lancaster City Council.
- The application Ref 21/00290/FUL, dated 5 March 2021, was refused by notice dated 13 September 2021.
- The development proposed is described in the application form as: 'erection of 7 dwellings'.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr W Cadman of Wrenman Lancaster Ltd against Lancaster City Council. That is the subject of a separate Decision.

Preliminary Matters

3. The appeal site is a triangular portion of land forming part of an allocation for housing as part of Policy H2 of the Lancaster Local Plan Part One: Strategic Policies and Land Allocations DPD (2020) (the LPP1). The site forms part of planning permission 17/01423/REM for 60 dwellings with associated infrastructure, granted in 2018 pursuant to outline permission 14/01344/OUT ('the 2018 site'). Although the outline permission was approved with a legal agreement securing a minimum of 24 affordable housing units, a viability case was presented and independently assessed as part of the application forming the 2018 permission. As a result, the development was approved with a reduction in affordable housing to ten units (16.67%).

4. The implementation of the 2018 permission is well underway and the appellant states that construction is complete on all other parts of the site. Nonetheless the appeal site itself comprises a mix of rough grass, exposed earth and spoil. It was being used for the parking of vehicles at the time of my visit. Mature trees and a hedge are located adjacent to the boundary with Low Road to the north.

5. In 2021, a separate planning permission was granted for the erection of nine dwellings (20/00277/FUL) (the 2021 permission) on land within the 2018 site but set away from the appeal site. This resulted in a net gain of seven dwellings across the site. This application included a viability assessment,

based on the extended part of the site only, that concluded that it was not viable to provide any affordable housing.

Main Issues

6. The main issues are:

- the effect of the proposed development on the character and appearance of the area; and
- whether or not affordable housing should be provided, and, if so, whether appropriate arrangements have been made.

Reasons

Character and Appearance

7. The appeal site is located in the north eastern corner of the 2018 site adjacent to the junction of the access road with Low Road. The site lies on the edge of the settlement with open rolling farmland interspersed with pockets of woodland and hedges extending to the south and east. The appeal site formed part of the landscaping strategy secured as part of the 2018 permission. Together with the land on the opposite side of the access road which includes a surface water attenuation pond, the appeal site forms part of the landscaped entrance to the site. The new dwellings are set substantially further back into the site, in a more elevated position and broadly in line with the dwellings on Forgewood Close and Forgewood Drive. Together these provide a clear pattern to development and form a definitive edge to the settlement. This even extends across Low Road to the dwellings along School House Lane which follow a similar pattern.

8. The appeal proposal would involve the construction of seven dwellings positioned to the east of the access road and to either side of a new section of road with a turning head that would be constructed on site. The dwellings would consist of two pairs of semi detached dwellings and a terrace of three properties positioned close to the pavement and the edge of the new road that would serve a large parking court to the rear of the buildings.

9. The approved landscaping plan for the 2018 permission shows the retention of the existing trees and hedge adjacent to the boundary. The majority of the appeal site is shown being planted with a woodland belt mix comprising of a number of native species. A smaller area would be planted with a native understorey woodland edge mix whilst the area closest to the pavement would be grassed with low maintenance amenity grass including some standard trees. A new native hedgerow would form the boundary with the adjacent field. I saw on the site visit that some limited planting around the fringes of the site had taken place although the majority of this landscaping was yet to be carried out.

10. Having regard to the landscaping plan and my impressions on site, the proposed landscaping scheme is well designed. It would help to provide a soft edge to the development that is reflective of the surrounding countryside. In views from Low Road at present the site is open with a natural appearance aside from the aforementioned spoil and exposed earth.

11. Owing to their elevation and the considerable distance between them and the newly constructed dwellings, the proposed dwellings would appear somewhat

isolated from the rest of the estate and at odds with the aforementioned pattern of development. As a line of closely positioned dwellings, unlike those constructed under the 2018 permission, they would be poorly related to the existing settlement.

12. Furthermore, the proposed dwellings would be positioned between just 1.5 and 2.5 metres from the pavement edge. Given that the majority of dwellings are set back behind driveways and with more space between them, the proposal would be poorly related to the character and appearance of the existing estate. Furthermore, due to their proximity to the pavement at the entrance to the estate and their considerable height, the proposal would have a more urban feel than the rest of the estate or this part of the village. The development would contribute to a considerable sense of enclosure to this side of the road, in contrast with the character of the open land opposite and to the detriment of the rural setting.

13. Moreover, the construction of the proposed development would prevent the implementation of the aforementioned landscaping scheme, which would contribute to a verdant, open and natural edge to the settlement. Its replacement landscaping scheme would be much more limited and concentrated on the site boundaries. The appeal proposal would lead to the provision of a line of dwellings, positioned close together and to the pavement, that in my view would radically alter the entrance to the estate from one of an open verdant setting to an enclosed line of dwellings with an urban density and comprising extensive hardsurfacing.

14. For the above reasons the proposal would result in considerable harm to the character and appearance of the area. It would therefore conflict with Policies DM4, DM29 and DM46 of the Lancaster Local Plan Part Two: Development Management DPD (2020) (the LPP2) which together seek to ensure, amongst other things, that development proposals contribute positively to the identity and character of the area through good design, are well related to the existing built form of the settlement and are appropriate to their surroundings in terms of siting, scale, massing, design, materials, external appearance and landscaping. The proposal would also be contrary to the provisions of the Framework which, amongst other things, seeks to ensure new development is visually attractive and sympathetic to local character.

Affordable Housing

15. Policy DM3 of the LPP2 requires proposals for over ten dwellings in the 'rural east' (of which the appeal site forms part) to provide 40% affordable housing. Schemes of less than ten residential units are not required to provide any affordable housing in line with the Framework.

16. The appellant is of the view that no affordable housing should be provided in accordance with Policy DM3 and the Framework, due to it falling below the threshold of ten dwellings. The Council however view the proposal as piecemeal development and state that the affordable housing requirement should be calculated based upon the whole site: 74 dwellings in total (including the appeal proposal and 20/00277/FUL). In this regard I have been referred to case law[1] that provided three criteria to determine and assess the piecemeal

[1] Brandlord judgement (R (Westminster City Council) v First Secretary of State and Brandlord Limited [2003] J.P.L 1066

development of sites or/and aggregation of sites for the purposes of applying an affordable housing policy threshold. The three criteria include: a. the ownership of the site; b. whether the land could be considered to be a single site for planning purposes; and, c. whether the development should be treated as a single development.

17. I am also mindful of further case law[2] that endorsed the above approach but held the three criteria were not determinative and should help inform decision-makers in forming an overall planning judgement as to whether proposals would be aggregate development or not. In this regard I note the appellant's statement refers to the appeal site as being part of an existing larger development site being built out by the appellant. The appeal proposal lies within the 2018 site and taking into account the location of the proposal, design of the houses and shared infrastructure, the appeal proposal and the 2018 site would likely be viewed as a single development.

18. Taking the above into account, I am of the view that the proposal would represent piecemeal development of the wider site and therefore, in terms of affordable housing requirements, should be considered as part of that development. I accept that the Council took a different approach when considering 20/00277/FUL, although they have since accepted that this was a mistake, nonetheless I am required to take a decision on the current proposal, based on the information before me.

19. Notwithstanding the above, the appellant has provided a viability assessment prepared by ETP, assessing the whole site. ETP argue that it would not be viable to provide any additional affordable housing as part of this scheme. Based on the ETP appraisal, the scheme generates a residual deficit of £1,440,401, which ETP conclude is an unviable outcome even before any affordable housing is factored in. The figures have been independently assessed by the Council's viability consultant (CPV) who argues that when tested alongside the dwellings that have already been delivered, all seven dwellings could be viably provided as affordable dwellings (3 affordable rent, 4 shared ownership).

20. The PPG[3] advises that viability evidence should assess whether a site is financially viable, looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.

21. Starting with the benchmark land value (BLV), the PPG[4] states that this should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner and should reflect the implications of abnormal costs, site-specific infrastructure costs, and professional site fees.

22. In calculating their EUV, ETP state that they would expect to see land values of between £250,000 to £500,000 per hectare. Furthermore, they state that due to the site being allocated for housing in the Local Plan and a reasonable prospect for housing at this site, the upper values are considered most appropriate. ETP go on to refer to values contained within the Council's Local

[2] New Dawn Homes Ltd v SSCLG [2016] EWHC 3314 (Admin)
[3] Paragraph: 010 Reference ID: 10-010-20180724
[4] Paragraph: 014 Reference ID: 10-014-20190509

Plan Viability Assessment (2018) and concludes that the range between £250,000 and £425,000 per net developable acre or around £617,500 - £1m per hectare was considered appropriate for these types of sites, again taking into account the allocation in the Local Plan. Using these figures, ETP arrive at an EUV of £3,441,149 (£291,953 per net acre).

23. However, these findings do not accord with the approach in the PPG. The PPG[5] is clear that the EUV is the value of the land in its existing use. Existing use value is not the price paid and should disregard hope value. It is a hypothetical value based upon the existing use: an allocation in the Local Plan is not an existing use. Viability assessments are carried out on the basis that a site is coming forward for residential development and therefore should be unaffected by whether a site is allocated. The site was agricultural land prior to being developed and it is on this basis that the existing use should be calculated.

24. Another inconsistency with regard to the approach in the PPG is that the figures from the Council's Local Plan Viability Assessment are cited as being based upon scenarios with no significant abnormal costs. There has been some disagreement over what should be included as abnormal and site-specific infrastructure costs and I understand that the ETP figure has changed during the application process. However, in light of the review work carried out by CPV, I am more convinced by the higher figure of £1,455,581. Nevertheless, whichever figure is used, this is still a significant cost, and the site would therefore not be comparable to the sites referred to above.

25. Furthermore, as the EUV is a fixed figure, the only way the abnormal and site-specific infrastructure costs can be appropriately reflected is through an adjustment in the level of the premium uplift. ETP has not applied a premium uplift to their EUV and therefore the BLV provided is essentially the EUV. Given that the BLV is based on data from sites that do not have significant abnormal costs, and the BLV has not been adjusted to reflect the implications of abnormal costs, site-specific infrastructure costs, and professional site fees, I find that the ETP BLV calculations are not clearly substantiated which leads me to further doubt the financial viability information.

26. The CPV consultant bases their EUV figure on an underlying agricultural use taking into account the land quality which is Grade 3: Good to Moderate. Their value of £10,000 per acre (around £24,700 per hectare), does not appear unreasonable and aligns with the PPG. This results in a EUV of £1,356,332. This is less than half the EUV calculated by ETP.

27. Whilst there has been disagreement between the parties over CPV's use of a site in Trafford, the Warburton Lane case, for a comparison, the use of a premium based on a 15 times multiplier of the EUV does not appear unreasonable particularly as the premium of the case in question was based on a 10 times multiplier. On this basis CPV find that the scheme is viable when all seven proposed dwellings are affordable. Given that the CPV assessment has followed the approach in the PPG, I find this conclusion more convincing.

28. This reinforces my above reasoning and as the appellant has not followed the approach in the PPG as outlined above, it has not been adequately demonstrated that the proposal is unviable.

[5] Paragraph: 015 Reference ID: 10-015-20190509

29. Given that Policy DM3 requires the provision of 40% affordable housing across the estate as a whole, the proposed development would not provide a sufficient number of affordable dwellings, even when taking into account those that have previously been delivered. Therefore, it would conflict with Policy DM3 of the LPP2 and paragraph 63 of the Framework which seek to ensure new development provides on-site affordable housing where appropriate.

Planning Balance

30. It is common ground between the parties that the Council cannot demonstrate a five year supply of deliverable housing sites. Based on the Council's 2021 Housing Land Supply Statement this is limited to 2.6 years supply. This represents a substantial shortfall where paragraph 11. (d) of the Framework would be triggered, to which I turn to consider below.

31. Whilst the Framework refers to boosting significantly the supply of housing, the provision of seven additional dwellings would certainly contribute towards rectifying that shortfall. However, it would only make a small difference overall. The proposal would lead to some minor economic benefits through the construction and occupation of the dwellings, but these would be limited by the small scale of the proposal. The provision of new dwellings on the appeal site would provide for natural surveillance at a key location, being at the entrance to the estate, and would provide a minor benefit to security more generally.

32. However, I have found that the proposal would amount to considerable harm to the character and appearance of the area. Moreover, it would not provide any affordable housing. The support in the Framework and development plan for new housing is not unconditional. The Framework emphasises the need to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations[6]. This is a key objective of sustainable development. There is a critical need for affordable housing in the Local Authority area and approving this application for open market housing would reduce the proportion of affordable dwellings further. Good design is also a key aspect of sustainable development[7]. This leads me to the conclusion that the proposal would be contrary to the development plan as a whole.

33. Therefore, applying paragraph 11. d)ii), the adverse effects of allowing the appeal would significantly and demonstrably outweigh the benefits, when assessed against the policies taken in the Framework as a whole. There are no material considerations of such weight to lead me to conclude otherwise.

Conclusion

34. I conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR

[6] Framework paragraph 8. b)
[7] Framework paragraph 126