



Appeal Decision

Site visit made on 12 October 2022

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2022

Appeal Ref: APP/A2335/W/22/3295920

Land at Carnforth Brow, Carnforth, Lancashire, LA5 9RE, 350705, 470981

- 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 Back2Base Properties against the decision of Lancaster City Council.
 - The application Ref 21/00383/FUL, dated 29 March 2021, was refused by notice dated 2 March 2022.
 - The development proposed is 2no detached dwellings with associated access drive.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the site forms part of a larger residential development, and if so whether it should make provision for affordable housing.

Reasons

3. The appeal site is a triangular piece of undeveloped land on the edge of Carnforth. The site lies adjacent to a recently constructed estate of houses known as Netherbeck Meadows, and is bounded on the other two sides by a railway line and road, known as Carnforth Brow.
4. The Council has expressed no objection to the principle of erecting two houses on this site, which forms part of Area A, as identified in the submitted documents. The application was refused for a single reason, namely the lack of affordable housing provision.
5. The Local Plan identifies that there is a high level of affordable housing need within the district, with median and lower quartile house prices being more than 5 times median and lower quartile incomes. As a result, the housing market is inaccessible for many households, particularly those on lower incomes. To ensure that new development contributes towards the identified need, Local Plan Policy DM3 sets out specific requirements for affordable housing provision in different parts of the district.
6. Policy DM3 requires that, in Carnforth, affordable housing is provided in developments comprising 10 or more units. This reflects the thresholds for affordable housing provision contained in paragraph 64 of the National Planning Policy Framework (the Framework). The appeal proposal is only for 2 houses, so taken on its own, would not require any affordable housing provision.

However, the site is immediately adjacent to a development of 11 recently constructed houses. If it were viewed as forming part of that larger development, then the combined site would be of a scale which triggered an affordable housing requirement.

7. Both parties have referred to case law which considered whether a site should be combined with an adjoining development for the purposes of affordable housing contributions¹. The Brandlord case identified three criteria to assist with determining whether two development proposals could be aggregated or considered to form part of a larger whole. These criteria were: site ownership; whether the areas of land constitute a single site for planning purposes, and whether the proposals can be deemed to constitute a single development. These same criteria were subsequently used and accepted in the New Dawn case.
8. In the current appeal, there is no dispute that the wider site, identified in the submitted documents as Area A and Area B, is now in single ownership, although this was not the case prior to development, when there were two fields, separated by a hedge, with different owners.
9. Outline planning permission was granted for up to 6 dwellings on part of Area A in February 2015 (application ref. 14/00629/OUT). At that time, Area A had a different owner, but the site was subsequently purchased by the appellant, now known as Loxam Riley (Oakridges) Limited, who submitted the reserved matters application in June 2016.
10. In September 2016, an application was submitted for full planning permission for 5 dwellings on Area B (application ref 16/01257/FUL). The application was made by Global Cattle Exports Ltd, but the company had close links with Loxam Riley, which it appears the Council were aware of at the time. In September 2018, the entire site, including Areas A and B, was registered in the name of Loxam Riley (Oakridge) Limited.
11. Whilst Area A had a different owner at the time of the initial outline application, the wider site, encompassing Areas A and B, has been in common ownership since 2016, and the site has been built out by the same developer. Given this history, it seems reasonable to treat the site as being in single ownership for the purposes of this appeal.
12. Although subject to separate planning permissions, Areas A and B appear to have been built out as a single site. On the ground, there is no obvious distinction between Area A and Area B, and the impression is very much one of a single development. The two areas share the same access road off Carnforth Brow, which serves no other development. The style and materials of the dwellings provide a uniform appearance to the small estate.
13. The additional two dwellings now proposed on undeveloped land within Area A would also use the main access off Carnforth Brow, and the design and style of the houses would reflect those already built at Netherbeck Meadows. The proposed development would appear to form part of the larger estate. As such, there is no clear reason why the site as whole should not be treated as a single site for planning purposes.

¹ New Dawn Homes Ltd v Secretary of State for Communities and Local Government & Tewksbury Borough Council [2016] EWHC 3314 and Westminster City Council v First Secretary of State and Brandlord Ltd [2003] J.P.L 1066

14. Given these factors, it is reasonable to consider the appeal site as forming part of a larger development, in combination with the adjacent development of 11 houses. Aggregated together, the total site would provide 13 units. A development of that size on a greenfield site in Carnforth would trigger a requirement of 20% affordable housing provision on site, according to the table contained in Policy DM3.
15. I acknowledge that Policy DM3 does not specifically refer to the aggregation of sites, either in the body of the policy or in the explanatory text. The policy simply refers to proposals for new housing development, with affordable housing targets linked to development type, location and number of units. There is nothing in the policy to suggest that consideration of residential development should be limited to a specific site defined by a red line boundary. As I have found that the proposal would form part of a larger development of 13 units, it is therefore reasonable to apply the requirements set out in Policy DM3.
16. Unlike in the Brandlord and New Dawn cases, it does not appear that the appellant has deliberately subdivided the site to avoid affordable housing contributions. Rather, the situation has occurred as a result of the way in which planning permission was sought across the sites. However, this does not make consideration of this matter any less valid. The reserved matters application for Area A, and the full application for Area B were submitted by the appellant at a similar time, and the sites appear to have been developed together. The two dwellings now proposed on undeveloped land within Area A would be a continuation of that single, larger development. Given this, and in light of the pressing need for affordable housing in the area, the Council's position is justified.
17. I note that the initial owner of Area A had agreed to make provision for affordable housing as part of the outline application for up to 6 dwellings, but that planning permission was then granted without any affordable housing provision. However, this was due to a change in national policy at the time. In November 2014, whilst the application was being determined by the Council, a Written Ministerial Statement (WMS) was published which introduced small site thresholds for affordable housing contributions, an approach which has since been incorporated into national planning policy. The contents of the WMS would have overridden any requirements for affordable housing on small sites contained in the Council's Meeting Housing Needs Supplementary Planning Document 2013.
18. As a result of the WMS, the Council was no longer justified in requiring an affordable housing contribution as part of the outline application on Area A. However, a previous willingness to provide affordable housing on the site does not mean this matter cannot be considered again now.
19. No clear explanation has been provided as to why, when determining the full application for 5 dwellings on Area B in the same year, the Council did not consider whether that development, in combination with that on Area A, should trigger an affordable housing contribution. This may have been an oversight, but again, does not mean that the issue cannot be considered as part of the current proposal. I am required to consider the case now before me, based on the information provided.

20. The appellant has referred to a previous appeal in Mendip, which considered whether sites should be aggregated for the purposes of affordable housing contributions (ref APP/Q3305/A/12/2174713). In that case, adjoining land in the appellant's ownership had been developed in stages, following various grants of planning permission over a considerable period of time, with no suggestion that the site had been deliberately subdivided to avoid affordable housing contributions.
21. Whilst there are some similarities between the cases, the Inspector in the Mendip case found that the Council had originally considered part of the appeal site to be a discrete entity, and not part of a wider site. This was evident from the Council's initial resistance to development on that part of the site. Permission for residential development was subsequently granted on appeal, but given the Council's earlier position, the Inspector found that a change in approach, in which the site was viewed as being part of a larger development, was not justified.
22. In the Mendip case it appears that the different parts of the appeal site had formerly been quite distinct. There meant there was a clear reason not to aggregate the sites for the purposes of affordable housing contributions. It differs from the situation before me, in which the site was agricultural land, separated only by hedgerow, both parts of which the Council considered suitable for development.
23. For the reasons set out above, I conclude that the site does form part of a larger residential development, and as such, it should be subject to requirements for affordable housing. In the absence of any such provision, the scheme conflicts with Local Plan Policy DM3.

Other Matters

24. No objections have been raised in relation to the principle of the development, or to its effect on the character of the area. The site is well contained, and given its location, adjacent to existing housing and near to local services and facilities, I have no reason to disagree. By developing the remaining part of Area A, the proposal would make effective use of land, as required by Local Plan Policy DM1.
25. The Council has indicated that other impacts of the scheme, including noise, drainage and ecology, could be satisfactorily dealt with through conditions, and I have no reason to suppose otherwise.
26. The appellant has referred to a court case which considered whether a proposal which was found to conflict with certain development plan policies whilst being compliant with other relevant policies, should be refused². In that case, the judge noted that development plan policies may point in different directions, and it was for that the decision maker, in applying development plan policy, to decide which should be given greater weight. Once the policies, and the interaction between them, is understood, the decision to be made is one of planning judgement.
27. The development plan must be read as a whole, and the proposal before me does comply with a number of policies. However, given the clear need for

² R.(on the application of William Corbett) v The Cornwall Council v Stephen Tavener [2020] EWCA

affordable housing which is identified in the Local Plan, I give significant weight to the conflict with Policy DM3 in this appeal.

28. There is no dispute that the Council is unable to demonstrate a five-year supply of deliverable housing sites, and reference has been made to a figure of 2.6 years supply. This is a significant shortfall that needs to be addressed. Paragraph 11.d) of the Framework needs to be applied.
29. Paragraph 8 of the Framework identifies three interdependent objectives of sustainable development, economic, social and environmental.
30. The proposal would result in a minor economic benefit through the construction and subsequent occupation of the dwellings. The effect on the environmental objective would be neutral. In relation to the social objective, the provision of an additional two dwellings would contribute towards the overall supply of housing, but only by a small amount. Furthermore, it would provide additional market housing without contributing to the pressing need for affordable housing in the district.
31. The Framework supports the provision of additional housing, but this is not at the expense of other considerations. The social objective, as set out in Framework paragraph 8.b), highlights the need to support strong, vibrant and healthy communities by ensuring that sufficient number and range of homes can be provided to meet the needs of existing and future generations. The proposal would not contribute to the range of homes which is identified as being needed in the development plan. As such, the social objective is not met.
32. Whilst I have found that the proposal would provide minor economic benefits, these would not outweigh the harm caused by the lack of affordable housing provision. When assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits and the presumption in favour of sustainable development does not apply.

Conclusion

33. For the reasons given, I conclude that the conflict with the development plan is not outweighed by other considerations, including the Framework. The appeal is therefore dismissed.

R Morgan

INSPECTOR