The Planning Inspectorate

Appeal Decision

Site visit made on 25 April 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/D2510/W/22/3306142
Land off Low Road, Friskney PE22 8NJ
Easting (x) 546306 Northing (y) 355932

- 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 Lusso Homes against the decision of East Lindsey District Council.
- The application Ref S/053/02398/21, dated 19 November 2021, was refused by notice dated 26 August 2022.
- The development proposed was originally described as 'Siting of 23 single storey modular homes for over 55s'.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Lusso Homes against East Lindsey District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council's decision notice refers to the original description for 23 modular homes. However, the evidence before me suggests this was amended to 22 modular homes and the viability evidence before me is based on this updated figure.

Main Issue

4. The main issue is whether the development would make adequate provision for affordable housing and any other necessary infrastructure requirements arising from the development.

Reasons

5. Strategic Policy 1 (A Sustainable Pattern of Places) of the East Lindsey Local Plan (2018) (LP) defines Friskney as one of its 'large villages'. There is no dispute that the appeal site is a suitable location for the development. The evidence before me indicates that the site is allocated for housing in the LP and that there is a planning permission on the site for 24 dwellings from approximately 3 years ago. It is not clear whether that planning permission is still extant.

6. Strategic Policy 7 (Affordable and Low Cost Housing) (Policy SP7) confirms that the Council will support the delivery of affordable housing in the towns and

large villages across the District. In the Medium and High Value Area, on sites of 15 or more houses the Council will seek a 30% developer contribution towards the provision of affordable housing.

7. Policy SP7 confirms that its requirements shall apply unless it is demonstrated by a detailed and robust site specific assessment, commissioned by the developer and carried out by an accredited person that the viability of the development would be compromised such that a reduced level of contribution would be justified. The first choice for affordable housing provision will be mixed tenure sites and on site provision integrated throughout the site. Where on site provision cannot be made, the Council will accept alternatives including, but not limited to, a financial contribution equivalent to 50% of market value for rented accommodation, or 30% of market value for shared ownership.

8. The Council's Housing officer states that with previous park homes applications, they have sought commuted sums as registered providers do not usually wish to acquire such homes and they do not provide for the affordable rented accommodation that the Council needs. The appellant has not disputed that the affordable housing requirements should instead be met on site, and based on the Housing officer's experiences with such sites, I find no reason to disagree.

9. In terms of a commuted sum, 30% of the 22 homes equates to 7 affordable homes. The Housing officer confirmed that the tenure split set out in the LP is 70% affordable rent and 30% shared ownership. The Housing officer based their calculation on a park home value from another unspecified site at £160,000 per unit. When the formula in Policy SP7 is applied to this figure, the commuted sums would be 5 x £80,000 (50% of market value for rented accommodation) plus 2 x £48,000 (30% of market value for shared ownership). Therefore, based on the Housing officer's comments, I can see how the Council's initial request for an affordable housing contribution of £496,000 would have been calculated.

10. I find that the park home value of £160,000 on which the affordable housing commuted sum figure was calculated seems conservative based on the values provided in the various viability appraisals (VAs) before me. Even so, this is not to say a reduced level of contribution would not be justified if there is clear evidence that the viability of the development would be compromised were a full contribution to be made.

11. The appellant's case primarily focusses on the VAs carried out by Resilienti Group Ltd (RGL) and Lusso Homes (LH) and the differences between these and the VA carried out by the Council's appointed assessor, CP Viability Ltd (CPV). More particularly, the appellant disputes the sales values, ground rent and finance figures in the CPV VA. However, during the planning application process the appellant sought arbitration through a third party, Avison Young (AY). The findings of AY's VA which considered the evidence in the other VAs are also pertinent to my own assessment.

Sales Values

12. In applying higher sales values than the appellant, CPV suggested amongst other things that the appellant was advertising on their website a 2 bedroomed park home (990 sq ft) in Friskney for a price of £245,000. The appellant disputes this and suggests that the higher sales values related to another site to the north of Lincolnshire where the homes are manufactured by 'Prestige'.

Within their appeal submissions, the appellant suggests that the homes on the appeal site would be an inferior product manufactured by 'Sunseeker'.

13. However, I note that the RGL VA is based on 'Prestige' products and the email from Pygott and Crone estate agents appended to that appraisal also provides market values on Prestige products. Furthermore, there is no mechanism before me to specify the quality of the product that would be provided on the appeal site. These factors cast doubt in terms of the reliability of the sales values provided by RGL and LH.

14. The appellant has also referred to a 2 bed home sold for £79,950 in Sleaford. However, the specific circumstances in that case including the property type, quality and age of the home in that instance are not before me. Therefore, it is not clear why the sale price in that instance was significantly below the sales values in the various VAs before me.

15. The appellant also suggests that the sales values referenced by CPV for a site at The Paddock, Sleaford support their sales values. However, the prices for 2 bed park homes at that site were detailed as ranging between £170,000 and £229,950 with the latter being significantly above the sales values in the RGL and LH appraisals. Indeed, AYs appraisal considered the park homes on the market in Sleaford and found them to be the most comparable in terms of location. Overall, AY found that sales values more likely sat between the respective positions with the sales values applied being £200,000 for a 'detached majestic' unit and £220,000 for a 'detached residence' unit.

16. The appellant points to a RICS UK Residential Survey dated January 2023 which they suggest is very clear that in the last 12 months the property market has seen a significant reduction in both transactions and prices with a clear 'decline in demand' and that 12 month prices are negative across all parts of the UK. However, I have not been provided with a copy of this document and the extent to which this has impacted on sales values is unclear.

17. Taking all the above matters into account, I find the sales value assumptions made by AY most persuasive.

Ground Rent

18. The appellant disputes the methodology used by CPV which suggested that the investment value of the land on completion capitalising the ground rents would be £770,000. In that regard, AY agreed with the appellant that the yield should be applied to the net pitch fee after taking account of management costs. However, in reaching their land value of £550,000 the appellant suggests this includes agreeing to the yield included in CPVs VA. AY considered the yield applied by both CPV (7%) and the appellant (8%) was too high and so applied 6% which they advised was consistent with rates applied for other schemes they had valued for funding purposes. In the absence of detailed evidence to dispute AY's position that a yield of 7% is too high, I find no reason to diverge from the appellant's appointed arbiter's advice.

Finance

19. The appellant disputes that the finance costs allowed for at a 4% in the CPV VA is not acceptable. I acknowledge that the Bank of England base rate has risen over the last 12 months and at the time of writing this decision it currently stands at 4.50%. The appellant suggests the interest rate should be applied to

‘total development costs’ and provides an example of 4% over 2 years against the ‘total development costs’ in CPVs viability assessment which comes out at an interest cost of £355,297.

20. However, this does not address why the higher rate of 7% interest for finance costs when applied against the other inputs in the AY VA is not an acceptable methodology. Given my other observations, the appellant’s suggestions in respect of finance costs would in any case be inconclusive without more certainty on the other inputs.

Other considerations

21. The appellant confirms that for the purpose of the viability exercise they agree with the cost of providing the homes set out in the various VAs. However, they suggest that this cost has significantly increased between 10% and 25% over the past 12 months and that this does not include delivery. However, bearing in mind the range suggested and that no precise current costs of providing the park homes has been evidenced, I can only attach limited weight to this possibility.

22. AY’s VA included that the ‘Externals’ input was agreed between the parties at £768,950. This roughly aligns with the Wath Construction Ltd quotation of £770,000 dated March 2022 which is included with the RGL appraisal. The appellant has not sought to contest this figure on the basis that I were to find in their favour in respect of the other disputed inputs and in terms of their previous offer of an affordable housing contribution of £75,000.

23. In the alternative, the appellant contends that the services and infrastructure costs should be a minimum 16% higher than the previously agreed figure. Whether or not this is the case, given my concerns in respect of the other inputs, I cannot be certain of the overall effects of any such increases on the overall viability of the development.

24. Furthermore, The National Planning Practice Guidance (PPG) confirms that an assumption of 15 – 20% of gross development value may be considered a suitable return to developers. CPV’s VA applied a 20% developer profit but confirmed that this was strictly on the basis of the uplifted sales values in its appraisal. CPV were clear that if, for example, lower market values were applied, this would reduce the risk associated with the scheme and necessitate a reduction in the required developer profit. In reducing the sales values in its VA, AY did not provide any commentary as to why developer profit was retained at 20%. This is even more pertinent were I to apply the lower sales values put forward by LH. Nevertheless, I acknowledge that the figure of 20% used by the appellant while on the higher end of what is acceptable in PPG terms is not on its own determinative in this instance.

25. Notwithstanding, the above, even if I were to reach a finding on the basis of the AY VA, this identifies a minor deficit of circa. £80,000 below the benchmark land value (BLV). However, it also acknowledges that residual values are very sensitive to the appraisal inputs and applies a sensitivity analysis is applied in line with RICS and Planning Policy Guidance. This indicates that a 2.5% decrease in costs and 2.5% increase in value would result in a surplus of approximately £61,000 against the BLV, whilst a 5 % increase in values would result in a surplus of approximately £88,000 or £2,772 and £4,000 per unit.

26. AY concluded that given the relatively minor deficit produced by their appraisal and the sensitivity analysis applied, they considered that if an agreement could be reached on the basis of the range given, this would provide a reasonable contribution toward affordable housing for a scheme of this nature, based upon the developer taking a commercial view having regard to current market conditions. However, the appellant has now withdrawn their offer to make an affordable housing contribution of £75,000. Given the sensitivities outlined and my concerns in respect of the disputed inputs, I am not persuaded that the proposal would make adequate provision towards affordable housing.

27. Moreover, a healthcare contribution of £13,915 (£605 per dwelling) has been requested by the Lincolnshire Commissioning Group (CCG) to account for the increase in population that would result from 23 new dwellings. The request suggests that the increased population resulting from the development would be likely to place extra pressure on existing health provision, for example extra appointments requiring additional consulting hours. The CCG advise that this would in turn impact on premises, with extra consulting / treatment room requirements. The contribution is therefore requested to contribute towards expansion in capacity through remodelling/changes to layout or extension to existing facilities at Hawthorn Medical Practice and Old Leake Medical Centre as the development would be within their catchment.

28. A recalculation would be required to account for the reduction in the number of homes proposed to 22. Based on the CC's formula for calculation healthcare contributions, this would reduce the contribution required to £13,310.

29. The appellant will be aware of the requirement for a health contribution as it is referenced in the RGL VA and the Council's officer report. Without such a contribution, there is the possibility that the proposal would have an unacceptable impact on the provision of healthcare services in the area. Therefore, even if I had found that an affordable housing contribution could not be justified in this instance, I am even less persuaded that a comparably small healthcare contribution could not reasonably have been met.

30. To conclude, I am not persuaded that the development cannot make reasonable contributions towards affordable housing or the other infrastructure requirements that would arise, namely healthcare. In this regard, the development would be contrary to the affordable housing and planning obligation requirements of Policy SP7 of the East Lindsey Local Plan and the National Planning Policy Framework.

Other matters

31. The highway authority (HA) has confirmed that there would be a requirement to alter the position of the 30/40mph speed limit to the eastern end of the development. This would require a payment from the appellants of £2,800 to cover the costs of processing the Traffic Regulation Order. This matter is also set out in the Council's officer report, yet this has not been addressed and an appropriate mechanism to secure this payment is not before me.

32. In addition, the HA has advised that the proposal would also require construction of a bridge or culvert to cross 'the not insubstantial roadside watercourse'. As the internal road would be private, the HA has confirmed the bridge or culvert would not be adopted by them. The use of a planning condition would not be appropriate in terms of establishing a management

company and ensuring that future occupants of the proposed modular homes would be bound into an agreement to make on-going contributions towards future maintenance of the road, sewers and bridge or culvert. Such arrangements could only be secured with precision and enforceability as part of a planning obligation. Given no such obligation is before me, this further weighs against the proposal.

33. The appellant contends that the Council repeatedly changed the level of contribution sought. I am not aware of the full discussions that may or may not have taken place between the appellant's agent and the Council including any advice they may have received from their viability advisors. However, given the disputed positions and that CPV had advised the Council that the development could not make the full commuted sum for affordable housing; it would be not unusual for the Council to seek to reach a negotiated figure.

34. The BLV within the VAs carried out by CPV and Avison Young is agreed at £500,000 taking into account the affordable housing requirements of the extant planning permission on the site for 24 dwellings. However, there is nothing before me to suggest reserved matters have been approved and that conditions requiring provision of affordable housing and mitigation towards education have been discharged. Therefore, it is questionable whether the planning permission will be implemented and whether this remains a relevant factor in the BLV.

35. The appellant contends that in relation to a planning permission relating to another park homes site in the District, the LPA did not seek an affordable housing contribution. However, the appellant has also confirmed in their final comments that they have never tabled that the proposal would not be liable for an affordable housing contribution, only that it should be a nil contribution as a result of viability. Either way, I have determined this appeal on its individual planning merits and if the Council has not requested a contribution elsewhere, this does not automatically mean that one is not required for this appeal having regard to the development plan and its site specific circumstances.

Conclusion

36. In accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004), the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.

37. The development would not contribute to the District's affordable housing requirements and would fail to make any contributions to the healthcare and highway requirements that would be attributable to the development. In these respects, the proposal has the potential to put significant pressure on local infrastructure.

38. For the above reasons the appeal should be dismissed.

M Russell

INSPECTOR