
Appeal Decision

Hearing held on 25 April 2023

Site visits made on 24 and 25 April 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/C1435/W/22/3310505

Little Shepham, Shepham Lane, Polegate BN26 6NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a grant of outline planning permission.
 - The appeal is made by Orbit Homes against the decision of Wealden District Council.
 - The application Ref. WD/2022/0465/CD, dated 21 February 2022, sought approval of details pursuant to condition No.6 attached to a planning permission Ref. WD/2016/3047/MAO, granted on 2 March 2020.
 - The application was refused by notice dated 12 August 2022.
 - The development proposed is the development of up to 108 dwellings, new internal roads, and allotments.
 - The details for which approval is sought relate to the provision of affordable housing.
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Decision

1. The appeal is allowed and the details relating to the provision of affordable housing submitted pursuant to condition No.6, attached to planning permission Ref. WD/2016/3047/MAO, granted on 2 March 2020, in accordance with the application Ref. WD/2022/0465/CD, dated 21 February 2022, and the material submitted with it, are approved.

Application for Costs

2. In advance of the Hearing, an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issues

3. This is whether the details of the affordable housing submitted with a view to discharging condition No.6 attached to the original grant of outline planning permission are acceptable, or not, in the light of any potential impact on the capacity and functionality of roads and junctions in the Polegate and Stonecross areas, and the need for improved local bus services.
4. Linked to the conclusion on that matter, it is necessary to address whether any deleterious impacts in relation to the capacity of roads and junctions and/or bus services, are outweighed by any benefits that flow from the provision of a 100% affordable scheme.

Reasons

5. It is necessary, first, to set out a little of the background to this matter.

6. In March 2020, the Council granted outline planning permission for the development of up to 108 dwellings, new internal roads, and allotments on the site under Ref. WD/2016/3047/MAO.
7. Condition 6 attached to the grant of permission dealt with the provision of affordable housing setting out that: *The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework 2019 or any future guidance that replaces it. The scheme shall include: (i) the numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall consist of not less than 35% of housing units; (ii) the timing of the construction of the affordable and its phasing in relation to the occupancy of the market housing; (iii) the arrangements for the transfer of the affordable housing to an affordable housing provider [or the management of the affordable housing] (if no RSL involved); (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and (v) the occupancy criteria to be used for determining the identity of the occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.*
8. As set out above, the details submitted by the appellant sought to address those matters. The Council took issue with the 100% affordable nature of the scheme proposed by the appellant because, in summary of the reason for refusal, the condition provided for 35% provision and a 100% affordable scheme would reduce the amount of Community Infrastructure Levy (CIL) that the Council would otherwise receive which would be used to mitigate the highways impacts of the development, and the need for improved bus services in the area.
9. In my view, they were wrong to take that stance, for a number of reasons. First, contrary to what is set out in the reason for refusal, condition 6 does not provide for 35% affordable provision. It provides for *not less than 35% of housing units*. Obviously, 100% provision is not less than 35%. If the Council intended to set affordable housing provision at 35% then it could have done so by not using the phrase *not less than*. My attention has been drawn to subsequent decisions where this has been done. The first point then is that a 100% affordable scheme does not offend the terms of the condition.
10. The second point is whether the Council was right to take into account CIL receipts, a local finance consideration, when considering the details. In my view, they were not. Section 70(2)(b) of the Town and Country Planning Act 1990 (as amended) (the Act) says that in dealing with an application for planning permission or permission in principle the authority shall have regard to any local finance considerations so far as materials to the application.
11. It is evident from the wording of Section 70(2)(b) of the Act that the point at which the Council should have considered this local finance consideration was when it dealt with the original grant of outline planning permission. Put simply, if the Council wanted to protect its position in relation to potential highway impacts, and the need for improved bus services, through CIL receipts, then it should have done so when it granted outline planning permission.

12. It could have done so by not using the phrase *not less than* in condition 6. It did not and in seeking to salvage the situation when considering the details submitted in pursuance of condition 6, the Council took local finance considerations into account at too late a stage in the process.
13. The third point is that even if one thought it possible for the Council to take into account CIL receipts when assessing the details submitted in pursuance of condition 6, it could only reasonably refuse to approve the details if it thought the highways impacts resulting from a 100% affordable scheme would be unacceptable, or the residual cumulative impacts on the road network as a result of the scheme would be severe (with reference to paragraph 111 of the National Planning Policy Framework). There is nothing in the evidence to suggest that they would be. What is more, the relatively minor cumulative impacts identified in the Traffic Assessment were calculated on the assumption that the scheme would be 100% open market housing. The impacts from a 100% affordable scheme would be even less significant, because one can assume a lower rate of car ownership.
14. In terms of bus services, I do not doubt that the scheme would lead to some increased pressure upon them, and that they could be improved. At the Hearing, the Appellant submitted an Agreement under Section 106, with East Sussex County Council, that offered up a Bus Service Contribution of £5,000 towards the provision of an enhanced bus service allowing the existing Number 44 Cuckmere Community bus service to run a minimum of 2 days a week, thereby improving accessibility between the appeal site and Duttons Road. This would mitigate the identified impact of the scheme.
15. However, even if you assume that this local finance matter is something that can be taken into account at this stage, one cannot look at the impact of the 100% affordable scheme proposed on bus services in isolation. The Wealden Local Housing Needs Assessment says that *'it is clear that the provision of affordable housing is an important and pressing issue in the District'*. In that context, the benefits of the 108 affordable dwellings proposed would be very significant indeed. In my view, they would far outweigh the impact the scheme would have on bus services. On that basis, I am not satisfied that the proffered contribution properly meets the tests set out in paragraph 57 of the Framework, which reflect Regulation 122 of the CIL Regulations, because it is simply not necessary to make the development acceptable in planning terms.
16. For the sake of completeness, I should also confirm that in my view the benefits of the affordable housing proposed would far outweigh the highway impacts too, as well as the combination of highway and bus services impacts.
17. As a final point, there are no other concerns raised about the details of the affordable housing. Indeed, both the Town Council, and the Council's Housing Development Manager have expressed support for what is proposed.

Conclusion

18. On that overall basis, the details submitted in pursuance of condition 6 are acceptable and I intend, therefore, to allow the appeal.

Paul Griffiths

INSPECTOR

APPEARANCES

For the Appellant

Neil Cameron KC	Instructed by Pinsent Masons LLP
Gary Heard	Director Transport Planning, Stantec
Chris Wotjulewski	Director, Parker Dann
Helen Moore	Group Director, Orbit Homes
Kieran O’Leary	Senior Land Manager, Orbit Homes

For the Council

Stacey Robins	Service Lead, Planning and Environmental Services Division, Wealden DC
Michelle Edser	Transport and DC Manager East Sussex CC
Ben Lenton	Transport DC East Sussex CC

DOCUMENTS

Document 1	Completed Agreement under s106 dated 4 April 2023
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