



Appeal Decision

Site visit made on 15 July 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/L3245/Q/24/3344165

Land off Tilstock Close, Tilstock, WHITCHURCH, Shropshire SY13 3PG

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to discharge a planning obligation.
- The appeal is made by Mr R G Millership against the decision of Shropshire Council.
- The development to which the planning obligation relates is Residential development for the erection of 9 dwellings.
- The planning obligation, dated 20 November 2015, was made between Shropshire Council and Leonard Chesters David John Chamberlain and Peter Alan Owen (the original owners).
- The application Ref 23/01286/DSA106, dated 23 March 2023, was refused by notice dated 18 May 2023.
- The application sought to have the planning obligation discharged.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Policy CS11 of the Shropshire Core Strategy [2011] (CS) requires housing development to achieve an overall affordable housing target of 33% and for all sites, of 5 dwellings or more, for the provision of affordable housing to be made on site. The outline application was submitted with all matters reserved but indicative details showed that the site could be occupied by 17 dwellings. Furthermore, the size of the site suggested to the Council that it would be able to accommodate around 13 dwellings. Outline planning permission was granted for the proposal on 20 November 2015.
3. An affordable housing contribution was required to satisfy CS policy CS11. Consequently, the outline approval was subject to the provision of affordable housing. The level of contribution was to be calculated, in accordance with the Council's affordable housing SPD [2012], at the reserved matters stage when numbers would be known. Schedule 3 of the Legal Agreement requires the owner to submit a scheme demonstrating the details of the type and location of on-site affordable housing and for these units to be allocated in accordance with the Council's Housing Allocations Policy.
4. The reserved matters application was made in 2020 for 9 dwellings. The affordable housing proforma, submitted by the applicant, demonstrated that an affordable housing contribution of 15% would be required, being in area B. This amounted to the provision of 1.35 dwellings. This therefore required one on-site unit and the remaining requirement was converted to an off-site sum. The off-site sum of £31,500 has since been paid and the plot assigned as an affordable unit has been agreed to be Plot 5.

5. The 2014 Written Ministerial Statement¹ (WMS) identified that due to the disproportionate burden of developer contributions on small scale development, affordable housing should not be sought for sites of 10 units or less. This was revoked in July 2015 on the basis that, *inter alia*, the policy was intended to create blanket exemptions, to have immediate effect, to override local plan policies and was inconsistent with the statutory process.
6. Some of the objectives of the WMS were enshrined in policy through the publishing of the 2018 National Planning Policy Framework. Paragraph 63 of this stated that the "Provision of affordable housing should not be sought for residential developments that are not major developments [being less than 0.5ha], other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer)". This paragraph is also found in the latest version of the Framework at paragraph 65.
7. The relevant test for the proposed discharge of the Legal Agreement is section 106A of the Town and Country Planning Act 1990. Under Section 106A(6), the grounds on which an obligation may be discharged or modified are limited. This provides that where an obligation no longer serves a useful purpose, an authority may discharge the obligation. The courts have established that in this context 'useful purpose' means useful planning purpose.
8. Accordingly, the main issue is whether the obligation continues to serve a useful planning purpose.

Reasons

Five-year Housing Land Supply

9. The Council has indicated it did not have a 5-year housing land supply in 2013, at 4.95 years. Nonetheless, the Council has submitted its housing figures for the period of 2014² and 2015³. These demonstrate that the Council had a supply of 5.47 and 5.75 years respectively. As such, there is clear evidence to demonstrate that the Council had a 5-year supply of housing when it made its decision on the outline application.
10. Furthermore, in consideration of the outline application the Council found that the site was an edge of settlement development that connected well to the remaining village. It therefore provided a natural extension to the built envelope, enabling future occupiers good access to goods and services in accordance with the Framework's sustainable development objectives.
11. It is therefore unconvincing that the Council did not have a 5-year supply of housing at the time of determining the outline application. Moreover, there is insufficient evidence to demonstrate that the Council's affordable housing policy should have been subject to reduced weight as its objectives would have been unlikely to conflict with the Framework.

The calculation of the affordable housing sum

12. The Appellant notes that CS policy CS11 requires affordable housing to be on-site, but that the outline approval's obligation sought an on and off-site provision. However, the affordable housing sum, as calculated on the submitted

¹ House of Commons, Written Ministerial Statement (HCWS50), Dept for Communities and Local Govt 28 Nov 2014

² Shropshire Five Year Housing Land Supply Statement August 2014

³ Shropshire Council – Five Year Housing Land Supply Statement, August 2015

proforma for the reserved matters application, demonstrates that a 1.35 provision was required. Naturally this would need to be split between the provision of an on-site unit and the remaining residual component converted to an off-site sum equivalent to 0.35% of a unit.

13. The scheme was for 9 dwellings. The Appellant asserts that as the threshold in a designated rural area is for residential schemes for over 5 dwellings, only 4 dwellings would be subject to the affordable housing requirement. I do not concur with this logic. The affordable housing requirement is placed on a qualifying scheme as a whole, rather than only on those dwellings that would exceed the threshold. Accordingly, the affordable housing requirement is based on an equitable calculation, proportionate to the scale of the quantum of all proposed dwellings within the development.

Reserved matters scheme

14. The outline application was subject to a S106 Agreement for affordable housing to satisfy CS policy CS11. Further, during consideration of the application the Council noted that final housing numbers were not known, and the site exceeded 0.5ha. It appears that the WMS was a material consideration during the initial consideration of the outline application but was revoked prior to the application being determined. However, as the scheme was likely to deliver over 10 dwellings at the time, and was over 0.5 ha, it qualified as a major development. As such, it seems reasonable that a planning obligation was required to be entered into irrespective of whether the WMS was engaged or not.
15. The outline approval, and reserved matters scheme, must be read together. Therefore, whilst the planning obligation was entered into in 2015, the extent of the affordable housing was only able to be calculated in 2020. This accords with the Council's Affordable Housing SPD [2012], which states that for outline applications affordable housing will be calculated at the prevailing rate of delivery at the reserved matters application stage. The Council's consideration of the reserved matters would have required it to take into account all material considerations at the time of making this decision in 2020 as well as the obligation of the outline approval. These considerations included the Framework and the requirement to secure affordable housing for over 5 dwellings in designated rural areas. Furthermore, in paying the off-site contribution, the applicant demonstrated an ongoing acceptance and agreement of the requirements of the obligation.
16. The appeal site is within the parish of Whitchurch Rural which was designated as a 'rural area' in 2016. Although this designation was made after the outline application was determined, it predates the determination of the reserved matters application. It is therefore reasonable that the assessment of the reserved matters application took into account the policy context at the time of calculating the affordable housing sum and making the decision.
17. Taking this policy position into consideration, the requirement for the scheme to comply with the Council's affordable housing policy (requiring the provision of 1.35 dwellings) was reasonable. Moreover, the sum as a residual provision is detailed at clause 2.1 of the Agreement which states that "The Affordable Housing Contribution comprises financial amounts due in respect of the balance of the Affordable Housing Contribution remaining after the on-site contribution has been calculated". The requirement for the S106 Agreement was originally

sought for sound planning reasons and complied with policies within the development plan. Furthermore, policy and the Framework has not materially changed since the initial decision was made and no material considerations indicate a clear reason to alter this finding.

18. I conclude therefore that the obligation continues to serve a useful planning purpose and would fail to serve that purpose equally well if subject to modification or was discharged. As such, the proposed discharge would conflict with CS policy CS11 and the Framework for the above reasons.

19. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR