Appeal Decision

Hearing held on 17 June 2025

Site visit made on 17 June 2025

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2025

Appeal Ref: APP/W3520/W/25/3360015
Land at Meadow Lane, Thurston, Suffolk

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Matthew Homes Limited against Mid Suffolk District Council.
- The application Ref is DC/24/02211.
- The application sought planning permission for residential development consisting of 64 dwellings and associated highway, car parking and public open space without complying with a condition attached to planning permission Ref 4942/16, dated 8 January 2019.
- The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out in accordance with the drawings/documents listed under Drawing Schedule Sheet (Sheet no. 1 Job no. 15.033) and/or such other drawings/documents as may be approved by the Local Planning Authority as a non-material amendment following an application in that regard.
- The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning of the development.

Decision

1. The appeal is dismissed and planning permission is refused for residential development consisting of 64 dwellings and associated highway, car parking and public open space at Land at Meadow Lane, Thurston, Suffolk in accordance with the application Ref DC/24/02211 without compliance with condition 1 previously imposed on planning permission Ref 4942/16 dated 8 January 2019.

Preliminary Matters

2. The appeal form and other documents refer to an application for planning permission under section 73A of the Act[1]. However, at the hearing the parties agreed there has been no breach of condition 1 and that the correct reference is section 73 of the Act which I have referred to in the banner above.

3. There is a planning obligation under section 106 (S106 agreement/obligation) of the Act dated 20 December 2018 linked to the planning permission. A draft deed of variation to the section 106 obligation was submitted and the subject of discussion at the hearing. A final signed deed of variation dated 26 June 2025 was subsequently provided which I have taken into account in my decision.

[1] Town and Country Planning Act 1990 (as amended)

Background and Main Issue

4. Planning permission was granted in January 2019 for a residential development of 64 dwellings and associated works[2]. The original permission included condition 1 as set out in the banner above which requires the proposal to be carried out in accordance with the approved drawings. The condition was imposed 'for the avoidance of doubt and in the interests of proper planning of the development.'

5. The appellant sought to vary the condition by replacing the reference to 'Drawing Schedule Sheet (Sheet no. 1 Job no. 15.033)' with 'Drawing Register - Site Ref-347 dated 08 May 2024'. This would change the list of approved drawings by deleting drawing 101 Site Layout Rev C by BDG Design and adding drawing P.101 Site Plan by Matthew Homes, altering the amount and type of affordable dwellings.

6. The appeal is against the non-determination of the planning application. The Council's appeal statement indicates that it would have refused planning permission for a reason relating to the proposed mix and distribution of the shared ownership units. Therefore, the main issue in this appeal is the effect that varying condition 1 would have on the mix and distribution of affordable housing units.

Reasons

7. Policy SP02 of the Babergh and Mid Suffolk Joint Local Plan- Part 1 2023 (LP) outlines the Council's approach towards affordable housing, including a requirement for 35% affordable housing on greenfield sites of ten or more dwellings. It also requires the mix of tenure, size and type of affordable housing to be informed by the district needs assessment, local housing needs survey and other evidence, but this may be varied in exceptional circumstances where it is convincingly demonstrated that the required provision is not viable.

8. Table 4b of the LP outlines a need for various sized shared ownership and social/affordable rented units, with significant need for 2 bedroom units (32.1% for shared ownership and 28% for social/affordable rented) and substantial need for units with 3 or more bedrooms (42.6% for shared ownership and 49.5% for social/affordable rented).

9. The original scheme shows the provision of 22 affordable dwellings. This includes 16 affordable rented units comprising 2no. 1 bedroom two person flats, 2no. 2 bedroom 3 person bungalows, 9no. 2 bedroom 4 person houses and 3no. 3 bedroom 5 person houses. It also provides 6 shared equity units consisting of 2no. 1 bedroom 2 person flats and 4no. 2 bedroom 4 person houses. This mix meets the amount, tenure and size of affordable housing required by Policy SP02.

10. The proposal is for 8 shared ownership dwellings, retaining the previous 6 shared equity dwellings and changing the tenure of the previous 2no. 1 bedroom 2 person affordable rented flats. All other previously approved affordable units would become private housing.

11. The appellant's Financial Viability Assessment considers the proposed mix of 1 bedroom flats and 2 bedroom houses, concluding that the provision of 8 shared ownership homes would be viable. Along with subsequent additional information on foundation costs, testing by the Council's viability consultant found that this would be unviable as it calculated that the appeal scheme would generate a

[2] Application ref 4942/16 'the original permission/scheme'

residual land value of £618,564, lower than their adopted benchmark land value of £775,698. Nevertheless, due to the appellant's more optimistic assessment of values, the Council concluded that the appellant had demonstrated that the 8 shared ownership units would be viable. Therefore, the Council accepts the proposed amount and tenure of affordable housing units.

12. There is no dispute that the proposed 2 bedroom houses would help meet affordable housing needs. However, 50% of the proposed units would only be 1 bedroom flats when the LP indicates that the greatest need is for larger affordable units, and there is no substantive evidence indicating otherwise.

13. The Council considered the viability of an alternative mix involving 2 and 3 bedroom units and the appellant calculated that this would be unviable but, at the hearing, it was agreed that it was not relevant to consider this in the context of the current proposal. Notwithstanding this, the appellant has not considered the viability of other alternative scenarios which could provide larger shared ownership units in accordance with assessed needs. As such, the proposed mix and sizes of affordable dwellings would not meet the requirements of Policy SP02.

14. Even if it were demonstrated that the proposed mix would be the only viable option, the Council is concerned that the 1 bedroom flats would be highly unlikely to be accepted by a registered provider (RP) given their size and, in the case of the units on plots 9 and 10, contiguous with an open market housing unit. At the hearing, the Council indicated that 1 bedroom flats are not a saleable product for shared ownership tenure due to their affordability given the relatively high service charges. Further, RPs are concerned about the risk of complaints when the party walls of affordable and market housing units are shared.

15. The appellant stated that these are legitimate concerns, but do not take account of interest from RPs. In this respect, the appellant provided information to RPs, including the proposed layout, to gauge their interest in the scheme. The Council also contacted several RPs. Most indicated that they would not offer due to programme capacity or the scheme being too small.

16. Of the four organisations which originally expressed an interest in offering, at the hearing it was established that two are not RPs so would be unable to provide the affordable housing. Of the remaining two, Havebury indicated that they would no longer be interested in providing affordable homes on the site, giving different reasons to the appellant and the Council.

17. V&F Homes specialises in smaller affordable housing schemes and is the only RP potentially interested in making an offer for the proposed affordable housing. However, there is no correspondence or other evidence that indicates anything more than interest. As such, there is a high risk that the affordable housing would not be provided on site. The Council argues that units of two or more bedrooms that are not adjoined to open market dwellings would be more likely to attract RPs, and I have no reason to disagree.

18. Policy SP02 indicates that affordable housing should be met on site unless off-site provision or an appropriate financial contribution in lieu can be robustly justified and this contributes to the objective of creating mixed and balanced communities. Therefore, if a RP could not be found, a commuted sum would be required.

19. The S106 agreement makes provision for the originally approved amount and type of affordable housing. Whilst there have been changes in circumstances since it was signed in 2018, the S106 agreement includes an affordable housing contribution of up to £1,536,955 in the event that a RP cannot be found to provide the affordable units on the site. The eighth schedule sets out a formula for calculating the affordable housing contribution, including £49,000 per 1 bedroom 2 person flat and bungalow and £78,576.58 per 2 bedroom 4 person house that were to be provided as affordable housing units. At the hearing, the parties were unable to explain how these figures had been derived.

20. In terms of the 8 shared ownership dwellings now proposed, the Council calculates that an affordable housing contribution of £316,521 should be made if these units could not be provided on site. This figure was calculated using a 17.5% profit on gross development value (GDV) for market sale units and 6% profit on GDV for affordable sale units, a 16.5% profit figure overall. It uses the same residual land value found in the Council's assessment of the viability of the scheme.

21. However, the appellant considers that this undercalculates an appropriate developer return as it distorts the relationship between risk and reward. It is argued that homes for open market sale which would have been affordable homes if viability issues were not a concern are not subject to a pre-agreed sale and a contracted price to a RP, or subject to staged payments which ease cash flow. Instead, the appellant states that the 17.5% profit requirement should apply to the entire scheme, resulting in an affordable housing contribution of £71,979, though the appellant proposes to round this up to £80,000.

22. The Planning Practice Guidance (PPG)[3] indicates that for the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. The Council used a 20% of GDV figure in assessing its plan viability. Nevertheless, the overall profit percentages put forward by the Council and the appellant in this case fall within the range considered acceptable in the PPG.

23. There may be greater financial risk with the provision of market housing compared to affordable homes where a RP is on board, but in this case development on the site is well underway with some dwellings largely completed, others under construction and a sales office in situ. Further, the appellant purchased the site with the S106 agreement in place and their proposed £80,000 affordable housing contribution falls significantly below the existing requirements in the agreement, even taking account of the proposed reduced affordable housing provision.

24. The appellant's suggested commuted sum would result in a larger profit to the developer than the contribution suggested by the Council, at the expense of affordable housing provision in the area. Given the circumstances, I find that the £316,521 calculated by the Council would be a more appropriate commuted sum than the £80,000 put forward by the appellant. The appellant's relatively modest proposed contribution would be insufficient to contribute to the objective of creating mixed communities in Policy SP02.

25. Therefore, I conclude that varying condition 1 would not provide an appropriate mix and distribution of affordable housing units, contrary to Policy SP02 of the LP.

[3] Paragraph: 018 Reference ID: 10-018-20190509

Conclusion

26. For the reasons given above, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed, and planning permission is refused.

A Wright

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Richard Murdock	Woods Hardwick Planning
Mr Talys Nikam	Woods Hardwick Planning
Mrs Jenny Harper	Housing Expectations
Mr Martin Aust	Pathfinder Development Consultants Limited
Mr Barry Jordan	Matthew Homes Limited

FOR THE LOCAL PLANNING AUTHORITY

Mr Stuart Cook	Urba
Mr Robert Feakes	Mid Suffolk Council
Miss Jasmine Whyard	Mid Suffolk Council