



Appeal Decision

Site visit made on 9 August 2017

by **B Bowker Mplan MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 September 2017

Appeal Ref: APP/J3720/W/17/3172559

**Land to the north of Birch Place and Chestnut Way, Bidford on Avon
B50 4GD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Cranbrook Homes Ltd against the decision of Stratford on Avon District Council.
 - The application Ref 16/03508/OUT, dated 26 October 2016, was refused by notice dated 17 March 2017.
 - The development proposed is outline application for the erection of 23no.extra care bungalows, clubhouse, and related access and parking (0.825ha); change of use to create POS (0.75ha) (Hybrid application).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Full details of the public open space element of the proposal have been submitted for determination. The extra care bungalows and clubhouse aspect of the scheme have been submitted in outline form with all other matters reserved except access. The appeal has been determined on this basis.

Application for costs

3. An application for costs was made by Cranbrook Homes Ltd against Stratford on Avon District Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues are:
 - Whether the proposal would make adequate provision for open space, affordable housing and care/support packages for future occupants and;
 - Whether occupants of the proposed development would have acceptable access to facilities, shops and services.

Reasons

Open Space

5. The appeal site forms part of an area approved for public open space in association with an extant planning permission¹ for up to 125 dwellings. Although not constructed, the Council are concerned that the proposal would result in the loss of 0.85 hectares of public open space.
6. Core Strategy (CS) Policy CS.25 is of relevance and states that new housing development will enable an increase in or enhancement of open space and recreation facilities to meet the needs of its residents. It goes on to state that the loss of public open space without a suitable replacement will be resisted. The appellant considers that a separate application² submitted to the Council to provide natural and semi natural greenspace on land to the west of the appeal site would be a suitable replacement. The replacement space would be similar in size and within 200 metres of the appeal site and 100 metres of Chestnut Way. This level of accessibility would be meet the standards suggested within the Council's 2011 Open Space Audit.
7. The proposed layout³ for residential development at the adjoining site indicates residents would have access to the replacement public open space. Although the proposal would result in two distinct areas of public open space, they would be accessible and useable for residents. Consequently a suitable replacement for the public open space lost to the appeal proposal would be provided.
8. Owing to land ownership and related legal issues, a prior to commencement of development condition is before me that would require the completion of a planning obligation to secure the offsite replacement public open space. The legal agreement would also secure the provision of residential care packages, travel packs, and open space financial contributions.
9. The Planning Practice Guidance (PPG) outlines that in exceptional circumstances, a negatively worded condition requiring a planning obligation to be entered into before development can take place may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. Without prejudice to its case, the Council⁴ are satisfied that the appellant's suggested condition would accord with the PPG. In addition, the appellants raise no concern regarding the use of such a condition in the context of the PPG.
10. The PPG states that the use of a negatively worded condition to secure a planning obligation is unlikely to be appropriate in the majority of cases. It goes on to say that the heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the planning condition test of necessity is met and in the interests of transparency.
11. Whilst I note that the use of negatively worded condition is not a point of contest between the parties, based on the evidence before me, I am not convinced that the proposal is strategically important development and that the issues preventing the submission of a planning obligation are complex. Furthermore the heads of terms or principal terms as required by the PPG have not been provided as part of the appeal documentation. On this basis, no

¹ Council Ref 09/00247/OUT.

² Council Ref 17/00676/FUL, pending at the time of the appeal decision.

³ Council Ref 17/00672/REM, reserved matters application pending at the time of the appeal decision.

⁴ At section 6.2 of the Council's Statement of Case.

secure legal mechanism is before me to ensure that a suitable replacement site is provided in the context of CS Policy CS.25.

12. In such circumstances, Policy CS.25B criteria 1 and 2 apply and resist the loss of public open space without a suitable replacement unless it can be demonstrated that; there is an absence of need or it is surplus to requirements and; it does not make a valuable contribution to the amenity and character of the area. CS Policy AS.3 seeks the provision of additional accessible greenspace and play spaces for children and young people in Bidford on Avon given identified shortfalls.
13. The parties disagree on whether the proposal would result in a loss of parks, gardens and amenity greenspace or of natural/semi natural greenspace with reference to the 2014 Open Space Audit and Policy CS.25B (1). Based on the outline permission, the open space proposed at the appeal site was accounted for and classified as natural and semi natural greenspace as part of the 2014 audit. However, based on the evidence before me, namely the most recent approved application⁵, I concur with the appellant that the proposal would result in a loss of parks, gardens and amenity greenspace.
14. The 2014 Open Space Audit update identifies a deficit in unrestricted natural accessible greenspace and a surplus in parks, gardens and amenity greenspace. With an absence of need for parks, gardens and amenity greenspace, the proposal would meet Policy CS.25B criteria 1. Furthermore, as the open space approved at the appeal site has not been constructed it does not make a valuable contribution to the character or amenity of the area. Consequently, the proposal would meet Policy CS.25B criteria 2.
15. The Council have calculated that the provision of 23 extra care units of accommodation would give rise to the need for natural accessible greenspace and outdoor sport. The Council seek a financial contribution towards both of these public open space types. Based on the evidence before me, Bidford on Avon has a deficit of both natural accessible greenspace and outdoor sport space. However, I have no evidence before me to demonstrate what projects the contribution would be spent on, or any details on how the requested figures have been individually calculated.
16. Without any projects identified or justification regarding the amount of financial contributions sought, I cannot be certain that the contributions would be fairly and reasonably related in scale and kind, or directly related to the development and necessary to make the development acceptable. Therefore, the tests in Regulation 122 of the CIL have not been met and the lack of such an obligation carries no weight against the proposal.
17. In reaching this view, I have also taken into account the recently adopted Bidford on Avon Neighbourhood Development Plan (NDP). The appeal site falls within an area allocated as a Local Green Space by NDP Policy AM4. NDP Policy AM4 reflects paragraphs 76 – 78 of the National Planning Policy Framework (the Framework).
18. As the Chestnut Way site was not in use as a green space and did not comply with paragraphs 76 – 78 of the Framework, the NDP Examiner's Report included a modification to delete the site as a local green space. However, the

⁵ Council Ref 13/03115/FUL

Council disagreed with the modification citing an inconsistent approach in relation to a proposed local green space site at Russet Way. In addition, the Council within its proposed amendments to modification consultation document state that the local green space at Chestnut Way will be in use and therefore valued by the local community by summer 2017. Following consultation, the NDP (which included the appeal site designated as a local green space) was subject to a referendum and subsequently adopted by the Council.

19. Based on the evidence before me, including my site visit observations, it is clear that the Chestnut Way site is not in use as a green space. Consequently it is not demonstrably special to the local community. This factor represents the very special circumstances necessary to outweigh the conflict of the proposal with NDP Policy AM4. On this basis the resultant loss of local green space would not weigh against the proposal.

Affordable Housing and Care Packages

20. CS Policy CS.18 seeks to ensure that development comprising 11 or more use class C3 dwelling houses comprises 35% affordable housing. CS Policy CS.19C seeks to ensure that specialised accommodation, such as the proposed extra care bungalows, meet the needs of vulnerable people including elderly people. Of relevance, part 4 of Policy CS.19C seeks to ensure that arrangements are in place to ensure the delivery of appropriate care and support packages.
21. The Council requires a planning obligation to ensure the implementation and delivery of extra care housing and the provision of domiciliary care packages to residents. The obligation would ensure that the use proposed is restricted to that of Use Class C2 and thus is not subject to affordable house requirements set out in Policy CS.18. However, based on my reasoning above, the use of a condition to secure the necessary planning obligations would be contrary to the PPG. Consequently, no legal mechanisms are before me to ensure the proposal delivers extra care housing and the provision of domiciliary care packages. In the absence of the necessary provision of affordable housing and care packages, the proposal would be contrary to Policy CS.18 and Policy CS.19C.
22. In summary, I have concluded that despite the absence of a suitable replacement public open space, the proposal would meet the requirements of CS Policy CS.25 and NDP Policy AM4. However, this factor would not outweigh the conflict of the proposal with CS Policies CS.18 and CS.19C.
23. Therefore the proposal would not make adequate provision for affordable housing and care/support packages for future occupants. Consequently the proposal would be contrary to CS Policies CS.18 and CS.19, the requirements of which are outlined above.

Access

24. The appeal site is located within Bidford on Avon which is categorised as a Main Rural Centre by CS Policy CS.15 in recognition of its sustainable location for housing development and provision of local services.
25. The proposal would comprise 23 extra care units for the elderly and as such CS Policy CS.19 applies. Policy CS.19 requires that proposed specialised accommodation (including extra care) relate well to the existing settlement and provide easy access to services and facilities to enable residents to live independently as part of the community.

26. Based on the Council's measurements, the site is located approximately 800m from the High Street where the majority of facilities and services are available. Based on the appellant's measurements, Waterloo Road is roughly 300m to the east of the site and provides bus services that run to the village centre. The walk to Waterloo Road and the High Street would be along paved and lit streets in an overlooked residential environment. The distance to nearby facilities and services would be a regular, walkable and realistic option for elderly future occupants.
27. In addition, services and facilities available at the proposed clubhouse would go some way in meeting the needs of future residents. Furthermore, the appellant states that it is intended that the clubhouse would be made available to the wider community. Thus future residents would have additional opportunities to interact with the wider community.
28. In reaching this view I have taken into account the absence of a planning obligation to secure a financial contribution towards sustainable travel packs as set out by the Council in its Statement of Case. However, I have not been provided with substantive evidence to demonstrate whether such an obligation is necessary having regard to the statutory tests in Regulation 122 of the Community Infrastructure Regulations 2010. In these circumstances, the absence of such an obligation does not weigh against the proposal.
29. Therefore occupants of the proposed development would have acceptable access to facilities, shops and services. Consequently the proposal would meet the requirements of CS Policy CS.19 insofar as it relates to this matter. Of relevance, this policy requires specialised accommodation to relate well to the existing settlement and provide easy access to services and facilities, including public transport, enabling its residents to live independently as part of the community.

Other Matters

30. A number of benefits are associated with the proposal. The proposal would contribute towards housing supply in a sustainable location and assist in meeting a local need for extra care accommodation. In addition, the Government's White Paper 'Fixing our broken housing market' places emphasis on the housing needs of older people. Furthermore the appellant lists a number of indirect benefits for the National Health Service associated with extra care accommodation. The proposal also includes a clubhouse which would bring some benefit to the wider community.
31. A number of economic benefits would arise through direct employment opportunities, increased spend in the area and support to the construction industry. However in the absence of a planning obligation, there is lack of certainty regarding the end use of the proposal. Nonetheless, these noted benefits combined attract some weight in favour of the proposal.
32. Based on my reasoning above, the resultant loss of open space associated with the proposal and the absence of a contribution towards sustainable travel packs do not weigh against the proposal. However these matters can only be considered as neutral factors in the planning balance. I also note that as the Council can demonstrate a five year supply of housing land (undisputed), the presumption in favour of sustainable development as set out in paragraph 14 of the Framework is not engaged.

33. In this case the combined weight afforded to the noted benefits would be outweighed by the harm identified above regarding the absence of provision for affordable housing and care packages for future occupants.

Conclusion

34. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

B Bowker

INSPECTOR

Richborough Estates