
Appeal Decision

Inquiry held on 16 April 2014

by P W Clark MA MRTPI MCMi

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

Decision date: 29 April 2014

Appeal Ref: APP/J2373/Q/13/2207621

Land at Runnell Farm, Chapel Road, Blackpool FY4 5HS

- The appeal is made under Section 106BC of the Town and Country Planning Act 1990 against a failure to determine that a planning obligation should be modified.
 - The appeal is made by Kensington Developments Limited against Blackpool Borough Council.
 - The development to which the planning obligation relates is residential.
 - The planning obligation, dated 16 April 2012 was made unilaterally by John Albert Ashworth and Anne Mary Frith, John Albert Ashworth and Elaine Rosina Ashworth, Anne Mary Frith and David Albert Frith and Kensington Developments Limited to Blackpool Borough Council.
 - The application Ref 11/0260 is dated 12 July 2013.
 - The application sought to have the planning obligation modified by the removal of the First, Second and Third Affordable Housing Contributions.
-

Decision

1. The appeal is allowed in varied form. For a period of three years from the date of this decision, the planning obligation, dated 16 April 2012, made unilaterally by John Albert Ashworth and Anne Mary Frith, John Albert Ashworth and Elaine Rosina Ashworth, Anne Mary Frith and David Albert Frith and Kensington Developments Limited to Blackpool Borough Council shall have effect subject to the modifications as set out in the Schedule appended to this decision.

Procedural matters

2. An earlier hearing sought to determine this appeal but had to be terminated before it could conclude. The appeal was therefore heard afresh at this event. At the outset of this Inquiry, the Council announced that, following evidence of land values heard the previous day at another Inquiry dealing with a similar appeal by the same developer concerning land in the same locality as the current appeal, it had revised its viability appraisal. The Inquiry was therefore adjourned for the appellant to consider this matter.
3. On resumption, the appellant advised that agreement had been reached between the parties. The appellant submitted his own revised appraisal. Although this differs from the Council's in minor ways, the outcome is the same. An agreed schedule of modifications to the Unilateral Undertaking was submitted. Because there was no longer a contest between the parties, and with their agreement, the remainder of the event was conducted in the format of a hearing in which they jointly presented their agreed way forward and were questioned on it by the Inspector.

Main Issue

4. The issue is defined by reference to s106BA of the Act. It is whether the affordable housing requirement means that the development is not economically viable and, if so, how the appeal should be dealt with so that the development becomes economically viable.

Reasons

Background

5. As made in April 2012, the affordable housing elements of the planning obligation required the payment of money towards the provision of affordable housing off-site. This accords with Blackpool Council's Local Plan policy HN8 to provide affordable housing directly linked to Blackpool's housing priority neighbourhoods in the inner area of Blackpool, in contrast to its outer edge where the site is located. There were to be three equal payments of £539,850 made prior to the occupation of the 31st, 56th and 71st dwellings respectively.

Changed circumstances

6. For the purposes of the current appeal, the original viability appraisal was one jointly commissioned between the vendors of the land and the developers in order to establish the sale price of the land. At the time the viability appraisal was made, planning permission had been given in outline, with a condition limiting the maximum number of dwellings to be built to 83. Because the planning application for the development of the site was in outline, the viability appraisal made presumptions concerning the dwelling mix, numbers of dwellings and their floorspace.
7. No details of reserved matters have been approved but the viability appraisal submitted with this appeal is for a scheme of reduced intensity. The floorspace presumed would be reduced by about 11.7%. Although this reduction in intensity would inevitably reduce the viability of the scheme and although the floorspace presumed is not based on any approved detailed scheme, the Council does not take issue with this presumption. It has based its own appraisals on the same presumption of a less intensive scheme than originally envisaged.
8. In accordance with advice contained within the government's recently issued Planning Practice Guidance and that contained within its earlier advice (April 2013) on the Review and appeal of Section 106 affordable housing requirements, the Council has benchmarked the valuation against market values and sales prices of comparable sites in the locality and now confirms its agreement to the fixed price acquisition cost incurred by the developer. On this basis, it accepts that the affordable housing contribution of the original undertaking would make the development not economically viable.
9. I am satisfied that both parties' revised appraisals are based on up to date and benchmarked figures for sales revenues, land acquisition costs, construction costs, and marketing and letting costs and fees. They make appropriate allowances for a developer's return and for a finance rate for the expected roll-out period of the development. They are therefore convincing tests of current viability and so I conclude that the affordable housing requirement as originally entered into means that the development is not economically viable. I now

turn to consider how the appeal should be dealt with so that the development becomes economically viable.

The effect of the application

10. The application was to remove all three Affordable Housing Contributions from the planning obligation. Both parties now accept that their entire removal is more than is necessary to make the development viable. I agree. Although minor differences between their respective valuation appraisals still exist, both agree that a reduction in the total affordable housing contribution to £350,000, payable in three instalments of £117,000, £117,000 and £116,000 on unchanged trigger points, would render the development economically viable.
11. I am satisfied that this would be the case and so conclude that that is how the appeal should be dealt with in order that the development becomes economically viable. I therefore decline to accept the application to remove the three affordable housing contributions entirely. Instead I modify the planning obligation to amend the sums payable in each contribution. The developer confirms that on that basis he would want to progress the development immediately.

P. W. Clark

Inspector

Schedule of Modifications to the Unilateral Undertaking dated 16 April 2012

OPERATIVE PART

1 DEFINITIONS

Deletion of the definition of "First Affordable Housing Contribution" and its replacement as follows;

"the sum of One Hundred and Seventeen Thousand Pounds (£117,000)"

Deletion of the definition of "Second Affordable Housing Contribution" and its replacement as follows;

"the sum of One Hundred and Seventeen Thousand Pounds (£117,000)"

Deletion of the definition of "Third Affordable Housing Contribution" and its replacement as follows;

"the sum of One Hundred and Sixteen Thousand Pounds (£116,000)"

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ian Ponter, of Counsel

Instructed by Christine Baines (Head of Legal Services, Blackpool Borough Council)

FOR THE APPELLANT:

Roger Lancaster, of Counsel

Instructed by Anthony McAteer of McAteer Associates Ltd

DOCUMENTS submitted at the Inquiry

- 1 Council's Summary appraisal
- 2 Suggested Modifications to Definitions of Unilateral Undertaking
- 3 Appraisal Summary by Keppie Massie revised at 16 April

Richborough Estates