

Appeal Decision

Hearing held on 17 July 2014 and 19 September 2014

Site visit made on 17 July 2014

by J A Murray LLB (Hons), Dip.Plan.Env, DMS, Solicitor

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

Decision date: 30 September 2014

Appeal Ref: APP/R3650/A/14/2218533

**First Church of Christ Scientist & Churchmill House, Ockford Road,
Godalming, Surrey, GU7 1QY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd against Waverley Borough Council.
- The application Ref WA/2013/1985, is dated 8 November 2013.
- The development proposed is the erection of 31 Later Living apartments (Category II type) with communal facilities, parking and the erection of a replacement church and associated parking facilities with shared access from Ockford Road.

Summary of Decision: The appeal is dismissed and planning permission refused.

Application for costs

1. At the hearing an application for costs was made by McCarthy & Stone Retirement Lifestyles Ltd against Waverley Borough Council. This application is the subject of a separate Decision.

Main Issue(s)

2. The main issues are:
 - Whether or not the proposal would result in the loss of employment land, which ought to be retained;
 - Whether or not the proposal would be detrimental to the character of the area, the setting of the nearby Conservation Area (CA) and the setting of nearby Grade II listed buildings and therefore harmful to the amenities of the area;
 - Whether or not the proposal should provide the off site financial contributions which the Council seeks; and
 - What is the appropriate level of contribution to affordable housing.

Reasons

Employment land

3. The existing development on the site includes some 220m² of Class B1 office space, which would be lost through the proposed scheme. Saved Policy IC2 of the Waverley Borough Local Plan (LP), adopted 2002, indicates that the loss of suitably located industrial and commercial land will be resisted. Where such

loss is proposed, this policy requires the applicant to demonstrate that there is no need for the site to be retained for employment purposes. Paragraph 7.13 of the supporting text states that this is necessary to ensure that an adequate resource for future economic growth is maintained.

4. The Council contends that a marketing campaign is required to demonstrate that there is no longer a need for this employment space. No such campaign has been undertaken and indeed the office space is currently in use for that purpose, albeit on a flexible, short term arrangement. However, the policy and its supporting text do not include an explicit requirement for a marketing exercise. The National Planning Policy Framework (the Framework) simply states that policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. It is necessary to consider whether other evidence assists on this point, notwithstanding the absence of a marketing campaign.
5. The appellant provides evidence of a significant supply of alternative office accommodation within Godalming, and in the major office locations nearby, and concludes that there is a lack of local demand. The appellant accepted the Council's point that, just like the number of houses advertised for sale, the amount of office space on the market at any one time indicates the level of supply, but does not necessarily demonstrate a lack of demand. The appellant was unable to say how long any of the office space had been on the market.
6. I give due weight to the appellant's expert's view on the low level of recent demand and his opinion on the likely demand for office space in Godalming. However, the Council says the latest Experian report predicts a significant increase in employment; mainly office jobs in small and medium sized enterprises. Office accommodation of the type and size currently available on the appeal site could be attractive to such enterprises. It may not be ideally suited to the requirements of modern business, but my site inspection revealed no obvious reason why it should not function satisfactorily. In any event, a marketing exercise would provide the clearest means of demonstrating whether there is a need for this type of office space, in this location.
7. On the evidence before me, the lack of need for the existing office space has not been demonstrated as required by LP Policy IC2. Similarly, in terms of the Framework, I am unable to conclude that there is no reasonable prospect of the existing office space being used for that purpose. Nevertheless, the Council also accepted the appellant's evidence that some 220m² of office space could not be included in a mixed redevelopment scheme for this site without cross subsidy. In addition, it would be likely to result in the loss of about 4 residential units from the scheme, at a rough cost of half a million pounds and there would be practical difficulties in providing access and parking space without compromising the important consideration of security for elderly persons' apartments. On the available evidence, I am persuaded that including office space within a scheme of the type proposed would render it unviable.
8. I also take account of the fact that, as a result of changes introduced in May 2013, the change of use from Class B1 office use to C3 residential is currently permitted development¹ (PD) and will remain so until the end of May 2016. This is subject to a prior approval procedure, but the Council could

¹ By virtue of Class J of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

see no reason why prior approval would be withheld. The appellant did not put forward any evidence of the likelihood of those PD rights being taken up, but their existence does indicate a level of priority for housing provision in Government policy.

9. The Council accepted that the proposed loss of office space needs to be balanced against other factors. Given that office space cannot be included in a viable redevelopment scheme of this type, if I were to dismiss the appeal because of the loss of employment land, then an opportunity to provide additional housing in an appropriate and sustainable location would be lost. In circumstances where the Council cannot demonstrate that it has a 5 year supply of deliverable housing land², as required by the Framework, this is a material consideration of substantial weight. Furthermore, this proposal would contribute to meeting the critical need for housing for older people, highlighted in the National Planning Practice Guidance (NPPG), because of the projected increase in the number of households aged 65 and over.
10. The appellants contend that the scheme delivers other benefits. However, without considering those, I am able to conclude on the first main issue that, whilst the proposal would result in the loss of employment land, contrary to saved LP Policy IC2, that is outweighed by the other considerations identified.

Character and appearance

11. During the hearing, the Council described the appeal site as lying in an area of transition between the Ockford Road CA to the southwest and the Godalming Town Centre CA to the northeast. Nevertheless, the site is within neither CA. Given the proximity of the Town Centre CA boundary and the way that it wraps around the Grade II listed Richmond Arms, it is possible to see the site and that CA in the same view. Accordingly the appeal site is part of the setting of that CA, but the same cannot realistically be said of the more distant Ockford Road CA.
12. The only significant public views of the appeal site and its existing buildings are from Ockford Road. Though set back from the road frontage, the existing Christian Science Church on the appeal site has a significant presence in the street scene. Whilst a report from Beardmore Urban, submitted with the appeal, describes the Church merely as a "...highly competent but unremarkable example of a second quartile twentieth century church...", I am satisfied that it is a clearly legible public building, which makes a positive contribution to the street scene.
13. However, in terms of the setting of the Town Centre CA, the way in which the Church is set back from the road frontage gives greater prominence to the unprepossessing side elevations of the flat-roofed Reading Room and former Telephone Exchange buildings to the northeast. The eye is drawn to these elevations as one looks towards the CA and they have a negative impact on the street scene generally.
14. In the proposed scheme, the Reading Room would be replaced and the side elevation of the Telephone Exchange would be masked by the new Church building, described by the Council during the hearing as "a good representation of the Surrey and Godalming vernacular, which sits comfortably on the

² Although the Council is taking steps to boost significantly the supply of housing land, it acknowledged during the hearing that, as at April 2014, it could only demonstrate a 3.8 year supply.

frontage and has presence.” The Council’s description of the proposed church’s likely contribution to the street scene was “either as positive as the existing building or marginally less.”

15. I am satisfied that the proposed Church represents high quality design. The Council’s marginal concerns arise out of the relationship between it and the residential element of the development. I do not share those concerns. The proposed frontage element of the residential development would be set back a little, giving due prominence to the new Church. However, without seeking to directly mimic it, the design of that element would take cues from the façade of the Telephone Exchange building on the other side, whilst interpreting its components in a contemporary manner. Of particular significance are the central entrance door; the number, size and disposition of the windows; and the brick detailing around them. The scale of that front elevation would also reflect that of the Telephone Exchange and, contrary to the Council’s view, I consider that the proposed dormer windows would reduce the apparent bulk of the mansard roof.
16. I also note in passing that the entrance door on the front elevation is likely to be the residents’ primary means of pedestrian access to Ockford Road and the town centre. This will result in an active street frontage, enhancing legibility.
17. Though initially concerned that the new Church would be cramped by the residential elements to the side and rear, the Council conceded during the hearing that, in reaching this view, too much reliance had been based on two dimensional drawings, without having proper regard to the perspective of a live observer on the street. I am persuaded by the appellant’s evidence that the residential element represents a “rightly understated approach”, which would defer to the new Church as the dominant feature in the street scene and result in a successful ‘bookending’ of that building. Though understated, the residential element would be “mannerly and proportionate”. The overall result would be new buildings of high quality, which add interests to the street scene and remove existing detrimental views of the Reading Room and Telephone Exchange flank elevations.
18. The Council was also concerned about the impact of the flat roofed areas in the rear sections of the proposed residential development. On the south west side of the building, these flat roofed sections would be set back from the road and articulated around the external car parking and amenity areas. In the circumstances, the Council accepted that views of these flat roof sections from Ockford Road would be oblique and fleeting and they would not be seen in the same field of view as the CA, or read as part of its setting. Having regard to these circumstances, and the fact that existing prominent views of other flat roofed buildings on Ockford Road would be obscured by more interesting frontage elements of the proposal, these aspects of the scheme would not be harmful in views from that road. Furthermore, the articulation of these rear sections would reduce the appearance of mass and bulk, concerns which did not feature heavily in the Council’s evidence during the hearing anyway.
19. The north east elevation would have a projecting wing, with mansard roof, at its northern extremity but, aside from this, that elevation would be flat roofed and would not have the same degree of articulation as the opposite side and more limited detailing. Its appearance would be plainer, simpler and more functional. However, it would face the similarly functional and arguably plainer

flank elevation of the Telephone Exchange. There would be private views of that north east elevation from some of the flats on the south west side of Ladymere Place. However, they would be at a reasonable distance and dominated by the telephone Exchange in the foreground, such that the appeal development would not be unduly intrusive.

20. There would be more limited public views of the rear flat roofed sections of the proposal from just within the CA to the northeast, around the Mill Lane car park area. However, they would be seen at some distance, looking out from the CA, rather than towards it, such that they would not affect its setting. In so far as this aspect of the proposal might be regarded as detrimental, it would be significantly outweighed by the scheme's positive impact on the much more prominent Ockford Road frontage.
21. The Council cited concerns about the effect of the appeal scheme on the setting of listed buildings on Ockford Road and Mill Lane. However, it accepted that, as none of these are immediately adjacent to the appeal site, this is a secondary issue and, if there is no harm to the setting of the CA, there will be no harm to the setting of any of the listed buildings. I agree with that analysis. For the reasons given, I conclude on the second main issue that the proposal would enhance the setting of the nearby Town Centre CA, the character and appearance of the area generally and, in so far as it has any impact, the setting of the nearby Grade II listed buildings. Accordingly, the proposal complies with saved LP Policies D1, D4, HE3, HE8 and HE10 and the Framework, which together safeguard local character and heritage assets and promote high quality design.

Off site financial contributions

22. Saved LP Policy D14 provides that the Council will seek environmental and/or community benefits in appropriate cases. The appellant has submitted a planning obligation³ which provides for contributions to meet the Council's requirements in respect of library, sports and leisure and recycling facilities, as well as transport infrastructure and environmental improvements. Together with a monitoring fee, this package of contributions would total £62,253.11. The level of contributions is based on a tariff set out in the Council's Infrastructure Contributions Supplementary Planning Document (SPD), adopted April 2008. The appellant accepts that the tariff provides a useful starting point, but questions whether all of the contributions meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the Framework, namely that they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
23. The library contribution of £4,978.12 would be used for the provision of IT facilities for older people in the nearby library. A sum of £17,639.86 would be spent on equipment at the Godalming Leisure Centre for use in aquatic classes, suitable for older people. Whilst the Leisure centre is some 2.5 km away from the appeal site, it is the only one in Godalming and it is reasonable to suppose that people over 55 will make use of it. The £1,343.10 recycling contribution would fund recycling bins for the site. The £29,222.60 transport contribution would be used towards: accessibility improvements comprising dropped crossings and tactile paving between the site and the town centre; pedestrian

³ Hearing document 28.

safety and crossing improvements at Holloway Hill/Flambard Way and Station Road, all of which are close to the site; and bus stop infrastructure improvements. The environmental improvements contribution of £6,105 would be spent on resurfacing the cobbled areas of Wiggins Yard. This is within the town centre and is likely to be used by occupiers of the appeal development.

24. I conclude on the third main issue, that the proposal should provide the off site financial contributions which the Council seeks, in accordance with LP Policy D14 and the SPD, as all of the obligations listed above meet the relevant tests and the monitoring charge is reasonable and appropriate. There are some errors in recitals (2) – (6) of the planning obligation, because the colours referred to do not appear on the attached plan and the Council did not refuse a planning application; it failed to determine it. However, I am content that these errors do not undermine the operative parts of the Deed. Similarly, whilst the definition of “Appeal” in clause 1.1 also refers incorrectly to a refusal of the planning application, this is overcome by inclusion of the correct Planning Inspectorate reference. Accordingly, the planning obligation carries due weight in my consideration of this appeal.

Affordable housing

25. Saved LP Policy H5 provides that the Council will normally require at least 30% of the number of new dwellings to be provided as subsidised affordable housing. However, it also states that the scale of provision on individual sites will depend on the characteristics of the site, market conditions and other considerations and that commuted sums may be acceptable, where it is not desirable to incorporate affordable housing within the scheme. This approach is consistent with the Framework, which also stresses that developments should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.
26. The Council accepts, as do I, that a mix of open market and affordable housing within one building on this site would not be managerially feasible and the provision of 2 buildings would not be viable. It therefore seeks a commuted sum, but the appellant contends that the scheme cannot afford such a contribution, as viability modelling, set out in an assessment report⁴, identifies a surplus of just £54,765. On that basis, it is only by accepting a slightly reduced profit that the appellant can make the £62,253.11 of contributions set out above. Against this, a report commissioned by the Council identifies a surplus of £375,000⁵ available for affordable housing and other contributions.
27. The authors of both reports (Mr Barefoot for the appellant and Mr Coate for the Council) were present at the hearing. The difference between them is due to the fact that the appellant has calculated professional fees @10% and a contingency @5% on the gross construction costs, including abnormal costs. This gives rise to sums of £771,546 and £367,403 respectively. Mr Coate maintains that professional fees should only be calculated on the unit build cost (the net core construction costs) and not on the external works and infrastructure costs. Furthermore, he refers to the Homes and Communities Agency Development Appraisal Tool (HCA DAT) guidance notes, which indicate that contingencies are appropriate where there is a high level of risk, for example refurbishment, or large complex schemes. Mr Coate contends that

⁴ Hearing document 25.

⁵ Hearing document 17.

the contingency for the build element of the residential units should be low, as this is a product which the appellant builds regularly and therefore the risk is low. He suggests that, strictly speaking, a 5% contingency should only be applied to the "abnormals" but in fact he generously applied them to the higher unit build cost, albeit in error.

28. In line with the RICS Guidance Note - Financial Viability in Planning, 1st Edition published in August 2012 (the RICS GN)⁶, Mr Barefoot had regard to advice from an independent firm of Quantity Surveyors⁷, who prepared the cost plan. He argued that the HCA DAT is a simple and crude tool and in any event, this scheme, on a sloping site, with significant construction difficulties and involving some £5 million of net core constructions costs and £2 million of abnormal costs, is a large and complex scheme. Mr Barefoot, supported by Mr Gillingham, the architect, maintained that in their extensive experience, it is standard practice to apply a 5% contingency to the gross costs, including abnormals, and not just to the "less risky" elements of a scheme, as suggested by Mr Coate.
29. It is difficult to deny that this is a large and complex scheme and, even though the later living apartments element of the scheme is the appellant's usual territory, every site is different and can present unexpected challenges. Notwithstanding the scope for desk top studies and trial holes, digging into the ground can produce surprises, including contamination issues. Furthermore, regardless of the familiarity of the product, prices for materials and scaffolding etc can fluctuate. With due respect to Mr Coate, it is difficult to see why a contingency at 5% should not be applied to the total costs⁸. Similarly, given that the abnormal costs amount to some 28% of the total, I see no good reason why the usual 10% professional fees should not be charged on those costs, as well as the core construction costs. For the reasons given, I accept the appellant's evidence regarding the manner in which contingencies and professional fees should be calculated.
30. However, the Council pointed out that, by definition, some or all of the contingency may not be required. If it is not, then a surplus of anything up to £367,403 could become available for an affordable housing commuted sum. Whilst the appellant was critical of the Council for raising this point at the hearing, it did not request an adjournment to consider it. In any event, it did not represent a fundamental shift in the Council's position. It had argued that the level of contingency applied by the appellant was unjustified, whereas its alternative position is simply that the contingency should only be accepted as preventing a contribution to affordable housing if it is actually spent. The appellant could have taken that approach on its own initiative, just as it employed a simple device in the submitted planning obligation⁹ to ensure that, if I had concluded that any of the other contributions specified in the Deed did not meet the relevant tests, the appropriate sum would be applied towards the provision of affordable housing instead.
31. Mr Barefoot quoted from paragraph 3.6.4.1 of the RICS GN, which indicates that the "re-appraisal approach" may be more applicable to phased schemes

⁶ See the extract at paragraph 4.6 of hearing document 29.

⁷ BLB Kilminster Beer LLP – see appendix 5 of hearing document 25.

⁸ Whilst the section on viability in the NPPG (Permalink ID 10-022-20140306) does not include contingencies in the list of costs to be taken into account, that list is not intended to be exhaustive.

⁹ Hearing document 28, clause 10.

over the longer term, rather than single phase schemes to be implemented immediately and which require certainty. However, a re-appraisal of the scheme would not be required in this case; merely proof of how much, if any of the 5% contingency has been spent. There would be certainty, as the same total sum would be spent either on contingencies, or an affordable housing commuted sum, or a combination of the two. This approach could not undermine the viability of the scheme, the assessment of which assumes that the same total sum will be used to cover contingencies anyway. The appellant provided no reason why a suitable mechanism could not be provided in a planning obligation.

32. I conclude on the last main issue that the appropriate level of contribution to affordable housing is a commuted sum equivalent to any unused contingency. However, contrary to saved LP Policy H5 and the Framework, the appeal scheme makes no contribution to affordable housing.

Overall conclusion and balancing exercise

33. I have found that the appeal scheme would contribute to boosting a currently inadequate housing supply and meeting a specific and critical need for elderly persons' housing. Having regard also to the Government's approach to PD, I have found that these factors are sufficient in themselves to overcome the loss of a small amount of employment land, in breach of saved LP IC2. In addition I conclude that the scheme would enhance the character and appearance of the area, including the setting of the CA and nearby listed buildings. It would also provide £62,253.11 in off site contributions and the Council could not dispute that other benefits would include: providing employment during construction and through a concierge; increased footfall and local expenditure; releasing under-occupied family housing and equity into the economy; making efficient use of land with an energy efficient development; and providing a Church building which is fit for purpose and of benefit to the community.
34. I attach substantial weight to all of these benefits, but conclude overall that they do not overcome the failure to make any contribution to much needed affordable housing, contrary to Government and development plan policy. This consideration is sufficient in itself to justify dismissal of the appeal. It is unfortunate that this will delay the delivery of an otherwise beneficial scheme, but I note that there is a duplicate application before the Council and no apparent reason why that could not be progressed reasonably quickly, in the light of work undertaken on this appeal and my decision.

Decision

Appeal Ref: APP/R3650/A/14/2218533

35. The appeal is dismissed and planning permission for the erection of 31 Later Living apartments (Category II type) with communal facilities, parking and the erection of a replacement church and associated parking facilities with shared access from Ockford Road is refused.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Walton of counsel Alex Child	Instructed by The Planning Bureau Ltd Planning consultant, The Planning Bureau Ltd (Director)
Peter Barefoot, FRICS	Development viability consultant, Alder King property consultants
David Beardmore	Urban design consultant, Beardmore Urban
Stephen Gillingham BSc BArch RIBA	Architect, The Planning Bureau Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Barry Lomax MRTPI	Area Team Manager (Development Control), Waverley Borough Council
Tim Lipscomb BA(Hons) MRTPI	Case Officer, Waverley Borough Council
Sarah Wells BA(Hons) BTP MA (Urb Des) MRTPI	Planning Projects Team Leader (Urban Design Specialist), Waverley Borough Council
Sean Rix MSc IHBC	Heritage Officer, Waverley Borough Council
David Coate BSc(Hons) MCIB MCIH	Adams Integra

INTERESTED PERSONS:

Julian Gall	Christian Science Church
Bernard Jones	Christian Science Church
Kristina Sutton	Christian Science Church
Benjamin Nield BA(Hons) MSc	Grillo LLP Chartered Surveyors, Managing Agents for Ladymere Place, Ockford Road

DOCUMENTS SUBMITTED DURING THE HEARING

1	Drawing No 047.0007.100 – Refuse vehicle tracking
2	Statement of Common Ground
3	Updated list of section 106 contributions required
4	DAT PB – 3% Summary
5	Supplemental Employment Land Report
6	Residual Development Appraisal Comparative Analysis Sheet A
7	Statement re deemed reason for refusal 3 (infrastructure contributions)
8	Statement re deemed reason for refusal 2 (impact on heritage assets)
9	Godalming Conservation Area Map
10	Hearing Note 1 - Viability Appraisal Issues (Areas of Disagreement) ¹⁰
11	A3 copy of Document 6
12	Floor areas - changes consequent upon previous errors
13	Adams Integra Viability Report – August 2014
14	Email trail between the appellant and Council 9 July 2014 – 8 September 2014
15	Drawing MCS500/Drg 01 Rev B Landscape strategy (referred to in Alex Child's email of 8 September 2014 and showing the proposed 8m wide

¹⁰ Distils issues from Doc 11. Those not highlighted in red are just arithmetic consequences of changes

	buffer strip)
16	Email from the Council to PINS dated 10 September 2014 attaching Adams Integra Viability Report – September 2014
17	Adams Integra Viability Report – September 2014
18	Hearing Note 2 - Viability Appraisal Issues (Areas of Disagreement)
19	Residual Development Appraisal Comparative Analysis Sheet B
20	Email from The appellant to PINS enclosing the revised Statement of Common Ground
21	Revised Statement of Common Ground
22	Appellant's costs application
23	Drawing No 10-1905-101 Rev B Site plan
24	Drawing No MCS500/Drg 01 Rev B Landscape strategy
25	Alder King Financial Viability Assessment dated 21 July 2014
26	Map showing the Ockford Road and Town Centre Conservation Areas and listed buildings
27	Aerial photograph
28	Planning Obligation dated 19 September 2014
29	Hearing Note 3 - Viability Appraisal Issues- Building Contingencies and Professional Fees Issues (Areas of Disagreement)
30	Council's response to costs application