Appeal Decision

Hearing held on 18 December 2014

Site visit made on 17 December 2014

by P W Clark MA MRTPI MCMI

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

Decision date: 7 January 2015

Appeal Ref: APP/D1590/Q/14/2228062
175 London Road, Southend-on-Sea, Essex SS1 1PW

- 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 Venture Capital Associates Limited against Southend-on-Sea Borough Council.
- The development to which the planning obligation relates is to demolish existing building, erect five storey building of 27 self-contained flats and 215 sq m of commercial at ground floor level cycle and refuse store and lay out parking.
- The planning obligation, dated 1 June 2011, was made between Southend-on-Sea Borough Council and Venture Capital Associates Limited and the Royal Bank of Scotland.
- The application Ref 14/01179/S106BA is dated 23 July 2014.
- The application sought to have the planning obligation modified as follows: to remove the affordable housing obligations.

Decision

1. The appeal is allowed in modified form. For a period of three years from the date of this decision the planning obligation, dated 1 June 2011, made between Southend-on-Sea Borough Council and Venture Capital Associates Limited and the Royal Bank of Scotland shall have effect subject to the modifications as set out in the Schedule appended to this decision.

Procedural matters

2. This appeal is one of three heard at a shared Hearing in which material submitted was common to all three appeals. Nevertheless, separate decisions are made because each case concerns a separate address and different, although related, appellants.

3. An informal, unaccompanied site visit was made on the day before the Hearing.

Applications for costs

4. Prior to the Hearing applications for costs were made by Venture Capital Associates Limited against Southend-on-Sea Borough Council and by Southend-on-Sea Borough Council against Venture Capital Associates Limited. Both these applications were withdrawn in writing at the Hearing.

Main Issues

5. The main issues derive from the provisions of the Town and Country Planning Act which govern this type of appeal. They are; 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

6. The scheme in this appeal has yet to commence. Most of the risk of development remains and so, although I am aware that in some parts of the country developers are prepared to accept a return of 15%, for this appeal I accept the assertions of both parties' experts, (evidenced by paragraph 44 of appeal decision APP/X0360/A/12/2179141 summarising the targets on costs and on GDV of six national house builders, by paragraph 33 of appeal decision APP/R4408/Q/14/2216976, by paragraph 14 of appeal decision APP/W1145/Q/13/2204429 and from e-mails from the developer's bankers setting out their expectations for profit on costs) that a risk reward return of between 20% and 25% is a reasonable expectation for profits whether calculated on GDV or on costs, with expectations for profits calculated on the latter basis being sometimes higher still.

7. But, although there was a degree of concurrence between the parties on the residual valuation for this site submitted by Mr Dedman on the day of the Hearing, I am not convinced that the approach it takes follows the DCLG Guidance. Paragraph 10 of this refers to the current cost of building out the entire site (at today's prices) (i.e 2014), selling the market units in today's market (ie at 2014 prices). Only the definition of land value refers to the market value at the date of the original permission (ie June 2011 in the case of this appeal). By contrast, as evidenced by the answers to questions put at the Hearing, both parties had factored sale prices up from 2008 or down from 2014 to figures applicable at the time planning permission was granted.

8. In addition to the residual valuation presented by Mr Dedman on the day and commented on by Mr Murphy, the parties had submitted a total of five other valuations on various assumptions. From an examination of these, I find that the parties agree that current sale prices for this appeal in 2014 are £150,000. Although the Council's expert differs from the appellant in the method of valuing the sale prices of the affordable units, he accepts 50% of the value of the market units as a reasonable figure for the purposes of this exercise. Although the evidence of benchmarking is not before me, I have no reason to disbelieve Mr Murphy's statement that he has done some research to corroborate them. These are the figures which I believe should be used in assessing the current viability of the scheme. They produce the Gross Development Values set out in Mr Murphy's Development Appraisal report for the site as at June 2014 dated 2 December 2014.

9. At the Hearing, the Council's representative did not dispute the costs which Mr Dedman included in the residual valuation which he tabled on the day. These accept the Council's figures for land value at the time of planning permission and produce development costs of £2,990,000. If these are then compared with current development values the results would indicate profits on GDV of 23%, well within the range of current viability.

10. However, I note that the figures for developer's costs in this appraisal are far less detailed and appear to cover significantly fewer items than the costs estimates in Mr Murphy's valuation made on 2 December 2014. In so far as the items coincide, Mr Murphy appears to agree with Mr Dedman's costs but, clearly, a number of costs lines have been omitted from Mr Dedman's valuation submitted at the Hearing. I therefore take Mr Murphy's Development Appraisal of 2 December 2014 as the more accurate and complete.

11. This shows a return on GDV of 16.41% and a return on costs of 19.64%. On these figures, given the evidence from the developer's bankers requiring profits on costs of up to and exceeding 25%, the scheme is not viable and so I conclude that the affordable housing requirement does mean that the development is not economically viable and so the planning obligation needs modification.

12. Mr Murphy's report acknowledges this and suggests that the removal of one affordable unit would bring the scheme into viability. However, based on Mr Murphy's figures for the value of the affordable units and the market units, this would only move the developer's anticipated return on GDV to 18.3%. It would require the transfer of two units from affordable housing to market housing to bring the developer's anticipated return above 20% on GDV and so move the scheme into viability. I therefore conclude that this is how the appeal should be dealt with.

Other matters

13. I was referred by the parties to a number of other appeal decisions. I have taken note of these in so far as they shed light on the matters before me. But each case is unique and decided in relation to its own circumstances. None of the other cases referred to have bound me in considering the case the subject of this appeal, which has been determined on its own merits.

P. W. Clark

Inspector

Schedule

Modifications to the planning obligation dated 1 June 2011

1. DEFINITIONS

   "Affordable Housing Units" Delete "Twenty per cent (20%)" and insert "Three" Delete "2 x 1 bedroom dwellings" and insert "1 x 1 bedroom dwelling" Delete "3 x 2 bedroom dwellings" and insert "2 x 2 bedroom dwellings."

APPEARANCES

FOR THE APPELLANT:

Kevin Leigh, of Counsel	
David Dedman FRICS	
Michael Calder BSc(Hons) DipTP MRTPI	Associate, Phase 2 Planning and Development Ltd
Sean Callaghan	Partner, BTMK LLP
Brian Strickland	Director, Sandhurst New Homes and Venture Capital Associates

FOR THE LOCAL PLANNING AUTHORITY:

John Pugh-Smith, of Counsel	
Phillip McIntosh BRTP(Hons)	Team Leader, Planning Enforcement and Appeals, Southend Borough Council
Andrew Murphy BSc(Hons) MRICS	Lambert Smith Hampton
Amanda Rogers	S106 and CIL Officer, Southend Borough Council

DOCUMENTS submitted at Hearing

1 Statement of Common Ground
2 Appeal decision APP/X0360/A/12/2179141
3 Residual valuations at dates of planning permission for appeals 2228062 and 2228065
4 Extract from 39 Essex Street newsletter