



Appeal Decision

Hearing held on 20 November 2014

by **Stephen Roscoe BEng MSc CEng MICE**

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

Decision date: 18 December 2014

Appeal Ref: APP/X2410/Q/14/2225175

Land off Iveshead Road, Shepshed LE12 9ER

- The appeal is made under Section 106BC of the Town and Country Planning Act 1990 against the refusal of an application for a planning obligation to be modified in respect of the affordable housing requirement.
 - The appeal is made by Bloor Homes Limited against Charnwood Borough Council.
 - The application, Ref P/14/1223/2, is dated 16 June 2014.
 - The development proposed, to which the obligation relates, is residential development for up to 75 dwellings with associated garages, landscaping, infrastructure and open space. Principal site access to be provided via Iveshead Road, with four plots to be accessed via Brick Kiln Lane.
 - The planning obligation required the provision of 30% affordable housing, 70% in the form of rented units and 30% in the form of intermediate housing units.
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Procedural Matters

1. Apart from the appellant and the Council, the other parties to the appeal planning obligation had been notified of the details of the appeal prior to the Hearing.

Decision

2. The appeal is allowed and the planning obligation, dated 8 November 2012 and made between Bloor Homes Limited, the Council of the Borough of Charnwood, Leicestershire County Council, Martin Worth and Janet Worth and Howard Walker and Brenda Walker, is modified for a period of three years from the date of this decision as follows:
 - i. In Schedule 2 Paragraph 1 under Affordable Housing, '30%' is to be replaced with '17.1%', '70%' with '66.6%' and '30%' with '33.3%'.

Main Issue

3. The main issue in this case is whether the existing planning obligation requirement in relation to the provision of affordable housing results in the proposed development being unviable and, if so, whether the modification of the affordable housing requirement would be reasonable.

Reasons

Background

4. A viability appraisal was not carried out prior to the existing s106 obligation, which requires 30% affordable housing, being signed by the parties.

The appellant submitted two appraisals with the appeal application relating to the provision of 30% and 14% affordable housing on the appeal site at the time of the application. These appraisals were reviewed by DVS, the District Valuation Office, on behalf of the Council.

5. The appellant and the Council have submitted a Statement of Common Ground (SoCG) in relation to the appeal. This was submitted in draft in advance of the Hearing, with a signed copy then submitted as Document 2. The SoCG records that the following matters are agreed in respect of the appellant's viability appraisals: build costs; abnormal development costs; developer margins; and acceptable land returns for a willing vendor. It also records that the offers received from the Derwent Housing Association for either 30% or 14% of the properties are considered reasonable at their date of submission, although the Council wishes to see evidence that they remain current. The SoCG also advises that the gross development value that the scheme would deliver with either 30% or 14% affordable housing and the rate of sale of homes are not agreed.

Development Value

6. The appellant has undertaken a Market Research Report dated 8 September 2013 and an addendum to it dated 13 June 2014. The addendum identifies values achieved from the start of sales in March 2014 on a residential site under construction at Anson Road in another area of Shepshed. In the Hearing, the main parties agreed that the appeal and Anson Road sites were similar in terms of the proposed units and their location. Both sites adjoin the settlement boundary of Shepshed, with the Anson Road site being inside the settlement and the appeal site outside. In view of these factors, I consider that the values achieved at the Anson Road site are very relevant to the matters under consideration in this appeal.
7. The five sales at the Anson Road site during April 2014 achieved an average of just over £192 per square foot (sq.ft.). The addendum to the report then suggests that a net value of £190 sq.ft. for the appeal site would be more realistic and reflect the current market in Shepshed. At the Hearing, the appellant was also of the view that this reduction in value reflected the difference in unit types between the two sites and building cost increases between January and March 2014.
8. The appellant's 30% and 14% viability appraisals however use average market sales prices of £187.17 sq.ft. and £186.8 sq.ft. respectively. In the Hearing the appellant suggested that this further reduction from £190 sq.ft. reflected the actual house types now proposed, as property values had been considered on an individual basis. In relation to the 30% appraisal, this further reduction in value represents a reduction of £2.83 sq.ft. on 57,641m² or some £163,000. In relation to the 14% appraisal, this reduction of £3.20 sq.ft. is on 66,045m² and gives a figure of some £211,000.
9. Under the 14% appeal proposal, four bedroomed detached units represent some 68% of the total Gross Development Value of all of the market units on the site. This is a significant proportion. The appraisal shows them to have an average value of some £188 sq.ft..
10. At Anson Road, two four bedroomed detached units have been sold and achieved an average of some £202 sq.ft. net, after discounts. A third four bedroomed unit achieved approximately £185 sq.ft.. This third unit is however a link property and, as such, is very different to those that are

detached. There are few if any of these in the appeal proposal, and its value therefore carries little weight in the appeal. The two Anson Road units therefore achieved some £14 sq.ft. more than is projected for the four bedroomed units in the appellant's 14% scheme appraisal, or some £634,000 over the four bedroomed units as a whole. The incorporation of these values would make a significant difference to the 14% appraisal in increasing the residual funds.

11. I acknowledge however that no Anson Road properties were sold in the 8 weeks up to 13 June 2014 and that the sales could represent a release of pent up demand. Quicker sales are proposed in the appellant's 14% appraisal, and this has the effect of reducing finance charges in the appraisal. Furthermore, sales at the appeal site could result in a more competitive market with two similar housing developments associated with the same settlement. Also, whilst it has been agreed that the two sites are similar, I have not been provided with a breakdown of the proposed properties at the Anson Road site, and the £202 sq.ft. is based on a limited number of units.
12. In view of these points, whilst the £202 sq.ft. suggests a potential for additional value in the appeal site over that included within the 14% appraisal, it does not have sufficient credibility on which to base an appraisal for the appeal site. In my view however, it does provide the justification for not reducing the market advice provided in the 13 June 2014 addendum to the appellant's Market Research Report. I therefore consider that £190 sq.ft., without further adjustment, is a realistic net value to be adopted in any appraisal for the site. Such a value would generally result in an addition of £163,000 to the appellant's 30% appraisal values and £211,000 to the 14% appraisal values.
13. The Council's valuation advice from DSV suggests a private sales value of £13,357,030 on the 14% scheme. Over 66,045 sq.ft., this gives a value of some £202 sq.ft. Whilst this is similar to the four bedroomed units at Anson Road, the DSV data set ranges over the LE12 postcode area.
14. The Council has commissioned an Affordable Housing Economic Viability Assessment Report, dated April 2010, in order to inform the affordable housing policy in its emerging Core Strategy. The report suggests that the Borough of Charnwood has a very wide range of market values and that Shepshed is one of the lower value areas with a weaker housing market. The DSV data set only includes one Shepshed property, with others being situated in Quorn, Hathern and Sileby. Quorn and Hathern are said in the report to be situated in the high value rural areas, where the residual value of a single detached unit scheme on a 0.05ha site could be £201,000. Sileby is said in the report to be situated in the medium value urban areas, where such a residual value could be £82,000. In Shepshed, a comparable residual value is given as £53,000. Such variability therefore casts doubt on the relevance of the DSV advice, and indeed provides some support towards a value below £202 sq.ft. The DSV advice thus does not cause me to change my view that £190 sq.ft. is a realistic net value for any current appraisal on the site. It is also of note that the DSV advice adds that the advice could be reviewed if evidence to support the appellant's figures can be provided.
15. In response to the Council's refusal notice, the appellant has obtained updated affordable housing offers for the 30% and 14% schemes from a Registered Provider of affordable housing and another has declined to make an offer.

The Council, in the SoCG, considers these offers to be reasonable at their date of submission. I am therefore satisfied that the offer received is appropriate to be included in the appraisal.

Rate of Sale of Units

16. The appellant's appraisals are based on a rate of sales of two units per month. At Anson Road, 12 sales are now expected to be achieved in the first 22 weeks, although five of these are only at reservation stage. The appellant's rate therefore seems reasonable in that it is similar to the predicted rate at Anson Road.
17. The Council's DSV advice suggests that sales of three units per month would be a reasonable rate to include in the appraisals. This is higher than the predicted rate at Anson Road, and I consider that such a rate is much less likely to be achieved than the rate proposed by the appellant. Furthermore, the DSV advice again includes the potential for review if evidence to support the appellant's figures can be provided.
18. On this basis, I consider that the rate of sale of units in the appellant's appraisals, and the associated finance costs, are reasonable.

Existing Obligation Viability

19. From all of the above, I consider that, with the average value increase of £163,000, the appellant's 30% scheme appraisal would be based on prevailing and relevant viability evidence relating to the surrounding area in accordance with DCLG Guidance¹. Furthermore, the DVS considers the appellant's land payment figure to be reasonable for the existing site. The appraisal, as adjusted, then demonstrates that the existing affordable housing obligation makes the scheme unviable in current market conditions due to a shortfall of residual value against land costs.

Modifications to the s106 Obligation

20. The 1990 Act² sets out that, if the affordable housing requirement means that the development is not economically viable, then the appeal must deal with the application so that the development becomes economically viable. I therefore now turn to the effect of the additional value identified above on the 14% scheme.
21. The appellant's application to modify the obligation included a proposal that, for every £100,000 of combined net sales revenues in excess of that identified within the viability appraisal, an additional affordable unit could be generated. Payments in lieu of any units so generated would then be made in accordance with the obligation up to a maximum of 11 units. This is the number of affordable units lost between the 30% and 14% schemes. The £1,100,000 generally relates to the £1,221,399 combined additional revenues that the Council believe should be generated over that projected by the appellant for the 14% scheme.
22. Whilst the appeal application stated that this review mechanism was no longer proposed, the background evidence to it has not been withdrawn. In the Hearing, the appellant advised that the £100,000 figure had been rounded for ease of use and that a more realistic figure would be between £120,000 and

¹ Paragraph 17: Section 106 affordable housing requirements: Review and appeal: Department for Communities and Local Government: April 2013

² Sections 106BC (6) and 106BA (3)(a): Town and Country Planning Act 1990

- £140,000. There is however nothing to support such a higher figure, unlike the relationship between the £100,000 and the number of affordable units lost. Indeed, additional revenues of £1,221,399 related to 11 units would give some £110,000 per unit.
23. Turning now to my view that the appellant's values on the 14% scheme should be increased by £211,000 and relating it to the £110,000 per affordable unit, this could result in an additional 1.92 units. I have already found that to project the two Anson Road four bedroomed detached unit values onto the 14% scheme could result in a value increase of some £634,000, even though I have not then taken this forward for the reasons given. In my mind, it does however justify the rounding of 1.92 additional affordable units to 2 units. I therefore consider that the required number of affordable units should be increased to 12 or 17.1%.
24. In the Hearing, the appellant accepted that it would be practical to return individual open market units in the 14% scheme to their previous affordable status in the 30% scheme. If this were to be the case, the closest proportion to the existing obligation for an additional 2 units would lead to 66.6% rented and 33.3% intermediate.
25. The Council's Affordable Housing Economic Viability Assessment Report, in recognising the variability of market housing values across the Borough, suggests that the policy requirement for affordable housing should be similarly varied. It goes on to suggest that a reasonable figure for Shepshed would be 20%. Indeed, in the Hearing, the Council advised that if the appeal scheme was considered without the advice of the DSV, with which I do not agree, then the Council would be looking for 20% affordable housing. The report and the Council's potential position therefore offer some support for the 12 units, in the context that 20% would give 14 units.
26. This limited differential, and the fact that abnormal costs have been agreed between the parties, leads me to believe that a modification to 12 units would not set any dangerous precedent, as was suggested in the Hearing. Furthermore, the modification would incentivise a start of development, as sought by the Guidance³. Moreover, each case should be considered on its own merits and, from the Council's above report, there would still appear to be potential for higher proportions of affordable housing in the higher value areas of the Borough.
27. At the Hearing, local residents expressed concerns that the reduction in the number of affordable units has been made to units with gardens and that the proposed affordable maisonettes would be isolated and unsuitable for this edge of settlement location. The Council has however previously approved a reserved matters application in relation to the details of the units currently proposed for the site, which identified the affordable maisonettes.
28. In the Hearing, the Council did raise concerns about the detailed mix of unit types in the 14% scheme, despite not having done so previously. The existing s106 obligation is however silent on the detailed units to be used, leaving this matter to be submitted to the Council as an affordable housing scheme for approval. No representations have been made to modify this element of the obligation and, in my view, the mix and location of units are best addressed between the parties as set out in the obligation.

³ Paragraph 22.

29. I therefore conclude that the modification of the s106 obligation to provide 17.1% or 12 affordable units would be reasonable and would meet the needs of the 1990 Act⁴ in this regard.

Other Matters

30. The sales revenue review mechanism, suggested in the application to modify the s106 obligation, would operate on the sale of the 65th unit. The Act⁵ restricts the application of obligation modifications at appeal to a period of three years. In the context of the appellant's 38 month programme and the 36 month period over which any allowed modifications would apply, any review would occur at the end of the modification period. It therefore would have little effect in returning the development to economic viability. This would be the case even if the review was brought forward to the sale of the 60th unit, as suggested by the Council.
31. The Council's refusal notice also suggested the possibility of a review mechanism for the provision of additional affordable housing on the site should values increase. Such a review mechanism is not in the existing obligation. In view of the three year period over which modifications would apply and the purpose of the modifications, which is to return the development to a viable status at current values, I do not consider that the incorporation of a review mechanism to increase the number of affordable units is appropriate in this case.
32. It was suggested in the Hearing that the sale of social housing on the site could provide a more secure source of revenue. There is however no convincing evidence that this would be the case, and indeed one provider has declined to submit an offer. Furthermore, with a higher proportion of affordable housing, the residual value in the appraisal would suffer, leaving it well below the reasonable purchase price of the site.
33. I acknowledge that in the previous appeal, Ref. APP/X2410/A/12/2177327, the 21 affordable units were identified as a clear benefit and given significant weight. The provision of open market housing was also identified as a clear benefit but was given very significant weight. Furthermore, the Guidance⁶ notes that unrealistic s106 obligations can be an obstacle to house building. It also notes that stalled schemes, due to economically unviable affordable housing requirements, result in no development or community benefit. The change of proportions in favour of market housing therefore would not conflict with the previous appeal.
34. It was also suggested that the Borough now has a five year housing land supply. The site however already has planning permission, and therefore, on the basis of the evidence submitted, this matter is not relevant to the appeal. The ability to submit an application to modify a s106 obligation is widely available to those concerned, and therefore the modification of the appeal obligation would not be unfair to those involved in other developments. There is no evidence to support local concerns in relation to any increase in crime as a result of the proposed development. It was suggested that an intended sale of properties to the owners of the existing site had not been included in the appraisals. The appraisals have however been completed using

⁴ Sections 106BC (6) and 106BA (3)(a).

⁵ Section 106BC (13).

⁶ Paragraph 2

current market values in accordance with the Guidance⁷. Future sales mechanisms are therefore not within the scope of this appeal.

Conclusion

35. In view of all of the above points, I conclude that the existing planning obligation requirement in relation to the provision of affordable housing results in the proposed development being unviable and that the modification of the affordable housing requirement would be reasonable. I further conclude that the modification would comply with the 1990 Act and would accord with other guidance.
36. Having taken into account all other matters raised, none carry sufficient weight to alter my opinions. I therefore conclude that the appeal should be allowed.

Stephen Roscoe

INSPECTOR

Richborough Estates

⁷ Paragraph 10

APPEARANCES

FOR THE APPELLANT:

Mr A Sykes BA(Hons) BPL Land Director, Bloor Homes Limited
MRTPI

Ms T Williams TW Land Company

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Smith DipTP MRTPI Principal Planning Officer, Charnwood Borough Council

Mr D Scruton Housing Strategy Manager, Charnwood Borough Council

THIRD PARTIES

Cllr Ms J Lennie Local Ward Member, Charnwood Borough Council

Cllr Ms C Radford Local Ward Member, Charnwood Borough Council

Cllr Ms J Tassell Shepshed Town Council

Ms P Frekelton Local Resident

Ms B Cook Local Resident

DOCUMENTS

- 1 Hearing Notification Letter dated 23 October 2014
- 2 Signed Statement of Common Ground between the appellant and the Council dated 3 September 2014 and 18 November 2014
- 3 Suggested Commuted Sum Section 106 Obligation Modification