



Appeal Decision

Hearing held on 4 August 2015

Site visit made on 4 August 2015

by M Middleton BA(Econ) DipTP DipMgmt MRTPI

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

Decision date: 26 August 2015

Appeal Ref: APP/F4410/W/15/3005479

Land off Highfield Road, Askern, Doncaster, DN6 0LG

- 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 David Fielder Homes against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 10/01784/OUTM, dated 22 June 2010, was refused by notice dated 26 August 2014.
 - The development proposed is residential development.
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Decision

1. The appeal is allowed and planning permission is granted for residential development on land off Highfield Road, Askern, Doncaster, DN6 0LG in accordance with the terms of the application, Ref 10/01784/OUTM, dated 22 June 2010, and the plan submitted with it, subject to the conditions in the attached schedule.

Procedural matters

2. The application is in outline with all matters, apart from the access, reserved for subsequent approval. In accordance with the amendments to the Town and Country Planning (Applications) Regulations made in 2006 and brought about by the implementation of the Planning and Compulsory Purchase Act 2004, the proposal was accompanied by a Design and Access Statement that included a sustainability statement and an Illustrative Master Plan. Together, they suggest that 49 two storey dwellings and a block of apartments, with an unspecified number of dwellings, would be built on the site. Whilst providing information on the possible scale of the buildings and the site layout, they are no more than an illustration of one way in which buildings, whose appearance and location are reserved matters, could be designed and sited on this site.
3. The appeal was submitted two days before the deadline. The Appellant requested an Inquiry but the Council preferred a Hearing and the Planning Inspectorate considered that in the circumstances, that was a better procedure. Article 33 of the Development Management Procedure Order Regulations 2010 (as amended) now requires Appellants to provide their full statement of case to the Secretary of State when making the appeal. Once the appeal deadline is reached, there is no opportunity to submit supplementary evidence until the Hearing and then it is only at the discretion of the Inspector. This is different to the Inquiry procedure and the Appellant did not submit what it considered to be a full statement of case with its Appeal submission. Because of the lateness

of the appeal and following its decision that the Appeal should be determined by way of a Hearing rather than an Inquiry, there was not an opportunity for the Planning Inspectorate to request one before the Appeal deadline.

4. The Appellant's agent thought that her client's case had been prejudiced and brought two lengthy witness statements with appendices to the Hearing. She pointed out that her client now regarded the two previous financial appraisals that had been submitted on its behalf, to be deficient and that my understanding of its case would be improved if the new evidence was admitted.
5. The Appellant's discussions with the Council and its financial advisers had been based on the previous assessments and the Council's case against the appeal was prepared on this basis. Nevertheless, following an adjournment to appraise itself of the new evidence, the Council decided not to request a longer adjournment. I therefore accepted the statements and the Hearing concluded later that day. I have used them to appraise the Appellant's case and have only had reference to the previous financial assessments, particularly the more recent one (2013) from Moreton Homes, because the Council's financial case was prepared in response to it.
6. Whilst a draft Statement of Common Ground accompanied the Appeal, this did not identify the common ground between the Appellant and the Council in their respective financial assessments and more fundamentally there is no comparison of the latest appraisals provided by the parties.

Background

7. The appeal site was allocated for residential development in the Doncaster Unitary Development Plan and the principal of residential development is acceptable. On the basis of about 50 dwellings being constructed on the site and with localised widening along Highfield Way, adjacent to the site access, there are no objections from the Council acting as Highway Authority to the proposal.
8. In June 2013 the Council resolved to grant outline planning permission for residential development, subject to the Applicant entering into an agreement under Section 106 of the Town and Country Planning Act 1990. This was to cover the policy requirements for 26% of the dwellings on the site to be provided as affordable housing and a commuted sum, based on 10% of the residential land value of the site, to be provided in lieu of open space provision on the site. The agreement was never signed and the permission not issued.
9. Despite the submission of two viability statements by the Applicant that purported to demonstrate that the development would not be viable if the Council insisted on the provision of affordable housing and a financial contribution towards the provision of off-site recreational facilities, after taking valuation advice, the Council resolved to refuse planning permission because the proposed scheme fails to contribute towards open space and affordable housing provision in the local area.

Main Issues

10. From all that I have read, seen and heard I consider the main issues to be whether it is appropriate for the proposal to make a contribution towards the provision of open space and/or recreational facilities within the area and provide some affordable housing.

Reasons

11. Paragraph 176 of the National Planning Policy Framework (Framework) says that *"Where safeguards are necessary to make a particular development acceptable in planning terms, the development should not be approved if the measures required cannot be secured through appropriate conditions or agreements"*

Open space and recreational facilities

12. At paragraph 73 the Framework also says that *"Access to high quality open spaces can make an important contribution to the health and well-being of communities"* and *"information gained from assessments of needs should be used to identify what open space, sports and recreational provision is required"*
13. Policy RL4 of the Doncaster Unitary Development Plan (UDP) seeks to remedy local public open space deficiencies, within existing residential areas, by requiring local public open space, principally of benefit to the development itself, within new residential developments in accordance with a set of standards. 10-15% of the total site area of new developments with over 20 family dwellings should be laid out as public open space except where the local public open space provided would be less than 0.4 hectares. In such circumstances the Borough Council may require the Applicant to provide a commuted sum in lieu of open space, to be used for the enhancement of an area of existing open space in the vicinity of the development site.
14. The appeal site is indicated to be 1.9 hectares in area. 10% would be 0.19 hectares, 15% would be 0.28 hectares. Both are significantly below the policy threshold. Additionally, the 2008 Doncaster Greenspace Audit suggests that Askern Ward is not deficient in public open space. As a result the Council and Appellant informally agreed to a commuted sum of £43,000 in lieu of the on-site provision. This was to be spent on the provision of play equipment at the recreation ground immediately to the east of the appeal site. The Design and Access Statement proposes the construction of a dedicated footpath from the development into this site. As this large area of open space currently has no children's play facilities, this seems to me to be the most appropriate solution.
15. However, during the course of the appeal, the Appellant suggested that the open space requirement could be provided on three acres of land to the south of the appeal site, which the Appellant owns and which is within Flood Zone 2 and therefore not likely to receive planning permission for residential development. It is not clear how this area would be laid out but if it is to be meaningful public open space, even of an amenity nature, there should be a requirement for access, interpretation and management, all of which if properly assessed and implemented could give rise to the need for a significant financial contribution in addition to the land. Furthermore, although the Case Officer is alleged to have indicated that such a solution would be acceptable to the Council, such advice is clearly contrary to policy and is not consistent with the advice from Environmental Planning.

Affordable housing

16. Policy CS12 of Doncaster Council Core Strategy (CS): *Housing mix and affordable housing* requires affordable housing to be delivered on housing sites of 15 or more dwellings. The appeal proposal at above 50 dwellings is clearly

well in excess of this. The proportion, type and tenure split is to reflect the latest Strategic Housing Market Assessment (SHMA), which at the time of the adoption of the CS was about 26%.

17. The 2011 SHMA suggests that 235 affordable dwellings per annum (d.p.a) should be being provided in Doncaster. This is a small increase from the 223 d.p.a. suggested in the 2008 assessment. The evidence suggests that actual provision has fallen short of the needs estimated in the CS. This, together with the increased requirement, suggests that reductions in provision at eligible sites should not be agreed lightly.
18. Whilst paragraph 173 of the Framework does say that *"To ensure viability, the costs of any requirement likely to be applied to development, such as requirements for affordable housing should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable development to be deliverable"*, at paragraph 50 the Framework also says that *"To create sustainable, inclusive and mixed communities, local planning authorities should plan for a mix of housing"*.
19. Policy CS12 and UDP Policy RL4 are both consistent with the Framework and should not be lightly overturned. Therefore unless the requirements, when applied to the development, are clearly and demonstrably making it unviable then they should not be set aside.

Viability

20. The Appellant submitted a new viability appraisal to the Hearing, using a base date of September 2014, which is consistent with the final appraisal undertaken by the District Valuer (DV) on behalf of the Council. Like the DV it has used the primary assumptions put forward in the Moreton Homes analysis and used the Homes and Community Agency's Development Appraisal tool and supposedly the development industry standard cost assumptions and allowances. It is alleged that it was prepared to simplify the debate surrounding the matters under consideration but like the Moreton Homes analysis, it makes no allowance for affordable housing or the provision of public open space. Parts of the Appellant's submission now lack detail and overall it is noticeably more generalised than the DV's analysis. More fundamentally, it is not easily comparable with that assessment and there is no Statement of Common Ground covering this.
21. The Appellant now makes the point that the appeal is in connection with an outline planning application where the detailed development mix and site layout proposals cannot be ascertained. Consequently it is considered appropriate only to undertake a high level review at this juncture. However, without a more detailed assessment of what the development is likely to consist of, such a superficial analysis will inevitably have to make a wide range of assumptions that in reality could be incorrect. Having said that, the Appellant then goes on to claim abnormal costs based on alleged partially known site conditions. This seems to contradict the generalist approach.
22. The appeal proposal was accompanied by a design and access statement with an accompanying layout plan. The Moreton Homes assessment is based on a site layout and house types prepared specifically for that purpose. These should have been prepared having regard to site constraints and the local

housing market. In the circumstances of the appeal site, particularly its development constraints, their use as a starting point is to be preferred to the industry norm.

23. The DV's analysis provides for 10 affordable housing units (15.6%), which although based on the analysis undertaken for the Council in October 2013, by Adams Integra, is nevertheless significantly less than the policy starting point of about 26%. Provision is also made for a £43,000 contribution towards off-site open space improvements. The DV's assessment produces a super-profit of about £38,000, the Appellant's less than £1,000. They assume a developer profit of 16.5% and 16% respectively on valuation, although the DV's figure on the market housing element is slightly higher to allow for the application of a 5% profit to the affordable housing.
24. The difference in super-profit is somewhat surprising as the Appellant uses the DV's land and dwelling valuations, does not include the alleged abnormal costs and its end product has a larger number of higher value dwellings. It seems to arise from noticeably higher assumed costs, particularly build costs, on the part of the Appellant.
25. Plot build costs, in both cases, are supposedly based on BCIS¹ data for estate housing development, adjusted to the Doncaster market in both instances. The DV arrives at a figure of £806 per square metre (p.s.m), including preliminaries and using the median build cost figure, the Appellant £901. The difference at more than 10% is significant but there is no narrative from the Appellant to explain why the DV's figures are wrong. When the estimates for external works are added in, the DV's costs are £964 p.s.m. and the Appellant's £991. This is less of a difference but largely accounted for by the DV's use of more generous costs for external works. The Moreton Homes analysis suggests a comparative figure of £965, almost the same as the one arrived at by the DV.
26. Despite the Appellant's denial that Moreton Homes prepared an appraisal in order to make a meaningful financial offer for the site, their accompanying letter refers to the Appellant "*giving us the opportunity to make an offer for your land*". Even if it was acting under a misapprehension, it clearly undertook the appraisal on the assumption that it was considering making an offer for the land and it obviously used its experience as a developer, including preparing a layout with a higher number of dwellings than suggested in the Design and Access Statement. In these circumstances and in the absence of an explanation as to why the Appellant's generalised estimates of build costs are to be preferred to one that is based on a scheme designed for this site, I consider that the DV's calculations should be preferred.
27. The Appellant uses a contingency figure of 5%, whereas the DV uses 2%. However, the DV is more generous in his estimation of the likely costs of external works than the Appellant and includes a specific sum for off-site highway works. Consequently, the implications of the difference are not that significant and by way of comparison Moreton Homes only used 3%.
28. The Appellant now includes a non-exhaustible list of potential abnormal costs that is meant to demonstrate the likelihood of further costs to the development beyond those shown in its and the DV's appraisal and presumably requiring a contingency figure in excess of its assumed 5%. These include poor ground

¹ Building Costs Information Service

conditions, landscaping costs, acoustic insulation, highway and public transport improvements, higher finished floor levels, ecological mitigation, night watchman, groundwater levels, pumping station, service diversion, contamination and a reduction in CO₂ levels.

29. However, on site landscaping at this site is unlikely to be abnormal and should have been included in the external works estimates, as should the pumping station and electricity service diversion. This may account for the DV's external works costs being noticeably higher than the Appellants. Night watchmen are a regular feature at many construction sites and should be included in the base costs. The conditions do not require regular monitoring for the presence of great crested newts, only the provision of an exclusion fence. Neither do they include the achievement of a 10% reduction in CO₂ emissions or further studies/works concerning contamination. It was agreed at the Inquiry that the proposed improvements to the bus stop were not necessary and a sum for the off-site highway works (originally provided by the Appellant for Morton Homes) is in the DV's calculation as a specific item. Locating the floor levels at 5.00 metres above Ordnance Datum will involve extra foundation costs but nowhere is the increased depth more than 0.5 metres. There is no evidence in the information accompanying the application or observable on site, to suggest that ground conditions or ground water levels are abnormal.
30. I agree that acoustic insulation will be necessary to habitable room windows facing the adjacent railway and that special ventilation may be necessary in such rooms. The former could be offset by the insulation levels required under the Building Regulations but not entirely. The waste water pumping station, the electricity diversion and the higher foundation costs, would be extra. To what extent these would not be contained within the contingency sums or are already accounted for in the higher external works costs within the DV's assessment is unknown. However, it would not have been a difficult exercise for the Appellant to provide some realistic estimates to compare with the DV's assumptions.

Land value

31. Both parties have assumed a land value of £100,000 per acre. The Framework talks about a competitive return for a willing landowner but that is based on a premise that the landowner is an independent person who is using the land for another purpose. The appeal site is not used and given the state of overgrown vegetation on the site it does not appear to have been used for a number of years. The current owner is a building company who acquired the site in order to develop it. It presumably acquired the site from a willing seller in the knowledge of the local housing market and the site's development constraints. Despite that there was no evidence before the Hearing as to what price it actually paid for the land. In any event it is not a function of the planning system to compensate developers for bad investment decisions.

Housing need

32. Whilst Paragraph 49 may caution that "*relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites*", Doncaster clearly has a five year supply so that paragraph 14 is not invoked. More fundamentally, even allowing for a 20% buffer in response to persistent past under supply and CS plan period shortfalls, there is a 6.07 year supply.

Despite this, the plan's housing targets have not been met. This suggests that it is weaknesses in other parts of the housing equation rather than land supply that are preventing Doncaster's housing requirement from being met.

33. The Framework does say at paragraph 47 that local planning authorities should boost significantly the supply of housing. However, I am not persuaded that overall and at this point in time, this would be particularly assisted by releasing the appeal site. Surveyors, consulted by the Appellant, suggest that the appeal site is located in an area where the housing market is limited and there is a rigid ceiling as to what prices can realistically be achieved. There is also no specific evidence of a local need beyond affordable housing. Consequently, the national need for housing does not add weight to the appeal proposal.

Conclusions

34. I conclude that overall the DV's assessment is to be preferred. In this case there is no clear demonstration that the requirement to provide some affordable housing and a contribution to the provision of improved recreational facilities would make the development unviable. I nevertheless recognise that there could be abnormal costs attributable to this development, which is located in an area where the housing market is weak. The matter could be resolved by the submission of a more detailed appraisal from the Appellant that used known costs where practical.
35. In any event, Government advice suggests that conditions should be used in preference to legal agreements in circumstances where the conditions tests are met. I can see no reason why the provision of affordable housing and public open space/recreational facilities at this development could not be made the subject of conditions. Such an approach would allow these matters to be effectively resolved at the reserved matters stage when detailed proposals for the development of the site should have been prepared. I therefore find for the reasons discussed above and having taken account of all of the other matters raised, including the representations that local residents put to me both at the Hearing and in writing beforehand and the other appeals that I was referred to that the appeal should be allowed subject to conditions.

Conditions

1. The Council's ten suggested conditions were considered in the context of the Framework and the advice in the National Planning Practice Guidance (NPPG). All of the conditions, including the additional ones that relate to the provision of affordable housing and recreational facilities are agreed by the parties. They include the standard time limits for commencement and the submission and approval of details that are routinely applied to outline planning permissions.
2. To enable the development to meet Development Plan policies that seek to achieve sustainable development, conditions concerning noise mitigation, the timing of offsite highway works, mitigation to reduce flood risk and ecology protection have been suggested and agreed. In addition a drainage condition, a condition to improve a bus stop and a plans condition have also been suggested.

3. I have considered the need for these conditions in the context of the six tests contained in paragraph 206 of the Framework and the advice contained in the NPPG.
4. The approval of drainage proposals is controlled through the Water Utility Company's powers and under the Building Regulations. It was agreed that the suggested improvements to the bus stop on Moss Road was not required. This is an outline planning application. None of the plans submitted with it are for approval, apart from the site location plan. A condition concerning the information contained on these plans is therefore not necessary.
5. The remaining conditions are necessary in order to ensure that the development is of a high standard, creates acceptable living conditions for existing and future residents within the development and area as a whole, is safe and sustainable and minimises the impact on the environment.

M Middleton

INSPECTOR

Richborough Estates

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than whichever is the later of three years from the date of this permission or the expiration of two years from the date of approval of the last of the reserved matters.
- 4) No development shall take place until a scheme, for protecting any proposed dwellings within 30 metres of the adjacent railway line from noise from the adjacent railway line, has been submitted to and approved in writing by the local planning authority; all works which form part of the approved scheme shall be completed before the noise-sensitive dwellings are occupied.
- 5) No dwellings shall be occupied until highway improvement works to Highfield Road have been carried out in accordance with the scheme shown on the indicative details submitted on plan ref 137/08/02 dated 02.08.10.
- 6) Prior to the commencement of development, a great crested newt exclusion fence shall be installed on the site in accordance with the details described in the Method Statement produced by Estrada Ecology. This fence shall remain in place until the development is completed.
- 7) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made, which shall consist of not less than 26% of housing units/bed spaces unless otherwise agreed in writing by the local planning authority;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Social Landlord is involved;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

- 8) The development shall not begin until a scheme for the provision of public open space and/or recreational facilities within the vicinity of the site and including an implementation timetable has been submitted to and approved in writing by the local planning authority. The public open space and/or recreational facilities shall be provided in accordance with the approved scheme.

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APPEARANCES

FOR THE APPELLANT:

Jennifer Hubbard	Town Planning Consultant
Neil Tatton	Resolve 106 Affordable Housing Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Melvyn Roberts	Doncaster Metropolitan District Council
Philip Lee	District Valuer's Office, Leeds

INTERESTED PERSONS:

Vicky Ford	Local resident
JAP Coates	Local resident
Hilda Grant	Local resident
Carol Green	Local resident
Iris Beech	Local Councillor
Alan Jones	Local Councillor
Austen White	Local Councillor

DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Statement and supporting appendices from Jennifer Hubbard
- 2 Statement and supporting appendices from Neil Tatton
- 3 Question 10 of Local Plan Issues and Options paper, July 2015, supplied by the Appellant
- 4 Doncaster Housing Strategy 2015-2025, supplied by the Council
- 5 Doncaster Strategic Housing Market Assessment 2011, supplied by the Council
- 6 Doncaster, Five Year Deliverable Housing Land Supply, 2013-2018, supplied by the Council

PLAN

A 1/2500 Site Plan