



Appeal Decision

Hearing held on 14 October 2015

Site visit made on 14 October 2015

by R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 20 November 2015

Appeal Ref: APP/B1225/W/15/3049345

**Land adjacent to Policemans Lane and the A35, Upton, Poole, Dorset
BH16 5NE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Lewis Wyatt (Construction) Ltd, Mr C J Lees, Mrs S M Ormond & Mrs E J Bieron against the decision of Purbeck District Council.
 - The application Ref 6/2014/0299, dated 16 May 2014, was refused by notice dated 30 October 2014.
 - The development proposed was described on the application as '*Erection of 70 dwellings with associated open space, landscaped noise attenuation bund, access and on-site roads/footpaths; off-site transport improvements by means of contributions or direct works including footpath along Policemans Lane; creation of sustainable urban drainage system including new pond; and use of land for recreational purposes (Suitable Alternative Natural Green Space [SANG])*'
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DECISION

1. The appeal is allowed and planning permission is granted for the erection of 70 dwellings with associated open space, noise attenuation bund, accesses and on-site roads/footpaths; off-site transport improvements including footpath along Policemans Lane; creation of sustainable urban drainage system including new pond; and use of land for recreational purposes (Suitable Alternative Natural Green Space) on land adjacent to Policeman's Lane and the A35, Upton, Poole, Dorset BH16 5NE in accordance with the terms of the application Ref 6/2014/0299, dated 16 May 2014, subject to the conditions set out on the attached schedule.

PROCEDURAL MATTERS

2. The application site includes within the red line: land for the housing; land for the SANG; land for an extension to adjacent allotments; land south of the housing site where the pond and an extended bund would be sited; and parts of the highway where works are proposed. That agricultural land not directly required for the housing and the allotments would remain in agricultural use but with public access to the SANG land for informal recreation. The reference to 'off-site works' is to works that are outside the housing site but within the red line. Works outside the defined site relate to bridleway improvements which are not works covered by this planning application but which may be capable of implementation by other means.

3. At the Hearing it was agreed that the appeal should be determined on the basis of the Council's amended description which is:

'Erection of 70 dwellings with associated open space, noise attenuation bund, accesses and on-site roads/footpaths; off-site transport improvements including footpath along Policemans Lane; creation of sustainable urban drainage system including new pond; and use of land for recreational purposes (Suitable Alternative Natural Green Space).'

APPLICATIONS FOR COSTS

4. At the Hearing an application for costs was made by Purbeck District Council against the Appellants. This application is the subject of a separate Decision.
5. Following the hearing an application for costs was made by the Appellants against Purbeck District Council. This application is also the subject of a separate Decision.

POLICY CONTEXT

6. The appeal is required by statute to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The relevant development plan here is the Purbeck Local Plan Part 1 (2012) (the LP). It is supported by guidance in the Purbeck Affordable Housing Supplementary Planning Document 2012-2027 (the SPD) which is not part of the development plan but which is a material consideration.
7. A development brief scoping report was also prepared by the Council. That is a material consideration but it is not an adopted development brief and thus requires more flexible interpretation.
8. LP Policy SD sets out a presumption in favour of sustainable development. LP Policy LD sets out the general location of development. Of particular relevance, LP Policy NE allocates the appeal site for the development of 70 dwellings inside a realigned settlement boundary. It also refers to the proposed SANG and allotments extension.
9. LP Policy AHT seeks at least 40% affordable housing provision in this part of the District but it also provides that the Council will take account of the economic viability of provision. An open book approach to viability assessment with independent verification is required to justify reduced provision in 'exceptional circumstances'. The Local Plan examination and the more recent Community Infrastructure Levy Examination both considered evidence about development viability including specific assessments of the appeal site.
10. The National Planning Policy Framework (the Framework) and the supporting Planning Practice Guidance (PPG) are also material considerations.

MAIN ISSUES

11. The site is allocated as a strategic site for housing development in the development plan. It is also included in the Council's calculation of a 5 year supply of housing land. Nevertheless the proposal was refused planning permission for 3 reasons which may be summarised as:
 - there would be a shortfall in affordable housing provision (4 dwellings) against the 40% provision (28 dwellings) which is sought by the

development plan (subject to viability) and which the Council considers to be viable on this site;

- there could be a flood risk from the raising of land levels on the site which could divert water onto other properties; and
- the proposal lacked a completed planning obligation to secure the provision of the SANG, the allotments extension, a contribution to highways improvements and measures to make the SANG nitrogen neutral.

12. The Council has confirmed that:

- further technical work shows that the flood risk can be avoided;
- the completed S106 obligation agreement suitably secures the SANG; and
- the allotments extension and highways improvements can be addressed by planning conditions.

This leaves only the first reason as a disputed matter.

13. At the appeal stage the Appellant submitted different viability evidence. The proposal was also amended to increase the provision of affordable housing from 4 to 12 dwellings. The Appellant maintains that the proposal is policy compliant on viability grounds. The Council retains its position that the development would be viable with 28 affordable dwellings (40%).

14. If not policy compliant in relation to affordable housing provision the Appellant maintains that there are other benefits of the development including housing supply considerations which are a material consideration that may potentially outweigh any shortfall.

15. Having regard to the development plan, local guidance and national policy and guidance, the main issues are therefore considered to be:

- Whether the development would still be viable with more than the offered 12 units of affordable housing.
- If so, whether:
 - the number of affordable housing units should be increased; or
 - would any other benefits of permitting the development outweigh any harm due to the reduced provision of affordable housing below the amount at which the development would remain viable.

REASONS

Development Viability

16. The local planning policies and the appeal site itself have been the subject of a number of viability studies.

Local Plan Viability

17. The 'Purbeck Affordable Housing Viability Study' was issued in August 2008 at a time of peak housing values and when short term falls in values were anticipated. It did not include a specific study of the appeal site. It acknowledged that different sub markets varied in their capacity to deliver

affordable housing. It recommended 50% affordable housing provision in the strongest market areas and 40% elsewhere (including Upton). Upton was highlighted as the part of the District with the lowest values.

18. The '*Update Study*' prepared for the Council in October 2010 followed a fall in residential values. It did include a study of the appeal site. That study still supported a 40% target for affordable housing for this site but advised that it presented a '*greater challenge*' than the other strategic sites that were studied and that a '*flexible approach*' would be needed if the site were brought forward '*in current circumstances*'. The appended residual values for that date suggested that at densities of 30 dwellings per hectare (dph) land in Upton would be worth £1.22m per hectare if there were no affordable housing requirements. This would reduce to £0.4m/ha with a 30% affordable housing requirement and to £0.12m/ha with a 40% requirement.
19. Whilst the whole appeal site has an area of 11ha the housing element of the site was assessed as just 2.2ha which represents the developable part. Thus the residual land value for the housing site with 40% affordable housing would have been £264,000. With 30% affordable housing that would have risen to £880,000. With no affordable housing at all it would have risen further to £2.684m.
20. The Purbeck District Local Plan Part 1 was adopted in 2012 with a 40% affordable housing requirement in Upton but subject to viability considerations.

Site Option

21. In 2010 or 2011 the Appellant agreed an option with the landowners that ensured that the landowners would receive a minimum price for the land of £0.5m. That agreement apparently remains in effect and is thus good evidence of the value at which the site would be released for development.

CIL Viability

22. In late 2013 the site's viability for housing development was again assessed as part of the evidence for the examination of the Community Infrastructure Levy Examination. That study assessed the site's existing agricultural value at £20,000/ha. It also considered a '*going rate*' benchmark value of £0.5m/ha which apparently reflects land with development value. However that figure does not seem to have had good evidential support.
23. The appeal site's development costs were then assessed at £10.7m with no abnormal costs identified. The developer's profit was assessed as 17.5% of GDV which would have been a blended rate for market and affordable housing. With 40% affordable housing and £30 per sqm CIL charge the residual value was estimated at £1.47m. The Appellant company was critical of the methodology of the CIL study at the time but does not appear to have submitted alternative figures. The Examining Inspector subsequently expressed concern about viability in Upton. To address this concern he recommended that the CIL rate for residential development be reduced from £30 per sqm to the adopted rate of £10 per sqm in that area.

Planning Application Scheme Viability

24. The subject planning application was submitted in May 2014 and proposed 70 dwellings. Only 4 dwellings would have been affordable (5.7%) and these

would all have been two bedroom flats. 3 flats would have been social rented and 1 would have been an intermediate (shared ownership) flat. The application was supported by a viability appraisal prepared in April 2014. Key figures in that appraisal were a gross development value (GDV) of £15.93m, development costs of £13.3m (including a land price of £381,114) and a developer's profit of £2.63m (16.5% of GDV). At the hearing the Appellant suggested that the price paid to the landowners would have been increased from £381,114 to the option price of a minimum £500,000 by reducing the developer's profit. The development costs also included a contingency sum of about £500,000 which might have also been available in whole or in part to increase the final return to the landowner and/or the developer if it were not required for other purposes.

25. The Council consulted the District Valuer Service (DVS) who concluded in a report dated 1 October 2014 that the development could provide 40% affordable housing. With 42 market dwellings and 28 affordable dwellings the DVS estimated the overall GDV at £13.63m and the development costs (including finance) at about £10.35m, well below the Appellant's then figure. The developer's profit was assessed at 16.7% (£1.86m) on the market housing but at a reduced 6% on the affordable housing units (£173,566). With a slightly reduced return to the landowner of £335,000 and £437,354 as a building costs contingency there would have been a surplus of £893,525 at completion (a present value of £750,237).

Appeal Scheme Viability

26. Following the Council's refusal of planning permission the Appellant has revised the proposal at the appeal stage to increase the number of affordable dwellings from 4 to 12 and therefore to reduce the number of market dwellings to 58. This has been supported by a new appraisal dated July 2015 in which the key figures are: a GDV of £15.98m, development costs of £13.31m (including a land price of £734,097) and a developer's profit of £2.66m (16.67% of GDV).
27. The apparent similarity of the headline costs, values and profit figures as between the Appellant's April 2014 and July 2015 figures is coincidental as there are significant differences in the components that make up these figures. In particular there has been a 5% increase in the values per sqm of the market housing. The 14% increase in the values per sq m of the affordable housing may be due to the inclusion of houses rather than simply small flats. That has offset the reduction in the number of more valuable market units for sale. The components of the development costs are all very different in spite of the similar total. That the land price has nearly doubled in spite of the tripling in affordable housing provision underlines the vulnerability of residual valuations to changes in key variables.
28. The DVS has again been consulted by the Council and remains of the view that the development can support 40% affordable housing (28 units). At that level the DVS now considers that the GDV would be £15.89m and the development costs including finance would be about £9.98m. The present value of the developer's profit would be 16.7% of GDV on the market housing (£2.19m) and 6% of costs on the affordable housing (£120,051). After payment of the developer's profit and with a land payment of £734,097 the DVS estimate that there be an increased overall surplus of £2.8m at completion (a present value of £2.36m).

29. The DVS also carried out a sensitivity test of its own appraisal of the 40% affordable housing scheme with GDV reduced from £3,000 per sqm to £2,750 per sq m and with costs increased by 10%. That would still have produced a surplus of £1.5m on completion (a present value of £1.24m).
30. The draft Statement of Common Ground established that the viability of affordable housing provision was the only matter at dispute between the parties. However it did not attempt to seek any agreement on the key components of the viability appraisals. To have done so would have saved valuable time at the hearing. There remained obvious large differences in the respective assessments of costs and values and in the percentage profit on the affordable housing.

Gross Development Value

Market Housing

31. At the application stage the DVS did not dispute the Gross Development Values assessed by the Appellant in April 2014 for the purposes of the original application. However the Appellant then submitted different GDV figures in the new assessment provided for the Appeal stage viability study. The Appellant did not seek to include agreement on GDV in the Statement of Common Ground. It was therefore not unreasonable for the DVS to also reassess the GDV using its own evidence, particularly as the Appellant's evidence was then unsupported by comparable sales evidence.
32. To estimate GDV the Appellant's valuer has sought to assess individual values for each dwelling. Owing to the lack of recent new development in the Upton area this is based mainly on sale values for second hand dwellings. That comparable evidence was only first provided at the hearing. The Appellant's gross sales figure of £16.9m for 6,193 sqm of gross internal area (excluding the communal areas of the flats) equates to an average of £2,730 per sq m for the market dwellings (as calculated by the DVS).
33. By making similar use of sales values from second hand dwellings in Upton the DVS calculated a similar figure of about £2,770 per sq m. However the DVS also assessed the values of comparable new build properties in the wider urban area of Poole at £3,263 per sq m. After adjustments to reflect both the lower values for new dwellings that would be expected in Upton compared to Poole and also to take account of the appeal site's proximity to the noisy A35 this combination of adjusted new and second hand values was used by the DVS to support average values for the new market dwellings of £3,000 per sq m.
34. Whilst it was not disputed that new properties can attract a premium over second hand stock, the Appellant considers that the new Poole sites are in better locations which are closer to amenities. The proximity of the appeal site to the noisy A35 dual carriageway may also further depress values compared to quieter locations. For these reasons the Appellant maintains its original estimate which equates to £2,730 per sq m. However the Council points out that the appeal site would be in an attractive location close to the countryside. It has a more spacious layout than the previous Wyatt development in Upton that featured in some comparisons. In my view it would be enhanced by the presence of attractive mature oak trees and by access to the nearby SANG. These would offset some of the locational disadvantages.

35. Given the differences in views of the respective valuers, I consider that it would be reasonable to roughly split the difference between the 2 valuations of £2,730 and £3,000 and apply a value of £2,900 per sq m for the market housing.

Affordable Housing

36. The parties also disagree about the values of the proposed affordable housing. In the summary of differences submitted by the Appellant at the hearing (Document 6) the Appellant has assumed an average value of £97,523 per unit and claims that the equivalent DVS figure is £119,551 per unit. However, in the DVS appraisal of a scheme with 28 affordable units the total value for those units is £3.09m which I calculate to equate to an average of just over £110,000 per unit.
37. The Appellant has provided details of an offer made by a housing association for the affordable housing in January 2015. That was said to be based on future rental values although detailed workings were not included. The sums offered vary according to the unit size and whether the units would be for rent or for intermediate shared ownership. The offer is qualified in that the housing association indicated that the rental values were conservative and also because they prefer to make offers on a whole scheme rather than on a unit by unit basis. The final agreed price could thus have been higher once that negotiation had been concluded.
38. The DVS has capitalised the same affordable rental values used in that offer at 80% of market rents and has added the expected net cash flows from the intermediate housing. It is not clear why the resulting DVS values are higher as the full workings of the DVS and the housing association are not before me. Market rents will probably have risen since January 2015 which could affect a valuation based on 80% of market rents. Also, the average size of the affordable dwellings would rise were they to include more of the dwellings which the Appellant proposes to be market dwellings. As the association's offer was qualified it would again be reasonable to split the difference, resulting in an average value of about £104,000 per unit.
39. It is acknowledged that the Government's policy changes announced in the summer have created uncertainty in relation to future rental values such that some housing associations, including this one, are not currently prepared to negotiate prices for new acquisitions. It is not known what the actual effect on values may be at this stage although that should be known before development starts.

Sales Incentives

40. The DVS has not adjusted the sales revenue by deducting any money for sales incentives for the market housing and disputes that these are necessary. However the Appellant has provided some evidence that incentives such as paying the stamp duty or providing carpets or electrical equipment are commonly offered in both high and low value areas and therefore an allowance should be made. However the amount quoted in the 2015 appeal stage appraisal of £280,000 for 58 market dwellings is unreliable given that the application stage appraisal in 2014 only included £85,000 as sales incentives for 66 market dwellings and market values are agreed to have risen since then. Also, were the proportion of affordable units to be increased above 12 then

there would be fewer market dwellings to sell and thus a reduced requirement for incentives. Splitting the difference between the sales incentive costs in the Appellant's original and final appraisals would result in a sales incentive figure of £182,500, still more than double the Appellant's estimate in 2014. That would reduce the Appellant's costs by £97,500.

Build Costs

41. The Appellant's summary of differences on build costs includes 23 items. Only 3 of these were agreed between the parties before the hearing. At the hearing a further 7 modest items were initially agreed, either in the Appellants favour or by splitting small differences. There remain substantial differences of about £1.5m on total build costs or over £2.3m including fees and contingency sums.
42. A major difference on build costs of the houses and flats was narrowed by the agreed addition to the DVS sum of £280,000 for buildings costs inflation. However, whilst this results in an apparently similar total figure, the Appellant's build costs figure includes £200,000 for scaffolding whereas the DVS includes scaffolding within the preliminary costs. Thus whereas there is apparent agreement that preliminary costs should be estimated at 12.5% of build costs, if the Appellant's scaffolding costs are moved to this heading then that percentage would rise whilst the build costs of the houses and flats would fall. In these circumstances I consider that the DVS build costs figure is to be preferred and that the scaffolding costs should be included as part of the 12.5% preliminary costs. The outstanding difference of £161,260 in preliminary costs apparently relates to differences in the other costs figures and the 12.5% rate would vary with those figures.
43. In relation to external works there is a difference of £457,241. This arises because the DVS has used a standard Building Costs Information Service (BCIS) rate of 20% as a typical amount for external works whereas the Appellant claims that its calculation results from detailed measurement that is supported by tenders. However the tenders were not supplied in evidence and the DVS reported that they had been subject to large adjustments. In the absence of more detailed justification I consider that the difference between the figures should be split, reducing the Appellant's external works costs by £228,620.
44. Under abnormal works the Appellant included £128,784 for the provision of an acoustic bund alongside both the housing site and the agricultural land to the south where it would reduce noise from the A35 for the housing and also on the SANG open space. The DVS figure for this was only £12,504 on the basis firstly that: they considered the southern section of the bund to be unnecessary; costs could be saved by using material excavated from the groundworks; and the £60,000 planting costs could be reduced by substituting grass or other cheaper treatments rather than trees. I consider that the full length of the bund is part of the application and its value in reducing noise for the housing and the SANG is supported by the submitted Environmental Noise Report. The tree planting is also desirable as a 2-way visual screen between the countryside/A35 and the edge of the urban area. There would be some re-use of excavated material although it is not clear what account has been taken of this in the Appellant's calculation. I consider that the Appellant's figure for the bund should be used.

45. There is a difference of about £50,000 in the respective costs for laying out the SANG. The Council maintains that the design includes unnecessary features and refers to comments from Natural England as support for reducing the specification. However the SANG is part of the application scheme and the landowner considers that items such as a new hedge are needed to manage the grazing and to facilitate public access. The tree planting would enhance its amenity and biodiversity value. In any event the suggested savings are relatively minor sums relative to the overall costs. The developer's figures are preferred.
46. A more significant difference relates to the foundations. The Appellant has included a sum of £137,572 for deeper foundations than normal on the recommendation of an engineer's report. This relates to the presence of mature trees on the site (many of which are protected oaks) and also because of existing oak saplings on the highway verge of the A35 and also the proposed tree planting on the acoustic bund. The DVS takes a different view as to what the standard depth of foundations may be and considers that deep foundations are unnecessary such there would be a saving of £61,208 compared to its view of standard foundation costs resulting in an overall difference of £198,780. The Appellant may be over-cautious in relation to the new tree planting on the bund. The trees on the highway are not within the Appellant's control and need to be taken into account. However they are currently very young and the highway authority would not necessarily allow the self seeded oaks to grow to maturity so close to a major highway owing to the potential risks to highway safety and road construction. Piled foundations may also be appropriate and cheaper in some locations. Nevertheless the Appellant points out that it would be potentially liable if it disregarded the engineer's recommendations. Their figures are therefore to be preferred.
47. Some abnormal costs relate to land-raising on low-lying parts of the site to address flood risk. The DVS position is that this would allow for overall costs savings as excavated material would not need to be disposed of off-site. The Appellant maintains that the excavated material would not be suitable and that imported structural fill material is needed to avoid the risk of subsidence, particularly beneath paved areas. There is a costs difference of about £100,000 between the parties. As not all of land-raising would be to paved areas, there may be some potential to mix excavated material with imported fill material. That would save the costs of importing some of the material and also the costs of disposing of unsuitable excavated material off-site. However there is no basis before me for determining what that costs saving may be and no reduction has been made.
48. The £58,053 difference in overheads and profit also relates to the differences in other costs and would be reduced if those other costs are also reduced.
49. Overall it is concluded that the Appellant's build costs figures should be reduced by at least £250,000.

Contingency Sum

50. The Appellant has allowed a 'development contingency' figure of £508,560 whereas the DVS 'building contingencies' figure is £294,819. This difference could not be explored in depth at the hearing. However as the DVS expresses the sum as 5% of other costs, it would be higher to the extent that the Appellant's higher costs are accepted. In the absence of other justification for

the difference I consider that the sums should be split so that the contingency sum would be £402,000, a costs saving of £106,560.

Return to landowner

51. Both main parties have agreed the current or existing use value of the land as £92,500. That equates to a figure of about £42,000/ha. It is more than double the agricultural values in the CIL viability study of 2013 but is said to reflect higher values for land for horse grazing close to the urban area.
52. The subject planning application was supported by a 2014 appraisal which included a return to the landowner of only £381,114. At the hearing the Appellant explained that had the planning application been approved this would have been topped up to the agreed minimum option price of £500,000 by reducing the developer's profit by at least an equivalent sum (£118,886).
53. In the more recent appraisals the DVS has not disputed the Appellant's figure for a significantly higher return to the landowner of £734,097. However that is in the context of the DVS appraisal which estimated that there would be an overall surplus even with full 40% affordable housing provision.
54. The Appellant has calculated the latest return to the landowner using their valuer's own formula which is based on a fixed 50% of the difference between the land's existing or current use value and its value without any planning obligations. It is pointed out that a similar approach was accepted by an Inspector at the Shinfield appeal¹ where the Appellant was represented by the same valuer. However I do not consider that the circumstances are the same. Firstly the Shinfield appeal did not concern a greenfield site with a relatively low existing use value. Rather it was a previously developed site with a planning history of permission for office development which was agreed to enhance its value. Secondly the case of the Council at that appeal was that no enhancement of that existing value was necessary for the landowner to release the land, a position which the Inspector did not accept. In that case the Inspector accepted the only other appraisal and land value that was before him.
55. I consider that in the present case a more detailed examination of the key components of the rival appraisals is warranted. Moreover the best evidence here of the price at which the land would be released for development by a willing landowner is the minimum option price of £500,000. That is significantly below the Appellant's most recent land value assessment but significantly above the Appellant's 2014 assessment. It still represents more than 5 times the site's agreed existing use value.
56. I conclude for these reasons that the landowner's return for the purposes of the appraisal should be a minimum of £500,000. That would reduce the development costs by £234,097 and there would be related reductions in the fees and stamp duty associated with the acquisition. Whether the return to the landowner should again be topped up from the developer's profit or from any money saved from the contingency sum or any other surplus would be a matter for negotiation between those parties.

¹ APP/X0360/A/12/2179141

Developer's Profit

57. The Appellant has assessed the developer's profit at either 16.67% of the Gross Development Value of the Market and Affordable Housing combined (or 'blended'), or at 20% of all costs.
58. The DVS has similarly assessed the profit on the market housing at 16.7% of GDV. However the profit on the affordable housing has been assessed at only 6% on costs. The DVS describes 6% as the industry norm for affordable housing and the Appellant describes it as the default position in the HCA appraisal model. The Appellant asserts that this rate is not considered acceptable in the market but acknowledges that there is significantly less risk for the developer when selling affordable units to a registered provider. The Appellant would support an 8% profit on cost for the affordable units but seeks 20% profit on GDV for the market units. When comparing this scheme with the Shinfield appeal the Appellant acknowledges that an increased proportion of affordable housing reduces the risk overall and justifies a separate rate.
59. That blended 16.7% is a slight increase on the 16.48% profit on GDV in the Appellant's April 2014 appraisal. That scheme only proposed 4 affordable dwellings out of 70 dwellings and thus would have been more risky. Moreover that original profit figure would have been reduced by the amount needed to top up the then land acquisition price to £500,000. In these circumstances it is not accepted that the Appellant's preferred figure of 20% of all costs should be applied. I consider that it would be more appropriate to apply 16.7% of GDV to the market housing but 8% on costs to the affordable housing. Whilst above the DVS rate of 6% the latter figure would reflect the current uncertain position with regard to the future provision of affordable housing by registered providers.
60. For ease of calculation I have nevertheless adopted the Appellant's blended approach to interest whereby a 20% profit on GDV of open market houses and 8% profit on the costs of affordable units approximates to 16.53% of profit on the GDV of the development as a whole. That is similar to the 16.48% figure in the Appellant's 2014 appraisal which however was in respect of a more risky development with very little affordable housing.

Conclusions on Viability and Affordable Housing

61. For the above reasons it is concluded that the development costs, landowner's return and developers profit should all be reduced compared to the Appellant's appraisal and that the gross development value should be increased. There should be associated reductions in fees and finance costs. An increase in affordable housing should also reduce the liability to CIL payments. But these would all be relatively minor and have not been assessed. Nevertheless it is concluded that the development would be viable with an increased amount of affordable housing provision. This would be less than the 40% target figure in the development plan. However that target is subject to viability and thus development can be compliant with the policy at a lower level of provision.
62. As this is a full application the floorspace of the individual units is already fixed so that any increase in the number of affordable dwellings would necessarily include some larger dwellings. The average size of the affordable dwellings would therefore increase.

63. From the calculation below I conclude that the development can viably support 21 affordable dwellings which equates to 30% provision. The calculation is based on the smaller dwellings in the scheme. These include a mixture of 1, 2 and 3 bed units as both flats and houses. Their floor areas sum to 1,679 sqm or 27% of the total floor area of 6,193 sqm.
64. For 21 affordable dwellings I estimate the average floor area at 75 sqm as opposed to 65 sqm for the 12 unit scheme in the Appellant's appraisal. The greater average size further supports a higher average value for these than the £97,523 estimated by the Appellant, albeit still lower than the value assessed by the DVS.

21 affordable units (30%) at £104,000/unit		£2,184,000
49 market units (4,514 sqm @ £2,900/sqm)		<u>£13,090,600</u>
Total GDV		£15,274,600
Appellant's Costs	£13,314,816	
Less		
Sales Incentives reduction	-£97,500	
Build Costs reduction	-£250,000	
Contingency reduction	-£106,560	
Landowner's return reduction	<u>-£234,097</u>	
Total Costs²	£12,626,659	
		£2,647,941
Developer's Profit	20.00% of costs or 16.53% of GDV)	<u>£2,525,332</u>
Surplus		£122,609

65. Whilst the generation of a surplus and the omission of some other associated costs reductions might indicate the potential for at least 1 additional unit of affordable housing, the disagreement between the parties on costs and values and associated uncertainty suggests that a margin should be either maintained or added to the contingency or land value figures.

Other Matters and Conditions

66. A schedule of conditions was submitted for the hearing and is attached with reasons and with some amendments to accord with the Framework policy tests for planning conditions. These include changes to improve precision and enforceability.
67. There is no submitted S106 agreement in respect of affordable housing provision. Instead the main parties agree that provision should be secured by means of a planning condition. As agreed at the hearing the submitted draft

² The costs reductions do not include all related reductions in fees, finance, stamp duty or other costs that are linked to the identified costs.

- planning condition in relation to the provision of 12 affordable dwellings is capable of variation to the number of affordable dwellings. It also provides for the subsequent negotiation of the size and tenure mix.
68. There is no submitted S106 agreement in respect of necessary highway works. However this can be suitably addressed by planning condition, as agreed between the main parties.
69. The completed S106 makes effective provision for the suitable alternative natural green space (SANG) including arrangements for its future use and maintenance. The SANG is necessary to mitigate and avoid a significant environmental effect from the development on a special protected area by attracting recreational pressures away from the protected area.
70. The S106 obligation is necessary for the development to go ahead and it has been taken into account in this decision. It satisfies the relevant requirements of the Community Infrastructure Levy Regulations 2010 (as amended).
71. The development would provide a significant amount of housing with associated social and economic benefits. The increased public access to open space and the extension of the allotments would have additional social benefits.
72. All other matters raised at the hearing and in representations have been taken into account but they do not outweigh the conclusions on the main issues.

Conclusions

73. The appeal development is already included in the Council's housing land supply and it is capable of being implemented in full within 5 years. It is concluded that sufficient affordable housing can be required by condition to satisfy the qualified requirements of the development plan. The Framework provides that in these circumstances planning permission should be granted without delay.
74. It remains possible that a more thorough and detailed assessment of the costs and values than has been possible through the hearing process could potentially justify higher provision. However that would risk delay in the supply of both the market and affordable housing.
75. In the circumstances the modified requirement for 21 affordable dwellings is considered to be justified by my conclusions on the available viability evidence and to be a reasonable and pragmatic compromise between the very different positions of the respective parties and which should enable the early delivery of the housing.
76. In the circumstances it is unnecessary to consider whether any other benefits of the development would outweigh any shortfall in affordable housing provision.
77. It is concluded that this is a sustainable development in the terms of the Framework and that the appeal should be allowed.

RPE Mellor

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: To encourage development to take place at an early stage. This condition is required by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted must be carried out in entirely accordance with the following approved plans

057_D1_49.4	2029-P-207/A
057_D1_45.3	2029-P-208/A
2029/P100/B	2029-P-209/A
2029/P101B	2029-P-210/A
2029/P102B	2029-P-211/A
2029/P103B	2029-P-212/A
2029/P104B	2029-P-213/A
2029/P105B	2029-P-214/A
2029/P106B	2029-P-215/A
2029/P110	2029-P-222/B
2029-P-201/B	2029-P-223/A
2029-P-202/A	2029-P-224
2029-P-203/A	2029-P-225
2029-P-204/A	L176/SRevD
2029-P-205/A	E6085B(1 and 2)
2029-P-206/A	E6020

Reason: For the avoidance of doubt as to what is permitted.

Affordable Housing

- 3) No groundworks shall commence until a Strategy 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 strategy must provide at least 21 dwellings of affordable housing as defined in Annex 2 to the National Planning Policy Framework. The affordable housing shall be provided in accordance with the approved scheme. The Strategy must include:-
- The numbers, type, tenure and location on the site of the affordable housing provision to be made,
 - The respective proportions of each tenure of dwellings,
 - The arrangements for the transfer of the affordable housing to an affordable housing provider approved by the Council,

- (d) The timing of the delivery of the affordable housing,
- (e) 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.

The affordable housing shall be provided and retained in accordance with the approved strategy.

Reason: To ensure necessary affordable housing is provided within the development.

Drainage

- 4) Despite the details submitted with the application, no groundworks shall commence until a scheme for dealing with surface water drainage from the development, as well as the prevention of the flooding of the site and neighbouring property, has been submitted to and approved in writing by the local planning authority. This must include details of the on-going management and maintenance of the scheme. The appropriate design standard for the scheme must be the 1 in 100 year event plus an allowance to cater for the predicted increase in rainfall due to climate change. The approved scheme must be implemented, maintained and managed entirely in accordance with the agreed details.

Reason: These details are required to be agreed before ground works start in order to ensure that consideration is given to installing an appropriate drainage scheme to alleviate the possible risk of flooding to this site and adjoining catchment land.

Landscaping, trees and bio-diversity

- 5) Despite the details submitted with the application, no groundworks shall commence until a more detailed scheme for the hard and soft landscaping of the development has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall be based on the plans hereby approved and must include the laying out of the Suitable Alternative Natural Green Space as well as all communal and public open space areas. The scheme must include details of the proposed ground levels of the site, plant schedules, planting specification, a maintenance schedule, management plan and an implementation programme.

Reason: To ensure the satisfactory landscaping of the site.

- 6) All planting required under condition 5 must be maintained in accordance with the approved maintenance schedule and management plan. Any trees or plants of the agreed landscape scheme which within a period of five years from the completion of development die, are removed or become seriously damaged or diseased, must be replaced in the next planting season with others of similar size and species, unless local planning authority gives written permission to any variation.

Reason: To ensure the landscaping of the site establishes successfully.

- 7) All works impacting on the retained trees during the construction of the development must only be carried out as specified in the submitted Aspect Tree Consultancy Arboricultural Method Statement dated October 2014 and all specified works shall be supervised by a qualified tree specialist.

Reason: To prevent trees being damaged during construction works.

- 8) The development must be carried out and maintained entirely in accordance with the Chris Mungo (Ecological Planning & Research Ltd) Biodiversity Mitigation Plan dated 4 August 2014 and as approved by Dorset County Council on 19 September 2014.

Reason: To ensure the development provides adequate opportunities for biodiversity enhancement.

- 9) The land comprising the Suitable Alternative Natural Green Space must only be used for informal public recreation purposes and for not other purposes, including any other purpose within Class D2 (Assembly and leisure) of the Town and County Planning (Use Classes) Order 1987 (as amended or replaced).

Reason: Because the use of the land as approved is needed to mitigate the environmental effects of the development.

Materials

- 10) The manufacturers name, product name and colour of all external facing and roofing materials must be submitted to and approved in writing by the local planning authority before they are used on the proposal. The development must then be implemented using the approved materials.

Reason: To ensure the satisfactory appearance of the development.

Noise

- 11) No dwelling shall be occupied until, any attenuation measures to mitigate noise from the A35 road at that dwelling have been applied to the development in accordance with The English Cogger Partnership Environmental Assessment Report No 01482/RO2.5. The measures shall thereafter be retained at all times.

Reason: To satisfactorily mitigate the impact of noise upon the development from the A35 road.

Allotments

- 12) No dwelling shall be occupied until a scheme for the implementation, letting and management of the allotments has been submitted to and approved in writing by the local planning authority. The development of the allotments must be implemented, let and managed in accordance with the approved scheme.

Reason: To satisfactorily provide for allotment provision in accordance with Policy NE: North East Purbeck of the Purbeck Local Plan Part 1.

Transport and Access

- 13) No groundworks shall commence until the first 10m metres of the access crossings, measured from the nearside edge of the carriageway, have been laid out and constructed to a specification submitted to and approved in writing by the local planning authority.

Reason: In the interests of road safety.

- 14) No groundworks shall commence until a Construction Traffic Management Plan and programme of works has been submitted to and approved in writing by the local planning authority. The Plan shall include construction vehicle details, vehicular routes, delivery hours and contractors' arrangements (compound, storage, parking, turning). The plan shall also include details of:

- (a) Arrangements for inspection of the highways serving the site jointly between the developer (or his contractor) and Dorset Highways prior to work commencing and at regular, agreed intervals during the construction phase so that any damage to the edges of the carriageway and verges can be identified and suitable remedial works, agreed.
- (b) A scheme of signing of the heavy vehicle route to the site agreed with advice and warning signs at appropriate points. The development must be carried out strictly in accordance with the approved Construction Traffic Management Plan.

Reason: In the interests of road safety.

- 15) No dwelling shall be occupied until the highway improvements to Policeman's Lane/Watery Lane/Dorchester Road as illustrated on drawing number L176/3 Rev have been completed to a design and specification which must first be submitted to and agreed in writing by local planning authority. The design must include full details of construction, materials, drainage and street lighting.

Reason: In the interests of road safety.

- 16) No dwelling shall be occupied until details of improvements to the bridleway linking Policeman's Lane to French's Farm and Marsh Lane have been completed to a detailed design which shall first have been submitted to and approved in writing by local planning authority.

Reason: In the interests of public safety.

- 17) No dwelling shall be occupied until the access, geometric highway layout, and turning areas shown on the approved plans have been constructed, unless otherwise agreed in writing by local planning authority. Thereafter, these shall be maintained, kept free from obstruction and available for the purposes specified.

Reason: In the interests of road safety.

- 18) No dwelling shall be occupied until the turning and parking facilities indicated on the approved plans serving those dwellings have been constructed. Thereafter, these areas shall be maintained, kept free from obstruction and available for the purposes specified.

Reason: In the interests of road safety.

- 19) No dwelling shall be occupied until the details of a Travel Strategy, as set out within the Interim Travel Plan dated September 2014 have been implemented.

Reason: In order to mitigate the impacts of the development upon the local highway network and surrounding neighbourhood by reducing reliance on the private car for journeys to and from the site.

APPEARANCES

FOR THE APPELLANT:

Mr R Warren	Of Queens Counsel, instructed by Mr A Howse, Solicitor, Lewis Wyatt Construction Ltd
Mr D Cramond BSc MRTPI	Planning Consultant - DC Planning Ltd
Mr N Jones BSc FRICS ACI Arb	Valuer - Chesters Commercial
Mr L Foote BSc MRICS	Quantity Surveyor - Lawrence Foote and Partners (London) Ltd
Mr I Parkes BSc MRICS	Quantity Surveyor - Lawrence Foote and Partners (London) Ltd
Mr C Isherwood	Drainage Engineer PFA Consulting Ltd
Mr D Wyatt	Managing Director Lewis Wyatt (Construction) Ltd
Mrs C Lees	Wife of one of the Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Bird	Principal Planning Officer, Purbeck District Council
Mr C Cox BSc (Hons) MRICS	Valuer - District Valuer Service
Mr T Huxley MRICS FCIOB	Quantity Surveyor - District Valuer Service

INTERESTED PERSONS:

Mr R Burns	Lytchett Minster & Upton Town Council
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DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Second letter of appeal notification and list of persons notified
2. Missing Landscape application drawing of the SANG - E6020
3. Cox – comparable information appended to email of 13 October 2015 (3A) and observations of summary differences with Jones (3B)
4. Jones – note to summarise differences between DVS and Chesters Commercial and appendices
5. Foote - cost summary and explanatory notes
6. Foote – table of cost differences
7. Jones – location map of comparable developments
8. Missing 2 pages from Cox appendix 4
9. Bundle of documents concerning viability evidence at LP and CIL examinations
10. Drawing showing engineer's recommended foundation depths
11. Email with attached drawing L176/22 showing flood modelling
12. S106 Planning Obligation Agreement for SANG (2 copies in order to include all signatories)
13. Purbeck Local Plan Part 1 2012 Policy AH and supporting text
14. Costs application by Purbeck District Council
15. Response by Lewis Wyatt Construction Ltd and costs application against Purbeck District Council
16. Response by Purbeck District Council to costs application
17. Further response by Lewis Wyatt Construction Ltd
18. Bundle of Documents referred to by Foote in lever arch file