



Appeal Decision

Hearing held on 27 February 2007

Site visit made on 27 February 2007

by **Jacqueline North BSc MSc**

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

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Date: 18 May 2007

Appeal Ref: APP/P3040/A/06/2029629

Land to rear of 64 Nottingham Road, Bingham, Nottingham, NG13 8AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Foley Books Ltd against the decision of Rushcliffe Borough Council.
- The application Ref 06/00185/FUL, dated 14 February 2006, was allowed on 28 April 2006 and planning permission was granted subject to conditions.
- The development permitted is 23 flats with access and parking from Harvest Close.
- The condition in dispute is No 12 which states that: "The development shall not begin until a scheme for the provision of 7 affordable units 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. The scheme shall include:-
 - I. The type and location of the site of the affordable provision to be made;
 - II. The timing of the construction of the affordable housing;
 - III. The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing; and
 - IV. The occupancy criteria to be used for determining and identifying of prospective and successive occupiers of the affordable housing, and the means by which such occupancy shall be enforced.
- The reason given for the condition is: To ensure that affordable housing is provided in accordance with Policy HOU7-Affordable Housing, of the Replacement Rushcliffe Borough Local Plan.

Summary of Decision: The appeal is allowed, and the planning permission varied in the terms set out below in the Formal Decision.

Background and Main Issue

1. The appeal was lodged within six months of the date of the grant of planning permission. On that basis I am dealing with the appeal under the auspices of Section 79 of the Town and Country Planning Act 1990. This means that not only the disputed condition is before me but also the original grant of planning permission and the other conditions attached thereto. However, I see no reason to question the original grant of planning permission or any of the other conditions. In that context I shall concentrate on condition no.12 and the main issue to be considered is whether that condition meets the tests of Circular 11/95- The Use of Conditions in Planning Permissions having regard to whether it is necessary for the scheme to provide the level of affordable housing required, a reduced level, or any at all. Condition no.12 was supplemented by an informative requiring the affordable housing provision to be in the form of rented housing managed by a registered social landlord.

Planning Policy

2. The development plan includes The Regional Spatial Strategy for the East Midlands (RSS8), the Nottinghamshire and Nottingham Joint Structure Plan (JSP), adopted in 2006 and the Rushcliffe Borough Local Plan (LP) adopted in 1996. Both the RSS and the JSP refer to the importance of affordable housing provision in the creation of balanced, inclusive communities. More specifically, LP Policy H9 states that, where evidence of need has been established, a proportion of the dwellings to be built on allocated sites should be in the form of affordable housing with the level to be decided by negotiation to reflect local housing needs.
3. The District Council refer to Policy HOU7 of the Replacement Rushcliffe Borough Local Plan (RLP) in their justification for condition No 12. This seeks a proportion of up to 30% of the total dwellings, on allocated sites for 15 dwellings or more, as affordable dwellings to meet local needs. However, as RLP Policy HOU7 has not been and it seems will not be adopted by the Council, it is of limited relevance.

Reasons

4. LP Policy H9 does not require affordable housing on sites, like the appeal site, that are not allocated in the LP. As far as the LP is concerned, there should be no requirement for affordable housing as part of the scheme. Similarly, while the Council adopted Affordable Housing Supplementary Planning Guidance (SPG) in 2003, this requires 15% affordable housing provision within schemes of 25 dwellings or more. As the scheme was for 23 dwellings, the SPG does not justify affordable housing as part of it.
5. The Council produced a Draft Affordable Housing Supplementary Planning Document (SPD) in January 2006 that, reflecting the approach of RLP Policy HOU7, requires 30% affordable housing on schemes of 15 or more dwellings. However, the document acknowledges that this requirement would be subject to further analysis and may change. Given the stage this SPD has reached, and the uncertainty that must be attached to the threshold therein, like my colleague Inspector (APP/P3040/A/05/1179239 and 1196967), I conclude that limited weight can be attached to it. While it is clear that there is a need for affordable housing in the Borough of Rushcliffe, I have not seen any convincing evidence to justify the requirement for 30% affordable housing on schemes of 15 or more dwellings.

Conclusion

6. In that context, having regard to the provisions of LP Policy H9 and the adopted SPG, to which I attach most weight, there is no requirement for any affordable housing to be provided as part of the scheme. As a consequence, condition no.12 fails the tests of Circular 11/95 because it is unreasonable and unnecessary. I therefore intend to remove the condition.
7. Concerns have also been raised about whether the scheme would be viable if it included the amount of affordable housing the Council requires. There is conflicting evidence on this matter but given my policy based conclusions, this is of little consequence.

Formal Decision

8. I allow the appeal, and vary the planning permission Ref 06/00185/FUL for 23 flats with access and parking from Harvest Close at Land to rear of 64 Nottingham Road, Bingham, Nottingham, NG3 8AW granted on 28 April 2006 by Rushcliffe Borough Council, deleting condition No 12.

Jacqueline North

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Herington
Seamus Foley

John Herington Associates
Foley Books Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Charlotte McGraw
Norman Jowett
Donna Dwyer

Rushcliffe Borough Council
Rushcliffe Borough Council
Rushcliffe Borough Council

DOCUMENTS

- 1 Notification of the hearing and list of those notified
- 2 Chronology of events
- 3 Minute to approve updated housing strategy
- 4 Housing Strategy 2004-2007
- 5 Nottingham Core Housing Market Area Assessment 2006
- 6 Extract from Draft East Midlands Regional Plan (RSS8)
- 7 Communication regarding affordable housing contribution
- 8 E-mail requiring 30% affordable housing provision
- 9 Appraisal of affordable housing provision at Mill Hill Bingham
- 10 Price of flats in Bingham and Rushcliffe, Land Registry Data
- 11 Council's Indicative Costs for 23 Flats