



Appeal Decision

Inquiry held on 25 & 26 June 2013

Site visit made on 27 June 2013

by Anthony Lyman BSc(Hons) DipTP MRTPI

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

Decision date: 27 August 2013

Appeal Ref: APP/H0738/A/13/2193511

Red House School, 36 The Green, Norton, Stockton-on-Tees, TS20 1DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr A R W Taylor, Red House School against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 12/2782/VARY, dated 21 November 2012, was refused by notice dated 15 February 2013.
 - The application sought planning permission for the redevelopment of the senior and preparatory school ("Main School Site") together with associated playing fields and hard surfaced tennis courts for 68 residential units, including access, car parking and landscaping, without complying with a condition attached to planning permission Ref 12/0165/FUL, dated 31 August 2012.
 - The condition in dispute is No. 3 which states that: The development shall not begin until details have been submitted to and approved in writing by the local planning authority of a scheme for the provision of affordable housing on the site to comprise 15% of all units. The affordable housing shall be provided in accordance with the approved scheme and the submitted scheme shall include details of the following, as appropriate:-
 - i) The delineation of the area or areas of the site upon which the affordable dwellings will be constructed;
 - ii) The type, tenure and size of affordable dwellings to be provided;
 - iii) The arrangements the developer shall make to ensure that such provision remains at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision;
 - iv) The phasing of the affordable housing provision in relation to the provision of open market housing on the site;
 - v) Occupancy criteria and nomination rights in relation to identified housing need.
 - The reason given for the condition is: To ensure the provision of affordable housing on the site in accordance with Stockton-on-Tees Borough Council's Core Strategy Policy CS8 – Housing mix and affordable housing provision.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The section 73 application sought the removal of condition No. 3 as set out above. This was the only matter referred to on the appeal form and in the letters of notification relating to this appeal.

3. A section 106 Obligation, to make a contribution towards education facilities if required, had previously been submitted but was tied specifically to the implementation of the original planning permission dated 31 August 2012. If this appeal were to succeed a new permission would be created and, therefore the previous Obligation would not be triggered if the new permission was implemented. There is no section 106 Obligation relating to the current proposal and the appellant stated that he was not now willing to make such a contribution.
4. The Council's reason for refusal of the section 73 appeal application included reference to the lack of an education contribution. I will address this issue under 'Other Matters' below.

Main Issue

5. The main issue is whether condition No. 3 is reasonable and necessary, having regard to the need for affordable housing and the viability of the proposed development, in the context of national and local planning policies and all other material considerations.

Reasons

6. Red House School (RHS) is an established independent day school, providing education for approximately 440 pupils from pre-nursery (2 years and over) to GCSE level (16 year olds). It is run as a not for profit, charitable organisation. The school operates on two sites around The Green in Norton from a variety of buildings including an old vicarage, a Victorian house and several extensions and new buildings added during various decades mostly of the latter half of the last century. The Headmaster (the appellant) confirms that, particularly on the main school site, the facilities fall short of expectations with small classrooms and cramped conditions which he says would not be tolerated in a maintained school.
7. RHS has an option on land at Wynyard on which it hopes to build a new school to house all of the existing operations on one site and to enable expansion particularly with the addition of a sixth form. Due to the constrained nature of the existing site, the lack of a sixth form and the substandard conditions, the school is fearful of losing out to competitor independent schools in the area.
8. In 2012 planning permissions were obtained for the new school at Wynyard and for various residential developments on the existing sites in Norton. On the appeal site comprising the main Red House complex, permission was granted for 68 residential units, including the conversion of the original Victorian house to eight flats and the construction of 60 new dwellings in the grounds following the demolition of most of the school buildings. Condition No. 3 attached to that permission requires a scheme for the provision of 15% affordable homes in accordance with Policy CS8 of the Stockton-on-Tees Core Strategy and Development Plan Document (the Core Strategy).
9. Subsequently the appellant submitted simultaneously two section 73 applications. One sought to vary condition No. 3 to reduce the affordable homes from 15% (10 houses) to 3 affordable homes, but including an education contribution. The second section 73 application sought to remove condition No. 3 completely with no provision for the education contribution. Both applications were refused by the Council in February this year, but only the second application is the subject of this appeal.

10. Paragraph 173 of the National Planning Policy Framework (the Framework) seeks to ensure that projects are viable and deliverable. It advises that to ensure viability, the costs of any requirements likely to be applied to the development, such as affordable housing or infrastructure contributions should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
11. Policy CS8 of the Core Strategy requires developments to provide a mix and balance of good quality housing of all types and tenures, and, amongst other things, seeks affordable housing provision within the target range of 15% to 20% on developments of 15 or more dwellings. The Policy is, however, flexible and allows for a lower provision of affordable houses where a robust justification demonstrates that provision at the standard target would make the development economically unviable. The basis of the appellant's argument is that **any** (my emphasis) *planning obligations or the provision of affordable housing would make the overall development economically unviable*. At the Inquiry, the appellant's valuation witness stated that, in that situation, the project would not proceed.
12. Neither party made any representations regarding a compromise in their opposing positions. Therefore, in the absence of such representations, the options before me are, to allow the appeal thereby enabling the development to proceed without the provision of any affordable housing, or to dismiss the appeal thereby leaving the full affordable housing requirements of condition No. 3 in place.
13. Financial viability appraisals of the proposal have been undertaken by both parties. The Council confirm that, due to the constrained nature of the site and its sensitive location partly in the Conservation Area, the site has no obvious alternative use which would be acceptable in planning terms, other than the existing educational use or the permitted residential development. In a Valuation Statement of Common Ground, the majority of the appraisal inputs have been agreed, including, amongst other things the sales prices of the housing units (gross development value – GDV), build costs, demolition costs, abnormal costs, fees, finance rates and sales rate period. The only significant difference between the parties in arriving at the residual site value (RSV), ignoring affordable housing and an education contribution, is the appropriate level of developer profit.
14. The District Valuer Service (DV) acting on behalf of the Council adopted a developer profit of 15% on GDV. This is a 'blended' profit allowing different rates for the affordable and market houses and equates to 15.5% profit on the market houses. The DV argues that, from experience, projects showing a developer profit of 18% will definitely proceed and those with a 15-18% profit are more marginal but are likely to proceed. The DV supports the use of 15% with reference to a list of 26 residential appraisals in the north of England where, in all but a few cases, the developers' stated profit requirements were 15% or below, as a percentage of GDV.
15. The appellant argues that volume house builders generally require a 20% profit on GDV and supports this statement with reference to the views of the Technical Assessor appointed to assist the Inspector at the examination of the Core Strategy in 2009. However, the appellant then adopts a very precise figure of 16.67% profit on GDV (equivalent to profit on costs of 20%).

16. A developer's profit reflects the degree of risk associated with a development proposal. The RICS Professional Guidance – *Financial Viability in Planning* (PG) advises that a small scheme constructed over a shorter timescale may be considered relatively less risky and therefore attract a lower profit margin. In this case, the appeal site is in a prime location for housing adjacent to the historic core of Norton with shops and services nearby. Both parties agree that the sale period for the houses will be a relatively short 24 months with a total development time of about 33 months. Therefore, although the site is in the Tees valley in the north east of England, with relatively high levels of unemployment and generally low house prices, I am satisfied that, in the current market, this prime site would be very attractive to house builders. In such circumstances I consider that a profit of 15% on GDV would not be unreasonable for many developers. On this assumption the DV calculates a RSV, based on no affordable houses and no education contribution, of £2,695,410 compared to the appellant's RSV of £2,451,390.
17. In addition to the variance in the rate of developer profit in calculating the RSV, a fundamental difference between each party's viability appraisals is the calculated existing use value (EUV) of the site and the level of competitive return for the landowner. The PG advises that the RSV (ignoring any planning obligations and assuming planning permission is in place) and the EUV, represent the parameters within which to assess the level of any planning obligations including the provision of affordable housing. Any planning obligations imposed will need to be paid out of this uplift but cannot use up the whole of this difference except in exceptional circumstances, as this would remove the likelihood of the land being released.
18. There are several different approaches to the valuation of real estate which were explored in detail by both parties. Having established the RSV at £2,451,390, the appellant calculates that, on the basis of the depreciated replacement cost model (DRC) the main RHS site has a current value of £2,367,000, giving only a marginal uplift of just over £84,000. The appellant's valuation expert argues that the school as landowner would not benefit from any windfall or significant gain, and that he has demonstrated that it would not be possible to take any value out of the appeal site for planning obligations or affordable housing. The appellant defends his EUV as being correct by comparison to the capitalisation of the rateable value of the school, to arrive at a figure of a similar magnitude. However, I am persuaded by the DV's argument that valuations using the Contractor's Test (cost approach) for rating purposes are not the same as those for DRC and that there is a fundamental difference in that rateable value assumes a letting from year to year and that the buildings are in good condition.
19. The appellant's valuation expert states that *where the alternative use value is only marginally higher than the current or existing use value, there is little or no incentive for the landowner to sell*. In this case, however, despite the appellant's calculated uplift of only £84,000, it is clear that the landowner's incentive to sell is based on a business case to provide a more cost effective way to run and expand the educational establishment so as to remain a competitive and effective player in the market. The appellant also states that the EUV calculation of £2,367,000 is only marginally less than the figure the school needs from the sale of this site in order to secure sufficient funding from the bank to build the new school. However, the RICS in its PG advises that for valuation purposes, the nature of applicants and, amongst other things, their

ability to secure finance should not be taken into account in valuation appraisals except in exceptional circumstances.

20. To facilitate comparison with the appellant's appraisal, the DV also employs the DRC method of valuation although emphasising that such a model should only be used as a last resort. A profits based model is more appropriate for independent schools as recommended by the RICS¹. However, such an appraisal would require sight of the school accounts to which the Council state they did not have access. As a starting point for the DRC appraisal the DV uses the same gross replacement cost of the buildings as the appellant. However, the DV uses a higher percentage rate of depreciation than the appellant based on the functional and operational obsolescence of the buildings.
21. In justifying the higher level of depreciation, the DV refers to the constrained site, the ages of the buildings, their inadequacies in terms of layout, circulation and cramped classrooms, and the claimed abnormally high annual costs of maintaining the fabric of the school. These judgements reflect the headmaster's own comments that the facilities fall short of expectations of both current and prospective parents and that the classrooms, corridors, laboratories and technology rooms throughout the school are below the size recommended and in some case are significantly smaller.
22. From my own observations during my site visit, the existing school buildings do have significant inadequacies compared to modern educational establishments and display substantial functional and physical obsolescence. This would impact on the price a purchaser would be willing to pay for the site for educational use, particularly as the Headmaster states that on its present site *the RHS is likely to find it increasingly difficult to maintain its current healthy roll*. If the existing school buildings are so deficient as to potentially harm the future of the business, the existing use value of the site must be depreciated significantly and, therefore, I attach greater weight to the level of depreciation used by the DV. Using the higher level of depreciation, the DV arrived at a DRC valuation of £1,343,484, thereby giving sufficient uplift to provide for affordable homes.
23. A further issue which to my mind significantly reduces the weight to be given to the EUV arrived at by the appellant is an earlier valuation of the whole RHS commissioned by the school and dated August 2011. This valuation was undertaken by GVA Grimley Ltd (GVA) and a copy was submitted at the Inquiry by the Council who stated that they had obtained a copy only a few days previously. That appraisal, using a profits approach with access to the school's accounts, concludes that having regard to the historic and business forecasts going forward, it is considered the *market value of the freehold interest in Red House School, Norton as a fully trading entity, as at August 2011, to be £600,000*.
24. At the Inquiry the appellant's valuation witness stated that the GVA valuation of £600,000 was a gross understatement of the value of the asset and should not be given weight. Nevertheless, it was a professional valuation commissioned by the school and it demonstrates the considerable difference between the market or existing value as calculated by GVA and the appellant's later valuation presented with the appeal. Clearly, on the basis of the GVA valuation there would have been a substantial uplift between it and the RSV,

¹ RICS (isurv)- *Introduction to educational establishments for 5-18 year olds*

- which would be more than sufficient to meet the affordable housing requirements and, if necessary, any planning obligations, and still leave a substantial competitive return for the landowner.
25. The various appraisals demonstrate that valuation exercises are not a precise science and that any variation to models or to the inputs can result in significantly different results. From the evidence before me I consider that the EUV arrived at by the appellant using the DRC method is an over estimate of the existing value of the school and that the appraisal adopted by the DV is not unreasonable. It is a more realistic valuation appraisal, particularly given that the resultant value per hectare of the land stands comparison with other sites in the area.
26. The Framework advises that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously. The social dimension is defined as, amongst other things, supporting strong vibrant communities by providing the supply of housing required to meet the needs of present and future generations. Although the Council has, in recent years, met the annual affordable housing targets set out in its Core Strategy Policy CS8, these targets are not ceilings and the latest Strategic Housing Market Assessment (SHMA) demonstrates that there is still an outstanding requirement for affordable homes in future years. The appellant confirms that it is not doubted that there is a wider affordable housing need. The failure of the scheme to provide any affordable houses would result in the social dimension of sustainable development not being fully met.
27. The appellant also refers to the Council's lack of a 5 year housing supply and argues that Policy CS8 is a housing supply policy and should not be considered up to date in accordance with paragraph 49 of the Framework. However, the planning permission has been granted for 68 new dwellings on the site and, given the continuing identified need for affordable housing in the most recent SHMA, I attach greater weight to the delivery of a wide choice of homes including a mix of housing of different size, type and tenure to reflect local demand as advocated in paragraph 50 of the Framework.

Other matter

28. The Council's reason for refusal included reference to the lack of a contribution to education facilities as required by the Council's Supplementary Planning Document 6 – *Planning Obligations* (SPD). The amount of any educational contribution would be calculated with regard to a formula in the SPD, based on the number of children likely to arise from the development. However, the calculated amount would be subject to a discount based on the number of surplus places in catchment area schools. Currently, the discount arising from the number of surplus places would exceed the potential contribution and, therefore, no payment would be necessary at this time.
29. It is likely that this situation would continue throughout the building phase of the development. Nevertheless, if the appeal were to be allowed and a new permission created, given the requirements of the SPD I see no good reason why a new s106 Obligation should not be in place to secure a payment should circumstances change in the future before the scheme commenced. I am satisfied that such an Obligation would meet the tests in paragraph 204 of the Framework and in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Given the scale of surplus places at the catchment schools,

it is unlikely that the viability of the project would be threatened. The absence of a mechanism to secure a contribution is not in accord with the provisions of the SPD and adds weight to my overall conclusion.

Conclusion

30. It is clear that the appellant needs to obtain an adequate return on the existing site in order to help fund the new school which would bring economic and educational benefits to the area. Nevertheless, it has not been demonstrated that the deliverability of the new school would be put in jeopardy by the provision of affordable homes. The appellant was prepared to provide three affordable dwellings as part of the parallel section 73 application and market conditions do not appear to have changed significantly since then. Given that the basis of this appeal is the appellant's stated objective to provide no affordable homes, the appeal must fail as being contrary to the objectives of Policy CS8 of the Core Strategy and the sustainable development provisions of the Framework.
31. For the reasons given and having had regard to all other matters raised, including the various submitted appeal decisions and proofs of evidence relating to other cases, I consider that condition No.3 is both reasonable and necessary. The appeal is, therefore, dismissed.

Anthony Lyman

INSPECTOR

Newman

- 8 Letter from DVS dated 7 February 2013
- 9 Valuation Report on Red House School, by GVA Grimley Ltd, dated August 2011