The Planning Inspectorate

Appeal Decision

Hearing held on 23 October 2013

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 19 November 2013

Appeal Ref: APP/W1145/Q/13/2204429
Former Holsworthy Showground, Trewyn Road, Holsworthy.

- The appeal is made under Section 106BC of the Town and Country Planning Act 1990 against a failure by Torridge District Council to determine that a planning obligation should be modified.
- The appeal is made by Redrow Homes Ltd
- The development to which the planning obligation relates is residential development of 151 dwellings.
- The planning obligation, in the form of an agreement dated 20 April 2010, was made between Torridge District Council and Catesby Estates Limited.
- The application Ref: 1/0594/2013/SEC106 is dated 8 July 2013
- The application sought to have the planning obligation modified in order to reduce the affordable housing content of the development from 60 to 31 units and to remove reference to shared ownership and staircasing payments.

Summary of Decision: The appeal is allowed and the S106 obligation varied as set out below.

Main Issue

1. The main issue is whether the existing planning obligation requirements in relation to affordable housing provision result in the overall development being unviable, and if so what modification to the obligation would be reasonable.

Background

2. The affordable housing requirement on the appeal site at present is 40%, or 60 dwellings. This would be split between rented and shared ownership dwellings in accordance with the extant obligation.

3. The Appellant is seeking to provide 31 units of affordable housing (20.5%) whilst the Council maintains that the site could provide about 55.

4. The Statement of Common Ground identifies some important agreed matters:
   (a) Completions on the entire site have been slow: a total of 66 dwellings including 10 affordable dwellings to date.
   (b) There is justification for the removal of shared ownership housing and staircasing arrangements from the scheme as this is no longer in demand. All future affordable housing will be for social and/or affordable rent.
   (c) The provision of 40% affordable housing is not financially viable.

5. The areas of specific disagreement in the Statement of Common Ground are:
   (d) The percentage level and mix of affordable housing proposed by the developer.
   (e) The assessment of benchmark land value as a development cost.
   (f) The appropriate level of developer's return.
   (g) Weight to be attached to existing and emerging local planning policy on affordable housing.

Planning Policy

6. I set out here the policy background which informed the obligation, policy which has been published since, and the emerging picture.

7. The S106 obligation was executed in light of Policy HS2 of the Torridge District Local Plan of 2004. Policy HS2 was saved by direction on 2 September 2007. The policy does not set a percentage target for affordable housing, but indicates that affordable housing will be sought to meet identified need. The Planning Obligations Supplementary Planning Document (SPD) of November 2008 deals in more detail with the Council's aspirations. It seeks 40% affordable dwellings on sites of over 15 dwellings in Holsworthy (amongst other places). Local policy support for the S106 obligation is therefore clear.

8. There is an emerging Local Plan at consultation stage. At present it seeks affordable housing contributions of 25% of dwellings on sites providing more than 7 dwellings. However there is no certainty that this will not change. The emerging plan is at a very early stage.

9. The National Planning Policy Framework (NPPF) anticipates that an expected rate of market and affordable housing delivery will be identified and an implementation strategy set out. That is essentially what the current Local Plan and associated SPD seek to achieve.

10. The NPPF also seeks to ensure that the supply of housing in general terms is boosted significantly. The provision of housing on this site can assist in that regard. The NPPF also warns against a scale of obligations and policy burdens which might threaten viability. Competitive returns to a willing developer should be provided. Competitive return is not defined, but does not to my mind necessarily mean the minimum return a developer would aspire to since profit is bound to vary from site to site above and below aspiration level.

11. The matter of weight attached to current and emerging policy is a matter of some disagreement between the parties. However, in appeals under this procedure the single matter I have to determine, irrespective of policy weight, is the matter of viability.

Reasons

Developer Profit

12. The Appellant argues that 20% profit on Gross Development Value (GDV) is a reasonable and acceptable return for both affordable and open market housing. This position is supported by the appeal decision brought to my attention (APP/X0360/A/12/2179141) – the Shinfield decision. That decision was made in the light of evidence brought from several national housebuilders relating to their profit expectations, or requirements. In that case the evidence was

persuasive and satisfied the Inspector that a developer profit of 20% was reasonable. But that cannot be the end of the matter.

13. Other decisions have found lower profit margins to be reasonable, and whilst their circumstances differ, they are no less valid as a recognition that profit margin will vary from site to site and in different circumstances. On risky sites it is to be expected that profit expectations would be higher, and vice versa. It may be that since the downturn in the market following 2008 risks are increased, and profit expectations increased too. But this site was purchased in an open competition in 2010, when the impact of recession on the housing market was well known. It is to be expected that risk was taken into account at that time.

14. Be that as it may there are various 'rules of thumb' which are quoted when discussing developer profit, and these tend to vary between 15% and 25%. That would tend to support a mid range figure in the region of 20% for a 'run of the mill' site. But equally it is often a 'rule of thumb' that affordable housing carries less risk and that a profit of about 6% is reasonable. That is not the aspiration of the developer here. However, I have heard no convincing evidence that the risks of affordable housing provision on this site are such that 20% across the board profit is reasonable. Adoption of 20% for open market and 6% affordable in this case would produce a 'blended' margin of about 18%. It is notable that 18% was the figure used in the original study which assessed affordable housing provision at the time that the extant S106 agreement was drawn up, and on which basis the appellant purchased the site.

15. The appellant has been candid enough to admit that development of the site has not been as positive as hoped, and to all intents and purposes I am informed that house building has stopped (those partially completed dwellings at slab level only being completed upon sales being made). In that regard I understand why a higher profit margin than the original assessment is now sought. The appellant indicates the intention to proceed on site if the affordable housing element of the obligation is reduced, returning viability on the basis of an assessed 20% developer profit. But, with great respect to the developer's stated intentions, there is no way in which this could be assured.

16. Taking these matters in the round I am not persuaded that a profit of 20% on both open market and affordable housing has been justified. The risk of affordable provision here is not greater than would be expected on any site given the existing need for affordable housing. But equally I am not persuaded that an open market profit of 17.5% (as proposed by the Council) would adequately recompense the developer for open market housing. Hence I consider that a blended profit of about 18% on the combined open market and affordable housing would be reasonable here. This is the profit level built in to the original assessment.

Land Value

17. Guidance on land value assessment is contained within the '*Section 106 affordable housing requirements review and appeal guidance'* issued by DCLG[1] in April 2013 to which I must have regard in making my determination. The guidance is not prescriptive, but has been interpreted by the parties in different ways. However, it is my judgement that the guidance indicates that

[1] Department for Communities and Local Government

benchmarking is the preferred method in instances such as this where a land sale has taken place. Indeed the guidance states that *"The agreed land value in the original appraisal should be used, unless the site has been acquired since and evidence is provided of the purchase price."* In this case there is no agreed land value in the original appraisal and it was in any event based on what is agreed as faulty methodology. The guidance continues *"Any purchase price used should be benchmarked against both market values and sale prices of comparable sites in the locality. Any significant overbid on the appeal site should be disregarded."* In this case there is a known land purchase price, and the comparator valuation figures indicate the level of overbid, which has been disregarded in viability calculations.

18. The appellant has sought to benchmark the land value against prices and values of comparable sites in the region which, given the relative paucity of land sales in a rural area, is not an easy task. The fact that differences between sites (such as S106 requirements and local planning policy) and therefore values, are often not apparent in plain figures, also makes the exercise more difficult. Nonetheless I accept that the appellant has sought to follow the guidance which indicates that where a site has been purchased the price should be benchmarked (ignoring any overbid). The figures produced seem to me to be as fair as could be expected. On this basis the appellant values the land at about £2.68m.

19. The Council on the other hand has re-used the land value of the original appraisal of £1.75m. The Council opted for this value as part of a 'two pronged' approach which also considered a new calculation based on residual land value (RLV) methodology and 40% affordable housing provision. This latter calculation leads to a lower land value of about £1.3m. The Council therefore chose to revert to the original appraisal value of £1.75m. But it is common ground that the methodology of the original appraisal is no longer appropriate.

20. In essence it seems to me that land value should be either based on an up to date RLV calculation, or on comparators where there has been land acquisition. The approach of the Appellant more closely follows guidance and is the one I prefer in this instance. I have therefore adopted a land value of £2.68m as the basis for my consideration of viability.

The Outcome and Conclusion

21. There is an acknowledged need to boost housing delivery. Delivery on this site has been slow and is all but stalled. There is no guarantee of faster delivery even if the developer position on affordable housing was to be agreed. Developer profit aspirations are not the same as a competitive return and there must be scope for a range of profit outturns – in some cases no doubt developers will comfortably exceed their 20% aspiration. In this case I consider that a blended profit (combining market and affordable housing) of 18% would be reasonable.

22. Taking these matters into account, and referring to the helpful matrix of alternative outturns provided by the Appellant[2] (which were not challenged by the Council) it is apparent that column 4 of that matrix provides a reasonable solution. This takes the land valuation assessed by the Appellant and applies a

[2] See Hearing Note 5 of Document 3

blended profit margin of 18%. It would lead to a requirement for the provision of up to 36 affordable homes (23.8% of the total). This seems to me to offer a suitably viable result for the developer, and whilst not meeting the Council's initial expectation for affordable housing, would go some way to meeting need. At the same time it should offer the opportunity to proceed to completion of the site, thereby boosting overall housing delivery. In addition I consider that the removal of reference to shared ownership and staircasing arrangements would be reasonable in order to reflect current demand.

23. In this case I have not been provided with any preferred breakdown of the affordable homes which I consider should be provided (other than in relation to the Appellant's proposed mix for the reduced number of 31 units). That is a matter which I must leave to subsequent discussion between the Council and the Appellant. The modifications in the formal decision will have effect for a period of 3 years from the date of this decision, following which the original S106 obligation will remain in force in its original form.

Formal Decision

24. The appeal is allowed and the planning obligation, dated 20 April 2010, made between Torridge District Council and Catesby Estates Limited, is modified as set out below for a period of three years from the date of this decision.

(A) In Paragraph 1 of Schedule 1, Part A is deleted and replaced with:

"Unless otherwise agreed in writing between the Owner and the Council the Affordable Dwellings shall be 23.8% of dwellings to be constructed as part of the overall development of 151 dwellings."

(B) In Paragraph 2 of Schedule 1, Part A reference to "150 (one hundred and fifty) Dwellings" is deleted and replaced with "151 (one hundred and fifty one) Dwellings.

(C) In paragraph 3.6 of Schedule 1, Part A the following words shall be deleted: *"and in the case of Shared Ownership Dwellings, any additional share purchased"*.

(D) In paragraph 10.1 of Schedule 1, Part A, the following words shall be deleted: *"(or in the case of a Shared Ownership Dwelling any share in an Affordable Dwelling)".*

(E) In paragraph 10.2 of Schedule 1, Part A, the following words shall be deleted: *"(or in the case of a Shared Ownership Dwelling any equity in an Affordable Dwelling)".*

(F) Paragraph 11 of Schedule 1, Part A, shall be deleted in its entirety.

(G) Paragraph 5 of Schedule 2 shall be deleted in its entirety.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Winstone	RPS Planning and Development
Mr G Hill	Redrow Homes Ltd
Mr P Barefoot	Alder King
Mr A Cullen	Alder King

FOR THE LOCAL PLANNING AUTHORITY:

Mr L Andrews	Principal Planning Officer, Torridge District Council
Mr R Gill	Valuation Office Agency
Ms R Webdell	Torridge District Council

DOCUMENTS

1 Notification letter of the appeal
2 Statement of Common Ground
3 Hearing Notes 1 to 5 from Mr Barefoot
4 Policies of the Torridge District Local Plan 2004
5 Supplementary Planning Document – November 2008
6 Appeal decisions from the Council
7 Extract from the Redrow website
8 Post hearing correspondence from the Appellant
9 Post hearing correspondence from the Council