Planning Inspectorate

Appeal Decision

Inquiry held on 25 March 2025

Site visit made on 25 March 2025

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2025

Appeal Ref: APP/V3120/W/24/3356728
Lot 3 Land at Crab Hill, Land North of A417 and East of A338, Wantage, OX12 7GQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd against the decision of Vale of White Horse District Council.
- The application Ref is P24/V1243/FUL.
- The development proposed is the erection of Retirement Living Apartments with Communal Facilities, Car Parking and a Sub Station to serve the development.

Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue.

2. The parties have completed comprehensive Statements of Common Ground (SoCG), referring to planning, viability, an addendum statement relating to planning matters and a further supplementary statement referring to a land issue. I have referred to these statements when determining the appeal.

3. With specific regards to the land issue, during the Inquiry it came to light that a small portion of the appeal site was owned by a separate party. It was detailed by the appellant that this party were aware of the application and appeal. As such, the parties agreed that the application and consequently the appeal is valid. I have no substantive evidence before me that would lead me to conclude otherwise.

4. The appeal site currently accommodates a construction compound used in association with the surrounding residential development, itself resultant of an allocation in the Vale of White Horse Local Plan (the LP). The parties agree that the principle of the appeal scheme is acceptable and, save for the provision of a public house referred to by interested parties, I have no substantive evidence before me that would lead me to conclude otherwise.

5. With regards viability issues, the parties have agreed the provisions for public transport services, primary healthcare, public art, street naming, waste bin provision, household waste and recycling centres, and a Biodiversity Net Gain (BNG) monitoring fee that were referred to in the decision notice. In addition, it is agreed between the parties that these provisions (save for the BNG monitoring fee) are adequately secured through the submitted planning

obligation. I have no substantive evidence before me that would lead me to conclude otherwise.

6. Furthermore, in accordance with the provisions of policy CP7 of the LP the parties agree that developer contributions are prioritised firstly to essential and then other infrastructure. In this instance this means that provisions for public transport services, primary healthcare, public art, street naming, waste bin provision, household waste and recycling centres, and a BNG monitoring fee are delivered in full and that the off-site affordable housing provision is reduced. I have no substantive evidence before me that would lead me to conclude otherwise.

7. Within the viability SoCG, the phrases 'agreed, adopted and disagree' are used. While 'agreed' and 'disagree' are self-explanatory, the council clarified at the Inquiry that some figures, such as the premium to existing use value and contingency were 'adopted' for the purpose of producing appraisals but the figures were not agreed. I have recognised this differentiation when determining the appeal.

8. The parties have variously referred to standards and guidance[1] set by the Royal Institute of Chartered Surveyors (RICS). For the avoidance of doubt, while I have had some regard to these documents in reaching my decision, Planning Practice Guidance (PPG) takes precedence over any RICS professional standards and guidance.

9. I held a Case Management Conference (CMC) on 6 January 2025 to discuss Inquiry procedural matters. At the CMC the main issues were discussed. As referred to previously, the appropriate mechanism to secure the Habitat Management and Monitoring Plan and the monitoring fee, is disputed by the parties and I have addressed this under other matters. It was confirmed at the opening of the Inquiry that the main issue at this appeal is:

   - Whether or not the appeal scheme makes appropriate provision for off-site affordable housing.

Reasons

Viability

10. Policy CP24 of the LP seeks affordable housing at a rate of 35% and supports off-site contributions in "exceptional circumstances". A threshold that, due to the appeal scheme being for retirement living, the parties agree has been met and I have no substantive evidence before me that would lead me to conclude otherwise.

11. In common with policy CP24, policy CP7 of the LP refers to the use of viability assessments, carried out to agreed terms, where requirements could render a development unviable. It needs to be demonstrated that the sum/surplus identified in the Financial Viability Appraisal (FVA), is the maximum[2] contribution to off-site affordable housing possible while maintaining the viability of the proposed development.

[1] CD8.08 RICS Professional Standard - Assessing viability in planning under the National Planning Policy Framework 2019 & CD8.09 RICS Professional Standard - Conduct and Reporting

[2] PPG Paragraph: 010 Reference ID 10-010-20180724 Revision date 24 07 2018

12. The appellant has submitted a FVA that has evolved following negotiations with the council. I note that the sum available for off-site affordable housing has increased substantially through this process, but remains below the sum sought by the council and indeed that ordinarily required by Policy CP24 the LP and as agreed by the parties in the SoCG[3].

13. I note that the council has sought, in particular, evidence regarding build cost and land value to justify the assumptions in the FVA, but this evidence has not been provided by the appellant. Moreover, the gradual evolution of the FVA raises questions as to the robustness of the evidence and assumptions behind the inputs of the FVA.

14. It is common ground between the parties that the development could not deliver the full contributions sought by the LP and remain viable. The council has therefore sought a reduced sum of £1,276,728 for all section 106 obligations, for the purposes of the appeal. The appellant's FVA identifies £1,004,203 as being the residual amount after all costs, including profit are accounted for, for all section 106 obligations.

15. At the Inquiry the parties' evidence included reference to specific matters of build cost; contingency; land value and the premium for the land; developer profit; and intertwined with these are the matters of simplicity and transparency. These factors include those referred to in the Planning Practice Guidance (PPG) and I therefore consider that they are a sound basis for assessing the viability of the proposal.

16. I note that the council used the figures of the FVA for their own analysis whereby it was concluded that the contributions sought would be Regulation 122 compliant. However, this test considers whether the contributions are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development rather than Development Plan policy compliant. As such this does not in itself justify the acceptability of the off-site affordable housing contribution proposed.

Build cost

17. The PPG[4] refers to standardised inputs for viability assessments and makes specific reference to BCIS data as an example of appropriate data at the plan making stage. Alternatively, guidance from RICS[5] clearly identifies that a detailed costs plan should, is best practice, be provided at the development management stage.

18. The appellant has built many similar schemes before, and the viability witness highlighted the bespoke design of each of the appellant's various developments. This was in contrast to the wide use of standard house types of a volume housebuilder. This was the justification given for the use of BICS data as opposed to a lower figure or a detailed costs plan.

19. The appellant has sought to rely on Building Cost Information Service (BCIS) data to produce build costs information for the FVA and, as referenced in the viability SoCG the council have adopted the resulting figure. While the council

[3] Statement of Common Ground 7.11
[4] PPG Paragraph: 014 Reference ID: 10-012-20240214, Revision date: 12 02 2024
[5] CD8.8 RICS Professional Standard for Assessing Viability

have not suggested alternative figures or specifically sought to contest the data, I note that the council did request a 'full cost plan' for the appeal scheme but that this has not been provided by the appellant.

20. The applicable policy or guidance does not require the appellant to produce a detailed cost plan. Nonetheless, it is identified as RICS best practice to do so and can add confidence that the BICS data used accurately reflects the build cost of the scheme.

21. Therefore, while I have no alternative to those BCIS build costs provided by the appellant before me, I nonetheless find that this aspect of the FVA could be more transparent, a matter I shall return to later.

Contingency

22. The PPG[6] expressly allows for project contingency costs where "scheme specific assessment is deemed necessary" and requires "a justification for contingency relative to project risk and developers return".

23. The FVA identifies a figure of 5% of build costs as a contingency. This figure is referred to as 'adopted' in the viability SoCG, as referred to previously this is distinct from 'agreed'.

24. The appeal site is currently occupied as a construction compound having previously been an agricultural field. No contamination or abnormal development costs have been identified in evidence before me. For these reasons I consider the site to be of a very low risk.

25. The appellant's viability witness identified the 5% contingency figure as being a typical percentage used across a number of developments. The witness stated that it was anticipated that increases in materials for the construction would consume the contingency monies. Conversely, the council acknowledged that while build costs may increase, it is also true that the GDV of the appeal scheme may also increase.

26. Moreover, the appellant's viability witnesses' Rebuttal Proof of Evidence at paragraph 2.16 refers, in the context of the appeal site being a fully serviced plot with no on-site abnormal costs, to a reduced contingency of 3%. During cross examination the witness referred to this as a typographical error. Furthermore, a second reference to a lower contingency of 3% at paragraph 2.20, also in the context of reference to the absence of "abnormal costs and the site being levelled and cleared ready for development", was referred to as a typographical error.

27. Be that as it may, the basic principle of a reduced contingency to account for the, acknowledged by both parties, low risk of developing the site, is sound but I am not satisfied that this is reflected in the 'typical' 5% of costs contingency figure in the FVA and sought by the appellant.

28. A decrease in the contingency allowance from 5% to 3% results in an additional, approximately, £169,000 surplus for the section 106 obligations. I consider this to be a material sum.

[6] Paragraph: 014 Reference ID: 10-012-20240214

29. Consequently, I consider that the evidence before me regarding the contingency allowance falls short of the assessment and justification required by the PPG. Therefore, I do not consider that it has been demonstrated that that a contingency sum of 5% of costs is appropriate given the low risk of developing the site.

Land Value and Premium

30. The appellant has identified a Benchmark Land Value (BLV) of £200,000. The factors which assist in determining the BLV in this case are the existing use value and the premium to be added.

31. The Existing Use Value (EUV) promoted by the appellant is based on the use of the site as agricultural land. Albeit the site is currently used as a construction compound and the site is allocated for development in the LP. The premium suggested by the appellant and adopted by the council is a 20 times uplift.

32. There has been some considerable movement in these figures during discussions between the parties. The appellant's viability witness acknowledges[7] that the BLV has been revised from an initial figure of £685,000 to £450,000 and again to £200,000.

33. I accept that parties may, through negotiation, alter their positions on particular aspects of the FVA but it is expected that such changes are supported by reasoned justification[8]. However, while some basic rational has been provide by the appellant, it is apparent that the appellant has adopted figures presented by the council's viability consultants, presenting an offer primarily on the grounds of "commercial expediency"[9].

34. The PPG expressly states[10] that councils can request "data on the price paid for land (or the price expected to be paid through an option or promotion agreement)". Such data would increase the confidence and transparency in the BLV. I consider these changes in BLV to be material. While no specific alternative figures are being suggested to me by the council, there is little substantive evidence before me to justify the particular figures in the FVA.

35. In addition, the appellant has, despite requests from the council, not disclosed the price to be paid for the appeal site. At the time of the appeal the appellant does not own the site but has an agreement in place to purchase the site. The appellant did not detail any particular substantive reason for doing this though I note that there is no absolute requirement in the PPG for the requested data to be provided.

36. The appellant has referred to an earlier appeal decision[11] where that Inspector found that "the lack of any fixed price cannot, of itself, prejudice the case of either party". In that instance the appellant stated that no price for the sale of the land had been agreed between the appellant and the landowner, that is not the case here. Therefore, I consider that the failure to disclose the price to be paid for the land where an agreement exists, as it does here, lacks transparency which is a key requirement of the PPG.

[7] Paragraph 3.10 and 3.12 Mr Mackay Proof of Evidence
[8] Financial Viability in Planning: Conduct and Reporting **(CD8.8)**
[9] CD4.5 Final offer email from McCarthy Stone 27th September 2004
[10] Paragraph: 014 Reference ID: 10-014-20190509
[11] CD10.16 Appeal Ref: APP/B1740/W/23/3324227, Decision date: 16th January 2024

37. As a result of the considerable movement in these figures in the FVA, the limited substantive supporting evidence in this regard and the failure of the appellant to provide details of the price expected to be paid raises concerns as to whether the figures in the FVA are a fair reflection of the true value of the site, lacks simplicity and transparency.

Developer Profit

38. The developer is seeking a profit of 20% on the GDV of the scheme. The PPG sets profits at a range from 15% to 20% on GDV for plan making. However, it was accepted by the parties that the same range could equally apply to development proposals and hence it was relevant to this appeal. The assessment of developer profit is related to the risk of developing the site. The appellant has placed the profit required at the top of the range set out in the PPG. This suggests that the developer considers the proposal to be amongst the riskiest to develop.

39. The council has proposed a figure of 17.5% on GDV, reflecting the risk involved in the development of the appeal scheme and suggesting that the appellant can accept a slightly reduced level of profit and facilitate the provision of offsite AH.

40. The appellant is seeking a profit of 20% on GDV. A risk of this magnitude would suggest that the site was either contaminated or there is other site-specific development risks,

41. However, it is acknowledged by both parties that the appeal site is a serviced plot where services are readily available, road infrastructure has already been provided and a wider residential development is coming forwards around the plot. As such, there's no substantive evidence before me of any site-specific development risks. Furthermore, the affluence of the local housing market and an ageing population have been referred to by the parties as positive factors regarding the appeal scheme.

42. The appellant suggests that the nature of the proposed development, being retirement apartments, is such an inherently risky form of development that the highest level of developer profit is justified. The risks referred to by the appellant include (i) that the development must be completed and operation before sales commence; (ii) that this results in a slower return on investment and a longer period of uncertainty in the market and cost exposure; (iii) occupancy restriction reduces the size of the market in comparison to general housing; and, (iv) in referencing national planning guidance paragraph 007, because, as housing for older people, the appeal scheme varies from standard models of development for sale.

43. The appellant's viability witness acknowledged that the appellant does undertake marketing and sales activity from some 6 months prior to the completion of the development, typically accepting the reservation of units with a refundable deposit in the region of £1000. Nonetheless, that such 'off-plan' sales do not complete until the unit, and thus the development, is complete, leading to additional financing costs and associated risk. The additional financing cost is reflected in the FVA and the appellant's viability witness' proof of evidence.

44. Other appeal decisions[12] referred to by the appellant have accepted to a developer profit of 20% of GDV, with the exception of a case where a developer accepted a lower figure of 18.5% in the interests of expediency. However, it is not clear whether or not the circumstances of those appeals are replicated in this appeal.

45. The main risks identified by the appellant are referred to above. I have balanced these risks against benefits of the affluent housing market, ageing population, the nature of the appeal site and surrounding development.

46. Overall, I do not consider that the appeal scheme should be considered as having such low risk that the application of 17.5% of GDV for developer profit is applicable, as suggested by the council and while there are favourable considerations in respect of the appeal scheme I am satisfied that a profit of 20% is applicable in this instance and that this is in accordance with the guidance detailed in the PPG.

Transparency

47. The PPG says that any viability assessment should be proportionate, simple and transparent[13]. The council has requested details from the appellant with regards the price agreed to be paid for the land and a detailed cost assessment for the appeal scheme. The appellant has declined to provide this information.

48. That a council can request such data is specifically allowed for in the PPG and the provision of a detailed build cost is identified as recommended best practice in guidance published by RICS[14].

49. Therefore, in the absence of the reasonably requested information, without clearly reasoned justification, I find that the appellant has not provided full transparency of the assumptions behind the FVA. As a result I conclude that the viability assessments do not confirm with the PPG in respect of transparency. Therefore, in accordance with the PPG[15], I afford the FVA reduced weight.

Conclusion on viability

50. I have no alternative build cost figures before me, but it is a relevant consideration that the appellant has not followed RICS best practice and provided a detailed costs plan for the appeal scheme. This lacks transparency.

51. With regards land value and premium to be paid I have no alternative figure before me, indeed the appellant has used the council's figure, but there has been significant movement in these figures in the FVA without any substantive evidence to support the figures. In addition despite clear guidance in the PPG that such data can be sought, the appellant has not provided details of the price agreed to be paid between the appellant and the landowner. This lacks transparency and simplicity.

[12] CD 10
[13] Paragraph 010 Reference ID: 10-010-20180724
[14] CD8.08 RICS Professional Standard - Assessing viability in planning under the National Planning Policy Framework 2019 & CD8.09 RICS Professional Standard - Conduct and Reporting
[15] Planning Practice Guidance paragraph:008 reference ID:10-008-20190509

52. Turning to the matter of profit. I have accepted that in this instance the appellants desired profit of 20% of GVD is justified. On the other hand, with regards contingency, I have found that the 5% of cost figure does not reflect the low risk of developing the site, a serviced plot without contamination or abnormal construction issues, and this has not been adequately acknowledged anywhere in the values presented in the FVA. The appellant's viability witness acknowledged that unspent contingency funds would be retained by the developer as profit.

53. Consequently, I consider that the appellant has failed to demonstrate that the 5% contingency sum is justified, failed to follow best practice as detailed by RICS guidance and failed to provide the simplicity and transparency required by the PPG. In accordance with the guidance set out in the PPG, I therefore afford the FVA reduced weight.

54. In conclusion, I am not satisfied that the conclusions of the FVA can be relied upon. Therefore the proposed scheme would not make appropriate financial contributions towards the provision of affordable housing and as such I find that the appeal scheme is in conflict with policies CP24 and CP7 of the LP.

Other Matters

Habitat Management and Monitoring Plan and monitoring fee secured by either a Planning Obligation or a condition.

55. There is a dispute between the parties as to whether the Habitat Management and Monitoring Plan (HMMP) and monitoring fee should be secured within the planning obligation or whether the HMMP can be secured by condition and the monitoring fee secured within the obligation as favoured by the appellant.

56. The Regulation 122 tests generally require that a planning obligation's terms are necessary, relevant, and proportionate to the development.

57. Regulation 122(2A) does not apply to conditions and that if, at some point in the future, the monitoring fee was not paid, the Council would not have a legal basis to enforce the payments given the limitations of Regulation 122.

58. This exemption means that monitoring fees do not need to pass this test and there is no reason to doubt the reasonableness of the fees sought in this instance and so I consider that they meet Regulation 122 (2A) of the Community Infrastructure Levy Regulations 2010 (as amended).

59. I have no substantive reason before me that would lead me to conclude that the HMMP cannot be adequately secured by condition and the monitoring fee, separately, in the planning obligation

Provision of a Public House

60. Local residents have referred to an expectation that the appeal site would provide a Public House (PH). It was acknowledged at the Inquiry by the parties that there is no LP policy requirement to provide a PH at the appeal site but an earlier planning application for the wider development did include provision of a PH on the site.

61. A clear consequence of the appeal scheme therefore is that, if approved, a PH could not come forwards on this site and local residents would be denied a PH,

identified by local residents as a community benefit and this would result in harm to the formation of a community in the wider development.

62. However, the appellants have carried out a marketing exercise to demonstrate that the PH use is not viable or that there is no commercial interest in the PH development. Moreover, there is a clear absence of any planning policy requirement or other planning obligation to provide the PH at the appeal site.

63. In this instance as a result of the above, I find that the absence of a PH in the appeal scheme and the loss of a potential PH, in the absence of any policy or other requirement, would not be harmful and accordingly attach neutral weight to it.

Provision of specialist residential accommodation

64. The appeal scheme would provide 44 units of specialist residential accommodation, contributing to a recognised need for housing with support for older people. This is a positive benefit of the appeal scheme, and I afford it significant weight. With regards housing in general, I note that the council has demonstrated a considerable surplus over the required 5-year housing land supply. The provision of housing in general is still of some positive benefit but I afford it only moderate weight.

65. The appeal scheme would provide a £1,004,203 contribution for the provision of affordable housing off-site and other requirements. While the sum proposed by the appellant for affordable housing is not the full amount sought by policy CP24 or the reduced sum sought by the council, l the contribution is nonetheless a positive benefit of the appeal scheme, but I afford it limited weight due to the conflict with the LP.

66. During construction of the appeal scheme, and in operation, a number of jobs would be created and supported. This is a positive benefit of the appeal scheme but because many of the jobs would only exist during the short construction phase of the development, I afford it moderate weight.

67. The appeal scheme would provide a Biodiversity Net Gain in excess of the basic requirement in the landscaping of the development. This is a positive benefit of the appeal scheme, and I afford it significant weight.

Planning Balance and Conclusion

68. The appeal scheme would create housing with support for older people and makes provision for Biodiversity Net Gain. The appeal scheme does make provision for an off-site contribution for affordable housing, but critically this is below that required by Policies CP24 and Policy CP7 of the LP and is thereby in conflict with those polices.

69. The appeal scheme would be in conflict with policies of the Development Plan, read as a whole, and planning permission should not be granted. There are no material considerations in this case that would alter or outweigh the harm identified. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

Mr M Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Robert Walton KC,Landmark Chambers instructed by

Richard Butler Ba (Hons) Dip TP MRTPI – Planning Bureau

R James Mackay BSc (Hons) MRICS – AlderKings LLP

FOR THE LOCAL PLANNING AUTHORITY:

Ms Emmaline Lambert, Cornerstone Barristers – Counsel instructed by Vivien Williams for Vale of White Horse District Council

Mr Ben Aspinall – Aspinall Verdi, Viability

Mr Stephen Jupp MRTPI Planning-solutions

INTERESTED PARTIES:

Cllr Andrew Crawford

DOCUMENTS

Opening Statement on behalf of the appellant

Opening Statement on behalf of the council

Closing Statement on behalf of the appellant

Closing Statement on behalf of the council