

NEWBURY 16/01414/ OUTD	Rear Of 108 Bartholomew Street Newbury Ressance Limited	Outline application for the development of seven 1 and 2 bedroom apartments. Matters to be considered: Access, Appearance, Layout and Scale.	Dele. Refusal	Dismissed 9.6.17 Costs Awarded
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Procedural Matters

The application was made in outline form, with landscaping reserved for future consideration. The Inspector determined the appeal on that basis.

Since the appeal was submitted, the Council has adopted its Housing Site Allocations Development Plan Document (DPD). The Inspector invited comments in respect of the DPD prior to making his decision.

Application for Costs

An application for costs was made by Miss Sarah Melton of Ressance Ltd against West Berkshire Council. This application is the subject of a separate Decision.

Main Issues

The Council said that it did not wish to defend the third reason for refusal. Consequently, the main issues in this appeal are:

- Whether the proposal would make adequate provision for vehicle parking.
- Whether the proposal would make adequate provision for affordable housing.

Reasons

The appeal site is within the Newbury Conservation Area (CA). It primarily consists of an area of land immediately to the rear of 108 Bartholomew Street (No. 108) which is currently occupied by traditional outbuildings. These would be replaced by a four-storey apartment block, which would occupy most of the land between the rear of No. 108 and an electricity substation.

Provision for vehicle parking

DPD Policy P1 sets out appropriate parking levels for new residential development, in the interests of creating good quality environments. As the site is in a central location, the level of parking required is lower than that sought in other parts of the town. A total of seven spaces should be provided for the proposed apartments to meet the required parking level. Whilst the proposal would not make provision for any parking at the site, Policy P1 (iii) recognises that there may be exceptional circumstances for providing parking that does not accord with the expected levels and allows for consideration of cases on an individual basis. Given its recent adoption and in the absence of any other factors being drawn to the Inspector's attention, Policy P1 should be given full weight.

The site is located towards the centre of town. There is convenient access to town centre services, facilities and employment as well as bus and rail services. Consequently, future occupiers of the apartments could rely on a range of alternative modes of transport to the private car including walking, cycling and public transport for most of their day-to-day needs. In turn, this would reduce reliance on the private car and promote healthy and safe travel. Exceptionally, a reduced level of parking provision at the site over that otherwise required under Policy P1 might therefore be warranted.

Nevertheless, it would be realistic to expect that at least some of the future occupiers would still require access to a car at times. Although the site is close to public car parks, some future occupiers are likely to be deterred from using those facilities, notably due to the likely costs involved. In turn, this may lead to increased on-street parking in locations elsewhere in the town, thereby eroding the quality of the local environment. Accordingly, it would not be

unreasonable to expect the proposal to make some form of provision for future occupiers who wish to have access to a car.

The Inspector understood that the Newbury car club scheme was launched in April 2016. It provides access to up to five vehicles, including one parked within a convenient walking distance of the site. The participation of future occupiers in the car club would provide them with reasonably convenient access to a car where and when it is required, as an alternative to on site provision. The Council's adopted Planning Obligations Supplementary Planning Document (SPD) provides for seeking contributions towards off-site improvements required as a result of a development, including car clubs. The methodology underpinning the level of contribution sought in respect of the proposal has been set out by the Council. The contribution would provide future occupiers with membership of the car club and would finance the hire costs for an initial period. Consequently, he was satisfied that there is proper justification for the contribution sought in respect of the proposal.

Therefore, a contribution to provide for future occupiers' membership of the car club would satisfy the three tests in Section 122(2) of the Community Infrastructure Regulations 2010 and paragraph 204 of the National Planning Policy Framework (the Framework). However, the Planning Obligation supplied is incomplete. Consequently, the Inspector could not afford it any weight in his decision. A planning condition would not satisfy the Framework tests. Therefore, the proposal would not accord with Policy P1, as an appropriate level of parking would not be provided. Consequently, the proposal would also not accord with Policy CS13 of the adopted West Berkshire Core Strategy (CS), as it would fail to improve and promote opportunities for healthy and safe travel and improve travel choice and facilitate sustainable travel. The appellant has not explained how the proposal would accord with Policy CS5, which concerns infrastructure requirements.

In reaching the above conclusions, the Inspector was mindful that the Inspector determining the previous appeals at the site did not raise objections on grounds of inadequate parking. However, that decision pre-dated the adoption of the DPD, as well as the car club becoming operational. Consequently, the circumstances in those appeals were materially different to the appeal scheme.

Affordable housing

CS Policy CS6 seeks 20% provision of affordable housing of sites of 5 - 9 dwellings. The Council says that this equates to one unit in the appeal scheme. The appellant submitted a draft Planning Obligation in respect of affordable housing provision.

However, the Planning Practice Guidance (PPG) section 'Planning Obligations' at paragraph 031 advises that affordable housing contributions should not be sought from developments of ten dwellings or less. This follows the Order of the Court of Appeal dated 13 May 2016, which gave legal effect to the Written Ministerial Statement of 28 November 2014.

The Council has referred to the site's sustainable location and a very significant need for affordable housing in its area. However, the PPG is a material consideration to which substantial weight must be attached. The Council has not produced any substantive evidence to indicate that there are any exceptional local circumstances concerning affordable housing that should prevail over the PPG. Therefore, the Inspector intended to afford the PPG greater weight in relation to Policy CS6.

Other matters

The previous Inspector found that a building materially similar in terms of its design and scale to the appeal scheme would preserve the character and appearance of the CA. The Inspector did not find any reason to disagree with that assessment.

The Council did not object to the appeal scheme on the above grounds or concerning the size of the flats and amenity space, the effect on the privacy of neighbouring occupiers, noise and disturbance, odours or vermin, the size of the refuse store, risk of flooding of the adjacent car park, proximity of the apartments to the electricity sub-station or access matters, including for construction traffic and emergency vehicles. The Inspector had not been supplied with any firm evidence which would warrant reaching a different conclusion to the Council in respect of any of the above matters.

Planning balance

The Framework advises at paragraph 7 that sustainable development has to be assessed against three roles - economic, social and environmental. All three roles are mutually dependent. The proposal would provide modest economic benefits, notably short-term jobs in the construction sector. It would also provide modest social benefits in terms of future occupiers contributing to maintaining and enhancing the vitality of town centre services and facilities and supporting local employment.

Following adoption of the DPD, the appellant has not offered a further explanation of their position that the Council did not have a five-year supply of housing land. In any event, the contribution to the supply of housing which would be made by the proposal is a social benefit which should be afforded modest weight, having regard to its scale. There would also be a modest benefit arising from the re-use of previously developed land. However, the proposal would not entirely fulfil the social role, as the failure to make provision for any form of parking would not create a high quality built environment.

Moreover, for a similar reason the proposal would not fulfil the environmental role as it would fail to mitigate and adapt to climate change including moving to a low carbon economy. These adverse impacts would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. As a result, the proposal would not amount to sustainable development as set out in the Framework.

Conclusion

The proposal would not be required to make provision for affordable housing when assessed against the PPG. Otherwise however, for the reasons given above the proposal would not accord with the Development Plan and it would be inconsistent with the Framework. Therefore he concluded that the appeal should be dismissed.

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Costs Decision

Reasons

The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.

The application for an award of costs is made on both procedural and substantive grounds. In summary, the applicant says that the Council did not engage with them during the application process as it did not request additional information. It did not act in accordance with paragraph 187 of the National Planning Policy Framework (the Framework) and the application was refused without warning. Secondly, the Council did not give appropriate weight to a material consideration, namely the recent appeal decisions concerning the site, as it refused permission in respect of matters where the Inspector had not identified harm.

In response, the Council says in summary that it had a dialogue with the applicants and acted reasonably at all times, but it could not permit the application without a completed Planning Obligation. The matter of sunlight and daylight was considered carefully and represents the professional opinion of the case officer. Had the applicant's more detailed assessment been available at an earlier stage, the Council would have reviewed its position.

The procedural matters raised by the applicant largely concern the processing of the application, rather than the appeal itself. Therefore, there is no firm evidence before me that the Council acted and behaved in any of the ways listed at paragraph 047 of the PPG or otherwise in a manner which could be regarded as unreasonable in relation to appeal procedures.

At paragraph 048, the PPG details when the Council's handling of the planning application might lead to an award of costs. However, this is mainly concerned with cases where the Council fail to determine applications within the prescribed limited, as opposed to when planning permission has been refused. Otherwise, paragraph 033 advises that costs cannot be claimed for the period during the determination of the application, although the behaviours and actions of that period can be taken into account.

The Inspector could appreciate the applicant's sense of frustration at the manner in which the application appears to have been determined, in that had they been able to supply additional information, they might have been able to resolve some or all of the Council's objections. Even so, the Council's behaviour and actions in relation to the application, although perhaps falling short of the proactive approach encouraged by the Framework, do not, in the Inspector's view, fall within the scope of what could be regarded as procedurally unreasonable behaviour under the PPG.

Turning to the applicant's comments regarding substantive matters. At paragraph 049, the PPG provides a list of examples of when a Council might be at risk of an award of costs due to unreasonable behaviour concerning the substance of the case. These include failing to produce evidence to substantiate their reasons for refusal at appeal, persisting in objections to elements of a scheme which an Inspector had previously found to be acceptable and refusing to provide reasonably requested information. The list is not exhaustive.

The Council supplied the applicant with information on which it based its decision, including its sun path analysis and a detailed justification of the car club contribution. This assisted the applicant in the preparation of their case at appeal. Consequently, the Inspector was not persuaded that the Council acted unreasonably in this respect.

The Council's reasons for refusal concerned three matters. In terms of the first reason on grounds on inadequate parking, he was satisfied that the Council's emerging (subsequently adopted) Housing Site Allocations Development Plan Document (DPD) together with the launch of the Newbury car club represented material changes in circumstances since the previous appeals. Although the current appeal scheme involved a similar number of flats to one of the previous appeals, the above warranted the Council coming to a different conclusion than the previous Inspector in relation to the level of parking provision required. The Council provided detailed and robust evidence to support its reason for refusal.

In respect of the second reason, the Council indicated that it was maintaining its position that Policy CS6 of the adopted West Berkshire Core Strategy (CS) should be given full weight. The previous Inspector considered that an affordable housing contribution would meet the statutory tests. However, that decision pre-dated the restriction on seeking affordable housing contributions for developments of ten dwellings or less, inserted into paragraph 031 of the PPG section 'Planning Obligations' following the Order of the Court of Appeal dated

13 May 2016, which gave legal effect to the Written Ministerial Statement of 28 November 2014. The Council did not produce any substantive evidence to indicate that there were exceptional local circumstances concerning affordable housing in its administrative area that should prevail over the PPG.

The third reason for refusal concerned the effect on sunlight and daylight levels enjoyed by the adjacent residential properties. However, the previous appeals concerned buildings of similar design and scale to the current appeal. The previous Inspector fully addressed the effects on the living conditions of adjacent residential properties and concluded that there would be no unacceptable harm in terms of overshadowing or overbearing.

The Inspector fully understood that the consideration of matters such as sunlight and daylight can often involve judgments being made and parties can legitimately hold different views. However, the Council has not adequately explained why it was considered necessary to undertake a further analysis in relation to a proposal which was materially similar to that considered by the previous Inspector. The Inspector had not been referred to any material change in circumstances since the previous appeal which might have affected the consideration of matters of sunlight and daylight and which could have justified the Council introducing it as a reason for refusal. Consequently, by refusing permission for this reason the applicant was put to the unnecessary expense of producing evidence concerning sunlight and daylight in relation to the appeal.

The applicant's evidence on sunlight and daylight culminated in the Council declining to defend this reason at appeal. He did not criticize that action in itself, as a review of the case following receipt of the appeal as part of sensible on-going case management is good practice. Nevertheless, withdrawing this reason did reinforce his view that it was not soundly based in the first place.

Therefore, the second and third refusal reasons are not underpinned by a body of evidence and they largely lack any substance. Consequently, the Council have behaved unreasonably with respect to the substance of the matter at appeal. As a result, the applicant has been put to additional expense in order to address those reasons at the appeal. This should not have been necessary and could have been avoided.

Conclusion

The Council's actions in relation to the appeal procedures and in dealing with the application did not amount to unreasonable behaviour. However, one of the reasons for refusal concerned an element of a scheme which a previous Inspector had indicated was acceptable and there was no evidence produced of a material change in circumstances since that appeal decision. This and another reason for refusal could not be substantiated by evidence at the appeal.

Consequently, the Council has behaved unreasonably in respect of the substance of the appeal, as set out in paragraph 049 of the PPG. This has resulted in the appellant incurring additional expenditure in preparing for the appeal, which would otherwise have been unnecessary.

The Inspector therefore found that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to refusal reasons 2 and 3. The conditions for an award at paragraph 030 of the PPG have therefore been met and a partial award of costs is justified.

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