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## Appeal Decision

Hearing Held on 11 July 2017

Site visit made on 11 July 2017

**by D J Board BSc (Hons) MA MRTPI**

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

**Decision date: 31 July 2017**

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**Appeal Ref: APP/W0340/W/17/3170877**

**Tower House, The Street, Mortimer Common, Reading, RG7 3RD**

- 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 conditions subject to which a previous planning permission was granted.
  - The appeal is made by T A Fisher (Mortimer) Ltd against the decision of West Berkshire Council.
  - The application Ref 16/02600/FULEXT, dated 13 September 2016, was refused by notice dated 16 December 2016.
  - The application sought planning permission for Erection of 17 dwellings following demolition of existing dwelling and clearance of the site, alteration of the existing means of access off The Street, and associated landscape work without complying with a condition attached to planning permission Ref 15/02667/FULEXT, dated 25 August 2016.
  - The condition in dispute is No 17 which states that: *"The development shall not begin until a scheme for the provision of five units of affordable housing 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 and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:*
    - i) The numbers, type, tenure and location of the site of the affordable housing provision to be made which shall be distributed throughout the development and which shall consist of 30% percentage of the overall development unless otherwise agreed in writing by the Local Planning Authority.*
    - ii) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing. No more than 80% of the market housing shall be occupied before the affordable housing is completed ready for occupation.*
    - iii) The arrangements for the transfer of the affordable housing to a n affordable housing provider or the management of the affordable housing (if no registered social landlord is involved).*
    - iv) The arrangements to ensure that such provision is affordable for both first and all subsequent occupiers of the affordable housing.*
    - v) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced".*
  - The reason given for the condition is: *"To ensure the provision of affordable housing in accordance with the provisions of Policy CS6 of the West Berkshire Core Strategy (2006-2026) and Part 6 of the National Planning Policy Framework".*
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## Decision

1. The appeal is allowed and planning permission is granted for Erection of 17 dwellings following demolition of existing dwelling and clearance of the site, alteration of the existing means of access off The Street, and associated landscape work without complying with a condition attached to planning permission Ref 15/02667/FULEXT, dated 25 August 2016 at Tower House, The Street, Mortimer Common, Reading, RG7 3RD in accordance with the terms of the application, Ref 16/02600/FULEXT, dated 13 September 2016, and the plans submitted with it, subject to the following conditions in Annex A.

## Application for costs

2. At the Hearing an application for costs was made by T A Fisher (Mortimer) Ltd against West Berkshire Council. This application will be the subject of a separate Decision.

## Procedural Matters

3. The statement of common ground identifies that the reference to Condition 12 within the decision notice is an error. There is no dispute that it should read Condition 17. The appeal is considered on that basis.
4. The Council advised that the since the application was determined the West Berkshire District Council Housing Site Allocations Development Plan Document has been adopted as has the Stratford Mortimer Neighbourhood Development Plan (NDP). It was agreed at the hearing that the NDP requirement for affordable housing mirrors policy CS6 of the West Berkshire Core Strategy (CS). The appeal is considered on this basis.

## Main Issue

5. The main issue is whether the disputed condition is necessary and reasonable, having regard to the submitted information on development viability.

## Reasons

6. Paragraph 173 of the National Planning Policy Framework (the Framework) advises that to ensure viability, the costs of any requirements likely to be applied to the development, such a requirements for affordable housing should, when taking account of the normal costs of development and mitigation, provide competitive returns to a willing landowner and will developer to enable the development to be deliverable.
7. Policy CS6 of the CS states that '*Subject to the economics of provision...on development sites of 15 dwellings or more...30% provision will be sought on previously developed land and 40% on greenfield land... proposed provision below the levels set out above should be fully justified by the applicant through clear evidence set out in a viability assessment...'*
8. As the appellants point out the policy is worded to allow flexibility in approach where appropriate. It is also clear that in order to apply that flexibility the applicant should provide evidence. In this case the appellants provided a financial viability assessment when the initial application was made<sup>1</sup>. This was considered by the District Valuer (DVS) as part of the application process and additional information was provided by the appellants to the planning

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<sup>1</sup> LPA ref 15/02667/FULEXT

- committee. The appellants have provided a further financial viability report has been provided for the appeal.
9. There is no dispute that there is a need for affordable housing in West Berkshire as the relevant policies identify. Further there was agreement on the matters of CIL contributions and that the Mortimer housing market is buoyant. However, the difference between parties relates to whether the site could in fact make provision for affordable housing and provide a competitive return that would make the development deliverable using a benchmark market value approach.
  10. The appellants' approach seeks to determine the market value of the site. In this case an Alternative Use Value (AUV) is advanced. This is based on the fact that the site benefits from two separate planning permissions for a total of 8 detached houses<sup>2</sup>. There is no dispute that these have been implemented and could be built out. Therefore the appellants' position is that the 17 unit scheme should be compared to the extant consents. The Council's advice from the DVS does not challenge this approach in principle. Given that the 8 unit scheme can readily identify a higher value for the site and could be built out I agree that this approach is reasonable in this case to establish a market value for the site.
  11. In adopting this approach the appellants have within the submitted appraisals adopted a profit of 20% on GDV. These appraisals demonstrate that if 20% is adopted as reasonable developers return then the 17 dwelling scheme without affordable housing is slightly less viable than the 8 unit scheme. Nevertheless the appellants have expressed a preference for the 17 unit scheme due to a local demand for smaller units and the ability to sell them. The appellants have also considered the 17 unit scheme with affordable housing and 20% profit as well as a 17 unit scheme with a blended return of 14.52% and a fixed land value equivalent to its market value. The value of both of these developments would be substantially less viable than the benchmark scheme.
  12. The DVS used a profit 17.5% in considering the 8 unit scheme as a benchmark which it is suggested is a reasonable level. The report in March 2016 considered the appellants appraisals at that time. It considered both the appellants development value and a second appraisal that produced a higher development value. At that point using the higher land value the scheme produced a profit level below the benchmark. Further at that point the DVS considered the appellants benchmark land value as a point of comparison. That produced a scheme with 18% profit which it again suggests would be unlikely to be able to support the provision of affordable housing. The overall advice from the DVS appears to be that the 17 unit scheme with affordable housing is not viable as it would not provide a reasonable level of return.
  13. In a letter dated August 2016 the DVS considers the 20% profit adopted by the appellants. In particular highlighting the changes in the financial and property markets and resultant uncertainty. This is also raised by the appellants in so far as uncertainty increases risk and, consequently, a higher margin is sought to offset this.
  14. The site to the rear of the appeal site is allocated for housing in the NDP. The appellants have demonstrated that either scheme could accommodate access

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<sup>2</sup> LPA refs 12/00680/FULD and 14/02246/FUL.

to this site. Therefore, it is reasonable to adopt the approach that it would have a neutral impact on viability of the appeal site.

15. The RICS Guidance Financial Viability in Planning is clear that '*...a scheme should be considered viable, as long as the cost implications of planning obligations are not set at a level at which the developer's return (after allowing for site value) falls below that which is acceptable in the market for the risk in undertaking the development scheme. if the cost implications of the obligations erode a developer's return below an acceptable market level for the scheme being assessed, the extent of those obligations will be deemed to make a development unviable as the developer would not proceed on that basis...*'
16. The Framework and PPG<sup>3</sup> set out that '*A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy*'.
17. In this case I am satisfied that the benchmark approach was appropriate. In addition that if the scheme was required to provide affordable housing then the return would be reduced significantly below that of the benchmark scheme. This would erode the developer's return below an acceptable market level such that the developer would not proceed. I therefore conclude that based on the submitted information regarding development viability that the condition is not necessary or reasonable. It would not be in conflict with CS policy CS6 or the Framework.

#### *Other matters*

18. The Council has referred me to two appeal decisions<sup>4</sup> that it considers are relevant to the appeal. However, in one of the cases no financial appraisal was provided and the second turned on the effect of sales values on viability, which is not in dispute in this case. I therefore attach very limited weight to these decisions.

#### **Conditions**

19. Section 73 allows the decision maker to attach new conditions, to not attach conditions that were previously imposed or to attach modified versions of them. In light of this, it is appropriate to review the conditions in their entirety. This is based on the discussion of a comprehensive list of conditions at the Hearing and conditions that the parties agreed were pre commencement conditions it was suggested that the wording be amended to take account of those previously discharged. In addition section 73 is not a mechanism to extend the time limits and a time limit condition attached accordingly.

#### **Conclusion**

20. For the above reasons and having regard to all other matters raised I conclude that the appeal should be allowed.

*D J Board*

INSPECTOR

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<sup>3</sup> 024 Reference ID: 10-024-20140306

<sup>4</sup> APP/W0340/W/16/3165818; APP/W0340/A/14/2222914

## **Annex A – Conditions**

- 1) The development shall be started before the 25th August 2019.
- 2) The development hereby approved shall be carried out in accordance with drawing title numbers: 15 – P1117 – LP – Location Plan; 15 – P1117 – 01B – Site Layout; 15 – P1117 – 02A – Plot 1; 15 – P1117 – 03A – Plot 2; 15 – P1117 – 04A – Plot 3; 15 – P1117 – 05A – Plot 4; 15 – P1117 – 06A – Plot 5; 15 – P1117 – 07A – Plot 6; 15 – P1117 – 08B – Plot 7; 15 – P1117 – 09A – Plots 8 – 11; 15 – P1117 – 10A – Plot 12; 15 – P1117 – 11A – Plots 13 – 16; 15 – P1117 – 12A – Plot 17; 15 – P1117 – 13A – Site Sections; 15 – P1117 – 14A – Site Comparison; 15 – P1117 – 15A – Outbuildings
- 3) No demolition or construction works shall take place outside the following hours:
  - 7:30am to 6:00pm Mondays to Fridays;
  - 8:30am to 1:00pm Saturdays;nor at any time on Sundays or Bank Holidays.
- 4) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref a5/02667/FULEXT no development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for:
  - (a) The parking of vehicles of site operatives and visitors;
  - (b) Loading and unloading of plant and materials;
  - (c) Storage of plant and materials used in constructing the development;
  - (d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
  - (e) Wheel washing facilities;
  - (f) Measures to control the emission of dust and dirt during construction;
  - (g) A scheme for recycling/disposing of waste resulting from demolition and construction works.

Thereafter the demolition and construction works shall incorporate and be undertaken in accordance with the approved statement.

- 5) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until a schedule of the materials to be used in the construction of the external surfaces of the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The hard surfacing shall incorporate the use of a porous material. This condition shall apply irrespective of any indications as to these matters which have been detailed in the current application. Samples of the materials shall be made available for inspection on request. Thereafter the development shall be carried out in accordance with the approved materials.

- 6) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until details of the finished floor levels of the development hereby permitted in relation to existing and proposed ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.
- 7) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no residential unit hereby permitted shall be occupied until the hard landscaping of the site has been completed in accordance with a hard landscaping scheme that has first been submitted to and approved in writing by the Local Planning Authority. The hard landscaping scheme shall include details of any boundary treatments (e.g. walls, fences) and hard surfaced areas (e.g. driveways, paths, patios, decking) to be provided as part of the development.
- 8) The development shall be completed in accordance with the approved soft landscaping drawing number 669/01 within the first planting season following completion of building operations / first occupation of the new dwelling (whichever occurs first). Any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed, die, or become diseased or become seriously damaged within five years of completion of this completion of the approved soft landscaping scheme shall be replaced within the next planting season by trees, shrubs or hedges of a similar size and species to that originally approved.
- 9) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until details of sustainable drainage measures to manage surface water within the site have been submitted to and approved in writing by the Local Planning Authority.  
These details shall:
  - a) Incorporate the implementation of Sustainable Drainage methods (SuDS) in accordance with best practice and the proposed national standards;
  - b) Include and be informed by a ground investigation survey which establishes the soil characteristics, infiltration rate and groundwater levels;
  - c) Include a drainage strategy for surface water run-off from the site that ensures that no discharge of surface water from the site will be directed into the public system;
  - d) Include construction drawings, cross-sections and specifications of all proposed SuDS measures within the site;
  - e) Include run-off calculations, discharge rates, infiltration and storage capacity calculations for the proposed SuDS measures based on a 1 in 100 year storm +30% for climate change;
  - f) Include pre-treatment methods to prevent any pollution or silt entering SuDS features or causing any contamination to the soil or groundwater;



- g) Ensure any permeable paved areas are designed and constructed in accordance with manufacturers guidelines;
- h) Include details of how the SuDS measures will be maintained and managed after completion. These details shall be provided as part of a handover pack for subsequent purchasers and owners of the property/premises;
- i) Include a management and maintenance plan for the lifetime of the development. This plan shall incorporate arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a residents' management company or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

All sustainable drainage measures shall be implemented in accordance with the approved details before the dwellings hereby permitted are occupied or in accordance with a timetable to be submitted and agreed in writing with the Local Planning Authority as part of the details submitted for this condition. The sustainable drainage measures shall be maintained and managed in accordance with the approved details thereafter.

- 10) The development shall be carried out strictly in accordance with the 'Method Statement: Herpetofauna' detailed in the AA Environmental Limited Report dated 3rd July 2015.
- 11) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place, including any site clearance and/or demolition of buildings, until details and locations of 6 built in bat tubes in the houses and 10 woodcrete bird boxes have been supplied to and approved in writing by the Local Planning Authority. The boxes shall be installed and thereafter managed and maintained in accordance with the approved details.
- 12) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until details of the provision for the storage of refuse and recycling materials for the dwellings have been submitted to and approved in writing by the Local Planning Authority. Such details will include the type of bin storage. No dwelling shall not brought into use until the refuse and recycling facilities have been provided in accordance with the approved details and shall be retained for this purpose thereafter.
- 13) The development shall be carried out in accordance with the tree protection measures detailed in Section 4 of the Arboricultural Impact Assessment prepared by SJ Stephens Associates (9th September 2015). The protective fencing shall be erected prior to any development works taking place and at least 2 working days notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities or storage of materials

whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

Note: The protective fencing should be as specified at Chapter 6 and detailed in figure 2 of B.S.5837:2012.

- 14) No dwelling shall be occupied until the visibility splays at the access have been provided in accordance with drawing number 5224.001 Rev A received on 3 December 2015. The land within these visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 0.6 metres above the carriageway level.
- 15) No dwelling shall be occupied until the vehicle parking and turning spaces have been surfaced, marked out and provided in accordance with the approved plans. The parking and turning spaces shall thereafter be kept available for parking (of private motor cars and/or light goods vehicles) at all times.
- 16) Unless otherwise discharged under formal discharge of condition application relating to LPA Ref 15/02667/FULEXT no development shall take place until details of the cycle parking and storage space have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the cycle parking and storage space has been provided in accordance with the approved details and retained for this purpose at all times.



## **APPEARANCES**

### FOR THE APPELLANT:

Steven Smallman	Pro Vision Planning & Design
Katherine Miles	Pro Vision Planning & Design
Steven Smith	Haslams Chartered Surveyors
Julian Pacey	T A Fisher

### FOR THE LOCAL PLANNING AUTHORITY:

Simon Till	West Berkshire Council
Graham Bridgman	West Berkshire Council

### INTERESTED PERSONS:

Janet Duffield	West Berkshire Council
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### DOCUMENTS SUBMITTED AT THE HEARING

- 1 Plan 11-P719-SK01 showing amendment to one of the 4 unit schemes to provide access to the land rear of the appeal site.

END