



Appeal Decision

Site visits made on 10 August 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15th September 2022

Appeal Ref: APP/Z4718/W/22/3290253

**Land at and to the rear of 271 Cliffe Lane, Gomersal, Cleckheaton
BD19 4SB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Richard Morton (KCS Development Ltd) against the decision of Kirklees Council.
 - The application Ref 2019/60/90902/E, dated 7 March 2019, was refused by notice dated 9 July 2021.
 - The development proposed is an outline application for the demolition of one dwelling and erection of 98 dwellings with consideration for access, landscaping and layout
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application sought permission for the erection of 98 dwellings. The Council supported the proposal, subject to a planning obligation to secure affordable housing and contributions towards various facilities and service. Consequently, on 19 December 2019 the Council resolved that it was minded to grant outline permission for the proposal, subject to a Section 106 Agreement being entered into within three months.
3. Following this there were further negotiations and amendments and, a copy of the draft Agreement, the terms of which were agreed, was circulated for execution in June 2020. As this was beyond the original three month deadline, the Council agreed to further extensions to its deadline for completion of the Agreement.
4. Following a series of logistical and postal issues, further hard copies of the draft were circulated for signature in June 2021. However, in the absence of the required signatures on 9 July 2021 the Council formally resolved to refuse outline planning permission.

Main Issue

5. The main issue is therefore whether or not the planning obligation is essential to permit the development to proceed.

Reasons

6. Although the Council supported the proposal it required a planning obligation to secure the following: affordable housing; the provision, maintenance and management of public open space, including an off-site commuted sum; contributions towards the provision of bus shelters along with a residential

travel plan fund and a travel plan monitoring fee; an education contribution; and the implementation and maintenance of offsite drainage works and the management and maintenance of on-site drainage works.

7. The appellant does not dispute the requirement for the obligation or the level of contributions sought. Having had regard to the relevant policies of the development plan, I too am satisfied the above requirements are necessary to make the proposal policy compliant and acceptable in planning terms. I also acknowledge the provision of affordable homes is a benefit which weighs in favour of the proposal in the planning balance.
8. I have been provided with a copy of the latest version of the obligation . While some signatures are in place, it is not yet completed for various reasons. One reason relates to an overseas signatory, which the appellant sought to overcome via electronic signature. I note such signature is currently acceptable in certain situations but that the Council did not wish to proceed on this basis.
9. Nevertheless, there were other factors which have contributed to the lack of completed document. These include, among other things, postal problems, amendments, negotiations between the parties, and delays due to the pandemic. Further delays were linked to internal execution procedures of the mortgage company. While attempts have been made to address this via a sale of the site to a purchaser willing to execute the deed, on the evidence before me this has not yet occurred. In any event, following completion of the sale, it is likely that associated amendments will be required to the current version of the deed, further delaying receipt of a final form agreement.
10. I note that much of the delay relates to matters outside of the control of the appellant, who appears to have made many efforts to arrange and expediate execution and completion where possible. However, this is not a sufficient reason to allow the appeal. Various extensions have already been provided by the Council and, notwithstanding the efforts of the appellant and the assurance that a final form Section 106 agreement would be submitted during the appeal, there remains no completed planning obligation in connection with this proposal. On that basis, there is no mechanism to secure affordable housing, public open space, landscape maintenance and management, flood risk, sustainable travel, or education, necessary to make the scheme compliant with the development plan.
11. Furthermore, Planning Practice Guidance is clear that negatively worded conditions limiting the development that can take place until a planning obligation has been entered into are unlikely to be appropriate. While it may be suitable in complex and strategically important development, even acknowledging the importance of the provision of housing, and particularly affordable housing, on the evidence before me the proposal does not amount to such a development. Accordingly, it would not be appropriate to secure completion of the draft agreement by way of condition.
12. I find that the planning obligation is essential to permit the development to proceed. However, for the reasons given, the proposal would fail to provide affordable housing, public open space, landscape maintenance and management, flood risk, sustainable travel, and education. As such, it would conflict with Policies LP4, LP11, LP20, LP21, LP27, LP28, LP32 and LP63 of the Local Plan, which relate to each of these matters in turn.

Conclusion

13. The proposal would fail to comply with the development plan and there are no other considerations that outweigh that finding. Consequently, the appeal should be dismissed.

C Rafferty

INSPECTOR