

Appeal Decision

Hearing held on 5 September 2024

Site visit made on 5 September 2024

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal Ref: APP/Z0116/W/24/3341173

Orchard House 515-517 Stockwood Road, Brislington, Bristol BS4 5LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Stockwood Land Ltd against the decision of Bristol City Council.
 - The application Ref is 21/04340/P.
 - The development proposed is the erection of 58no. residential apartments with associated works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Stockwood Land Ltd against Bristol City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have altered the description of development above to remove wording that does not describe development.
4. The application is in outline with access, layout, scale, and appearance to be considered as a detailed matter, with landscaping reserved for future consideration. Drawing 1482 - 01, a landscape concept plan, is therefore indicative only.
5. The appeal is against a failure of the Council to give notice of its decision on the planning application Ref 21/04340/P within the prescribed period. As such, there is no decision notice.
6. The Council have indicated that they would have been minded to refuse the application had they made a formal determination. It states it would have found the proposal would not make adequate provision for affordable housing, fire safety measures and promoting sustainable travel patterns. I have had regard to these and the hearing discussion in setting out the main issues.

7. Evidence was provided by appellant in advance of the hearing in respect to further examples of care home valuations, evidence of need across Bristol for care homes, and finance information. This does not alter the scheme in any way and the Council had opportunity to comment. Therefore, I am satisfied that accepting the evidence would not result in prejudice to any party.
8. A planning obligation was submitted, including obligations relating to fire hydrant provision and travel plan monitoring fees. It does not include any provision towards affordable housing.

Main Issues

9. The main issues in this case are:
 - whether the proposed development would make provision for affordable housing;
 - whether the proposal would make appropriate provision for fire safety measures; and;
 - whether the proposal would make appropriate provision for promoting sustainable travel patterns.

Reasons

Affordable housing

10. Policy BCS17 of the Bristol Development Framework Core Strategy (2011) (the BCS) requires that affordable housing is sought on residential developments of 15 dwellings or more at a level of 30% in the appeal site location. However, the policy also sets out that *'Where scheme viability is affected, it expects developers to provide full development appraisals to support a reduced level of affordable housing.'*
11. Whilst initially a policy compliant 30% affordable housing provision was proposed, the appellants submitted viability assessment (VA)¹ suggests that the scheme results in a considerable financial deficit, and any affordable housing contribution would be unviable. Whilst the Council accept that it has been demonstrated that the delivery of 30% affordable housing would not be viable, there is considerable discrepancy between the parties on what would be viable.
12. Both main parties were agreed at the hearing that, in accordance with PPG², as a first step in order to define land value for any viability assessment, a benchmark land value (BLM) should first be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. The Council's Planning Obligations SPD also sets out the starting point for a viability assessment is to be the existing use value.
13. The Council set out at the hearing that there is no development plan policy nor guidance which sets out in which circumstances alternative methods of establishing a benchmark land value can be used. Nevertheless, PPG sets

¹ By JLL, September 2023

² Paragraphs 013 Reference ID: 10-013-20190509 and 014 – ID: 10-014-20190509

out that that an alternative use value (AUV) of the land may be informative in establishing benchmark land value, and sets out that the circumstances where AUV may be used might include:

- *if there is evidence that the alternative use would fully comply with up to date development plan policies;*
- *if it can be demonstrated that the alternative use could be implemented on the site in question;*
- *if it can be demonstrated there is market demand for that use; and*
- *if there is an explanation as to why the alternative use has not been pursued.*

14. The appeal site currently consists of a car park area, serving the existing residential development at Orchard House and an area of adjoining parking formerly associated with the adjacent property to the south, occupied by a van sales business.
15. The Council's VA³ suggest a figure of £770,000 for EUV, based on an investment and comparable method of valuation, using letting values of open surfaced car spaces in Bristol, and allowing for quantum and associated management issues as well as location. The Council's VA suggest that an appropriate premium above the EUV would be £155,000.
16. The appellants representative suggested that this figure was not accurate. However, they had no figure of their own, due, it was stated at the Hearing, to the difficulty in accurately assessing the use, given the number of assumptions necessary. In any event, they consider that an AUV should be used.
17. The appellant's AUV is based upon a planning approval⁴ on the appeal site for "Outline application seeking matters of Access, Layout, and Scale for a care complex (Use Class C2) with associated works" which was granted in January 2023.
18. The VA submitted by the appellant gives a AUV for this scheme of £2.4m. This is based on a £ per room figure of £30,000, for 80 rooms. The 80 room nature of the scheme is not secured, rather it is referenced in the delegated report as – 'up to 80 beds'. The report is clear that "*as the application is in outline the internal layout and room dimensions of the proposed buildings have not been provided for consideration at this stage*". While the layout and scale are not therefore set, given the age and mobility of the occupiers of a care home may have, there would likely be issues with 5 storey blocks. No details of specific care homes that have such an arrangement have been put before me. This issue would again affect the attractiveness of such a scheme and make it unlikely that one could come forward at 80 beds and therefore casts doubt on the viability of such a scheme.
19. Notwithstanding this, the appellant disagrees with the appropriateness of the further value comparison examples used by in the Council's VA due to their age, however it is unclear why an example from May 2017 is out of date

³ District Valuer Service, 23 November 2023

⁴ Application reference 21/04414/P

whilst an example used by the appellant from November 2017 is acceptable. The £30,000 per bed figure is based on utilising an average from examples of care homes across a wide geographical area, such as the countryside. These alternative schemes would have varied desirability and values which do not appear directly comparable with the appeal site. The value put on the alternative use is therefore general and vague, and not adequately demonstrated.

20. Therefore, it has not been demonstrated that a scheme of this size and value could be implemented on the site or would comply with up to date development plan policies.
21. The appellant was clear at the hearing that details are limited as it was likely that, should a residential scheme fail to gain permission, the site would be sold on for other care home developers to pursue a reserved matters scheme to their own specifications. However, the appellant sets out that there is at present no provider on board and does not have previous experience of constructing care homes. There is no indication that a reserved matters application is forthcoming therefore, and it is noted that the residential flats scheme before me is already being advertised online on a website connected to the developer. Whilst the appellant sets out that two other care home developments are in the process of being brought forward elsewhere by the appellant, little evidence is before me that these schemes would be granted permission or likely to be developed.
22. Evidence is submitted of a general market demand for care homes across Bristol, and it was the appellant stated at the hearing that a number of operators are looking for sites. However, no evidence of any formal interest by care home providers is provided. It is not therefore demonstrated there is market demand for the use in this location.
23. PPG states that potential risk is accounted for in the assumed return for developers at the plan making stage. It describes an assumption of 15-20% of GDV as a suitable return to developers for the purpose of plan making but gives no specific advice on acceptable returns in decision-making on individual development schemes. Nevertheless, the Council suggest a figure as low as approximately 3% profit, based on the appellant's AUV, would be necessary in order for the residential scheme not to be in deficit. The appellant did not dispute this figure at the Hearing. The appellant conceded that the proposal makes 'little financial sense', and given the scheme would be self-funded, as landowner and developer, they would be willing to accept a lower profit margin. Given the seemingly fine margins proposed, this argument is not convincing, especially given that borrowing costs are set out and included in the appellants VA.
24. The appellant set out at the hearing that the developer is seeking to diversify risk and build a business reputation and grow their presence as a reputable developer in the Bristol market. I acknowledge that factors for development are not always necessarily financially driven. However, this does not represent compelling evidence of why, given the apparent low value and return of the scheme put forward by the appellant, such an ostensibly far more lucrative alternative development would not be pursued. It is not

therefore adequately explained why the alternative use has not been pursued.

25. Given the above, I conclude that it has not therefore been demonstrated that the AUV should be used to establish the benchmark land value.
26. There is also a difference in opinion regarding the Gross Development Value of the scheme in front of me, with the Council's VA concluding that the GDV is significantly higher than the appellant.
27. Both figures are based on projected sales values, however the Council has provided updated figures (originally May 2022 to May 2023, but including Land Registry House Price Index (HPI) for Orchard House sales mainly 2018 and 2019). These are benchmarked on the HPI and specifically the Land Registry House Price Index for Flats and Maisonettes in Bristol (February 2024). Whilst not site specific, this is due to the lack of comparable recent sales.
28. The Bristol HPI indicates that more recent sales reflect a higher value and so it is likely that sales prices in Bristol have recovered and are rising. As such, the appellants sales figures, the latest of which are over 12 months old, are not reflective of current prices. This is also true of the estate agent valuation referenced, which also reflects prices at the time of their report (April 2023).
29. I accept that the smaller units that the Council's VA partly focuses on may result in inflated sales prices, and consequently the proposed dwellings would not have a value as high as the Council's figure of £381-£388 per sqft. However, it has not been demonstrated that it would be as low as the appellant's figure of £359 per sqft (open market units). As such, I conclude that the higher figure is more likely to be accurate, given the pattern of rising value over time. This would improve the viability of the proposed development, but not alter the findings on the AUV put forward.
30. PPG⁵ sets out that the assessment of costs should be based on evidence which is reflective of local market conditions. The appellant's figures are based on independent quantity surveyor cost assessment⁶.
31. PPG does set out that Building Cost Information Service is an example of appropriate data, however the information provided by the appellant is comprehensive and detailed and provides a bespoke costing for the scheme in this location. As such, whilst the Framework makes reference to standardised inputs, I am satisfied that it is appropriate to accept such detailed site-specific data. In addition, whilst common in large schemes of multiple phases, the appellant set out that this would not be a multi phase build, and I find the lack of 2% credit rate to therefore be reasonable.
32. Framework paragraph 58 sets out that the weight to be given to a viability assessment is a matter for the decision maker. The appellant's VA suggests that both AUV figures result in a significant deficit against both parties opinions of benchmark land value. However, the Council set out that their EUV+ based approach would result in a surplus of £477,717.

⁵ Paragraph 014 ID: 10-012-20240214

⁶ By Cubix Construction Consultants

33. My findings above on Benchmark Land Value and Gross Development Value, including developer's profit, and in particular AUV, which is paramount to the appellants viability case, raise issue with the appellant's case. The information before me fails to meet the criteria set out in the PPG in relation to the use of AUV, and it has not therefore been shown that AUV should be used. In addition, the evidence before me in relation to the viability of the proposed scheme is not clear. I am not therefore persuaded that the appellant's evidence provides a robust and sound basis for concluding that the proposal cannot support any contribution towards the provision of affordable housing.
34. As such, for the above reasons, I conclude that the scheme fails to make appropriate provision for affordable housing. Therefore, in the absence of a completed undertaking to secure this, the proposed development would conflict with BCS Policy BCS17.

Fire safety

35. BCS Policy BCS11 seeks to ensure that growth in the city is supported by the provision of infrastructure, services and facilities needed to maintain and improve quality of life. It states that planning obligations may be sought from any development, irrespective of size, that has an impact requiring mitigation.
36. The Supplementary Planning Document Planning Obligations (2012) (SPD) sets out that the requirement for a fire hydrant to be sited within 100m of major new development is set out in building regulations. It sets out that there are areas, primarily around the fringes of the city and on undeveloped land, that are not within 100m of a fire hydrant.
37. Both parties are agreed that a financial contribution towards the provision of fire hydrants and their maintenance in this location is necessary, given the distance from existing fire hydrants. Without such provision, there would be insufficient fire safety measures in place to meet the requirements of the SPD and BCS Policy BCS11. As such, I am satisfied that the request for a contribution for the provision and maintenance of the hydrants is necessary, as set out in the SPD, to meet the tests contained in the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework.
38. Notwithstanding this, as set out above, whilst the appellant has agreed to the payment of £3000 for the provision of 2 fire hydrants, the planning obligation is not completed as it is not dated and therefore, it cannot be secured.
39. As such, the proposal would not make appropriate provision for fire safety measures and would not therefore meet the requirements of BCS Policy BCS11.
40. Matters relating to fire risk at the existing Orchard House development is beyond the scope of this appeal.

Sustainable travel

41. BCS Policies BCS10 and Policy DM23 of the Bristol Local Plan: Site Allocations and Development Management Policies Local Plan (2014) (DM) support the delivery of significant improvements to transport including appropriate demand management and sustainable travel measures. The policy sets out that proposals should minimise the need to travel, especially by private car, and maximise opportunities for the use of walking, cycling and public transport.
42. DM Policy DM23 sets out that proposals should be supported by a transport assessment and/or travel plan where development is likely to have a significant traffic impact. Given the scale of the proposal⁷, I am satisfied that it would generate a significant amount of movement. It is notable that the Council's Transport Development Management Officer came to the same conclusion.
43. There would not be a parking space provided for every residential unit. As such not every apartment will have a right to access a car parking space and on site parking will be managed. The travel plan would encourage the use of more sustainable modes of transport, and to help to mitigate the impacts of a heavily car dependent proposal.
44. A condition securing an appropriate travel plan would therefore be necessary were I minded to allow the appeal. Monitoring/auditing costs of the travel plan are set out in the SPD and the Bristol Transport Development Management Guidance document 'Travel Plan Guide for New Developments' (2023). The travel plan would be undertaken by the Council on the appellant's behalf. I am satisfied therefore that it has been demonstrated that the request for a financial contribution (£8,352 - £144 per dwelling) would meet the tests set out in the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework.
45. Nevertheless, again, whilst the appellant has agreed to the provision of a contribution towards this matter, the submitted planning obligation is not completed as it is not dated and therefore, I cannot take it into account. As such, the proposal does not make an appropriate provision for promoting sustainable travel patterns and would not comply with the sustainable travel goals of BCS Policy BCS10 and DM Policy DM23.

Planning Balance and conclusion

47. There would be moderate temporary economic benefit during construction and once complete, an on-going benefit to the economy through spend in the local economy and the support to local services, facilities and related employment. The addition of 58 units would make a moderate difference to the overall supply of housing. Given its existing use, the appeal site has a limited ecological value. As such, suitably worded planning conditions could secure improvements in this regard, together with some limited green/play space and further landscaping. As such, this benefit would carry some modest weight.

⁷ Indicated in TRICS data set out in the submitted transport statement, by Highgate Transportation, August 2021

48. The Framework seeks to ensure that sufficient provision is made for affordable housing, and as such the conflict with BCS Policy BCS17 should be given significant weight in this appeal. In addition, the Framework sets out that decisions should promote sustainable travel modes that limit future car use. As such, the conflict with the sustainable travel goals of BCS Policy BCS10 and DM Policy DM23 carry significant weight.
49. The Framework also seeks to ensure that planning policies and decisions promote public safety, and as such the conflict with the provision of infrastructure goals of BCS Policy BCS11 also carries significant weight. Given the conflict identified above, the development would conflict with the development plan as a whole.
50. It is not disputed that the Council is falling significantly short of the required housing land supply, set out by the appellant at 2.2-2.4 years. Therefore, having regard to Framework footnote 8, Framework paragraph 11d) applies.
51. The Framework supports the value of using suitable brownfield land within settlements, and the efficient use of land. As set out above, the provision of 58 dwellings, even if of a size underrepresented in the area, would result in moderate social and economic benefits. The Framework also supports ecological improvements. Given its modest size, this benefit would carry some modest weight.
53. Whilst no harm has been found in relation to character and appearance, this does not necessarily translate to visual enhancement. Whilst the scheme would be designed to meet energy efficiency targets, this is a neutral factor in my assessment of this case as such matters would be expected of any similar well-designed development.
54. The Framework requires that the needs of different groups in the community, including for affordable housing, should be reflected in planning policy, and that the provision of affordable housing should be sought for residential developments that are major developments. Given the importance given to affordable housing in the Framework, I give significant weight to this matter. Additional significant harm is found in relation to fire safety and sustainable travel promotion.
55. Consequently, the adverse impacts set out above would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
56. The proposal is contrary to the development plan as a whole and there are no other material considerations of sufficient weight to indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed and planning permission is refused.

B Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kit Stokes – Stokes Morgan

Penelope Merrick – Horizon Homes

Martha Freer - JLL

Duncan Hay – Cubix Construction Consultants

Hugh Richards – Planning Barrister

FOR THE LOCAL AUTHORITY:

Lewis Cook – Team Manager Development Management – Growth and
Regeneration – Bristol City Council

Jim Cliffe – Planning Obligations Manager - Bristol City Council

THIRD PARTY

Steph Culpin – nearby resident