The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2012

by Andrew Jeyes BSc DipTP MRTPI

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

Decision date: 26 January 2012

Appeal Ref: APP/K2420/A/11/2163009
3 Cleveland Road, Hinckley, Leicestershire LE10 0AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission on an application for the extension to the time limit for implementing a planning permission.
- The appeal is made by Sycamore Developments against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 11/00435/EXT, dated 27 May 2011, was refused by notice dated 12 October 2011.
- The development proposed is the demolition of existing dwelling and erection of 14 apartments with ancillary works (revised application).

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and erection of 14 apartments with ancillary works (revised application) at 3 Cleveland Road, Hinckley, Leicestershire LE10 0AJ in accordance with the terms of the application, Ref 11/00435/EXT, dated 27 May 2011, subject to the conditions contained in the attached schedule.

Application for Costs

2. An application for costs was made by Sycamore Developments against Hinckley & Bosworth Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission was originally granted at appeal[1] on the 27 October 2008. A Section 106 Unilateral Undertaking [UU] was submitted to the Council in respect of the original application. It is now proposed that the time limit for the development be extended, and a new permission issued, without an accompanying S106 obligation.

4. The Council has only refused permission on the lack of open space provision. The County Council has made representations concerning the lack of provision for education, library and civic amenity services and the Primary Care Trust requested contributions at application stage.

5. The main issue therefore is whether the proposal makes acceptable provision either on-site or off-site for play and open space and for other matters contained within the original S106 UU.

Reasoning

6. The appeal decision allowing the development accepted the S106 UU as part of the overall means of providing an acceptable development and indicated that the lack of

[1] APP/K2420/A/08/2080060

inflation proofing was insufficient to overcome the beneficial impact on housing supply in the area. The Council, whilst reducing the amount required as an open space contribution, consider that it cannot be removed altogether but accept removal of contributions to services relating to education, libraries and civic amenity facilities, which is not supported by the County Council, and health care.

7. Statutory tests are set out in the Community Infrastructure Levy Regulations 2010 [CIL] that reflect those set out in Circular 05/2005[2], indicating that the obligation must be necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonable related in scale.

8. Open space is required in accordance with saved Policies REC3 and IMP1 of the Hinckley & Bosworth Local Plan 2001 [LP], which are supported by adopted Supplementary Planning Document: *Play and Open Space 2008* [SPD:Play]. These indicate that the Council will negotiate with developers to provide specified standards of play space or seek contributions to provision elsewhere in lieu. There would be little practical space on site to provide adequate open space and there are existing open spaces sufficiently close where such provision could be made. Whilst these have varying standards of layout and equipment, they do not meet the Council's aspirational quality rating judged necessary to provide an acceptable quality of facility.

9. Whilst the appellant points to 2001 Census data to provide an indication that few children are likely to live in these apartments, there would nonetheless be 10 two-bedroom apartments as part of the development. There is no suggestion of limiting occupation by a parent or parents with children and no means of preventing visits by children. The provision of open space is therefore a matter which should be considered as a necessary part of the proposal and SPD:Play clearly indicates that provision should be made based on all residential units, with a reduced amount for one-bedroom units.

10. The County Council has submitted evidence to justify their assertion that contributions should be made to County Council services. The County Council has adopted a *Statement of Requirements for Developer Contributions in Leicestershire* that sets out the position in relation to various services. The Borough Council do not consider the requirement for an educational, libraries or civic amenity contribution to be CIL compliant.

11. In terms of education, there is already a deficiency of 85 spaces at John Cleveland College, the upper school serving the area. This development would generate demand for an additional space and the contribution would be used to remodel teaching area facilities to meet pupil space requirements. The libraries contribution, based on a formula, would reflect the increased demand that would arise for library services, with the library located in the nearby town centre. The civic amenity contribution would be used to provide additional capacity through an extension to the Barwell Civic Amenity site, the site closest to the town; the development is estimated to increase demand of these facilities by 0.05%. These requirements would be necessary, relate directly to the development and be appropriate in scale.

12. The Primary Care Trust has also indicated a requirement for a contribution based on extending and remodelling of the practice at Tilton Road, Burbage, which covers this site; again this was not supported by the Council. This practice building is rated as being in great need for development and has a deficit of space compared to practice size and use. Some services are being withdrawn from the practice because of space issues. There will be an extension to the surgery and a contribution is requested to this, based on a standard formula.

13. I consider that requirements of both Councils and of the Primary Care Trust would satisfy the requirements of the CIL Regulations 2010 and the tests in Circular 05/2005 and, in that they are necessary to make the proposed development acceptable in

[2] Circular 05/2005: *Planning Obligations*

planning terms, are directly related to the proposed development and fairly and reasonably related in scale and kind. This would normally require the developer to make contributions via a S106 obligation.

14. An economic viability statement has been submitted with the proposal and the Council does not contest this evidence. This indicates that, including land acquisition at the agreed price, the development, including the cost of meeting the S106 commitments would not be viable and would give rise to a loss of £358,919. This indicates that the land acquisition costs and S106 costs are more then the development can stand. However, the site contains a substantial house and this has an existing value. This has been factored into a second viability analysis, which shows a reduced loss of £133,709. The S106 costs come to some £41,026, so that, based on these costs and assumed sale prices, the development would not be viable under either scenario.

15. To ensure that development can go ahead, *Planning for Growth*[3] indicates a positive approach should be taken to sustainable development proposals. It requires Councils to reconsider existing section 106 agreements that currently render schemes unviable, and where possible modify those obligations to allow development to proceed; provided this continues to ensure that the development remains acceptable in planning terms.

16. In this case, the scheme would not be viable even with removal of the S106 contributions and would require further reductions in cost or improvements to sale prices for viability. The contribution of this scheme to future housing supply over the next three years must therefore be viewed with caution, but this is not a reason to dismiss the appeal. The site is close to the town centre and represents a sustainable development within a sustainable location. The lack of viability of the scheme indicates that a requirement for financial contributions cannot be justified in the present economic circumstances.

17. The scheme is identical to that previously granted permission. At that time, the then Inspector considered that the proposal would not harm the character and appearance of the area and would not have an adverse effect on highway safety. Nor would it have an unacceptable impact on living conditions of nearby residents, subject to conditions, through noise and disturbance arising from use of the car park and its access drive, overlooking or loss of privacy. These circumstances have not changed and these matters do not represent matters that warrant dismissal of the appeal.

18. For the reasons given, and taking account of representations, the appeal is allowed.

19. The conditions suggested, based on those applied to the previous planning permission, have been considered in accordance with the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. The plans to which this decision relates are specified for the avoidance of doubt and in the interests of the proper planning of the area.

20. Conditions are necessary in respect of materials, landscaping and refuse storage to ensure that the character and appearance of the area are not compromised, as is a condition on fencing, which, along with a condition relating to high level opening lights and obscure glazing, would also serve protect living conditions of neighbours. Conditions relating to parking provision, gate positions and visibility splays are needed to ensure highway safety and bike storage to ensure facilities for sustainable transport choice.

Andrew Jeyes

INSPECTOR

[3] Planning for Growth: Written Ministerial Statement: The Minister of State for Decentralisation - Greg Clark MP

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than three years from the date of this decision.
2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan; 1019/101 Rev C; 1019/102 Rev A; and 1019/103 Rev A.
3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4) No development shall take place until full details of enclosures and screened facilities for recycling containers and wheeled refuse bins or refuse storage containers, together with point of collection, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and completed prior to first occupation of any apartment.
5) Notwithstanding the submitted details, no development shall take place until full details of all boundary treatments, including the provision of acoustic fencing to the boundary with 5 Cleveland Road, and 2-metre high fences along those parts of side boundaries adjoining the car parking area have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and completed prior to first occupation of any apartment.
6) The approved hard and soft landscaping scheme shall be carried out in accordance with the approved details in the first planting season after the first occupation of the development. If within a period of two years from the date of the planting of any tree, that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
7) No apartment shall be occupied until space has been graded, levelled, surfaced, drained and marked out within the site, in accordance with the approved plans, for the parking and manoeuvring of vehicles and it shall be completed prior to first occupation of any apartment. Thereafter and throughout the lifetime of the development, such parking and manoeuvring space shall not be used for any other purpose.
8) The windows to be installed in the first floor side elevations of the frontage building shall be fitted with obscure glazing, with any opening lights being at high level and top hinged. Such windows and glass shall be fitted concurrently with the development. The obscure glass shall be maintained in these windows throughout the life of the development.
9) Any vehicular access gates, barriers, bollards, chains or other such obstructions shall be set back a minimum distance of 7 metres behind the highway boundary, and shall open inwards only.
10) No walls or fences shall be erected or planting allowed to grow on the highway boundary exceeding 0.9 metres in height above the level of the adjacent carriageway.
11) No apartment shall be occupied until provision for the parking of cycles has been made in accordance with a scheme, which shall first have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and completed prior to first occupation of any apartment. The cycle parking spaces shall be retained throughout the life of the development.
12) No apartment shall be occupied until 2 metre by 2 metre pedestrian visibility splays, and 2.4 metre by 33 metre vehicular visibility splays have been provided at the site access. Nothing shall be permitted to grow higher above ground level than 0.6 metres within the pedestrian visibility splays or 0.9 metres within the vehicular visibility splays. These visibility splays shall be so maintained throughout the life of the development.