



Appeal Decision

Hearing held on 9 February 2010
Site visit made on 9 February 2010

by **Karen L Ridge** LLB (Hons) MTPL

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

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Decision date:
16 March 2010

Appeal Ref: APP/C2708/A/07/2061094

Former site of Carr Mill, Acre Road, Cowling, Keighley BD22 0BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Skipton Properties Limited against the decision of Craven District Council.
- The application Ref. 22/2007/7239, dated 5 March 2007, was refused by notice dated 30 May 2007.
- The development proposed is the construction of twenty two houses.

Decision

1. I allow the appeal, and grant planning permission for the construction of twenty two houses on land at the Former site of Carr Mill, Acre Road, Cowling, Keighley BD22 0BS in accordance with the terms of the application, Ref. 22/2007/7239, dated 5 March 2007, and the plans submitted with it, subject to the conditions in the schedule annexed hereto.

Preliminary matters

2. A previous appeal decision in this case was issued on the 11 June 2008. It was subsequently quashed by a consent order made by the High Court dated 2 June 2009 which remitted the case for re-hearing and re-determination. This decision supersedes that issued on 11 June 2008.
 3. The previous decision was quashed due to the uncertainty of a condition purporting to secure affordable housing. At the date of the last decision the provision of affordable housing was not in issue between the parties, only the level to be provided. However, due to the passage of time since the first decision, the issue of the principle of the provision of affordable housing is now in issue and as such I have determined the appeal afresh.
 4. At the Hearing the appellants submitted an executed Unilateral Undertaking under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). I shall return to the subject of the undertaking later in this decision letter.
 5. The site comprises previously developed land within the Cowling village boundary. Whilst the site was previously in industrial use, the mill building has been demolished and the nature of the surrounding residential uses and access roads mean that a residential use is more compatible with the immediate surroundings of the site. Development of the land for residential purposes is
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therefore acceptable in principle and the proposal compliant with saved policy EMP 7 of the Craven District (Outside the Yorkshire Dales) Local Plan (LP).

6. The site also falls within the Cowling Conservation Area and the houses are designed using traditional stone and slate, appropriate to the character of the area. I agree that the proposal would enhance the character and appearance of the Conservation Area.

Main issue

7. Having regard to the above, and to the representations which I have received, I consider that the main issue in this case is whether the proposal makes satisfactory provision in relation to affordable housing, having regard to national, regional and local planning policy.

Reasons

8. In its refusal notification the Council refers to LP policy H12 which relates to the provision of affordable housing on exception sites where such housing is needed to meet the local housing needs. However, the proposal is on previously developed land within the development boundary and the Council accepts the principle of a residential use. As such the proposal more properly falls to be considered under LP policy H3. Policy H3 allows residential development within the development limits of named settlements where six criteria are satisfied. Criterion (5) requires proposals to meet all other relevant LP policies. I have not seen any evidence to suggest that the remaining criteria are not met. I therefore conclude that, subject to the proposal making satisfactory provision in terms of affordable housing, it will be compliant with policy H3.

Five year housing land supply

9. The Council accepts that it cannot demonstrate a five year supply of housing land in accordance with the requirements set out in policy H1 of the Regional Spatial Strategy¹ (RSS). It had a shortfall of some 285 dwellings against its target of 1250 dwellings in 2009. Both parties agree that this proposal must be viewed favourably in accordance with the advice set out in paragraph 71 of Planning Policy Statement 3: *Housing* (PPS3).

The requirement for affordable housing

10. Guidance in PPS3 indicates a national indicative minimum site size threshold of 15 dwellings as a trigger for the requirement for affordable housing, subject to evidence as to economic viability². At the regional level, RSS policy H4 confirms the need to increase the levels of affordable housing across the region. It also contains a requirement for local targets of over 40% affordable housing in the North Yorkshire districts, including Craven. Policy H4 further recognises that there may be considerable variety as to what is required within Districts.
11. I note that LP policy H11, which related to affordable housing, was not saved by direction and has now lapsed. Documents making up the Council's Local

¹ The Yorkshire and Humber Plan published in May 2008.

² Paragraph 29, PPS3.

Development Framework are at an early stage and there are currently no draft policies in relation to affordable housing.

12. The Council's Housing Needs Survey of 2005 paints a picture of increasing housing need and a need for affordable housing in particular. As a result of this the Council published its Affordable Housing Guide (AHG) in July 2008 which sets out the Council's requirements in terms of affordable housing provision. This document was adopted following public consultation and I consider it to be in conformity with national and regional guidance. I therefore accord it significant weight. It points to a shortfall of affordable housing across the district of 1,440 homes over the period 2005 to 2010.
13. The AHG also recognises the importance of ensuring that affordable housing does not render schemes unviable and specifies that, in favourable circumstances, there should be a reasonable prospect of achieving the Council's target of 40% provision. Where circumstances are not favourable and Financial Viability Assessments are produced, the Council will reduce its requirements accordingly. Both parties accept the starting point of 40% provision on sites of 15 units or more. Given that the proposal would lead to some 22 dwellings, this means that the starting point in terms of the levels of affordable housing on the appeal site would be in the order of 8 to 9 units.

Viability considerations

14. The appellants contend that there has been a material change in circumstances since the last appeal. Due to the difficult economic climate they have had to re-assess the financial viability of the proposal and the impact of providing affordable housing on the viability of the scheme. As a result they contend that the provision of any affordable housing would reduce the profit margins to a level which would make it impossible to secure financial lending.
15. The appellants have entered into an options agreement with the landowner which means that the land price is fixed. I heard evidence from the appellants that financial lending institutions are now more cautious and expect developers to achieve profit levels in the region of 20%. Whilst there was no direct written evidence provided, this point was not contested by the Council and I was persuaded by the oral evidence of the appellants' financial director that this was the case. I also note that price levels on the appellants adjoining site have been varying since they started development of that site. Consequently it is difficult to predict the price levels which could reasonably be achieved on the appeal site. In addition the land is contaminated and in a Conservation Area which leads to increased costs in terms of remediation and the cost of sympathetic materials.
16. The appellants have had discussions with one of the five of the Council's preferred RSL³ partners and have ascertained the discount which the RSL would require to take a transfer of the units. Unfortunately the appellants have not made enquiries of any of the four other RSLs to see if an improved offer or more favourable terms could be achieved. In addition they had failed to make enquiries as to the availability of Social Housing Grant which, if available, could potentially have a material impact on the question of viability. This is directly contrary to the advice of the AHG.

³ Registered social landlord.

17. The Council also criticise the viability appraisal on the basis that it is not an independent appraisal but merely a schedule completed by the appellants. Whilst I accept that the latest assessment is essentially an update of the earlier assessment I do not consider that it is sufficiently rigorous to satisfy the terms of the AHG and justify a relaxation of the affordable housing requirements.

Conclusions

18. On the limited evidence before me I accept that it is likely that there has been a reduction in the ability of the scheme to financially support the level of affordable housing required by policy. However, given the deficiencies in the appraisal it is not possible for me to identify the level, if any, of affordable housing which would be appropriate in this case.
19. I turn now to the appellants' Unilateral Undertaking which essentially seeks to provide a mechanism for the payment of a contribution to the Council once a certain profit level has been attained. There are two main difficulties with the obligation as drafted; firstly it would not provide on-site provision of affordable housing which is so badly needed in the district and in Cowling in particular. Secondly, it provides that the Council will spend the monies on affordable housing in the southern sector with first preference to Cowling and in the event of a disagreement to be bound by the final decision of the arbiter (clauses 9 and 10). I consider that to impose such a requirement on the Council in this form is inappropriate and of doubtful validity in a document that cannot bind the relevant authority as it is not a party to the Undertaking.
20. I conclude therefore that the Unilateral Undertaking as drafted would not provide an appropriate mechanism for the delivery of affordable housing in this case. At the Hearing I discussed other means of securing an appropriate level of affordable housing with the parties. It was agreed that a condition could be imposed requiring the submission of an independent viability assessment which indicated the level of affordable housing (if any) which the scheme could sustain. If any affordable housing was financially viable then this could be secured by appropriate condition. I agree that a condition requiring an independent economic viability assessment and the provision of affordable housing would meet policy requirements at all levels. In the circumstances, given the acceptability of the proposal in all other respects I consider that the appeal should be allowed subject to such a condition.

Conditions

21. I have already referred to the need to impose a condition requiring a viability assessment and any affordable housing to be provided on-site thereafter. I shall impose this condition together with the standard time limit for the commencement of development. I shall also impose a condition requiring the development to be carried out in accordance with the submitted plans in the interests of ensuring a satisfactory development given that the proposal is in a conservation area. The Council has also suggested other conditions which I have assessed in light of the advice within Circular 11/95: *The Use of Conditions in Planning Permissions*. The numbers in brackets relate to the Council's suggested conditions.
22. I consider the following conditions to be reasonable and necessary and acceptable in all other regards and where appropriate I have amended the

- wording in the interests of clarity and enforceability. I shall impose conditions relating to the removal of permitted development rights (2 & 13 combined) and control over external materials (3 & 4 combined) given that the site is within a Conservation Area. I agree that it is necessary to control construction activities including access routes (5, 6 & 7 combined) as well as limiting the hours of construction (8). This should overcome the concerns of local residents relating to construction traffic. I shall further impose a condition requiring details of the access to the site and circulation areas to be submitted (9 & 10).
23. I shall also require details of the parking areas in relation to each property to be laid out prior to occupation (12). Given that the site is previously developed land I shall impose a condition to deal with this (15) as well as a condition to require details of foul and surface water drainage (16 & 17 combined). The Council accepted that proposed conditions 11, 14 and 18 were not necessary and withdrew them. I agree.
24. Finally, the Council requested a condition requiring the provision of public open space in relation to the proposal. I agree that such a condition is reasonable and necessary and shall impose it.

Karen L Ridge

INSPECTOR

SCHEDULE OF CONDITIONS SUBJECT TO WHICH PLANNING PERMISSION IS GRANTED

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall not begin until such time as an independent financial assessment has been submitted to and approved in writing by the Council. The financial assessment shall indicate the level (if any) of affordable housing which the scheme could provide, taking account of any available public subsidy. Thereafter development shall not commence until such time as either (a) the approved financial assessment confirms that affordable housing is not viable OR (b) if affordable housing is viable then a scheme for the provision 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 B of PPS3 or any future guidance that replaces it. The scheme shall include:
 - (i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall contain the maximum numbers of affordable housing units indicated by the financial viability assessment;
 - (ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - (iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no RSL involved);
 - (iii) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - (iv) 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.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: plans 1992.1 and 1992.2.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extension or external alterations to any dwelling shall take place and no garages shall be converted into living accommodation.
- 5) No development shall take place until samples of the materials to be used in the construction of all of the external surfaces of the dwellings 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.

- 6) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) the siting of site cabins
 - iii) access routes between the highway and the appeal site
 - iv) loading and unloading of plant and materials
 - v) storage of plant and materials used in constructing the development
 - vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vii) wheel washing facilities
 - viii) measures to control the emission of dust and dirt during construction
 - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 7) No construction works involving the use of any vehicles, machinery or power tools of any kind shall be carried on outside the following hours:

0730 hours to 1800 hours on Mondays to Fridays;

0800 hours to 1300 hours on Saturdays; and at no time on Sundays and Bank Holidays.
- 8) No development shall commence until details of the access to the site, and the circulation areas within it, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No dwelling shall be occupied until space has been laid out within the site for the car parking areas associated with that particular dwelling.
- 10) No development shall commence until a scheme to deal with any potential contamination of the site has been submitted to, and approved in writing by, the local planning authority. No dwelling hereby permitted shall be occupied until the approved remediation measures have been implemented in full.
- 11) Development shall not begin until full details of the foul and surface water drainage systems serving the site, including any balancing or off-site works, have been submitted to and approved in writing by the local planning authority. The approved systems shall be available for use prior to occupation of any of the dwellings hereby permitted.
- 12) No development shall commence until details of a scheme for the provision of public open space to meet the needs of the development in accordance with local plan policies has been submitted to and approved in writing by the local planning authority. The scheme shall include a timetable for the provision to be made and shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Mrs Patricia Blakemore Legal Executive, Walton and Co. Solicitors.

Mr Andy Colls Finance Director, Skipton Properties.

Mr Chris Heffernan Quantity Surveyor, Skipton Properties.

FOR THE LOCAL PLANNING AUTHORITY:

Mr G R Morris Town Planner, Craven District Council.

Mr Wyn Ashton Head of Strategic Housing, Craven District Council.

Mr Michael Turnbull Solicitor, Craven District Council.

INTERESTED PERSONS:

Mr T M Greenway Vice-chairman, Cowling Parish Council.

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Council's letter of notification of the Hearing and list of persons notified.
- 2 Schedule of costings and construction specification, submitted on behalf of the appellants.
- 3 Letter Cowling Parish Council, dated 6 February 2010, submitted by Mr Greenway.
- 4 Copy e-mails Michael Turnbull to Pat Blakemore, submitted by the Council.
- 5 Executed unilateral undertaking dated 9 February 2010, submitted by the appellants.