



Appeal Decision

Hearing held on 16 April 2024

Site visit made on 16 April 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th June 2024

Appeal Ref: APP/T2350/W/23/3333973

Land to the south of Chatburn Old Road, Chatburn, Clitheroe

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal for Technical Design Consent.
 - The appeal is made by Mr Ronald Jackson against the decision of Ribble Valley Borough Council.
 - The application Ref is 3/2022/0500.
The development proposed is Technical Details Consent application following on from Permission in Principle for land to the south of Chatburn Old Road, Chatburn. Site adjoining rear boundaries of Crow Trees Brow, High Beech House and recently approved/developed Hare Hill Croft.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Permission in Principle ('PIP') reference: 3/2018/0582 and appeal reference APP/T2350/W/19/3223816 established the principle of residential development for up to 9 units on the appeal site. There is no dispute between the parties that the principle of development is acceptable (in terms of location, land use and amount of development) whilst the PIP remains extant.

Main Issues

3. The main issues are: i) Whether the proposal would secure appropriate provision for affordable housing; ii) Whether the proposal would provide a suitable housing mix; and iii) The effect of the proposal on the living conditions of the occupiers of 26 Crow Trees Brow (No 26) with regard to the overlooking of the rear garden of this dwelling.

Reasons

Affordable housing

4. In accordance with Key Statement H3 of the Ribble Valley Borough Council Core Strategy 2008 – 2028, adopted December 2014 ('CS') outside of the settlement boundaries of Clitheroe and Longridge, on developments of 5 or more dwellings (or sites of 0.2 hectares or more irrespective of the number of dwellings) the Council will require 30% affordable units on the site.

5. The appeal site has an area greater than 0.5 hectares and is outside the settlement boundary for Clitheroe. Therefore, the starting point is that the proposal requires 30% of the dwellings to be affordable.
6. Key Statement H3 of the CS only allows a reduction in affordable units to a minimum of 20% where supporting evidence, including a viability appraisal fully justifies a lower level of provision to the Council's satisfaction. Also, that developers will be expected to provide affordable housing on site as part of the proposed development unless the Council and the developer both agree that it is preferable to make a financial or other contribution towards the delivery of affordable housing on another site.
7. The National Planning Policy Framework under Paragraph 65, sets out an expectation that where a need for affordable housing has been identified that this should be met on-site, unless: "a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities."
8. Accordingly, both local and national planning policy provide some flexibility towards the provision of affordable housing, which can include off-site financial contributions towards affordable housing, where justified.
9. In this case, there was no interest from local Registered Providers in acquiring affordable dwellings on-site. Furthermore, the appellant's Financial Viability Assessment ('FVA') confirms that the proposed scheme would be technically unviable even before any affordable housing is factored in. This position was largely accepted by the Council's appointed viability consultants commissioned to appraise the appellant's FVA.
10. Instead, the Council suggested that consideration be given to the incorporation of three on-site affordable dwellings to be sold as Discounted Market Sales Housing at a discount of 40% to Open Market Value.
11. The appellant undertook further financial appraisal modelling incorporating the provision of three smaller dwellings as Discounted Market Sales Housing but it was concluded that this would not be viable owing to the incidence of fixed site costs, as set out in the submitted Technical Statement – Affordable Housing & Viability dated 14 November 2023. The Council's appointed consultants have also reviewed this and confirm that on-site affordable housing would not be viable.
12. Notwithstanding financial viability, at the Hearing the appellant accepted that Key Statement H3 does not allow for anything less than a 20% affordable housing. Accordingly, and given that viability is acknowledged as a constraint on the provision of affordable housing, the appellant's completed Unilateral Undertaking ('UU') dated 16 April 2024, includes an obligation to provide Ribble Valley Borough Council with a financial contribution of £224,640 for the purpose of off-site affordable housing provision in the event that the appeal is allowed.
13. The submitted affordable housing financial contribution is based on the Council's requested on-site provision, for three dwellings to be sold at a 40% discount to the average sale price in the local area of about £312,000. This equates to a sale price after discount of around £187,200. Therefore, the

discount to be provided would have equated to £124,800 per dwelling (£312,000 x 40%) and it is proposed that this sum represents the subsidy required to provide an affordable dwelling on-site. A contribution equivalent to 20% affordable housing provision therefore equates to £224,640 (£124,800 x 1.8).

14. Based on the appellant's submissions, the proposed financial contribution would be sufficient to deliver the equivalent amount of affordable housing off-site, if invested as 'gap funding' to support delivery by a Registered Provider, either through the direct development of new affordable housing, or through acquisition of additional affordable units on private development sites over and above the minimum level of provision required by way of legal agreements.
15. Also, the average grant provided by Homes England for affordable housing in the North West was £48,309 per dwelling. On this basis, the proposed financial contribution is equivalent in value to the provision of 4.6 affordable dwellings at average Homes England grant in relation to affordable housing delivery in North West.
16. At the Hearing, the Council referred me to its 'Affordable Housing Memorandum of Understanding' ('MoU'). The MoU provides information for parties involved with the provision of affordable housing. This says that in general the Council will not consider commuted sums for sites outside Clitheroe or Longridge unless there are clearly demonstrated special circumstances. Furthermore, that where commuted sums are accepted, the amount payable per dwelling will be a sum equal to the difference between the highest value a partner Registered Social Landlord would be willing to purchase at (without grant) and an independent market valuation of the dwelling.
17. In light of the site specific circumstances of the appeal scheme, the Council acknowledged that the MoU allows for the provision of commuted sums in lieu of on-site provision, but disagreed with the appellant's methodology for calculating the proposed affordable housing financial contribution.
18. Although the MoU is marked 'Final adopted version' it is unclear if and when this was adopted. In any event, the MoU appears to pre-date the CS and has not been updated for some time. Accordingly, this attracts limited weight.
19. Moreover, a financial contribution in lieu of on-site affordable housing provision was secured in connection with the development of 10 dwellings by the appellant on the adjacent housing site. In this instance, a contribution was agreed based on the difference between what a Registered Provider would have paid for an average priced dwelling in Chatburn for use as affordable housing and its estimated market value. The contribution equated to about 36% of the average priced dwelling in the locality.
20. As such, the principle of an affordable housing contribution based on the notional cost of off-site provision, related to local average property prices has already been agreed in a similar location for a comparable scale and type of development.
21. At the Hearing, the Council's representative advised that most affordable housing in the Borough was secured on-site, and that it was difficult to use financial contributions to secure this elsewhere. Whilst this does raise concern

about the deliverability of the affordable housing, this would be a matter for the Council to resolve, if this appeal succeeds.

22. Based on the foregoing reasons, the proposal only needs to secure the minimum level of provision for affordable housing (20%). Given the specific circumstances of this case a financial contribution in lieu of on-site affordable housing provision is justified. Also, in light of a similar precedent, the appellant's methodology for calculating the proposed affordable housing is acceptable. Therefore, the proposal makes appropriate provision for affordable housing and accords with Key Statement H3 of the CS.
23. Accordingly, the obligation to provide a financial contribution in the submitted UU is necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. This accords with the tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended).
24. The Council's decision also refers to Policy DMH1 of the CS. This sets out the criteria for those eligible for occupying affordable housing units. Therefore, this is not directly relevant to this main issue, which relates to the principle of providing such accommodation.

Housing mix

25. Key Statement H2 of the CS says: 'Planning permission will only be granted for residential development providing it can be demonstrated that it delivers a suitable mix of housing that accords with the projected future household requirements and local need across the Ribble Valley as a whole as evidenced by the Strategic Housing Market Assessment. Determination of planning applications for residential development will be informed by the most recent Housing Needs Surveys, Addressing Housing Needs statement and the most recently adopted SHMA, to identify the type, tenure and size of residential dwellings, required at different locations throughout the borough as well as reference to relevant housing market information as appropriate.'
26. On the evidence before me, the Council's Strategic Housing Market Assessment ('SHMA') says that Ribble Valley has an undersupply of smaller, more affordable housing types and planning policy can target a better mix of housing in all locations by focussing on gradually increasing the supply of smaller types of housing. That there will also be a need to continuously assess the mix of house types on a site-by-site basis.
27. Key Statement H2 does refer to 'relevant housing market information'. To this end, I have been referred to the Strategic Housing and Economic Needs Assessment ('SHENA'). This was produced for the Council in April 2020 to inform the future review of the Local Plan.
28. By proportionately applying households' existing tendencies (based on the 2011 Census) to occupy different sizes of housing, Table 5.2 of the SHENA provides an illustrative profile of the size of housing likely to be required by additional households forming in the Ribble Valley over the plan period. Proportionally, Table 5.2 sets out a greater requirement for 2 and 3 bedroom dwellings. Even so, the SHENA says that the application of this should not be overly prescriptive in directly basing requirements for individual sites on the illustrative mix.

29. The proposal is for 9, 4+ bedroom dwellings, along with a financial contribution towards affordable housing, but it has not been demonstrated that this mix of housing accords with the SHMA or is informed by Housing Needs Surveys, Addressing Housing Needs statement or any relevant housing market information. As such, there would be conflict with CS Key Statement H2.
30. Nevertheless, the SHMA is about 15 years old and there is nothing to suggest that this has been updated. As such, I cannot be certain that its requirements are current and reliable. Because the SHENA is based on the 2011 Census, this does not reflect demand. This includes demand arising from in-migration, and from the pandemic for homes with additional bedrooms and larger gardens. For example, to support the increase in home working, necessitating the need for home offices. Accordingly, the SHMA and SHENA are afforded limited weight.
31. Furthermore, the proposal relates to a relatively small development (9 units). Consequently, any harm to the Borough's housing mix would be negligible.
32. The appellant has referred to other permissions for small housing schemes (less than 10 dwellings) within Ribble Valley where the Council has not prescribed any specific housing mix. Most notably, no housing mix was specified on the aforementioned and comparable residential scheme on the adjacent site.
33. I have also been provided examples of larger housing schemes approved in Ribble Valley. Each incorporates a different mix of housing. However, these only represent a snapshot of those approved in Ribble Valley and provide insufficient information to support the appellant's argument that the type of housing and mix provided, depends on the site characteristics and location. Irrespective, and in the absence of any contrary evidence, the approved schemes illustrate that a broad mix of housing is being provided across the Borough as a whole.
34. Because the appeal site extends to under a hectare, is located on the edge of Chatburn and is restricted to a maximum of 9 dwellings by the approved PIP, this is confined to a lower density scheme. Also, the appellant has considered incorporating smaller dwellings within the scheme but this was not financially viable.
35. Drawing on the above reasons, the Council's information on suitable mix of housing for projected future household requirements and local need across Ribble Valley as a whole, cannot be relied upon. In any event, it does not appear that this is consistently applied across the Borough. In particular, for smaller housing proposals, such as the appeal scheme. Also, the proposal would deliver a number of large family houses and a financial contribution towards affordable housing, which would provide some support for housing mix in the Borough. This, and the benefits associated with the proposal attract moderate weight, which outweighs any limited harm arising from the conflict with Key Statement H2 of the CS. Therefore, I consider the proposed housing mix to be acceptable.

Living conditions

36. The proposed dwelling at Plot 07 ('No 7') would be located adjacent to, and orientated to face a considerable section of the southerly flank boundary for the rear garden of No 26. At the Hearing, the main parties agreed that there are no

applicable local space standards and the assessment of the effects of the proposed dwelling on No 26 is a matter of planning judgement.

37. No 26 benefits from a generous garden, which is well maintained and incorporates a number of outbuildings/garden structures. This suggests that the entirety of the garden is enjoyed by the occupiers of this dwelling and includes a small seating area towards the top of the garden.
38. The proposed boundary between these properties would comprise a taller fence than the one that exists. Even so, there would be an appreciable difference in finished floor levels between No 7 and No 26, with the proposed dwelling being on higher ground. Consequently, the rear windows for the ground and first floor accommodation at No 7 would be higher than the top of the proposed boundary fence.
39. The shared boundary between No 7 and No 26 is irregular. As such, the separation between the rear elevation of No 7 and the boundary with No 26 varies between about 10.8m at the closest point to just over 14m at the furthest point.
40. The rear elevation for No 7, incorporates floor to ceiling glazing and a balcony, which serve habitable rooms at ground floor, and a first floor bedroom. Based on my observations these, in particular those closer to the boundary with No 26, would allow extensive views over the rear garden of No 26, which would not be limited to the top parts of the garden.
41. Also, some of the windows and the balcony at No 7, serve living, dining and kitchen areas, which are likely to be in use in the day, when the garden associated with No 26 is also likely to be used. The presence of outbuildings / garden structures at No 26 are of limited sizes and would be largely screened by the fence. As such, these and any boundary planting would offer a very limited visual break in the extensive views from the ground and first floor accommodation at No 7.
42. I acknowledge that some mutual overlooking is expected in residential areas. Even so, in this instance the siting of No 7, would be particularly intrusive by introducing a substantial and unacceptable degree of overlooking of the rear garden of No 26. This would significantly undermine the living conditions of the occupiers of this dwelling. As such, the proposal would conflict with Policy DMG1 of the CS, which seeks to protect existing and future residential amenities from undue detrimental impacts.

Conclusion

43. I have found that the proposal makes acceptable provision towards affordable housing. This, along with 9 family homes would support the housing mix for Ribble Valley Borough as a whole. On the other hand, the proposal would harm the living conditions of the occupiers of No 26 with regard to the overlooking of the rear garden of this property. For this reason and conflict with the development plan, I conclude that the appeal should be dismissed and the TDC application be refused.

M Aqbal

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Christan Hawley	Counsel for the appellant
Ronald Jackson	Appellant
Caroline Payne	Emery Planning
Neil Andrews	Stanton Andrews Architects
Daniel Bowe	Stanton Andrews Architects
Neil Tatton	Resolve 106

FOR THE LOCAL PLANNING AUTHORITY

Stephen Kilmartin	Ribble Valley Borough Council
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DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Copy of signed Unilateral Undertaking dated 24 April 2024.
2. Affordable Housing Memorandum of Understanding.