The Planning Inspectorate

Appeal Decision

Site visit made on 31 December 2013

by V F Ammoun BSc DipTP MRTPI FRGS

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

Decision date: 3 March 2014

Appeal Ref: APP/M3835/A/13/2199960
6-8 West Avenue, Worthing, BN11 5LY

- 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 Mr Richard Andrew against the decision of Worthing Borough Council.
- The application Ref AWDM/1465/12, dated 21/11/2012, was refused by notice dated 13/05/2013.
- The development proposed is *The demolition of existing buildings and the erection of 7 houses and 2 flats*.

Decision

1. The appeal is allowed and planning permission is granted for *The demolition of existing buildings and the erection of 7 houses and 2 flats* at 6-8 West Avenue, Worthing, BN11 5LY in accordance with the terms of the application, Ref AWDM/1465/12, dated 21/11/2012, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Background to the appeal

2. The Council and the Appellant agree that, subject to an appropriate S106 undertaking, planning permission should be granted for the appeal development.

3. The Appellant provided a S106 undertaking, but the Council considered it unsatisfactory. The point at issue was whether the contribution which the development should make to an affordable housing fund should be calculated on the net housing gain (the Appellant's view) or on the gross size of the development (the Council's view).

4. During the appeal the Appellant provided a new signed S106 undertaking dated 4th September 2013. This includes a clause setting out the two differing figures for the affordable housing contribution. The figure based on the Appellant's view was £59,500, and on the Council's view was £75,300. The S106 undertaking states that the affordable housing contribution *"for the purposes of this deed shall be that determined by the Secretary of State in the Appeal"*[1].

5. The Appellant therefore envisages that planning permission will be granted for the appeal redevelopment, and that my appeal decision will indicate which of the two alternative figures for the affordable housing contribution set out in the new S106 undertaking is to apply.

[1] For the purposes of the undertaking the term Secretary of State is defined as including *"any inspector appointed to hear the Appeal on his behalf"*.

6. I have concluded that for the purposes of Clause 7 of the S106 undertaking dated 4th September 2013, the appropriate quantum of the Affordable Housing Contribution should be £75,300, for the reasons set out in paragraphs 12-23 below.

Agreed and non-disputed matters

7. It is not in dispute that one or other of these contributions should be made, in order to support the provision of affordable housing in Worthing. It is also agreed that a total access demand (TAD) payment should be made to the County Council in respect of additional highway and sustainable transport needs generated by the development, and this is provided for in the S106 undertaking.

8. The Council's policies for the provision of affordable housing and the contributions to be sought include qualifications allowing for negotiation and in particular the taking into account of evidence that the standard contributions could affect the viability of a scheme and should be reduced for that reason. The Appellant has been reminded of this possibility by the Council but has not sought relief from the £73,300 charge on that basis and has not provided any evidence or argument based upon the effect of the charge upon the viability of the appeal redevelopment.

9. The parties are agreed that conditions should be imposed on the development, and agree the purpose and/or wording of most of them. There are however some conditions proposed by the Council which are not agreed, and these are considered later in this decision.

Planning Policy and the main issues

10. Saved policies of the Worthing Local Plan 2003 set out in the representations do not include policies concerned with affordable housing. These are set out in draft Planning Contributions Supplementary Planning Guidance (SPG) 2007. Contributions to provide affordable housing are triggered by residential development being of 6 or more dwellings, and at paragraph 1.9 it is stated that *Affordable Housing is calculated using the gross amount of development, in accordance with PPS3*. At 2.12 a table sets contributions based on fixed percentages of *the development size.* Subsequently a Core Strategy was adopted in 2011 which includes policy 10 that states in part *on all sites of 6 to 10 dwellings, 10% affordable housing will be sought via a financial contribution,* but does not otherwise address whether the contribution is to be calculated upon gross or net development. An intention to revise the SPG has been abandoned in favour of work being undertaken on a forthcoming Community Infrastructure Levy (CIL) relating to Worthing. In the meantime the Council continues to apply the SPG method of calculation. Relevant local planning policies are to be given weight on the basis of their consistency with the National Planning Policy Framework (NPPF) which was issued in 2012, and thus postdates the local policies referred to.

11. From my consideration of the representations made I have concluded that the main issues in this case are whether the use of gross rather than net housing for the calculation of contributions is consistent with relevant NPPF policy, and whether its application to the appeal development is consistent with the Development Plan and otherwise appropriate in this case.

Reasons

12. As to the first issue, National policy set out at paragraph 204 of the NPPF requires that a S106 meet the three tests of being necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. In this case there is no dispute that meeting the Core Strategy policy of requiring the provision of affordable housing or a contribution thereto is necessary to make the development acceptable in planning terms, and is directly related to the proposed residential redevelopment of this site. I concur with both these conclusions.

13. The issue of compliance or otherwise with the NPPF thus turns on whether what is proposed fairly and reasonably relates in scale and kind to the development. As to kind there is no dispute that a financial contribution is appropriate rather than the provision of affordable houses on the appeal site, and I concur.

14. What remains at issue is whether the contribution sought fairly and reasonably relates to the scale of the development. In the present case this turns on whether scale for this purpose should be the size of the development, or the net gain in housing resulting from the development.

15. The Council has pointed out that both the gross and the net amount of development are used as the basis for affordable housing polices, so there is no standard practice, and further that the NPPF does not address the issue of using gross or net development calculations. They conclude that this is a decision to be taken at local level and in the light of local circumstances. They support their use of gross calculation by reference to the substantial need for affordable housing in Worthing as shown by objective and up to date needs assessment. From this they argue for an approach that maximises the opportunity for affordable housing, pointing out that in a largely built up Borough the vast majority of new housing will be on redevelopment sites.

16. The Appellant does not dispute that there is a need for affordable housing, but points out that the charging method being used by the Council is not set out in its statutory Core Strategy policy 10, but only in draft SPG that is not going to be updated. It is pointed out that the NPPF at paragraph 153 makes it clear that SPG should not be used to add unnecessarily to the financial burdens upon development, nor is broadening the application of a Development Plan policy consistent with a plan led system. The fact that the Council's "gross" approach would increase revenue does not in itself justify departing from adopted policy.

17. It is also pointed out for the Appellant that the County Council TAD contribution is based upon the additional vehicle or public transport use generated by the replacement of the two houses by the appeal development, and argued that this same approach should apply to the charge made in respect of affordable housing. The TAD contributions are, however, directly related to additional expenditure on highways and sustainable transport generated by the additional development on any site. The affordable housing contribution is not so linked, as it is not assumed that the housing/additional housing provided on the site creates a need for affordable housing. Rather there is a pre-existing backlog of need for affordable housing.

18. In considering this matter I start by noting that the fundamental purpose of affordable housing policy is to obtain from the development process affordable

dwellings that the market would not otherwise provide. Subject to provisions intended to avoid making development non viable, it diverts part of what would otherwise be the return from a private development investment into a public fund for the provision of affordable housing. It is thus in essence a "financial burden" imposed upon the development process to meet social and economic objectives set through the publicly accountable planning system. As a matter of fact it is the proceeds from the sale of dwellings that funds the housing development process. The gross number of dwellings available to be sold is thus a reasonable indicator of what funds are likely to be available[2]. I have concluded that calculations based on the gross size of the development can fairly and reasonably relate in scale and kind to the development.

19. Turning to whether the Council's approach is consistent with relevant NPPF policy, the NPPF (and indeed Core Strategy policy 10) does not state which method of calculation should be used, so adopting one rather than another method is not in itself a departure from or an overriding of policy. Similarly where both methods are in use by local planning authorities, I do not consider that choosing one rather than another constitutes a broadening of policy. I have concluded on the first issue that the use of gross rather than net housing for the calculation of contributions is consistent with relevant NPPF policy.

20. Turning to the second issue of whether calculation based on the gross size of a development is consistent with the Development Plan and otherwise appropriate in this case, no challenge has been made to the thresholds for establishing liability for making some affordable housing contribution – in this case *sites of 6 to 10 dwellings.* This is a measure based upon the gross size of the development, not the net housing gain. It is a measure that has been taken through the Core Strategy adoption process and now forms part of the Development Plan. There is thus no internal inconsistency in the Council's SPG approach of calculating what is a *10% affordable housing* financial contribution on the same basis.

21. It is apparent from paragraphs 7.18 to 7.26 of the Core Strategy relating to affordable housing that the strategy is informed not only by substantial study establishing the size of the affordable housing need, but also by consideration of the proposed provision that could be made under policy 10. This includes an assessment that *the targets are considered to be realistic and achievable[3].* As the Council had by 2011 been applying its SPG guidance for about four years and therefore will have been calculating on the basis of the gross size of residential developments, it must follow that its Core Strategy assessment as to what was realistic and achievable was based upon financial contributions being based upon gross size. Similarly, the conclusion by an Inspector that the Core Strategy was sound would have involved a conclusion that its policy relating to affordable housing was similarly sound. It follows that while draft SPG will not carry great authority in itself, where as in this case its method of calculation has in effect been incorporated into the Core Strategy the status of the SPG is of little direct relevance. Similarly, for the above reasons I consider that though Core Strategy policy 10 does not directly state what the method of calculation should be, it is based upon the gross development figure being applied by the Council.

[2] Situations in which this is not the case and viability is likely to be affected are dealt with by the Core Strategy provisions relating to negotiation, but which are not at issue in this case.
[3] Core Strategy, paragraph 7.28.

22. As to whether it is appropriate to apply the gross calculation to the present appeal I have noted the Council's acknowledgment that there is no uniformity of practice, from which it must be assumed that in varying local circumstances different approaches have differing merits. It does not, however, follow that one can appropriately switch from one system to the other in this case. As stated above, the statutory development plan process which led to the conclusion that the Core Strategy was sound would have included assumptions about affordable housing based upon gross housing provision funding. To retrospectively alter the basis of the calculations in a way that must reduce the flow of money into the affordable housing fund calls into question and implies a need to reconsider and recalculate the contribution figures. This is a process to be carried out through the Development Plan system of consultation and examination, perhaps in connection with a forthcoming CIL charging schedule to which the Council refers, rather than by an appeal decision on a single site.

23. I have concluded on the second issue that the application of the Council's gross housing provision calculation of affordable housing contribution to the appeal development is consistent with the Development Plan and otherwise appropriate in this case.

24. Having regard to my conclusion on the two main issues in this case I have further concluded that planning permission should be granted subject to conditions in part[4] for the reason that a S106 undertaking exists that includes a contribution to affordable housing provision calculated on the basis of the gross number of dwellings proposed on the appeal site.

25. Turning to **conditions**, the Council suggested 19 conditions and 10 of these were not objected to by the Appellant. These agreed conditions are clearly relevant to the development and I shall impose them with minor modifications, correction of a plan reference, and inclusion of the standard time limit condition. Provisions relating to access closure, pedestrian visibility and vehicle parking and turning are not objected to in principle, but the Appellant points out that they are all shown on the application plans. There is no evidence from the Council that what is shown on these plans is other than acceptable, and I shall therefore impose conditions requiring adherence to these plans prior to occupation rather than seeking further submission of details to the Council. I shall however retain a requirement for completion of the new access as the first stage of development, and requiring details where as in the case of the surface materials of the roadway or the standard of construction in relation to weight of vehicles is not defined. I have taken a similar approach to the approval of external materials, qualified by these not being defined on Drawing No: 5800/07 REV B Title: Garages – Plans & Elevations.

26. The Council has sought drawings at a scale of 1:10 showing architectural detailing, but this level of detail requires some justification where as in this case a property is neither within a Conservation Area or adjoined by buildings of particular architectural character or merit. In the absence of such justification and having regard to the standard scale elevation drawings provided I shall not impose this condition. The Appellant has suggested that details of tree protection measures do not need to be approved because they are set out in an arboricultural report, but though this report will have informed

[4] For completeness I record that the other and fundamental reason for the grant of planning permission is the general acceptability of the proposed scheme having regard to development plan and national policies relating to matters other than affordable housing, and that are not disputed in this case.

the Council's decision on the application it does not form part of the application and there is no indication that the Council approves of all its content. I shall therefore impose the condition suggested by the Council. No case has been made by the Council for removal of permitted development rights or requiring only a communal TV antenna, nor is the need for such restrictions otherwise self evident, and I shall not impose them.

27. The terms of the **unilateral S106 obligation** were commented on by the Council and as a result various changes were made, with the final version dated 4 September 2013. Three requested changes were not agreed by the Appellant and are not included in the S106.

28. At Clause 3.1 the Appellant undertakes to pay the affordable housing contribution on or before the date of first occupation of any of the dwellings, rather than as sought by the Council on commencement of the development. At Clause 3.2 the same position is taken in respect of the TAD payment to the County Council. The Appellant argues that the need for the contributions, and the justification for any measures to be financed by them, arises from occupation of the development not from its commencement. While I consider that this argument applies to the TAD contributions, as stated in my conclusions on the main issues above the need for affordable housing is pre existing and not caused by the appeal development. On the other hand in the absence of any evidence that making the payment later will have a materially adverse effect upon the provision of affordable housing I do not consider that this matter warrants withholding planning permission.

29. In respect of Clause 3.2 the Council seeks payment of an administration fee of £50 or 2% of the TAD contribution, whichever is the greater. The Appellant states that there is no justification for an additional administration fee to the money already paid. In the absence of such justification I do not consider this omission to be a material defect in the undertaking.

30. The Council considers that Clause 6.2 should be removed because it is implicit that if the unilateral undertaking is accepted it will be because it has complied with the relevant NPPF/CIL tests. The Appellant responds that as compliance with the tests is the central issue of the appeal it is appropriate for this to be made explicit in the deed. While I agree that this matter is central to the appeal, and is dealt with in my conclusions on the main issues, it does not follow that it is the purpose of a unilateral undertaking to reflect the planning appeal process. I do not, however, consider that the retention of this clause warrants withholding planning permission.

31. I have taken into account all the other matters raised in the representations, including that the County Council seeks a contribution of £15,000 which is provided for in the S106 obligation though its documentation includes calculations supporting a figure of £15,550, and the observations of the Appellant on this point, but do not consider that they are necessary to or alter my conclusions on the main issues in this case.

V F Ammoun

INSPECTOR

SCHEDULE OF CONDITIONS
Appeal Ref: APP/M3835/A/13/2199960
6-8 West Avenue, Worthing, BN11 5LY

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) No development shall take place unless and until details of screen and/or boundary walls and fences, including details of the making good of the boundary fronting West Avenue, have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the agreed screen and/or boundary walls and fences have been carried out. No fence or wall shall be erected between the front of the dwellings and the access road.

3) No other development shall commence until the proposed vehicular access to the development from West Avenue has been constructed in accordance with the approved planning drawing.

4) No part of the development shall be first occupied until such time as the existing vehicular accesses onto West Avenue have been physically closed as shown on the approved plans.

5) No part of the development shall be first occupied until such time as the pedestrian visibility splays have been provided either side of the proposed vehicular access onto West Avenue as indicated on the approved plans and these shall thereafter be kept free of all obstructions over a height of 0.6 metre above the adjoining carriageway level.

6) No part of the development shall be first occupied until such time as the access road, vehicle parking and turning spaces shown on the approved plans have been constructed in accordance with further details, including surface materials, to be submitted to and approved in writing by the Local Planning Authority. These spaces shall thereafter be retained for their designated use.

7) No dwelling shall be occupied until secure covered cycle storage provision to serve the new development has been provided in accordance with further details to be submitted to and approved in writing by the Local Planning Authority.

8) The development shall not commence unless and until details of surface water drainage and means of disposal including the results of soakage tests in accordance with BRE Digest 365 (1991) have been submitted to and approved in writing by the Local Planning Authority.

9) No work for the implementation of the development hereby permitted shall be undertaken on the site except between the hours of 08.00 and 18.00 Monday to Friday and 08.00 and 13.00 hours on Saturdays. No works shall take place on the site on Sundays or on Bank or Public Holidays.

10) No development shall take place unless and until there has been submitted to and approved in writing by the Local Planning authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection during the course of the development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development whichever is the sooner. Any trees or plants which die within a period of five years from the completion of the development, die are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the Local Planning Authority gives written consent to any variation. All

hard landscaping shall be provided prior to the occupation of the development hereby permitted.

11) The existing trees to be retained shall be protected during construction in accordance with an agreed Arboricultural Method Statement as recommended in BS: 5837:2012 to be submitted to and approved in writing by the Local Planning Authority and which shall include details of the construction details and method of working for the surfaces adjacent to the root protection areas of the retained trees.

12) The development shall not commence until samples of the materials to be used for the external walls and roofs, including bonnet hip tiles, as defined in the application plans, have been submitted to and approved in writing by the Local Planning Authority. The external materials to be used for the garage blocks shall be the same as those used for the approved houses and flats, unless otherwise agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out fully in accordance with the agreed materials.

13) The windows in the north elevation of Plot 6 shall be obscurely glazed and non opening except those parts of the window which are situated above 1.7 metres of the floor of the room in which the window is situated, and thereafter they shall be retained as such.

14) Before any of the dwellings hereby permitted are occupied, dustbin and re-cycling storage enclosure(s) shall be provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

15) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Method Statement and shall be adhered to throughout the construction period. The Statement shall provide for:- (i) the parking of vehicles site operatives and visitors; (ii) loading and unloading of plant and materials; (iii) storage of plant and materials used in constructing the development; (iv) the erection and maintenance of security hoarding; (v) wheel-washing facilities; (vi) measures to control the emission of dust and dirt during construction and demolition.

16) No external lighting of communal areas shall be installed except in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

17) The development hereby permitted shall be carried out in accordance with the following approved plans:- Drawing No: 5800/01 REV A Title: Site Location plan; Drawing No: 5800/02 REV B Title: Site layout; Drawing No: 5800/03 REV B Title: Plots 1-6 Plans and Sections; Drawing No: 5800/04 REV D Title: Plots 1-6 Elevations; Drawing No: 5800/05 REV B Title: Plots 7-9 Plans and Sections; Drawing No: 5800/06 REV D Title: Plots 7-9 & Street Elevations; Drawing No: 5800/07 REV B Title: Garages – Plans & Elevations.