



## Appeal Decisions

Hearing Held on 24 March 2021

Site visit made on 25 March 2021

**by M Scriven BA (Hons) MSc CMgr MCIHT MCMi**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> May 2021**

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### **Appeal Ref A: APP/F0114/W/20/3256285**

#### **Site of Former Ministry of Defence Offices, Warminster Road, Bathwick, Bath**

- 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 Hardrock Developments LTD against the decision of Bath & North East Somerset Council.
  - The application Ref 19/03838/FUL, dated 23 August 2019, was refused by notice dated 26 June 2020.
  - The development proposed is the construction of 42no. new dwellings and 2no. new blocks of apartments to provide a total of 70 new homes on part of the former MOD site at Warminster Road (revision to consented development).
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### **Appeal B Ref: APP/F0114/W/20/3256292**

#### **Additional Development Area, Holburne Park, Bathwick, Bath**

- 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 Hardrock Developments LTD against the decision of Bath & North East Somerset Council.
  - The application Ref 19/04772/FUL, dated 24 October 2019, was refused by notice dated 2 July 2020.
  - The development proposed is the erection of 8 additional dwellings, landscaping, car parking and associated works on land adjacent to Holburne Park, Warminster Road, Bath.
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### **Decisions**

1. Appeals A and B are dismissed.

### **Applications for costs**

2. At the Hearing, applications for costs were made by Bath & North East Somerset Council and Hardrock Developments LTD against one another. These applications were made in full following the Hearing through written representations and are the subject of separate Decisions.

### **Procedural matters**

3. In light of recent permissions being granted at the appeal sites, prior to the Hearing the Council withdrew their second and third reasons for refusal in relation to Appeal A, specifically with regard to the effect of the proposal on the Bath Word Heritage Site (WHS) and local car parking provision. I have dealt with this below.

4. The appellant submitted additional viability information on the day of the Hearing including a Valuation Report prepared by CBRE and a supporting letter from Savills. The late submissions were accepted as evidence as it was understood to provide the most up to date financial viability information associated with the proposed developments. Given the detailed nature of the material provided, the parties agreed the matter be dealt with by written representations following the Hearing rather than adjourning the event.
5. The appellant has provided an 8<sup>th</sup> Deed of Variation to the original S106 agreement for the wider development, the document makes provision for me as decisionmaker to amend the document in the event that I consider either the appeal proposals to be acceptable or, in light of the appellants view of viability and COVID-19, to allow the appeal with a zero financial contribution. A late stage viability review is also proposed with a resultant profit share.
6. The main parties have referred to recently published RICS viability guidance<sup>1</sup> and have had opportunity to comment on its relevance to the appeals as part of their submissions. As such, I have had regard to it albeit recognise that the effective date is intended to be July 2021.

### **Main Issue**

7. The main issue in respect to both appeals is whether an acceptable level of affordable housing provision is proposed, with particular regard to the viability of the proposals.

### **Reasons**

8. The appeal sites form part of a wider development, known as Holburne Park and is partially built out<sup>2</sup>. Since the appeals were made subsequent permissions have been granted at the two sites<sup>3</sup>, decisions dated March 2021, further to a completed legal agreement. There are no material differences between that recently agreed and that before me in terms of design and layout. However, that recently approved provides for 20 open-market, discounted homes on-site, located within Appeal site A, whereas that before me makes no provision for on-site affordable housing.
9. By virtue of the sites' central location, the proposed developments are referred to as being in 'Prime Bath' in Affordable Housing Policy CP9 of the Core Strategy<sup>4</sup> (CS), where it is expected that larger sites will provide for 40% on-site affordable housing. Where sites are sub-divided or phased, the policy states that affordable housing will be considered against the wider development. Given the sites' interdependency, in agreement with the main parties, I have dealt with both Appeal A and B together.
10. Further to its assessment of financial viability in the summer of 2020, including the uncertainty of the impacts of COVID-19, the appellant originally offered to provide a financial contribution of £644,000 in lieu of on-site affordable housing. The appellant explained that if I were to agree with the Council's assessment of Benchmark Land Value (BLV), the appellant would no longer

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<sup>1</sup> Assessing Viability in planning under the National Planning Policy Framework 2019, RICS, March 2021

<sup>2</sup> References 14/02272/EFUL and 16/04289/EFUL (as amended)

<sup>3</sup> References 20/02921/FUL and 20/02926/FUL for Appeal site A and Appeal site B respectively

<sup>4</sup> Bath and North East Somerset Core Strategy, 2014

consider the sum to be viable and is of the view that no upfront financial contribution would be appropriate.

11. The appeal proposals would provide a shortfall in the amount of on-site affordable housing compared to that stated in CS policy CP9. Even when considering the wider Holburne Park development as a whole, the figure would be around 15%, still well short of that sought by policy CP9. However, policy CP9 does acknowledge that viability should be taken into account in determining appropriate levels of affordable housing provision. It is common ground that meeting the full 40% requirement is unviable across Holburne Park. However, what is disputed is the acceptable level of affordable housing provision on-site and any associated upfront commuted sum.
12. The National Planning Policy Framework, 2019 (the Framework), recognises that viability assessments can be considered at the planning application stage if justified by the applicant, it also states that the weight to be given a viability assessment is a matter for the decision-maker. The Planning Practice Guidance (PPG) chapter on Viability provides guidance on the standardised inputs to viability assessments and sets out the principles in carrying out a viability assessment to establish Benchmark Land Value (BLV) based on the Existing Use Value (EUV) of the land.
13. Having had regard to the guidance referred to, I consider that EUV is not the price paid for the land but rather the existing value of the land and should disregard hope value. Where viability is disputed, a viability assessment is prepared to indicate what financial contribution can be supported by the scheme. This establishes the amount of money left for affordable housing once the costs (including build costs, developer's profit, planning obligation contributions etc) of the scheme have been taken into account.
14. Much evidence was presented by the parties in relation to viability, but with substantially differing outcomes, depending on what assumptions, data and methodology are used.
15. The appellant invites me to find that the BLV should incorporate a premium, an incentive to bring the land forward for development. However, the appeal sites already benefit from extant permissions for housing and form part of a wider development that is currently being built out. Therefore, I find that the land should not be treated as involving a material change of use, and having considered the Framework and PPG, such a premium should not be applied.
16. I accept that comparison sites can be used to 'cross-check' and inform viability appraisals. However, I find the appellant's methodology for calculating a weighted average cost per acre, which is primarily based on other sites, is not only based on differing affordable housing levels of provision but also do not reflect the appeal sites' more central location in Bath and which are likely to affect values. I therefore afford the assessment little weight in the appeal.
17. The appellant states that the CBRE Valuation Report submitted for the appeals provides a more recent assessment of the viability of the proposals. However, I agree with the Council that the report actually goes further than this and alters the methodology and approach taken. Whilst it is incumbent on me to consider the updated viability information, I do so without disregarding the predecessor viability assessment at application stage.

18. The most recent CBRE Valuation Report relates to a different number of units to that previously considered. It also makes reference to two additional sites which I accept appear more geographically comparable. However, I am told by the parties that those sites provide significantly less affordable housing than is required by CS policy CP9. In order to draw comparisons between the sites it would be reasonable to expect that affordable housing and transaction evidence should be analysed on a policy compliant level, which has not been adequately demonstrated in the evidence before me. I also have insufficient evidence that the actual sales to date at the Holburne Park development, as a whole, have informed the appraisal.
19. Whilst I accept that it is reasonable to provide updated information, I nevertheless find that the two views of viability provided by the appellant, following different methodologies paints a conflicting view on the viability of the proposed schemes. I cannot with any degree of certainty, conclude that the CBRE report demonstrates that the appeal schemes are unviable with affordable housing provision.
20. The appellant has very recently agreed to provide 20 on-site discounted units for the schemes that currently benefit from full planning permission<sup>3</sup>. The appellant argues the associated S106, sealed in March 2021, was only agreed to keep the development moving and to avoid the need to close the site. I cannot accept that a reasonable developer would have entered in to such a legal agreement to simply keep the development moving. Nonetheless, it is apparent that development is underway and represents a realistic fallback proposition, reported to result in around 25% affordable housing across the Holburne Park development as a whole. This was based on a revised assessment of viability. Whilst this is still below that required in CS policy CP9, it is clearly set at a more satisfactory level than that before me. Moreover, I have little detail before me to explain how the viability of the proposals has fundamentally changed since those decisions so as to justify the proposed absence of affordable on-site housing provision. I therefore afford the recently agreed permissions at the sites significant weight in the appeals as realistic fallback schemes.
21. Furthermore, when discussed at the Hearing, the appellant explained that the ongoing development would continue in the event the appeal was dismissed. Likewise, at the Hearing I heard there would be little or no impact on existing residents if the appeal were dismissed. As such I afford that argument little weight. The Council also explained at the Hearing that if a commuted sum was considered appropriate there was no certainty that it could be utilised within the 'Prime Bath' area, where I understand there is great need, but rather be used to fund developments across the wider administrative area.
22. I also understand that extant permission 16/04289/EFUL was based on a viability assessment providing 33% affordable housing on-site and a commuted sum of £400,000. In my view, to revisit the viability of a development repeatedly through its construction goes against the ethos of national guidance on the matter, including not only the PPG but also that recently published by RICS.
23. That both parties have provided me with an up to date view of their considered impacts of COVID-19 on the housing market since the time of the Council's decisions in the summer of 2020, is not in my view unreasonable as it provides

me with evidence of whether the uncertainties described in the evidence submitted have come to fruition. Whilst it would appear sales and reservations slowed at the site, various reasons are cited for this in the Savills Letter, including matters which would appear to have been within the control of the appellant. On the basis of that before me, the pessimism associated with the housing market last summer does not appear to have borne out in reality so as to justify the proposed lack of on-site affordable housing provision.

24. I appreciate the appellant is of the view that economic uncertainties remain and that they consider the financial impacts of the pandemic to have been 'kicked down the road' by national interventions such as furlough and the stamp duty holiday. However, I have no certainty of this and have considered the information available to me at the time of my decisions.
25. The appellant estimates the refusal of planning permission for the proposals cost around £3.4 million as development paused, despite seeking to make design savings on that previously agreed. Although I have little substantive evidence supporting this figure it does not explain why the appellant subsequently agreed to provide 20, affordable homes on-site. I therefore afford the reported costs no more than moderate weight.
26. I have determined the appeal on the evidence before me; whether the planning committee came to a different conclusion to its officers, which is their right, has had little bearing on my findings.
27. For the reasons given above, I find that the proposed developments would conflict with policy CP9 of the CS which, amongst other things, seeks to ensure that adequate levels of on-site affordable housing are provided, or in exceptional circumstances use of alternative mechanisms to achieve that required be agreed. As stated above, if considered in isolation, Appeal B would also conflict with policy CP9 as it forms part of a wider development.

#### **Other matters and planning balance**

28. The Council's second reason for refusal of that proposed in Appeal A related to its effect on the Outstanding Universal Value (OUV) of the WHS, this objection was subsequently withdrawn. The sites also sit within the Bath Conservation Area (CA). Therefore, as required by national policy and legislation I have had regard to the historic significance of the heritage assets. Having viewed the appeal sites from across the city, as well as visiting the sites and their surrounds, I concur that as the wider approved development is well under construction and the proposals would integrate with that being built, there would be no adverse impact on the OUV of the WHS and the CA would be preserved.
29. The Council's third reason for refusal of that proposed in Appeal A related to its effect on local car parking provision. This objection was subsequently withdrawn as it was broadly similar to that recently considered acceptable by the Council in 20/02921/FUL. Whilst the level of parking provision would be below that typically required, I must be mindful of that recently approved. I also consider the site to be readily accessible by sustainable means and as such do not consider it to be harmful in this regard.
30. I appreciate that Appeal A would provide significant Community Infrastructure Levy contributions and recognise the amount of planning contributions already

secured from the wider development. I also acknowledge that the proposals before me would contribute to the local housing supply and provide wider public benefits, including to the economy during construction, biodiversity net gain, provision of open space and public rights of way.

31. However, I understand the Council can demonstrate an adequate forward supply of housing and further to the extant permissions in place, which afford a higher level of affordable housing provision, any wider benefits would not be materially different to that already approved and being constructed. As such I afford the identified benefits of the proposals little weight. In my view the submitted viability information and reported impacts of COVID-19 do not justify that either the originally proposed commuted sum or a nil upfront contribution is appropriate in this instance.
32. Therefore, other material considerations associated with the appeals before me do not outweigh the identified conflict with Development Plan.

### **Conclusion**

33. For the reasons above having considered the Development Plan and Framework as a whole, both Appeal A and Appeal B are dismissed.

*M Scriven*

INSPECTOR

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY**

- Miss S Mason BSC Hons Assoc RTPI (Senior Planning Officer)
- Mr B Stone MRICS
- Mr J Blundell MSc MRICS
- Mr C Griggs (observer)
- Mr P Rixon (observer)

### **FOR THE APPELLANT**

- Mrs C Taylor Drake MSc MRTPI (Agent)
- Mr C Banner QC (Counsel)
- Ms A Rhodes Solicitor
- Mr E Gunnery MSc MRTPI MRICS
- Mr J Craven MRICS

### **Documents submitted at the Hearing**

- CBRE Valuation Report, dated 17<sup>th</sup> March 2021
- Savills Letter, dated 16<sup>th</sup> March, 2021