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## Appeal Decision

Hearing held on 4 August 2015

Site visit made on 4 August 2015

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

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

**Decision date: 11 August 2015**

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**Appeal Ref: APP/M9496/W/14/3001876**

**Endcliffe Court, Ashford Road, Bakewell DE45 1GT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by County Estates (Bakewell) Ltd against the decision of Peak District National Park Authority.
  - The application Ref NP/DDD/0914/0997, dated 15 September 2014, was refused by notice dated 14 November 2014.
  - The development proposed is six number one bedroom flats.
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### Decision

1. The appeal is allowed and planning permission is granted for six number one bedroom flats at Endcliffe Court, Ashford Road, Bakewell DE45 1GT in accordance with the terms of the application, Ref NP/DDD/0914/0997, dated 15 September 2014, subject to the conditions set out at the end of my decision.

### Preliminary Matters

2. On 31 July 2015 the judgement of Mr Justice Holgate in the case of West Berkshire District Authority and Reading Borough Authority v SSCLG was issued. Given the size of this judgement and the timing of its release so close to the Hearing date I agreed to hear oral views on the issue at the Hearing and allowed a further deadline for any written comments. The matter was discussed at the Hearing and subsequent to this both parties confirmed in writing that they had no further comments to make on this subject.
3. The proposal has been submitted in outline. I have therefore treated the submitted layout plan as indicative only and have decided the appeal on this basis.

### Main Issue

4. The main issue in this case is whether the development proposed would be consistent with the principles of sustainable development, having regard to the Development Plan and the National Planning Policy Framework.

### Reasons

5. The appeal site lies on the north western side of Bakewell and consists of a car parking area which serves two buildings. These buildings were previously office blocks but have both been converted relatively recently into residential

- use, with each unit housing 6 flats. As a result of the conversion of these buildings, less car parking space is now required and the proposal seeks to utilise this by building a block of 6 one bedroom flats. Although the application was submitted in outline, an indicative plan submitted shows the building proposed to closely match the existing two blocks in height, design and external appearance. The proposed flats would be for sale or rent on the open market. To the rear of the site lies Deepdale Business Park, a high quality business area made up of various employment uses.
6. Policy HC1 of the Peak District National Plan Local Development Framework Core Strategy, 2011 (the Core Strategy) states that provision will not be made for housing solely to meet open market demand. Saved policy LH1 of the Peak District National Park Local Plan, 2001 (the Local Plan) says that exceptionally residential development will be permitted provided that there is a proven need for the dwelling, the intended occupants meet a local occupancy criteria and the dwellings will be affordable. Both parties are in agreement that, in the absence of any proposed on site affordable housing, the proposal is contrary to these policies.
  7. Paragraph 215 of the National Planning Policy Framework (the Framework) states that in the case of plans adopted prior to the publication of the Framework, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. Paragraph 54 of the Framework concerns housing in rural areas, and states that local planning authorities should "in particular consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs". This is not a provision allowed for within either Policy HC1 or LH1. In this respect therefore these policies are not consistent with the Framework.
  8. A financial development appraisal is submitted within the evidence. Both parties agree that this appraisal is fair and realistic. The appraisal demonstrates that the proposed development would realise a profit of between 12.14% and 13.36%. However, the appellant owns both the site and the wider business park, and they have effectively removed the plot value from the appraisal to generate a sum of £55,000 to be paid towards the off site provision of affordable housing to meet local needs.
  9. The Authority question whether such a contribution could facilitate the provision of a significant level of affordable housing, given that the sum proposed would not construct one house. However, I note that the District Council Rural Housing Enabler Officer states that the sum would be "very helpful" in facilitating a scheme such as proposed at Lady Manners School elsewhere in Bakewell. Evidence submitted by the appellant indicates that such a scheme could ultimately provide 40 affordable homes. The Council Officer points out that the contribution would be very helpful not just in supporting capital funding, but also as a method of showing partnership support and assisting with bids for funding from national agencies.
  10. A further, seemingly unprompted email is also in evidence from the same Officer confirming that her views mirror those of her manager, and that the sum would help to reduce the level of grant required per unit, making it more competitive, more likely to succeed and potentially making schemes viable. Given this evidence I therefore consider that the sum proposed has the

potential to facilitate the provision of significant additional affordable housing to meet local needs, and that the scheme would thus comply with paragraph 54 of the Framework.

11. Paragraph 14 of the Framework states that where the development plan is silent or out of date that permission should be granted for sustainable development unless any adverse impacts would significantly and demonstrably outweigh the benefits, or specific policies in the Framework indicate development should be restricted. This is subject to footnote 9 which states that 'specific policies' include those relating to sites within a National Park. Footnote 10 states unless material considerations indicate otherwise.
12. The parties are in agreement that the proposal is located in a sustainable location, in walking distance of the town centre and with regular bus services to Bakewell and Buxton. The proposal would also generate some economic benefits through construction and the provision of six flats, and some social benefits through the provision of the six units. Paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in National Parks. However, the design of the proposal, providing it matched or was similar to that shown on the indicative plans would replicate the surrounding site and be softened in various views by Endcliffe Woods to the south. The proposal would be constructed largely on a redundant car parking area and would have minimal effects on landscape, scenic beauty, wildlife or cultural heritage.
13. The Authority have concerns over the effect that an approval could have on other possible proposals for similar schemes in the area; in effect the precedent that an approval could provide. However, each case must be dealt with on its own merits. The site is an exceptional one in terms of its location, the possibility to construct a building to match the existing units in terms of scale and design, utilising brownfield land with minimal impacts on the landscape and the scenic beauty of the National Park, and the contribution that can be offered towards affordable housing as a result of the ownership of the site. I do not consider that to allow such a small scale scheme which could accrue substantial benefits and facilitate significant affordable housing would undermine the status of the National Park.
14. I therefore conclude that the proposed development would be consistent with the principles of sustainable development. Planning law requires that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Whilst the proposal would be contrary to the Development Plan, I consider its compliance with the Framework and the benefits the proposal would provide outweighs this in this particular case.

### **Obligation and Conditions**

15. A Unilateral Undertaking (UU) has been submitted to confirm the proposed off site affordable housing contribution. Previous Planning Policy Guidance (PPG) stated that in designated rural areas such as national parks no affordable housing contributions would be sought from schemes of 5 units or less, but that this would not apply to rural exception sites. The parties disagreed on whether the appeal site constitutes a rural exception site, and hence to what proportion of the development would be required to contribute towards off site affordable housing. However, the judgement of Mr Justice Holgate has meant

- that the previous relevant policies in the PPG must not be treated as material considerations.
16. As such, I consider that the measures in the UU are necessary, related directly to the development and are fairly related in scale and kind. They accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.
  17. At the Hearing it transpired that the Authority had made comments on this UU relating to what they considered to be a fundamental flaw in that one of the mortgage holders for the site was not signed up to the document. However, these comments were not received by myself or the appellant. Aside from this and a few minor drafting errors, the Authority has no objection to the principles of the UU. The appellant had no objection to the changes proposed to the UU and accepted that the mortgage holder was required to sign. At the Hearing it was suggested by both parties that a condition could be used to ensure a revised UU was submitted prior to development taking place.
  18. Planning Practice Guidance states that a negatively worded condition limiting the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases, as ensuring that an obligation is entered into prior to the grant of consent is the best way to deliver sufficient certainty about what is being agreed.
  19. However, in this case, the parties are both in agreement over the proposed sum for off-site affordable housing, and agree fully with the provisions of the submitted financial appraisal. There is also agreement over the changes required to the submitted UU. There is therefore strong clarity over what is being agreed. In this one particular case for the reasons given above I therefore agree that the exceptional circumstances of this case would permit such a condition to be used. I consider that such a condition would be necessary, relevant and appropriate.
  20. The Authority are of the view that the proposed units should be legally tied to the business park. In their view the rental from the flats would provide a source of income to support the viability of the Business Park as a whole and thus support the Authority's aims in other ways, through the safeguarding of employment land. They would wish to see this confirmed through a separate obligation or a variation to the amended one.
  21. However, I note that the appellant considers that this issue was not raised prior to the Authority's Committee Report. An email from an independent chartered surveyor states that the appellant is taking "the wider view of the estate at Deepdale and is prepared to include the site of the proposal at zero cost". I do not consider that this refers to the proposal being necessary to maintain and sustain the business park; more, that as the appellant owns the land and surrounding area that they feel able to effectively donate the land for the proposal for free, knowing that this would then generate a reasonable profit for themselves and allow for the affordable housing contribution. I do not consider therefore that a legal undertaking to tie the residential units to the business park is necessary. Furthermore, I consider such a tie would not be realistic given the issue, as discussed at the Hearing, that at any one time any of the existing units on the business park could be sold off separately.

22. There is a list of 6 agreed conditions between the Authority and the Appellant. I have imposed conditions relating to time, and details of reserved matters and accordance with plans where relevant, in the interests of the proper planning of the area and for the avoidance of doubt.
23. A condition was proposed by the parties covering the design, appearance and amount of development. Such a condition would not normally be appropriate on an outline application with all matters reserved. However, in this case, due to the particular details of the site and its location within the National Park I consider such a condition to be both necessary and reasonable.
24. Conditions are also imposed to ensure adequate parking, access and bin storage provisions are made on site, and to ensure areas are retained for the provision of the day to day parking of vehicles, in the interests of highway safety.
25. The Highways Authority states that a condition to improve pedestrian facilities at the south east corner of the site should be imposed, considering lighting and visibility issues. I noted on my visit that this corner of the site would be the natural route for pedestrians walking to Bakewell to take, and that there was evidence that this was in use. However, this coincides with a point where an existing public footpath joins the road from Endcliffe Woods. There is a street light directly adjacent to the footpath and visibility in both directions is good. I do not consider therefore that such a condition, particularly given the limited number of residents that the proposal would create, is reasonable or necessary.

### **Conclusion**

26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Jon Hockley*

INSPECTOR

### **SCHEDULE OF 8 CONDITIONS**

- 1) Prior to the commencement of any part of the development hereby permitted, approval of Reserved Matters relating to the following details shall be obtained from the National Park Authority:
  - i. Access to and the layout of the proposed development (including parking and manoeuvring areas)
  - ii. The design and external appearance of the proposed development (including materials and external finished)
  - iii. Landscaping treatment of the site including the retention of existing trees and precise details of any planting schemes and surfacing materials)

All such applications shall be made within three years of the date of this permission. Thereafter, the development shall be carried out as approved and begun three years from the date of this permission, or two years from final approval of all Reserved Matters, whichever is the later.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan 1:1250.
- 3) The detailed scheme shall provide for a three storey building with a similar eaves and ridge height to the adjacent buildings, containing a maximum of six flats with an individual maximum internal habitable floor area of 54m<sup>2</sup>, orientated parallel to the adjacent buildings, the design of which shall closely reflect the appearance of the adjacent buildings in terms of form, detailed design and materials.
- 4) No development shall take place until space is provided within the site curtilage for site accommodation, storage of plant and materials, parking and manoeuvring of site operatives and visitors vehicles, together with the loading/unloading and manoeuvring of goods vehicles, designed laid out and constructed all to the satisfaction of the National Park Authority in advance of construction works commencing and maintained free from impediment throughout the duration of the construction works.
- 5) The development hereby permitted shall not be brought into use until the parking/turning area have been provided as per drawing EC/1 and have been clearly marked out and maintained in permanent marking materials all as may be agreed with the National Park Authority and maintained thereafter free from any impediment to its designated use.
- 6) Prior to the first occupation of any flat hereby permitted adequate bin storage shall be provided within the site curtilage clear of all access, parking and turning provision.
- 7) No caravans or other domestic paraphernalia shall be located, parked or stored within the designated parking area unless otherwise expressly agreed in writing by the National Park Authority.
- 8) No development shall take place until a planning obligation in the form of a Section 106 agreement has been submitted to and engrossed by the National Park Authority. This agreement shall relate to the provision of a commuted sum towards the provision of off-site affordable housing.

**APPEARANCES**

**FOR THE APPELLANT:**

D.A. Clapham

Appellant

Nick Baseley MA (Hons)TP, MRTPI

IBA Planning Ltd

**FOR THE LOCAL PLANNING AUTHORITY**

Chris Fridlington BSc (Hons) MSc URP

Peak District National Park Authority

**DOCUMENTS SUBMITTED AT THE HEARING**

1. Written Statement made by the Minister of State for Housing and Planning (Brandon Lewis), 28 November 2014.
2. Legal comments of the Peak District National Park Authority on the submitted Unilateral Undertaking.
3. Suggested condition regarding a proposed planning obligation.