Our Ref: ST/NSCDCILRep

16 September 2016

Ms Ford
Planning Policy
North Somerset Council
Post Area 15
1st Floor Town Hall
Walliscote Grove Road
Weston-super-Mare
BS23 1UJ

Dear Ms Ford

**Re: Representations to North Somerset Council Community Infrastructure Levy (CIL) Draft Charging Schedule**

I refer to the North Somerset Council Community Infrastructure Levy (CIL) Draft Charging Schedule and wish to make a number of representations. These Submissions are made on behalf of Blue Cedar Homes, a private retirement homes specialist operating in the South West of England.

The Government updated paragraph 21 of the National Planning Policy Guidance (NPPG) in March 2015, putting a greater emphasis on Councils making provision for the changing needs of older residents. Indeed, the guidance stresses that older people have a wide range of different housing needs, ranging from suitable and appropriately located market housing through to residential institutions (Use Class C2).

I note that the Proposed CIL Charging Rate set out in Appendix A on page 17 sets a recommended rate of £0 per sq.m for Zone A (Weston Town Centre), £40 per sq.m for Zone B (Outer Weston Residential) and £80 per sq.m in the Rest of the District Residential on all types of residential development, including retirement housing. As a retirement house builder, I strongly believe that a nil rate across the Authority should be applied to specialist accommodation such as retirement housing. If a CIL charge is being applied to retirement housing, it will only constrain and hinder the delivery of this much needed housing type.

I suggest **C3 sheltered/retirement housing is subject to an Authority wide zero/nil rate of CIL.**

Several months ago, Blue Cedar Homes were involved in a planning appeal in the Vale of White Horse District Council (Appeal reference: APP/V3120/W/15/3141368 dated 19 May 2016). At paragraphs 19 and 20 of the decision, the Inspector noted that as a result of our enhanced specifications (which include among others strengthen ceiling joists, wider staircases and treads, hidden fixings for stair lifts, oversized garages for mobility impaired) our retirement developments have additional costs and as such it is appropriate to use the BCIS upper quartile costs. There is no sense therefore in penalising retirement housing with a high CIL rate. I enclose a copy of the appeal decision for your reference.

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In addition, the Government has recently reintroduced guidance set out at paragraph 031 in the NPPG, on 19 May 2016 which states that;

> ***"There are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-build development. This follows the order of the Court of Appeal dated 13 May 2016, which give legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014 and should be taken into account.***
>
> ***These circumstances are that;***
>
> - ***contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm***
> - ***in designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development. This applies to rural areas described under section 157(1) of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty"***

As such, this recent guidance should be taken into account in the Council's CIL Charging Schedule.

In summary, I believe the Council should reconsider the CIL rate specifically for retirement housing. This specialist housing sector needs to be encouraged to deliver much need housing, not hindered but additional CIL rates.

I note that in the report on the Examination of the Draft Hertsmere Borough Council Community Infrastructure Levy Charging Schedule, December 2013 (PINS/N1920/429/12), developers of specialist retirement housing, McCarthy and Stone and Churchill Retirement Living, and Hertsmere Borough Council recognised the important difference between retirement housing and general needs housing in their charging schedule. The same approach has been taken by South Oxfordshire District Council in its CIL Charging Schedule Submission Version following representations made by Blue Cedar Homes. They propose a 'nil' value for specialist retirement homes. Currently, I believe there is no reasonable justification for a CIL charge on retirement housing in any area of the Authority and, at the same level as general needs housing

I believe that a housing scheme which provides a real need for specialist housing, such as retirement dwellings, should be exempt from CIL as well as affordable housing, similar to the C2 use class. It should also be recognised that by providing this type of housing for the elderly to downsize, larger family homes would become vacant. As a minimum, all forms of C3 retirement housing should be explicitly exempt from CIL.

I trust the above comments can be considered in the North Somerset Council CIL Draft Charging Schedule Public Consultation. Please will you keep me notified of developments throughout the preparation process?

Yours sincerely

**Simon Tofts**
**Planning Manager**
Email: simon.tofts@bluecedarhomes.co.uk

The Planning Inspectorate

# Appeal Decision

Hearing held on 13 April 2016
Site visit made on 13 April 2016

**by Siobhan Watson BA(Hons) MCD MRTPI**

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

**Decision date: 19 May 2016**

**Appeal Ref: APP/V3120/W/15/3141368**
**Southmoor House, Faringdon Road, Southmoor, Abingdon, OX13 5AA**

- 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 R Williams (Blue Cedar Homes) against the decision of Vale of White Horse District Council.
- The application Ref P15/V0712/FUL, dated 25 March 2015, was refused by notice dated 16 September 2015.
- The development proposed is the demolition of existing building (previously used as a care home) and the construction of 10 "age restricted" dwellings (including 1 bungalow) with access, car parking and other facilities.

## Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building (previously used as a care home) and the construction of 10 "age restricted" dwellings (including 1 bungalow) with access, car parking and other facilities at Southmoor House, Faringdon Road, Southmoor, Abingdon, OX13 5AA in accordance with the terms of the application, Ref, P15/V0712/FUL dated, 25 March 2015 subject to the conditions in the attached schedule.

## Main Issue

2. The main issue is whether the provision of affordable housing would be appropriate in the context of the viability of the development, the National Planning Policy Framework, development plan policy and all other material planning considerations.

## Reasons

3. The appeal site is a large detached building which is currently vacant and was last used as a care home. The building stands in large grounds which contain a number of mature trees subject to a Tree Preservation Order. There is no dispute that the site is suitable for housing development. The parties also agree that there is an identified need for both affordable housing and housing for older people. Policy H17 of the Adopted Vale of White Horse District Council Local Plan 2011 (the LP) indicates that 40% of dwellings should be affordable. The Council does not have a 5 year housing land supply (HLS), and it was agreed at the hearing that its current HLS is 4.2 years.

4. The Council's Supplementary Planning Guidance *Affordable Housing* advises that if a developer considers that the criteria in Policy H17 cannot be fulfilled,

evidence will need to demonstrate why the level of provision sought by the Council would make the development unviable. It also says that in some cases it may be accepted that the provision of other housing objectives may reduce the amount of affordable housing that can be reasonably provided.

5. Paragraph 173 of the National Planning Policy Framework advises that to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. The Planning Practice Guidance (PPG) says that decisions must be underpinned by an understanding of viability, ensuring realistic decisions are made to support development.

6. The PPG does not provide a single approach for assessing viability but points in the direction of sector led guidance on viability methodologies and says that one of the principles for understanding viability is "evidence based judgement" which is informed by relevant available facts. It requires a realistic understanding of the costs and the value of the development in the local area and an understanding of the operation of the market. It says that for older people's housing, the specific scheme format may be a factor in assessing viability.

7. In assessing the viability of the appeal scheme, the principal areas of disagreement between the 2 main parties are the benchmark site value and development costs.

*Benchmark Site Value*

8. The Council and the appellant fundamentally disagree over the market value of the land. The Council has arrived at a land value of £1m whereas the appellant is of the view that it is worth £1.35m. Central to this disagreement is whether or not the site is valued for a realistic alternative use that complies with planning policy as required by the PPG[1].

9. The appellant has worked out a site value based on evidence of land transactions on other housing sites in the area. This is in accordance with the advice in the PPG which indicates that in assessing a return to the developer comparable schemes or data sources should be reflected wherever possible. Whilst I acknowledge that the site does not have a specific housing allocation, the Council accept that the use of the site for housing would be policy compliant.

10. The Council accepted at the hearing that the appellant's comparable schemes were policy compliant although pointed out that 2 of them did not have to provide affordable housing and therefore were not directly comparable to the appeal site. That said, the Council did accept that the other 4 sites were relevant comparators in terms of complying with Policy H17 as they had each provided 40% affordable housing. Therefore, in using these 4 sites as comparators, the calculation of land value by the appellant has taken into account the need to provide affordable housing.

11. However, the Council disputed the appellant's methodology of working out a value based on the size of the developable area of the site because it was of

[1] Paragraph: 024 Reference ID: 10-024-20140306

the view that it should be worked out on a plot value basis. According to the Council, therefore, based on the plot values of the comparators, the value of the site would be lower than if worked out on a per acre value. The Council has never formally assessed if more houses could be built on the site and therefore, in its view, the appellant is attaching a "hope value" to the land in assuming that there was more than one scheme which the Council would allow.

12. I acknowledge that there has not been permission for a higher density scheme on the site but at the hearing the Council accepted that up to 15 units would be acceptable depending upon the exact details of the scheme. The Council did not provide any real evidence to substantiate the claim that 15 houses might not be acceptable, and therefore, based on the size of the plot and its context amongst estate housing, I disagree that the valuation of the land should be limited to 10 plots.

13. Furthermore, as the comparators were higher density developments with smaller dwellings than the appeal scheme, their plot values would be clearly lower than those of the larger appeal plots. Therefore, I consider that the appellant's methodology in using price per acre is more realistic than using price per plot.

14. The site has a developable area of 1.65 acres. The 4 comparators which provided 40% affordable housing achieved between £803,000 and £1.43m per net developable acre. If their values are applied to the net developable area of the appeal site, the land value would be between some £1.3m and £2.2m. In the absence of any conflicting comparable evidence from the Council, the appellant's view that the market value of the site would be £1.5m, with planning permission in place, does not seem unreasonable.

15. Another area of dispute is the amount of deduction from the £1.5m for planning risk. The appellants have deducted 10% from that figure to arrive at their benchmark site value of £1.35m. The Council say that a 20% risk would be more appropriate citing that this was the figure accepted by the Inspector in the Shinfield Appeal[2]. However, I do not know the full circumstances of that case and the two proposals are vastly different: the Shinfield appeal was for up to 128 dwellings on a much larger site with very different characteristics in terms of policy and use; in a different geographical area and had other planning considerations in addition to affordable housing. Therefore, the Shinfield case is not directly comparable to the appeal scheme. Given the acceptance by the Council that housing development on the site would be policy compliant, I consider that the planning risk is minimal and therefore a 10% risk is appropriate in this particular case.

16. I therefore consider the appellant's benchmark site value to be more convincing than the Council's which is significantly below the values of any of the comparator sites.

*Development Costs*

17. Many of the development costs are agreed as set out in the Statement of Common Ground. There is, however, major disagreement about core build costs (foundations up). The Council's position is that the core build costs would be £1,739,270 and the appellant's position is that the core build costs would be

[2] APP/X0360/A12/2179141

£2,099,350. The Council is of the view that the appellants should have submitted a detailed elemental cost plan of the construction. However, the PPG says that build costs should be based on appropriate data, for example, that of the Building Cost Information Service (BCIS) and therefore I am satisfied that the appellant has taken the correct approach in basing its costings on BCIS data.

18. Another area of dispute is whether or not the appellant has used the appropriate level of BCIS data. The appellant has used the upper quartile figures whereas the Council are of the opinion that the sales price can be achieved by using the mean average "estate housing" figures.

19. The Council says that the core build cost should be based on the BCIS mean average estate housing figures and query whether the Blue Cedar Homes (BCH) dwellings would actually cost more to build than general estate housing. However, the BCH marketing brochure explains that the housing would have features such as disabled access paths through each scheme, level thresholds, disabled access throughout the ground floor of each property, wider staircases, hidden fixings for easy installation of a stair lift, strengthened ceiling joists for the installation of a hoist above a bedroom and bathroom, larger shower enclosures and low level shower trays and stronger bathroom and shower room walls to allow for later adaptations. It seems to me therefore, that there are additional costs in providing these enhanced specifications.

20. The BCH dwellings would have a sales price significantly greater than the mid range estate housing. I heard that the BCH scheme would cost some £19 per SqFt more to build than the estate houses which would give an enhanced value over the estate housing of some £64 per SqFt. Therefore, as the BCH dwellings are projected to sell for substantially more per SqFt than the estate housing, I consider it appropriate to use the BCIS upper quartile costs.

21. It is not disputed that in addition to the core build costs, there would be an additional amount for "abnormal costs" and "external costs". There is broad agreement on the abnormal costs. However, the Council admitted at the hearing that it has not accounted for external costs, (such as estate roads, drives, patios, sewers, and the turfing of gardens) which, according to the appellant, would be in the region of £400,000 for the whole of the development.

*Summary of Benchmark Site Value and Development Costs*

22. The parties are £350,000 apart in terms of benchmark site value and £360,080 in terms of core build costs. The appellant's calculations leave a negative residual land value which means that there is no room for providing affordable housing in any form. These matters are not a precise science and involve an element of judgement. Notwithstanding the fact that I find the appellant's evidence convincing; even if I had accepted the Council's benchmark site value and core build costs, a big hole has been left by the Council not accounting for external works. Therefore, the external works would, in any event, wipe out the surplus indicated in the Council's evidence.

## Other Matters

23. At the hearing the Council suggested that the appellant should have explored different forms of housing development on the site to see if it could find an alternative viable scheme. However, this approach is not supported by national planning policy and I am mindful of the advice in the PPG which says that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements.

24. I note the Council's reference to an appeal decision in Islington[3]. However, I explain above why I consider that the appellant's land value reflects policy requirements. Therefore, I consider that the Government Legal Department's response to the Council's legal challenge to the reasoning in that decision is consistent with my reasoning in this appeal. Furthermore, Islington Council was not granted leave to appeal.

25. I note third party comments in respect of access and parking. However, I have no material evidence that the parking arrangements or access would harm highway safety and I note that the Council's highway engineer raised no objections to the proposal. I consider that the distances between proposed and existing properties are satisfactory and there would be no unacceptable impact upon the living conditions of nearby occupiers. I also note neighbours' comments in respect of the loss of the existing building but I have no reason to believe that it is of any special historic or architectural interest and therefore, there is no compelling reason to retain it.

## Conclusion

26. For the above reasons, I am satisfied that the scheme would not be viable if affordable housing were provided in any form. The failure to provide affordable housing would be in conflict with LP Policy H17. However, I need to take into account other material considerations: The proposal would accord with the Council's SPG; the Framework, and the PPG; and would provide significant benefits in terms of adding to the supply and mix of housing in the area.

27. I therefore conclude that the provision of affordable housing would not be appropriate in the context of the viability of the development, the National Planning Policy Framework, and all other material planning considerations. Therefore, taking into account all material considerations I allow the appeal subject to conditions.

## Conditions

28. I have considered the conditions set out in the Statement of Common Ground in accordance with the Planning Practice Guidance. In addition to the standard implementation condition it is necessary, in the interests of precision, to define the plans with which the scheme should accord. Conditions concerning external materials, the bin store, landscaping and tree protection are required in the interests of the character and appearance of the area. A condition is required for the satisfactory drainage of the site; conditions are required in respect of visibility splays, site access, the surfacing of parking spaces/drives/road in the interest of highway safety; conditions in respect of birds and bats are necessary in the interest of biodiversity. A condition limiting

[3] APP/V5570/A/14/2227656

the age of the occupiers of the dwellings is necessary in the interest of the provision of accommodation for older people in the area. Conditions 4, 3, 7, and 10 are pre-commencement conditions as these matters cannot be satisfactorily dealt with at any other time.

*Siobhan Watson*

INSPECTOR

**Schedule**

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

2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule contained within the signed Statement of Common Ground.

4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building 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.

3) Prior to the commencement of the development, a fully detailed sustainable foul and surface water drainage scheme for the development, including a management and maintenance plan, shall be submitted to, and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details before the occupation of any dwelling and shall be maintained thereafter.

4) The development shall be carried out in accordance with the Tree Quality Survey, Arboricultural Impact Assessment & Arboricultural Method Statement by Tyler Grange dated 20 March 2015. All the trees shown as being retained shall be protected by strong fencing as shown in this statement. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be retained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered.

5) No dwelling shall be occupied until the vehicular access is widened and visibility splays at the site access are provided in accordance with the details set out in the Transport Statement , March 2015. The widened access and visibility splays shall be retained thereafter and remain free of structures or vegetation above 0.9m high.

6) No dwelling shall be occupied until the approved car parking spaces, drives and access road have been surfaced. The parking spaces shall be constructed to prevent surface water discharging onto the highway. The parking spaces, drives and access road shall be retained thereafter.

7) Before any dwelling is occupied, a scheme for the provision of bat and bird boxes shall be submitted to and approved by the local planning authority. The approved scheme shall be implemented before the occupation of any dwelling and shall be retained thereafter.

8) Any tree or hedge removal connected with the implementation of this planning permission shall be carried out outside of the bird nesting season (March to August inclusive).

9) The bin store shown on the approved plans shall be provided before the occupation of any dwelling and shall be retained thereafter.

10) All hard and soft landscaping shall be carried out in accordance with approved plan 677-01B. The works shall be carried out in accordance with a programme to be agreed in writing with the local planning authority. The written programme shall be submitted to the local planning authority before the commencement of development. Any trees or shrubs which die or become seriously damaged or diseased within 5 years of planting shall be replaced by trees and shrubs of a similar size and species to those originally planted.

11) The dwellings hereby permitted shall be occupied only by:

i) persons aged 60 or over;

ii) persons living as part of a single household with such a person or persons;

iii) persons who were living as part of a single household with such a person or persons who have since died.

**APPEARANCES**

FOR THE APPELLANT:

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|---|---|
| Sarah Reid | Counsel |
| Andrew Cullen | Alder King LLP |
| Anthony Allen | Allen Planning Ltd |
| Mr Simon Toft | Blue Cedar Homes |
| Richard Williams | Blue Cedar Homes |
| David Millar | Blue Cedar Homes |

FOR THE LOCAL PLANNING AUTHORITY:

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| Andrew Jones | BPS Chartered Surveyors |
| Elise Parish | BPS Chartered Surveyors |
| Helen Novelle | Vale of White Horse District Council |
| Jacqui Evans | Vale of White Horse District Council |
| Sarah Green | Vale of White Horse District Council |

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|---|---|
| Brett Leahy | Vale of White Horse District Council |

INTERESTED PERSON:

| | |
|---|---|
| Peter Evans | Local Resident |

DOCUMENTS SUBMITTED AT THE HEARING:

Appeal Decision Ref: APP/V5570/A/14/2227656

Letter to the London Borough of Islington from Government Legal Department, dated 23 October 2015