



Appeal Decision

Site visit made on 21 March 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

Appeal Ref: APP/J0350/W/21/3276198 17 to 31 Elmshott Lane, Slough SL1 5QS

- 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 Joe Mirenpass Limited against the decision of Slough Borough Council.
 - The application Ref P/04670/014, dated 31 August 2020, was refused by notice dated 11 December 2020.
 - The development proposed is described as 'Revised Outline planning application with all matters reserved for the demolition of existing retail/residential buildings. Construction of three storey plus mansard building, over basement, consisting of associated parking at basement level, retail/storage at ground floor level and the formation of 9 no. three bedroom flats, 19 no. two-bedroom flats and 56 no. one-bedroom flats, including 20% affordable housing on site, at first, second, and mansard floor levels. Associated landscaping and realigned access to Elmshott Lane.'
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Joe Mirenpass Limited against Slough Borough Council. An application for costs was made by Slough Borough Council against Joe Mirenpass Limited. These applications are the subject of separate Decisions.

Preliminary Matters

3. The original application was made in outline with all matters reserved for future determination. I have had regard to the existing and proposed site plans and the indicative layout of the proposed development as shown in these drawings, but have regarded all elements of these drawings as indicative.
4. The application form gave the address as '17 Elmshott Lane'. The address in the banner heading above is taken from the appeal form and the Council's decision notice. This more accurately reflects the address of the appeal site.
5. The appellant has submitted a signed Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended). This is dated 23 November 2021. This includes financial contributions towards education and recreational infrastructure as well as transport obligations. It also includes the provision of on-site affordable housing. I return to this later in my decision.

6. As part of the appeal, the appellant has sought to revise the provision of affordable housing. At the time the application was determined, the scheme proposed the delivery of 30% affordable housing, 16 units (20%) to be provided on-site in an 'independent' block within the development and 10% to be provided through financial contributions to off-site provision. The revision to the scheme proposes 25 units with the additional units dispersed within the market housing block. In total this would represent just under 30% on-site provision.
7. The *Procedural Guide to Appeals - England* advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority. I have also had regard to the Wheatcroft principles¹ including whether amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity.
8. In my view, the provision of all the affordable housing within the development would be materially different to what had previously been proposed. I also have limited evidence of this having been consulted on and therefore that interested parties have been given the opportunity to comment. I have therefore proceeded to base my decision on the proposals before the Council when it made its decision.

Main Issues

9. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposed development would provide an appropriate mix of housing;
 - whether the proposed development would make adequate provision for affordable housing;
 - whether the proposed development would make adequate provision for infrastructure;
 - the effect of the proposed development on the living conditions of neighbouring occupiers at 33 Elmshott Lane, with particular regard to its effect on outlook and whether it would appear overbearing; and
 - whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan.

Reasons

Character and appearance

10. The appeal site is located within a mixed use area which forms part of a neighbourhood shopping centre. Surrounding development is a mix of single and 2-storey properties, including a primary school, library, churches and

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

shops as well as residential properties located along Elmshott Lane and within the surrounding streets. The school is also a locally listed building. To the rear of the site, there are short terraces of 2-storey residential development on Patricia Close whilst a more substantial 3 to 4-storey block of flats, Charlcot Mews, is located on the southern boundary of the site.

11. Development along Elmshott Lane tends to be set back from the road behind front gardens, driveways and forecourts, which given its modest scale, gives the area an open and spacious character and make a positive contribution to the local environment.
12. The appeal site occupies an area of approximately 0.5 hectares with a long frontage to Elmshott Lane. It is currently occupied by 2 buildings both of which are 2-storeys in height and an area of surface car parking. These are commercial units with residential above. The scheme proposes the demolition of these buildings and their replacement with a 4-storey building with basement parking, indicated to be over 12m high. This is a revised scheme to a previous proposal for the redevelopment of the site with a 5-storey building of 119 flats, dismissed on appeal².
13. Although the drawings are indicative, the proposed building would include 84 apartments and a sizeable building such as shown on these drawings would inevitably be required to accommodate the proposed quantum of development. The proposed building would be substantially larger than the existing development both along Elmshott Lane and in the surrounding residential streets. It would extend across much of the width of the Elmshott Lane frontage at a height of 4-storeys, stepping down to a single-storey building adjacent to its boundary with 33 Elmshott Lane (No 33).
14. The proposal would be reduced in height compared to the previously dismissed scheme and the top floor would be set back from the front elevation. It would nevertheless appear significantly larger and bulkier than surrounding development although to a lesser extent than that previously proposed.
15. I observed that Charlcot Mews is a taller building within the locality and a similar height to the proposed building. It is however atypical of surrounding development. This building also incorporates various pitched roof elements and lower sections, which makes it appear less bulky. Therefore, despite the similarities in height, the scale, mass and form of the proposed building would be more substantial due to its extensive width, plot coverage and flat roof. This would make it appear much more bulky than this neighbouring development. Furthermore, Charlcot Mews is not immediately visible on Elmshott Lane and does not form the character along this road.
16. The presence of this building on an adjacent street, does not therefore alter my view that the proposed development would appear visually dominant and overbearing within the Elmshott Lane streetscene, unrelated to its context and harmful to the character and appearance of the local area.
17. The illustrative drawings indicate that the upper floors of the building would project rearwards in a U-shape, enclosing an area of communal garden at first floor. In comparison to the existing development, the building would be more visually prominent in views from the adjacent properties on Patricia Close and

² APP/J0350/W/19/3224244

Charlcot Mews. However, the set back and reduced height close to its boundaries would help to reduce its bulk and visual impact when viewed from these. With additional planting along these boundaries as shown on the indicative plans, the proposal would provide a softer environment and more visual interest compared to the stark appearance of the large area of surface parking. However, this would not overcome the harm that would arise from a building of this scale along Elmshott Lane.

18. The proposal before me is for a scaled down scheme compared to that previously dismissed with a reduction in height by approximately a third and a similar reduction in the overall quantity of development on site. The appeal scheme would nonetheless extend almost entirely across the full width of the Elmshott Lane frontage over 4-storeys, cover nearly 60% of the plot and would be taller, bulkier and out-of-character with surrounding development.
19. I acknowledge that the previous appeal decision is a material consideration. However, whilst I agree that the scheme before me would have a less harmful impact than that previous scheme, I do not find that simply reducing its scale would render it acceptable. I have assessed the scheme before me on its own individual merits and have found it to be harmful.
20. The proposal would provide basement parking. The Council has suggested this is uncharacteristic of the area. Whilst this may be the case, it would provide an effective way of reducing the visual impact of any parking, it would sit unobtrusively beneath the building and would not detract from the character of the area.
21. The appellant has provided an artist's impression of the proposed building which he has argued demonstrates vast improvement to the vitality of the street. I have been presented with no specific evidence that this is a declining centre. Furthermore, the artist's impression shows a building and fully glazed shopfronts and indicates cafes, which to my mind is more reflective of the type of retail units better suited to more destination shopping areas, such as large town or city centres rather than this small neighbourhood shopping area.
22. The Council's decision notice refers to the scheme being of an unacceptably high density outside of the town centre. In this regard, I concur with the previous Inspector that density calculations alone cannot provide an assessment of the effects on character and appearance.
23. There is an expectation with the National Planning Policy Framework (the Framework) that proposals such as this one will come forward on previously-developed land. I am told that the existing density of the area is around 28 dwellings per hectare (dph) and would increase to 153dph, which is a notable decrease from the previous scheme of 238dph. Nevertheless, in the context of surrounding development, this density of development would result in an uncharacteristically large building, occupying a significant amount of the plot, which would predominantly be viewed from Elmshott Lane where buildings are one or 2 storeys in height and of a modest scale.
24. I have been referred to various permitted schemes for much higher density development with greater site coverage in locations outside the town centre than proposed in this scheme. Of particular note, the Council approved 100% site coverage at 3 sites along Stoke Road which would be much higher density than what is being proposed here. However, I do not find Stoke Road to be

comparable to Elmshott Lane due to the presence of a number of other larger and taller buildings, both commercial and residential and a generally busier environment.

25. I have also been made aware of various other developments within the Slough area but outside of any town centre or designated neighbourhood or shopping centres. These are given as examples of high density developments. However, I have limited information about the circumstances for the approval of these developments nor what their local context is. I can therefore only give these very limited weight in terms of the appellant's arguments to justify higher density development.
26. As such, whilst I agree that there are circumstances within neighbourhood centres and also outside of designated shopping areas where larger buildings and a higher density of development has been found to be appropriate, those circumstances do not exist along Elmshott Lane due to the modest scale of development and the open character of the area.
27. I acknowledge that the Council has not found the proposal would harm the setting of the locally listed school building on the opposite side of the road. However, this does not make the scheme acceptable within the wider area.
28. I conclude that the proposed development would cause significant harm to the character and appearance of the area. It would therefore conflict with Saved Policy EN1 of the Local Plan for Slough 2004 (the LP) and Core Policy 1, Core Policy 4 and Core Policy 8 of the Local Development Framework Core Strategy 2008 (the CS) which together require development proposals to be a high standard of design, compatible with their surroundings in scale, height, mass and bulk and at a density related to the character of the surrounding area. It would also fail to accord with the design objectives of the Framework which seeks development sympathetic to local character.
29. Saved Policy EN2 of the LP referred to in the decision notice relates to extensions to buildings which given the proposal is for a redevelopment of the site, would not be applicable in this case.

Housing mix

30. The Council is seeking to deliver a wide choice of high quality homes and to create sustainable, mixed and inclusive communities in accordance with the objectives of national policy. To this end, Core Policy 4 of the CS sets out that in the urban areas outside the town centre, new residential development will predominantly consist of family housing. It also states that there will be no net loss of family accommodation as a result of redevelopment.
31. The Council's *Space Standards for residential development Developers Guide Part 4 – supplement* (November 2018) defines family housing as 'a fully self-contained dwelling with a minimum floor area of 79 square metres that has direct access to a private garden. Comprises a minimum of two bedrooms and may include detached and semi-detached dwellings and townhouses but not flats or maisonettes.'
32. Since the existing building comprises flatted development, there would be no loss of family housing. The proposed scheme, in only providing flatted development, would also not provide any family housing based on the

- definition. It would, however, provide 9 larger 3-bedroom units, representing a net increase in larger units of 5.
33. It seems to me that the policy requirement for family housing should be applied flexibly depending on the circumstances. The appeal site has a long frontage within the designated shopping area which does not lend itself to traditional suburban family housing. Therefore, the failure of the scheme to provide 'family housing' in accordance with the definition would not make it unacceptable.
34. In coming to this view, I am mindful of the approach taken by the Council in other schemes to which I have been referred including developments within shopping areas at both Alexandra Plaza³ and 76 & 78 Stoke Road⁴ where the Council considered the provision of family housing was not considered necessary or appropriate above ground floor retail uses. A short distance from the appeal site, a scheme at the Tyre Centre on Bath Road⁵ for a development of 75 new flats delivering 63% 1-bed and 37% 2-bed units was recently approved by the Council. I have also been referred to proposal at Akzonobel Decorative Paints, Wexham Road⁶ where the Council officers recognised that due to the high density nature of the proposal, it would be unlikely that typical suburban type family housing could be sought.
35. Caselaw⁷ has established that like cases should be decided in a like manner so that there is consistency and also to secure public confidence in the planning system. Subsequent judgments⁸ to which I have been referred to have upheld this position. I appreciate that none of the aforementioned schemes would be directly comparable as each is located within its own context. Nevertheless, they provide an indication that the policy requirement for family housing is often applied flexibly by the Council. It seems to me that there are broad parallels with the scheme before me.
36. Notwithstanding that the appeal site would not be suitable for family housing in accordance with the definition, a requirement to provide a suitable housing mix to contribute towards mixed and inclusive communities nonetheless exists.
37. The Eastern Berks and South Bucks Housing Market Area is defined in the Strategic Housing Market Assessment (SHMA) February 2016. It recommends a housing mix split between 15% 1-bed, 30% 2-bed, 35% 3-bed and 20% 4-bed. The SHMA covers an area comprising 7 local planning authorities. Given the variation that must exist across such a large area, it seems to me reasonable that the figures should not be applied rigidly on a one size fits all basis. The Council acknowledges that this split set out within the SHMA cannot be achieved at all times and is not always appropriate, depending on the location of development and the character of the surroundings.
38. The scheme would deliver 56 x 1-bed units (67%), 19 x 2-bed units (23%) and 9 x 3-bed units (11%). The general housing mix proposed would not reflect that set out within the SHMA. It seems to me that with a disproportionate number of 1-bed units and a significant shortfall in larger units, the scheme

³ Council Ref: P/08040/020

⁴ Council Ref: P/03678/018

⁵ Council Ref: P/00442/016

⁶ Council Ref: P/00072/096

⁷ North Wiltshire District Council v SSE [1993] 65 P & CR 137

⁸ R (Midcounties Co-Operative Limited) v Forest of Dean District Council [2017] EWHC 2050

would make a limited contribution towards creating mixed and inclusive communities.

39. There is nothing before me to suggest that this location is not suited to family households who would occupy the larger units even if they do not meet the definition of family housing. Indeed, there is a local primary school opposite, a library and local shops and facilities all within easy walking distance and there is no reason why larger households would not benefit to the same extent as a smaller household such as might occupy a 1-bed flat, from the proximity to the recently improved public transport, notably Crossrail which now serves Burnham Station. The proposal also includes communal gardens and balconies so households would benefit from dedicated outdoor space.
40. My attention has been drawn to the key findings in relation to market housing within the SHMA, extracts of which are set out within the appellant's statement of case. This states that Slough has the highest need for 1-bedroom homes amongst the authorities covered by the SHMA. However, I do not have details of what that figure is. The appellant has also indicated that the number of 1-bed units would need to grow by 27% over the 2013 to 2036 period covered by the SHMA, and 2-bed units by more, at nearly 30%. Whilst this is noted, this does suggest that the need for larger units of 3 or more bedrooms would be over 40%. There is therefore evidence of units of all sizes being needed.
41. In the previous scheme for this site, the housing mix was found unacceptable by the Inspector. That previous scheme proposed 71% 1-bed and 29% 2-bed units. In this regard, whilst the appeal scheme housing mix would be better than that earlier scheme, there would still be a disproportionate amount of 1-bed units and a limited number of larger units. For these reasons, I conclude that it would make a limited contribution to achieving the overall aims of providing mixed and balanced communities.
42. I recognise the appellant's frustrations that the Council did not refer to the SHMA in its assessment of housing mix for a nearby scheme at the Tyre Centre of Bath Road. However, this in itself does not negate the relevance of the SHMA to the appeal before me.
43. I conclude that the proposed development would not provide an appropriate mix of housing. It would therefore conflict with Core Policy 4 of the CS as referred to above.

Affordable housing

44. Core Policy 4 of the CS sets out a requirement for all sites of 15 or more dwellings (gross) to provide between 30% and 40% of the dwellings as social rented along with other forms of affordable housing. The appeal scheme would deliver 84 dwellings which would be a net increase of 70 dwellings.
45. Due to the number of units proposed, the Council has advised that the proposal would attract an on-site requirement for affordable housing provision. The *Developer Contributions and Affordable Housing (Section 106) Developer's Guide Part 2 (2017)* sets out that for brownfield sites of more than 70 dwellings, 35% affordable housing should be provided comprising 22% rent and 13% intermediate housing.
46. Notwithstanding the above, there is some ambiguity in the level of affordable housing being sought by the Council with the Council's statement referring to a

- policy compliant 30% provision of affordable housing but providing no explanation for this departure from either its published guidance or its previously stated position.
47. The appellant has set out that the scheme would provide 30% affordable housing, with 20% provided on site and the remaining 10% proposed as a financial contribution for off-site provision. The on-site provision, which would be 16 units, would however be closer to 19%. This would not meet the requirements set out within policy. The appellant has not provided a viability assessment to demonstrate that the required 35% on-site provision could not be provided.
 48. The previous Inspector noted the constraints for Registered Social Landlords (RSL) of managing affordable housing within a single block alongside market housing, a matter which the appeal scheme has sought to address. However, from my reading of that decision, whilst he noted that a proposed financial contribution for off-site provision had been submitted, he did not conclude that the provision of 30% affordable housing was acceptable or had been justified.
 49. I appreciate that the appellant has sought to address the provision of on-site affordable housing through the creation of an 'independent' block within a 'wing' of the proposed building. This would make the proposed scheme more suitable for managing by a RSL. This element of the scheme, based on the indicative layouts, would provide 16 units on site.
 50. Whilst I have not accepted amendments to the provision of affordable housing due to the absence of consultation, these do indicate that additional affordable housing, such as intermediate housing could be accommodated alongside the market housing within the rest of the proposed building. For this reason and in the absence of any viability assessment, the proposal to make up a shortfall in the required on-site provision through off-site contributions has not been justified.
 51. The affordable housing units would be 1 or 2 bedroom units. I have noted the appellant's reference to the Key Findings Affordable Housing with the SHMA, which suggests that between 2013 and 2036 around three-quarters of the need is for homes with 1- or 2-bedrooms. Whilst this lends weight to the view that the provision of a higher proportion of smaller units as affordable housing may be acceptable, I am unable to reach a firm conclusion on this as the overall provision of affordable housing falls short of policy requirements.
 52. The submitted UU would appear to secure the 16 units on-site but makes no provision for the off-site financial contributions. I recognise this is because the appellant intended to amend the provision of affordable housing and the UU was drawn up on the basis of that amended proposal. However, I have nothing before me to secure the affordable housing as originally proposed. In any event, the overall provision would be less than the 35% required by policy.
 53. This leads me to conclude that the proposed development would fail to provide an appropriate level of affordable housing. It would therefore conflict with Core Policy 4 of the CS as set out above. In addition, it would not comply with the Framework which requires affordable housing to be provided on site, unless a financial contribution towards off-site provision can be robustly justified.

Provision of infrastructure

54. Core Policy 10 of the CS sets out that development will only be allowed where there is sufficient existing, planned or committed infrastructure. Where it is insufficient to meet the needs of new development, the developer will be required to supply all reasonable and necessary on-site and off-site infrastructure improvements. This will be secured through planning obligations or conditions attached to planning permissions.
55. The submitted UU secures financial contributions to education, a per dwelling contribution towards recreation facilities in lieu of private amenity space and a contribution towards highway work as well as a Travel Plan and monitoring fees. The Council has confirmed that these obligations would be appropriate but raised a concern about whether the agreement confirmed that the appellant would meet the full costs for undertaking the highway works.
56. I have noted that the definitions set out under Schedule 3, Part 1 of the UU confirm that the highway works would be executed by the owner at the owner expense. On this basis, I am satisfied that the submitted UU would secure the necessary infrastructure. The scheme would therefore accord with the requirements of Core Policy 10 of the CS.

Living conditions

57. No 33 lies to the south of the appeal site. This is a commercial property with a flat above. There are a number of upper floor windows facing towards the appeal site within the side elevation of No 33. These currently look out over a single-storey section of building.
58. The illustrative drawings indicate that that the proposed building would be separated from these windows by an existing access road and the proposed building would be retained as single-storey to provide a gap between these windows and the taller flank wall to the 4-storey element of the building. The Council has indicated that the gap would be around 8 to 10m.
59. The Council has drawn upon its guidance, *Residential Extensions Guidelines Supplementary Planning Document 2010* (the SPD), which advises that a 15m distance is provided between flank walls and primary elevations to avoid harmful overbearing impacts. This guidance relates to residential extensions and the windows in question are within a flank wall facing towards another flank wall. The guidance would not strictly apply but I agree it provides a useful yardstick of acceptability.
60. The appellant has indicated that these windows serve bedrooms and, on this basis, he considers them to be less sensitive. Whilst I note this point, bedrooms are nevertheless habitable rooms which should enjoy a satisfactory degree of outlook and protection from overbearing development.
61. The proximity of these bedroom windows to the flank wall of the 4-storey section of the proposed building would fall below the recommended minimum distance set out in the SPD. However, No 33 is positioned as an angle to the proposed building which, in combination with the single-storey section to the proposed building, would ensure that these bedroom windows would retain a sufficient degree of openness. Consequently, the proposed building would not appear overbearing and would not unduly harm outlook from these windows, which would still benefit from views towards the verdant area on the opposite

side of Elmshott Lane provided by the school grounds and the trees within them.

62. I am therefore led to the conclusion that the living conditions of neighbouring occupiers of No 33 would not be unacceptably harmed by the proposal in respect of outlook or a sense of overbearing. The proposal would therefore comply with Saved Policy EN1 of the LP and Core Policy 8 of the CS which together require a high standard of design that is compatible in terms of its relationship to nearby properties and respects the amenities of adjoining occupiers. Saved Policy EN2 of the LP is not relevant to this appeal for reasons stated above.

Other Considerations

63. The Council cannot demonstrate a 5 year housing land supply (5YHLS). The appellant considers that the Council can currently demonstrate a supply of either 1.92 years or 2.1 years. This lower figure, I note was referred to in the previous appeal decision for this site, which dated back to late 2019. The 2.1 year figure is included in the Council's Annual Monitoring Report 2018/19. I have been provided with no more recent figures and the Council has not disputed the appellant's position. Whether 1.92 years or 2.1 years, the absence of a 5YHLS indicates that the policies for the supply of housing are out-of-date.
64. Paragraph 11 d) of the Framework sets out that for decision taking where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
65. The 'tilted balance' established under paragraph 11 should therefore apply in this case. I return to this in my planning balance below.
66. The proposal would make a significant contribution to housing, providing a net increase in 70 units and thereby helping to address the significant shortfall in housing land supply within the Borough. The provision of additional housing would help to deliver the Government's objective of boosting significantly the supply of housing. I attach considerable weight to the provision of housing as the previous Inspector did.
67. The scheme would deliver a range of economic benefits both during the construction phase and subsequent occupation of the development. The appellant has suggested there would be a significant improvement in the vitality of the area, and has submitted letters suggesting that there is local demand for this. However, I have limited information about this. I appreciate the artist's impression indicates a vibrant streetscene, but this is just a sketch.
68. Nevertheless, I agree that the scheme would renew the shopping parade in providing modern premises and facilities within the neighbouring shopping centre and secure the ongoing provision of day-to-day services for the local community. There is evidence of local support for this.

69. The appeal site is previously-developed land with a large area of surface car parking within an urban area. The scheme would make efficient use of the site.
70. The site is in a convenient location with good access to services and facilities and public transport providing access to the wider area, therefore future occupants would not be reliant on the use of the private car to meet their day-to-day needs.
71. The provision of dedicated delivery bays to serve the retail units would help to reduce the risk of conflict arising from delivery vehicles reversing on Elmshott Lane. This would both improve highway safety and the general environment along the road.
72. The proposed development could enhance the appearance of the local area in providing a more up to date building and replacing some buildings of little architectural merit. As recognised in the previous appeal, the existing outlook from surrounding properties is not especially pleasant, onto the car parking and rear of the shops. Some benefit could arise from the redevelopment of the site. However, due to the size and bulk, the environmental benefits from this would be somewhat reduced.
73. In addition, the indicative drawings indicated that the scheme would provide a number of trees and hedges to the site, both within the communal gardens and adjacent to the street as well as landscaping buffers around the edge of the site. These would enhance the appearance of the area and, could potentially improve biodiversity around the site.
74. The scheme would also be constructed to take advantage of renewable energy and to mitigate the impact of climate change through water storage and infiltration. Compared to the existing site with outdated buildings and a large area of surface parking, it would deliver environmental benefits.

Other Matters

75. The appellant has asserted that the Council failed to work proactively during the application process to reach a positive solution on the application. Whilst the appellant's concern is acknowledged, this is a procedural matter and does not affect the merits of the case.
76. The appellant considers that the Council's third reason for refusal in relation to planning obligations in respect of affordable housing and contributions towards infrastructure was pre-emptive and inappropriate. This was on the basis that he had set out that planning obligations would be provided through a section 106 legal agreement. He considers that this reason for refusal could have been avoided. Again, this is a procedural matter.
77. A number of letters of support for the scheme have been provided to me which it is asserted have not been published. Whilst this is noted, this is a procedural matter. Nevertheless, I have been provided with copies of these letters and have taken them into account in my decision.

Planning Obligation

78. The UU would secure contributions to education, recreation facilities and highway works. It seeks to secure affordable housing, although for the reasons I have set out, the provision of this would not be satisfactory.

79. Notwithstanding the shortfall in affordable housing provision, I am satisfied that the other Obligations meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and comply with the tests set out in paragraph 57 of the Framework. Since they are to ensure that effects of the development are mitigated, I consider them to be neutral in the final balance.

Planning Balance

80. In the absence of a 5YHLS, the tilted balance as advocated under paragraph 11 should apply.

81. The scheme would deliver 70 additional dwellings in a sustainable location. In the context of a significant shortfall in housing, I give the provision of housing considerable weight.

82. The scheme would deliver a range of social, economic and environmental benefits which together I also attribute considerable weight.

83. The proposed development would cause significant harm to the character and appearance of the area. Notwithstanding that the scheme proposes to deliver some affordable housing, it would fail to make adequate provision for affordable housing in accordance with policy requirements. Furthermore, it has not been secured through a section 106 agreement. Given the need for affordable housing, I attribute significant weight to the failure to make this provision. The scheme would fail to deliver a suitable housing mix and moderate harm would arise from this. These harmful factors are matters that carry very substantial weight and importance in the planning balance.

84. The absence of harm to the living conditions of adjoining neighbours is a neutral factor in the balance.

85. In my view, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

Conclusion

86. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Rachael Pipkin

INSPECTOR