Land between Appledore Road and Woodchurch Road, Tenterden

Appeal Reference APP/E2205/W/21/3284479

Response of Appellant to the Council's note on delivery

Introduction

The Appellant accepts the general reading of the S106 as set out by the Council in its note. Indeed, it has always been the Appellant's contention (as set out in the evidence of Mr Grady) that there would be an element of delay between the grant of consent and the completion of new homes on the Appeal Site.

However, the concerns raised by the Council in terms of delivery are unfounded and are not evidenced. The Appellant accepts that circumstances beyond their control may delay delivery (indeed, this may occur on every site) however reasonable assumptions must be used in order to assess deliverability,

It is the Appellant's view that the Council approach is overly pessimistic and, in some cases, wrong. The Appellant addresses these matters below under three headings:

1. The correct five-year period;
2. The effects of the S106 / disposal of land; and
3. Rates of delivery.

In any case, even on the Council's overly pessimistic case, over half the dwellings would be delivered. No justification has been put forward to reduce the significant weight to be afforded to the benefits of providing both market and affordable housing (which in the Appellant's view should be afforded more than significant weight). Furthermore, the Council's only premise relates to the five-year housing land supply. If the scheme does deliver beyond the five-year period, it would still fully contribute to assisting in overcoming the significant deficit accrued over the plan period, thus playing a significant role in seeking to ensure that the Council meets its obligations to meet the overall housing need identified in the Local Plan.

Five-year period

In coming to its view on the five-year period to be assessed, the Council has once again fallen into the trap of ignoring clear Government requirements and its own Local Plan requirements as well as the recent note provided to the Inquiry. It is clear that the Council's change of monitoring year is totally flawed and has presented both this inquiry, but more seriously, the Department for Levelling Up, Housing and Communities, incorrect monitoring data. The Council should rectify this position immediately and return to a 1 April to 31 March monitoring year. Indeed, the Council's note [CD8.59] confirms this position and that the Council will revert back to the correct monitoring year. Given the seriousness of the situation in terms of providing the Government with incorrect data, we would expect this to happen as soon as possible, i.e. from 1 April 2022. As such, the grant of this consent would fall within the next monitoring year and the correct five years against which to assess the levels of deliverability of the site would be from 1 April 2022 to 31 March 2027, not the period set out by the Council which clearly, even on their own evidence, would be superseded in the future. It is the Appellant's case that should the Council have used the correct five-year period it would have confirmed that the majority of the new homes (113 (80%) using ABC methodology) would be delivered within the five-year period and no unsubstantiated allegation of reduction of weight to be afforded to the benefits would have been made.

Effects of the S106 / disposal of land

The Appellant has worked with the Council to provide a reasonable and deliverable S106 which has led the Council to remove a further two of its reasons for refusal. The exact programme has been explained to the Inspector and the Appellant generally agrees with the processes and procedures outlined by the Council. However, the Appellant does not share the Council's pessimism that the pitches cannot be laid out in May 2023. Significant work has already been done in terms of the design of the pitches and other elements.

The Inspector is reminded that this element of the scheme has been provided in full so that only discharge of pre commencement conditions is required. Given that the statutory timescale for the discharge of these (once submitted) is eight weeks, the Appellant is confident that if the Council behaves reasonably and expediently, there is no reason why over a year would not be sufficient to carry out the required obligations both under the S106 and the conditions. As such, in relation to this element, the Appellant is confident that matters like this that are in its control would not prohibit the commencement of work in May 2023.

It should be noted that, unlike the wetlands mitigation affecting many other schemes, the provision and certification of the sports pitches for this site is already well understood, fully in the control of the developer and conventional in approach to construction/provision. The complexity of process and potential implementation timescales of each are not comparable and any inference that there are parallels between what is required for the very complex issue of achieving nutrient neutrality and the more straightforward provision of playing pitches would be misplaced.

As to the sale of the playing pitches, this is a matter already addressed by Mr Ross. The School has already indicated [Appendix 1 and 18 of Mr Grady PoE CD7.2] that not only has the school not used the pitches for a significant amount of time and that it does not intend to use the pitches, that replacement pitches have been provided and that these are adequate to meet the school's requirement. Furthermore, the scheme has been fully developed in conjunction with Sport England who fully endorse it. As the guidance sets out, early engagement with Sport England is important, and this has taken place with no concern raised by them about the development.

As such, whilst this is a technical requirement to obtain consent from the Secretary of State, the clear facts indicate that this is likely to be a formality rather than a long-winded process which the Council appear to set out. Again, there is no reason to consider why this process cannot be concluded in over a year.

Rates of delivery

The Council correctly refers to the Lichfield's 'Start to Finish' Report [Appendix 15 of CD7.13] as being a a good basis for considering delivery.

There are two phases to consider here:

Phase 1 relates to the 35 dwellings that can be delivered prior to the final certificate being issues. It is agreed between the parties that there is no impediment to the delivery of these and whichever five-year period is used, there is no evidence that these will not be delivered.

Phase 2 relates to the remaining 106 dwellings that cannot be occupied (but can be erected and completed) until the final certificate is issued. The Appellant agrees with the Council's statement in the penultimate paragraph that it is 'unlikely' that a developer would complete dwellings ahead of this trigger. However, it is very likely that all elements would be in place to commence building the dwellings prior to the trigger. As such, it is highly likely that delivery could be expediated once the final certificate had been issued and that this would increase delivery rates.

Secondly, the proposal includes 50% affordable housing. As the Lichfields study confirms [page 17] *"schemes with more affordable housing built out at close to twice the rate as those with lower levels of affordable housing as a percentage of all dwellings on site*". Thus, the research indicates that a scheme with a high level of affordable housing (such as the Appeal Scheme) would deliver at a higher rate.

The Appellant is confident that based on the evidence provided the development of phase 2 would commence in October 2025. This would allow for a period of 17 months (1 November 2025 – 31 March 2027) in which completions would take place. Using the 55 dwellings per annum figure, this would equate to 78 dwellings being completed in this period (as a minimum), thus equating to an overall delivery of 113 dwellings within the five-year period. However, as the Appellant has pointed out, it is likely that delivery would exceed this level.

Conclusion

The Council has sought to allege that reduced weight should be afforded to the provision of housing due to the potential of delivery being outside of a five-year period. This is an astounding allegation – a Council that has a significant [accepted by Goodyear in xx] shortfall against its housing land supply and that housing land supply is worsening, is seeking to reduce the weight to be afforded to the provision of housing, one of the key Government and the Council's aspirations. Indeed, this allegation also has to be

considered against the continued failure to meet the overall housing requirement and the increase in shortfall against this target, something that this Council has presided over.

In any case, this allegation of the Council is wholly mis-founded based on assertions and pessimism that the Appellant does not share. The Appellant considers that the vast majority of the housing will be delivered within the correct five-year period and any residual would continue to assist the Council in reducing its vast deficit.

Further, in the context that the Council's stated shortfall stands at 664 dwellings, the fact that the scheme does contribute to reducing that shortfall cannot be diminished solely by reference to the scale of that contribution (e.g. it only being c.70 instead of 141 homes). That would end up with the irrational situation that as the shortfall grew to 1,000, 2,000 or more homes, you would give less and less weight to the provision of housing, because schemes would progressively represent a relatively smaller contribution to solving the whole issue. It's illogical to reduce weight in that way.

Overall, the Appellant considers that the Council's assertion is perverse. The position that market housing should be afforded significant weight and affordable housing more than significant weight is unchallenged in face of the Council's unevidenced assertions.