

**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL AT  
HENBLAS SQUARE, 1 HENBLAS STREET, WREXHAM**

**COUNCILS STATEMENT OF CASE**

**PLANNING REF: P/2018/0684**

**PINS REF: 3226729**

## **1.0 INTRODUCTION**

1.1 This statement will form the Council's case for its reasoning to refuse planning permission for the conversion of the existing first floor and construction of mezzanine floors to create 53 no. apartments (51 x one bedroom and 2 x two bedrooms), associated works and external alterations at the former BHS, Henblas Square, Wrexham.

1.2 Planning permission (Ref: P/2018/0684) was refused on 01 April 2019 for a single reason:

*The development does not make an adequate contribution to the provision of affordable housing and is therefore contrary to Local Planning Guidance Note 28 and to Unitary Development Plan Policy H7.*

1.3 The Council has made reference to the relevant policies and supplementary planning guidance notes in the Questionnaire as previously submitted.

## **2.0 THE COUNCIL'S CASE**

2.1 Policy H7 of the Wrexham Unitary Development Plan (UDP) requires that 'Where there is a proven lack of affordable housing to meet local needs, the Council will negotiate with developers to provide an element of affordable housing in new proposals of 25 or more houses...'.

2.2 Local Planning Guidance Note 28 'Affordable Housing' amplifies UDP Policy H7 and sets out the mechanism to secure affordable housing to meet the needs of those unable to compete in the local housing market.

2.3 Prior to the Council's determination, the proposal had been considered on the basis of this policy requirement and it is content that it was justified to seek a commuted sum equivalent to that which would otherwise be provided on site based upon the market value of the units being created, in line with UDP requirements.

2.4 Whilst the Appellant has submitted Viability Appraisals (VAs) in an attempt to demonstrate that the development is not viable, set against all development costs, and existing land and property values in the area, this Council does not consider that the benefits of the redevelopment of the site as proposed outweigh the harm that the shortfall in commuted sum for affordable housing would create, together with the lack of onsite parking. Whilst it was not a specific reason for refusal of permission, the lack of onsite parking weighs heavily against the development in combination with the lack of affordable housing.

2.5 There were several inconsistencies with the figures provided within the submitted VAs. For example, the Appellant's Appendix 4 shows the VA submitted in November 2018 where the GDV figure given is 3,932,900. However adding up the values, these total £3,857,900, making a difference of -£75,000. This has an impact on the profit percentage of 15% and 20% which

equates to £578,685 and £771,580 respectively. The Sub-Total Construction figure given is £2,354,330. However adding up the costs totals £2,311,830, making a difference of -£42,499. This sub-total construction figure then has a knock on effect on the percentages for fees and contingencies etc. The Appellant's Appendix 5 shows the VA submitted in March 2019. Marketing costs are still listed at 3% (of the GDV) at £31,800 which is misleading as 3% of GDV (excluding ground rent) should be £99,010. These inconsistencies led to a position of no confidence in the application documentation and the Council could not reasonably be expected to rely upon the information as submitted.

- 2.6 For the above reasons, the Council respectfully requests that the Appeal is dismissed.

### **3.0 APPELLANT'S APPLICATION FOR COSTS**

- 3.1 In November 2018, the Council granted planning permission for the conversion works despite the lack of onsite parking. This has demonstrated the Council's willingness to try to accommodate the developer and its commitment to securing the redevelopment and regeneration of the site. At the time of the committee's resolution to grant, the recommendation that a S106 be signed and sealed prior to the issue of the planning permission to secure the payment of a commuted sum towards off-site affordable housing was agreed. Whilst the Appellant had made the Council aware that they were looking at the viability of the scheme as the development progressed, this is best practice and the normal course for any competent developer. The requirement for a S106 agreement was not challenged by the Appellant prior to report to planning committee and the Council had no reason to doubt that the affordable housing provision would be forthcoming.
- 3.2 A VA was not made available prior to the committee meeting because an appraisal had not yet been carried out. It is impossible for the Council to have known that the scheme was unviable as this was not yet known to the Appellant. A VA could of course have shown that the scheme was viable and the Council did not act unreasonably in its assumption that the scheme was viable at the point of the determination of the application. The Council was not made aware until after the committee resolution to grant permission that the scheme was considered to be unviable, when a VA was submitted to the Council for consideration.
- 3.3 The VA was considered by the planning committee in February 2019 on the basis that the Appellant contended that a profit margin of less than 15 % was unacceptable to them. The Appellant presented notional figures showing an estimated profit of around 600K (16%). The Appellant offered the difference between the estimated profit and the deemed acceptable profit (1%), which amounted to £28,816, as a commuted sum for off-site affordable housing. The Council questioned the accuracy of the initial figures because it had been reported in local newspapers in December that all the flats had been sold for £3.3m with a 212k service charges. This was a significantly lower sum than that claimed by the Appellant which prompted the Council to reconsider the

initial figures. What became clear is that the contingency costs, professional fees, and sales and marketing costs ( $5 + 7 + 3 = 15\%$ ) actually added up to 18.6% of building costs. This amounted to an overstated cost of £90,000 in the initial costs. The Council therefore acted reasonably in requesting the submission of a revised VA based upon actual figures known to be available.

- 3.4 The revised figures submitted and considered by the Council in April 2019 more accurately reflected actual costs, some of the fees had been reduced but not all. The contingency was removed (because the building work was almost complete), sales and marketing was reduced from 124k to 31k. Professional fees were still the same - 209k - although this is actually 8.5% not 7% of build costs. This is an over-estimate amounting to £40,000. These errors make a difference in terms of actual profit. The initial profit would have been 18% not 16%, making it more difficult for the Appellant to argue for the removal of the affordable housing contribution. The revised costs are substantially different to the original ones, which raised concerns about the evidential base upon which the Council based their original decision.
- 3.5 The second set of figures showed a drastically reduced profit of 8% due to the changing nature of the scheme, even though it is clear that this was the nature of the scheme back in November 2018. Acceptable profit and viability is an important material consideration and the Council did not act unreasonably in its lack of confidence in the Appellant in terms the accuracy of the figures presented which led to the subsequent refusal of planning permission.
- 3.6 The Appellant contends that the behaviour of the Council has been totally unreasonable because it resulted in the need for professional consultants to address the issue of viability thoroughly as part of the Appeal. The Council contends that the issue of viability should have been thoroughly and accurately addressed as part of the application. In not doing so, the proposed reduced commuted sum for affordable housing was not properly justified and based upon the information before it, this Council had no option but to refuse planning permission.
- 3.7 The issue of whether the benefits of the development (i.e. the provision of dwellings and regeneration of a town centre building) outweigh the harm that would be caused by the lack of affordable housing provision is a fine balance. UDP Policy H7 lays out a clear and accepted policy requirement and in this instance the Council considers that although the Appellant scheme may be unviable, the harm caused by the implementation of this development is of greater importance. The Council is perfectly entitled to take this view in giving due consideration to the development plan in force and for this reason it considers that no unreasonable behaviour has been demonstrated.
- 3.8 For the above reasons, the Council respectfully requests that the Appellant's application for costs is dismissed.

#### **4.0 SUGGESTED CONDITIONS**

- 4.1 Should the Appeal be allowed, the Council suggest imposing the following conditions:
- 4.1.1 The development hereby permitted shall be commenced before the expiry of five years from the date of this permission.
  - 4.1.2 The development shall only be carried out in strict accordance with the details shown on the approved drawings numbered L018022-006 Rev C, L018022-007 Rev H, L018022-008 Rev E, L018022-009, L018022-11, L018022-12 Rev A, L018022-014 Rev A and as contained within the application documentation.
  - 4.1.3 No facing or roofing materials shall be used other than those detailed on the application form and within the approved application documentation.
  - 4.1.4 All works in relation to the implementation of this permission, including deliveries to and / or leaving the site, shall be undertaken only between the hours of 7.30 and 18.00 Monday to Friday, and 08.00 to 14.00 on a Saturday, and at no time on a Sunday or a Bank Holiday unless the prior written approval of the Local Planning Authority has been obtained.
  - 4.1.5 The scheme of bin / refuse storage as shown on approved plan ref: L018022-006 Rev C shall be fully implemented prior to first use of the development, and bins / refuse / recycling shall not otherwise be stored on any other part of the site.
  - 4.1.6 The rating level of any noise generated by the cumulative air handling plant associated with the commercial development shall not exceed the pre-existing background level (determined to be 45dB LAeq 1hr during the daytime, and 31dB LAeq,15mins during the night time) by more than 5dB(A) at any time. The noise levels shall be determined at nearby noise sensitive premises, and measurements and assessment shall be made in accordance with BS4142:2014 Methods for rating and assessing industrial and commercial sound.
  - 4.1.7 The dust mitigation measures, as contained within the Dust Management Scheme Ref: 2018/001 submitted and approved as part of this application, shall be fully implemented for the entire duration of the construction phase.

- 4.1.8 The Construction Traffic Management Plan (CMTP) Ref: 2018/002 submitted and approved as part of this application, shall be fully implemented for the entire duration of the construction phase.
- 4.1.9. Prior to first use of the development hereby approved, all new and replacement windows shall be installed in strict accordance with plan refs: L018022-007(A) Rev G and L018022-144 Rev B. The tinted glazing shall thereafter be permanently retained as approved.
- 4.1.10 The landscaping scheme approved as part of this application shall be fully implemented in strict accordance with the approved drawing no. L018022-015 within three months of the first use of the development.
- 4.1.11 The landscaping scheme as carried out in connection with condition no. \*\* shall be permanently retained and maintained in accordance with the Landscape Management Specification prepared by Rosetta Landscape Design, dated 16 November 2018, approved as part of this application. Any planting becoming severely damaged or seriously diseased, or is in poor physiological condition and/or are removed without the written permission of the Local Planning Authority shall be replaced with trees or shrubs of similar size and species to those originally required to be planted and within a timescale all to be submitted to and approved in writing by the Local Planning Authority.