
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 02/07/19

gan K Sheffield BA(Hons) DipTP
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 06.08.2019

Appeal Decision

Site visit made on 02/07/19

by K Sheffield BA(Hons) DipTP MRTPI

an Inspector appointed by the Welsh Ministers

Date: 06.08.2019

Appeal Ref: APP/H6955/A/19/3226729

Site address: Henblas Square, 1 Henblas Street, Wrexham, LL13 8AE

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 The Mandale Group against the decision of Wrexham County Borough Council.
 - The application Ref P/2018/0684, dated 13/08/2018, was refused by notice dated 01/04/2019.
 - The development proposed is the conversion of existing first floor and construction of mezzanine floors to create 53no. residential apartments (51no. one bedroom and 2no. two bedroom), associated works and external alterations.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of existing first floor and construction of mezzanine floors to create 53no. residential apartments (51no. one bedroom and 2no. two bedroom), associated works and external alterations at Henblas Square, 1 Henblas Street, Wrexham, LL13 8AE in accordance with the terms of the application, Ref P/2018/0684, dated 13/08/2018, and the plans submitted with it, subject to the conditions set out in the annex to the decision.

Preliminary Matters

2. Over the course of the application there was a reduction in the number of proposed units from 55 to 53. I have therefore taken the description of the development from the appeal form as it accurately reflects the scheme determined by the Council.
3. The Appellant has submitted a signed Unilateral Undertaking and I have had regard to it in the determination of the appeal.

Application for costs

4. An application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

Main Issue

5. In November 2018 the Council resolved to grant planning permission for the proposed development subject to a planning obligation under Section 106 of the Town and Country Planning Act 1990 regarding the provision of affordable housing. Whilst it was subsequently agreed that the provision would be in the form of a commuted sum the
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Appellant sought a reduced payment based on the financial viability of the scheme. In view of the Council's resolution to grant planning permission the main issue is whether the development would make an adequate contribution to the provision of affordable housing.

Reasons

6. The appeal property is a two-storey building with service yard which occupies a substantial plot of land within Wrexham town centre. It comprises ten retail units, two of which are substantial in size and all of which were vacant at the time of my site visit. It is the first floor of the building, previously in retail, office or storage use, which is the subject of the appeal. Work to convert the building has commenced.
7. According to Policy H7 of the Wrexham Unitary Development Plan (UDP) "*the Council will negotiate with developers to provide an element of affordable housing in new proposals of 25 or more homes*". Although the Council's Local Planning Guidance (LPG) Note 28: Affordable Housing confirms that 25% of the total site capacity would normally be expected to be provided as affordable housing and that the commuted sum would reflect the equivalent provision, it also states that "*only in cases where the viability of the whole development is genuinely threatened will the affordable housing requirements be reduced.*"
8. It is generally accepted that developers can expect a return of between 15% and 20% on a development. The Viability Appraisal, November 2018 showed that the proposals would realise a profit of 16% with no affordable contribution. The Appellant therefore proposed to pay the Council £28,816 as an off-site contribution being the additional profit above the standard 15% return.
9. The appraisal was accepted by officers of the Council. However the recommended acceptance of a financial contribution below the 25% stated in LPG Note 28 was not accepted by the Council's Committee when the matter was considered in February 2019. The Council contends that reports in the local press of the units being sold at a significantly lower price than given in the appraisal raised concerns over its accuracy and as work had started on site it considered the appraisal should be based on actual rather than projected figures.
10. The updated appraisal, March 2019, based on actual costs, estimated a profit margin of 8% before an affordable contribution. Whilst this would be well below what many developers would normally accept, the Appellant was satisfied with the level of risk and a lower profit and was prepared to pay the commuted sum originally offered. Although the updated appraisal was accepted by officers, the Council considered that the substantial difference between the original and updated appraisal raised concerns regarding the evidential base on which it had based its decision to grant permission. Having declined the Appellant's offer to have the figures independently verified, the Council concluded that the benefits of the redevelopment of the site would not outweigh the harm the shortfall in the commuted sum for affordable housing would create, together with the lack of on-site car parking.
11. The Council, as part of its appeal submissions, has questioned several figures in the appraisals. In respect of the original appraisal I am satisfied that the inconsistencies are due to the figures for one unit having been omitted from the spreadsheet and do not consider that the profit level was incorrectly assessed. Whilst no evidence has been submitted regarding the sale price of the units reported in the local press, the figures quoted by the Council tally with the updated appraisal. I do not find the marketing, sales and legal costs given in the updated appraisal to be misleading since

they are based on actual costs as requested by the Council and there is no evidence regarding local residential property values. I have also found no error in the professional fees as the figure cited by the Council included planning and building regulations fees. It is generally accepted that these fees are listed separately and the Council's advisers raised no objection in this respect. From my examination of the figures I have no reason to dispute the findings of the updated appraisal. I am satisfied that it represents a fair assessment and confirms the proposed scheme would result in a financial return well below that considered to be a reasonable profit.

12. Policy H7 of the UDP and LPG Note 28 allow negotiation of the scale of the provision of affordable housing based on the viability of the development. The updated appraisal clearly demonstrates that the scheme without any contribution to affordable housing would fall below the general level of return expected on developments. On balance, I consider that the financial viability of the proposed development would be genuinely threatened if a commuted sum which reflects the equivalent provision of 25% affordable housing was required and I conclude that a reduced commuted sum is justified in this instance. Whilst I understand that a reduced financial contribution will affect the delivery of affordable housing, there is no substantive evidence as to the harm the shortfall in the commuted sum would cause.
13. Although the Council contends that a lack of on-site parking weighs heavily against the development, no substantive reason has been given in support of this conclusion and officers of the Council have not raised objections in this respect. The site lies within a pedestrianised zone with access restricted to delivery/service vehicles and mobility vehicles. It is in a sustainable location within the town centre with easy access to facilities and public transport. There are also several car parks nearby which all currently have free evening parking. In view of the highly sustainable location of the site I do not consider the lack of on-site parking goes against the appeal. Furthermore the proposal would result in the redevelopment of a prominent building which has lain vacant for some time and I understand is important to the successful delivery of the Wrexham Town Centre Masterplan.
14. In assessing the list of suggested conditions submitted by the Council I have had regard to the guidance in Circular 016/2014: The Use of Planning Conditions for Development Management. I generally find the conditions to be reasonable and necessary for the reasons given. However, I find suggested condition 1 unnecessary as work has commenced on site and suggested condition 3 is covered by condition 2. The Unilateral Undertaking submitted by the Appellants confirms that a commuted sum of £28,816 will be paid to the Council within five working days of the granting of planning permission. The Council has confirmed that it finds the contents to be satisfactory. I have no reason to reach a different conclusion.
15. For the reasons given above, and having had regard to all other matters raised, I conclude that the development would make an appropriate contribution to the provision of affordable housing. The appeal is allowed. In reaching my decision I have considered the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle, through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.

K. Sheffield

INSPECTOR

Annex - Schedule of Conditions

- 1) The development shall be carried out in accordance with the details contained in the application documents and the following approved drawings numbered: L018022-001; L018022-002; L018022-003 Rev B; L018022-004 Rev A; L018022-005; L018022-006 Rev C; L018022-007 Rev H; L018022-008 Rev E; L018022-009; L018022-010; L018022-0011; L018022-012 Rev A; L018022-013; L018022-014 Rev A; L018022-015; L018022-144 Rev B; Scheme of Glazing sheets 1 and 2; and 2984/1 Rev B.

Reason: To ensure the development is carried out in accordance with the approved drawings, for the avoidance of doubt.

- 2) All works relating to the implementation of this permission, including deliveries to and/or leaving the site, shall be undertaken between the hours of 07:30 and 18:00 Monday to Friday, 08:00 and 14:00 hours on Saturdays and at no time on Sundays or Public Holidays.

Reason: To protect the amenity of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 3) The refuse and recycling storage facilities shall be completed in accordance with drawing no. L018022-006 Rev C before the development is occupied and retained for the lifetime of the development. The storage of refuse and recycling arising from the development shall not take place on any other part of the site.

Reason: To ensure that adequate provision is made for the storage of refuse and recycling in the interests of the visual amenity of the surrounding area, in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 4) 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, 15 mins 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 assessments shall be made in accordance with BS4142:2014 Methods for rating and assessing industrial and commercial sound.

Reason: To protect the amenity of the occupiers of the residential units in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 5) The dust mitigation measures specified in the Dust Management Scheme shall be implemented for the entire duration of the construction phase.

Reason: To protect the amenity of the occupiers of nearby properties in accordance with Policy GDP1 of the Wrexham Unitary Development Plan

- 6) The construction phase of the development shall be carried out in accordance with the submitted Construction Traffic Management Plan.

Reason: In the interests of highway safety in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 7) All new and replacement windows shall be installed in accordance with drawing nos. L018022-007 Rev H, L018022-144 Rev B and Scheme of Glazing sheets 1 and 2 before the development is occupied and the tinted glazing shall be retained for the lifetime of the development.

Reason: To ensure a satisfactory standard of appearance of the development in the interests of the visual amenity of the surrounding area and to protect the living conditions of future occupants of the development, in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.

- 8) Within three months of the first occupation of the development the site shall be landscaped in accordance with drawing nos. L018022-015 and 2984/1 and shall be maintained thereafter. Any planting becoming severely damaged or seriously diseased or in poor physiological condition and/or removed shall be replaced with trees or shrubs of a 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.

Reason: To ensure a satisfactory standard of appearance of the development in the interests of the visual amenity of the surrounding area, in accordance with Policy GDP1 of the Wrexham Unitary Development Plan.