

Planning Review Committee

25th July 2012

Application Number: 11/02446/FUL

Decision Due by: 21st November 2011

Proposal: Demolition of rearmost building. Erection of 5 storey building consisting of 9 x 2-bed flats with cycle parking, bin stores and landscaping.

Site Address: Cantay House 36 - 39 Park End Street.

Ward: Carfax Ward

Agent: John Philips Planning
Consultancy

Applicant: Cantay Investments Ltd

Recommendation

That planning permission be refused for the following reason:

1. The proposed scheme for the erection of 9 x 2 bedroom residential flats on a site with capacity for 10 units is inappropriate as it does not include a contribution towards the provision of affordable housing in Oxford, which is contrary to policy CS24 of the adopted Oxford Core Strategy the Affordable Housing SPD, and policies HP3 and HP4 of the Sites and Housing Plan, and would cause harm by failing to contribute to the provision of mixed and balanced communities across Oxford as required by those policies

Background

1. This application was considered at the meeting of West Planning Area Committee on 8th December 2011 when Members resolved on a vote of 6 – 2 to approve the application subject to the conditions set out in the attached report.
2. A 12 member motion to call in the application to Planning Review Committee was received on 9th December 2011 on grounds that the proposal is for a development of 9 x 2 bedroom flats which is one unit short of triggering an affordable housing requirement; that the site is capable of providing 10 flats and that the developers have under developed the site in order to avoid making a contribution to affordable housing contrary to policy CS24 of the adopted Oxford Core Strategy and the Affordable Housing SPD.
3. Clearly if the site can accommodate 9 x 2 bed flats, if some of the flats were 1 bed rather than 2, then the 10 site threshold would be met.

4. On 19th December 2011 the full Council endorsed the proposed submission Sites and Housing Plan for publication and submission to the Secretary of State for examination. Council also adopted the Sites and Housing Plan for development control purposes, considering the advanced stage it is in production, the front loading of the evidence base and the responses from the earlier consultation stages. The Sites and Housing Plan was formally submitted to the SoS for examination in May 2012.
5. At its meeting on 22nd December 2012, Planning Review Committee considered the proposal, and considered that while the site technically could accommodate 10 units, and trigger the requirement for generally a minimum of 50% of the development to be affordable housing under policy CP24 of the Core Strategy and the Affordable Housing SPD; that it was better to seek an off-site financial contribution to affordable housing in accordance with policy HP4 of the Sites and Housing Plan. The Planning Review Committee voted to defer the application in order to allow negotiation between the applicant and the City Council officers in relation to an off site affordable housing contribution.
6. The affordable housing policy requirement in the Sites and Housing Plan for residential schemes of between 4 - 9 dwellings is for a financial contribution to off site affordable housing. The contribution is equivalent to 15% of the sales value of the units (otherwise known as the gross development value). In addition a 5% (of the contribution) administrative charge is required to cover the administrative costs of being able to spend and implement the affordable housing contribution. The policy requires the contribution to be paid prior to the sale (or occupation) of more than 50% of the site. This has the advantage of improving the cash flow for the developer, and removes any uncertainty about the sales value of the units.
7. The applicant has submitted 2 parallel applications for this site, one for student accommodation, and this one for residential development. The City Council granted permission for the student accommodation scheme on 9 February 2012, which included a legal agreement to pay £172,845 contribution to off site affordable housing in accordance with Policy HP6 the Sites and Housing Plan. Also included is a West End Infrastructure contribution of £49,984 and admin fees of £500 for the Infrastructure contribution and £1,000 for the affordable Housing contribution.
8. The applicant has sought to suggest that the residential scheme is not sufficiently viable to make any affordable housing contribution. The Sites and Housing Plan policy does make it clear that if there are specific issues which would make a scheme unviable, then the planning authority will take this into account when applying the policy. This reflects the normal approach of considering whether there are any material considerations which would justify a departure from the development plan policy.

Summary of the Policy Position

9. The adopted Core Strategy along with saved Oxford Local Plan policy HS4 and the Affordable Housing SPD would require that any site in excess of 0.25ha or with the capacity for 10 units to make an on site affordable housing provision of generally a minimum of 50% of the units. Policy HP3 of the Sites and Housing Plan will replace Local Plan Policy HS.4, but carries forward the threshold of 10 units as a trigger for on-site affordable housing. In calling the application to Planning Review Committee, Members were of the view that the site had the capacity to accommodate 10 or more units, and therefore the policy requirement has been triggered.
10. Policy HP4 of the new Sites and Housing Plan requires sites of 4-9 dwellings to make a contribution to affordable housing, however it seeks a financial contribution to off site affordable housing. This proposal clearly triggers this policy.
11. Under either Policy HP3 or HP4 the proposal triggers the need to make an affordable housing contribution. Officers have sought to negotiate the financial contribution in relation to the Sites and Housing Plan policy, ie that 15% of the GDV should be an affordable housing contribution towards the provision of affordable housing off site.
12. The applicant has now declined to make any affordable housing contribution, based upon their case on viability. Further details on this are set out below.

Viability methodology

13. The methodology to assess viability is relatively straight forward, and is based upon the Residual Land Value. One considers the gross development value (GDV) of the scheme, in this case the total value expected of the sales of the residential units. One subtracts the costs of the scheme (which includes the cost of construction, the finance costs, developers profit and other planning policy requirements). The difference between the cost of the development and the GDV is how much the land is worth (this difference is known as the 'residual land value' or RLV). If the residual land value is greater than the existing use value (plus a reasonable incentive for the landowner to bring the site to the market), then the scheme is viable.
14. The difficulty comes when trying to assess the assumptions and values which are fed into the model, as this is where significant differences in results can occur. Therefore in assessing viability information, it is important that all of the figures are clearly evidenced.
15. It is also important for the planning authority to distinguish between viability and value. In this case, where there are two different proposals on the same site, and both uses are acceptable in principle, the question is whether the proposal creates a residual land value greater than the existing use value, not whether the scheme creates a land value higher

that an alternative land value – ie the student scheme. From a landowners perspective, all other things being equal, the landowner would implement the scheme which has the highest value. But for the planning authority, unless there can be harm demonstrated by the implementation of the alternative scheme, this is not the appropriate consideration. In effect, if every time the consideration was an alternative land value, one could clearly see the situation where value spiralled.

16. It should also be noted that permitting this scheme without provision towards affordable housing would, if that meant that this scheme would proceed and the student accommodation scheme did not, result in the loss of the provision towards affordable housing that the student accommodation scheme would provide.

Viability details

17. The applicant has provided different viability assessments over the last 6 months. The applicant's own sales figures expect to generate a gross development value of £3,755,000. 15% of this sum is £546,354. and 5% administrative fee is an extra £27,318. This would create a policy compliant affordable housing contribution of £573,670

18. The applicant's first viability assessment indicated that using their own figures, an affordable housing contribution of £106,000 was viable; however the contribution offered was capped at £100,000. The City Council commissioned external surveyors to take a strategic review of the applicant's assessment. The advice from the City Council's advisors was that the viability study was unclear, and it was possible that items had been double counted. In addition there were 9 separate areas where further evidence was required.

19. In response, the applicant submitted a further viability assessment. This assessment did provide further information on a number of points. But at this stage the residual land value was compared to an alternative use value of student accommodation.

20. This approach is flawed for 2 reasons. Firstly, as set out above, the question the planning authority needs to consider is whether the scheme is viable against the existing use value (plus a landowner's sales margin) not an alternative use value. Secondly, the residual land value of the site for student accommodation has not been established clearly using the same methodology, ie a full Residual Land Value assessment. Hence they were not comparing like with like.

21. The applicant has taken this approach as the existing building on site has now been demolished, however that does not change the approach to viability assessment for planning purposes.

22. As a result of the second viability assessment, the applicant has withdrawn the original offer of an affordable housing contribution, and has

asked that the application be determined on the basis that an affordable housing contribution is not reasonable in this case.

Conclusions

23. The proposal is for 9 x 2bed flats. As such the site is considered to have the capacity for 10 units. This would trigger the need for on site affordable housing under the adopted Oxford Core Strategy and Affordable Housing SPD. Under the new Sites and Housing Plan, a scheme of 4 to 9 units is required to make a financial contribution towards the provision of affordable housing off site. While the proposed development triggers both policies, Officers have sought to negotiate an affordable housing contribution in line with policy HP4 of the Sites and Housing Plan. This approach is considered reasonable and supported by a recent appeal decision (Hernes House).
24. The applicant has sought to use viability issues to argue against the payment of any affordable housing contribution, and has withdrawn an earlier offer of a financial contribution towards affordable housing. It is considered that evidence submitted is not clear or robust, and officers are not satisfied that a departure from the policy position is justified, therefore the proposal is unacceptable and would cause harm by failing to provide for mixed and balanced communities.. It is therefore recommended that the application should be refused.

Background Papers:

11/02181/FUL

11/02446/FUL

Hernes House appeal

Contact Officer: Angela Fettiplace and Mark Jaggard

Extension: 2445 / 2161

Date: 12th July 2012

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