



Appeal Decision

Site visit made on 15 February 2010

by **E C Grace** DipTP FRTPI FBEng PPIAAS

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
3 March 2010

Appeal Ref: APP/K0425/A/09/2117218

Land rear of 4-12 Cressex Road, HighWycombe, Bucks HP12 4TY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Paul Wells (Bramley Homes (Southern) Ltd) against Wycombe District Council.
- The application Ref 09/06646/FUL, is dated 29/7/09.
- The development proposed is erection of 5 x 2 storey houses (1 pair of 3 bed semi-detached houses, 2 x 3 bed and 1 x 4 bed detached houses), parking and access between 10 and 12 Cressex Road.

Decision

1. I dismiss the appeal.

Main Issue

2. The sole issue is whether the infrastructure requirements for the development would be suitably addressed by the submitted Unilateral Undertaking.

Reasons

3. The principle of 5 dwellings on this site was first established in 2007 following an appeal (APP/K0425/A/06/2027280). The application was in outline and accompanied by a Unilateral undertaking to secure a sole contribution towards transport infrastructure. A subsequent detailed proposal (08/06614/FUL) was granted planning permission in June 2009 subject to a Section 106 Agreement to secure a developer's contribution towards a wide range of infrastructure requirements upon first occupation of the development.
4. The current application is directly comparable to that latest approved scheme but includes a small number of amendments and was submitted to resolve these, but also to review matters contained in the Section 106 Agreement. I am advised that a separate request has also been made of the Council to approve these design changes as minor amendments to the approved scheme. As the Council were unwilling to meet and discuss a revision to the terms of the Section 106 Agreement, the appeal was reluctantly lodged on grounds of non-determination.
5. The Council have since resolved that the minor alterations to the approved scheme are acceptable, but they would nevertheless have refused permission for the following reason: *In recognising the problems associated with increasing demand on highways, education and other infrastructure, the Council has adopted a Supplementary Planning Document aimed at providing*

improvements or additions to this infrastructure. This requires development to make a commensurate contribution towards this infrastructure where the proposal would otherwise have an unacceptable impact on the provision of these services. In the absence of a S106 Planning Obligation or other agreement to secure a contribution towards Transport, Open Space, Education, Indoor Sports and Leisure, Fire Services and Environmental Schemes, this proposal would undermine the objectives of the strategy and would have an unacceptable impact on these services. Accordingly, the proposal is contrary to Policy CS21 (Contribution of Development to Community Infrastructure) of the adopted Core Strategy and the requirements of the Developer Contributions Supplementary Planning Document (Adopted April 2007).

6. The crux of this case is that the Section 106 Agreement was completed by the appellant under protest as they considered the contribution should have been discounted to take account of the original outline approval. Hence, the main purpose of the current application/appeal is to seek to renegotiate the sum payable. Accordingly, a Unilateral Undertaking has been submitted in respect of a lesser sum than that required by the existing Section 106 Agreement.
7. However, I saw at my visit that the development is now constructed and one of the dwellings was occupied, while another displayed a SOLD sign. In my opinion, the extant Section 106 Agreement freely entered into by the appellant, albeit grudgingly, is therefore now legally enforceable. The Council's stance is that the newly submitted Unilateral Undertaking cannot amend, revoke, replace or in any way affect the existing Agreement. In principle, I agree that the grant of a new (but largely similar) planning permission would generate the need for a new Section 106 Agreement and its content might indeed be subject to review. However, this is not the position here as the original planning permission has been implemented and occupation has occurred whereby the terms of the original Section 106 Agreement are already binding on the appellant.
8. Furthermore, as the Council have commented that the wording of the Unilateral Undertaking submitted by the appellant contains some drafting flaws which do not reflect the situation that now pertains and which render it unacceptable to them in its present format, I can accord it little weight.
9. Accordingly, for the reasons given above I conclude that the appeal should be dismissed.

Edward Grace

Inspector



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Your Ref: 09/06646/FUL
Our Ref: APP/K0425/A/09/2117218/NWF
Date: 3 March 2010

Dear Mr Beck

**Town and Country Planning Act 1990
Appeal by Bramley Homes (Southern) Ltd
Site at R/o 4-12 Cressex Road, High Wycombe, HP12 4TY**

I enclose a copy of our Inspector's decision on the above appeal.

If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 0207 947 6655.

Yours sincerely

Dianna Wride

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