

IN THE MATTER OF AN APPEAL UNDER SECTION 78 TOWN AND COUNTRY  
PLANNING ACT 1990

LAND EAST OF LIDL, CHRISTYS LANE, SHAFTESBURY.

APP/D1265/W/24/3337301

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OPENING ON BEHALF OF  
THE LOCAL PLANNING AUTHORITY

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1. This inquiry is convened to determine an appeal brought under section 78(2) TCPA against the Council's non-determination of a planning application for planning permission (ref P/FUL/2023/05051) "erect 41 No. retirement apartments including communal facilities & access, car parking and landscaping."
2. The application was received on 30 August 2023 and registered as valid by the Council on 13 September 2023. The LPA did not issue a decision notice before the statutory deadline of 13 December 2023, and this appeal commenced on 1 February 2024.
3. Following the commencement of the appeal and the receipt of the Appellant's statement of case, the Council determined that, had the application been determined by it, it would have refused planning permission for a single reason:

"In absence of a completed Section 106 agreement to secure policy compliant affordable housing the proposal would be contrary to Policy 8 of the adopted North Dorset Local Plan Part 1 2016 and paragraphs 55, 57 and 58 of the National Planning Policy Framework 2023."
4. Following the submission of the Council's statement of case and the evidence on viability appended to it, the Appellant and the Council have worked closely to identify common ground and narrow (and if possible, overcome) issues between them.
5. Policy 8 of the Local Plan Part 1 at paragraph (d) makes clear that where it is suggested that viability issues with a development militate against the provision of the full 30% affordable housing contribution otherwise required from development within Shaftesbury, a planning obligation will be required to secure the "maximum level of provision achievable" within those viability constraints.
6. Following discussions between the Council and Appellant's viability experts, a Viability Statement of Common Ground has been concluded. The parties have agreed a maximum level of provision achievable for affordable housing from this development having regard to the scheme's viability. The parties have also been working closely on a planning obligation which is being offered as a unilateral undertaking by the appellant to secure the agreed level of contribution.

7. Accordingly, the Council's position is that, upon receipt of an executed unilateral undertaking in the form which the Council has most recently seen, its reason for refusal will be overcome.
8. A detailed main Statement of Common Ground sets out the parties' agreed positions on other matters, including the principle of development, design, highways, and other financial contributions towards infrastructure (which are not, in the light of the constrained viability position and the pressing need for affordable housing, considered necessary to make the development acceptable in planning terms).
9. In these circumstances and subject to the execution of a satisfactory unilateral undertaking, the Council's view will be that the development complies with the development plan taken as a whole, there are no material considerations that suggest that permission should be refused, and that the Inspector should therefore allow the appeal and grant planning permission.

BRENDAN BRETT  
1 May 2024

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Inner Temple, London.