

**APPEAL REF: APP/D1265/W/24/3337301**

**Land to the east of Lidl, Christy's Lane, Shaftesbury, Dorset, SP7 8QN**

Appeal against a failure to give notice within the prescribed period of a decision on a planning application for redevelopment to form 41no Retirement Living apartments for older persons including communal facilities and associated car parking and landscaping.

**Case Management Conference Summary Note**

1. This note summarises the discussion from the Case Management Conference (CMC) held on 25 March 2024 at 14:00.
2. The Inspector appointed to conduct the Inquiry is myself, Gareth Wildgoose BSc (Hons) MSc MRTPI.
3. The Inquiry based on the start letter was scheduled to open at 10:00 on Tuesday 30 April 2024 and was reserved for six days. However, following discussions during the CMC regarding the availability of witnesses, it has been agreed that the Inquiry will now open at 10:00 on Wednesday 1 May 2024, ideally adjourning by 17:00 on each day. In addition, taking account of the extent of agreed matters between the main parties, it was agreed that the Inquiry is now to be scheduled for two days, resuming on Thursday 2 May 2024 if necessary. In the event, that further time is required for closings it was agreed that this would be arranged during the Inquiry for a suitable day/time when the parties are available in subsequent weeks.
4. The advocates were confirmed as Sasha White KC for the Appellant (represented by Edward Abedian for the purposes of the CMC), and Brendan Brett for the Local Planning Authority (Council).
5. The Council is encouraged to draw the attention of interested parties to this Note, including posting a copy on the Council's website.

**Main Issues and other matters**

6. As discussed with the parties during the CMC, I consider that the potential main issue in this case is likely to relate to:
  - whether the proposal satisfies policy requirements for provision of, or contributions towards, affordable housing and community infrastructure, having regard to financial viability.

7. In advance of the CMC, the appellant informed the Planning Inspectorate on Friday 22 March 2024 that discussions with the Council had resulted in an agreed position on that matter. A revised Statement of Common Ground (SoCG), a Viability SoCG and suggested conditions documents accompanied the correspondence. A draft planning obligation was also provided in the form of a Unilateral Undertaking (UU) that includes an affordable housing contribution.
8. Notwithstanding that the areas of dispute between the parties have significantly narrowed, clarification on several matters is required to enable me to make my decision on this non-determination appeal. In that light, I identified a number of questions that remain unresolved in the evidence before me. In summary, it would be helpful to me if the submission of proofs and/or an updated SoCG could address the following to assist discussions during the Inquiry:
  - How the agreement on matters of viability was reached to inform the Viability SoCG and the reasons and explanation for the agreement of the inputs in the table under paragraph 2.6 of that document.
  - The parties' respective positions on the draft UU provided on 22 March 2024, including whether it is the appropriate means by which to secure the planning obligations in the circumstances of this case and given that the Council would not be a party to it.
  - The extent to which the planning obligations in the draft UU (or any subsequent version of legal agreement) meet the statutory tests in regulation 122 of the Community Infrastructure Levy (CIL) Regulations and the policy tests in the National Planning Policy Framework (the Framework), including how and where the off-site contributions will be spent, the type or amount of affordable housing to be provided and how its delivery would be assured.
  - The parties' positions on whether the proposal would be in accordance with the development plan, if the planning obligations do not meet the full list of policy requirements for affordable housing and/or community infrastructure set out in Policies 8, 13, 14 and 15 of the North Dorset Local Plan Part 1 and/or any other development plan policies that may be relevant.
  - The parties' views on any benefits, potential effects and/or impacts of the proposal, together with any weight that they consider should be attributed if a relevant planning balance were to be applied.
  - If not otherwise addressed, it would also be helpful to me for certainty to have the parties' positions on specific issues raised by interested parties and in consultation responses to the planning application.
9. Whether or not those matters are dealt with as main issues in the eventual decision will depend on the evidence heard in due course.
10. The parties agreed to notify me regarding any significant changes in position as soon as possible. Any changes should also be reflected within an updated SoCG and topic based SoCG relating to viability as necessary which should be provided in draft by not later than **Wednesday 10 April 2024** and a final

version by **Wednesday 24 April 2024**. It was also agreed that proofs of evidence may not be necessary if there is full agreement on the further matters for clarification that I requested above. However, if significant matters of dispute remain that cannot otherwise be addressed in the SoCGs, then proofs of evidence from each party should be submitted by witnesses/participants in the Inquiry by not later than **Wednesday 17 April 2024**.

11. For certainty, the above deadlines for submission of SoCGs and proofs of evidence (should they be necessary) have been significantly extended from those given in the appeal start letter. This has been agreed to enable reasonable time for ongoing discussions between the parties when addressing the Inspector requests for clarification set out in this note and to allow preparation of proofs of evidence thereafter, should they be necessary.
12. Guidance has been provided separately in the pre-conference note, including its Annex that sets out the preferred format and content of proofs and other material, which should be observed.

### **Dealing with the evidence**

13. The Council's preference in the circumstances for a change of procedure to written representations was noted. However, I confirmed that the extent and scope of remaining questions that I have would remain suited to an Inquiry. In that regard, the matters I have set out would appear capable of being dealt with via discussions in round table sessions at the Inquiry, which I would lead based on an agenda circulated in advance. Nonetheless, given that I have requested further clarification on some matters from the parties, it is necessary to retain the option at this stage of formal presentation of evidence by the respective planning witnesses and cross-examination.
14. Discussions of suggested conditions and potential planning obligations will take the form of round table sessions that I will also lead.
15. It was confirmed that the Council currently intends to call two witnesses: Mr McDonald (planning) and a representative of the Council's viability consultants - Dixon Searle Partnership. The appellant also currently intends to call up to two witnesses: Mr Shellum (planning) and if necessary, Mr Lynch (viability). The confirmation of witnesses participating in the Inquiry, or any change thereto is to be provided by the parties by not later than **Wednesday 17 April 2024**.
16. If at that stage, I decide that formal presentation of evidence will be required at the Inquiry, I will require confirmation of final timings by not later than **Wednesday 24 April 2024**. A draft programme would be issued following receipt of draft timings. Other than in exceptional circumstances, the parties would be expected to take no longer than the timings indicated, which would require the cooperation of both advocates and witnesses.

## Conditions and planning obligations (without prejudice)

17. A list of suggested conditions has been provided alongside the current version of the SoCG for my consideration if the appeal were to be allowed.
18. Careful attention should be given to the wording of conditions and they will need to be properly justified having regard to the tests for conditions, in particular the test of necessity. The parties were reminded in this regard that as set out in the Framework, planning conditions should be kept to a minimum and that conditions that are required to be discharged before development commences should be avoided unless there is a clear justification. The reasons for any pre-commencement conditions will need to include that justification. Any difference in view on any of the suggested conditions, including the specific wording, should be highlighted in the schedule with a brief explanation given. It was agreed that the list of suggested conditions would be reviewed taking account of the above and would be re-provided in the updated SoCG.
19. As previously mentioned, a draft UU has been provided, to which I have requested clarification from the parties. For certainty, a final draft of the planning obligation should be submitted shortly before the Inquiry (by not later than **Wednesday 24 April 2024**). This will also need to be accompanied by the relevant office copy entries and a CIL Compliance Statement prepared by the Council which should contain a fully detailed justification for each obligation. This includes any policy support and, in relation to any financial contribution, exactly how it has been calculated and on precisely what it would be spent.
20. A week will be allowed after the Inquiry has closed for submission of a signed version of the planning obligation.

## Core Documents

21. The parties will need to discuss and agree a list of core documents in advance of preparing the proofs, should they be necessary, so they can be properly referenced within the proofs and/or the final versions of the SoCGs. That list is to be co-ordinated by the appellant and must be submitted with the proofs and/or not later than **Wednesday 17 April 2024**. The appellant must also provide an electronic copy of the core documents with appropriately referenced file names. I note that the appellant has already started to compile the core documents list and encourage that work to continue. A template for that list is attached in Annex 1 which the appellant can cross refer to.
22. The core documents should comprise only those documents to which you will be referring. Any appeal decisions and/or legal authorities on which the parties intend to rely will each need to be prefaced with a note explaining the relevance of the document to the issues arising in the Inquiry case, together with the propositions on which you are seeking to rely, with the relevant paragraphs

flagged up. For certainty, as it is a non-determination appeal, any development plan policy that is considered relevant to a material consideration (even if not in dispute) should be included in the core documents.

23. All documents must be available electronically for the benefit of all interested parties. The Council indicated that ideally a dedicated webpage for Inquiry documents will be hosted on their website; this will likely facilitate the smooth running of the Inquiry and is encouraged to be made available by not later than **Wednesday 17 April 2024**. For clarity, any documents submitted once the Inquiry has opened will be recorded as Inquiry Documents on a separate list that I will oversee.
24. One hard copy set of the SoCGs, the statements of case, the proofs (if prepared) and any associated appendices for both parties should be sent to the Planning Inspectorate marked for my attention by not later than **Wednesday 24 April 2024**. I also requested that the appellant provide hard copies of a full set of the application plans with those documents. An additional set of each of the aforementioned documents in hard copy should also be made available at the Inquiry for interested parties, with additional copies of proofs (if prepared) made available for wider circulation as necessary.

### **Inquiry venue**

25. The venue for the Inquiry has now been confirmed as Westport House, Worgret Road, Wareham, Dorset, BH20 4PP. The Council should ensure and confirm by not later than **Wednesday 17 April 2024** that it is suitable for the Inquiry with respect to the following:
  - The capacity of the venue.
  - No restrictions on the use of the room between 09:00 and 18:00.
  - Provision of microphones.
  - Provision of a hearing loop.
  - The availability of WiFi (including access for participants).
  - Provision of photocopying facilities.
  - The suitability of public and disabled access, and toilet availability.
  - The availability of secure overnight storage for papers/evidence (if possible).
  - Provision of an Inspector retiring room.
  - Parking arrangements.
  - The availability of drinking water for all participants.
  - A Council point of contact for interested parties during the event.
26. Guidance for setting up a venue for an Inquiry is provided [here](#).

## **Inquiry programme**

27. In general, the Inquiry is expected to finish on each day by around 17:00 and will resume on the next day at 10:00.
28. In terms of the running order, following my opening comments on the first day of the Inquiry, I will invite opening statements which should be no longer than 10 minutes with the appellant first, followed by the Council.
29. Assuming that there is to be no formal presentation of evidence or cross examination, I will then proceed to the round table discussions that I will lead based on a pre-circulated agenda of topics and/or questions I have. Interested parties will be included in those round table discussions should they be in attendance and express a wish to participate. In the event that formal presentation of evidence and cross examination is required, I will hear from any interested parties present who wish to speak before it takes place (typically after openings).
30. On conclusion of the presentation/hearing of evidence, the round table sessions on conditions and planning obligations will take place. Those will be followed by closing submissions (Council first, then appellant). The closing submissions should be no longer than 30 minutes. They should set out each parties' respective cases as they stand at the end of the Inquiry, with a copy emailed to the case officer (Kerr Brown) beforehand, and should include appropriate cross-referencing where evidence is relied on for the avoidance of doubt. Any case law should also be attached along with references to relevant paragraphs.
31. Should there be any applications for costs made during the Inquiry, I will hear them after closing submissions.
32. As previously mentioned, it was agreed that the Inquiry should now be scheduled to sit for up to two days. On the basis of the CMC discussions and ongoing conversations between the parties, it seems hopeful that we will be able to get through everything in that time and perhaps even in a shorter time. Nonetheless, the parties also agreed as a contingency that there is the possibility should it be necessary for closing submissions to be arranged as a virtual event on a suitable date for the parties in a subsequent week.
33. In terms of the site visit it was confirmed that an accompanied visit will be required to access the site, with the precise timing to be confirmed during the Inquiry.

## Timetable for submission of documents

<b>Tuesday 9 April 2024</b>	Deadline for the Council to submit a copy of the Inquiry notification letter and list of those notified.
Ideally an updated draft by <b>Wednesday 10 April 2024</b> , with a final version by <b>Wednesday 24 April 2024</b>	<ul style="list-style-type: none"> <li>• Statement of Common Ground, including revised list of suggested planning conditions.</li> <li>• Any topic specific statements of common ground</li> </ul>
<b>Wednesday 17 April 2024</b>	Deadline for submission of: <ul style="list-style-type: none"> <li>• all proofs (if necessary)</li> <li>• core documents list</li> <li>• inquiry venue clarifications</li> </ul> Confirmation of witnesses/participants
<b>Wednesday 24 April 2024</b>	Deadline for submission of: <ul style="list-style-type: none"> <li>• final draft planning obligation and relevant office copy entries</li> <li>• CIL Compliance Statement (Council)</li> <li>• any necessary rebuttal proofs</li> <li>• final timings (if necessary)</li> </ul> Deadline for receipt of: <ul style="list-style-type: none"> <li>• hard copies of documents requested by the Inspector</li> </ul>
<b>Wednesday 1 May 2024</b>	Inquiry opens at 10:00

## Costs

34. The parties confirmed that they currently do not intend to make a costs application. Nonetheless, if any are to be made, Planning Practice Guidance (PPG) makes it clear that they should be made in writing to the Inspector before the Inquiry. The parties are also reminded that to support an effective and timely planning system in which all parties are required to behave reasonably, I have the power to initiate an award of costs in line with the PPG. Unreasonable behaviour may include not complying with the prescribed timetable and deadlines.

## Any other matters

35. No additional matters raised.

36. When ending the call, I thanked the parties and reaffirmed the need to ensure close and continuing collaboration between all parties in advance of the Inquiry reflecting the tone and spirit of the CMC. This not only will help to continue to minimise and refine any areas of dispute, but it will also help to ensure the efficient overall running of the event procedurally.

*Gareth Wildgoose*  
INSPECTOR

26 March 2024



## **Annex 1**

### **TEMPLATE FOR CORE DOCUMENTS LIST (adapt headings to suit)**

#### **CD1 Application Documents and Plans**

- 1.1
- 1.2 etc

#### **CD2 Additional/Amended Reports and/or Plans submitted after validation**

- 2.1
- 2.2

#### **CD3 Committee Report and Decision Notice**

- 3.1 Officer's Report and minute of committee meeting
- 3.2 Decision Notice

#### **CD4 The Development Plan**

- 4.1
- 4.2

#### **CD5 Emerging Development Plan**

- 5.1
- 5.2

#### **CD6 Relevant Appeal Decisions\***

- 6.1
- 6.2

#### **CD7 Relevant Judgements\***

- 7.1
- 7.2

#### **CD8 Other**

- 8.1
- 8.2

\* Any appeal decisions on which a party intends to rely must each be prefaced with a note explaining the relevance of the decision to the issues arising in the current Inquiry case, together with the propositions relied on, with the relevant paragraphs flagged up. A similar approach is to be taken in relation to any legal citations relied upon.