

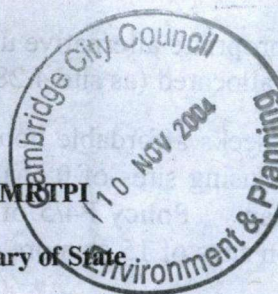
# Appeal Decision

Hearing held on 12 October 2004

Site visit made on 12 October 2004

by **Daphne Mair** BA(Econ), MPhil, MRTPI

an Inspector appointed by the First Secretary of State



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Date

**05 NOV 2004**

**Appeal Ref: APP/Q0505/A/04/1143494**

**Former Builders Yard, Sandy Lane, Cambridge, CB4 1HZ**

- 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 Sandy Lane Developments against the decision of Cambridge City Council.
- The application Ref C/03/0406/FP, dated 11 April 2003, was refused by notice dated 3 September 2003.
- The development proposed is demolition of existing workshops and erection of 18 dwellings.

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

## Procedural Matters

1. There were several amendments to the proposal prior to its determination by the Local Planning Authority, including amendment of the application site on 9 June 2003 to include the southern half of Sandy Lane to the immediate north of the site. Plots 1-3 were also set further towards Sandy Lane, to distance them further from a group of trees, mostly just outside the south west corner of the site, that are subject to the City of Cambridge (Sandy Lane and Montague Road) Tree Preservation Order 2/2003.
2. Subsequent to refusal of this application for 4 and 5 bedroom houses, the Local Planning Authority has resolved to approve, subject to Planning Obligations under Section 106 of the Act, two proposals: one for 22 dwellings including 7 units of affordable housing on the appeal site and one for 5 dwellings with 1 affordable unit on land to the immediate east.
3. At the hearing the Local Planning Authority confirmed that they did not maintain the objection within the first reason for refusal that the underground parking did not meet the requirements of excellence in urban design or fail to reflect the character of the area. The objection was that such an arrangement would preclude involvement of a Registered Social Landlord and hence affordable housing on the site.

## The Main Issue

4. The main issue is whether affordable housing should be provided in association with this proposal and if so whether this should be done on site or whether a commuted sum for off-site development would be acceptable in this case.

## Planning Policy

5. The most pertinent Development Plan policies are HO4 and HO7 of the Cambridge Local Plan as adopted in 1996. The appeal site of 0.43ha (excluding the half of Sandy Lane) and adjoining land (comprising about 0.6ha in all) is allocated under Policy HO4 for housing as



the most appropriate alternative use and on the Local Plan Proposals Map as site 6.31. The site remains allocated (as site 4.28) in the First Deposit Draft of the replacement Local Plan.

6. Policy HO7 seeks affordable housing or special needs housing on 30% of the developable area of all housing sites of 0.5ha or more where identified in the schedule of proposals of the Local Plan. Policy P4/5 of the emerging Local Plan seeks 50% of all housing to be affordable on sites of 15 or more dwellings.
7. Policies P1/3, P6/1, P5/4, P9/1 and P9/8 of the Cambridgeshire and Peterborough Structure Plan adopted in September 2003 and BE1, BE2, RL3, CS3 of Local Plan are also relevant.
8. Planning Policy Guidance 1, 3 and 13 together with Circulars 1/97 and 6/98 are important material considerations.
9. I have also had regard to the ODPM's Consultation Papers on Proposed Changes to PPG3 Housing, firstly: "Influencing the size, type and affordability of housing" and secondly, "Supporting the delivery of new housing" and to the accompanying Ministerial Statement.
10. Supplementary Planning Guidance (SPG) has been adopted by the Local Planning Authority on the following relevant matters: The Planning Obligations Strategy (2002) and Housing Development and Design Guide (2001). I have also had regard to the document "The Payment of Commuted Sums in Lieu of On-Site Affordable Housing (1999)" which informed part of the above SPG on Planning Obligations.
11. I have treated as material considerations the relevant parts of the Council's Housing Needs Survey of June 2002 and the report "Key Worker and Affordable Housing in Cambridge", which was accepted by the Council's Environment Committee in March 2002.

### **Reasons**

#### **Affordable housing policy**

12. The Local Planning Authority in this case has not pressed for 30% of the net area to be affordable housing but considers that affordable housing should be provided in about that proportion of dwellings because the site as identified in the Local Plan is over 0.5ha.
13. The adopted Local Plan pre-dates Circular 6/98 which is clear that outside Inner London it would be inappropriate to seek affordable housing on sites of less than 1ha or 25 dwellings, unless there are exceptional local constraints which should be justified through the Local Plan process. That national policy advice which is endorsed in PPG3 of 2000 is a weighty material consideration. There is no encouragement there for thresholds below 0.5ha.
14. Regional Planning Guidance 6 at Policy 10 states that Development Plans should consider whether in the Cambridge sub-region there is evidence to justify the lower threshold in Circular 6/98. The Structure Plan at paragraph 5.16 flags up the fact that house prices have been rising faster than incomes in the Cambridge Sub-Region; at 5.17 that in some parts of the County key workers have been priced out of the market and at 5.18 that targets for affordable housing in the Districts will vary with the local level of need.
15. I give little weight to a draft Local Plan policy, because it has yet to be examined at a Local Plan inquiry. Nonetheless the possible need to retain the adopted Local Plan threshold has been foreshadowed in the Structure Plan and RPG. I shall examine whether there are material considerations which also support use of that lower threshold.



16. The Council's "Key Worker and Affordable Housing" report examined the nature of Cambridge's key worker problem arising from high house prices and strong economic growth. It shows a severe affordability problem in Cambridge, which as a sub-regional service centre has many essential jobs whose importance is not reflected in high earnings.
17. The Joseph Rowntree Foundation has examined and updated for the fourth quarter of 2003 the "Affordability difference by area for working households buying their homes". Comparing household incomes to the prices of 2 and 3 bedroom dwellings in major towns and cities in England, Cambridge had the 22<sup>nd</sup> highest house price to income ratio, which is higher than all but 2 London Boroughs. Only 1 of those is an Inner London Borough, the special needs of which are recognised in Circular 6/98 as regards the lower thresholds.
18. National policy is under review. The Draft states that affordable housing should not normally be sought on site of less than 0.5ha or a development of less than 15 dwellings. It reiterates Circular 6/98 that where a site forms part of a larger development site it should be treated as if the application was for the larger site. Draft Guidance may of course change and can be given limited weight of itself. However it indicates that particular needs exist outside Inner London that may justify seeking such housing on sites of 0.5ha or more.
19. Having considered all the above, my conclusion is that the Local Planning Authority is right to continue using its adopted plan thresholds given the high ratio of house prices to household income in Cambridge, pending adoption of their replacement Local Plan. A site of 0.5ha or above should contribute to affordable housing needs.

Should the appeal site contribute?

20. The appeal site is 0.43ha, exclusive of the half of Sandy Lane. The potential residential site as identified in the adopted and emerging Local Plans is 0.6ha. The question arises whether the latter should be the "residential site" as far as deciding whether affordable housing should be provided in association with this proposal.
21. The Local Plan allocation site was in 7 ownerships. 4 of those owners were willing to sell to the Appellants, but the others did not wish to come to terms with them. I accept in good faith the Appellants' account of land assembly problems at the time the appeal proposal was devised. Their experience does however show that things can change within a short period. Following determination of this proposal by the Local Planning Authority, two of the other 3 owners died. Most of the other land has become available and now has planning permission subject to a Planning Obligation being concluded. I heard that circumstances have very recently changed again, regarding the last piece of the allocation site. The owner of that small triangle of land has also now died. It was reported at the hearing that he had been consistent in wanting to keep that extension to his back garden, to the extent of checking that he could not be forced to sell. His beneficiaries' intentions are not yet known.
22. The appellants were unable, rather than unwilling to acquire all the larger site when the appeal application was made and although 2 more pieces have become available since, at the time of the Hearing they remained unable to obtain the last piece of "site 6.31". I do not consider that the size of the site was artificially manipulated in order to avoid contributing to affordable housing needs in Cambridge. There was no attempt to exclude parts of the site that were not developable. The circumstances are rather different to those in the "Glebe Road/Perse School for Boys" appeal (APP/Q0505/A/96/273111).



23. I was not told the area of the last plot within "site 6.31", but from the plans it is clear that the appeal site (excluding the road) together with the other 2 adjacent plots is more than 0.5ha. Having accepted the need for the Local Planning Authority's site size threshold, that there is now no obstacle to development of an area of 0.5ha or more and that the appellants now have control over most of the allocated land, I consider that the appeal site should be expected to contribute to affordable housing in the area.

Should on site provision be made or would a commuted sum be an acceptable way forward?

24. The appeal scheme is designed so that the 24 car parking spaces and 45 of the 51 cycle spaces are provided below ground. This allows for a fairly high housing density at 44 to the hectare to be achieved, whilst retaining an appearance uncluttered by residents' cars. Despite the density, the appearance would be compatible with the leafy surroundings of medium and large dwellings dating mainly from late Victorian times.
25. The necessity to impose service charges for maintenance of the underground parking would make the appeal scheme unacceptable to a Registered Social Landlord. The appellants clarified at the Hearing that they do not propose to make any of the dwellings in the appeal scheme available for affordable housing in any case and that the appeal should stand or fall on whether, if affordable housing should be provided, a commuted sum towards off site provision would be acceptable.
26. There is a presumption that affordable housing should be provided as part of the development of a site. The site is close to bus routes and is within easy walking distance of a convenience store and a limited range of other local shops.
27. There are undoubtedly substantial additional costs likely to be incurred in upgrading Sandy Lane and its junction and resolving how much of the costs are to be borne by others fronting the road. That would also be the case with the alternative scheme that includes affordable housing. A desk study of the site suggests some minor contamination that would need to be addressed. That would also be needed however for the later proposal. Neither of these factors gives compelling reasons why affordable housing should not be provided on site and I have borne in mind that more dwellings could be provided here including some affordable flats in a way that is acceptable to the Local Planning Authority.
28. There are some other factors to consider here however. The adopted plan is outdated and the new Local Plan policy has yet to be tested at a public inquiry. The new draft national guidance would support the Local Planning Authority but is not finalised. Also, the net area of the land now available to appellant is near the margins of the lower threshold. Although most of the adjacent land has now become available, I do not consider the appellant deliberately sought to exclude that land when this proposal was prepared.
29. The site has reasonable but not outstanding accessibility. The appeal scheme is a positive design response on this brownfield backland site that degrades the otherwise pleasant, mainly residential surroundings. It allows large houses at a high density to be provided without compromising the quality of the surroundings. Helping keeping cars out of sight here will enhance the appearance of this redevelopment and it would provide amply for cycles. Overlooking of surrounding homes and gardens can be avoided. The scheme would meet the design aims in the above policies and SPG as well as those of national guidance.



30. I consider the above factors support applying some flexibility in how affordable housing from the proposal is achieved. Provided a sum is provided that would allow for a similar proportion of dwellings off-site as are provided within the subsequent scheme approved in principle by the Local Planning Authority, I consider a commuted sum would be acceptable in this case.

#### Other matters

31. I have considered the concerns of the Sandy Lane Residents Association. Their members want this unmade private road to be improved to an adoptable standard but do not want to have to pay for the cost of doing so. That is material to planning insofar as it may affect completion of any works necessary for the development to proceed. I return to that below.
32. I have also considered the concerns of some nearby occupiers about the ridge height being taller than nearby dwellings. The difference appears to be minor and, at the distances concerned from surrounding dwellings, I consider that undue dominance would be avoided.

#### The Planning Obligations

33. Two Planning Obligations have been submitted after the Hearing. These are between firstly Foildock Ltd and the owners of the site and secondly Cambridge City Council and Cambridgeshire County Council. It was confirmed at the Hearing that Foildock Ltd has the same directors as are the partners in the appellant organisation. One Obligation undertakes to make contributions to open space, community facilities and education (life long learning and pre-school facilities only) and the other addresses those facilities together with a contribution of £544,656 towards affordable housing. The latter Planning Obligation would meet to my satisfaction the necessity here of providing affordable housing.
34. The Council's SPG on Planning Obligations does not give the derivation of costings for all the above facilities. However, bearing in mind the Local Planning Authority's information that 12,500 new dwellings are to be provided in their area to 2016 and the cumulative demands of many fairly modest proposals such as this, I consider that contributions at or about such sums are likely to be necessary and are in accordance with the other tests that such obligations should satisfy as set out in Circular 1/97.

#### Conditions

35. The pot-holed and unmade condition of the private road Sandy Lane falls well short of what would be an acceptable standard for the pleasant living conditions of residents of the proposed houses. Its junction with De Freville Avenue would not meet adequate safety standards because of limited forward visibility.
36. Even if the western part of Sandy Lane is made up as proposed, I have some concerns about whether some new occupiers would still use the eastern unmade section to access Elizabeth Way. In view of the volume of traffic on that stretch of the Ring Road, right turn manoeuvres from and to Sandy Lane would be obstructive and potentially hazardous. I have taken account of the present low usage suggested by the appellants' survey and the absence of injury accidents at that sub-standard junction. The adopted Local Plan notes that access from Elizabeth Way would not be acceptable. There would be difficulties closing the access as it is a private road. The appellant has expressed willingness to fund a traffic island on Elizabeth Way to restrict such turns should this prove necessary after monitoring post development usage but no firm commitment has been made. I was told that the



Highway Authority are satisfied that sufficiently few people would be likely to attempt this point of access/egress if the opposite end of Sandy Lane was made up and its De Freville Avenue junction improved. That road joins the Chesterton Road part of the Ring Road a short distance to the north. In the absence of contrary evidence, I am content that undue extra hazard or obstruction is unlikely to arise from the use of the Elizabeth Way junction.

37. Having considered all the matters in the Traffic Statement, I am satisfied that for this proposal to proceed it is both necessary and sufficient that Sandy Lane be made up to adoptable standards from an improved junction with De Freville Avenue as far as the eastern boundary of the appeal site.
38. I was told the mechanism whereby not all those fronting the lane have to agree to contribute for this to happen. The appellant company will control a significant proportion of the relevant length of the lane. There are incentives to owners fronting Chesterton Road in terms of potential development at the rear end of their long gardens. There is thus a reasonable prospect of the provisos in a "Grampian" condition being fulfilled if one were imposed to address the traffic implications of the development. It would be essential that those improvements are completed before any of the houses are occupied.
39. Because of the relationship to surrounding development arising from the "backland" nature of the site, from the limited private open space at some of the dwellings and the potential for overlooking from roofspaces in some of them, I agree with the Local Planning Authority that some rights under the Town and Country Planning (General Permitted Development) Order 1995 should be restricted.
40. To secure a high standard of appearance in the development, I shall impose conditions on materials, landscaping and related matters. I do not consider proposed condition 3 to be necessary. I am satisfied that the trees of merit within and adjacent to the site could be satisfactorily safeguarded during construction and would not be felt to be harmful to living conditions, such that pressure for their removal would arise.
41. The desk study suggests that further investigation of contamination will be needed.
42. There is significant potential for disturbance and other loss of amenity to local residents during development because of the lack of street frontage. For that reason I agree with the Local Planning Authority that powers under other legislation should be reinforced in this case by imposing conditions regulating when and how building work should take place.
43. Given the distance from existing dwellings and the fact that noisy fume extraction plant would not be acceptable to occupiers of the scheme, I do not consider it necessary to impose the conditions proposed relating to extraction of fumes from the car park. I shall require the underground car and cycle parking to be retained and used for no other purpose to help ensure nearby streets are not obstructed.
44. The provision of street and other external lighting will effect a change to the rear of nearby dwellings. I shall impose a condition to help ensure that change is not harmful.

### Conclusions

45. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.



## Formal Decision

### Appeal Ref: APP/Q0505/A/04/1143494

46. I allow the appeal, and grant planning permission for demolition of existing workshops and erection of 18 dwellings at Former Builders Yard, Sandy Lane, Cambridge, CB4 1HZ in accordance with the terms of the application, Ref C/03/0406/FP, dated 11 April 2003 and the plans submitted therewith, as amended (Amended site boundary plan of 9 June 2003 and drawings numbers 0131/6: 1/C, 2/C, 6/3, 6/4, 6/5, 0131/D.ACCESS, 0131/SITE SECTION and SL-01 (landscape details), subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
- 2) No development shall commence until full details of the construction of surfacing, lighting and other improvements to Sandy Lane have been submitted to and approved by the Local Planning Authority in writing, including an agreed timetable for their implementation. None of the dwellings shall be occupied until those improvements have been completed in accordance with the approved details.
- 3) No dwelling shall be occupied until the underground area identified for the parking of cars and cycles has been completed in accordance with the approved details. That parking area shall thereafter be retained and used for no other purpose.
- 4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification):
  - a) no extensions or additions or garages shall be erected and
  - b) no windows or dormer windows [other than those expressly authorised by this permission] shall be constructed.
- 6) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority.
- 7) No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.
- 8) Details of the specification and position of fencing, or any other measure to be taken for the protection of any trees from damage during the course of development, shall be submitted to and approved by the Local Planning Authority in writing before any equipment, machinery or materials are brought onto the site for the purpose of development. The agreed means of protection shall also be implemented in accordance with the approved details before any equipment, machinery or materials

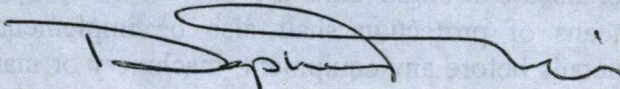


are brought onto the site and shall be retained in position until all equipment and surplus materials have been removed from the site. Nothing shall be stored or placed in any area protected in accordance with this condition, and the ground levels within those areas shall not be altered nor shall any excavation be made without the prior written agreement of the Local Planning Authority.

- 9) The boundary treatment hereby approved shall be completed before the dwellings are occupied. Development shall be carried out in accordance with the approved details.
- 10) Details of any floodlighting or external lighting shall be submitted to and approved in writing by the local planning authority before the dwellings are occupied. Development shall be carried out in accordance with the approved details.
- 11) Before any development commences, an intrusive site investigation shall be carried out to establish the level of contamination and any necessary remedial measures. Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority and shall be implemented prior to the commencement of the development.
- 12) Except with the prior approval of the Local Planning Authority in writing, no construction work or demolition shall be carried out, or plant operated outside the following hours: 08.00 to 18.00 hours on Monday to Friday, 08.00 to 13.00 hours on Saturday and at no time on Sundays, Bank or Public Holidays.
- 13) No deliveries shall be made to the site outside the hours of 07.00 to 23.00 Monday to Saturday and not at all on Sundays, Bank or Public Holidays.
- 14) Before development commences, details of the following shall be submitted to and approved by the Local Planning Authority in writing:
  - a) Contractors' access arrangements for vehicles, plant and personnel;
  - b) Contractors' site storage area or compound;
  - c) The means of moving, storing and stacking all building materials, plant and equipment around and adjacent to the site and
  - d) The arrangements for parking of contractors' vehicles and contractors' personnel's vehicles.
- 15) Before development commences, including demolition, full details of wheel washing facilities shall be submitted to and approved by the Local Planning Authority. The agreed facilities shall be installed and operational before demolition commences.
- 16) Before any development commences, full details of the lighting of the site during construction, facilities for stone crushing during construction and dust suppression facilities during construction shall be submitted to and approved by the Local Planning Authority in writing and such equipment shall be installed and operational before any demolition commences.

#### Information

47. Attention is drawn to the requirements of section 76 of the Town & Country Planning Act 1990 concerning provisions for the benefit of disabled people.



INSPECTOR



## APPEARANCES

### FOR THE APPELLANT:

Mr David Henry	Of FPD Savills, Agents for the Appellants
Mr Julian Harper	Partner, Sandy Lane Developments
Mr Simon Peck	Partner, Sandy Lane Developments
Mr Simon Clewlow, CEng, MICE	Capita Symonds, Traffic Consultants to the Appellants

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Toby Williams, BA, MA, Case Officer, Development Control with the Council MRTPI

Mr David Roberts, BA(Hons), Planning Policy Manager with the Council MRTPI

### INTERESTED PERSONS:

Mr Michael Stothard	Chairman, Sandy Lane Residents Association, of Murfitts Thatch, Sandy Lane, Cambridge, CB4 1HZ
Mr Clive Bowyer	Secretary, Sandy Lane Residents Association, of 162 Chesterton Road, Cambridge, CB4 1DA

## DOCUMENTS

Document	1	List of persons present at the hearing
Document	2	Letter of notification of arrangements and list of those notified
Document	3	Statement of Common Ground
Document	4	Appendices 1-3 to Appellants' statement
Document	5.1	Appendices 1-9 to Local Planning Authority statement
Document	5.2	Additional Development Plan policies put in by the Local Planning Authority
Document	5.3	Research into Key Worker and Affordable Housing in the Cambridge Area
Document	5.4	Extract from Housing Needs Survey (Cambridge City Council) 2002
Document	5.5	Extract from Joseph Rowntree Foundation study "Affordability differences by area for working households buying their homes - 2003 update"
Document	6	List of "no prejudice" Conditions
Document	7	Mr Stodhart's speaking notes
Document	8	Two Planning Obligations submitted to PINS on 21 October 2004

## PLANS

Plan	A	Appeal plans: Amended site boundary plan of 9 June 2003 and drawings numbers 0131/6: 1/C, 2/C, 6/3, 6/4, 6/5, 0131/D.ACCESS, 0131/SITE SECTION and SL-01
Plan	B	Other application plans, computer generated images and explanatory plans