



Appeal Decision

Hearing Held on 19 July 2017 and 10 October 2017

Site visit made on 19 July 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 7th December 2017

Appeal Ref: APP/L3245/W/16/3161114

Former Builder's Yard, Innage Lane, Bridgnorth, Shropshire WV16 4HJ

- 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 Churchill Retirement Living against the decision of Shropshire Council.
 - The application Ref 16/00720/FUL, dated 9 February 2016, was refused by notice dated 10 October 2016.
 - The development proposed is for the demolition of the existing buildings and redevelopment to form 66no. sheltered apartments for the elderly including lodge manager's accommodation, communal facilities, access, car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The description of development set out in the application differs to that shown in the Council's decision notice. This follows revisions submitted during the course of the application. The Council's decision does not include the element of the development that involves the demolition of existing buildings but otherwise accurately reflects what is proposed. I have therefore amended the description of development to include the demolition of existing buildings and erection of 3-storey block of sheltered accommodation comprising 55no. apartments for the elderly and lodge manager's accommodation; communal facilities; vehicular access and car parking; landscaping scheme to include the removal of trees and boundary treatment.
 3. A revised draft Statement of Common Ground (SoCG) was submitted prior to the Hearing. The parties confirmed that the document dated June 2017 had been agreed between them.
 4. During the Hearing, the Council confirmed that it has now revised its position in relation to affordable housing. The Council explained that when the application was being considered it incorrectly took the view that this form of development represented a Class C2 use that would not trigger the requirements for affordable housing as set out in its Type and Affordability of Housing Supplementary Planning Document (2012) (SPD). Furthermore, the Council also confirmed that it wished to present evidence in respect of affordable housing.
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5. The Hearing was adjourned on 19 July 2017 to enable the parties to present further evidence and reconvened on 10 October 2017.
6. The appellants' case is supported by a development viability appraisal¹ and supplementary report².
7. The Council's case is supported by a Review of Development Viability Appraisal³ and supplementary report⁴.
8. An application for the award of costs was made by the appellants at the Hearing held on 10 October 2017. This application is the subject of a separate decision.

Main Issues

9. From the above, I consider the main issues are:
 - The effects of the proposed development on the settings of the Innage Gardens Conservation Area and the Bridgnorth Conservation Area and on the character and appearance of the wider area. In considering this issue, it is necessary to assess the contribution which the non-designated heritage assets make to the settings of those Conservation Areas; and
 - Whether the proposed development should make an appropriate financial contribution towards off-site affordable housing provision.

Reasons

Effects on setting of conservation areas

10. Situated partly within but substantially outside the adjacent Innage Gardens Conservation Area (IGCA), the appeal site fronts and is accessed from Innage Lane opposite the public car park and the fire station. Immediately to the south-west lies Bridgnorth Hospital, to the west is a medical centre and a primary school and to the north-west are residential properties that either front Innage Lane or are accessed from Innage Gardens. The extensive Bridgnorth Conservation Area (BCA) lies to the south and south-east. The site contains several structures that combined to form the premises of a one-time builder's merchants and include the non-designated heritage assets comprising Innage Lea, a former dwellinghouse and separate associated outbuildings, together with a former barn that has been extended to form part of the showroom.
11. The proposed development would demolish the buildings on site, including three non-designated heritage assets as well as the modern showroom and warehouse structures and provide an 'L'-shaped residential structure of two and three storeys set back approximately 5-6 metres behind Innage Lane with a slightly larger set-back from the adjoining hospital complex. The building would follow the line of the boundary with Innage Lane, taking a slight change in direction mid-way along the street elevation before turning east at the corner, which will be articulated by the addition of an octagonal tower feature before extending along the boundary with the hospital. Access from Innage

¹ Affordable Housing & Viability Appraisal dated July 2017 incorporating and updating findings of an earlier appraisal undertaken by Levvel Ltd dated February 2016

² Affordable Housing – Response to DVS Review of Viability Appraisal – Churchill Retirement Living October 2017

³ Review of Development Viability Appraisal – DVS dated 9 October 2017

⁴ Review of Development Appraisal – DVS dated 16 October 2017

Lane would be taken at the north-westernmost point alongside the substation and lead to a 27-bay car park. A formal garden and amenity area would be provided between the south-western elevation and the boundary with the medical centre.

Innage Gardens Conservation Area

12. A small part of the appeal site comprising a low electricity sub-station and part of a modern storage building lies within the IGCA. The parties agree that the demolition of the modern structure and screening to the sub-station would enhance the character and appearance of the Conservation Area. For the purposes of exercising my duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act, I would concur with this assessment.
13. Beyond the sub-station and within the IGCA are the Edwardian terraced houses of Edward and Alexandra Terraces set in two mirror-image rows incorporating a third storey timber framed gable to the front. Directly opposite is the former Bridgnorth Union Workhouse, an imposing Gothic Revival style building. Built of blue brick with contrasting limestone dressings to the gables, string courses and "Tudor"-arched doorways and chamfered stone mullioned and transomed windows under a plain tiled roof this is the pre-eminent and dominant structure in the IGCA. Leading off Innage Lea is Innage Gardens, comprising arts and crafts style cottages grouped around a large communal garden, opposite which are a group of three modern infill dwellinghouses dating from the 1940s.
14. The significance of the IGCA is derived from the subdivision of the area into four distinct parts and the connection of parts of this area with the Apley Estate, a one-time major landowner in Bridgnorth and the rural hinterland. Whilst the buildings within the four parts constitute a rather disparate group, their quality is based on the survival of their detailing from the various periods of their development helped by the management of some of the buildings by the Apley Estate.

Bridgnorth Conservation Area

15. Bridgnorth is an important market town set in an attractive rural landscape above and astride the River Severn. The extensive Conservation Area is mostly characterised by its historic street pattern which is defined by its topography and how the town has developed in response.
16. The part of the BCA closest to the site is the area of the town beyond Northgate, which includes the Infirmary building now part of the hospital and the Endowed School elevated above high stone retaining walls to the south-east beyond which are the historic buildings of Northgate. This area forms part of a once mediaeval suburb lying just outside the town gate. Beyond, lies the former infirmary now part of the hospital and the Endowed School buildings built on the former rural edges of Bridgnorth. These comprise attractive late Victorian/Edwardian style public buildings with a mixture of materials including timber-framing detailing, tile hanging and small-paned windows.
17. The significance of the Conservation Area is derived from the rich variety of styles, forms and materials of the historic buildings, the successful integration of later buildings, the spaces, including the river and the steeply sloping topography. Together these features and characteristics illustrate Bridgnorth's

gradual development as a regionally important and outstanding historic settlement and tourist destination.

Non-designated heritage assets

18. It is common ground that the three buildings comprising Innage Lea, its outbuildings and a barn are non-designated heritage assets. As such, and in accordance with the National Planning Policy Framework (the 'Framework'), and Planning Practice Guidance (the 'PPG'), they also have a degree of significance meriting consideration in this decision. The grouping lies yet further out in the once rural hinterland and beyond the former infirmary and the Endowed School.

Innage Lea

19. Dating from the early 19th century the house was originally built by the Apley Estate to house an estate tenant. The importance of the property to the estate subsequently increased and it was occupied for some period by the Borough Surveyor, engineer and land agent before occupation by the Estate surveyor during the period including when Innage Gardens was constructed on land belonging to the Estate.
20. Innage Lea comprises a two storey 'T'-shaped house of red brick under a clay tile roof with bay windows to the front that faces towards the Medical Centre. The property is typically early Victorian with use of robust traditional materials, strong gabled forms, tall brick stacks at each gable and a variety of casement and sash windows dating from the same period and later. Although concealed from wider public vantage points by the plethora of unsightly modern additions within the appeal site, the scale and form of the former house is clear. Moreover, the built form, features and broad symmetry together with its domestic scale, are important to its character as a modest but nonetheless handsome historic dwelling of local importance.

Innage Lea outbuilding

21. Located immediately to the north of the house, the outbuilding comprises a simple rectangular single storey structure of brick under a shallow hipped slate roof with two large stacks and a lean-to projection at the south-eastern end. Although this building has been subject to substantial alteration including the insertion of new sliding door and the rebuilding/adaptation of the external walls, nevertheless it has retained its strong connection with Innage Lea itself.

The Barn

22. The building was originally built as a timber framed structure dating back to the medieval to post-medieval period, which was later extended and clad with brick and further extended by the addition of two later nineteenth century cart sheds. The barn very much later has been subsumed by large modern showroom structures associated with the builders' merchants. The building although retaining some original roof timbers has itself been extended which has resulted in the extensive loss of historic fabric and obscured its legibility and agricultural provenance. However the structure that now exists occupies a prominent position on the Innage Lane frontage.
23. The parties agreed that the significance of Innage Lea and its outbuildings and, to a lesser extent, the barn, is derived principally from its association with the

Apley Estate and its location historically on the once rural edge of Bridgnorth. This Estate included both substantial areas of land surrounding the town as well as a large number of properties within it. Despite alterations to Innage Lea, the house retains much of its original architectural character whilst the outbuilding has the architectural qualities of a service range for the house. The historic form and values of both Innage Lea and its outbuilding in particular have not been eroded by their alterations and they tell the story of the site's development from forming part of an agricultural estate on the rural fringes of Bridgnorth to a more modern land use as the town expanded.

24. By contrast, the architecture of the barn structure has been substantially altered and extended over time. It is no longer legible as an agricultural barn, has largely lost its defining historic fabric and there is no documentary evidence that it played an important part of the Apley Estate.
25. None of the non-designated buildings have been identified formally in a local list or as a positive contributor in the Council's Conservation Area Appraisals for either the IGCA or BCA. The Council also fully accepts the decision by English Heritage not to statutory list the buildings. However, these factors do not undermine the value of the buildings either in terms of the significance of the buildings themselves or in turn to the settings of the Conservation Areas.
26. In terms of the contributions that the non-designated heritage buildings make to the settings of the two Conservation Areas, I agree with the appellant that the heritage significance of the IGCA in terms of its architectural interest would not be affected by the proposed demolition of the non-designated heritage assets. From the evidence, I am satisfied that the character of the setting of the IGCA is already very appreciably influenced by twentieth century development, including the car park, the fire station and the various modern buildings and hardstanding areas of the builder's yard, which all conspire to detract from the setting and streetscape. Importantly, appreciation of the collection of buildings within the IGCA would remain unaffected as they are viewed independently as four distinct parts.
27. Neither am I convinced that there is sufficient evidence to demonstrate that there is significant historical association such that the setting of the designated heritage asset would be affected. In this regard, there is little evidence, other than circumstantial, to suggest that any of the buildings were purpose built to accommodate the function of development of Innage Gardens.
28. In terms of the BCA, I also consider that the historic buildings on the edge of Northgate have been absorbed into the town and the legibility of the former landscape setting consisting of the rural hinterland has been significantly reduced by the continued urban development of modern Bridgnorth. The site is not legible in terms of its original use and the non-heritage buildings do not contribute architecturally to the setting of the BCA. Neither party offered convincing evidence of any historical association between the non-designated heritage assets and the BCA.
29. I am therefore satisfied that the removal of the non-heritage buildings at the appeal site would not result in any unacceptable harm to the setting of either Conservation Area.
30. Paragraph 135 of the Framework in terms of proposals that affect the significance of non-designated heritage assets advises that in weighing

proposals that affect directly heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. In this case for the development to go ahead, the three non-designated heritage assets would have to be removed and would be lost. Therefore consideration of the scale of harm from their loss is required having regard to their significance identified above.

31. As stated above, the scale and form of Innage Lea together with its features and broad symmetry represents a historic building of local importance. Despite the recent fire damage, I agree with the Council that it has not resulted in irreparable damage, particularly to the external fabric.
32. I appreciate that Innage Lea is of architectural interest. However, based on the evidence of this case, I do not consider that it makes a strongly significant contribution to the character and appearance of the immediate area and its integrity has been diminished by the loss of internal historic fabric. English Heritage assigned a level of local interest noting also its alterations over time that has diminished the building's importance. The connections with the Apley Estate are also not unique and the appellant identified other buildings within the Apley Estate holding, one of which is located within a similar former rural hinterland of Bridgnorth and which is now statutorily listed. From the evidence, I would agree with the appellant that at best the building is of no more than regional importance and this is not dissimilar to English Heritage's assessment that the building overall is of *strong* local interest.
33. Turning to the outbuilding, this structure is legible as the service range to Inner Lea. However, its historic fabric has been denuded over time and its form changed considerably. That said, it is difficult to separate any assessment of the outbuilding from Innage Lea due to the very strong historical and architectural connections. Therefore from the evidence, this building is at best of regional importance due to its association with Innage Lea; however, due to the building's degradation, overall I consider this building is of local importance.
34. There is some disagreement in relation to the importance and indeed provenance of the barn. The appellant's historic building appraisal concludes that the building has been significantly altered and extended over various periods; indeed, there is a suggestion that the surviving medieval to post-medieval timberwork that remains may not have been original to the site. But most certainly the principal fabric of the building is brick dating from the eighteenth century with later additions. I would concur that the building is of local interest.
35. Accordingly, based on the evidence before me, I do not consider that the significance of the three non-designated heritage assets of Innage Lea and its outbuilding and the Barn would justify resisting permission for development of this site.

Character and appearance

36. In establishing that the loss of the non-designated heritage assets would not diminish the setting of either Conservation Area, it is the quality of the proposed building to replace them which remains a contention in this case. Paragraph 131 of the Framework sets out that it is desirable for new development to make a positive contribution to local character and

distinctiveness. Moreover, paragraph 132 explains that *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation...Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting."*

IGCA

37. The essential character of the locality including the approach to the IGCA from the town is derived from the presence of generally two storey development located close to the highway edge. Due to their generally low form and height, neither the fire station nor the modern buildings and barn located within the appeal site dominate those buildings at the point of arrival in the IGCA. I agree with the Council that the openness of the surface car park on the opposite side of the road does not in any way detract from what is an attractive approach to the Conservation Area. I also agree that the car park allows open aspect views across the site, to the Edwardian terraces within the Conservation Area and back down towards the infirmary, the Endowed School and the historic buildings on the edge of Northgate.
38. The defined edge to the IGCA is further emphasised by the steep road leading from the town passing important historic buildings comprising the infirmary and the Endowed School either side. Despite the appeal site appearing elevated behind a brick retaining wall, vegetation and railings at this point, the buildings sit comfortably within the site due to their relatively low height. The dominant views at this location are the Edwardian Terraces and the former Bridgnorth Union Workhouse opposite and which defines the Conservation Area at this juncture. There is a verdant quality to these views and beyond.
39. The proposed building would extend some 60 metres along Innage Lane and would be predominantly of full three storey height with an octagonal tower 'stop-end' feature at the site's southernmost point and eastern corner before the building turns the corner. The IGCA Appraisal explains that the majority of dwellings are two storey with the exception of the Edward and Alexandra Terraces which have an additional faux timber framed third storey projection. It also explains that great attention to building detail and craftsmanship were incorporated both to the Edwardian terrace buildings and the union workhouse. Despite the breaking up of the principal elevation along Innage Lane, the building would appear as a single mass with a few setbacks in roofline and the introduction of gable elements at third floor.
40. Contributed in part by the fall in the road at the southernmost point, the scale and mass of the front elevation would be over-dominant in the context of the road frontage and dominate views of important historic buildings within the Conservation Area. I therefore consider that the appeal development would have an unacceptably overbearing and unduly dominating effect on the streetscape as well as undermining the harmonious scale and massing of the historic buildings beyond.
41. There is an effort to pick up on some local detailing in the scheme, particularly the faux timber framing; however, the varying width of the gable features, the articulation of the timberwork and windows positioned below the gable roof rather than positioned within the roof fails to capture the charm and authenticity of the 'arts and craft' styled terraced houses. The use of modern detailing, including the regimented and repetitive window patterns and details

such as the Juliet balconies, uPVC windows and doors and the variation in roof tiles would introduce incongruous pastiche elements that would detract from the character and appearance of the area and be particularly jarring against the more traditional compositions of the nearby historic buildings.

BCA

42. At a position within the BCA in the immediate area of Northgate, the views up Innage Lane are dominated by the former infirmary and hospital, which again takes its cue from the 'arts and crafts' movement. From this location and due to its projection closer to Innage Lane, the octagonal tower would protrude into this scene. Although taking its inspiration from the robust timber framed tower of the Endowed School, the narrow and slender form would fail to create any sense of drama or purpose. Instead, it would be a pastiche addition of limited quality that would project as a slender form beyond the building line of the more important historic buildings within the Conservation Area below. This in turn would unacceptably compete with and seriously detract from these historic buildings and represent an incongruous, almost unnecessary addition to the street scene when viewed from the BCA.

Conclusions - the effects on conservation areas

43. Accordingly, I find that the proposed development would fail to respect or enhance the quality, character and distinctiveness of the area. In turn it would be out of kilter and cause significant and demonstrable harm to the character and appearance of the local area. Furthermore it would not enhance or better reveal the significance of either the IGCA or BCA that I have identified and in this regard, I find that that the development would harm the settings of both Conservation Areas. Notwithstanding the impact on their settings, the character and appearance of the Conservation Areas themselves would be unaffected.
44. In assessing the level of harm, I have found that the proposed development would give rise to less than substantial harm to the significance of the Conservation Areas as heritage assets. Paragraph 134 of the Framework indicates that such harm should be weighed against the public benefits of the proposal.
45. A number of benefits would flow from this development as explained further in the document submitted at the Hearing⁵. This form of housing brings a range of benefits in the form of housing for the elderly people normally from within a ten mile radius and who would then likely release under-occupied properties. Residents would be close to facilities in the town centre and thus reduce the need to travel by car. They would have an increased level of security leading to improvements in health and well-being thus reducing the burden on health and social services. Future residents would help sustain local facilities and services. The proposal would also make more efficient use of land on a previously developed site.
46. In acknowledging these benefits, I do not consider that they would outweigh the harm identified to the setting and thereby the significance of the two Conservation Areas affected. I reach that conclusion largely because there seems to me to be no good reason why those self-same benefits could not be

⁵ Retirement Living Explained – A Guide for Planning & Design Professionals

secured by a more contextually appropriate design. Therefore the proposal would be contrary to the Council's Core Strategy Policies CS6 and CS17 and the Sites and Development Management of Development (SAMDev) Policies MD2 and MD13, and the Framework which aims to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.

Affordable Housing

47. Core Strategy Policy CS11: Type and Affordability of Housing seeks to ensure an overall target of 33% local needs affordable housing from all sources for the first five years of the plan period. This requirement has been refined in the SPD following an update to the affordable housing policy requirement. Bridgnorth is located in Area A as identified in the SPD which outlines that a target of 20% affordable housing target would be applied with a 70:30 tenure split of affordable rented to intermediate housing. There is no dispute between the parties that a commuted sum payment towards offsite affordable housing provision would be an acceptable way of achieving affordable housing in the case of the appeal scheme.
48. Paragraph 173 of the Framework explains that viability is an important consideration whilst noting that development should not be subject to such a scale of obligations and policy burdens that threaten their ability to be developed. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. Local planning authorities are encouraged to apply flexibility in their approach to viability⁶.
49. On Day 1 of the Hearing, the Council was not in a position to question the appellants' viability assessment and sought to deal with the matter of affordable housing by way of an overage clause to be included within a Unilateral Undertaking or section 106 Agreement. This clause would require a viability review to take place and a contribution paid to the Council should the viability review demonstrate an increase in the viability of the appeal scheme. However the appellants argued that this request would not be reasonable or necessary in the terms set out within Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the 'CIL Regulations') and cited a number of appeal decisions⁷ to support this. In addition, the appellants cited a case⁸ in Sidford, East Devon, which is presently the subject of High Court challenge with particular reference to the issue of overage clauses. I have paid due regard to these cases.
50. Dealing with the question of the review mechanism, I note that the overage clause requirement does not form part of the development plan but is included as an option at paragraph 4.1 of the SPD in cases where viability might be an issue.

⁶ PPG Ref. ID: 10-001-20140306

⁷ APP/W0340/S/16/3153625; APP/P5870/W/16/3159137; APP/N0410/A/13/2207771; APP/Q1255/S/15/3005876; APP/Z6950/A/15/3119189; APP/L5810/W/14/3002030; APP/V5570/W/16/3151698

⁸ APP/U1105/W/17/3167556

51. The Planning Practice Guidance (PPG) was published in March 2014 and post-dates the SPD. Paragraph 17 is clear that viability assessment in decision taking should be based on current costs and values and planning applications should be considered in today's circumstances. The only exception to this is where a scheme requires a phased delivery over the medium and longer term and in these circumstances, changes in the value of development and changes in costs of delivery may be considered. The appellants confirmed that the scheme would be built out as a single phase. The construction programme identified by the appellants and to some extent included within the Council's subsequent appraisal of the appellants' viability assessment, cannot be regarded as medium to long term. Consequently I am satisfied that the PPG supports the appellants' case in this regard and that the requests for an agreement incorporating overage clause would not be necessary in the terms set out in the tests in Regulation 122 of the CIL Regulations.
52. One of the key considerations in viability assessment is the Benchmark Land Value (BLV). PPG sets out three principles that should be reflected in determining a site value⁹. In all cases, land or site value should:
- (a) Reflect policy requirements and planning obligations and any Community Infrastructure Levy charge;
 - (b) Provide a competitive return to willing developers and land owners; and
 - (c) Be informed by comparable, market-based evidence wherever possible.
53. PPG gives further advice on the concept of a competitive return to developers and land owners¹⁰. In this case, the appellants seek a developer profit of 20% and this was accepted by the Council. However, the appellants submitted an opinion of Site Value at £660,000 for benchmarking purposes, which included a 20% premium to the proposed site value of £550,000 to reflect an "incentive to sell" on the part of the landowner. The appellants believe that an 'Existing Use Value plus a premium' approach is increasingly being used for benchmarking purposes as evidenced in the Islington case¹¹.
54. By comparison, the Council favoured the approach adopted in the RICS Professional Guidance, Financial Viability in Planning (GN94/2012) (RICS Guidance) where "site value, either as an input into a scheme-specific appraisal or as a benchmark, is defined...as follows:

*"Site Value should equate to the market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan"*¹²

Based on the Chesters Commercial report on comparable, market based evidence that accompanied the appellants' submissions, the Council importantly agreed that the Site Value of £550,000 but without the percentage uplift to incentivise the landowner should be used for benchmarking purposes.

⁹ PPG Ref. ID: 10-023-20140306

¹⁰ PPG Ref. ID: 10-024-20140306

¹¹ APP/V5570/W/16/3151698

¹² Box 7 Page 12 Financial viability in planning – RICS Professional Guidance, England

55. The appellants' appraisal seeks to demonstrate that the development would not be viable with affordable housing contributions as well as the required CIL infrastructure contributions (amounting to £170,990). The parties agreed that off-site affordable housing, unlike on-site provision, would not qualify for CIL reduction as the appeal scheme itself is for 100% market retirement housing. The appellants' assessment concluded that with a policy compliant 20% affordable housing contribution, there would be a significant deficit in excess of £240,000; even with nil affordable housing contribution, there would be a deficit in excess of £110,000.
56. In response, the Council in applying the market value approach considered that the scheme would be capable of providing a reduced affordable housing contribution in the sum of over £575,000.
57. A significant amount of time was taken up at the Hearing to identify the principal areas of dispute and to confirm or otherwise whether the scheme would generate sufficient funds for affordable housing contributions. The figures have since been recalculated where agreement on certain inputs have been agreed. Although not exhaustive, the remaining principal areas of dispute comprised:
- Capitalised ground rents forming part of the GDV
 - Contingencies
 - Empty property costs
 - Sales and marketing costs
 - Professional fees
 - Landowner's premium/incentive

Capitalised ground rents forming part of the GDV

58. The appellants made an allowance in their viability appraisal for the ground rent income from one-bed apartments to generate £475 per year and £550 per year from two-bed apartments. By capitalising this revenue at a gross initial yield of 5.5%, this would equate to a capital value in the assessment of £493,636. The Council on the other hand believes that ground rents are a 'safe risk bet' that would support a lower yield of circa 4%, which would equate to a larger capital value. However, the appellants maintain that with the changing political scene surrounding the issue of ground rents nationally with indications that they will be capped in future, the capitalised sum contained within the appellants' appraisal may not materialise. There does seem to me to be a degree of uncertainty. However by the appellants' own admission, it also seems that should ground rents be reduced (or opportunities to charge taken away), then the purchase price of properties "will have to increase"¹³. I would accept that the Council's evidence in this regard is compelling and that the appellants have under-valued the contributions that capitalised ground rents make to the appraisal.

¹³ The UK needs more housing for older people...- a summary of Churchill Retirement Living's response to Housing White Paper of February 2017 (pamphlet)

Contingencies

59. The appellants considered that a 5% contingency should be built in to the costs given the uncertainties of what may unfold when development commences. However this was disputed by the Council who believes the appeal scheme to form a low risk new build development with no evidence of any known presence of issues such as land contamination, asbestos etc. From their experience in the disposal of 81 Homes & Community Agency (HCA) owned sites in 2015, the DVS surveyor confirmed that a median contingency allowance was included at a rate of 2.77%.
60. No further evidence was offered by the parties but I note that in relation to the Cheam appeal decision¹⁴, the Inspector found that there was no evidence to suggest that 5% was excessive. I have no further evidence of the basis for the HCA percentage figure. The Cheam decision is relatively recent and 5% would not in my view be unreasonable.

Empty Property Costs

61. Whilst the appellants' calculation of total empty property costs were not challenged, the Council pointed out that the Council operates a discount in relation to council tax liability for initial periods. The point was made that the appellants' calculations are consequently overstated. However, in my view, this would be limited to the omission of the Council's policy in relation to council tax reductions in the appellants' submissions but would nonetheless result in lower costs to the appellants. Nevertheless it would result in some reduction in the costs of the scheme to the appellants.

Sales and marketing costs

62. The 6% sales and marketing fee was considered extremely high by the Council which would equate to prolonged sales and marketing exercise. The DVS surveyor confirmed that sales rates are strong in this locality, which would indicate that application of an allowance that appears to be universally applied would be inconsistent with the DVS' evidence of local circumstances and demand. The appellants subsequently reduced this to 5.5%. Given the appellants' stated build programme and likely sales rates together with the Council's evidence of other schemes, I would agree with the Council that 5.5% of gross capital value of the scheme appears excessive and the Council's revised % figure of 4% would be proportionate and lead to a reduction in the costs of the scheme to the appellants.

Professional fees

63. The appellants explain that 10% represents an industry accepted practice for professional fees, which has been accepted by other Inspectors at appeal. However, I have not been furnished with decisions that itemise professional fees in such detail. By way of retort, in the experience of the DVS, a figure between 6 to 8% would be more reflective of current trends. In the Council's review of the viability appraisal, an allowance was given based on an upper figure of 8%. However, I find the evidence presented not convincing either way and this is a neutral consideration to my findings.

¹⁴ APP/P5870/W/16/3159137

Landowner's premium

64. I am aware of the Inspector's decision at Cheam in respect of incentivising landowners to sell. Whilst the details of that appeal are not before me, the Inspector pointed out that in the circumstances of that particular case, a 20% premium to the landowner was justified having regard to the fact that the existing property, a house, was occupied and in good state of repair and that there was no intention to sell. Thus, it appears to me that an incentive over and above Site Value would only be necessary where there is an imperative to suppress an existing use or where the current use value or its value for a realistic alternative would be greater than the market value.
65. In this regard, the appellants provided no substantive evidence for the 20% uplift. A representative of the holding company stated that as current holding costs at this site were minimal, in the absence of an incentive, the site would merely be land-banked for future development opportunity. However, the condition of the buildings on site continues to deteriorate with the dwelling, Innage Lea having been subject to vandalism and fire damage. Moreover, it was not disputed that the site has not generated any income for the holding company for several years. In my view, there is substantial uncertainty as to whether the existing buildings can be put to alternative higher value uses without considerable further investment. The DVS confirmed that there are other surplus commercial premises in the area able to provide better opportunity.
66. On balance and taking into account all the evidence presented, I do not consider that the appellants have provided compelling justification for the addition of a 20% landowner premium incentivising the sale of the site. Neither do I consider that the experience of London authorities should necessarily be applied to other regions given the much vaunted disparity in market conditions. The omission of this incentive would therefore result in a considerable reduction in the costs of the scheme to the appellants.

Conclusions – affordable housing

67. Having regard to the above, I am not persuaded that the appeal scheme would be unable to make a financial contribution towards the provision of off-site affordable housing albeit on a reduced scale than planning policy would require. I therefore conclude that the lack of affordable housing contributions would fail to accord with CS Policy CS11 which seeks to meet affordable housing need. In the absence of affordable housing contributions in the form of a prior legal agreement or undertaking, the development would not be acceptable in planning terms and be in conflict with paragraph 203 of the Framework.

Overall Conclusion

68. With regards to the above reasons and having considered all other matters raised, I conclude that this appeal should be dismissed.

Gareth W Thomas

INSPECTOR

Appearances

DAY 1:

FOR THE APPELLANT:

Mr Chris Geddes	Planning Issues Ltd
Carl Tunnicliffe	Regional Design Manager, Planning Issues Ltd
Dr Paul White	Head of Heritage, ECUS Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Dr Andrew P Wigley	Natural and Historic Environment Manager, Shropshire Council
Frank Whitley	Planning Case Officer – Shropshire Council

INTERESTED PARTIES: None

DAY 2:

FOR THE APPELLANT:

Andrew Burgess, BA(Hons) MRTPI FRSA –	Group Land & Planning Director – Churchill Retirement Living Ltd
Simon Mitchell, BA(Hons) FCIH ARTPI -	Head of Affordable Housing – Planning Issues
Kim Langford, LLB(Hons) PGCert BSc (Hons) ARTPI –	Senior Associate Planner – Planning Issues

FOR THE LOCAL PLANNING AUTHORITY:

Frank Whitley -	Planning Case Officer – Shropshire Council
Lewis Prosser, BSc(Hons) MRICS -	Senior Surveyor, DVS

INTERESTED PARTIES:

Michael Bennett	Folkes Holdings Ltd
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Documents submitted at the Hearing:

1. Retirement Living Explained – A Guide for Planning & Design Professionals
2. Application to the High Court of Justice filed on 3 October 2017 – in respect of Appeal decision Reference APP/U1105/W/3167556
3. Review of Development Viability Appraisal – DVS dated 9 October 2017
4. Letter from DVS detailing areas of disagreement between the parties dated 9 October 2017
5. Financial Viability in Planning – RICS Professional Guidance in England

Documents submitted following close of the Hearing:

- a) Affordable Housing – Response to DVS Review of Viability Appraisal 4th (9th) October 2017 – Churchill retirement Living (October 2017)
- b) Letter from DVS dated 16 October 2017 – Review of Development Viability Appraisal