



Appeal Decision

Site visit made on 8 May 2019

by W Johnson BA (Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2019

Appeal Ref: APP/L3245/W/19/3222930

Quercus Domus, Pound Lane, Hanwood, Shrewsbury SY5 8JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jack Goodall against the decision of Shropshire Council.
 - The application Ref 18/04951/VAR, dated 19 October 2018, was refused by notice dated 20 December 2018.
 - The application sought planning permission for the erection of a 2-bed affordable dwelling and detached double garage without complying with a condition attached to planning permission Ref 13/01656/FUL, dated 18 June 2014.
 - The condition in dispute is No 8 which states that: The dwelling hereby permitted, shall not exceed 100sqm gross internal floor area, including any future extensions. No further internal habitable space shall be created within each of the dwellings by internal alterations.
 - The reason given for the condition is: To ensure that the dwellings are of a size appropriate to the local affordable housing market.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 2-bed affordable dwelling and detached double garage at Quercus Domus, Pound Lane, Hanwood, Shrewsbury SY5 8JR in accordance with the application Ref: 18/04951/VAR dated 19 October 2018, without compliance with condition No 8, previously imposed on planning permission Ref:13/01656/FUL dated 18 June 2014.

Procedural Matter

2. The Government published the revised National Planning Policy Framework (the Framework) on 19 February 2019, which forms a material consideration in the determination of the appeal. However, the changes have no material bearing to the main issue before this appeal.

Background and Main Issue

3. Permission was granted in 2014 for the erection of an affordable dwelling with a detached double garage on the appeal site, which has been implemented. The removal of the disputed condition would enable the dwelling to be extended and the creation of additional internal habitable space.
4. The main issue in the appeal is whether the condition is necessary having regard to the stock of affordable dwellings.

Reasons

5. Condition 8 of the permission restricts the dwelling, including future extensions, to no more than 100 square metres gross internal floor area. An accompanying planning obligation under a section 106 agreement requires adherence to the planning conditions. It also contains various mechanisms to ensure that, were the house to be sold, its price would be maintained at an affordable level below market rates.
6. In order to make the rural area more sustainable Policy CS4 of the Shropshire Core Strategy 2011 (CS) seeks to direct new development into Community Hubs and Clusters, improving local sustainability through a suitable mix of housing that caters for local needs. Outside of these areas CS Policy CS5 restricts new development in the open countryside to, amongst other things, affordable housing / accommodation to meet a local need.
7. CS Policy CS11 seeks to meet the diverse housing needs of Shropshire residents and indicates that an integrated and balanced approach will be taken with regard to existing and new housing, including type, size, tenure and affordability. Among many other things, it allows for exception schemes for local needs affordable housing on suitable sites in and adjoining appropriate settlements, subject to scale, design, tenure and prioritisation for local people and arrangements to ensure affordability in perpetuity.
8. Policy MD7a of the Shropshire Council Site Allocations and Management of Development Plan 2015 (SAMDev) indicates that to protect the affordability of single plot exception dwellings, they will be subject to size restrictions and other legal restrictions.
9. The Council's supplementary planning document Shropshire Type and Affordability of Housing 2012 (SPD) states that the size of a rural exception dwelling will not normally be permitted to exceed 100 square metres gross internal floorspace. Moreover, the SPD accepts that the limit may be varied; paragraph 5.63 recognises the difficulties faced by growing households already occupying affordable housing and states that it may be acceptable to enlarge an existing affordable house in order to accommodate the needs of the existing household. However, it also advises that any potential sale value of the property would remain restricted as if it were still a maximum of 100 square metres.
10. I note that the appellant refers to 'Lea View' which is a neighbouring property to the appeal site that was granted permission by the Council after permission was granted for the appeal dwelling. Despite the disputed circumstances surrounding the policy position of the Council in relation to its 5-year housing land supply at the time of the assessment of both planning applications, I find the planning application for the appeal dwelling was, nevertheless, submitted as a local needs affordable house. In these circumstances, the presence of a recently constructed, neighbouring open market dwelling is not sufficient alone to justify the removal of the condition limiting the gross internal floor area of the dwelling. Additionally, I note reference by the appellant to 2 appeal decisions¹ in support of his case, but relatively little detail has been provided to the planning background on these schemes.

¹ APP/L3245/Q/17/3169024 & APP/L3245/Q/16/3143661

11. However, within the appellant's submission he has advanced particular circumstances to support the requirement for potential further accommodation and his desire to create a family home, which he considers to be currently 'relatively cramped'. The house would still have a restriction of 60% of the open market value in place as required by the planning obligation, and it would remain affordable in perpetuity. Whilst the appellant has made his intentions known that he may seek the discharge of the planning obligation after its fifth anniversary in June 2019, this is not a matter for consideration under this appeal.
12. On the evidence before me, the house would remain as a unit of affordable accommodation. Therefore, in terms of the availability of affordable housing, nothing would be gained by resisting the removal of Condition No 8. The need for affordable housing is not limited to small dwellings and Policy CS11 recognises that housing needs are diverse in terms of size. The proposal would not cause the loss of an affordable dwelling and would enable the appellant to have the ability to meet his future household needs in his existing home.
13. Accordingly, I do not consider it is necessary to continue to impose a restriction on the amount of gross internal floor area as it would not have a significant harmful effect on the stock of affordable dwellings. As a consequence, the proposal would comply with the affordable housing / accommodation aims of CS Policies CS4, CS5 and CS11, SAMDev Policy MD7a, the SPD and the Framework.
14. SAMDev Policy MD3 has been cited by the Council on its decision notice. However, this policy relates to housing delivery and therefore I find it is not directly applicable to the case before me.

Conditions

15. The guidance contained within the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
16. The development is complete and therefore the standard time limit and plans condition are no longer necessary. I have granted a new permission which stands alongside the original permission with the disputed condition removed. I have also reviewed the conditions imposed on the original permission, taking account of those suggested by the Council to reflect the present situation.
17. PPG paragraph 004 sets out the 6 tests for conditions. They must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. PPG paragraph 017 advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness.
18. Therefore, for similar reasons to those given above in relation to Condition No 8, and in the light of national policy and guidance regarding imposition of conditions restricting the future use of permitted development rights, I consider

there are no exceptional circumstances (as required by PPG 017) to justify the removal of permitted development rights at the appeal site. Accordingly, I do not find it necessary or reasonable to re-impose Condition No 9 or Condition No 10 on the original decision for extensions / detached buildings or the use of the existing garage respectively, as suggested by the Council. I am satisfied that no conditions are necessary.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR