



Appeal Decision

Site visit made on 3 June 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th June 2019

Appeal Ref: APP/L3245/W/19/3224676

Oak Tree Cottage, Wattlesborough, Halfway House, Shrewsbury SY5 9EA

- 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 Phillip Edwards against the decision of Shropshire Council.
 - The application Ref 18/05582/VAR, dated 28 November 2018, was refused by notice dated 14 February 2019.
 - The application sought planning permission for the erection of a 3-bed Single Plot Exception (SPE) affordable dwelling and detached double garage without complying with a condition attached to planning permission Ref 12/03658/FUL, dated 25 March 2014.
 - The condition in dispute is No 5 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 the dwelling by internal alterations.
 - The reason given for the condition is:
To ensure that the dwelling is of a size appropriate to the local affordable housing market.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant seeks to remove the disputed condition to enable a link to be constructed between the approved detached double garage and the dwelling to create a boot/coat room at ground floor and a toilet in the roof space. Details of the proposed extension have been submitted. However, the appeal before me only seeks to remove the disputed condition and not planning permission for the extension. I have determined the appeal on this basis.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of ensuring there is an adequate supply of affordable housing in the area.

Reasons

4. The appeal site comprises a large, detached, two-storey dwelling set within an extensive plot. The dwelling was granted planning permission on the basis that it was an affordable dwelling. The disputed condition restricts the gross internal floor area of the dwelling to 100sqm to ensure that the size of the

dwelling remains appropriate to the local affordable housing market. The Council's Type and Affordability of Housing Supplementary Planning Document (SPD) 2012 states that the figure of 100sqm is adequate to accommodate a family of up to 6 persons. It goes on to state that larger properties are more expensive and run counter to the primary aim of ensuring affordability.

5. The existing dwelling has three bedrooms, one with an en-suite, and a bathroom at first floor. On the ground floor there is a kitchen/diner, a large living room and a W.C. Whilst not yet constructed, the approved double garage has an office at first floor level.
6. The appellant confirms that there are two adults and three children living in the appeal property, totalling five persons. Therefore, based on the SPD, the permitted floor area would be sufficient to meet the needs of the appellant and his family. I acknowledge that the extension sought by the appellant would enable dirty footwear and clothes to be removed before entering the living area of the house, which would be of benefit to the him. However, I do not consider that this justifies what would become a very large dwelling.
7. The appellant contends that around the time that the dwelling was granted planning permission, March 2014, the Council were inconsistent in their consideration of single dwellings. In February and March 2015, the Council granted planning permission for single dwellings within the vicinity of the site, each being approximately 200sqm¹. However, based on the evidence before me, these dwellings were considered on the basis of what the planning applications sought, which was open market dwellings. The subject application sought planning permission for an affordable dwelling. Therefore, despite the changes in the Council's five year housing land supply status, the policy considerations between the affordable dwelling, as applied for, and the open market dwellings, was markedly different.
8. I acknowledge the appellant's frustration that the size of the approved open market dwellings referred to are significantly greater than his and that the appeal property is subject to restrictions on its size. However, based on the evidence before me, the Council correctly determined the original planning application for the appeal property based on it being an affordable dwelling, as that is what was applied for, and applied the relevant development plan policies and SPD in relation to affordable dwellings, which clearly states that such dwellings will be subject to restrictions on their size. It was not the responsibility of the Council to advise the appellant at the time to change the proposal to an open market dwelling, even if a change in policy and housing land supply circumstances may have resulted in such a proposal being acceptable.
9. I note the appellant's contention that prior to the submission of the planning application for the dwelling he was advised that planning permission for an open market dwelling would not be forthcoming. However, there is no substantive evidence to support this contention. In any event, it was open to the appellant to seek professional advice at the time and submit a planning application for an open market dwelling if they so wished.

¹ LPA Refs14/03486/OUT and 14/00629/OUT

10. I have had regard to the recent appeal decision elsewhere in Shropshire that related to the removal of a similar condition². The Inspector's conclusion was based largely on the restrictions set out in the S106 agreement, which restricted the dwelling to 60% of its market value and therefore he was satisfied that the dwelling would remain affordable. However, whilst there is a S106 agreement attached to the subject appeal property, there are no details before me of its content. Therefore, I cannot be certain that if I removed the disputed condition, the dwelling would remain affordable.
11. In conclusion, the appeal property is an affordable dwelling. The disputed condition ensures that the dwelling remains of a size that is affordable, preventing it from becoming too expensive to buy and run for those eligible to purchase an affordable dwelling. There is no evidence before me to suggest that there is not a need for affordable housing in the area. For these reasons the condition is necessary and reasonable. Therefore, based on the evidence before me, the removal of the condition would likely result in the dwelling no longer being affordable and therefore would be contrary to Policies CS4, CS5 and CS11 of the Shropshire Core Strategy 2011, Policies MD3 and MD7a of the Shropshire Site Allocations and Management of Development Plan 2015 and the SPD, which together seek to ensure that ensure a suitable mix of housing, including affordable housing.

Other Matters

12. The appellant submits that not allowing the appellant to extend the appeal property infringes Article 8 of the European Convention on Human Rights. I recognise that the appellant and his family consider that the proposal would interfere with their right to respect for their private and family life, his home and his correspondence. However, this must be weighed against the wider public interest. In this instance, the need for the provision of affordable housing is a sufficient material consideration and any interference with the appellant and his family's peaceful enjoyment of their property and their right to respect for their private and family life is proportionate and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.

Conclusion

13. The planning history of the appeal site is a material consideration in my determination of the planning merits of the proposal to remove the disputed condition. However, I must determine the appeal based on an assessment of the current development plan. It has not been demonstrated that there is sufficient justification to remove the disputed condition contrary to the development plan.
14. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR

² Appeal Ref APP/L3245/W/19/3222930