



Appeal Decision

Site visit made on 3 November 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2021

Appeal Ref: APP/L3245/W/20/3253848

Mount View, Lockley Wood, Market Drayton, TF9 2LS

- 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 Robert Yale against the decision of Shropshire Council.
 - The application Ref 20/01180/VAR, dated 12 March 2020, was refused by notice dated 21 April 2020.
 - The application sought planning permission for erection of an affordable dwelling and formation of a new vehicular access without complying with conditions attached to planning permission Ref 12/05149/FUL, dated 4 June 2013.
 - The conditions in dispute are Nos 4 and 9 which state that:
 - 4) *Notwithstanding the provisions of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 or any Order modifying, revoking or re-enacting that Order, the dwelling hereby permitted, shall not exceed 100sqm gross internal floor area, including any future extensions or alterations.*
 - 9) *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order with or without modification), the following development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority:-*
 - *extension to the dwelling*
 - *free standing building within the curtilage of the dwelling*
 - *addition or alteration to the roof*
 - *erection of a porch*
 - The reasons given for these conditions are:
 - 4) *To ensure that the dwelling is of a size appropriate to the local affordable housing market.*
 - 9) *To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of an affordable dwelling and formation of a new vehicular access at Mount View, Lockley Wood, Market Drayton, TF9 2LS in accordance with the application Ref 20/01180/VAR dated 12 March 2020, without compliance with condition numbers 4 and 9 previously imposed on planning permission Ref 12/05149/FUL dated 4 June 2013, and subject to the following conditions:
 - 1) The development shall be carried out strictly in accordance with the approved plans and drawings.

- 2) The new (affordable) dwelling hereby permitted shall be constructed to an equivalent to the Code for Sustainable Homes, level 3 star rating, for energy and water efficiency and meet the Lifetime Homes standard.
- 3) The development shall be carried out in accordance with the external materials approved under permission Ref 13/02279/DIS.
- 4) The access, parking and turning areas shall be satisfactorily laid out and completed in accordance with the approved plan SA9855/01 Revision C.
- 5) The garage(s) hereby approved shall not be used for any purpose other than those incidental to the enjoyment of the dwelling hereby approved but not including use as living accommodation.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no outbuildings, as permitted by Class E of Part 1 of Schedule 2 of that Order, shall be erected other than those expressly authorised by this permission.

Procedural Matters

2. A deed of variation pursuant to the original s106 agreement attached to permission Ref 12/05149/FUL has been submitted as part of this appeal. It is signed and dated, and I have taken it into account in reaching my decision.
3. The application sought to remove condition 9 of permission Ref 12/05149/FUL only. However, condition 4 of that permission is also directly relevant to the matters under dispute as it requires that the dwelling "*shall not exceed 100sqm gross internal floor area, including any future extensions or alterations*". This effectively precludes any further additions to the building, and so I have considered it as being under dispute in determining this appeal.

Main Issue

4. The main issue is whether the disputed conditions are reasonable and necessary in order to protect the character and appearance of the area.

Reasons

5. The appeal building consists of a recently constructed detached property on the north western side of Marl Pitt Lane. It is set within a relatively generous plot and is largely surrounded by open countryside.
6. The removal of the disputed conditions would allow for a number of extensions and alterations to be made to the building under permitted development rights. These would include extensions to the side and rear of the house, additions and other alterations to the roof, and the construction of porches and outbuildings. In this regard, the appeal property is set back within its plot and there is limited space to accommodate a new rear extension. Whilst an extension could be constructed to the side, this would be only single storey in height. In my view, any such extensions would be relatively modest in scale and would not result in significant harm to the visual amenities or openness of the area. They would also leave ample garden space remaining to serve the property.
7. Any porch installed under permitted development rights would also be limited in size. Similarly, any additions or alterations to the roof would be modest in

scale and subject to the limitations set out under the Order. Such alterations would not be harmful to the character and appearance of the area in my view.

8. In addition, the removal of the disputed conditions would allow for the construction of an outbuilding or series of outbuildings within the curtilage of the property. Given the shape of the plot, and the position of the existing garden area, this would allow for a substantial and visually prominent outbuilding or outbuildings that could remove much of the existing garden space. This has the potential to significantly harm the character and appearance of the area, and reduce the size of the outdoor amenity space to an unacceptable degree. In these circumstances, I consider it necessary to remove permitted development rights relating to outbuildings. However, the other restrictions set out in disputed conditions 4 and 9 are unnecessary in this case. Whilst the Council state that an extension to an affordable dwelling should only be allowed in 'exceptional circumstances', that test is not specified in any development plan policy that is before me.
9. For the above reasons, I conclude that the disputed conditions are unnecessary insofar as they relate to permitted development rights for extensions, additions and other alterations to the roof, and porches. The removal of these restrictions would not significantly harm the character or appearance of the area and would therefore accord with Policies CS5 and CS6 of the Shropshire Core Strategy (2011), and Policies MD2 and MD12 of the Shropshire Site Allocations and Management of Development Plan (2015). These policies seek to ensure, amongst other things, that new development is of good design and does not harm the character and appearance of the countryside. Whilst there would be some conflict with guidance in the Type and Affordability of Housing SPD (2012), that is outweighed by the lack of any significant harm in this case.
10. However, it is reasonable and necessary to restrict permitted development rights in relation to outbuildings in order to protect the character and appearance of the area, and to ensure that adequate garden space is retained. I have therefore removed the disputed conditions and replaced them with a new condition that reflects this approach.

Other Matter

11. The s106 agreement ensures that the dwelling's resale value is restricted as if it were still a maximum of 100 square metres in floorspace, regardless of any extensions that are constructed. Accordingly, the use of permitted development rights would not affect its contribution to the supply of affordable housing in the area. The proposal would therefore be consistent with the aims of Policy CS11 of the Shropshire Core Strategy (2011) and Policy MD7a of the Shropshire Site Allocations and Management of Development Plan (2015).

Undisputed Conditions

12. Planning Practice Guidance states¹ that decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate those imposed on earlier permissions that continue to have effect. In this regard, the Council has confirmed that previously imposed conditions 5-7, which were pre-commencement in nature, were discharged under permission Ref

¹ Paragraph Ref 21a-040-20190723

13/02279/DIS. Accordingly, I have not re-attached conditions 6 and 7, and have amended condition 5 to reflect the approved materials.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions, but substituting another, and restating those undisputed conditions that are still subsisting and capable of taking effect.

Thomas Hatfield

INSPECTOR