



Appeal Decision

Site visit made on 26 April 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2022

Appeal Ref: APP/L3245/W/21/3283341

Development land west of Springfield Park, Clee Hill, Shropshire SY8 3QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by KH Developments against the decision of Shropshire Council.
 - The application Ref 20/04700/VAR, dated 11 November 2020, was refused by notice dated 13 April 2021.
 - The application sought planning permission for the variation of condition no.7 pursuant to SS/1/07/19934/F to allow for a redesign of all 13 approved properties; re-design of site layout and erection of one detached garage block (amended description) without complying with conditions attached to planning permission Ref 19/03888/VAR, dated 28 January 2020.
 - The conditions in dispute are Nos 1 and 7 which state that:
Condition 1: *'The development shall be carried out strictly in accordance with the approved plans and drawings'.*
Condition 7: *'All hard and soft landscape works shall be carried out in accordance with the approved plan, and in accordance with a schedule of plants and trees which have first been approved by the local planning authority in writing. The works shall be carried out prior to the occupation / use of any part of the development hereby approved. Any trees or plants that, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season'.*
 - The reasons given for the conditions are:
 - 1) *'For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details'.*
 - 2) *'To ensure the provision, establishment and maintenance of a reasonable standard of landscape in accordance with the approved designs'.*
-

Decision

1. The appeal is allowed and planning permission is granted for the variation of condition no.7 pursuant to SS/1/07/19934/F to allow for a redesign of all 13 approved properties; re-design of site layout and erection of one detached garage block (amended description) at Development land west of Springfield Park, Clee Hill, Shropshire SY8 3QY, in accordance with the application Ref 20/04700/VAR dated 11 November 2020, without compliance with conditions numbers 1, 3 and 7 previously imposed on planning permission Ref 19/03888/VAR dated 28 January 2020 and subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for costs is made by KH Developments against the Shropshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have taken the site address from the appeal form as this reflects the address adopted in both decision notices. In addition, and at the time of my site visit, plots 1 and 3 were substantially constructed and the groundworks for plot 2 were underway. I have considered this appeal accordingly.
4. The appellant also seeks to vary condition No 7, which relates to landscaping, as they have advised that the approved landscaping plan includes references to the floor levels which they are now seeking to vary. Notwithstanding the inclusion of floor levels within the approved landscaping plan, I note that the Council has raised no issues with the amended landscaping plan now being proposed. As such, there is no need for me to consider the merits of it further, however I shall return to this matter within the conditions section below.

Background and Main Issue

5. The appeal site has extensive planning history for the approval of residential development. From the information before me, the original planning permission¹ granted approval for 13 dwellings. There was a subsequent approval² for the same number of properties with amendments to the estate road and private drives. This most recent approval was then varied³ through the submission of amended plans (the '2019 variation').
6. It is this 2019 variation which is the subject of this appeal. The appellant seeks to vary it by amending the approved plans as the dwellings on plots 1, 2 and 3 have been/are being constructed at a higher level than originally indicated. The appellant has indicated that the raised levels were to ensure the operation of a gravity flow plot drainage to a centrally located attenuation tank. The information before me indicates that the raised levels were included on the drainage scheme which was approved following the granting of the 2019 variation. Condition No 1 of the 2019 variation requires the development to be carried out in accordance with the approved plans which are included in an informative within the decision notice.
7. The Council refused the variation of the approved plans on the basis that the increased levels of the dwellings on plots 1, 2 and 3 would be overbearing and create issues of overlooking for neighbouring properties on Tenbury Road.
8. In light of the above, the main issue is the effect of varying the approved plans and thus the affected conditions on the living conditions of neighbouring occupiers, with particular regard to outlook and privacy.

Reasons

9. Plots 1, 2 and 3 are located along the western boundary of the wider residential site. They are sited at a higher level than the properties immediately adjacent to the west along Tenbury Road due to the vast variation in local topography. This contrasting relationship has been established through the 2019 variation. Compared to the approved plans of the 2019 variation, this appeal seeks to increase the floor levels and overall heights of the dwellings on plots 1, 2 and 3 by between 0.8 metres (m) and 0.95m.

¹ Council ref: SS/1989/397/P

² Council ref: SS/1/07/19934/F

³ Council ref: 19/03888/VAR

10. The rear of the nearest properties on Tenbury Road are already dominated by the increased land levels and existing boundary treatments, which together create a strong sense of enclosure to the rooms and garden areas of those properties. The proposed increase in height of the appeal dwellings would not be so noticeable or oppressive when compared to the existing restricted layout to the rear and the approved relationship, so as to amount to significant harm to outlook or an overbearing sense of enclosure for existing occupiers. The proposed landscaping would also contribute towards a softer, natural outlook.
11. The lower ground floor levels of the appeal properties would be arranged as the main habitable rooms such as living rooms and kitchen/dining rooms. There would be very limited options to overlook neighbouring properties from these rooms. The rooms in the upper ground floor levels would be arranged as bedrooms and it is the increased level of the windows serving these rooms, and the remaining property above, which would be most felt from neighbouring occupiers compared to the approved design.
12. I observed that the main outlook from the upper ground floor rooms was directly outwards across the rooftops of neighbouring properties towards the landscape beyond. There were very limited views into neighbouring rear gardens due to the boundary treatment and the difference between land levels. I nevertheless acknowledge that neighbouring occupiers may get a sense that they are being overlooked, particularly in their upper floor rooms.
13. However, given the use of the upper floor rooms in the appeal dwellings, it is unlikely that future residents would spend considerable amounts of time looking out from these windows. Furthermore, given the good distance between the properties and the intervening landscaping both existing and proposed, which would assist in reducing any presence of the dwellings, the differences between the 2019 variation and the appeal proposal would not be so substantial so as to create significantly greater opportunities to overlook neighbouring properties that would result in a harmful loss of privacy.
14. Accordingly, the proposed increase in floor level and heights of dwellings on plots 1, 2 and 3 would not result in unacceptable harm to the living conditions of neighbouring occupiers. It would therefore accord with Policy CS6 of the Shropshire Local Development Framework: Adopted Core Strategy (March 2011) and Policy MD2 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan (December 2015) which is referenced within the Council's evidence. Collectively these policies seek to ensure that developments safeguard residential amenity.

Other Matters

15. Numerous concerns have been raised relating to matters which fall outside the scope of the main issue and thus scope of this appeal. Namely, drainage, flooding, the effect on light to neighbouring properties and damage to shared boundaries and retaining walls. The latter is a civil matter between the appellant and neighbouring occupiers.
16. The Council has raised no concerns with the effect on light and given the nominal differences between the appeal proposal and the approved development, I concur with this view. With regards to drainage and flooding, there is no objection from the Council in this regard and I acknowledge that approved drainage details were based on the proposed raised floor levels and

were deemed to be acceptable through a discharge of conditions application. Accordingly, I afford these matters limited weight.

17. I note that the plans submitted with this appeal also indicate some minor adjustments to the levels of the dwellings on some of the other plots within the wider development site. Whilst the Council has alluded to possible enforcement action, it has not advised of any specific objections in this regard and indeed it has recommended a condition, in the event that the appeal is allowed, specifying the amended site plan. As such, there is no need for me to consider this matter further within the context of this appeal.
18. The appellant has advised that there is an error in the 'LGF' measurement of plot 1 as referenced on the amended proposed site plan. The appellant has clarified the correct floor level measurements within their submitted evidence, which correlate with the levels stated in the sectional plans, which I have therefore based my decision on. This discrepancy on the plan is a matter for the main parties to resolve where necessary.
19. Article 8 of the European Convention on Human Rights affords the right to respect for private and family life. Taking all the above into consideration, I am not persuaded that the homes, family life or privacy of neighbouring occupiers would be significantly diminished in the case that the appeal were allowed. The degree of interference that would be caused therefore would be insufficient to give rise to a violation of rights under Article 8 of the First Protocol.

Conditions

20. The Planning Practice Guidance (the PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I have had regard to the conditions suggested by the Council in the event that the appeal is allowed. I note that these largely reflect the conditions of the 2019 variation, aside from the amended plans. The appellant has not raised any concern with these conditions.
21. For the avoidance of doubt, other than those specified below, I have not made any substantial alterations to the remaining conditions within the 2019 variation other than some minor editing in light of the advice in the PPG which has not affected their controlling elements.
22. The approved plans are listed as an informative on the 2019 variation decision notice. The PPG advises that informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes⁴. Accordingly, and to ensure condition No 1 is precise and enforceable, I have included the approved plans list within the main body of its wording. I consider that no party would be prejudiced by me doing so.
23. Condition No 2 concerns the external facing materials and roof tiles of the proposed development. Whilst the majority of the wider development has largely been constructed and although the Council has not recommended reattaching this condition, as the dwelling at plot no 2 remains to be fully constructed, I consider this condition is necessary to ensure it is finished in similar materials to the existing properties.

⁴ Paragraph: 026 Reference ID: 21a-026-20140306

24. I note that condition No 3, which relates to matters of drainage, has been discharged. Nevertheless, the condition continues to have an effect in perpetuity therefore it should be reattached. This will then be a matter for the main parties to resolve were necessary.
25. The Council has recommended restating the landscaping plans which were approved under the discharge of conditions application for condition No 7⁵. These plans do not correlate with the amended landscaping details submitted with the variation of conditions application and to which the Council raised no concerns with. Accordingly, I can see no reason why any party would be prejudiced by me including the amended landscaping plans within condition No 1. I shall however amend condition No 7 of the 2019 variation to ensure that that the landscaping is implemented and retained as required.

Conclusion

26. For the reasons given above, and having regard to all relevant material considerations, the proposal would accord with the development plan thus the appeal should be allowed.

H Ellison
INSPECTOR

⁵ Council ref: 21/02427/DIS

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: WDS102 E, WDS105 B, WDS106 B, WDS107 A and WDS108 A.
2. The external facing materials and roof tiles shall be as specified on the approved drawings.
3. Other than site clearance and land regrading works, together with any measures required to ensure that there would be no increase in surface water run-off impacting on adjacent properties when these works are carried out, no development in relation to the details shown on the approved plans shall take place until a scheme of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the development is occupied/brought into use (whichever is the sooner).
4. The construction of roads, footways, sewers and other services within the development hereby permitted shall be carried out in accordance with the Highway Authority's Specification for the time being then in force for Residential Estate Roads.
5. Construction work shall only take place on site between the hours of 0800 and 1830 Mondays to Saturdays and not at all on Sundays and Bank Holidays.
6. All parking, loading and unloading in connection with the site development operations shall take place within the site boundaries.
7. All hard and soft landscape works shall be carried out in accordance with the approved plans prior to the occupation/use of any part of the development hereby approved. If, within a period of five years from the date of planting, any tree or plants are removed, uprooted, destroyed or die or become, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree or plant unless the local planning authority gives its written consent to any variation.