



Appeal Decision

Site visit made on 24 August 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/L3245/W/22/3296567

Red Brick House, Ashfields Junction Corner Farm To Goldstone Road Junction, Ashfields, Hinstock TF9 2NG

- 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 Richard Harper against the decision of Shropshire Council.
 - The application Ref 21/05082/VAR, dated 22 October 2021, was refused on 22 March 2022.
 - The application sought planning permission for removal of conditions No. 3 and No. 5 attached to planning permission 10/02100/FUL, dated 4 November 2010, for the erection of a detached affordable dwelling and garage.
 - The conditions in dispute are Nos 3 and 5 which state that:
 - 3) *"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."*
 - 5) *"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, no garage, carport, extension or other building shall be erected within the curtilage of the dwelling hereby permitted without the prior consent in writing of the Local Planning Authority."*
 - The reasons given for these conditions are:
 - 3) *"To ensure that the dwelling is of a size appropriate to the local affordable housing market."*
 - 5) *"To enable the Local Planning Authority to retain control of the siting and external appearance of any buildings to be erected in the interest of visual amenity and maintain affordability of the dwelling."*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Permission was granted in 2010 for the erection of a detached affordable dwelling and garage (10/02100/FUL), which has been implemented. The removal of the disputed conditions would enable the dwelling to be extended and the creation of additional internal habitable space.

Main Issue

3. The main issue is whether the dwelling would remain affordable in perpetuity, having regard to permitted development rights.

Reasons

4. The proposal relates to a rural dwelling that was constructed under the rural exceptions policy of Shropshire Council. Red Brick House is a detached two-storey, three-bedroomed dwelling located in an area of open countryside, accessed off Ashfields.
5. The appellant's work and family requirements mean that they require additional space, as the size of the property no longer meets the family's needs. As a result, the proposal seeks to remove conditions 3 and 5 which would reinstate the permitted development rights and allow the appellant to extend the property under permitted development. This would enable the appellant to continue to live in a location to which they have a strong local connection and in which they work and are raising their family.
6. Policy CS11 of the Shropshire Local Development Framework: Adopted Core Strategy (2011) (Core Strategy) seeks to meet the diverse housing needs of Shropshire residents now and in the future, and a balanced approach will be taken with regard to existing and new housing, including type, size, tenure and affordability. Amongst other things, it allows for exception schemes for local needs affordable housing on suitable sites, subject to their suitable scale, design tenure and prioritisation for local people and arrangements to ensure affordability in perpetuity.
7. Policy MD7a of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan (2015) states that in order to protect the long-term affordability of single plot exceptions dwellings, they will be subject to size restrictions and the removal of permitted development rights, as well as other appropriate conditions or legal restrictions. The appellant makes reference to Policy CS6 of the Core Strategy, which is not referred to in the Council's decision notice. This policy refers to all development being flexible and adaptable, and in relation to housing, adapting to changing lifestyle needs. Whilst the policies do not require retention as built, Policy MD7a does enable specific control of any future development relating to affordable housing such as this.
8. Condition 3 of the permission restricts the dwelling, including future extensions, to no more than 100 square metres gross internal floor area. This is in accordance with the Council's 2012 Type and Affordability of Housing Supplementary Planning Document (SPD), which states that in order to ensure that dwellings approved are, and will remain, affordable, a dwelling size restriction will be imposed.
9. Condition 5 of the permission removes permitted development rights. This is also in accordance with the Council's SPD, which states that permitted development rights of affordable dwellings will normally be removed in order to retain control over future extensions.
10. Paragraph 5.63 of the SPD recognises that there are genuine difficulties faced by growing households already occupying affordable housing, due to its chronic shortage in Shropshire. The SPD states that it may be acceptable to enlarge an existing affordable house in order to accommodate the needs of the existing household, but the potential sale value will remain restricted as if it were still a maximum of 100 square metres and therefore there will be no financial profit from an enlargement.

11. The Council states that 'exceptional circumstances' have not been shown by the appellant; however, this test does not appear to be specified in any development plan policy that is before me. Notwithstanding this, the appellant has not been specific about the development form that they require and, in my judgement, has not submitted sufficient evidence to robustly justify the specific need and associated nature of any additional space required.
12. Although paragraph 5.63 of the SPD makes reference to enlarging an existing affordable house in order to accommodate the needs of the existing household, this would be related to planning applications where the nature of the proposed extension is known rather than relying purely on permitted development rights. If left to permitted development rights, the size of the dwelling may increase to a scale that is no longer suitable for affordable housing. In any event, were the conditions concerned to be removed, this would need to be subject to controls over its ongoing affordability and there is no such mechanism before me to provide that control.
13. The Council does not consider the existing dwelling to be overcrowded and states that it meets the national described space standards (NDSS) for a family of 4. Whilst the NDSS provides a minimum recommendation for space standards and not a maximum, this does not on its own justify the removal of permitted development rights at the appeal site.
14. Were the proposal to remove the conditions concerned to be allowed, a variation on the original S106 legal agreement would be required to secure the status of the property as an affordable dwelling in perpetuity. The appellant has referred to a revised Section 106 legal agreement. However, I do not have a revised S106 legal agreement before me. In the absence of such an agreement I am unable to conclude whether the status of the property as an affordable dwelling in perpetuity can be secured. Therefore, in the absence of a completed planning obligation the conditions remain necessary to limit the floorspace of the dwelling and thereby also limit its value to the affordable limits applied by the Council.
15. My attention has been drawn to a previous appeal decision (APP/L3245/D/14/2229755), which was dismissed for reasons of affordability. This appeal decision was for a two-storey rear extension and link between garage and house at Red Brick House. I note that the Inspector considered Red Brick House to be a relatively large affordable house. Nevertheless, this previous appeal is not directly comparable to the current appeal, which is for the removal of conditions that restrict permitted development rights. Its relevance is therefore limited for the purposes of my determination of this appeal.
16. For the above reasons, I conclude on this main issue that the disputed conditions are reasonable and necessary to ensure that the dwelling remains affordable in perpetuity. Consequently, the proposal fails to accord with Policies CS11 and CS5 of the Core Strategy. In addition, there would be conflict with Policy MD7a of the SAMDev and the SPD. Collectively, these policies, amongst other things, seek to ensure the provision of affordable housing in rural areas.

Other Matters

17. The appellant has referred me to other appeal decisions. However, appeal decision APP/L3245/D/19/3224217 refers to a specific form of development;

appeal decision APP/L3245/W/19/3222930 relates to particular circumstances submitted to the Inspector to support their requirement, including details of a relevant planning obligation. Appeal decision APP/L3245/W/20/3253848 submitted a deed of variation to the original S106, signed and dated. Therefore, these other appeal decisions are not directly comparable to the appeal before me. In any event, I do not know the full details of these cases. I have determined this appeal on its own merits.

Conclusion

18. For the reasons given above, I conclude that the appeal is dismissed.

Helen Smith

INSPECTOR