



Appeal Decision

Site visit made on 4 June 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/C1625/W/19/3223924

Land at rear of Canonbury Street, Berkeley, Gloucestershire GL13 9BG

- 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 Miss Ellen Fortt of Persimmon Homes Severn Valley against the decision of Stroud District Council.
 - The application Ref S.18/1989/VAR, dated 10 September 2018, was refused by notice dated 21 December 2018.
 - The application sought planning permission for the erection of 188 dwellings, provision of new access from B4066, landscaping and associated infrastructure without complying with a condition attached to planning permission Ref S.14/0619/FUL, dated 21 November 2016.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the approved plans listed in Annex 2 to this Decision.*
 - The reason given for the condition is: *For the avoidance of doubt.*
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Planning application reference S.14/0619/FUL was allowed on appeal¹ on 21 November 2016, with 30 conditions. Condition 2 referred to a list of the plans approved, and I have taken the reason given for the condition from the appeal decision.
3. The appeal proposal seeks to substitute the list of plans approved in condition 2 in order to make changes to the permitted scheme. It seeks the substitution of 5 x 2 storey houses (Alnwick house type) at plots 145-149 with 4 x split level houses of a different house type (The Cragside) comprising plots 145-148, thereby omitting plot 149.
4. This would reduce the overall number of dwellings by one unit. In addition, the Cragside house types contain four bedrooms and are taller than the 2 bedroom Alnwick houses. Due to the split level, there would be a proposed reduction in the height of the associated retaining wall and fewer engineering works to the

¹ Reference APP/C1625/W/15/3133335

respective garden areas. A replacement condition specifying the plans that reflect the amended design is sought.

5. At the time of my site visit, development of the 188 house scheme had commenced on site, although other than general ground works, construction on the plots the subject of this appeal had not been undertaken. I shall consider the appeal accordingly.

Main Issues

6. The main issues are the effect of the proposed variation to the appeal proposal on the character and appearance of the area, and on the planning obligations secured as part of the original permission.

Reasons

Character and appearance

7. The effect of the originally approved 188 dwelling scheme on the landscape character and setting of Berkeley was considered in some detail at the appeal that permitted the development. The Inspector described the appeal site as lying on an east facing slope abutting the eastern boundary of Berkeley with bungalows and houses running north/south along the ridge line to the west. He further found that the site is visually quite well contained such that it is really only visible from the east. The appeal decision is highly relevant to the consideration of the present proposal. I concur with the description of the appeal site generally, and that the existing dwellings along the ridgeline are especially noticeable in long views from the east, particularly from the B4066.
8. The scheme before me proposes to change 5 of the 188 approved dwellings and therefore, based on its scale, represents a modest change to the character and appearance of the overall major residential development. The 4 substitute split level dwellings would be located on a similar footprint to approved plots 145-149 but would utilise the slope of the land such that the east facing principal elevation presents three storeys, whilst the rear elevation would appear as two storey. As a consequence, a more natural gradient to the rear garden would be retained and the resulting retaining wall would be reduced in height.
9. The submitted site sketch plan shows that the proposal is located some distance from the B4066 with intervening agricultural land and landscaped belt. As such, whilst views to this part of the appeal site would be possible from the east and B4066, they would for the most part, be long views including the surrounding context. On that basis, the 4 proposed dwellings would be seen within a large modern housing development, with residential development to the north, south and west in close proximity. Although facing eastwards, there are other dwellings located nearer to the easternmost edge of the approved layout that would be seen in the foreground. Taking these factors together, the increase in ridge line arising from the appeal proposal would not be readily apparent in such views.
10. Furthermore, the dwellings would be located on considerably lower land than the approved and existing residential development to the west. Notwithstanding that most of the surrounding residential development is two storey, the comparative photomontages prepared by the Cooper Partnership demonstrate that the proposal would be read against the sloping developed

backdrop. Therefore, it would not appear unduly prominent in comparison to the more visible development along the ridge line.

11. Notwithstanding the 3-storey appearance of the principal elevations, there would be coherence with the surrounding house types in the consistent detailing and materials. In any event, the sloping land results in a variety of ridge heights for the surrounding two storey dwellings. In this context, the development as varied by the plans subject to the appeal would not appear out of character.
12. Accordingly, I find that the proposal would not have a harmful effect on the character and appearance of the area. Given the modest nature of the variation to the overall major residential development, I do not find that the proposal would conflict with the spatial vision or strategic objectives for the district outlined in policy CP4 of the Stroud District Local Plan, 2015 (LP), nor the objectives of policy ES7 which seek to protect the landscape character of the area from adverse effects. In addition, the proposal would integrate with its surroundings in accordance with policy CP14(9) of the LP that seeks to secure high quality development.

Planning Obligations

13. The original appeal decision² was subject to planning obligations secured by two Unilateral Undertakings (UU) dated 24 August 2016 under section 106 of the Town and Country Planning Act 1990, to Stroud District Council and Gloucestershire County Council respectively. These related to financial contributions towards off-site education provision, library contributions, public transport enhancement in the vicinity of the development, a residential travel plan and off-site recreation facilities in Berkeley, as well as provisions for the management of open space. In addition, it secures 30% provision of Affordable Housing across the site.
14. The Inspector considered that both the UUs met the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and took them into account in his decision. In particular, the provision of 56 units of affordable housing across the site carried very significant weight in favour of the development given that there was an acknowledged shortage in the District.
15. Subsequently, the Council have adopted a Community Infrastructure Levy (CIL) and the parties agree that in the event of an approval the development would be liable for the CIL charge only in relation to the increase in floorspace resulting from the varied units.
16. The wording of both UUs refer specifically to planning permission reference S.14/0619/FUL and do not expressly secure the obligations in relation to subsequent or related other planning permissions. If this appeal decision were allowed, a new permission would be created and as such, I do not have evidence to assure me that any such new permission would be bound by the terms of the UUs for the remainder of the development of the site.
17. From the statements of the main parties, there is no dispute that it is appropriate to secure the existing affordable housing arrangements and other obligations in the UUs in relation to the appeal proposal, and both parties refer to pursuing a Deed of Variation to the UUs to this end. The appellant indicates

² Reference APP/C1625/W/15/3133335

an intention to undertake a Deed of Variation to ensure that the application is referenced as the latest planning permission in the UUs. However, I do not have any signed and completed documents before me.

18. I have not seen evidence to suggest that the acknowledged shortage of affordable housing in the district, or the finding of the Strategic Housing Market Assessment has significantly changed since the original appeal decision was taken. Neither has evidence been provided to demonstrate that circumstances have changed in relation to the other planning obligations previously found necessary to make the proposal acceptable.
19. On the evidence before me, it appears that the need for affordable housing and other planning obligations remains and would continue to satisfy the 3 tests in Regulation 122(2) of the CIL Regulations 2010. These state that the obligations should be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore, the proposal would fail to secure appropriate financial contributions towards the provision of affordable housing and the other planning obligations that would otherwise make the proposal acceptable, and so would conflict with policy CP9 of the LP which seeks to secure 30% provision of affordable housing.
20. In addition, it would conflict with policies CP6, EI12 and ES15 of the LP which, amongst other matters, seek to ensure suitable infrastructure and developer contributions to mitigate the impact of development as supported by guidance in the Stroud District Local Plan Planning Obligations Supplementary Planning Document, April 2017. Policy EI12 mainly relates to those obligations dealing with transport infrastructure, and policy ES15 specifically relates to those obligations concerning the provision and management of outdoor space.
21. Planning Practice Guidance advises that it is only exceptionally that a planning condition might be used to limit development that can take place until a planning obligation has been entered into, indicating that this applies to complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. It further states that ensuring that any planning obligation is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties. I have not seen evidence to suggest that exceptional circumstances apply in this case. Therefore, it is not shown that the obligations necessary to make the development acceptable in planning terms would be appropriately secured.

Other Matters

22. I have had regard to the concerns raised that the proposal would result in fewer two-bedroom houses, a housing need identified in the Strategic Housing Market Assessment (SHMA). Nevertheless, this was not included as a refusal reason by the Council. Furthermore, the overall mix of houses at the appeal site would still exceed the targets for 1 and 2 bedroom dwellings in the SHMA whilst also providing a housing mix more in line with that identified, which weighs in its favour. In addition, the development would result in some CIL receipts that would not otherwise have been forthcoming, which weighs in support of the proposal.

23. The proposed changes to plots 145-149 lie outside of The Berkeley Conservation Area (CA) which is located to the south of the appeal site. Berkeley Castle (Grade I) lies within the CA and is itself within the Berkeley Castle Registered Park and Garden (Grade II*). There are many other listed buildings within the Conservation Area and surrounding area. Nevertheless, within the overall context of the approved major residential development, the proposed revisions to plots 145-149 would be visually contained and of a relatively minor nature.
24. Given that I have found the proposals would not cause harm to the character and appearance of the area, it follows that the revisions would not cause harm to the significance of the setting of surrounding designated heritage assets. Mindful of the statutory duties imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990, and the provisions of the Framework, these considerations lead me to the conclusion that the setting of the listed buildings would be preserved, and that the significance of the Conservation Area would not be harmed.

Conclusion

25. I have found no harm would flow from the proposal in terms of its character and appearance effects. However, this merely equates to a lack of harm rather than a positive benefit and has only a neutral effect on the overall planning balance. The other matters advanced in favour of the proposal carry some weight. However, the lack of an enforceable mechanism to secure affordable housing and other necessary mitigation measures is a factor that weighs substantially against the scheme and tips the planning balance firmly against its approval. In these latter regards, the proposal would conflict with the development plan and no material considerations have been advanced to indicate that a decision other than in accordance with the plan is justified in this case.
26. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector