
Appeal Decision

Site visit made on 18 September 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/H1840/W/19/3230615

Millhome, 2 Peewit Road, Evesham WR11 2NH

- 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 and Mrs R Molson against the decision of Wychavon District Council.
 - The application Ref 19/00511/OUT dated 28 February 2019 was refused by notice dated 2 May 2019.
 - The application sought planning permission for proposed sub-division of residential plot into two parcels of land and construction of new dwelling at Millhome, 2 Peewit Road Evesham without complying with two conditions attached to planning permission Ref 18/02060/OUT dated 16 January 2019.
 - The conditions in dispute are Nos 2 and 6.
 - Condition No 2 states that "Development shall not begin until the engineering details and specification of the proposed resurfacing to the existing private shared accommodation road from its junction with the nearside edge of the adjoining footway, Peewit Road have been submitted to and approved by the Local Planning Authority. The dwelling hereby approved shall not be first occupied until the reconstruction works necessary to provide improved access have been completed in accordance with the details submitted to and approved in writing by the Local Planning Authority."
 - Condition No 6 states that "Notwithstanding the details set out within the drawing number 18322-01 A as submitted with the application, the dwellinghouse hereby approved shall be single storey only with no habitable room windows provided above eaves height."
 - The reason given for condition 2 is : "To ensure an adequate and acceptable means of access is available before the dwelling is occupied."
 - The reason given for condition 6 is: "To ensure that the proposed dwelling integrates effectively with the character of the area and to avoid the proposal causing unacceptable harm to the amenities of the neighbouring properties in accordance with Policy SWDP21 of the adopted South Worcestershire Development Plan and the accompanying Design Guide SPD."
-

Decision

1. The appeal is dismissed.

Procedural matters and background

2. Outline planning permission was granted for the subdivision of the plot at Millhome 2 Peewit Road on 16 January 2019 subject to conditions. The conditions in dispute relate to the access and the height of the proposed dwelling. There is an unmade track to the side of the appeal site and condition No 2 provided for the resurfacing of the track, Condition No 6 provided that the

proposed dwelling would not be taller than one storey high. Although all matters were reserved in the outline application, the track was included in the outline application boundary plan.

Main Issues

3. The main issues of the appeal are (i) whether condition No 2 is necessary to ensure an adequate and acceptable means of access and (ii) whether condition No 6 is necessary to protect the character and appearance of the area and to avoid harm to living conditions of occupiers of nearby dwellings.

Reasons

Condition No 2

4. The appeal site currently forms part of the garden land to the rear of 2 Peewit Road which is a detached two storey dwelling. To the side of No 2 is an unmade track of around 3.9 metres width which provides vehicular and pedestrian access to the rear of No 2 and also for the occupiers of Nos 141 to 159 Pershore Road to have access to the rear of their dwellings and garages. Pershore Road runs parallel to the track so that the dwellings on Pershore Road who use the track also have separate access to the front of their dwellings and also the option of on street parking. No 2 has access to the front of the existing dwelling where there is off street parking space and garaging. At present, the track is not a primary access for any dwelling.
5. With the appeal dwelling's proposed location being within the garden land to the rear of No 2, the track would become the primary pedestrian and vehicular access for the future occupiers of the appeal dwelling and any visitors. I observed at my site visit that the track is uneven, does not have a bound surface and had a number of potholes.
6. The condition requires the resurfacing of the track with the reason for imposing the condition referring to ensuring an adequate and acceptable means of access. Whilst, the appellant refers to betterment of a problem that does not exist, the proposed use of the track on a daily basis for future occupiers and visitors would in my view cause the condition of the track to deteriorate to make it unsuitable for a primary use.
7. The Highway Authority has made comments upon the condition as part of the Council's internal consultation process and suggested an alternative which would involve a 2 metre wide pedestrian route. The suggestion of splitting of uses made by the Highway Authority would not, however, remove the need to address the condition of the track surface and the Council is not indicating that they agree to an alternative and no longer require the original condition. I do share the appellant's view that a separately defined pedestrian route is not a practical solution when it is currently in use as a shared access between pedestrians and vehicles.
8. Whilst I note that the proposal plan is only indicative, space for cars within the appeal site are shown on plans and the track is going to be used as primary access on a regular basis as a result of the appeal proposal. The appeal proposal does, in my view, alter the use of the track.
9. With regard to enforceability, an arrangement to have shared rights of way to use a track is not uncommon and any enforcement notice would be served

upon the owner of the track and any persons with an interest as defined under the Town and Country Planning Act 1990 Section 172(2)(a) and (b).

10. The original reason for imposing the condition refers to ensuring an adequate and acceptable access is available. The condition was imposed with regard to the appeal dwelling and therefore relates to users of the access to reach the appeal dwelling. Whilst the appellant considers that the Council has now sought to now widen the stated reason, I do not consider that it needs widening. Access is required by future occupiers, visitors and delivery people such as post or newspapers. The timing of compliance which refers to before occupation would also allow for any arrangements that are made for access during the construction period.
11. I do consider that the condition is precise enough for the appellant to understand the nature of the works required and the intention is to create a made up even track surface. The track needs to be adequate and accessible as the only access for the appeal dwelling and visitors.
12. I do therefore consider that the condition is necessary to ensure an adequate and suitable means of access prior to occupation and that it is not appropriate to remove the condition. Whilst no policy reference was included when the condition was imposed the wording used, Policy SWDP21 includes a requirement that development be generally accessible to all users.

Condition No 6

13. The modest appeal site forms part of the rear of the existing garden of No 2. Whilst No 2 and the ribbon development to the front of Peewit Road are largely two storey dwellings, the garden areas to No 2 Peewit Road and Druimsaillie to the south are either undeveloped or have single storey outbuildings such as sheds or garages. The appeal site currently includes a single storey garage in the garden that would be removed to make way for the appeal proposal. To the other side of the track there are largely single garages and hardstanding. The beer garden of the Cider Mill public house is beyond the eastern boundary of the track. Beyond the garden land of Druimsaillie is the crescent shaped built development of New Road. Whilst there is two storey development along road frontages, that is not the case for the garden areas including the appeal site enclosed behind road frontage built development. A two storey dwelling in the rear garden of No 2 would not follow that pattern of development and would be incongruous.
14. Whilst the appellants consider that the reasoning is not clear, they refer to the officer stating that only single storey buildings are seen behind the main building line and two storey dwellings face onto public highways. Whilst the appellant refers to the National Planning Policy Framework supporting the most effective use of land but subject to paragraph 118 e) which is qualified by "consistent with the prevailing height and form of neighbouring properties and the overall street scene". The appeal proposal would not be part of a prevailing pattern of two storey development as it would be in a back land garden location where the prevailing pattern is of limited or no development.
15. With regard to amenity, it is not evident that a two storey dwelling with first floor windows can be accommodated without leading to unacceptable loss of privacy, overlooking or other amenity issues. The indicative plan shows the proposed dwelling within 2 metres of the new boundary with No 2. The garden

of Druimsaillie is next to the appeal site to the south and to part of the eastern boundary. The indicative layout plan has limited details and does not necessarily show that a two storey dwelling would be acceptable in policy terms as the location of the dwelling is not fixed. The supporting text on the indicative plan refers to proposed elevations and includes a number of restrictions for elevations for windows. Whilst, reference is made to south or west facing elevations being obscure glazed or fixed-opening at less than 1.7 metres, such restrictions are not commonly imposed upon habitable rooms and I am not persuaded that the indicative plan does support two storey development that would not harm the living conditions of nearby occupiers with regard to issues such as overlooking. It is not clear that any stated spacing standards contained in the Design Guide would be met and paragraphs 8.3.13 onwards relate to rear extensions rather than new development.

16. I therefore consider that the restriction to single storey with no habitable room windows provided above eaves height is necessary to protect the character and appearance of the area and to avoid harm to the living conditions of nearby residents. The condition complies with Policy SWDP21 of the South Worcestershire Development Plan which requires development to integrate with its surroundings and to address neighbouring amenity.

Other Matters

17. With regard to the two conditions meeting the six tests set out on in the Planning Practice Guidance referred to by the appellant, I do consider the conditions to be necessary, enforceable, precise, and reasonable in all other respects as well as relevant to planning and to the development. Whilst the Council could have considered refusal of the outline application, it chose instead to grant outline planning permission subject to conditions.
18. Whilst the appellants' consent was not obtained prior to imposing the precommencement condition relating to the track, it is not required for outline planning permissions. Outline planning permissions were specifically exempt from Section 100ZA of the Town and Country Planning Act 1990 which imposed the requirement for the written agreement of the applicant prior to imposing pre commencement conditions on a grant of planning permission.
19. There have been a number of objections from nearby residents to the appeal proposal who support the conditions remaining in place and I have taken those into consideration where they relate to material planning considerations. However, issues such as the nature of access rights, legal liability and responsibility for maintenance of the track are civil matters that fall outside the remit of this appeal and the principle of a dwelling on the appeal site has already been established.

Conclusion

20. For the reasons given, I have found that the removal of the two disputed conditions would not be appropriate. The appeal is therefore dismissed.

E. Griffin

INSPECTOR