
Appeal Decision

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2020

Appeal Ref: APP/C4235/W/20/3245868

71 Longford Road West, North Reddish, Stockport SK5 6EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs N Hewitt against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/074197, dated 22 July 2019, was approved on 13 September 2019 and planning permission was granted subject to conditions.
 - The development permitted is the erection of 2 no. dwellinghouses with vehicular access from Longford Road West.
 - The condition in dispute is No 17 which states that: Prior to first occupation of any dwelling hereby approved, a scheme for the provision and maintenance of formal recreation and children's play space and facilities, including a timetable for implementation, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full.
 - The reason given for the condition is: To ensure adequate formal recreation and children's play space and facilities are provided to meet the needs of the residents of the development hereby approved in accordance with Policy SIE2 of the Stockport Core Strategy DPD, the National Planning Policy Framework and the Recreational Open Space Provision and Commuted Payments Supplementary Planning Guidance (July 2006).
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Decision

1. The appeal is allowed and the planning permission Ref DC/074197 for the erection of 2 no. dwellinghouses with vehicular access from Longford Road West at 71 Longford Road West, North Reddish, Stockport SK5 6EU granted on 13 September 2019 by Stockport Metropolitan Borough Council, is varied by deleting condition 17.

Application for Costs

2. An application for costs was made by Mrs N Hewitt against Stockport Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.
4. There is dispute between the parties as to whether the Council's Recreational Open Space Provision and Commuted Payments Supplementary Planning

Guidance 2006 (SPG), the Open Space Provision and Commuted Payments Supplementary Planning Document 2019 (SPD), or neither, were in force as adopted documents on the date that the decision notice was issued. However, I am required to determine the appeal on the basis of the local and national planning policies that are in place at the time I make my decision. Therefore, the SPD is the relevant adopted document.

Background and Main Issue

5. Planning permission has been granted for the erection of two dwellings on land forming part of the curtilage of 71 Longford Road West. The main issue in this appeal is whether condition 17, which relates to the provision and maintenance of formal recreation and children's play space and facilities (open space), meets the 6 tests set out in Paragraph 55 of the National Planning Policy Framework (The Framework).

Reasons

6. The requirement for new developments to provide open space is set out in Policy SIE-2 of the Stockport Core Strategy DPD 2011 (CS). Further guidance on the Council's requirements is provided within the adopted SPD. The appellant considers that the SPD does not accord with a Written Statement made by The Minister of State for Housing¹ and the Planning Practice Guidance (PPG) in terms of its approach to smaller sites which do not propose major development. However, the SPD is a recently adopted document of the Council and I have no conclusive or definitive evidence before me to demonstrate that the approach it advocates with respect to the provision of open space on smaller sites is contrary to that set out by the most recent revisions to The Framework and the PPG.
7. Both CS Policy SIE-2 and the SPD set out that on smaller developments such as the one subject to this appeal, any open space requirement will be met in the form of a financial contribution to the provision of open space in locations close to and easily accessible from the new development and where it would be of direct benefit to its occupiers. The SPD further states that contributions will be secured in the form of a planning obligation which will be completed before planning permission is granted. As part of this process, the applicant will be notified of the contribution that has been calculated for each individual development and the obligation will contain clarity on the purpose of the contribution that is sought.
8. The Council has instead in this instance imposed a planning condition which seeks to secure the open space that they consider to be necessary with respect to the appeal development. The appellant states that this was unexpected, and I have nothing before me to demonstrate that the Council sought to engage the appellant in discussions about the open space requirement before planning permission was granted, and in particular its intended use of a planning condition to address this matter. This departs from the guidance of the SPD and its predecessor, the SPG, which both set out that the developer should be engaged in discussions during the process and that open space contributions should be secured through a planning obligation.

¹ Written Statement made by: The Minister of State for Housing and Planning (Brandon Lewis) on 28 Nov 2014.

9. The condition that has been imposed is vague in what the appellant must do to meet its requirements. This vagueness is emphasised by the fact that the approach taken in imposing a condition is in conflict with the clarity that is provided by the SPD, which sets out the steps that will be taken in securing any open space provision that is required. It is logical that the appellant would seek out the SPD for guidance as to how they could successfully meet the open space requirements but, given that its approach is at odds with the one the Council has taken, they would have reasonable doubts as to how they should proceed.
10. The condition does not expressly require that a planning obligation be entered into, which would at least offer some degree of consistency with the SPD. The SPD is clear that open space requirements will be assessed on a case by case basis to ensure that it is in a location close to and easily accessible from the new development and be of direct benefit to its occupiers. This means that there could be some degree of discussion, and potentially negotiation, necessary between the parties. The wording of the condition does not give certainty either as to what mechanism will be used to secure the open space or what form the provision should take and this renders it imprecise in its requirements. Furthermore, the use of a condition risks the appellant being at the behest of the Council at an advanced point in the development process, without the benefit of the collaborative approach that the SPD sets out having been adhered to and having set a clear path forward. For this reason, the imposition of the condition is not reasonable.
11. The Council points to Paragraph: 005 Reference ID: 21a-005-20190723 of the PPG which does not preclude the use of negatively worded conditions requiring the payment of money or other considerations, for example the entering into of a planning obligation, where the 6 tests will be met. However Paragraph: 010 Reference ID: 21a-010-20190723 of the PPG is clear that such an approach is unlikely to be appropriate in the majority of cases and that only in exceptional circumstances would a planning condition seeking that a planning obligation or other agreement be entered into before development can commence be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk.
12. The PPG further states that the proposed use of such a condition should be discussed with the applicant before the grant of planning permission, with heads of terms or principal terms being agreed to ensure the appropriateness of its use and the interests of transparency. Whilst condition 17 does not prevent development from commencing, it is restrictive in that it prevents occupation of the dwellings until such time as the Council has approved the open space scheme. Its outcome is therefore equivalent to the type of scenario that the PPG explicitly seeks to avoid. I have not been provided with a persuasive argument that this is an exceptional circumstance which justifies a departure from the guidance of both the PPG and the SPD.
13. The Council draws further attention to paragraph 54 of The Framework which states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. However, for the reasons that I have identified, in this instance, the matters cannot be successfully addressed by a planning condition. In addition, the Council considers that they have taken a proportionate approach which minimises up-front costs and delays to decision making that often arise from the preparation

and signing of Section 106 legal agreements. However, no evidence has been provided that entering into a planning obligation would have put the development at risk through up-front costs or delays.

14. As an alternative, the Council suggests that the condition could be satisfied other than through a planning obligation being entered into. However, the approved scheme is for two dwellings and given the size of the development it would be both unreasonable and disproportionate to require the appellant to procure their own area of public open space or to independently seek to make enhancements to existing facilities, which in any instance are likely to be owned by the Council, and then to carry out maintenance on it thereafter. There is no support in either the SPD or the SPG for such an approach, and therefore no guidance as to how the appellant could realistically proceed down such a path. That the Council itself is unclear as to how the open space requirement could be met and has chosen to depart from its adopted planning documents without explanation adds further weight to my finding that the condition is both imprecise and not reasonable.
15. In the absence of any discussions between the appellant and the Council regarding the open space requirements for this specific development, or any direct evidence having been provided by the Council, it is not possible for me to establish whether open space provision is justified in this instance. The SPD sets out the importance of providing clarity of the requirements to the developer and to clearly set out what requirements, if any, are necessary with regard to each individual development proposal. Contributions will only be required where they would secure provision in a location close to and easily accessible from the new development and where it would be of direct benefit to its occupiers. Accordingly, I have insufficient information before me to demonstrate that an open space requirement is relevant to the appeal development or that the imposition of the condition is necessary in respect of the case before me. Therefore, these tests are also not met.
16. The condition sets out when the open space scheme must be submitted, that it must include a timetable for implementation, and that the scheme must be approved by the Council and then implemented in full. Accordingly, I do not have concerns with respect to the enforceability of the condition, although this does not overcome the other concerns I have identified. The appellant considers that the condition is unlawful as it is a pre-commencement condition for which they did not give their prior agreement. However, the wording of the condition requires that the open space scheme be submitted prior to the occupation of either dwelling and I am not persuaded by the appellant's argument that it represents a pre-commencement planning condition.
17. The effect of deleting the condition will be to mean that the development would potentially not comply with the local policies that relate to open space provision. However, this does not justify the retention of a planning condition which fails to meet with the tests set out in The Framework. Given the circumstances of the case, including that I have no evidence before me to demonstrate that open space provision is justified in this instance, and given the relevant national guidance on planning obligations and the use of planning conditions together with the conflict with the approach set out in the SPD, I am not satisfied that a variation of the wording of the condition would overcome the conflict with the tests that I have identified.

18. For the reasons I have set out, the condition is imprecise in its requirements. It is also not reasonably imposed, as it seeks to secure open space provision by way of a planning condition, contrary to national and local guidance. No evidence has been provided to demonstrate that in the circumstances of the appeal case its imposition to secure open space provision is relevant to the development and necessary. In conclusion, the condition fails to meet with the tests set out in The Framework and the appeal should therefore be allowed, with condition 17 deleted.

Graham Wraight

INSPECTOR