



Appeal Decision

Site visit made on 22 June 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Appeal Ref: APP/W1850/W/21/3268189

Land adjacent to Bredstone House, Burghill, Hereford

- 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 Mark Ellis of GPT Properties Ltd against the decision of Herefordshire Council.
 - The application Ref 203591, dated 19 October 2020, was refused by notice dated 15 January 2021.
 - The application sought planning permission for erection of 10 no. dwellings and associated works without complying with a condition attached to planning permission Ref 194343, dated 2 October 2020.
 - The condition in dispute is No 15 which states that: Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, B, C, D, E and H of Part 1 and of Schedule 2, shall be carried out.
 - The reason given for the condition is: In order to protect the character and amenity of the locality, to ensure the design, character and appearance of this high quality development is protected, to maintain the amenities of adjoining property, ensure the development retains a mix of housing sizes and to comply with Policy H1, H3, RA2 and SD1 of the Herefordshire Local Plan – Core Strategy, the Burghill Neighbourhood Development Plan and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is necessary in relation to controlling potential effects on the housing mix of the area.

Reasons

3. The site is located within Burghill Parish, wherein it comprises a housing allocation pursuant to the Burghill Parish Neighbourhood Development Plan 2019 (the NDP). Paragraph 125 of the National Planning Policy Framework (the Framework) is clear that neighbourhood development plans can play an important role in identifying the special qualities of an area, and how these should be reflected in development. In this context, the NDP has identified that the local area would benefit from housing development that is of a particular housing mix. Indeed, this is the first objective identified within the supporting text and enshrined within Policy B1 of the NDP accordingly.

4. The proposed development, which has since been commenced, comprises a mix of housing that is reflective of the NDP and broader development plan requirements, something established through the original planning application's determination process. In particular, the site would provide smaller dwellings which although not affordable housing secured by planning obligation, would be comparatively more affordable than larger dwellings at the site and would cater for distinctly different people in the housing market.
5. Once completed, it would be possible for occupants of the development to exercise permitted development rights, and this would potentially change the fundamental housing mix of the site therein. It is not unreasonable to predict that, over time, smaller households living in smaller dwellings would seek to enlarge their property through permitted development rights, perhaps to cater for a growing family, among other things.
6. In essence, this may not be problematic in and of itself at the time or in the shorter term. However, upon the household moving to a different property somewhere else, the enlarged dwelling would remain, and the housing mix of the site would have been permanently eroded. Consequently, the housing options for subsequent smaller households seeking a smaller dwelling in the area would have been similarly and permanently eroded.
7. Consequently, the NDP sets out that permitted development rights for outbuildings, extensions, additions, and conservatories shall be withdrawn on sites for new housing, something which Condition No. 15 achieves in this case. Therefore, removing this condition would harm the site's housing mix to the detriment of future household demand for smaller dwellings.
8. Underlining the importance of preserving housing mix is Paragraph 127 of the Framework, which establishes that planning policies and decisions should ensure that developments optimise the potential of a site to both accommodate in the first instance but also to sustain an appropriate amount and mix of development. Consequently, a long term removal of permitted development rights would help sustain the housing mix on the site and would not be unreasonable in this context.
9. Paragraph 53 of the Framework does establish that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. However, it is clear in this case that there is justification in accordance with the development plan policies and other policies within the Framework.
10. The Council has not taken a blanket approach to the removal of permitted development rights across the whole of its area, wherein the NDP has a particular focus in one particular locality. Furthermore, the Council has been precise in its drafting of the planning condition, stipulating exactly which permitted development rights have been restricted.
11. Future occupants would be able to enlarge their dwellings using normal planning application procedures, consequently any social disbenefit would be tempered whilst allowing the housing mix to be sustained in a controlled manner. Furthermore, in the event that local needs change, the Council retains the prerogative to allow any such planning applications that they feel would allow the site to respond to changing demands.

12. Appendix 3 of the NDP may not be referenced by policies, however Policy B1 of the NDP is clear that housing mix will be controlled. Consequently, Appendix 3 of the NDP is of utility in understanding how housing mix will be controlled and it appears reasonable to treat it as a material consideration in this regard. It is an aid to interpretation as set out in the relevant judgement¹ cited by the appellant.
13. As for the other relevant judgement² cited by the appellant, Appendix 3 of the NDP has not been applied in a vacuum or as a substitute for policy, it has been used pursuant to specific policies relating to housing mix, namely Policy B1 of the NDP.
14. In regards the application of Paragraphs 11 and 14 of the Framework, it is unclear how this would relate to the proposal, insofar as the provisions for conflict with the NDP and weighting therein appear to be provided in the context of housing land supply. This has already been established under the original planning permission, whereas this case relates specifically to permitted development rights. It is not clear that it needs to be assessed afresh here.
15. Underlining this point is the relevant judgement³ where it was confirmed an application under section 73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission. In essence, section 73 requires only consideration of the question of what conditions a grant of planning permission should be subject to.
16. Overall, Condition No. 15 is necessary to preserve the housing mix at the site, pursuant to Policies H3 and RA2 of the Herefordshire Local Plan Core Strategy 2015, Policy B1 of the NDP, and Paragraph 53 of the Framework. Among other things, these policies ensure development contributes to the delivery of an appropriate mix of dwelling tenures, types and sizes.

Other Matters

17. Some of the original reasons for including Condition No. 15 related to character and appearance and living conditions of neighbouring occupiers. However, the evidence presented by the Council in this case predominantly concentrates on matters of housing mix, which was also within the original reasons.
18. In this context, there is no detailed evidence demonstrating how the design quality of the site or the living conditions of neighbouring would be harmed by reinstating permitted development rights. Accordingly, these matters have been given limited weight under the appeal.

Conclusion

19. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR

¹ R. (Cherkley Campaign Limited) v Mole Valley District Council [2014] EWCA Civ 567

² Bassetlaw District Council v Secretary of State for Housing [2019] EWHC 556 (Admin)

³ Finney v Welsh Ministers & Others [2019] EWCA Civ 1868