



Appeal Decision

Site visit made on 15 January 2025

by **S Rawle BA (Hons) Dip TP Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 05 February 2025

Appeal Ref: APP/J1860/W/24/3348480

13 Clay Green, Alfrick, Worcestershire WR6 5HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
 - The appeal is made by Mr Josh King against the decision of Malvern Hills District Council.
 - The application Ref is M/24/00273/FUL.
 - The development proposed is the erection of a single storey self-build dwelling house.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether or not the proposal would harm the character and appearance of the area;
 - Whether or not the proposed development would provide acceptable living conditions for future occupants with regard to privacy; and
 - Whether or not the proposal has made adequate provision for affordable housing.

Reasons

Character and appearance

3. The appeal site is located within an established residential area comprising a mix of house types including bungalows along Clay Green and a converted school on the opposite side of the road that runs through the village. The community shop and village hall are within very easy reach of the appeal site. Many of the existing bungalows along Clay Green have spacious plots, but two dwellings more recently developed immediately adjacent to the appeal site have smaller plot sizes. As a result, the plot sizes surrounding the appeal site are not uniform.
4. The appeal site forms part of the garden area of 13 Clay Green. The plot size of this property is an anomaly being significantly larger than any other surrounding plots. As a result, it is possible to create an additional plot where the proposed house would sit comfortably on the site and would be set sufficiently away from the common boundaries on all sides to ensure it does not appear cramped on the site.
5. Further, it would have sufficient space to provide an area to enable off street parking and for an appropriately sized private garden to serve the proposed

dwelling. The size and shape of the plot would not appear at odds with the existing plot sizes, and I consider that overall, the proposal would not be at odds with the established pattern or character of development. Moreover, the scale, massing, height and architectural design of the proposal would be compatible with its surroundings.

6. I therefore conclude that the proposed development would not harm the character and appearance of the area. Consequently, the proposal complies with Policy SWDP 21 of the South Worcestershire Development Plan adopted February 2016 (SWDP) which among other things seeks to ensure that development should respond to surrounding buildings and the distinctive features that contribute to the visual interest of the local area and should safeguard the distinct identity and character of settlements.

Living Conditions

7. I observed at the site visit that the proposed dwelling would be set far enough away from windows serving habitable rooms at neighbouring properties to ensure that habitable rooms at the proposed dwelling itself would not be unacceptable overlooked.
8. In terms of the proposed private garden area, 16 Clay Green (No 16) does have upstairs windows that would have views over this area. However, because of the orientation of the proposed garden relative to the position of the windows such views would not result in an unacceptable degree of overlooking and would be expected within a residential area.
9. I therefore conclude that the proposed development would provide acceptable living conditions for future occupants with regard to privacy. Consequently, the proposed development would comply with Policy SWDP 21 of the SWDP which among other things seeks to ensure that development should provide an adequate level of privacy.

Affordable Housing Contribution

10. The Council's Formal Position Statement (June 2019) clarifies the requirement for affordable housing as set out in Policy SWDP 15 of the SWDP. The appeal site falls within a Designated Rural Area, therefore the policy requires that on sites of less than 5 dwellings a financial contribution towards local affordable housing should be made based on the cost of providing the equivalent in value to 20% of the units as affordable housing on the site. In this regard I am satisfied that the Council's position regarding affordable housing is not at odds with the National Planning Policy Framework (the Framework). No detailed assessment has been provided to demonstrate that such a payment would not be viable.
11. In their appeal statement, the appellant indicated that they would be prepared to enter into a Section 106 Agreement to pay the Council the requisite sum which the Council indicated would be £12,797. However, in their final comments they indicated that they did not think it was appropriate to execute a planning obligation at this stage due to the costs involved in preparing the legal document, the fact that it would add an unnecessary and unreasonable burden on an individual with personal circumstances and would not meet the necessary tests set out in the Framework for seeking an obligation.

12. However, as set out above, I am satisfied that the requirement to provide an affordable housing contribution does accord with the Framework. The relevant Planning Practice Guidance (PPG) is clear that positively worded conditions cannot be imposed which require the payment of money and that a positively worded condition that requires a party to enter into a planning obligation is unlikely to be enforceable.
13. I have taken account of the appellant's suggestion that a negatively worded condition could be imposed if I consider that an affordable housing contribution would be necessary. However, the PPG advises that a negatively worded condition limiting the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases and that is the situation here. That is because there are no exceptional circumstances present in this case that would justify such an approach as there is not clear evidence that the delivery of the development would otherwise be at serious risk. Certainly, the proposal is not a particularly complex development scheme.
14. Consequently, a planning obligation to secure the affordable housing contribution is necessary to make the development acceptable in planning terms, would be directly related to the proposed development and would be fairly and reasonably related in scale and kind to the proposed development. As outlined above, I do not consider that it would be appropriate in this case to impose a negatively worded condition.
15. I have no completed legal agreement before me. I therefore conclude that the proposal has not made adequate provision for affordable housing contrary to Policy SWDP 15 of the SWDP and I afford this matter significant weight in the determination of the appeal.

Other Matters

16. In relation to housing supply, the appellant sets out that based on the Council's housing figures the Council only have a housing land supply figure of 3.47 years and based on the available evidence I have no reason to question that figure. That is below Government's expectations. However, although the proposal would undoubtedly be valuable in boosting housing stock in circumstances where there is an existing significant shortfall, given that it would only result in the addition of one dwelling that tempers its weight.
17. I accept that the proposal would have a cumulative effect on the supply of housing and would have some economic, social and environmental benefits. For example, it would provide some jobs and create demand for materials during the construction phase, would broaden the availability of housing in the area which would be adapted for wheelchair access and use and once occupied would support services and local facilities. I also accept that the proposal would make efficient use of the appeal site within an existing settlement.
18. Further, I note that it is intended that the proposal would result in an additional self-build house. The Council has a duty under the Self Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) to keep a register of persons who are interested in acquiring a self-build or custom-build plot, and to also grant enough suitable development permissions for serviced plots to meet identified demand for the district.

19. The Framework supports small sites to come forward for self-build and custom-build housing. The addition of a self-build dwelling on the appeal site would help to meet the demand for such housing in the area. However, again the weight afforded is tempered by the fact that the proposal would only result in one additional dwelling.
20. I also note that no mechanism to secure the property as a self-build home has been provided and as I would need to be satisfied that the initial owner of the proposed dwelling would have primary input into its final design and layout the description of development alone would not be sufficient to satisfy me that the proposed dwelling would count towards the Council's statutory duty of granting permission for enough self-build homes to meet demand. As monitoring and enforcing a condition would be extremely difficult, a planning obligation would be necessary. As no obligation has been provided to secure the proposed dwelling as self-build this also tempers the weight afforded to this matter.
21. I have also taken account of the fact that no statutory consultee or interested party has objected to the proposal. However, the lack of any objections is a neutral factor in the determination of the appeal.
22. I have carefully considered the personal circumstances involved in this case and I note that the proposed dwelling would provide accommodation for the appellant's disabled daughter and for a parent as a carer and would not be for financial gain. I also note that the appellant has suggested a condition could be attached to ensure that the proposed dwelling could not be sold separately.
23. I have had due regard to the Human Rights Act 1998 and the three aims of the public sector equality duty (PSED). I accept that by not allowing the appeal my decision would interfere with the rights of the disabled daughter of the appellant who has a protected characteristic and also with the appellant's right to respect for private and family life. However, on the other hand, the proposal fails to make adequate provision for affordable housing. Consequently, although I have a significant amount of sympathy for the appellant's personal circumstances, in this case the interference is proportionate.
24. On that basis, taking account of the contribution the appeal scheme would make in addressing the housing land supply shortfall, the personal circumstances and the other matters that weigh in favour of the proposal, I afford the totality of the benefits moderate weight.

Planning Balance

25. I have afforded some matters weight as outlined above and overall, I afford the totality of the benefits moderate weight in the determination of the appeal. On the other hand, I afford the harm that would result from the fact that the proposal has not made adequate provision for affordable housing significant weight in the determination of the appeal.
26. As set out above, the Council cannot demonstrate a five-year housing land supply. As a result, Paragraph 11(d) of the Framework is engaged. However, for the reasons set out above, the adverse impacts of granting permission for the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

27. In reaching that view I have taken account of the most recent version of the Framework and as a result I have had particular regard to key policies including directing development to sustainable locations, making effective use of land and providing affordable homes, individually or in combination.
28. However, the latest version of the Framework does not alter my findings. That is because I have taken account of the contribution the proposal would have on boosting the supply of housing and the fact it would make effective use of the appeal site within the settlement. However, I have nevertheless found that overall, the harm associated with the proposal would significantly and demonstrably outweigh the benefits.
29. Consequently, the scheme would not represent sustainable development within the meaning of paragraph 11(d) of the Framework and this weighs substantially against the scheme.

Conclusion

30. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Consequently, the appeal should be dismissed.

S Rawle

INSPECTOR