

19 DCNC2004/3647/F - REMOVAL OF CONDITION 14 ON PLANNING PERMISSION NC04/1529/O, RELATING TO RESERVED MATTERS SUBMISSION SHALL INCLUDE PROVISION THAT NO LESS THAN 3 HOUSES SHALL BE AFFORDABLE HOUSING AT RIDLERS PLACE, UPPER SAPEY, HEREFORDSHIRE

For: Mr M Clarke per Wall, James & Davies 19 Hagley Road Stourbridge West Midlands DY8 1QW

Date Received:
20th October 2004

Ward:
Bringsty

Grid Ref:
70264, 63631

Expiry Date:
15th December 2004

Local Member: Councillor T Hunt

1. Site Description and Proposal

- 1.1 The site is located on the south west side of the B4204 approximately half a mile south of Sapey Common and approximately 2 miles east of Upper Sapey. The site has previously been used for employment purposes including heavy industry manufacturing, castings, manhole covers, etc. A number of brick and corrugated clad buildings occupy the site along with large areas of hard standing littered waste material from the previous industrial uses. The boundaries of the site are largely enclosed by mature hedges and vegetation and ground levels rise westerly into the site from adjoining road level. The site falls within the open countryside and is also designated as An Area of Great Landscape Value as identified in the Malvern Hills District Local Plan.
- 1.2 Planning permission was approved in outline form on 8th October 2004 for the construction of 8 dwellings. This permission was subject to a number of conditions including condition 14 which required that the reserved matters submission include the provision of no less than 3 affordable dwellings. The condition reads:

“The reserved matters submission shall include provision that no less than 3 of the houses to be built on the site shall be Affordable Housing, and shall include details of the time at which such Affordable Housing is to be provided (with reference to the development of other parts of the site), the type of Affordable Housing to be provided and the means of ensuring that the benefits of Affordable Housing will be enjoyed by successive as well as initial occupiers of such Affordable Housing. The Affordable Housing shall be provided and subsequently retained as Affordable Housing in accordance with the approved details. Each dwelling thereafter must be allocated in accordance with the following:

- a) a qualifying person with a strong local connection to the parish of Upper Sapey;
- b) in the event that there is no qualifying person with a strong local connection to the parish of Upper Sapey, to a qualifying person with a strong local connection to any of the following parishes: Edvin Loach and Saltmarshe, Tedstone Delamere, Tedstone Wafre and Wolferlow;
- c) in the event that there is no qualifying person with a strong local connection to any of the parishes referred to in clause b of this condition, to a qualifying person with a strong local connection to any of the following parishes: Collington, Edwyn Ralph, Norton, Whitbourne, and thereafter Herefordshire;
- d) references to a qualifying person having a strong local connection with the areas firstly, secondly and thirdly specified above are to their having a connection with one of these areas
 - i) because they are, or in the past were, normally resident there, and that residence is or was of their own choice, or
 - ii) because they are employed there, or
 - iii) because of a family association, or
 - iv) because of a proven need to give support to or receive support from family members
 - v) because of special circumstances.

For the purposes of paragraph d above (but not by way of limitation or restriction of a wider discretion):

- i) "normally resident" shall be established by residence in one of the areas specified above
- ii) "employed" shall mean in the employ of another not being of a casual nature but this shall not exclude part-time employment of 16 hours or more per week or self-employment
- iii) "family association" shall mean where a person or a member of their household has parents, adult children, brothers or sisters currently residing in one of the areas specified above and who have been so resident for a period of at least one year and that person indicates a wish to be near them
- iv) "support" shall mean personal and physical care to enable a person or a family member to live independently in the community
- v) "special circumstances" shall not normally apply but may amount to circumstances which in the view of the Council give rise to a strong local connection.

In each instance, the written approval of compliance with the above shall have been received from the local planning authority prior to occupation.

Reason: To ensure that an element of affordable housing for the community is maintained".

2. Policies

Hereford and Worcester County Structure Plan

H16A – Housing in Rural Areas
H20 – Development in the Open Countryside
CTC2 – Development in Areas of Great Landscape Value
CTC9 – Development Criteria

Malvern Hills District Local Plan

Housing Policy 4 – Development in the Countryside
Landscape Policy 1 – Development Outside Settlement Boundaries
Landscape Policy 3 – Development in Areas of Great Landscape Value

Herefordshire Unitary Development Plan (Revised Deposit Draft)

H7 – Housing in the Countryside Outside Settlements
H9 – Affordable Housing
H10 – Rural Exception Housing

Other Guidance

Circular 11/95 – The Use of Conditions in Planning Permission
Supplementary Planning Guidance – Provision of Affordable Housing
Circular 01/97 – Planning Obligations
Circular 06/98 - Planning and Affordable Housing

3. Planning History

NC2004/1529/O – Site for erection of 8 dwellings. Approved 8th October 2004.

NC2004/1528/O – Erection of 26 houses. Refused 28th July 2004.

MH2934/88 – Redevelopment of industrial site for residential purposes. Refused 13th December 1988. Appeal allowed 22nd February 1990.

4. Consultation Summary

Statutory Consultations

4.1 None required.

Internal Council Advice

4.2 Head of Engineering and Transportation – no objection.

4.3 Forward Planning Officer – no comments received.

4.4 Strategic Housing – no comments received

5. Representations

- 5.1 Upper Sapey Parish Council comment as follows: "The Parish Council agrees the removal of condition 14 in favour of a commuted sum to the local community only".
- 5.2 Malvern Hills District Council have been notified as neighbouring authority and state: 'Local Plan and Hereford and Worcester County Structure Plan both reflect the Government guidelines that affordable housing should, where possible, be encouraged. Therefore, on the basis that your Development Plan contains similar policies we would generally support any planning applications that would include the provision for affordable housing.'
- 5.3 Three letters of support have been received from:

N A Sargent, Fields Cottage, Park Lane, Sapey Common and Mr
Mrs S C Lees-Milne, Linehill House, Sapey Common
Mr & Mrs Johnson, Greens Cottage, Upper Sapey

The main points raised are:

- a) Sapey Common is a totally unsuitable community for the provision of affordable housing. There is no shop, no pub, no recreational facilities, no schooling and very little provision for public transport.
 - b) Architecturally and in view of the location, to mix different qualities and types of housing in such a sensitive area would not work or be acceptable.
 - c) Provision of affordable housing should be concentrated into developments within communities which are better able to support it.
- 5.4 The applicant's agent has provided justification for the removal of the condition which will be referred to in the Officer's Appraisal.
- 5.5 The full text of these letters can be inspected at Northern Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

- 6.1 The application seeks the removal of condition 14 listed in full at paragraph 1.2. Section 54A of the Town and Country Planning Act 1990 requires that all applications be considered against the relevant Development Plan Policies unless material considerations indicate otherwise. This legislative test also applies to the imposition of conditions on planning permissions. Paragraph 6 of the Circular 11/95 concerning the use of conditions on planning permissions states that conditions should normally accord with the provisions of the Development Plans and other policies of the Local Planning Authority.
- 6.2 Although a number of policies are referred to earlier in this report, the imposition of the condition does not accord with any of the policies listed, due principally to the fact that the development as a whole is contrary to the prevailing development plan policies. Therefore, the application must be judged against the tests set out in Circular 11/95 concerning the use of conditions. Para 14 of the Circular states that "In addition to satisfying the Courts criteria for the validity of a condition, conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants" conditions should only be imposed where they are:

- i) necessary
 - ii) relevant to planning
 - iii) relevant to development to be permitted
 - iv) enforceable
 - v) precise
 - vi) reasonable in all other respects
- 6.3 The Circular states in paragraph 15, "In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed". In this instance, it is considered that permission would have been refused without the condition and that, therefore, the condition is necessary notwithstanding that it has no specific development plan policy support.
- 6.4 The need for the condition must also be assessed against the identified need for affordable housing primarily in the locality. This is echoed in PPG3 which states that the provision of affordable housing must be based on evidence of need. In May 2003, Herefordshire Council Research Team, on behalf the Council's Directorate for Social Care and Strategic Housing, undertook a housing needs study in the north Bromyard group of parishes (Edvyn Loach and Saltmarsh, Tedstone Delamere, Tedstone Wafer, Upper Sapey and Whitborne). A self completion questionnaire was posted which asked about the likely housing needs over the next 5 years. A response rate of 44% was achieved and the data was cross-referenced with 2001 census information to ensure that the survey results could be generalised across the group of parishes. This identified a net need of 5 units arising from those who responded to the survey. Assuming that same level of need would exist from those who did not respond, an overall likely need of 11 units can be projected. Members may recall that planning permission was provisionally approved at the October Planning Committee for the construction of 8 affordable dwellings at The Old Fold Yard, Church Lane, Upper Sapey. This leaves a net shortfall of 3 units. The requirements of condition 14 would therefore ensure that the identified need for affordable housing is met.
- 6.5 There is no doubt that the requirements of the condition are both relevant to planning and relevant to the development to be permitted. This is particularly so given that the permission is an exception site and therefore the nature and location of the development also justifies the imposition and retention of the condition. The condition is also sufficiently clear, precise and enforceable and for the reasons outlined above it is not considered to be an unreasonable or onerous requirement placed on the developer. As such, the condition satisfactorily meets the six test set out in the Circular.
- 6.6 The applicant's agent does not challenge the validity of the condition but suggest the condition is unnecessary given the recently approved affordable housing in Upper Sapey itself and the unsustainable location of the site. The site is clearly not a sustainable location for any form of housing. However, it is highly likely that the persons meeting the qualifying criteria contained within the condition i.e strong local connection to Upper Sapey parish or neighbouring parishes would be a car owner given the rural characteristics of the area. As such, the unsustainable nature of the site is not seen as a reason or justification for lifting the condition.
- 6.7 This site could also be an opportunity to provide low cost open market housing, which would then not necessitate the need for a partnership with a registered social landlord. This is particularly so given that the 8 affordable dwellings recently approved within

Upper Sapey, submitted by Elgar Housing Association will provide 4 rented and 4 shared ownership properties but no low cost market housing. The provision of 5 open market dwellings may help to sustain the discount necessary on the 3 affordable open market units.

- 6.8 The applicants also refer to guidance contained within the Supplementary Planning Guidance concerning the provision of affordable housing. Paragraph 1.2 states that: "Some sites, particularly brown field sites, will probably have some constraints on development. Normally these will be taken into account in the land purchase price. However, where the developer can prove that a large number of development constraints exist such as contamination, access problems and unusually high site preparation costs, and where the development of housing would lead to significant improvements in the local environment Herefordshire Council may agree to accept a lower proportion of affordable housing". In this instance, the site was an exception site and therefore it is not considered that the site development constraints are particularly relevant. Furthermore, these constraints only relate to the extent of affordable housing to be provided and should not affect the principle of providing affordable housing.
- 6.9 In replacement of the condition, the applicants have 'offered' to provide a commuted sum for 'a local good cause'. The suggestions being put forward are for use by Lower Sapey Housing Association which falls within Worcestershire but encompasses Upper Sapey, an alternative regional housing association or the for the renovation of Upper Sapey village hall. The Council's Supplementary Planning Guidance based on Circular 6/98 entitled Planning and Affordable Housing introduced the concept of a financial or other contribution towards the provision of affordable housing on another site in the Local Planning Authority's area in lieu of on-site provision. However, the supplementary planning guidance states that such a contribution should be provided through a planning obligation, which the applicants make clear they do not wish to enter into in this instance. Without such an agreement, the local authority would have no control over the use and management of any commuted sum to ensure that it is utilised in the appropriate and intended manner and used for the benefit of the parish/locality. The provision of a sum of money for the village hall would not meet the criteria set out in Circular 01/97 concerning planning obligation's as there would be no direct or indirect linkage with the development and the sum of the money provided.

Conclusions

- 6.10 Whilst the condition has no specific adopted development plan policy support, this should not be used as justification for the removal of condition given the exception status of the site. The condition is necessary in that there is an identified need for additional affordable housing in the locality and it meets all the other tests set out in the Circular concerning the use of planning conditions. The offer of a commuted sum is not considered to be appropriate in this instance. The retention of the condition is therefore fully justified and the application is recommended for refusal.

RECOMMENDATION

That planning permission be refused for the following reason:

- 1 Planning permission was approved as an exception to the prevailing adopted Development Plan Policies and therefore it is considered reasonable and justified to secure 3 affordable dwellings to meet a clear and identified need. As such the retention of the condition is justified in accordance with guidance contained within Circular 11/95 entitled 'The Use of Conditions in Planning Permissions' and guidance contained within the Supplementary Planning Guidance entitled the 'Provision of Affordable Housing' dated March 2001.**

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.