



Appeal Decision

Site visit made on 30 May 2019

by **A McCormack BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20th June 2019

Appeal Ref: APP/P0240/W/19/3222182

Land to the south of Barford Road, Blunham, Bedfordshire MK44 3NE

- 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 Abbey Developments Limited against the decision of Central Bedfordshire Council.
- The application Ref CB/18/02867/VOC, dated 17 July 2018, was refused by notice dated 23 January 2019.
- The application sought planning permission for residential development of up to 44 dwellings including specific accommodation for over 55s and open space, with all matters reserved except for access without complying with a condition attached to planning permission Ref CB/16/04369/OUT, dated 13 April 2017.
- The condition in dispute is No. 4 which states that: *'Any subsequent reserved matters application shall include the provision of three over 55's bungalows. Each of the bungalows hereby permitted shall be occupied only by: a) persons aged 55 or older; or b) a widow or widower of such a person or persons; or c) any resident dependent or dependents of such a person or persons; or d) a resident carer of such a person or persons.'*
- The reason given for the condition is: *'In view of the need for elderly accommodation in the area and in accordance with the NPPF.'*

Decision

1. The appeal is dismissed.

Procedural Matter and Background

2. The declaration on the original application form, Ref: CB/18/02867/VOC, was not dated. However, it has been indicated in the submissions of both of the main parties that the application was registered on 17 July 2018. As a result, in the absence of any evidence to indicate otherwise, I have used this date with reference to the application to vary the disputed condition which is the subject of this appeal.
3. The appeal follows the Council's refusal to grant planning permission relating to application Ref CB/18/02867/VOC, dated 17 July 2018, to vary Condition 4, an age-related occupancy condition for properties specifically for persons aged 55 and over, attached to outline approval Ref CB/16/04369/OUT. The approval was for residential development of up to 44 dwellings including specific accommodation for over 55s and open space, with all matters reserved except for access. Since that approval, reserved matters relating to the proposed development have been granted and construction, including the three relevant bungalows to this appeal, was ongoing at the time of my site visit.

4. The appellant has sought to amend Condition 4 by removing the second sentence which sets out the occupancy requirements for three bungalows on the approved development for persons aged 55 and over. The reason for this that it is considered that the disputed condition is too restrictive and does not meet the relevant tests.

Application for costs

5. An application for costs was made by Abbey Developments Limited against Central Bedfordshire Council. This application is the subject of a separate Decision.

Main Issue

6. The main issue is whether the condition is necessary to make the development acceptable with regard to meeting local housing needs for older people, and if so, the effect that varying the condition would have on meeting that local need.

Reasons

7. The appellant argues that the disputed Condition 4 is too restrictive and would have an adverse effect on the ability of purchasers to resell their property in the future. As such, it also would have an adverse effect on the initial interest from buyers in the first instance. This is supported by the appellant's argument that the first dwelling specifically for '55s and over' was apparently first marketed in October 2018 and no interest in its purchase had been received.
8. Notwithstanding this, I note that there is no substantive evidence of a lack of interest in the first dwelling. Moreover, in Paragraph 5.1 of the appellant's Rebuttal Statement, dated April 2019, it is stated that the three bungalows in question '*...are being constructed and will be marketed this year.*' This indicates that the marketing of the bungalows had not yet commenced as at April 2019.
9. The appellant says there is no evidence from the Council to show the extent of weight given to the 'benefit' of Condition 4 in terms of providing over 55s accommodation in the planning balance considered at the time when the original outline permission was granted. Although referenced in the original Committee Report as weighing in favour of the development, the appellant maintains that there is no specific reference given to the restrictive occupancy planning condition and no indication that this was fundamental in granting planning permission.
10. Paragraphs 129-134 of the Luton & Central Bedfordshire Strategic Housing Market Assessment (December 2017) (the SHMA), in accordance with the Framework and the Planning Policy Guidance (the PPG), outlines the housing need for older persons in the local area. This includes a need for bungalows. As such, it is evident that there is a need for single level dwellings for older persons in the local area to meet the varying needs of those within that age group. Moreover, the SHMA also indicates a growing population of older people in the area during the period to 2035. Based on this evidence, I consider that the provision of bungalows and single level accommodation specifically for older persons formed a substantive benefit that weighed in favour of the development approved under application Ref CB/16/04369/OUT.
11. It is noted in Paragraph 16.4 of the Committee Report relating to the original outline approval that significant weight was given by the Council to the delivery of 44 new dwellings, including affordable homes and older persons accommodation. The appellant argues that this demonstrates a recognition of the benefits of the wider development with only a passing reference to the over 55s accommodation. However, from the evidence, I consider it intrinsic in the Council's consideration of

the application that the specific provision of single level dwellings for persons aged 55 and over was a significant material factor in approving the scheme.

Furthermore, I find this view to be supported in the description of the approved development (Ref: CB/16/04369/OUT) which incorporates '*...including specific accommodation for over 55s ...*' and by the information provided within the SHMA.

12. The appellant claims that the removal of the age-related occupancy restriction within Condition 4 would not prevent the delivery of the bungalows which are under construction. Furthermore, it would not prevent the bungalows from being purchased on the open market by older people or by those who have mobile impairment. As such, it is stated that varying the condition as proposed by the appellant would have only a limited effect on the benefits of the wider development. However, there is no evidence from the appellant to demonstrate that the requirement for the accommodation for persons aged 55 or over would place an unreasonable burden on the development.
13. Moreover, I concur with the Council's point that the disputed condition was entered into willingly by the original applicant prior to the land and planning permission being transferred to the appellant. Furthermore, it is reasonable to consider that the appellant would have been fully aware of the condition at that time.
14. The appellant notes that at the time the decision was determined, there was an acknowledged absence of a five-year housing land supply in Central Bedfordshire which, it is argued, was a significant factor in the approval of the original outline planning application. Notwithstanding this, the specific details of whether this was a significant reason why the Council approved the scheme are not before me. In any event, the proposal has been approved and 44 dwellings are being delivered.
15. I note the appellant's argument that Council officers have stated in a committee report that even with the variation of the disputed condition, the development as a whole would provide a positive contribution towards identified housing needs, including the provision of bungalows, and that such benefits outweigh any identified harm. Whilst I acknowledge that this may be the case, I find that Condition 4, as currently worded, also seeks to ensure that an identified specific local need for older persons housing is addressed.
16. The appellant says that the reason for refusal is contrary to the professional planning advice given to Members in the Committee Report and the contributions made by the officers at the Committee meeting. Nevertheless, the elected members of the Planning Committee are entitled to disagree with the advice given by officers and have done so in this case based on the material considerations relating to addressing local housing needs and community concerns.
17. Moreover, I note that there is no evidence from the appellant to demonstrate that accommodation for those aged 55 and over is no longer required in the area and that Paragraphs 59-61 of the Framework outline the need for local planning authorities to meet the accommodation needs of older persons, as defined in Annex 2 of the Framework.
18. It is argued that the removal of the age-related occupancy restriction within Condition 4 is not contrary to the Framework and that the Framework does not include a policy statement from which it could be concluded that a request to remove the restrictive occupancy requirement in Condition 4 is contrary to the Framework. As a result, the appellant concludes that the reason for refusal is not justified as it has no development plan policy basis and is not contrary to the policy advice in the Framework. Moreover, it is also stated that the undeniable need for

accommodation for older persons in the area and elsewhere in England is not a sufficient reason for the age-related occupancy restriction within Condition 4.

19. Notwithstanding this, the Framework does advise that the housing needs of different groups, including older people, should be assessed. Whilst there is an absence of relevant local policy in this case, I find that there is evidence in the form of the SHMA which identifies a local housing need for older persons. As such, having assessed that need, I consider that a requirement to provide appropriate accommodation to meet that need through planning approvals accords with Paragraph 59 of the Framework. Therefore, in my view, the development would fail to meet that need and would be contrary to the Framework by not requiring specific older persons accommodation through Condition 4.
20. The appellant has assessed Condition 4 against the six policy tests. In doing so, it is argued that the age restriction on occupancy is unnecessary. However, in order to meet the identified need for older persons accommodation set out in the SHMA, I find the existing age restriction to be necessary and relevant in this case, notwithstanding the absence of any specific adopted development plan policy.
21. Furthermore, the appellant considers Condition 4 to be unenforceable as there is no mechanism identified for assessing the status of occupiers of the bungalows by the local planning authority, such as through an ongoing management company. In addition, the appellant considers it to be unclear what sanctions would be imposed for non-compliance. I note that a comparison is drawn with another scheme where over 55s accommodation was part of the affordable housing provision and managed by the Registered Social Landlord. I do not have any specific details regarding this matter before me. Nonetheless, I consider it to be reasonable that such a mechanism, whilst not specified within Condition 4, could be agreed between the appellant and the local planning authority as part of the appropriate discharging of that condition.
22. The appellant argues that the wording of the disputed condition is not precise as there is no recognised definition of an 'over 55s bungalow'. Moreover, there is no justification for applying the age of 55 as indicating the need for a specific form of accommodation. In my view, there is no requirement for the condition to specifically define what this would be, other than to ensure that occupiers of dwellings are within the specified age group. As such, the purpose of Condition 4 is to ensure the provision of suitable single level accommodation is available and provided for persons aged 55 and over and to work towards meeting an identified local need for such accommodation.
23. Finally, the appellant states that, as it stands, Condition 4 is discriminatory and unreasonable as it restricts the three bungalows in question from many sectors of the home buying market. I consider the provision of such accommodation not to be so as it seeks to provide accommodation within the local area to meet an identified need for a specific group in the community. As such, in my view, this is no different to providing accommodation for other groups as identified within Paragraph 61 of the Framework, such as affordable housing, housing for families with children, students, service families or people with disabilities.
24. Having carefully considered the above matters, I find that Condition 4 passes the relevant tests and is therefore reasonable, relevant, necessary, precise and enforceable. Furthermore, based on the evidence put forward, I find that as it is currently worded, Condition 4 not only meets the policy tests, but also seeks to ensure that the development permitted reasonably contributes to identified local housing needs for older persons.

25. Consequently, I conclude that Condition 4 of the planning permission Ref: CB/16/04369/OUT is necessary to make the development acceptable in terms of meeting a specific identified local housing need for older persons. Furthermore, I conclude that varying Condition 4, as suggested, would result in the development failing to meet the identified specific housing need for older people's accommodation. It would, therefore, be contrary to the relevant sections of the National Planning Policy Framework 2018 which relate to identifying, assessing and addressing the local housing needs of different groups in the local area, including older people.

Other considerations

26. It is noted that the removal of the age restriction within Condition 4 would enable the bungalows to be purchased by others who may require single level living such as those with a physical disability who may be aged under 55. However, I do not consider this to be a benefit of such substance as to outweigh the aims of the condition as it currently stands.

27. A draft Deed of Variation was submitted by the appellant. This was to ensure that were the appeal allowed, all obligations and affordable homes within the S106 agreement attached to planning permission CB/16/04369/OUT would be secured and that planning permission is granted subject to the relevant conditions, to reflect the details approved under the original outline application and to secure the provision of bungalows. However, notwithstanding this, as I am dismissing the appeal, this document is not necessary.

Conclusion

28. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A McCormack

INSPECTOR