

DELEGATED DECISION REPORT

SMD/2023/0214
Valid 27/04/2023

1A BADGERS SETT
LEEK

REMOVAL OF CONDITION 7
RELATING TO 06/01246/FUL

(FULL - MINOR)

MAIN ISSUES

- Role and relevance of the condition

PROCEDURAL MATTERS

As first submitted this application was described by the applicant as '*removal of condition 9 relating to SMD/2004/1451*'. An outline consent was granted under this reference (formerly 04/01497/OUT) and reserved matters consent was obtained under reference SMD/2006/0069 (formerly 06/00257/REM).

In the course of assessing the application it has become apparent that the details approved under the reserved matters were not carried through to implementation. The development as built corresponds instead with a slightly later full permission reference 06/01246/FUL on the decision notice (also now referred to in records under SMD/2006/0989). This consent included an identically worded condition to that under condition 9 of SMD/2004/1451 only this time numbered condition 7. The applicant has agreed to amend the description of the current proposal to refer to condition 7 and application 06/01246/FUL.

DESCRIPTION OF SITE

Detached corner dwelling in small estate at Hencroft, Leek – within the Leek town development boundary.

PROPOSAL

From the applicant's Planning Statement: *This application is for the removal of the local occupancy condition that was attached to the original approval for the erection of the dwelling now known as 1A Badgers Sett. At the time of the application, SMDC had a moratorium on new housing and so the permission was only considered acceptable if it had a Local Occupancy Condition to restrict the occupancy of the house, effectively providing a form of affordable housing.*

Condition 7 of the approved application reads:

"The dwelling hereby permitted shall not be occupied, nor shall each subsequent new occupation be undertaken until such time as it has been demonstrated in writing to the Local Planning Authority, and such written consent has been provided, that

occupation of the dwelling will satisfy the following local occupancy criteria from the Supplementary Planning Guidance on Affordable Housing for Local People by meeting at least one of the following criteria:

- (i) They have lived continuously in the Staffordshire Moorlands community for at least five years;*
- (ii) They have strong local connection with the Staffordshire Moorlands by birth or upbringing, or by previous periods of residence;*
- (iii) They need to support their family currently living in the Staffordshire Moorlands or themselves in need of family support;*
- (iv) They are employed in the Staffordshire Moorlands.*

Reason - In order to achieve and maintain in perpetuity local needs housing in circumstances where planning permission would otherwise be refused."

The proposal is for this condition to be removed.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Local Plan (adopted 9th September 2020)

- SS1 Development Principles
- SS2 Settlement Hierarchy
- SS5 Leek Area Strategy
- H1 New Housing Development

National Planning Policy Framework February 2019

Paragraph(s) 1 – 14;

Section(s) 4 – Decision making; 6 – Building a strong and competitive economy; 7 – Ensuring the vitality of town centres; 8 Promoting healthy and safe communities; 11 – Making effective use of land; 12 – Achieving well designed places; 15 – Conserving and enhancing the natural environment; 16 – Conserving and enhancing the historic environment.

Adopted Supplementary Planning Documents/Guidance (SPD/G):

- Space About Dwellings SPG
- Design Principles SPG
- Design Guide SPD adopted 21st February 2018

Local Plan Supporting Evidence Documents:

- Landscape and Settlement Character Assessment (2008)

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

88/00683/OLD – land adjoining Brough Park Leek – site for residential development – approved

04/01497/OUT – single dwelling (outline) – approved [SMD/2004/1451] – nb condition 9 occupancy restriction

06/00257/REM – erection of detached dwelling (reserved matters) – approved
24.05.2006 [SMD/2006/0069] – not built

06/01246/FUL – detached dwelling – approved 22.12.2006 – built – nb condition 7
occupancy restriction

CONSULTATIONS

Publicity

Site Notice expiry date: 07.06.2023
Neighbour consultation period ends: 30.05.2023
Press Advert: N/A

Public Comments

None

Town / Parish Comments

Leek Town Council – no objection, it is not un-neighbourly.

SMDC Regeneration and Housing Delivery

No objection to the removal of the local connection criteria at 1A badgers Sett, Leek.

OFFICER COMMENTS

Principle of Development

The proposal is acceptable in principle as the dwelling is within the town development boundary. The main issues are: is the condition necessary, relevant to planning and to the development permitted, enforceable, and precise and reasonable in all other respects, in line with Paragraph 55 of the NPPF (2021).

The applicant's Planning Statement (PS) appears to regard the condition as one related only to 'affordable housing' (PS 5.5) but the condition provides four options only one of which must be met. All four involve a requirement to have demonstrated local connections in order to be eligible to live in the dwelling. However, only option (iii) includes a reference to economic circumstances of the occupier.

By reference to policy H2, the size of the original development (i.e. a single dwelling) would not trigger an affordable housing requirement if it were to be considered today as the trigger threshold is 10 dwellings or more.

Policy H1 covers 'new housing development' more generally. The relevant determining consideration for a dwelling at this location is at policy H1(4)(a) which says that – "Within the development boundaries of the towns and larger villages, residential development and development on unidentified (windfall) sites will be

permitted, subject to compliance with the Spatial Strategy and wider Local Plan policies”.

This site is within the Leek Town Development boundary and – subject to compliance with all other matters (such as design, highway safety etc.) – is therefore supported in principle. There would be no policy basis to attach occupancy restrictions.

It is for this reason that the application seeks the removal of the local occupancy condition. It is understood that for a period of time the Council commonly imposed the condition due to an ‘oversupply’ of housing in the District. However, challenges at appeal were allowed in favour of applicants, with Inspectors noting that there was no policy basis for the Council to require or impose such a restriction.

This is certainly the case for this site today – as demonstrated by policies SS5, H1 and H2, particularly in view of the fact that the Council cannot demonstrate a 5 year supply of housing. The condition does not therefore pass the tests as set out at paragraph 55 of the NPPF and its removal is therefore considered to be acceptable.

For a dwelling that has been fully implemented, the new Decision Notice must otherwise include all conditions attached to the original consent which remain relevant.

CONCLUSION / PLANNING BALANCE

Issue a new permission omitting condition 7. The only condition required to be retained is no.4 as this refers to certain requirements that are “to be retained for the life of the development” and therefore may be considered to have an on-going relevance for the life of the permission.

As noted at the head of this report under ‘Description of Site’ the outline permission initially referred to in this application has become obsolete. Although a reserved matters application followed under reference 06/00257/REM [SMD/2006/0069], it can be seen from the elevations drawings which accompanied the reserved matters application that the dwelling now present on the site does not match the drawings approved.

A further full planning application reference 06/01246/FUL [SMD/2006/0989] was approved at 22.12.2006 with drawings which identifiably represent the current building. This permission also included an occupancy restriction at condition 7 with the same wording as that used in condition 9 of the outline application which was initially cited in the applicant’s submissions here.

An informative could usefully be attached to the decision to record that the LPA has noted the Outline consent and its condition 9 but has come to the view that this consent can’t be amended as it has (a) lapsed; (b) hasn’t been implemented, and (c) can’t be implemented because there is an alternative scheme now built on the site.

OFFICER RECOMMENDATION : **approve**

Case Officer: Arne Swithenbank

Recommendation Date: 28th June 2023 revised 03.01.2023

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council