

**APPEAL BY MR A MOSS AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR THE DEMOLITION OF AN EXISTING BUNGALOW AND THE CONSTRUCTION OF THREE DORMER BUNGALOWS AT 8 BARFORD ROAD, NEWCASTLE**

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| <b><u>Application Number</u></b>      | <b>17/00483/FUL</b>   |
| <b><u>Recommendation</u></b>          | <b>Approval subject to securing of a planning obligation</b>                            |
| <b><u>LPA's Decision</u></b>          | <b>Refused by Planning Committee 17<sup>th</sup> August 2017 following a site visit</b> |
| <b><u>Appeal Decision</u></b>         | <b>Appeal allowed and planning permission granted</b>                                   |
| <b><u>Costs Decision</u></b>          | <b>An application for a partial award of costs against the Council granted</b>          |
| <b><u>Date of Appeal Decision</u></b> | <b>22<sup>nd</sup> February 2018</b>  |

**The Appeal Decision**

The Inspector identified the main issues to be the effect on the character and appearance of the area and the effect on the living conditions of the occupants of neighbouring properties with particular reference to overbearance. In allowing the appeal the Inspector made the following comments:-

- The proposed properties would be parallel to the boundary which currently separates properties on Barford Road from those on Stockwood Road. Although the plots would have shorter rear gardens than some in the area there is no uniformity in terms of plot sizes, shapes and sizes in the locality. The overall form of the buildings in a row would replicate the form of development in the vicinity and the properties would be discreetly situated at the head of the cul de sac with adequate spacing between them.
- Although the proposal would change the overall layout of properties along Barford Road by elongating the extent of development this was not seen as an unacceptable departure from the established pattern of development.
- The proposal would continue the suburban pattern of development in the locality and the overall scale, design, massing and location of dwellings on the site is suitable for the surroundings having regard to the edge of settlement location adjacent to the Green Belt and would not be out of keeping with its immediate surroundings.
- Although the development would extend the suburban built form towards the edge of the Green Belt and there would be some visibility of the development from surrounding landscape, and in particular from Bunny Hill, it would be mainly seen against existing residential development and as such would not be visually harmful to Bunny Hill and the prevailing form and character of the area.
- As a consequence of the proposal, three trees and a tree group would be lost but the quality of landscaping and tree planting along the boundary and across the site could be improved by a well-considered landscape scheme. Although a provisional tree preservation order has been placed on the large Scots Pine within the appeal site which the Council considers to make a valuable contribution to the local landscape, it is yet to be confirmed and taking into account the conclusions and recommendations of the Tree Survey and Impact Assessment there is no evidence to suggest that the tree in question would be prejudiced.
- In relation to impact on living conditions, the separation distances between the proposed dwellings and the existing properties on Stockwood Road are well in excess of the minimum recommended distance of 24 metres as set out in the Council's Supplementary Planning Guidance: Space Around Dwellings taking account of the significant level changes. There is also extensive landscaping in the rear gardens of properties along Stockwood Road which would also partly screen the proposal from the windows in the rear elevation of those properties.

- Although the appeal site is on a considerably higher level than nearby properties on Stockwood Road, given the overall scale and massing of the proposal, the landscaping in the locality and the considerable separation distances the proposal would not be unacceptably overbearing. As such the proposal would not be harmful in that regard.
- In terms of the relationship between the proposal and properties either side, Nos 7 and 9 Barford Road, the proposal has been designed to ensure there is no harmful or significant effect on the outlook from those properties.
- Therefore, in conclusion, the proposal would not have a harmful effect on the living conditions of the occupants of neighbouring properties with particular reference to overbearance.
- In relation to other local concerns raised regarding land stability, drainage, the intended use of the development, land ownership, density, ecology and the setting of a precedent for other similar developments, the Inspector did not consider that such matters would justify refusal.
- Two signed and completed Unilateral Undertakings require the appellant to make a financial contribution of £11,158 towards the improvement and maintenance of Guernsey Drive Play Area and/or Wye Road playing fields. The only difference between the documents is the timing of the payments as one requires payment to be made on commencement of development and the second on first occupation.
- Support for the contribution is found in Policy CSP5 of the Core Strategy which indicates that developer contributions will be sought to provide key funding to meet the needs of new residents for the delivery of the North Staffordshire Green Space Strategy and any replacement strategies. The replacement strategy is the Open Space Strategy (OSS) which was adopted in March 2017. The evidence indicates that a wide consultation exercise was carried out.
- The document is non-statutory and does not form part of the development plan, but nonetheless, it can be a material consideration in the determination of planning applications. It is clearly a document which will inform the emerging Joint Local Plan and be part of the evidence base and therefore the financial contribution is justified in order to ensure the development is compliant with the development plan.
- Both Guernsey Drive Play Area and Wye Road playing fields are relatively close to the appeal site and could potentially be used by future residents. The overall scale of the payment also appears to be reasonable in relation to the development proposed. Although the OSS is not an SPD or part of the development plan, it does represent the Council's latest position relating to the provision of open space and as such can be a material consideration in the determination of the current proposal, albeit somewhat limited. The requirement for the contribution can be justified by Policy CSP5 of the CS to which the OSS can reasonably relate.
- In addition, as a consequence of the very specific details of how the money would be spent locally and how it would relate to the development, the contribution would meet the statutory tests as set out in the CIL Regulations and a UU providing financial contributions towards off-site public open space is required in these particular circumstances.
- Given the timescales involved in the development process and the fact that any pressure on the open space provision locally would only occur once new residents have taken occupancy of the properties, the UU which provides for the contribution on the first occupation of the development is considered the appropriate version.
- Overall, the proposal would not be harmful to the character and appearance of the area nor to the living conditions of the occupants of neighbouring residential properties. Consequently the benefits of the proposal outweigh any potential harm and the appeal should be allowed.

### **The Costs Decision**

- In making an application for costs the appellant contended that the Council had requested a financial contribution which is not considered to meet the relevant tests as well as there being substantive issues relating to the reasons for refusal in particular circumstances where Council officers have recommended approval.

- In relation to the financial contribution sought with respect to public open space improvements and maintenance, the Inspector's decision concludes that it is justified in order to ensure that the development is compliant with the development plan. As such, the financial contribution meets the required tests and it is not considered that the Council has behaved unreasonably.
- Although the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate on material planning grounds why a proposed development is unacceptable and must provide clear evidence to substantiate the reasoning. The first reason for refusal set out by the Council is based on the design of the proposal. The officer report presented to the Committee states that the proposed dwellings would be discretely located and there would be no visual harm arising from the development. Furthermore, it advises that subject to the use of suitable materials and boundary treatment the proposal would be acceptable. There appears little evidence that in reaching its decision the Council took account of the character of the site and its surroundings, the context in which the proposal would be seen and the potential use of planning conditions to mitigate concerns such as landscape context and prominence.
- In concluding on the matter of character and appearance it seems that there is little in the way of objective analysis of the proposal in the context of the development plan and the Framework.
- The second reason for refusal is restricted to the effect of the proposal on the amenity of the occupiers of adjoining properties with reference to the resultant overbearing impact of the proposal. In coming to this conclusion there is evidence that the Council has disregarded the advice of officers who have presented a clear justification for supporting the proposal in the light of the adopted Space About Dwellings SPG. Even taking account of the significant change in levels between the appeal site and the rear of properties along Stockwood Road the separation distances recommended to be far exceeded. In addition the Council appears to have also disregarded other factors such as the landscaping in some of the rear gardens and dense boundary vegetation which would in some cases screen the proposal.
- In this regard the Council has made generalised and unsupported assertions about the effect of the proposal on the living conditions of adjoining residents.
- In the particular circumstances of this case where the Council cannot demonstrate that there is a five year supply of housing land and development plan policies relating to the supply of housing are out of date, regard should have been given to balancing the potential harm against the benefits that would result from the proposal. There is insufficient evidence that the Council undertook a reasonable balancing exercise when determining the application.
- Consequently, it appears that in the planning judgement having regard to the development plan, national planning policy and other material planning considerations the development should reasonably have been permitted. Therefore, the refusal of planning permission in this particular case represents unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, and a partial award of costs is justified.

### **Your Officer's comments**

In relation to the appeal decision, of particular note is the Inspector's conclusion regarding the Section 106 contribution towards off-site Public Open Space and the weight to be attached to the Open Space Strategy (OSS), adopted by the Council in March 2017. The Inspector stated that while the OSS is not a Supplementary Planning Document or part of the development plan, it does represent the Council's latest position relating to the provision of open space and as such can be a material consideration in the determination of a planning application. He concluded that the requirement for the contribution can be justified by Policy CSP5 of the Core Spatial Strategy to which the OSS can reasonably relate.

This is an important decision as it is the first occasion that the approach being taken by your Officers on this matter has been considered at appeal. The fact that the Inspector supported the approach that has been taken to date is helpful in consideration of subsequent planning applications.

In concluding in his cost decision letter that a partial award of costs is justified, the Inspector is finding that the Council behaved unreasonably, thereby causing the appellants to incur additional expense. The Inspector acknowledged that the Council is not duty bound to follow the advice of its professional officers but highlighted that if a different decision is reached the Council must clearly demonstrate on material planning grounds why a proposed development is unacceptable and must provide clear evidence to substantiate that reasoning. Despite being made aware that the Planning Committee visited the site before a decision was reached the Inspector considered that there was little evidence that the decision took account of the character of the site and its surroundings.