

APPEAL BY MR WARNER AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR THE CONVERSION OF THE GROUND FLOOR OF THE PROPERTY TO A TWO BEDROOM FLAT

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| <u>Application Number</u> | 17/00838/FUL |
| <u>Recommendation</u> | Refusal |
| <u>Appeal Decision</u> | Appeal allowed and planning permission granted |
| <u>Costs Decision</u> | An application for the award of costs against the Council refused |
| <u>Date of Appeal Decision</u> | 22nd June 2018 |

The Appeal Decision

The Inspector identified the main issues to be whether a financial contribution is necessary towards public open space provision in the area. In allowing the appeal the Inspector made the following comments:-

- Paragraph 204 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Levy Regulations (CIL) require that planning obligations should only be sought when they are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale to the development.
- Policy CSP10 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006 – 2026 (adopted October 2009) (CSS) indicates that developers are required to have regard to the consequences that may arise from development. Proposals should therefore include provision for necessary on-site and off-site infrastructure, community facilities and/or mitigation measures where this is necessary to ensure comprehensive planning and to avoid placing an additional burden on the existing community and area. It states that these may include open spaces, sport and recreation facilities. Saved Policy IM1 of the Newcastle-under-Lyme Local Plan 2011 (adopted October 2003) (NLP) states that where a development requires improvements to infrastructure, or essential facilities, to make it acceptable then the developer will be expected to carry out or contribute to the funding of appropriate works.
- Policy C4 of the NLP only seeks the provision of, or a contribution towards, open space and its maintenance in housing proposals with ten or more dwellings or 0.4ha. The proposal is clearly well below this threshold. Policy CSP5 of the CSS states that open space, sport and leisure assets will be enhanced, maintained and protected by a number of measures including the use of developer contributions to meet the needs of new residents, and help deliver a variety of green space strategies in the area, and any approved revision or replacement strategies.
- In March 2017 the Council adopted the Open Space Strategy (OSS) as a replacement strategy for the 2007 Urban North Staffordshire Green Space Strategy (GSS). Although not a Supplementary Planning Document, or formally part of the development plan, it is a strategy that relates to Policy CSP5. In addition, the Council's evidence shows that before adoption, the draft document was subject to an extensive consultation process. The OSS indicates that 0.004 ha of open space should be provided per dwelling irrespective of type or tenure and that the open space will be provided in areas of not less than 0.1ha regardless of development size. This approach conflicts with Policy C4 of the NLP and advice in the Planning Practice Guidance (PPG) outlined below.
- The OSS also provides a cost model for off-site contributions that is an update of the cost model from the GSS. On this basis, the Council have indicated that in this case they are seeking a contribution towards off-site open space of £5,579. This comprises £4,427 for capital development/improvement of open space and £1,152 towards maintenance for 10 years.

- Notwithstanding the OSS, the PPG makes clear that contributions towards affordable housing and tariff style planning obligations should not be sought from developments of 10 units or less and which have a maximum combined gross floor space of no more than 1,000 sqm. This accords with Policy C4 of the NLP. The PPG states that a tariff style is one where contributions are pooled in funding ‘pots’ intended to provide common types of infrastructure in the wider area.
- The Council indicated that this would be used for the nearby Heath Row playing field and although calculated on a “sum per dwelling” basis it does not meet the definition of a tariff style contribution. She accepted, in the absence of any outdoor amenity space on site, future occupiers may well use this nearby open space.
- However, it was noted that the table in the OSS indicates that the funding required per dwelling is for a range of different types of open space, including parks and gardens, amenity green space, natural and semi-natural green space, play spaces, allotments, and outdoor sports. This would suggest that the funding received from each dwelling would be pooled and used towards a variety of different types of open space in an area, and so would be a tariff style contribution.
- In the absence of the precise details of how the money is to be utilised, or any evidence as to why the need for improvement to this local area is such that all the money would be used in this way rather than being split as indicated in the OSS. Moreover, if the funding is only to be used on the one site, it has not been demonstrated how the amount of funding required has been calculated, as the table in the OSS sets out funding calculation for a variety of open space requirements. Whilst the Council have said it would not be contrary to CIL Regulation 123, which restricts the total amount of contributions that can be pooled to any one project, there is no evidence to show that no other money would be utilised for the proposed work, which would have to be the case if it were not to be a tariff style contribution.
- In the absence of such information, she considered that the financial contribution being sought is a tariff style contribution, which the PPG indicates should not be sought on a development of this size.
- Bringing these points together: whilst the development plan policies support the need for developments to make adequate provision for open space either on site or through financial contributions for off-site provision, there is a conflict between Policy C4 of the NLP which requires such provision only in developments of 10 or more dwellings, and Policy CSP5 supported by the recently adopted OSS which requires a contribution from any residential development regardless of size. The latter is also contrary to the PPG. One of the key aims of the changes made to the PPG was to reduce the disproportionate burden of developer contributions on small scale developers.
- Given this, and in the absence of specific details about how the financial contribution would be spent and how it relates to the appeal proposal, the Inspector concluded that the contribution requested would not meet the statutory tests set out in the CIL Regulations and the Framework. Consequently, she considered that it is not necessary to require a contribution to open space provision in this case.

The Costs Decision

- In making the application for an award of costs, the appellant has set out how he considers that the Council acted unreasonably in dealing with the application. In particular he has highlighted that, despite having pre-application discussions, it was at a very late stage in the process that the need for a planning obligation was first mentioned. He has also highlighted the length of time it took to determine the application, and the difficulties he had communicating with Officers, and getting information about the obligation, how it was calculated, and what it was for.
- The Inspector noted the OSS was adopted in March 2017, several months before the pre-application discussion took place and the application was submitted. As a result, the Council’s change in approach, and thus the need for a financial contribution from this scheme, should have been known about before the pre-application advice was given, and the application was made.

- However in not advising the appellant about the need for a financial contribution until a very late stage, she considered that the Council's behaviour at application stage was unreasonable. Notwithstanding this, there is no indication from the appellant that if he had known about the need for a financial contribution at the start of the process he would have provided a planning obligation as part of the application. Consequently, the application would still have necessitated an appeal.
- In conclusion, she therefore considered that the Council have acted unreasonably at application stage, but this action has not resulted in unnecessary or wasted expense, and thus an award of costs, as described in the PPG, is not 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 in this case acknowledges the tension created by using the OSS document relative to Policy C4 within the Development Plan and the subsequent burden this places on developers. She also was critical of the Council's current approach to accepting that the financial obligation sought was not a tariff style contribution.

This is an important decision as it is the first occasion that the approach being taken by your Officers has proved to be unsuccessful at appeal. The fact that the Inspector did not support the approach is however helpful in consideration of subsequent planning applications alongside the information provided by Landscape Development Services, in what is, still a relatively recent practice.

A meeting has taken place with representatives of the Landscape Development Services where it was agreed that this appeal decision did not justify the abandonment of the policy to seek public open space contributions in respect of developments of less than 10 dwellings. It was also agreed that more evidence would need to be provided to demonstrate that the contribution to be secured could be spent without the need for it to be pooled with other money.