
Appeal Decision

Site visit made on 18 December 2018

by Eileen Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 13 February 2019

Appeal Ref: APP/P3420/W/18/3211831

1 Wade Court, Market Street, Kidsgrove ST7 4BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Peter Phillips of Handyman Maintenance against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 18/00393/FUL dated 2 May 2018 was refused by notice dated 1 September 2018.
 - The development proposed is change of current use (communal area) into a 1 bedroom self contain flat
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Decision

1. The appeal is allowed and planning permission is granted for change of current use (communal area) into a 1 bedroom self contain flat at 1 Wade Court Market Street, Kidsgrove ST7 4BB in accordance with the terms of the application, Ref 18/P3420/W/, dated 2 May 2018 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan Ref 00/545LJJ; Proposed Flat Layout Drawing No 0202; Site Plan Drawing No 0201.
 - 3) Demolition or construction works shall take place only between 0700 and 1800 on Monday to Friday, 0700 to 1300 on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.

Main Issue

2. The main issue is whether the appeal proposal makes adequate provision for public open space in the area.

Reasons

3. The appeal site is a communal area in the centre of a block of sixteen flats in the town centre of Kidsgrove in a sustainable location.
4. The Council has no objection to the conversion of a communal area to a single bedroom flat in principle but considers that a monetary contribution

for open space provision is necessary to make the development acceptable in planning terms.

5. Paragraph 56 of the National Planning Policy Framework (NPPF) and Regulations 122 and 123 of the Community Infrastructure Levy Regulations (CIL) state that planning obligations can only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
6. The development plan for the appeal site consists of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (the Spatial Strategy), adopted in 2009, and the saved policies of the Newcastle-under-Lyme Local Plan 2011 (the saved Local Plan). This plan was adopted in 2003.
7. Policy IM1 of the saved Local Plan sets out the Council's overarching policy for contributions and states that where a development proposal would require 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.
8. The Council accepts that Policy C4 of the saved Local Plan is not triggered as it only requires the provision of, or a contribution towards open space, where the development is less than 10 units or more than 0.4 hectares; the appeal proposal is significantly below that criterion.
9. However, Policy CSP10 of the Spatial Strategy "Planning Obligations" states that development should include provision for necessary on-site and offsite community facilities including open space to ensure comprehensive planning and to avoid placing an additional burden on the existing community and area.
10. Paragraph 96 of the NPPF refers to planning policies having robust up to date assessments of the need for open space. The Council believes it has such an assessment. Policy CS5 of the Spatial Strategy does refer to contributions providing a key funding source for new residents through the Urban North Staffordshire Green Space Strategy and any replacement strategies. The Open Space Strategy was adopted by the Councils Cabinet on the 22nd March 2017 (the OSS) as a replacement for the Urban North Staffordshire Green Space Strategy.
11. The Supplementary Planning Document (SPD) for Developer Contributions, September 2007, is not part of the development plan but has been through a consultation process and was intended to provide further guidance on the approach to contributions set out in the Local Plan. It refers to the Policy C4 triggers for requiring an open space contribution but predates the OSS.
12. The OSS states that it is good practice for residential development to provide 0.004 hectares of open space per dwelling and sets out a costs model for calculations. The Council is seeking a contribution rather than the provision of open space. However, there is clear tension between Policy CS5 and CS10 of the Spatial Core Strategy and the OSS and Policy C4 of the saved Local Plan, as they require obligations for all developments regardless of size.

13. The more recent policies are also not in accordance with the Written Ministerial Statement of the 28th November 2014, which was found by the Court of Appeal to represent national planning policy. This has been incorporated into the Planning Practice Guidance¹ and states that tariff style contributions should not be sought for developments of 10 units or less with less than 1000 sq. metres floor space. This represents a material consideration of significant weight.
14. However, the Council considers that the contribution they are seeking is not a tariff style contribution. The contribution would be spent on improvements to paving routes in the area of Weir Grove or Mount Road, which are the nearest points to the open space area off Powy Drive and Medina Way.
15. A tariff style contribution means that contributions are pooled funding pots intended to provide common types of infrastructure for the wider area and calculated on a sum per dwelling basis. The sum here is calculated on a per dwelling basis. Whilst stating that the contribution will not be pooled, the Council also indicates that the sum would not be sufficient to cover improvements to the full extent of paving routes and refers to limited improvements, which also suggest further improvements to these specific routes, again leading to pooling. On the basis of the information before me, this is, therefore, a tariff style payment.
16. The OSS identifies the area generally as being relatively well-provided for in terms of open space, with the quality of space being between good and very good. It further states that Policy C4 is a detailed policy, which endeavours to secure appropriate amounts of new open space, on the other hand, Core Strategy Policy CS10 seeks contributions to a wide range of infrastructure.
17. The methodology used in the OSS is stated to come from the cost model in the 2007 Urban North Staffordshire Green Space Strategy, which drew on the Local Plan policies, notably C4, producing a figure of £4427 plus maintenance of £1152. The figure is then discounted by removing the £512 allocated in the OSS, Table 8, for play due to this being a one bedroomed flat for one adult. However, the wording below the table indicates that the calculation is based on a figure of 2.5 people per dwelling whereas this is a one bedroomed flat. The figure includes a variety of areas such as allotments, parks and gardens and only £602 per dwelling for natural green space. The use of this Table indicates limited correlation between what is necessary as a result of this development and the Council's general requirements for open space provision. The OSS states at paragraph 5.24 that each individual case will need to be looked at carefully before seeking s106 tariff payments.
18. The Council has referred to two recent appeal decisions which relate to the contribution issue. The first of those decisions APP/P3420/W/17/3189223 related to a larger development. However, the payment of a contribution was not in issue, and I cannot be sure of the evidence before that Inspector and this is therefore of limited relevance to the appeal before me.

¹ Paragraph: 031 Reference ID: 23b-031-20161116

19. The second appeal decision APP/P3420/W/18/3195851(Monument Road appeal) does have similarities with the appeal proposal in that the development was small scale being the conversion of a ground floor property into a 2 bedroom flat where the payment of a contribution was in issue.
20. The Inspector in that instance found that the nature of the contribution sought was a tariff style contribution which did not meet the statutory test set out in the CIL Regulations.
21. The Council considers that the information supplied about where the contribution will be spent for this appeal proposal is specific enough to distinguish it from the Monument appeal. However, in the Monument Road appeal, the sum was said to be for a named nearby playing field. The Inspector's concerns related to why the money would be used in a certain way and also the lack of evidence to show that no other money would be used for the proposed work.
22. The Inspector also identified the policy conflict that existed between the Policy C4 of the saved Local Plan, which would not require a financial contribution for the appeal proposal and would be in line with the Ministerial Statement and the later Policy CSP5 which together with CSP10 and the OSS could be considered to require contributions for all developments.
23. I do not, therefore, consider that the detail provided of work to be done overcomes the issues that I have identified and that were also evident in the Monument appeal. I am not satisfied that the financial contribution is not a tariff style payment nor that it would meet the statutory requirements of the CIL Regulations in that the request is necessary. There is also limited evidence before me to indicate that the Council has shown that the sum of £4933 is fairly and reasonably related in scale and kind to a change of use of 42 square metres for one adult.
24. Furthermore, the PPG notes that authorities can still seek obligations below the threshold but only for site specific infrastructure, such as improving access and the provision of adequate street lighting. I consider that such exceptions do not apply here. Therefore, the seeking of a contribution conflicts with Policy C4 of the Local Plan, but can be considered to comply with the general approach to infrastructure set out in Core Strategy Policies CS5 and CS10. It further conflicts with the significant material consideration of the national policy approach set out in the Ministerial Statement and the PPG. Overall, I consider that any conflict with the development plan in this case is outweighed by more recent national policy.
25. In reaching my decision, I have had regard to Policies CSP5 and CSP10 of the Spatial Strategy, Policies C4 and IM1 of the saved Local Plan, the Supplementary Planning Document on Development Contributions, the OSS and the NPPF particularly paragraphs 56 and 96, and the accompanying PPG.

Conditions

26. I have imposed the standard time limit on implementation and the plan condition for certainty. The hours of operation during construction condition

is required to safeguard the residential amenity of occupiers of other flats within Wade Court in accordance with the principles of the Framework. I have amended the wording of the construction condition for clarity.

Conclusion

27. For the reasons given, the appeal is allowed with conditions.

Eileen Griffin

INSPECTOR