



Appeal Decision

Site visit made on 31 January 2018

by **A A Phillips BA (Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 February 2018

Appeal Ref: APP/P3420/W/17/3189223

8 Barford Road, Newcastle Under Lyme ST5 3LF

- 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 Mr A Moss against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 17/00483, dated 8 June 2017, was refused by notice dated 26 September 2017.
 - The development proposed is demolition of the existing bungalow and construction of three dormer bungalows.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing bungalow and construction of three dormer bungalows at 8 Barford Road, Newcastle Under Lyme ST5 3LF in accordance with the terms of the application, Ref 17/00483, dated 8 June 2017, subject to the conditions set out in the Schedule to this decision.

Application for costs

2. An application for costs was made by Mr A Moss against Newcastle-Under-Lyme Borough Council. This application is the subject of a separate decision.

Procedural Matter

3. Signed and completed Section 106 Unilateral Undertakings (UU) have been submitted by the appellant. They would secure a financial contribution towards public open space. Further comments have been received by the appellant with regard to the requirements of the UU and the Council have been given an opportunity to respond to those comments. I return to this matter later in this decision.

Main Issues

4. The main issues are:
 - i. the effect on the character and appearance of the area; and
 - ii. the effect on the living conditions of the occupants of neighbouring properties with particular reference to overbearance.

Reasons

5. It has been confirmed that the Council is unable to demonstrate a five year housing supply and as such paragraph 49 of the National Planning Policy Framework (the Framework) applies and development plan policies should not be considered up to date. The consequence of this is that the presumption in favour of sustainable development as set out in paragraph 14 of the Framework applies to the current proposal.
6. The site is within the urban area, close to public transport facilities and there is good access to a range of services and facilities nearby. As such there is no objection in principle to the proposed development and there is a presumption in favour of the proposed development unless there are any adverse impacts which significantly and demonstrably outweigh the benefits of the proposal or specific policies in the Framework indicate that development should be restricted.

Character and appearance

7. The appeal site is currently occupied by a detached dwelling and is approximately 0.2 hectares in size. It is situated within the urban area of Newcastle Under Lyme and adjacent to land designated as Green Belt. Land to the south of the site is known as Bunny Hill which is an open area of countryside with footpaths and public rights of way which is used for informal recreation including dog walking. There are some trees on the site, including some mature specimens along the boundary with the rear gardens of properties on Stockwood Road.
8. The site is situated at the end of a cul de sac and the land slopes downwards towards the rear of the existing houses on Stockwood Road which have steep downward sloping gardens. Properties along Barford Road comprise bungalows which are set back from the road edge by relatively open landscaped gardens. The plot the subject of this appeal appears to be significantly larger than other plots in the area, but it is not highly prominent due to landscaping along the boundary with Bunny Hill and the presence of existing buildings nearby. Nonetheless, as a large area of open garden it makes a positive contribution to the attractive residential area.
9. 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 I do not find there to be 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. The proposal would change the overall layout of properties along Barford Road by elongating the extent of development, but this need not be seen as an unacceptable departure from the established pattern of development.
10. 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. I do not agree that it would be out of keeping with its immediate surroundings.

11. 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. As such I do not consider that the proposal would be visually harmful to Bunny Hill and the prevailing character form and character of the area.
12. Following the submission of amended plans during the application process the appellant's Tree Survey and Impact Assessment confirms that as a consequence of the proposal three trees and a tree group would be lost. One of the trees which would be lost is of low quality, another is of moderate to low quality and one category U tree would be lost in the short term as a consequence of the development. Of importance to the loss of trees is the conclusion that as a result of the amendments submitted a mature Scots Pine which has an upright stem and full healthy crown would be retained. Some crown lifting is advised to ensure the long term health and retention of the tree.
13. I am aware that the tree report has been the subject of detailed comments from interested parties. I have carefully considered the nature of the concerns expressed but I have no evidence to suggest that the report and its conclusions are flawed or inaccurate in any way. Furthermore, the quality of landscaping and tree planting along boundary and across site could be improved by a well-considered landscape scheme including shrub and tree planting. I understand that a provisional tree preservation order has been placed on the large Scots Pine which the Council considers to make a valuable contribution to the local landscape. I am not aware that this has yet been confirmed. Given the amendments made to the proposal, 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.
14. Therefore, on this issue I conclude that the proposal would not have a harmful effect on the character and appearance of the area and as such would be in accordance with Policy CSP1 of the Newcastle Under Lyme and Stoke On Trent Core Spatial Strategy 2006-2016 (the CS), Saved Policy N12 of the Newcastle Under Lyme Local Plan 2011 Adopted October 2003 (the LP), Policies R3 and R12 of the Newcastle Under Lyme and Stoke On Trent Urban Design Guidance and the Framework. Among other objectives these seek to ensure that new development is well designed to respect the character, identity and local context. Development involving the removal of any visually significant tree, shrub or hedge will be resisted. Where, exceptionally, permission can be given and trees are to be lost through development replacement planting will be required in accordance with a landscaping scheme.

Living conditions

15. The Council's adopted Supplementary Planning Guidance: Space Around Dwellings (the SPG) recognises that the distance between buildings and the treatment of space around them have an important effect on the quality of life for residents. The separation between the proposed property on Plot 3 and the rear of No 63 Stockwood Road is approximately 35.6 metres, between the property on Plot 2 and the rear of No 61 is approximately 39.2 metres and between the Plot 1 and No 57 is approximately 38.9 metres. These separation distances are well in excess of the minimum recommended distance of 24

metres as set out in the SPG taking account of the significant level changes between the proposed development and the rear of the properties along Stockwood Road where an additional 3 metres is advised. I also observed at my site visit that there is 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.

16. The proposed dwellings would be closer to the shared boundaries with properties on Stockwood Road than some other properties on Barford Road. I also acknowledge that the appeal site is on a considerably higher level than nearby properties on Stockwood Road and as such parts of the new development may be visible from existing. However, given the overall scale and massing of the proposal, the landscaping in the locality and the considerable separation distances I do not consider that the proposal would be unacceptably overbearing. As such the proposal would not be harmful in that regard.
17. 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.
18. Therefore, on this issue I conclude that the proposal would not have a harmful effect on the living conditions of the occupants of neighbouring properties with particular reference to overbearance. As such there would be no conflict with Policy R15 of the Newcastle Under Lyme and Stoke On Trent Urban Design Guidance Residential Design Guidance, the SPG and the Framework.

Other matters

19. With reference to land stability I am aware that the site does not fall within an area defined as a Development High Risk Area or within the Abandoned Mines Catalogue. As such a Coal Mining Risk Assessment was not required to be submitted as part of the application. Furthermore, the method of construction of the development would be dealt with by an engineer rather than through the planning process. I do not consider that the development of sloping ground is highly risky as there are many examples of successful developments in the area and elsewhere involving steep ground.
20. Severn Trent Water has raised no objection to the proposal and I am not aware of any particular technical concerns from a drainage point of view, including risks to the existing sewerage infrastructure. As such I can see no reason why it is necessary to impose conditions relating to drainage.
21. I am aware that local residents have questioned the intended use and occupancy of the development. The appellant has stated their intentions and I have no evidence to question this. Also, in terms of material planning considerations I do not find the details of the occupancy to be relevant to the determination of this current appeal. Local residents also appear to be questioning information such as the employment status of the appellant which I do not find material to the current appeal.
22. Local residents also seem to be concerned that the Council Officer and appellant have worked together on this and other applications. Proactive working between parties is encouraged by the Framework and I have no evidence to suggest that the application has been dealt with unsatisfactorily in

this regard nor that the scheme has been dealt with in any other means than in accordance with the development plan and other material considerations. There is no firm evidence of underhand discussions between the appellant and Council officers and in any case such concerns would fall outside the remit of this appeal process.

23. I have no evidence that the details of land ownership are incorrect or that matters relating to land ownership are relevant to the determination of the current appeal. Parties have identified a number of development plan policies which they consider to be particularly relevant to the current proposal. However, some of the policies identified are not specified in the Council's reasons for refusal and as such are not key to the determination of the current appeal. Nonetheless, I find there to be no conflict with the development plan with regard to the Council's spatial principles of targeted development, spatial principles of movement and access or to the Spatial Policy for Newcastle and Kidsgrove Neighbourhoods Area. Neither do I find there to be conflict with Policy H1 of the LP regarding the sustainable location of development or T16 which relates to parking requirements.
24. With reference to concerns about the layout of the proposal I do not find that the density of the proposal is unacceptable given the density of existing residential development in the area. Given the separation distances I have identified above the proposal would not result in overlooking or loss of privacy to a harmful degree or a significant loss of natural light or sunlight. I have noted the concerns regarding the spacing standards around the plots; however, each property would be served by an adequately sized private amenity spaces.
25. I have no evidence that the site is of any particular ecological interest. I have also considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its individual merits and a generalised concern of this nature does not justify withholding permission in this case.

Section 106 Planning Obligation

26. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provision, 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.
27. There are two signed and completed UUs. They 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. It is my understanding that the only difference between the agreements is the timing of the payments; one obligation requires the payment to be made on commencement of development and the second obligation on first occupation.
28. Support for the financial contributions is found in Policy CSP5 of the CS 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. I understand that the replacement strategy is the Open Space Strategy which was adopted in March 2017. The evidence provided by the Council indicates to me that a wide

consultation exercise was carried out including local interest groups, Parish Councils, elected members and landowner representative groups, among others. Furthermore, there was extensive consultation publicity including on the Council's web site, social media and a press release.

29. However, the document is non-statutory and does not form part of the development plan. Nonetheless, it can be a material consideration in the determination of planning applications. The Open Space Strategy (OSS) is clearly a document which will inform the emerging Joint Local Plan and be part of the evidence base including with reference to development providing financial contributions towards public open space. The financial contribution is therefore justified in order to ensure the development is compliant with the development plan.
30. The Council states that the contribution in this case would be applied to Guernsey Drive Play Area and/or Wye Road Playing Fields. Both 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 clearly not an SPD nor form part of the development plan it does represent the Council's latest position relating to the provision of open space through development 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 I consider the Open Space Strategy adopted in March 2017 can reasonably relate.
31. 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 subject of this appeal I consider the contribution would meet the statutory tests as set out in the CIL Regulations and that a UU providing financial contributions towards off-site public open space is required in these particular circumstances.
32. 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 I consider the UU which provides for the financial contribution on the first occupation of the development permitted is the appropriate version to be attached to the permission.

Conditions

33. The Council has suggested a list of conditions which I have considered and where necessary amended in line with national policy and guidance. I have specified the approved plans as this provides certainty and attached a condition relating to external facing materials in the interests of the character and appearance of the area.
34. In the interests of highway safety I have imposed conditions requiring the development to be implemented in accordance with a construction method statement, the parking and turning areas to be provided in accordance with the submitted drawings and constructed of porous bound material and the integral garage for Plot 1 shall be retained for the parking of vehicles and cycles.
35. In the interests of the character and appearance of the area and to ensure satisfactory integration with the surroundings I have attached conditions

relating to landscaping, including tree planting, tree protection measures which shall be retained for the duration of the site works and there shall be no changes in levels other than those shown on the approved plans.

36. To protect the living conditions of future resident of the dwellings permitted I have attached a condition relating to noise levels which must be achieved internally and externally. Furthermore, to protect the living conditions of existing residents conditions restricting the hours of demolition and construction activities and measures relating to piling activities are considered to be reasonable in this case.

Conclusion

37. I have found that 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 with particular reference to overbearance. Consequently, the benefits of the proposal outweigh any potential harm. Therefore, for the reasons given above and taking into account other matters raised I conclude that the proposal is in accordance with the development plan taken as a whole and that the appeal should be allowed.

Alastair Phillips

INSPECTOR

SCHEDULE

- 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: 5359-002C, 5359-006D, 5359-003E, 5359-005.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) delivery, demolition and construction working hours;
 - v) recorded daily inspections of the highway adjacent to the site access; and
 - vi) wheel washing facilities.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 5359-002C for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The parking and turning areas shall be surfaced in porous bound material and shall thereafter be kept available at all times for those purposes.
- 6) The integrated garage hereby permitted for Plot 1 as shown on drawing no. 5359-003E shall be kept available at all times for the parking of motor vehicles and cycles by the occupants of the dwelling and their visitors and for no other purpose. It shall not be converted to living accommodation without the prior express permission of the local planning authority.
- 7) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping including tree planting.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which

within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 8) No development shall commence until tree protection measures have been implemented in accordance with details which shall have been submitted to and approved in writing by the local planning authority. The tree protection measures shall be retained for the duration of the works and shall only be removed once the development is completed.
- 9) There shall be no additional level changes in the site other than those shown on the approved plans unless such details have first been approved in writing by the local planning authority.
- 10) No development shall commence until details of the design measures, supported by an appropriate noise assessment, to be incorporated into the construction of the development hereby approved to ensure the following noise levels shall have been submitted to and approved in writing by the local planning authority. Thereafter the approved details shall be implemented in full prior to the first occupation of the development.

Internal noise levels not to be exceeded in all habitable areas attributable to external noise sources. Where windows need to be kept shut, adequate sound attenuated ventilation provision capable of providing purge ventilation and summer time cooling must also be demonstrated – 35 dBLAeq between 0700 and 2300, 30dBLAeq between 2300 and 0700 and 42dBLAMax between 2300 and 0700.

External noise levels to be achieved in garden areas and terraces – 50 dBLAeq between 0700 and 2300.

- 11) Demolition or construction works, including the movement of demolition or construction traffic entering or leaving the site, shall take place only between hours of 0700 and 1800 on Monday to Friday, between 0700 and 1300 on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 12) The applicant shall notify the local planning authority in writing at least 14 calendar days in advance of any piling work to be undertaken on site to enable the piling activity to be monitored by the authority. The piling program shall also be provided at the same time. Residents of Barford Road and Stockwood Road shall be notified in writing at least 14 days in advance of the commencement of piling operations. Impact piling shall not be undertaken on any part of the site. The piling contractor shall also carry out a vibration assessment of the initial piling solution in accordance with the relevant provisions of BS 5228-2:2009 "Code of practice for noise and vibration control on construction and open sites. Vibration" and also BS 6472-1:2008 "Guide to evaluation of human exposure to vibration in buildings - vibration sources other than blasting". Where the assessment shows a probability of adverse comment, the piling shall cease and appropriate mitigation measures designed to reduce the impact of the vibration from the piling solution shall be identified and implemented. The measures so identified shall be notified to the local planning authority in writing for its approval.

END OF SCHEDULE