



Appeal Decision

Site visit made on 11 June 2018

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2018

Appeal Ref: APP/P3420/W/18/3195851

Monument House, Crewe Road, Madeley Heath, Newcastle under Lyme CW3 9LH

- 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 Graham Warner against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 17/00838/FUL, dated 13 October 2017, was refused by notice dated 25 January 2018.
 - The development proposed is the conversion of the ground floor of the property into a two bedroom flat.
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Procedural Matter

1. I note the detailed description of development given on the application form. The more succinct description used in the heading above and the formal decision is that used on the decision notice.

Decision

2. The appeal is allowed and planning permission is granted for the conversion of the ground floor of the property into a two bedroom flat at Monument House, Crewe Road, Madeley Heath, Newcastle under Lyme CW3 9LH in accordance with the terms of the application, Ref 17/00838/FUL, dated 13 October 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location and Block Plan Drawing No 1370/1; Proposed Ground Floor Plan Drawing No 1370/2; Proposed First Floor Plan Drawing No 1370/3; Proposed Elevation to Keele Road Drawing No 1370/4; Elevation to Monument Hill Drawing No 1370/5; and Elevation to Back Yard Drawing No 1370/6.
 - 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.

Application for costs

3. An application for costs was made by Mr Graham Warner against Newcastle-Under-Lyme Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue in the appeal is whether a financial contribution is necessary towards public open space provision in the area.

Reasons

5. The appeal property is a two storey vacant building. The first floor has previously been used for residential purposes and it is proposed to convert the ground floor to a 2-bedroom flat. The proposal would not include any outdoor amenity space but there is public open space on Heath Row, within easy walking distance of the building. The Council has not raised any objection to the conversion in principle but considers that a planning obligation making financial contribution towards public open space is necessary to make the development acceptable in planning terms.
6. 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.
7. 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.
8. 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.
9. 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.

10. 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.
11. 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.
12. The Council has 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. I accept that, in the absence of any outdoor amenity space on site, future occupiers may well use this nearby open space.
13. However, I note that the table in in 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.
14. I have not been provided with 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.
15. In the absence of such information, I consider 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.
16. 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.

17. 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, I consider the contribution requested would not meet the statutory tests set out in the CIL Regulations and the Framework. Consequently, I consider that it is not necessary to require a contribution to open space provision in this case.

Other Matters

18. The appellant has raised a number of concerns regarding the Council's handling of the case. These are matters that would need to be taken up with the Council in the first instance, and in determining the appeal I have only had regard to the planning merits of the case.

Conclusion and Conditions

19. For the reasons set out above I conclude the appeal should be allowed.
20. As well as the standard implementation condition, I have imposed a condition specifying the relevant plans as this provides certainty. As the conversion will result in some changes to the exterior of the building, a condition is required to control these in the interests of the character and appearance of the area.

Alison Partington

INSPECTOR