

APPEAL BY PETER PHILLIPS OF HANDYMAN MAINTENANCE AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR THE CHANGE OF CURRENT USE (COMMUNAL AREA) INTO A 1 BEDROOM SELF CONTAINED FLAT AT 1 WADE COURT, MARKET STREET, KIDSGROVE

<u>Application Number</u>	18/00393/FUL
<u>Recommendation</u>	Refused under delegated authority 1st September 2018
<u>Appeal Decision</u>	Appeal allowed and planning permission granted
<u>Date of Appeal Decision</u>	13th February 2019

The Appeal Decision

The Inspector identified the main issue is whether the appeal proposal makes adequate provision for public open space in the area. In allowing the appeal the Inspector made the following comments:-

- 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 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.
- Relevant Development Plan policies are Policy IM1 and C4 of the saved Local Plan (LP) and policies CSP5 and CSP10 of the Core Spatial Strategy (CSS)
- 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 CSP5 of the CSS 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 (OSS) adopted 22nd March 2017 is a replacement for the Green Space Strategy.
- 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 CSP5 and CSP10 of the CSS and the OSS and Policy C4 of the saved Local Plan, as they require obligations for all developments regardless of size whereas policy C4 only requires a contribution where the development is more than 10 units or more than 0.4 hectares. The appeal proposal is below that criterion.
- 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 in to Planning Practice Guidance and states that tariff style contributions should not be sought for developments of 10 units or less with less than 1000m² of floor space. This represents a material consideration of significant weight.
- 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.
- 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 the contribution will not be pooled the Council indicates that sum would not be sufficient to cover improvements to the full extent of paving routes which suggest further improvements to these specific routes, leading to pooling. On the basis of the information, the Inspector considered it to be a tariff style payment.

- 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, CSS policy CSP10 seeks contributions to a wide range of infrastructure.
- The OSS cost model produces a figure of £4,427 plus maintenance of £1,152. The figure is then discounted for this proposal 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. 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.
- The Council referred to two recent appeal decisions which relate to the contribution issue. The first (Barford Road) related to a larger development. However, the payment of a contribution was not in issue and the Inspector (in this case) could not be sure of the evidence before that Inspector. It is therefore of limited relevance to this appeal.
- The second appeal decision (Monument House) 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. The Inspector in that case found the contribution to be a tariff style contribution and did not meet the statutory test set out in the CIL Regulations.
- 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 House appeal. However, in the Monument House appeal the sum was said to be for a named nearby playing field. The Inspector's concerns, in that case, 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
- The Inspector in the Monument House appeal also identified the policy conflict that existed between Policy C4 which would not require a financial contribution for the appeal proposals 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.
- The Inspector in this case did not consider that the detail provided of work to be done overcomes the issues that have been identified and that were also evident in the Monument House appeal. The Inspector was 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 that the sum is fairly and reasonably related in scale and kind to a change of use of 42m² for one adult.
- Furthermore the PPG notes that authorities can still seek obligations below the threshold but only for site specific infrastructure, such exceptions do not apply here. Therefore the seeking of a contribution conflicts with Policy C4 of the LP, but can be considered to comply with the general approach set out in CSS Policies CSP5 and CSP10. It further conflicts with the significant material consideration of the national policy approach set out in the Ministerial Statement and the PPG. Overall the Inspector considered that any conflict with the development plan in this case is outweighed by more recent national policy.

Your Officer's comments

Members will recall that reference was made to this appeal decision at Planning Committee on 26th February 2019 within a report that considered the decision and what consequences should arise from it. At the meeting Committee resolved, amongst other things, to cease to apply the policy of seeking public open space contributions in such cases. It was indicated, within the report, that a further full report on the appeal decision would be provided separately. This is that report.