
Appeals Received Hetton Houghton and Washington

Between 04/02/2011 and 28/02/2011

Team	Ref No	Address	Description	Date Appeal Lodged
------	--------	---------	-------------	--------------------

Appeals Determined Hetton Houghton and Washington

Between 01/02/2011 and 28/02/2011

Team	Ref No	Address	Description	Appeal Decision	Date of Decision
HO					
	10/00024/REF	SIG Combibloc Limited Blackthorn Way Sedgeleth Industrial	Mixed use development comprising the retention and refurbishment of Technical Centre Building to provide 1,440m2 of single storey commercial accommodation (use class B2 or B8);erection of 6,558m2 of single storey commercial accommodation (use class B2 or B8); erection of 15 flats in one three storey block, 17 bungalows, 6 two storey 4/5 bed detached houses and 33 two storey 2/3 bed semi-detached and terraced houses (use class C3) together with associated car parking, access roads (commercial access from Blackthorn Way and residential access from Sedgeleth Road), turning space and landscaped areas.	ALLOW	04/02/2011



The Planning
Inspectorate

SCAN 10/00024/REF

Quality Assurance Unit
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0117 372 8252
Customer Services: 0117 372 6372

Sunderland City Council
Civic Centre
SUNDERLAND
SR2 7DN

Your Ref:

Our Ref:

Date:

APP/J4525/A/10/2133345/NWF

4 February 2011

Dear Sir/Madam

Town and Country Planning Act 1990

Appeal by Mr Adrian Jackson

Site at S I G Combibloc Ltd, Blackthorn Way, Houghton Le Spring, DH4 6JN

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 0207 947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.

Yours faithfully



Amanda Baker

COVERDL2

You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button

Appeal Decision

Inquiry held on 7 December 2010

Site visit made on 8 December 2010

by Kevin Ward BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 February 2011

Appeal Ref: APP/J4525/A/10/2133345

**SIG Combibloc Ltd, Blackthorn Way, Houghton Le Spring, Tyne and Wear
DH4 6JN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Adrian Jackson (SIG Finanz AG) against the decision of Sunderland City Council.
 - The application Ref 09/04365/OUT, dated 20 November 2009, was refused by notice dated 5 February 2010.
 - The development proposed is mixed use development comprising the retention and refurbishment of technical centre building to provide 1,440sqm of single storey commercial accommodation (use class B2 or B8); erection of 6,558sqm of single storey commercial accommodation (use class B2 or B8); erection of 15 flats in one three storey block, 17 bungalows, 6 two storey 4/5 bed detached houses and 33 two storey 2/3 bed semi-detached and terraced houses (use class C3) together with associated car parking, access roads, turning space and landscaped areas.
-

Application for costs

1. At the Inquiry an application for costs was made by Mr Adrian Jackson (SIG Finanz AG) against Sunderland City Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal and grant outline planning permission for residential development up to a maximum of 71 dwellings on 2.25 ha of land and employment development (Class B2 or B8) up to a maximum of 7,998sqm on 3.31 ha of land at SIG Combibloc Ltd, Blackthorn Way, Houghton Le Spring, Tyne and Wear DH4 6JN in accordance with the terms of the application Ref 09/04365/OUT, dated 20 November 2009 subject to the conditions set out in the schedule attached to this decision.

Procedural Matters

3. The appeal concerns an application for outline planning permission including details of access. Appearance, landscaping, layout and scale are reserved for later consideration. The plans showing potential layouts submitted by the appellant are for illustrative purposes only.
4. The description of the proposed development set out in the heading above is taken from the application form. An additional statement of common ground was submitted at the Inquiry which included a simplified description. I have

determined the appeal on the basis of this simpler description subject to amendments to clarify the nature and amount of employment development permitted. These amendments were agreed by the main parties.

5. The Council withdrew reasons for refusal 1 and 2 and the evidence associated with them at the Inquiry. It also confirmed that based on the revised noise impact assessment and subject to conditions, its concerns over potential noise were overcome and reason for refusal 3 was withdrawn. Furthermore it confirmed that subject to such conditions it had no concerns over the wider impact on the living conditions of the residents of the proposed dwellings. The Council stated that it no longer contested the merits of the proposed development.

Main Issue

6. I consider the main issue to be whether the proposed residential development would be justified, given that it would be on an existing employment site, taking account of the supply of land for employment and housing and wider policy objectives.

Reasons

7. The appeal site forms part of the Sedgefield Industrial Estate. Residential development on such existing employment sites would be contrary to Policies EC4 and HA1 of the City of Sunderland Unitary Development Plan (the UDP).
8. The assessment carried out by the appellant, the Council's employment land review published in September 2009 and the figures set out in the statement of common ground all demonstrate a significant stock of employment land. Further analysis by the appellant indicates that based on average take up rates since 2000, the stock of readily available industrial and warehousing land equates to 21 years supply in the local Fence Houses area, 44 years supply in the Coalfield area and 19 years supply in Sunderland as a whole. This does not include identified land that would become available over time or vacant industrial buildings which would both add significantly to the supply. As the Council belatedly accepted at the Inquiry, there is a surplus of employment land in Sunderland, the Coalfield area and the locality of the site.
9. The main operations at the SIG factory ceased in mid 2006. Whilst there has been some limited disposal of smaller buildings and land, the main complex has remained largely vacant since then despite continuing marketing attempts. The Council accepted at the Inquiry that there is little prospect of the site coming forward for employment purposes in the foreseeable future. Given the wider supply of employment land, the scale and nature of existing buildings on the site, current economic circumstances and limitations on public funding I share this view.
10. Subject to appropriate layout, design and landscaping, I am satisfied that the proposed residential development would not prove a disincentive to existing or potential future users of the industrial estate and would not undermine attempts to develop the land on the opposite side of Blackthorn Way. Again this was conceded by the Council at the Inquiry.
11. Given this context, the appeal proposal would not adversely affect the overall supply of employment land, the need to provide an adequate range and choice of such land or the wider approach to economic development and regeneration.

12. The proposed dwellings would re-use previously developed land in the urban area. Such sites are prioritised in terms of the sequential approach to development set out in Policy 4 of the Regional Spatial Strategy (RSS). The appeal site is in a reasonably sustainable location in relation to services and facilities and links to public transport. The Council accepted at the Inquiry that the proposal would not undermine the strategic approach to the distribution and phasing of housing land set out in Policy H6 of the UDP and would be otherwise in line with wider policy objectives. Again I concur with this view.
13. Although reason for refusal 2 and the evidence associated with it was withdrawn, the Council did not specifically accept that there was less than a 5 year supply of deliverable housing sites. The appellant's position is that the supply of such sites falls well short of 5 years. Paragraph 70 of Planning Policy Statement 3: Housing (PPS3) makes it clear that even when there is a 5 year supply, proposals should be considered in terms of whether they would undermine wider policy objectives. In this case the appeal proposal would not. In the light of this, the extent of the supply of deliverable housing sites is not a determining factor in my decision.
14. I consider therefore that given the situation regarding employment land supply and the lack of conflict with wider policy objectives, the proposed residential development would in this case be justified as a departure from Policies EC4 and HA1 of the UDP.

Other Matters

15. I am satisfied that subject to appropriate layout, design and landscaping along with conditions to control the potential noise from Sedgeleth Road and the proposed employment units, there would not be an unacceptable impact on the living conditions of those occupying the proposed dwellings.
16. The appellant submitted a duly executed planning obligation in the form of a unilateral undertaking at the Inquiry. This concerns the provision of a proportion of affordable housing and contributions to the provision of children's play space. On the basis of Policies H16 and H21 of the UDP and taking account of the report to the Council's Planning and Highways Committee of 28 September 2010 and the Supplementary Planning Guidance on children's play space, I am satisfied that the undertaking is necessary to contribute towards meeting affordable housing needs and address the effect that the proposal would have on local recreational facilities. It would be directly related to the development and be fairly and reasonably related to it in scale and kind. The undertaking satisfies the requirements of Regulation 122 of the Community Infrastructure Levy Regulations and the tests of Circular 05/2005: Planning Obligations and I have therefore given it significant weight in reaching my decision.

Conditions

17. The Council had originally suggested a substantial number of conditions should the appeal be allowed. However, given that the appeal concerned an application for outline planning permission with all matters reserved apart from access, it accepted at the Inquiry that the suggested conditions relating to a scheme of working, boundary treatments, detailed parking provision, hours of construction, external materials, the control of dirt and debris, landscaping, a site/sales office and tree protection and replanting were not appropriate at this stage. In relation to an employment travel plan, it accepted that as there was

likely to be a reduction in employment over the site as a whole, such a condition was not necessary.

18. Given the existing and previous use of the site, I agree that a condition relating to potential contamination and remediation is necessary in the interests of the health and safety of the occupiers of the proposed dwellings. Conditions relating to the provision of a footway along the Sedgeleth Road frontage of the site and a pedestrian/cycle link from the site adjacent to the junction with Avenue Vivian are required to ensure that the proposed development would be readily accessible by a range of transport modes and well connected to services and facilities.
19. I agree that conditions are required in order to protect the occupiers of the proposed dwellings from undue noise and disturbance from Sedgeleth Road and to control the potential noise emissions from the proposed employment units. However, given that layout and landscaping are reserved matters I consider that some flexibility in terms of specific requirements is appropriate and that reference to the need for the submission and agreement of noise mitigation schemes is sufficient at this stage. I have amended and combined the suggested conditions where appropriate in the interests of clarity and simplicity. For the avoidance of doubt and in the interests of proper planning I have also imposed a condition to ensure that development is carried out in accordance with approved plans.

Conclusion

20. For the above reasons and taking account of other matters raised I consider that the proposal accords with Policies H1, H6, H16, H21, EN6 and EN9 of the UDP and Policies 18 and 29 of the RSS. I conclude that the appeal should succeed.

Kevin Ward

INSPECTOR

Schedule of conditions for Appeal Ref: APP/J4525/A/10/2133345

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed Site Access Arrangement Plan (JN0320-Dwg-0012).
- 5) No development shall take place until a scheme to deal with the risks associated with potential contamination of the site has been submitted to, and approved in writing by, the local planning authority. The scheme shall include:
 - i) a preliminary risk assessment
 - ii) where necessary a site investigation scheme
 - iii) the results of any site investigation and detailed risk assessment
 - iv) details of any remediation measures required, how and when they are to be undertaken and if necessary how they are to be retained
 - v) details and timings of sampling and target levels to be achieved
 - vi) post remediation monitoring arrangements, including necessary funding

Development shall be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the local planning authority.

If, following the commencement of development, contamination not previously identified is found to be present, no further development shall be carried out until an amendment to the scheme setting out the details of any additional remediation measures required has been submitted to, and approved in writing by the local planning authority.

- 6) No development shall take place until details of a scheme to provide a footway along the Sedgeleth Road frontage of the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 7) No development shall take place until details of a scheme to provide a pedestrian/cycle link from the site to Sedgeleth Road adjacent to the junction with Avenue Vivian have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 8) No development shall take place until details of a scheme to protect the occupiers of the proposed dwellings from noise from Sedgeleth Road

have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

- 9) No development shall take place until details of a scheme to control noise emissions from the proposed employment units have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Gill of Counsel

Instructed by the Solicitor, Sunderland City
Council

FOR THE APPELLANT:

Richard Sagar

Solicitor, Walker Morris

DOCUMENTS

- 1 Additional Statement of Common Ground 7 December 2010
- 2 Unilateral Undertaking submitted by the appellant
- 3 Supplementary Planning Guidance: Development Control
Guidelines

Costs Decision

Inquiry held on 7 December 2010

Site visit made on 8 December 2010

by Kevin Ward BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 February 2011

**Costs application in relation to Appeal Ref: APP/J4525/A/10/2133345
SIG Combibloc Ltd, Blackthorn Way, Houghton Le Spring, Tyne and Wear
DH4 6JN**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Adrian Jackson (SIG Finanz AG) for a partial award of costs against Sunderland City Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for mixed use development comprising the retention and refurbishment of technical centre building to provide 1,440sqm of single storey commercial accommodation (use class B2 or B8); erection of 6,558sqm of single storey commercial accommodation (use class B2 or B8); erection of 15 flats in one three storey block, 17 bungalows, 6 two storey 4/5 bed detached houses and 33 two storey 2/3 bed semi-detached and terraced houses (use class C3) together with associated car parking, access roads, turning space and landscaped areas.
-

Decision

1. I allow the application for an award of costs in the terms set out below.

The submissions for Mr Adrian Jackson (SIG Finanz AG)

2. The costs application was submitted in writing at the Inquiry. The Council's unreasonable behaviour relates to the late withdrawal of reasons for refusal 1 and 2.

The response by Sunderland City Council

3. A Statement of Common Ground on the costs application was submitted at the Inquiry. The Council accepts that the late withdrawal of reasons 1 and 2 constitutes unreasonable behaviour and does not contest the application for costs.

Reasons

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The Council withdrew reasons for refusal 1 and 2 at the Inquiry having only notified the appellant of its intention to do so the previous evening. The result,

having previously indicated that reason for refusal 3 could be overcome with conditions, was that it no longer contested the merits of the appeal proposal.

6. Other than indicating that it now considered that the evidence did not support a refusal of planning permission, the Council provided no explanation of its decision to withdraw reasons for refusal 1 and 2, nor did it point to any change in circumstances.
7. I find therefore that the Council acted unreasonably in the light of paragraph B4 of Circular 03/2009 and that this led to the appellant incurring unnecessary and wasted expense. A partial award of costs is therefore justified.

Costs Order

8. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act as amended, and all powers enabling me in that behalf, I HEREBY ORDER that Sunderland City Council shall pay to Mr Adrian Jackson (SIG Finanz AG), the costs of the appeal proceedings limited to those costs incurred in relation to the first and second reasons for refusal, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of planning permission for mixed use development comprising the retention and refurbishment of technical centre building to provide 1,440sqm of single storey commercial accommodation (use class B2 or B8); erection of 6,558sqm of single storey commercial accommodation (use class B2 or B8); erection of 15 flats in one three storey block, 17 bungalows, 6 two storey 4/5 bed detached houses and 33 two storey 2/3 bed semi-detached and terraced houses (use class C3) together with associated car parking, access roads, turning space and landscaped areas.
9. The applicant is now invited to submit to Sunderland City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Kevin Ward

INSPECTOR

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 – section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹. This is handled by:

The Senior Court Costs Office²
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 0207 9477124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court³. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or their Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

© Crown copyright

407

*Printed in Great Britain by the Planning Inspectorate on recycled paper Sept 2000
(updated)*

¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. These rules are available online at http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm

You can buy these Rules from The Stationery Office bookshops or look at copies in your local library or council offices.

² Formally named the Supreme Court Costs Office

³ Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.