
Items Delegated to the Deputy Chief Executive

Items Delegated to the Deputy Chief Executive

1. **Redevelopment and extension to existing store, service area and adjacent retail units with associated works to car park and landscaping (RESUBMISSION).**

09/02913/SUB J Sainsbury's Plc, Silksworth, Sunderland

03/08/09 Sainsbury's Supermarkets Limited

Decision: Approved

Date of Decision: 7th October 2009

Appeals Received South Sunderland

Between 01/09/2009 and 30/09/2009

Ref No	Address	Description	Date Appeal Lodged
09/00032/REF	15 Bristlecone □ Sunderland □ SR3 2NS □	Erection of two storey extension to side.	07/09/2009
09/00034/ADV	24 Pallion Road □ Sunderland □ SR4 6LS □	Erection of 2 internally illuminated free standing single sided display units	16/09/2009

Appeals Determined Sunderland South

Between 01/09/2009 and 30/09/2009

TEAM	Ref No	ADDRESS	Description	Decision	Date of Decision
	08/00054/REF	15 Victoria Avenue South Hylton Sunderland SR4 0QZ	Erection of garage to the side of property (Retrospective).	DISMIS	21/09/2009
	09/00009/REF	Flodden Road Sunderland	Erection of 90 no. residential dwellings with associated works and stopping up of existing highway. (AMENDED PLANS AND DESCRIPTION).	ALLOW	22/09/2009
	09/00011/REF	Land At Egerton Street Toward Road Sunderland	Erection of 2no blocks of student accommodation comprising 118 student bedrooms in 20 individual flats and associated external works parking and access to the site.	APPC	08/09/2009



Appeal Decision

Site visit made on 25 August 2009

by J D Waldron MCD BArch Architect

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

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Decision date:
21 September 2009

Appeal Ref: APP/J4525/C/08/2092963

15 Victoria Avenue, South Hylton, Sunderland SR4 0QZ.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Paul Thompson against an enforcement notice issued by Sunderland City Council.
- The Council's reference is 08/00055/ENF.
- The notice was issued on 8 December 2008.
- The breach of planning control as alleged in the notice is **Without planning permission the erection of a concrete sectional garage.**
- The requirements of the notice are **Dismantle the garage to the level of the concrete sub base and remove it from the land together with all waste and materials arising.**
- The period for compliance with the requirements is two calendar months from the date on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

DEVELOPMENT CONTROL
RECEIVED
21 SEP 2009
SUNDERLAND CITY COUNCIL

Appeal Ref: APP/J4525/A/08/2092951

15 Victoria Avenue, South Hylton, Sunderland SR4 0QZ.

- 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 Paul Thompson against the decision of Sunderland City Council.
- The application Ref: 08/03306/FUL dated 19 August 2008 was refused by notice dated 10 November 2008.
- The development is **Erection of garage to the side of property (Retrospective).**

Appeal on ground (a), the deemed application for planning permission and the appeal against the refusal of planning permission

Visual considerations

1. The garage is very prominent in the streetscene at the head of the cul-de-sac. As a prefabricated structure with roughcast sides, it appears mean and out-of-place in relation to the attractive brick-built houses with tiled roofs in the locality. It does not "respect and enhance the best qualities of nearby properties and the locality", as referred to in Policy B2 of the Unitary Development Plan. It is contrary to the aims of policy in Planning Policy Statement 1 which encourages good design. It does not accord with the guidance in "Household Alterations and Extensions (2007)" which states that "Detached garages should reflect the design, materials, character and style of the existing property". However, although this guidance appears to accord with Policy B2, it can be given limited weight until the full consultation process is completed and the document is formally adopted as Supplementary Planning Guidance.

2. The garage is between two pairs of semi-detached houses at right angles to each other. It is aligned at about 45 degrees to both houses. Although it projects in front of No 15, its positioning satisfactorily reflects its corner location. I am not persuaded that it is **"detrimental to the amenities of adjacent residents by reason of its size and position"** as referred to in the second reason for the refusal of planning permission.

Highway safety considerations

3. No 15 appears to have been built in the 1950s. Unless outhouses are demolished (that appear to be part of the original development) limited space is available on-site that is accessible from the highway. In "Household Alterations and Extensions (2007)" dimensions are given for useable garage space and for minimum driveway length in front of a garage. Using these dimensions, there is space for only one car to be parked or garaged on-site.
4. The development enforced against enables the two small cars of the appellant to be accommodated on-site, one in the garage and one on the driveway in front. Therefore, in present circumstances, the development cannot be said to have **"lead to an increase in on-street parking within the vicinity of the property, creating conditions prejudicial to highway safety and contrary to Policy T14 of the adopted UDP"** as referred to in the third reason for the refusal of planning permission.
5. However a larger car could neither be accommodated within the garage nor on the driveway in front (unless the garage door is left open). The Council points out that, in the future, a resident may well have a larger car because No 15 is a family-sized house. It follows that such car would most probably be parked on the highway.
6. While not disputing the Council's argument, a number of factors indicate against it happening. A prospective occupier would be aware of the situation. Cars are generally getting smaller in order to reduce emissions in response to global warming. No 15 is near to a Metro station and could well be attractive to those who do not own a car for whatever reason.
7. In assessing the extent to which highway safety might be compromised by an increase in on-street parking, it is relevant that vehicles are likely to be travelling relatively slowly as they approach the head of the cul-de-sac.
8. On balance, highway safety considerations do not provide sound planning justification for dismissing these appeals.

Conclusion

9. In conclusion, the development is contrary to the aims of Policy B2 of the development plan. I have taken into account the appellant's wish to garage his car during the extended periods when he works away from home and that no local resident has objected to the garage. However none of the matters raised changes my conclusion that, on balance, the appeal should fail on ground (a). Planning permission will not be granted on the deemed application. The appeal against the refusal of planning permission also fails.

Appeal on ground (g)

10. The appellant has put forward no sound reason why the period for compliance with the requirements of the notice is unreasonably short. I agree with the Council that two months is a reasonable period in which to demolish and remove this prefabricated structure. The appeal fails on ground (g).

FORMAL DECISION

Appeal against the enforcement notice

11. I dismiss the appeal, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Appeal against the refusal of planning permission

12. I dismiss the appeal.

J D Waldron

Inspector



Appeal Decision

Hearing held and site visit
made on 11 August 2009

by **Christopher Checkley**
BA(Hons) MRTPI

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

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Decision date:
22 September 2009

Appeal Ref: APP/J4525/A/09/2101257

Land at Flodden Road, High Ford, Sunderland, Tyne and Wear

- 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 Gladedale (Sunderland) Ltd against the decision of Sunderland City Council.
- The application (Ref 07/04411/FUL) dated 28 September 2007 was refused by notice dated 5 February 2009.
- The development proposed is erection of 90 no. residential dwellings and the refurbishment of 2 no. existing dwellings together with associated works.

Decision

1. I allow the appeal, and grant planning permission for the erection of 90 no. residential dwellings with associated works and stopping up of existing highway (amended plans and description) at land at Flodden Road, High Ford, Sunderland, Tyne and Wear, in accordance with the terms of the application, 07/04411/FUL dated 28 September 2007, and the amended plans submitted with it, subject to the conditions set out in the attached schedule to this decision.

Preliminary matters

2. An application for costs was made by the appellant, Gladedale (Sunderland) Ltd, against Sunderland City Council and it is the subject of a separate Costs Decision.
3. The application area and the detailed scheme were the subject of amendments prior to the application being determined. At the hearing the Council confirmed that the decision notice was in error in referring to some incorrect reference numbers and some drawings that had been superseded. My decision is made on the basis of the revised proposals shown on the amended drawings that were submitted on 13 June 2008 and 7 October 2008, as further amended by the revised Planning Layout ref G4:L:01G submitted on 17 November 2008 which omits the on-site play space at the request of the Council. The full set of revised drawings is listed in the letter dated 8 April 2009 from the agent to the Planning Inspectorate.
4. Also, I am using the description of the proposals within the decision notice, since this better describes the amended proposals that are before me. Finally, I am using the name of the company cited as the applicant on the application form as the appellant.

5. A completed unilateral undertaking signed by the appellant and the landowner was submitted by the appellant prior to the hearing. It contains an undertaking to make staged payments to the Council for off-site recreation provision. I have accorded significant weight to it.

Main issues

6. There are 2 main issues in this appeal. First, whether, in the absence of a Master Plan Supplementary Planning Document (SPD) for the High Ford Neighbourhood Renewal Area (NRA), the proposals are harmfully premature, unacceptably piecemeal or likely to be prejudicial to the delivery of the wider High Ford area strategic housing sites. Second, whether the amended scheme would achieve a good standard of design and layout.

Reasons

Premature, piecemeal or prejudicial development

7. The appeal site is just under 2 ha in area and is predominantly a cleared former housing site that has been grassed over. Most of the site lies within the boundaries of the partially cleared urban area referred to as the High Ford Neighbourhood Renewal Area (NRA) which extends to about 12.45 ha in area. The essence of the Council's main objection was that, since a Master Plan SPD was not available for the whole High Ford NRA, the proposal would result in a piecemeal and premature development, prejudicing future development of the adjacent land at High Ford which was considered to be a strategic housing site. The Council was also concerned that allowing this development would establish a binding precedent for the future design, density, massing and housing mix that would have to be followed for the whole of the High Ford NRA.
8. The companion guide to *PPS1, The Planning System: General Principles*, sets out government advice on the issue of prematurity (paragraphs 17-19 inclusive). It indicates that in some circumstances it may be justifiable to refuse planning permission on grounds of prematurity where a Development Plan Document (DPD) is being prepared or is under review but has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category. Similarly, *PPS3: Housing* (paragraph 72) advises that applications should not be refused solely on the grounds of prematurity. The Council did not seek to show that prematurity of this kind would arise.
9. I was told that the preparation of a Master Plan had been recommended in a Neighbourhood Renewal Assessment consultancy study (NRAS) commissioned jointly by the Council and the landowner (now a registered social landlord known as the Gentoo Housing Group). The NRAS was non-statutory assessment prepared by consultants and is not part of the development plan. Its recommendations therefore carry very limited weight in comparison with the development plan and a copy was not presented in evidence. There is no

requirement in the development plan to prepare a master plan for the High Ford area prior to granting any planning permissions within it.

10. The Council identified the High Ford area as one of its strategic housing sites within its Interim Strategy for Housing Land published in February 2006 (ISHL). Although the ISHL was subject to public consultation it was not subject to formal plan preparation procedures or public examination and it therefore warrants little weight in comparison to the development plan and national policies. The Council did not put forward evidence to show any significant conflict with its strategic approach to housing and regeneration, and indeed expressed no objection to appropriate housing development at High Ford.
11. Although the appeal site has been cleared of housing and lies within part of the urban area of Sunderland that is identified by the Council as in need of neighbourhood renewal, preparation of a High Ford Master Plan SPD has not taken place and the Council indicated at the hearing that this SPD is not listed as an intended document within the local development scheme. Such a document would not be subject to independent examination and would not form part of the statutory development plan. Clearly, no material weight can be attached to an intended Master Plan SPD document that does not yet exist and which is subject to no firm programme for its preparation.
12. The saved (September 2007) policies of the adopted City of Sunderland Unitary Development Plan (UDP) and the policies of the Regional Spatial Strategy (RSS) form part of the statutory development plan and provide the primary and appropriate policy context for the determination of this application.
13. I was presented with no basis under development plan policy or national guidance for the Council's case that the application would be premature in advance of the preparation of any High Ford Master Plan SPD that may or may not be prepared at some future date. None of the other material considerations before me indicate evidence of harmful prematurity. On the contrary, it would be contrary to the environmental and regeneration objectives of the development plan for the site to remain in its vacant and unused state.
14. In its hearing statement the Council refers to the appeal site as being a "*relatively small area of land*" (paragraph 6.1.4). I saw that the appeal site has well defined boundaries to the north, east and south in the form of established and significant public highways, and that it merges with existing development to the west. The site is separated from the remainder of the NRA to the north by Fordfield Road, a lengthy east-west route. The topography does not impose any special requirements. I find that the site is reasonably discrete and well-defined and the development of 90 homes would create its own identity without appearing piecemeal or unrelated to its surroundings. There was no case made that the scheme was so substantial that granting permission could prejudice policy objectives about the scale, location or phasing of new development. Indeed, the Council positively supported the principle of housing redevelopment of the appeal site and raised no objection to the total number of dwellings proposed.

15. Therefore, I find no evidence that the amended scheme would be harmfully piecemeal in extent or nature. It would connect well with its surroundings and relate harmoniously with them.
16. Although it was not specified as a refusal reason, a further objection expressed by members at the hearing was that the housing mix should have included both bungalows and social housing. However, no evidence on housing needs was put before me by the Council to substantiate this contention. The scheme would include a range of 2-storey dwellings for sale, including 37 two-bed, 50 three-bed and 3 four-bed houses in a mix of terraced, semi-detached and detached forms. I find that the amended scheme before me offers a reasonable mix of house types that would meet the 4 criteria within UDP Policy H1 (of maximising locational choice whilst allowing for a variety of needs, catering for reduced out-migration and increasing household formation, assisting the regeneration of existing residential areas and securing the re-use of vacant land). The new private housing would widen tenure choice locally in this locality which retains a high proportion of rented stock. I note that Gentoo owns other land in the NRA and as a registered social landlord it states an intention to use the capital receipt from the sale of the appeal site to help fund social housing on the adjoining land.
17. The Council did not present any evidence that development of the appeal site would prejudice future redevelopment of the adjacent land or delivery of the strategic housing sites in the High Ford area. On the contrary, I consider that it is more likely that the substantial private housing investment and environmental improvements arising from the appeal scheme would boost confidence in the area and act as a catalyst for the regeneration of the adjoining land at High Ford in a complementary manner. This would help the Council achieve the housing targets in RSS Policy 29 regarding the recycling of vacant urban land and delivery of net additional annual average housing numbers for the District, which are not currently being attained because of the recent high levels of demolition. The scheme would supply a reasonable mix of houses that would widen the tenure choice available locally, without prejudicing the development of strategic housing sites in the wider High Ford area.
18. The Council also did not demonstrate any conflict with the UDP Policies specified in the second refusal reason. Policy H12 applies to existing Council housing which is no longer applicable to this cleared site. Policy H13 applies to existing private housing which is again not directly relevant to this site, but the scheme will assist the underlying policy objective of investing in and upgrading the private housing stock and undertaking environmental improvements. The scheme would accord with the objective of UDP Policy B1 to secure environmental improvements and its traditional form would relate harmoniously to existing development as required by UDP Policy B2.
19. I find that the Council's objections under this issue, which related to the first 2 refusal reasons, were not substantiated by the submission of evidence that any demonstrable harm would arise if permission were to be granted for the amended scheme and the housing mix now before me. I conclude that the proposals would not be harmfully premature, unacceptably piecemeal or prejudicial to the delivery of the wider High Ford area strategic housing sites.

Design and layout

20. The third refusal reason simply stated that the proposed development does not achieve a good standard of design, contrary to Policy B2 of the adopted UDP. This refusal reason was vague and failed to meet the duty to be complete, precise and specific. The cited policy indicates amongst other things that the scale, massing, layout or setting of new development should respect and enhance the best qualities of nearby properties and the locality and requires that large scale schemes creating their own individual character should relate harmoniously to adjoining areas.
21. The layout and design had been the subject of lengthy negotiations with the officers over a protracted period, resulting in several revised schemes being considered prior to the appeal scheme being recommended for approval by the officers. This includes an amended layout, additional design features to the dwellings, full details of proposed materials and revised boundary features. The play area was removed at the request of the officers. The Council members giving evidence at the hearing declined to sustain the written objections previously made in the Council's pre-hearing statement regarding inadequate landscaping details, lack of an on-site play space, absence of adequate footpath and highway connections to the surrounding area, and concerns about security of the houses and sustainability/insulation standards.
22. Despite the wording of the refusal reason the members raised no detailed objections to the amended design or layout of the particular scheme. At the hearing in response to repeated invitations to clarify which elements of the scheme failed to achieve good design and were therefore harmful, members referred to the lack of a Master Plan and the absence of bungalows or social housing from the mix.
23. I find that the development would provide a reasonable mix of 2, 3 and 4-bed houses with private garden space in a layout that ensures permeability and connectivity with its surroundings, whilst meeting the Council's residential design guidance standards and criteria. Future residents would have good access to bus routes, shops, schools and other services and facilities including recreation areas.
24. Members failed to show that any demonstrable harm would arise from the amended scheme with regard to the scale, massing, layout or setting of the scheme or its relationship with the surroundings. No conflict was established with regard to the provisions of UDP Policy B2 cited in the refusal reason. There was no suggestion that the scheme would fail to comply with the minimum standards or criteria within the Council's Residential Design Guide SPD.
25. I conclude that the amended scheme would provide a good standard of design and layout and that no conflict would arise with the provisions of UDP Policy B2 or national guidance in PPS1 (paragraphs 33-38).

Other matters

26. Since I have found that no harm would arise from the amended scheme, it follows that no harmful precedent would be created by approving this

application. In any case, any further applications on other parts of the NRA would be determined on the basis of the development plan policies and national guidance then current, including the emerging Local Development Framework, and any up-to-date housing needs assessments including the SHLAA, and all other material guidance and considerations that were relevant at the time.

27. Additionally, the amended scheme subject to this appeal would accord with a number of objectives of the development plan (both the UDP and RSS) and of national policy (including PPS1 and PPS3) including those regarding recycling of brownfield urban land, development of mixed communities, and creation of a range and choice of housing within sustainable locations under the sequential approach and the encouragement of well designed housing developments.

Unilateral undertaking

28. UDP Policy H21 seeks the provision of play space within housing developments of the size proposed and Policy R3 indicates that developers will be expected to enter into planning obligations to enable suitable provision of open space and formal provision. The original layout included the provision of a play area within the site. However, Council officers asked for this to be deleted and a financial contribution instead made to enable off-site recreation provision elsewhere within the locality. The Appellants sought to enter into a legal agreement with the Council on this matter, but when the Council withdrew from negotiations a unilateral undertaking was instead submitted by the appellant committing to the payment to the Council of £61,200 in 3 separate payments linked to the completion of each third of the total number of dwellings.

29. I consider that the submitted planning obligation is necessary to address the effects of the proposed housing on local recreation facilities and the making of staged payments relates reasonably to the advent of the need for recreation facilities. The contribution would appear fairly and reasonably related in scale and kind to the proposed development and it would meet the tests set out in Circular 05/2005. At the hearing the Council objected to the planning obligation being in the form of a legal agreement rather than a unilateral undertaking. Part of the undertaking purports to bind the Council to agreeing to refund the contributions if they are not spent appropriately within a certain timescale. Whilst this requirement would not be binding on the Council as it is not a party to the undertaking, the principal obligation on the developer/landowner to make recreation payments is enforceable by the Council. Therefore, I accord the unilateral undertaking significant weight since it is necessary to fulfil the objectives of the cited UDP Policies and is enforceable by the Council.

Conditions

30. I have assessed the conditions suggested by the Council against the advice in Circular 11/95. I am imposing the standard 3 year commencement condition, as the 5 year period sought by the appellant would have extended the consent forward significantly to a time when circumstances might have changed significantly. A schedule listing the external finishes and materials of external surfaces has already been submitted and not objected to by the Council;

therefore a condition on the matter is not needed. Conditions are required to ensure that appropriate landscaping is provided and established in the interests of the appearance of the area. Conditions relating to working arrangements and hours of working during construction are required in the interests of the living conditions of surrounding residents and road safety. In the interests of the safety of future residents and the protection of controlled waters and the wider environment, conditions regarding potential contamination and its remediation are required since the area has been previously been subject to development including industrial activity. A condition is also required to ensure appropriate pedestrian and vehicular access is provided during the construction works.

Conclusions

31. I have taken account of all other matters raised but none outweigh the above considerations. I conclude that the proposed development would comply with UDP Policies H1, H12, H13, B1 and B2 and that permission should be granted subject to necessary conditions.

C J Checkley
INSPECTOR

Schedule of conditions for Appeal Ref: APP/J4525/A/09/2101257

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) No development shall take place until details of landscaping have been submitted to and approved in writing by the local planning authority. These details shall include proposals for the protection of existing trees and hedgerows, planting plans, schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and an implementation programme. Development shall be carried out in accordance with the approved details.
- 3) 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 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, unless the local planning authority gives its written consent to any variation.
- 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 approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. the loading, unloading and storage of plant and materials
 - iii. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - iv. wheel washing facilities
 - v. measures to control the emission of dust and dirt during construction.
- 5) Construction works shall not be undertaken outside the hours of 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 and 13:00 Saturdays, and shall take place at no time on Sundays or Bank or Public Holidays.
- 6) No development shall take place until a scheme to deal with the risks associated with landfill gas and 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.

- 7) No development shall take place until details of the provision for pedestrian and vehicular access during the works has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme, unless otherwise agreed in writing by the local planning authority.

APPEARANCES AT THE HEARING

FOR THE APPELLANT:

Ms Lois Lovely BSc, MA, MRTPI
Mr Niall Kelly BA(Hons), DipTP,
MRTPI, MIED
Mr Len Worsfold
Mr Ed Alder MRICS MRTPI

Associate Director, GVA Grimley
Planner, GVA Grimley
Director, Gladedale (Sunderland) Ltd
Land Manager, Gladedale (Sunderland) Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Councillor Alan Wright
Councillor Sheila Ellis
Councillor Peter Wood
Councillor Tony Morrissey
Mr Kevin Farrell MRTPI

Sunderland City Council
Sunderland City Council
Sunderland City Council
Sunderland City Council
Senior Planner, Sunderland City Council

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 Supreme Court Costs Office
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 Court². 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 his 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.

¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops (formerly HMSO) or look at copies in your local library or council offices.

² 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.



091000111REF DPE
Appeal Decision

Site visit made on 12 August 2009

by Christopher Checkley
BA(Hons) MRTPI

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

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Decision date:
8 September 2009

Appeal Ref: APP/J4525/A/09/2102021

Land at Egerton Street/Toward Road, Sunderland

- 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 Mandale Commercial Ltd against the decision of Sunderland City Council.
- The application Ref 08/03553, dated 15 September 2008, was refused by notice dated 5 February 2009.
- The development proposed is the erection of 2 no blocks of student accommodation comprising 118 student bedrooms in 20 individual flats and associated external works, parking and entrances to the site.

**DEVELOPMENT CONTROL
RECEIVED**

08 SEP 2009

SUNDERLAND CITY COUNCIL

Decision

1. I allow the appeal, and grant planning permission for the erection of 2 no blocks of student accommodation comprising 118 student bedrooms in 20 individual flats and associated external works, parking and entrances to the site at land at Egerton Street/Toward Road, Sunderland, in accordance with the terms of the application Ref 08/03553, dated 15 September 2008, and the amended plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issues

2. There are 3 main issues in this appeal regarding the effects of the development. First, the effect upon the appearance and character of the area. Second, the effect upon the living conditions of neighbouring residents in Egerton Street, with particular regard to levels of privacy, outlook and noise. Third, the effect upon parking and highway safety.

Reasons

Appearance and character of the area

3. The Council describe the site as being a "key gateway site" on a city centre approach. Its current condition is detrimental to the appearance and character of the area. There are 2 extant planning permissions relating to the site that form material considerations. One for the development of 40 two-bed flats (Ref 07/04658/FUL, dated 21 January 2008) on the site in the form of 2 blocks similar in size and layout to the current proposal. The other being in outline for the erection of a hotel with parking (Ref. 09/00957/OUT, dated 2 June 2009).

4. The Council accepts the principle of erecting student housing on this site, such use being compatible with the principal use of the neighbourhood in line with Policy EN10 of the adopted City of Sunderland Unitary Development Plan 1998 (UDP). UDP Policy H18 indicates that flats and buildings for multiple occupation will normally be approved where, amongst other things, the intensity of use would not adversely affect the character and amenity of the locality. UDP Policy H4 seeks at least to reflect, or if appropriate increase, housing densities, consistent with protecting and enhancing the character of an area. UDP Policy B2 requires that the scale, massing, layout or setting of new development should respect and enhance the best qualities of the locality, with large schemes relating harmoniously to adjoining areas. National policy in PPS1 emphasises the importance the government places on good design that is visually attractive, responsive to its local context and which creates or reinforces local distinctiveness.
5. Two separate blocks of student flats are proposed. Block B would be 4-storey and set back within the site next to its northern boundary. Block A would front Toward Road, and be part 6/part 7 storey at the rear within the site, with the apparent height reduced to part 5/part 6 storeys on the Toward Road frontage. The appellant contends the height of Block A would be the same as that of the similarly sited block approved under the 40 flats permission, whilst the Council contend that although the number of storeys would be the same, the proposed height of Block A would increase between 1.8m and 2.7m. I do not have the sufficient details of the 40 flats scheme to determine which party is correct. However, the appellant has set out side by side reduced copies of the Toward Road elevations of both the 40 flats scheme and the appeal scheme and they appear very similar in height. The Council's own Planning Implementation Manager concluded that the scale and massing of the appeal scheme was in line with previous consents. None of the available information leads me to a different conclusion regarding scale and massing.
6. The primary frontage of the scheme is the Toward Road elevation of Block A. The information available to me indicates that although the former balconies have been removed and the range of external materials has been reduced, the proposed scheme for Block A beneficially repeats many features of the approved 40 flats scheme including scale, massing, overall building form and its main articulation, and the size, pattern and hierarchy of the window openings. The main design theme and general effect on the street scene appears similar. The rear facades would be appear taller, but would also have some articulation and changes in material to break them up sufficiently.
7. I conclude that the scale, massing and layout of the appeal scheme is similar to that for the 40 flats scheme previously approved, whilst the detailed design of the Toward Road elevation reflects the broad themes of the previous approval. I conclude that the appeal scheme would not be out of keeping with the appearance or the character of the area, and no material conflict would arise with the provisions of UDP Policies H4, H18 and B2 and national guidance in PPS1.

Living conditions of neighbouring residents

8. The Council accepts that Block B would be sufficiently distant from the housing on Salisbury Street beyond the walkway/cycleway to avoid harm to the living conditions of those residents.
9. The south gable of Block A would no longer be blank but would include kitchen/dining room and landing windows on floors 2-7. Although the habitable room window would be about 23m from the north-facing side of the most western dwelling in Egerton Street, the angle orientation would be sufficient to prevent an unacceptable level of overlooking or loss of outlook. The other dwellings along the street would have greater separation coupled with angled orientations, preventing harm to their occupants.
10. The use of the site for 118 student bed spaces would be a more intensive use than that for 40 two-bed flats. Students tend to have different lifestyles from permanent residents which can cause friction, for example where students and families live in adjacent terraced dwellings and there is noise disturbance experienced through the party wall. However, the use of purpose-built insulated and detached student blocks set away from other dwellings is a means of reducing the potential for noise disturbance to local residents. Given the sustainable location of the site on the edge of the city centre, I would expect most students to travel to and from the blocks on foot or by cycle or by public transport. I would not expect unacceptable noise disturbance to result for local residents.
11. I conclude that the scheme would not be likely to cause unacceptable harm to the living conditions of adjoining residents, and no material conflict with UDP Policies H4, H18, B2 or Policy B2A of the Council's Residential Design Guide Supplementary Planning Document (October 2008) would arise.

Parking and highway safety

12. There would be a single vehicular access to the site off Egerton Street, serving 8 parking spaces and providing service vehicle access by means of a ramped service road and turning circle, with a drop off layby on Egerton Street.
13. The Council's parking standards which it describes as "historic" seek 1 space per 3 units plus one space for the warden. However, these standards pre-date more recent government advice in PPG13 and elsewhere to limit the amount of on-site parking provided in order to affect travel modes. There is no basis whatsoever for the Council's suggestion in its appeal statement that 1 space should be provided for each student bed space. The supplied evidence is that at several existing student housing schemes the ratio of parking permits to bed spaces varies between 1:5 and 1:8. Although the ratio for the appeal scheme is significantly less, this particular site is sustainably located on a bus route within easy walking distance of the full range of city centre facilities and the city centre university campus, although it is further from the main campus. There are parking restrictions on Toward Road, but at present none on Egerton Street and as a result of its proximity to the city centre the unrestricted on-street parking appears heavily used during the day. I am mindful that it remains open to the Council to impose on-street parking controls should it

consider it necessary. The relatively low level of parking available means the accommodation is likely to be particularly attractive to those students without cars.

14. I conclude that the amount of parking proposed is broadly acceptable and would not result in conditions prejudicial to road safety, having regard to the likely car ownership characteristics of the student residents and the nature of the location. There would be no conflict with the objectives underlying UDP Policies T14 and T22 and Sections 4.2 and 13 of the Development Control Supplementary Planning Guidance.

Conditions

15. I have concluded that there are no valid reasons for withholding permission. I have considered the conditions suggested by the Council in the light of the advice in Circular 11/95 and subsequent amended national advice. To safeguard the living conditions of neighbouring residents, a scheme of working is required with restrictions on the hours of construction and times of deliveries. The residential blocks are also to be insulated to prevent noise disturbance to surrounding residents. The site was previously occupied in part by a filling station and any contamination is to be remedied. In the interests of the appearance of the area a landscaping scheme is to be undertaken and the details of the external materials agreed. In the interests of road safety, bicycle and motorbike facilities and the car parking are to be provided. Drainage arrangements need to be approved to avoid pollution. Other conditions are not necessary or relevant, such as pegging out the site or displaying the plans outside the sales office.

C J Checkley

INSPECTOR

Schedule of conditions subject to which the permission is granted

16. The permission is granted subject to the following conditions:

- (1) The development hereby permitted shall be commenced before the expiration of 3 years from the date of this decision.
- (2) 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 approved Statement shall be adhered to throughout the construction period. 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. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities
 - vi. measures to control the emission of dust and dirt during construction
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.
- (3) No construction works shall be undertaken and no deliveries of construction materials shall be taken at or despatched from the site other than between the hours of 08:00 and 18:00 hours Monday to Friday and 08:00 and 13:00 Saturdays, and no construction works shall be undertaken and no deliveries of construction materials shall be taken at or despatched from the site at any time on Sundays or Bank or Public Holidays.
- (4) Before development is commenced, a scheme of insulation and soundproofing to each residential block shall be submitted to and approved in writing by the local planning authority, and the approved scheme shall be completed in accordance with the approved details before the first occupation of the block concerned.
- (5) Development shall not begin until a scheme to deal with contamination of the site has been submitted to and approved in writing by the local planning authority. The scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the environment and future residents when the site is developed. Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation of

contamination must not commence until paragraphs (a) to (d) below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until paragraph (d) has been complied with in relation to that contamination:

(a) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; archaeological sites and ancient monuments; (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*.

(b) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

(d) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be

undertaken in accordance with the requirements of paragraph 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with paragraph (c).

(e) A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of 5 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'.

- (6) No development shall take place until full details of a hard and soft landscaping scheme have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. These details shall include proposed ground levels, boundary treatments and means of enclosure; hard surfacing materials; any minor artefacts and structures; planting plans; written specifications (including cultivation and other operations associated with tree, plant and grass establishment); schedules of plants and trees, noting species, sizes and proposed numbers/densities; and an implementation programme. The planting shall be completed in the first planting season following completion of the development, unless otherwise agreed in writing by the local planning authority. If within a period of 5 years from the date of planting, any tree or plant that tree or plant, or any planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
- (7) Notwithstanding any indication of materials which may have been given in the application, no development shall take place until full details of the materials, finishes and colours to be used for the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- (8) Before the development is commenced, full details of facilities for bicycle and motor cycle parking and storage shall be submitted to and approved in writing by the local planning authority. The facilities shall

be carried out in accordance with the approved details before the first occupation of any part of the development.

- (9) Prior to the first occupation of any part of the development hereby permitted, the access, on-site parking and turning area shall be laid out, demarcated, levelled, surfaced and drained in accordance with details previously submitted to and approved in writing by the local planning authority, and thereafter shall be retained for that specific purpose and no other.
- (10) Development shall not begin until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The development shall not be first occupied until the approved drainage scheme has been completed.