



Appeal Decision

Hearing held on 12 October 2011

Site visit made on 12 October 2011

by Wenda Fabian BA Dip Arch RIBA IHBC

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

Decision date: 22 November 2011

Appeal Ref: APP/H0738/A/11/2157179

Land parcel at 443990 514012, Blair Avenue, Ingleby Barwick, Stockton-on-Tees

- 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 Chris Morgan against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 11/0113/FUL, dated 18 January 2011, was refused by notice dated 30 June 2011.
 - The development proposed is a development of 48 retirement apartments with associated communal facilities.
-

Decision

1. The appeal is allowed and planning permission is granted for a development of 48 retirement apartments with associated communal facilities at Land parcel at 443990 514012, Blair Avenue, Ingleby Barwick, Stockton-on-Tees in accordance with the terms of the application Ref 11/0113/FUL, dated 18 January 2011, subject to the conditions set out in the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by Mr Chris Morgan against Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposal is consistent with development plan policies which seek to protect the provision of open space and safeguard the urban environment within the Borough.

Reasons

4. The appeal site is a 1.9 hectare stretch of land that, until recently, was covered by young trees (approximately 20 years old); around half of these have now been cleared. The remaining large group, are subject to a Tree Preservation Order (TPO).
5. A Master Plan for the development of Ingleby Barwick based on a group of adjacent villages was drawn up in 1977 and outline planning permission for the erection of several thousand new dwellings was granted in 1978. Since then, the appeal site has continued to be indicated as open land through

subsequent revisions of the Master Plan – the latest in 2002. However, this document has no status as part of the development plan. It is illustrative only and carries limited weight in policy terms.

6. The Council resists any development on the site in terms of policy CS10 of the *Stockton-on-Tees Core Strategy Development Plan Document, 2010*, (CS) on the basis that this would not protect the amenity value of the open space. However, in this context policy CS10 refers specifically to strategic gaps, green wedges, urban open space and play space – designations that are not applicable to the appeal site. Whilst reference has been made to its status as a green wedge, the CS diagram does not indicate one of these in the vicinity of the appeal site, which falls within an area shown with no specific designation.
7. Notes to policy CS10 indicate that the strategic green infrastructure network is identified in the *Tees Valley Green Infrastructure Strategy*, which sets a broad framework for this across the Tees Valley. At the Borough level, the consultation draft *Green Infrastructure Strategy 2009-2021* (GIS), aims to create a local network of greenspace, including 'green grids'. However, as it remains in draft and could be subject to amendment, the GIS carries limited weight.
8. Moreover, the Master Plan clarified that green wedges were intended to separate the villages and link the peripheral open space area around Ingleby Barwick to its major centre; the planning permissions now granted on land to the north and northwest of the appeal site effectively divide it from any designated open land and it will become isolated within a built up area; it cannot, therefore meet the purpose of linking to surrounding countryside.
9. CS policy CS6 relates to community facilities and amongst other things seeks to protect and enhance the quantity and quality of open space throughout the Borough. Notes to it refer to the Council's *Open Space Audit*, undertaken in response to the requirements set out in PPG17¹, which was published in 2008. Whilst the appeal site is shown on the web-map associated with the audit as part of a narrow ribbon of green corridor along this part of Blair Avenue, linking to a similar ribbon of undeveloped land along Myton Road, it has been severed from this by the recent development of the Roseville Care Centre on the adjacent site. The appeal site is now a relatively short stretch of undeveloped open land that stands alone between existing and approved development on all sides. Further, it has recently been legitimately fenced in with no right of public access.
10. The Council's *Open Space, Recreation and Landscaping Supplementary Planning Document* (SPD2) records that green corridors are opportunity led due, for example, to the location of a watercourse or footpath. Neither of these applies to the appeal site. SPD2 also records that there is insufficient open space (including natural and amenity greenspace) within Ingleby Barwick. However, whilst the proposal would result in a loss of open undeveloped land, the site is not publicly accessible. There is little policy support in any of these documents for resisting development on the appeal site. The Council has acknowledged that the appeal site is not specifically allocated for any purpose in the Core Strategy or the *Stockton on Tees Local Plan, 1997*, (LP).

¹ Planning Policy Guidance Note 17: Planning for Open Space, Recreation and Sport

11. There is no dispute that the appeal site is within the development limits of Ingleby Barwick, where LP policy H03 allows residential development provided that, amongst other things, the land is not specifically allocated for another use and is not used for recreational purposes. Neither of these criteria applies to the appeal site.
12. The appeal proposal, for a long two storey pitched-roof building, would fit well with surrounding ones. Behind the building, a modest garden would be provided for residents. It is proposed to lower the site level so that the building would sit at road level, with a line of tree planting along the building frontage. These aspects, which would help to reinstate the former leafy roadside character of the site, could be secured by condition.
13. In addition, set against the loss of an open site (previously used informally by dog-walkers), the proposal includes provisions to secure the retention of the remaining trees subject to the TPO and transfer of this part of the land to the Council for public recreational use. This would substantially preserve the sense of a leafy interlude between buildings at this point. The provision of a publicly accessible open space, amounting to almost half the area of the appeal site would contribute to the Council's aspirations for its green infrastructure strategy and this adds to the acceptability of the scheme overall. The transfer could be secured by means of a S106 undertaking.
14. CS policy CS11 relates to planning obligations and sets out a requirement for new development to contribute towards the cost of providing additional infrastructure and meeting social and environment requirements. It sets out the basis for calculating financial contributions in respect of open space, related to the number of bedrooms in a scheme. The appellant has provided a S106 Unilateral Undertaking in respect of the transfer of land as Public Open Space as set out above. This would include a commuted sum, which is derived from the per capita figures provided in SPD2, for its maintenance for 25 years. Accordingly, this provision is necessary and is fairly and reasonably related directly in scale and kind to the proposal.
15. The Council is concerned that no contribution has been included for the off-site provision of other forms of open space or sport facility. However, the standards in the SPD are based on the *Open Space Audit* with a base date in 2005. Little evidence has been provided to update the shortfalls in provision it identifies or to substantiate where such a contribution would be spent so as to be directly related in scale and kind to the development. Furthermore, the provision of public open space proposed is substantially in excess of the amenity green space required by the SPD for a development of this size. Accordingly, the provisions set out in the undertaking in respect of open space are reasonable.
16. Taken all in all, the proposal is consistent with development plan policies which seek to protect the provision of open space and safeguard the urban environment within the Borough.

Other Considerations

17. In respect of the provision of affordable housing, in accordance with CS policy CS8, the Council acknowledges that it would not be realistic to make provision within the proposal and a commuted sum is necessary equivalent to a provision of 15-20% of the dwellings. The Council's SPD6 – *Planning Obligations* sets

out a method for calculating a commuted sum for off-site provision. This would be based on the difference between the RSL (registered social landlord) purchase price and the open market value of an equivalent dwelling in the locality.

18. The undertaking has been based on 8 units, which equates to a 16-17% provision, not the upper limit of 20% (9 units) indicated by SPD6. In the current economic climate 8 units would be reasonable. The commuted sum of £192,000 equates to £24,000 per unit and is derived from an analysis of figures taken from the Homes and Communities Agency (HCA)² record of current contract values for three national RSLs (Housing Associations). These show an average price per unit of £22,440; this equates to the public subsidy necessary by way of grant funding to these bodies to deliver affordable housing and the sum provided would therefore enable a housing association or equivalent RSL to deliver the necessary affordable units in the area.
19. The Council has provided, as its preferred alternative to the appellant's submission, a draft S106 bi-lateral agreement. This includes a formula for deriving the level of commuted sum for affordable housing. The formula is complex and, whilst based on the principle set in SPD6, it would require further negotiation between the parties before the amount required could be established. The Council was unable at the hearing to provide any prediction at all as to the quantum of contribution anticipated. This approach would introduce a significant degree of uncertainty as to development costs which should properly have been resolved by negotiation prior to the appeal hearing. In these circumstances I take the alternative method of calculation provided by the appellant to be reasonable.
20. The appellant's undertaking also makes provision, in accordance with the aims of SPD6 for the support of local employment and liaison with the Council's Labour Market Co-ordinator during construction of the proposal. This follows the Council's own approach. It is necessary and is fairly and reasonably related directly to the development in scale and kind.
21. Overall I find the S106 offered by the appellant is necessary and follows the CIL regulations.

Conditions

22. For the avoidance of doubt and in the interests of proper planning, a condition specifying the approved drawings is necessary. In addition to those referred to above, conditions are necessary in respect of materials, additional buffer planting, the future management of soft landscaping, hard landscaping and boundary treatments to ensure the development complements its surroundings. As the previous land use history of the site is unclear, a site contamination survey is necessary.
23. In accordance with national and local policy objectives for the reduction of carbon emissions, a requirement for the provision of energy by sustainable means is reasonable. For highway safety reasons, the maintenance of access sight lines and control of the design of external lighting within the site should be secured by condition. To secure the intended type of housing provision in accordance with housing policy objectives, a restriction within the residential use class is reasonable. The control of construction hours is reasonable to

² DOC 9

safeguard residential amenity. As a designated refuse store is included within the proposed building, further details are not necessary.

Conclusion

24. In reaching a decision I have had regard to the draft National Planning Policy Framework, which places an emphasis on economic growth. However, at this stage of the parliamentary process it could still be subject to amendment and carries only limited weight.
25. The proposal complies with development plan policy objectives that aim to secure open space provision in the area. In the light of the proposed provisions for public open space and affordable housing, secured by a unilateral undertaking, other material considerations are insufficient to justify refusal. Accordingly, and taking into account all other matters raised, the appeal should be allowed.

Wenda Fabian

Inspector

Schedule of 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: Dwg Nos - 09147/P010, P011 Rev E, P012, P013 Rev A, P100, P110 rev A, P111, 3933M/101, ASS/1073-1, 677/LA1C and 677/LA2C.
- 3) Before the development begins a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.
- 4) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and shall be carried out before the development begins.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building and hard landscaping hereby permitted have been submitted to and approved in writing by the local planning authority. Areas of hardstanding shall be surfaced with permeable materials or provision shall be made to direct run off to a permeable or porous area within the curtilage of the building. Development shall be carried out in accordance with the approved details.
- 6) Prior to installation details of the external lighting shall be submitted to and approved in writing by the local planning authority before the use hereby permitted begins. Details shall include: siting, angle of alignment, light colour and luminance. Development shall be carried out in accordance with the approved details and maintained as such thereafter.
- 7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping and boundary enclosure, which shall include indications of all

existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development in accordance with BS 5837:2005. The landscaping scheme details shall include a management plan and maintenance schedule for a minimum of 5 years from the completion of the development. Development shall be carried out in accordance with the approved details.

- 8) 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 written approval to any variation.
- 9) No planting exceeding 0.6 metres in height shall be placed within the access sightlines indicated on the landscaping scheme referred to in condition 6. The planting carried out shall be maintained thereafter so as not to exceed this height.
- 10) Construction works shall not take place outside 08:00 –18:00 Mondays to Fridays and 09:00 – 13:00 on Saturdays nor at any time on Sundays or Bank Holidays.
- 11) The premises shall be used only as Category 2 sheltered housing accommodation for those over 55 years of age and for no other purpose (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

APPEARANCES

FOR THE APPELLANT:

Mr S Barker	Prism Planning
Mr R Hepplewhite	Prism Planning
Mr C Morgan	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Bishop	Stockton-on-Tees Borough Council
Mr M Clifford	Stockton-on-Tees Borough Council
Mr J Dixon	Stockton-on-Tees Borough Council
Mr P Shovelin	Stockton-on-Tees Borough Council

INTERESTED PERSONS:

Councillor G Corr	Stockton-on-Tees Borough Council
-------------------	----------------------------------

DOCUMENTS tabled at hearing

- 1 Plan showing: Ingleby Barwick Master Plan (1991) overlaid with current situation
- 2 Extract from Minutes of special meeting of Planning Committee 11 May 2002
- 3 Pages 137, 149, 150 & 218 from Minutes of Development & Planning Services Committee 22 June 1990
- 4 Extract (one page) from Stockton on Tees Open Space Audit
- 5 Web page printout: map showing open space categories
- 6 Internal memo: consultation response by Head of Technical Services re the appeal proposal 20/04/11
- 7 Page 36 from PPG17 Assessment, definition extract from Open Space Audit
- 8 Drawing List, hand annotated as agreed between the parties
- 9 Extract from HCA contracts October 2011
- 10 SPD 6 Planning Obligations
- 11 Unilateral Undertaking signed final version 12 October 2011
- 12 Suggested conditions, annotated by appellant
- 13 Appellant's Costs application

PLANS

- A Bundle of 12 drawings as drawing list, DOC 8 above



Costs Decision

Hearing held on 12 October 2011

Site visit made on 12 October 2011

by Wenda Fabian BA Dip Arch RIBA IHBC

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

Decision date: 22 November 2011

**Costs application in relation to Appeal Ref: APP/H0738/A/11/2157179
Land parcel at 443990 514012, Blair Avenue, Ingleby Barwick, Stockton-on-Tees**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Chris Morgan for a full award of costs against Stockton-on-Tees Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a development of 48 retirement apartments with associated communal facilities.
-

Decision: the application for an award of costs is refused.

The submissions for Mr Chris Morgan

1. The costs application was submitted in writing. The following additional points were made orally. The main reason for submitting the application is the Council's behaviour in respect of the S106; the applicant needed to take professional advice on affordable housing. Additional matters are the Council's late reference to the Open Space Audit and its lack of regard for the draft National Planning Policy Framework.

The response by Stockton-on-Tees Borough Council

2. The response was made orally at the hearing. The Council considered the application as submitted. The decision was made by full planning committee and the Council has always been consistent in its approach to development on this site. Even if there is no right of public access to it, it is perceived as open space and is identified as such on the Master Plan. Other developments on adjoining land do not override the importance of the site as a green corridor.
3. The Core Strategy cannot identify individual sites; this is done by the supporting planning documents, referred to by policies CS6 and CS10. Although Local Plan policy H03 was not referred to in the Council's decision, it was in its statement, as was the draft National Planning Policy Framework. The Council considered the benefit of the open land offered to the Council, but this did not outweigh the harm arising from development of the appeal site.
4. The need for a S106 was acknowledged at the application stage, but no figures or draft document were provided. These were not produced until close to the deadline for submission in the appeal. The appellant has submitted a Unilateral Undertaking, despite the Council having made clear its position that this should be a bi-lateral agreement. It was the appellant's responsibility to draw up the

S106 in good time and this could have been done at an earlier stage in the appeal process. The Council cooperated as far as it could in this respect.

5. There have been substantial changes to the Core strategy and related planning documents since decisions on the adjoining land. The Council cooperated with the applicant as far as possible at all stages of the application by giving pre-application advice, taking part in ongoing discussions and advising on details. The importance of the site to the character of Ingleby Barwick is a matter for judgement and the Council's decision was reached on verifiable grounds.

Reasons

6. 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.
7. By seeking to safeguard the appeal site as open space the Council pursued a longstanding emphasis on the Master Plan guidance for the area, which clearly echoes local views. In reaching its decision, it relied on development plan policies including the *Open Space, Recreation and Landscaping SPD2*. The *Open Space Audit*, referenced in the SPD and the emerging *Green Infrastructure Strategy* are legitimate material considerations to be taken into account alongside the development plan. As set out in the decision, my assessment has differed from the Council as to their relevance and the weight to give them. In the circumstances an appeal could not have been avoided and the Council has not acted unreasonably in respect of paragraph B15 of the circular.
8. The Council's SPD6 – *Planning Obligations* acknowledges the need to establish the exact level of commuted sum payment for the off-site provision of affordable housing on a case by case basis. It also states that the sum should be calculated using the difference between local housing market costs and Registered Social Landlords' costs, but offers no mechanism for defining these.
9. It is clear from this policy document that significant negotiation would be necessary between the parties to achieve agreement on this matter and produce a satisfactory S106 agreement or undertaking. It seems that the applicant contacted the Council in this respect on 15 September 2011, only some three full working weeks prior to the hearing and almost two months after lodging the appeal. The Council put forward its formula for reaching this sum on 29 September – ten working days later; this is not an unreasonable response time. The applicant only put forward his own research-based calculation on the same day.
10. The planning statement submitted in January 2011, with the planning application, acknowledged the need for a S106 agreement in respect of open space and affordable housing. It is not clear why the applicant waited until after submission of the appeal statements to initiate contact on these matters. The applicant could have sought to resolve this at an earlier stage before the appeal. Accordingly, the Council has not acted unreasonably in relation to the S106 and no award of costs is justified.

Wenda Fabian Inspector