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## Appeal Decision

Site visit made on 18 October 2016

**by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

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

**Decision date: 27<sup>th</sup> October 2016**

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**Appeal Ref: APP/B3030/W/16/3151552**

**Kerkyra, Old Great North Road, Sutton on Trent, NG23 6QL**

- 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 and Mrs Robertshaw against the decision of Newark and Sherwood District Council.
  - The application Ref 16/00526/OUT, dated 30 March 2016, was refused by notice dated 24 May 2016.
  - The development proposed is outline application for one bungalow, land rear of Kerkyra.
  - The application is in outline with access to be considered and all other matters reserved.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. My attention has been drawn to Circular 11/95, however this was revoked when Planning Practice Guidance (PPG) was first published, in 2014. For clarity, I have had regard to PPG in the determination of this appeal.

### Main Issue

3. The main issue is the effect of the proposal upon highway safety.

### Reasons

#### *Highway Safety*

4. The appeal site is rectangular plot which currently forms the rear garden to 'Kerkyra.' The proposed dwelling would be accessed from the B1164. This is a busy road which curves away from the appeal site to the south.
  5. In order to achieve adequate visibility from the appeal site, the reduction of boundary hedgerows, trees and a small amount of close boarded fencing, along the western boundary of properties to the south of the appeal site would be necessary. These would need to be reduced to a height of 0.6m, and maintained thereafter. These boundaries are within separate ownership to the appeal site, and I note that appropriate notice was served on owners of these properties at the time the original application was made.
  6. Conditions can be applied to planning permissions in order to make otherwise unacceptable development acceptable. Paragraph 206 of the National Planning Policy Framework (the Framework) sets out the policy requirements for conditions called the '6 tests.' In respect of land out of the control of the
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appellant, it has been put to me that the visibility splay can be appropriately secured via a Grampian condition and that this would prohibit development authorised by the planning permission until the visibility splays had been implemented.

7. However, the PPG advises that conditions requiring works on land that is not controlled by the applicant often fail the tests of reasonableness and enforceability.<sup>1</sup> Such a condition would be concerned with matters to which the applicant has no control and would not be binding on neighbouring owners. Moreover, the work would place a considerable on-going burden on a great number of owners in respect of the continued maintenance of the height of the vegetation, particularly during the growing season.
8. On this basis, I do not consider that it would be reasonable nor would it be practicably possible to enforce such a condition for the on-going maintenance of the boundaries within the visibility splay.
9. I accept that conditions are usually more appropriate and preferable to planning obligations, and I acknowledge that neighbouring landowners at Fairway, as well as the occupants of business premises 'Marshalls of Sutton on Trent' and 'Peak Laminate Supplies' are willing to comply. However, the particular circumstances of occupants will change over time whereas the development of the site for a single dwelling and the need to maintain visibility would be permanent. Accordingly, the letters of support of the existing owners of neighbouring land within the splay carry little weight.
10. I also agree with the Council that the condition in itself would cause harm to the character and appearance of the area. The mature soft boundary treatments give this area a verdant character, and form an important element in the street scene in terms of the overall quality and visual amenity of the area. The reduction in height to 0.6m would be significant, so much so, I consider that this would severely erode the character of the area, causing harm. The imposition of a condition which would cause other harm would fail the test of reasonableness.
11. Overall I conclude that the development could not be made acceptable through the use of the suggestion condition and would therefore have a harmful effect on highway safety, by virtue of a lack of safe access and visibility. The development would therefore conflict with Spatial Policy 7 of the Newark and Sherwood Core Strategy (2011) and Policy DM5 of the Allocations and Development Management DPD (2013) which seek to secure safe and suitable access. The proposal would also fail in respect of paragraph 206 of the Framework in respect of conditions.

## **Conclusion**

12. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

*C Searson*  
INSPECTOR

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<sup>1</sup> Reference ID: 21a-009-20140306