



Appeal Decision

Site visit made on 9 March 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 03 April 2020

Appeal Ref: APP/P3420/W/19/3237735

22 King Street, Cross Heath, Newcastle-under-Lyme ST5 9HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Jonathon Fell c/o Kaizen Property Group against the decision of Newcastle-under-Lyme Borough Council.
 - The application Ref 19/00135/FUL, dated 25 February 2019, was refused by notice dated 9 May 2019.
 - The development proposed is described on the application form as 'erection of 2 x 3 bedroom semi-detached dwellinghouses within the existing rear garden of application site, incorporating the provision of 4 parking spaces, cycle spaces and refuse storage, new boundary treatment and landscaping.'
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Decision

1. The appeal is allowed and planning permission is granted for the development described in the banner heading above at 22 King Street, Cross Heath, Newcastle-under-Lyme ST5 9HQ, in accordance with the terms of the application Ref 19/00135/FUL, dated 25 February 2019, subject to the conditions below.

Application for costs

2. An application for costs has been made by the appellant against the Council, which is the subject of a separate decision.

Preliminary matters

3. Since the Council's decision in respect of application Ref 19/00135/FUL, the appellant has submitted additional information by way of an updated Arboricultural Report, Transport Statement and Design and Access Statement ('DAS').¹ Original plans have also been amended accordingly. An appeal should not be used to evolve a scheme. Nevertheless, not unreasonably, proposed revisions seek to address the Council's reasons for refusing permission. They do not significantly alter the overall nature of the scheme. The Council have considered fresh evidence and amendments at appeal, and is of the view that no party would be prejudiced by my having regard to them. I agree.
4. Each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. In this

¹ Prepared by Arboricultural Consultant Ian Murat dated 9 September 2019 replacing an earlier version of 18 December 2018, prepared by Mode Transport Planning dated September 2019, and prepared by TNR Architects dated 26 February 2019 respectively.

instance the development plan includes policies of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (adopted October 2009, the 'CS') and saved policies of the Newcastle-under-Lyme Local Plan 2011 (adopted originally in October 2003, the 'LP').² I have also had regard to various other material considerations including the National Planning Policy Framework ('NPPF'), the Planning Practice Guidance ('PPG'), the National Design Guide ('NDG') and the Councils' Urban Design Supplementary Planning Document (adopted 3 November 2010, the 'SPD').

5. In light of the revisions noted in paragraph 3 above, considered against LP policy T16 and NPPF paragraph 108. b), the Council no longer maintain the third reason for refusal given in their decision notice (that the scheme would be served by substandard access). It is now proposed that site access is altered to enable its use by two vehicles at a time and so as to improve visibility of oncoming traffic.³ The site falls within a predominantly residential area, where a significant number of vehicles were parked along the length of King Street at the time of my site visit (given the absence of restrictions). In that context, and given the modest uplift in vehicular movements that would result from two additional dwellings, I am similarly of the view that the proposal would be acceptable in respect of access and parking provision (subject to the imposition of suitably-worded conditions).

Main issues

6. Against the context above, the main issues are the effects of the development proposed on (i) the character and appearance of the area, including in respect of trees, (ii) as regards the living conditions of the occupants of No 22 King Street.
7. With regard to NPPF paragraphs 67 and 73, the Council set out that they are presently able to demonstrate about 5.45 years' worth of deliverable housing sites relative to needs. That is not disputed. Nor does the appellant contend that NPPF paragraph 11.d)ii) is otherwise engaged (by virtue of the policies which are most important for determining the application being out-of-date). NPPF paragraph 213 explains how existing policies should not be considered out-of-date simply because they were adopted prior to its publication. I have approached the appeal accordingly.

Reasons

Character and appearance

8. No 22 is one of a pair of mid twentieth century semi-detached dwellings (along with No 24). Both fall a relatively short distance from Liverpool Road, part of the A34. The surrounding area is predominantly residential. The notable exception in the immediate vicinity is the neighbouring Newcastle Working Men's Club, seemingly an amalgamation of Nos 18 and 20 along with subsequent extensions. Some properties here date from a similar era to No 22, albeit that there has also been more recent development. Properties tend to be laid out in a standard manner fronting streets, along a more-or-less consistent building line, with more spacious rear than front gardens. In parts the area has

² Whilst work is underway reviewing the development plan, that process is yet to reach a stage such that emerging policies may be accorded significant weight.

³ Shown on plan J32-3846-004, Revision C.

- a comparatively high residential density reflecting its proximity to a number of commercial and main town centre uses along the A34, which increase in prevalence towards the south approaching Bridge Street and High Street.
9. CS policy CSP1, in a similar manner to NPPF paragraphs 127. c) and d), sets out how development should integrate appropriately with the prevailing settlement pattern and townscape. The Council's first reason for refusal in their decision notice also cites policies R3, R5 and R17 of the SPD.⁴ Those elements of the SPD provide practical guidance as to how development may be designed with suitable regard to its surroundings. They encourage development that 'faces outwards wherever possible', respects a consistent building line, and where the orientation of new buildings aligns with those nearby.
 10. Those SPD objectives are similar to the approach in NDG sections C1, I1 and B2. NDG paragraphs 90 and 91 also explain how natural features including trees may contribute to the quality of a place. LP policy N12 seeks to resist the removal of 'visually significant' trees. Statutory provisions also apply in respect of the preservation of trees.⁵ British Standard 5837:2012 represents industry-standard guidance as to how trees may be assessed in terms of their significance or value, the extent of their root systems quantified, and indicates how safeguards may be put in place during construction including in respect of root protection areas ('RPA(s)').⁶
 11. The proposal is for two dwellings in what is presently the rear garden to No 22, close to the rear of Nos 1-4 'The Gardens' located along Derwent Place. The rear garden to No 22 is some 50 metres in length, similar to that of Nos 24, 26 and 28. Access would be off King Street to the side of No 22. The appeal site abuts a spur of Derwent Place to the rear where a block of garages is located. I am told, on account of ownership constraints, that taking access via Derwent Place would not be possible. At present the garden of No 22 is subdivided by way of a close-boarded fence, reflecting the limits of the outside space that would result were the development proposed to be undertaken.
 12. As explained above, nearby properties tend to be laid out in a standard arrangement. Various elements of policy and guidance advocate reflecting the prevailing pattern of development. In that context, being tucked behind No 22, the proposed dwellings would not be located or orientated in a manner consistent with many nearby properties. However, given the particular nature of the proposal and its surroundings, that would not be unacceptable in this specific instance.
 13. The rear gardens of even Nos 22 to 28 King Street are uncharacteristically generous. I was unable to identify other plots of comparable length in the area. Many plots are far more limited, including Nos 1-4 the Gardens. I accept recently-built properties off Navigation Way beyond No 28 King Street came forward as a comprehensively-planned scheme. However they are of comparable density as would result from the development proposed, and of a lower density than exists between the appeal site and the A34 where terraced properties prevail. Permission Ref 12/00036/FUL for properties off Navigation

⁴ Not to be confused with similarly-titled policies in the LP, which relate to the town centre or retail uses, and do not appear to remain extant (as set out in the schedule of saved policies beyond September 2007).

⁵ Section 197 of the Town and Country Planning Act 1990 as amended.

⁶ Titled 'Trees in relation to design, demolition and construction. Recommendations'.

Way was for 117 homes within a site of about 2.79 hectares, as stated on the application form for that proposal. That represents an approximate residential density of around 42 dwellings per hectare ('dph'). Two dwellings within the appeal site, stated to be about 0.08ha, in addition to No 33 would represent residential density of around 38dph.⁷ That is an appropriate level of density here.

14. The proposed dwellings would not have a clear street presence, nor align with the prevailing building line along King Street. However there is significant variety in the arrangement and orientation of dwellings nearby. Reflecting the piecemeal development of the area over time, properties in the surroundings are variously set along streets with a rectilinear pattern, but also around closes or crescents, and in some instances properties fall behind others with a street frontage.⁸ Several properties off Navigation Way are also located behind others facing the street. There is also a varied building line along Derwent Place immediately by the appeal site. No 4 next to the Working Men's Club abuts the pavement, Nos 1-3 The Gardens are set back from it behind parking bays, and No 4 The Gardens is set back again from the principal elevations of Nos 1-3. Viewed from around Nos 6, 8 and 10 Derwent Place, in so far as they would be visible beyond the block of garages and intervening trees, the dwellings proposed would not appear incongruous.
15. The appellant's updated Arboricultural Report explains how trees on site appear to be primarily pioneer specimens allowed to grow through a lack of maintenance rather than by conscious design or maintenance. Whilst the updated Arboricultural Report reaches different findings to the first report of 18 December 2018, the identification of specimens remains consistent with the original Tree Survey Plan (RBS-18/1379/002). Plan 003.01.203, Revision D shows ten trees as proposed for removal to facilitate the development, inevitably resulting in some change to the site's characteristics.
16. However, setting aside trees identified as T2, T14 and T15, all trees proposed for removal are either of limited scale or quality, or in the case of T10 and T11 have evidently been left to dominate the garden in the absence of management over the years. Both T10 and T11 have asymmetric forms and occasional dead limbs, and neither they nor T2 are subject to specific protection.⁹ The Council's opposition to the scheme is focussed on trees T2, T14 and T15. I deal with those trees in order.
17. T2, proposed for removal, is a birch now entangled with the retaining wall next to the plot boundary with the Working Men's Club. That tree was identified as falling within 'category B', i.e. of 'moderate quality' within the terms of BS 5837:2012, in the initial arboricultural report. However, in my view, T2 is firmly within 'category C', being of low quality. It is neither a mature nor particularly fine specimen, and contributes principally to local character by virtue of its location forward of the principal elevation of No 22 as opposed to its inherent quality.

⁷ Assuming No 22 is included within the given site area, the calculation being $3 \times (1\text{ha}/0.08\text{ha})$.

⁸ In the latter respect at Poplar Court which is surrounded by properties fronting Poplar Avenue, the A34 and the B5368.

⁹ Such as those that apply in Conservation Areas or by virtue of Tree Preservation Orders.

18. More significantly it has taken root in a sliver of earth between a retaining wall by the access to No 22 and hardstanding at the Working Mens' Club at a higher level. That situation will likely both impede its future growth and, if left unchecked, resulted in further structural weakness to the retaining wall beyond that which has already occurred. Irrespective of the outcome of this appeal, one way or another the effect of T2 on the retaining wall will need to be addressed at some point. It might be possible to undertake 'engineering measures' to shore up the wall as the Council indicate. However as set out above, the tree is not formally protected, and any such measures would likely involve a significant reduction in the root system of T2 to the detriment of its wellbeing. In that context the loss of T2 in association with the development proposed would not be significant.
19. T14 and T15, an ash and a eucalyptus respectively, fall within the garden of No 24. T14 is set close to the boundary with No 26, T15 closer to the appeal site. T14 was identified as 'category C' in the original Arboricultural Report. However, on account of its scale and prominence, it is recorded as BS 5837:2012 'category B' in the updated Arboricultural Report. T15 is younger than T14. The updated Arboricultural Report refers to T15 as a 'tall, drawn specimen'. That reflects how it has adapted relative to the confines of its location, competing against other trees. The Council is of the view that, in the absence of intrusive investigations, it has not been demonstrated that the root system of either T14 or T15 could be suitably safeguarded during construction. I disagree.
20. As set out above T14 is close to the boundary with the garden of No 26. The width of the garden to No 24 is around 9.5 metres. The foundations of the dwellings proposed would be set in some distance from the appeal site boundary. T14 is multi-stemmed, and the Council do not dispute the approximate diameters thereof given in the updated Arboricultural Report. BS 5837:2012, paragraph 4.6, guides as to how the theoretical RPA for multi-stemmed trees should be calculated.¹⁰ Applying that formula gives a theoretical RPA for T14 of just under 7.2 metres, falling short of the width of the garden. Consequently it is therefore highly unlikely that any of its root system would be affected by the development proposed.
21. As set out above T15 is of lesser quality than T14, albeit that its theoretical RPA transgresses the south-western corner of the proposed dwellings. However the RPA of T15 overlaps with that of T11, T16 and T19 within the appeal site. The presence of nearby trees, T11 and T19 being more mature specimens, will in all likelihood have significantly limited the presence of roots within the appeal site. I also note that eucalyptus are reasonably tolerant of root loss.¹¹ On the balance of the evidence before me, I am not of the view that the wellbeing of T15 would be unacceptably affected. Furthermore the proposal would not transgress the theoretical RPA of trees T19 to T26 close to the rear boundary of the plot by Derwent Place. Those trees, garages to the rear, dwellings along Derwent Place, and the form of Nos 22 and 24 would serve to obscure all but partial glimpsed views of the dwellings proposed from public vantage points.

¹⁰ The square root of the sum of all stem diameters individually squared, thereafter held up against the figures in Annex D.

¹¹ Matheny, N., and Clark, J. R. (1998) *Trees and Development: a Technical Guide to Preservation of Trees During Land Development*, International Society of Arboriculture.

22. Consequently, drawing together my reasoning above, I conclude that the proposal would integrate appropriately with the character and appearance of the area, including as regards trees. Notwithstanding the recommendations of the SPD and NDG, no conflict arises with the relevant provisions of CSP1 or NPPF paragraph 127. That is, however, subject to adherence to suitable conditions as explained below.

Living conditions

23. NPPF paragraph 127. f) sets out how development should create or preserve a high standard of amenity for existing and future users, and paragraph 180 how potential adverse impacts resulting from noise should be mitigated and reduced to a minimum. The PPG indicates an approach for gauging whether noise is likely to be a cause for concern, to which I have had regard.¹²
24. As set out above, the proposed dwellings would be accessed between a side elevation of No 22 and the neighbouring Working Men's Club (as detailed on plan 003.01.202, Revision C). Vehicle parking and manoeuvring space is proposed beyond the rear garden to No 22. The appellant indicates, and the Council does not dispute, that residential use of the dwellings would likely result in approximately 10 vehicular movements a day.
25. I saw that the adjacent side elevation to No 22 contains three windows, two at ground floor level and one above. Two are modest and likely serve functional areas, albeit I was not able to view the property internally. Nevertheless windows inevitably have lower acoustic attenuation than solid walls. As set out above, although there are some, dwellings accessed via cut-throughs beside properties are less prevalent than dwellings with a street frontage with parking in-front of them or on street. In that context the proposal would have some acoustic effect. Vehicular movements associated with the proposal would be perceptible to the occupants of No 22, and there is not a direct correlation between the level of noise and individuals' perceptions as to how it affects them.
26. However, as also set out above, the appeal site is in a comparatively central location with a fair level of residential density. The A34 is little more than a hundred metres or so away to the west. Whilst predominantly residential, there are also some leisure and assembly and also commercial uses relatively nearby (including Cross Heath Methodist Church between the appeal site and Liverpool Road). I also saw that the Working Men's Club has a small outside area next to the appeal site, roughly midway along the existing plot of No 22, the use of which is likely to generate some noise on occasion.
27. Although there is no technical acoustic information before me, in my view the surrounding context to the appeal site will generate a baseline level of activity and noise higher than in other areas. Individuals in this location will likely accept that as part-and-parcel of the character of the area. As reasoned earlier the rear garden to No 22 is atypically lengthy; many other dwellings, garages and parking provision in the vicinity are located in closer proximity to one another than is presently the case here.

¹² Reference ID: 30-005-20190722.

28. Relative to that context, the noise and disturbance resulting from a handful of daily vehicular movements associated with two new dwellings would be limited. Moreover, in all likelihood, movements would tend to occur principally at peak periods of the day related to commuting, where a greater baseline level of noise would be expected in any event. Noise resulting from vehicular movements would also be intermittent, with the proposed dwellings themselves serving to attenuate some noise generated from use of their rear gardens.
29. With regard to the extent and nature of the noise that would be generated by the dwellings proposed relative to prevailing baseline characteristics, although I accept that the proposal would slightly affect the acoustic character of the area, I conclude that would not result in a significant change to the quality of life of the occupants of No 22. The effects of the proposal, in my view, would be acceptable and a high standard of amenity at No 22 preserved in line with NPPF paragraph 127. f).

Other matters

30. I have taken careful account of the representations of those nearby, including concerns over potential effects in terms of disruption during construction, privacy, and flooding. Undertaking development inevitably entails some disruption. However that would be temporary, and the management of construction and working hours could be controlled via conditions. As with noise, the proposal would result in some change, and individuals' perception of privacy may be affected. However given the separation distance between the dwellings proposed and other properties, along with the presence of intervening trees and boundary features, I am not of the view that the proposal would have unacceptable effects in that regard.
31. I am told that previously some surface water has gathered at the appeal site, potentially as a result of run-off from higher ground or from a pond existing here in the past. However the appeal site is not in a location vulnerable to flooding, and development would in any event need to comply with the relevant provisions of Building Regulations in terms of drainage.¹³ As such no other matters are sufficient to alter my reasoning regarding the overall acceptability of the development proposed, as set out in the main issues above.

Conclusion

32. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF and all relevant other material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Conditions

33. In addition to securing commencement within the relevant statutory period, I have imposed conditions requiring compliance with the supporting plans, that agreed external materials are used, and that a landscaping scheme is implemented. Those conditions are necessary for certainty and so as to ensure the proposal integrates appropriately with its surroundings as assessed above. For similar reasons, with regard to section 197 of the Town and Country Planning Act 1990 as amended, I have imposed condition 5 requiring an agreed approach to tree preservation during construction. Although two arboricultural

¹³ As set out on Approved Document H in support of the Building Regulations 2010 as amended.

reports have been prepared in association with the development proposed, that condition is nonetheless reasonable in the light of differences between the findings of the original and updated reports.

34. It is further necessary to impose conditions requiring that site access is provided before occupation, visibility splays are maintained free from obstruction, and specifying that site access shall not be impeded, in the interests of ensuring safe and suitable access in line with LP policy T16 and NPPF paragraph 108. b).¹⁴ In line with my reasoning above, and with regard to NPPF paragraph 127. f), in order to minimise disruption to those nearby during construction, I have imposed conditions 8 and 9 specifying that development comply with an agreed construction management plan and take place only within reasonable working hours. In pursuit of the objectives within the Council's Air Quality Action Plan 2019-2024 and in NPPF paragraphs 105 and 181, it is also reasonable to impose condition 10 requiring electric vehicle charging point provision.
35. As described in paragraphs 26 and 27 there are some features of the surrounding environment that will generate a baseline level of noise. Nevertheless the appeal site falls within an established residential area, with other dwellings located in similar proximity to the Working Men's Club as the proposed units would be. Given the provisions of Building Regulations regarding resistance to the passage of sound that will need to be adhered to in any event, conditions requiring an acoustic assessment and specifying internal and external noise levels to be achieved proposed by the Council are not necessary.
36. Conditions 6 and 8 must take effect before any development is undertaken, as work on site has the potential to affect the wellbeing of trees or the living conditions of those nearby. With reference to section 100ZA of the Town and Country Planning Act 1990 as amended, the appellant has agreed to the terms of pre-commencement conditions proposed by the Council in those regards. In imposing conditions I have had regard to the tests in the NPPF, the PPG and the requirements of statute. Accordingly I have amended the wording of certain conditions proposed, and combined some, without altering their aims.

Thomas Bristow
INSPECTOR

¹⁴ Including with regard to PPG Reference ID: 21a-020-20140306.

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: 003.01.200, 003.01.202 Revision C, 003.01.205 Revision B, 003.01.201 Revision B, J32-3846-004 Revision C, J32-3846-007 Revision A, 003.01.203 Revision D.
- 3) Notwithstanding condition 2, before their installation in the development hereby permitted, details of external materials, boundary treatments and any surfacing materials (along with associated means of drainage) shall have been submitted to and agreed in writing by the local planning authority. Materials shall be installed as agreed, and thereafter retained.
- 4) No dwelling hereby permitted shall be occupied until details of all hard and soft landscaping have been submitted to, agreed in writing by the local planning authority, and carried out as agreed in the first planting season following first occupation of either dwelling or within 12 months of the commencement of the development (whichever is the sooner). Any planting, seeding or turfing which within a period of five years after implementation, are removed, die or become seriously damaged or defective shall be replaced as soon as is reasonably practicable with others of similar species, size and number as originally agreed.
- 5) No development hereby permitted shall take place until a Tree Protection Plan ('TPP'), Arboricultural Method Statement ('AMS') and details of all tree protection measures for all retained and existing trees and hedgerows within and adjoining the site, in compliance with BS 5837: 2012 or successor document, have been submitted to and agreed in writing by the local planning authority. The development hereby permitted shall be undertaken in accordance with the details thus agreed.
- 6) Before either dwelling hereby permitted is first occupied, visibility splays shown on approved plan J32-3846-004 Revision C, and also the access drive, parking and turning areas on approved plan J32-3846-007 Revision A shall have been provided. Once provided the visibility splays shall thereafter be kept free from any obstruction to visibility over a height of 600mm above the adjacent carriageway level, and the access drive, parking and turning areas retained for those purposes alone.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any other order amending, or revoking and re-enacting that order with or without modifications) or otherwise, no gates, enclosures, or other obstructions to vehicular movement shall be installed in respect of the access from King Street shown on the approved plans.
- 8) No development hereby permitted shall take place until a Construction Management Plan ('CMP') has been submitted to and agreed in writing by the local planning authority. The CMP shall include details of any (i) site compound with associated temporary buildings (ii) the routing of construction vehicles to and from the site (iii) the parking of vehicles for site operatives and visitors (iv)

the storage of plant and materials used in constructing the development hereby permitted (v) measures to prevent the deposition of deleterious materials onto the highway. The development hereby permitted shall be undertaken in accordance with the details of the agreed CMP.

- 9) No construction works related to the development hereby permitted shall take place outside of the following hours: 0800 to 1800 Mondays to Fridays inclusive, 0800 to 1300 on Saturdays. No construction works related to the development hereby permitted shall take place at any time on Sundays or on Bank or Public Holidays.
- 10) Before either dwelling hereby permitted is first occupied, at least one parking space per dwelling will have been provided with a fully operational dedicated electric vehicle charging point, and any other parking spaces provided with passive wiring to allow for future charging point connection. Charging points shall be a minimum of 32 Amp International Electrotechnical Commission standard 62196 Type 2 connector provided on a dedicated circuit (or equivalent). Once provided the charging point and passive wiring shall thereafter be retained.