

Agenda Item 8

REPORT

Report Subject: **Recent appeal decisions related to planning application ref Nos: S/2008/1841**

LOCATION

Land at Shaftsbury Road, Wilton, SP2 ODR

Report to: **Southern Area Committee**

Date: **3rd July 2009**

Authors: **Andrew Bidwell, Principal Planning Officer**

1. Purpose of Report / Report Summary

1.1 The purpose of this report is to inform members of a recent appeal decision following the refusal of the above planning application by the former Western Area Committee. In this case the members resolved to refuse the application contrary to the officers recommendation to approve.

1.2 Members are advised that in this case the appeal inspector has awarded costs against the council.

1.3 Members attention is drawn to the appeal decision and award of costs decision which is included as appendix 1 of this report.

3. Recommendation

That the committee notes the above report.

APPENDIX 1



The Planning Inspectorate

An Executive Agency in the Department for Communities & Local Government and the Welsh Assembly Government

21 Century Appeals Service Proportionate, Customer Focused and Efficient

Background

The Planning Act 2008 received Royal Assent on 26 November 2008. One of the main aims of the Act is to improve the speed of the appeals process. The focus is on the principles of proportionality, customer focus and efficiency.

Guidance is being developed and will soon be available on our website. Look out for this at the links overleaf.

The following is a brief overview of the key changes coming into place on 6th April 2009.

• Nature and Content of Appeal Documents

Appellants and local planning authorities (LPA) must ensure that their reasons for refusal and grounds of appeal (GoA) are clear, precise, comprehensive, and that the GoA relate to the scheme as refused at application stage, without substantial changes which could lead to any party being prejudiced. Applicants should not normally proceed to appeal unless all efforts to negotiate a solution with the LPA, including through amending their proposals, have been exhausted. They should be confident at the time of appeal that they have a clear case and do not need to commission further evidence.

• Determining the Appeal Method

The Planning Inspectorate (on behalf of the Secretary of State for Communities and Local Government) will be able to decide whether planning or enforcement appeals under the 1990 Act should proceed by written representations, hearing or inquiry. The appellant and LPA will have the opportunity to put forward their views on their preferred procedure. Criteria for determining the procedure (indicative) can be found on our website.

• Householder Appeal Service

There will be a streamlined appeal process for householder planning appeals to be determined within 8 weeks. The appeal period for householder appeals will be 12 weeks.

• Meeting the timetables

Once an appeal is accepted and validated by the Planning Inspectorate, it is crucial that all parties adhere to the statutory deadlines at each stage. Parties should also maintain a regular and continuing dialogue to ensure that the issues can be clearly established between them, with no last minute surprises arising.



• Streamlined Appeal Procedures (Statement of Common Ground)

There is new guidance being issued to streamline the appeal process. An example of the new streamlined process is main parties will no longer be able to submit final comments for hearing or inquiries at the 9 week stage, and the statement of common ground will be required 6 weeks after the appeal has started.

• Correction of Errors

The appellant or landowner's written consent will no longer be required to correct an error in a Planning Inspector's decision under the "Slip Rule" (i.e. a minor error that does not materially affect the decision).

• Making Costs Applications

Parties to an appeal will be able to apply for Costs in written representation cases. A revised Circular on Costs is in preparation.

Key Websites

Key websites for information regarding the 21st Century Appeal Service.

21st Century Appeals Service

For a full explanation of all of the changes described overleaf and the latest information on making an appeal using the 21st Century appeals service visit the '21Century Appeals Service' web page on the Planning Inspectorate web site:
http://www.planning-inspectorate.gov.uk/pins/21st_century/index.html

Householder Appeal Service

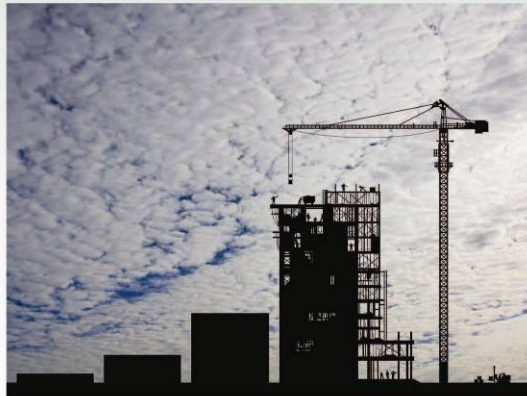
Information about the new Householder Appeals Service is on the Planning Inspectorate's website:
http://www.planning-inspectorate.gov.uk/pins/appeals/householder_appeals.htm

The Planning Act 2008

To view the actual Planning Act 2008 visit the Office of Public Sector Information (OPSI) website:
http://www.opsi.gov.uk/acts/acts2008/ukpga_20080029_en_1

Making an Appeal

For general Information on making an appeal, to follow the progress of an appeal and to submit an appeal online, visit the Planning Portal website:
<http://www.planningportal.gov.uk/pcs/>





The Planning Inspectorate

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Jenny Strange
Wiltshire Council
Wyndham Road Office
61 Wyndham Road
Salisbury
Wiltshire
SP1 3AH

Your Ref: S/2008/1841/FUL
Our Ref: APP/Y3940/A/09/2098296/NWF
Date: 26 June 2009

Dear Ms Strange

**Town and Country Planning Act 1990
Appeal by Ayleswood Developments Ltd
Site at Land At Junction Of Shaftesbury Road And Victoria Road, Wilton,
Salisbury, SP2 0DR**

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

Leaflets explaining the right of appeal to the High Court against the decision, our complaints procedures and how the documents can be inspected are on our website – www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm - and are also enclosed if you have chosen to communicate by post. If you would prefer hard copies of these leaflets, please contact our Customer Services team on 0117 3726372.

Please note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

If you have any queries relating to the decision please send them to:

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

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk

Yours sincerely



Amanda Baker

COVERDL2

*You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*

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.

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407

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.



Appeal Decision

Hearing held on 9 June 2009
Site visit made on 9 June 2009

by **David Morgan BA MA MRTPI IHBC**

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

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Decision date:
26 June 2009

Appeal Ref: APP/Y3940/A/09/2098296

72 Land at Shaftesbury Road, Wilton, Salisbury SP2 0DR

- 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 Ayleswood Developments Ltd against the decision of Wiltshire Council.
- The application Ref S/2008/1841/FULL, dated 27 October 2008, was refused by notice dated 27 January 2009.
- The development proposed is creation of new dwelling and access.

Application for costs

1. At the Hearing an application for full costs was made by Ayleswood Developments Ltd against Wiltshire Council. This application is the subject of a separate Decision.

Procedural matter

2. The appellants presented a unilateral undertaking securing a financial contribution towards local public recreational open space facilities at the Hearing. The Council confirmed the acceptability of this undertaking and accepted it addresses their second reason for refusal as set out on the decision notice. I therefore include it as a main issue and consider it below in the context of the criteria set out in Circular 05/2005.

Decision

3. I allow the appeal and grant planning permission for creation of new dwelling and access at 72 Land at Shaftesbury Road, Wilton, Salisbury SP2 0DR in accordance with the terms of the planning application ref: S/2008/1841/FULL, dated 27 October 2008 and the plans submitted with it and as amended, subject to the conditions set out in the schedule at the end of this decision.

Main issues

4. I consider these to be a) the effect of the development on the character and appearance of the area and b) its effect on the living conditions of occupiers of properties in Victoria Road and Shaftesbury Road, by virtue of its scale and proximity.
-

Reasons

Character and appearance

5. The appeal site comprises a parcel of land at the junction of Victoria Road and Shaftesbury Road towards the southern periphery of the settlement. It effectively forms a green tip to a finger of land which, as it broadens to the east, accommodates dense residential development. This finger of land is bordered to north and south by twin ribbons of residential development of predominantly inter-war date.
6. The development proposed is for a single dwelling which, negotiating the sloping topography of the site, is arranged over three levels; in terms of design, it has a North American Arts and Crafts resonance.
7. I agree with the Council that the appeal site is prominently located at the entrance to the settlement as one travels east along the Shaftesbury Road. I also agree that due to its promontory-like location at the confluence of the two roads it would have a strong presence in the street scene. However, I cannot agree that this would amount to a structure of over-bearing impact, nor one constituting an over-development of the site. In my view, though undoubtedly prominent, its height and scale are proportionate to the visual parameters of its location, which are essentially framed by the opposing fronts of the houses in Victoria and Shaftesbury Roads. Though at its highest point it would be over 10m above Shaftesbury Road, the proposed development is set within a space defined by the house fronts of some 45m in extent; not an uncomfortable proportion to my mind.
8. Moreover, the form of the building, working to the best advantage of the site topography, allows it to engage with its context, ensuring it would fit comfortably within the site. For these reasons I consider it compliant with the objectives of the effective and efficient use of previously developed land and good design set out in Planning Policy Statement 3 *Housing*, and with policy D1 of the Replacement Salisbury District Local Plan (RSDLP) specifically criteria i, ii, iii, iv, v and vii thereof, and to policies G2 and H16 (inclusive of all criteria) of the same.

Effect on living conditions

9. I have considered the concern of local residents and Council that the proposed development would be of a scale such as to amount to a degree of visual prominence constituting an overbearing presence, thus causing material harm to living conditions of occupiers of properties in Victoria and Shaftesbury Roads. However, though the development would undoubtedly change the outlook from these properties, the ridge of the main body of the proposed dwelling would be well below that of properties in Victoria Road and be some 19m distant from their front elevation. Moreover, though it would have greater presence for those on the Shaftesbury Road, with a similar 20m distance between them, no material harm to living conditions would result.
10. Concerns were raised about loss of privacy to properties in Victoria and Shaftesbury Roads due to the height and location of windows. Such concerns

are in my view misplaced as the only window facing Victoria Road that could not be reasonably obscure glazed lights a bedroom, a secondary living space, and the windows facing Shaftesbury Road light the stair, landing and utility rooms. Moreover, the distances of 19m and 20m respectively between existing dwellings and these secondary window openings are no less than generally accepted in an open suburban context such as this.

11. The Council also expressed concern as to the effect on living conditions of future occupiers of the dwelling, specifically in respect of loss of privacy to the study facing Victoria Road. Given the use of this room, the provision of a boundary fence, its distance from the footpath and the low level of pedestrian activity in the area, I conclude no material harm would result in this regard.

Other matters

12. Local concern has been expressed at the increase in pressure for on-street parking that would result from the development. Whilst such concerns attend many development proposals they are not shared by either the Council or the highway authority. Moreover, the development proposes two off-street parking places in accordance with local plan policy and I am satisfied that any such concerns are not based on any material planning considerations. I sympathise with local residents as to local parking difficulties but conclude this is more a local management issue than one relevant to the appeal.

Unilateral undertaking

13. Policy R2 of the RSDLP requires that new residential development will make provision for recreational open space in accordance with a standard of 2.43 hectares per 1000 population, with additional open amenity space being sought as appropriate. Further details relating to such provision are set out in Appendix iv of the RSDLP *Standards for the provision of Public Open Space in Association with New Residential Development*. This appendix states that for residential proposals of less than ten dwellings the Council will expect contributions to be made on the basis of a scale of payments operated by the local planning authority. This document also makes clear there is a deficiency in provision of recreational open space in the District (as was) and has therefore adopted an upper target for such provision. At the Hearing the Council confirmed that this District-wide deficiency was also reflected in such provision in Wilton and that the scale of the contributions set out in the unilateral undertaking was in accordance with the Council's current scale of payments. It was on the basis of the submission of this document that the Council had withdrawn the second reason for refusal set out on the decision notice. Having studied the unilateral undertaking and the evidence put before me I too am satisfied that the document is satisfactory and in accordance with the criteria set out in Circular 05/2005.

Conditions and conclusions

14. Allowing the appeal I attach conditions requiring the submission of samples of materials to ensure a satisfactory appearance to the development, conditions requiring the submission of details of engineering works for retaining walls, prior provision of parking spaces and details of footway provision, all in the interests of highway safety, conditions removing permitted development rights, submission of details of windows to be obscure-glazed and limits on times of

delivery of plant and materials and hours of operation, all in the interest of living conditions of neighbours, and a condition requiring the submission of details or renewable energy supply and resource conservation in the interest of limiting the incremental effect of the development on global climate.

15. For the reasons given above, and having considered all matters raised in evidence and at the Hearing, I conclude that the appeal should be allowed.

David Morgan Inspector

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full detailed engineering drawings and calculations for all retaining elements which will support the public highway along Victoria Road have been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the approved details.
- 4) No development shall take place until full details of the proposed 1.5m wide footway along Victoria Road have been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the approved details and the footway shall be completed before the first occupation of the dwelling hereby approved.
- 5) The parking area shall be constructed in accordance with the approved details before first occupation of the dwelling and shall be constructed in a suitable consolidated material to ensure that no loose stone or gravel enters the public highway.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended on 1 October 2008) (or any order revoking and re-enacting that Order with or without modification) no buildings, extensions, nor insertion of additional windows, nor the erection of any structures within the cartilage unless otherwise agreed in writing by the local planning authority upon submission of a planning application in that behalf.
- 7) Prior to the commencement of development, details of the means and extent of the obscure glazing and details of proprietary opening restrictors in the ground and first floor levels of the north elevation shall be submitted to and approved in writing by the local planning authority. Development shall be undertaken in accordance with the details hereby approved, and thereafter retained in that state.
- 8) No delivery of plant, equipment or materials, or any demolition, construction work or other building activity shall take place on Sundays or public holidays, or outside the hours of 08:00 to 18:00 on Mondays and Fridays and 08:00 to 13:00 on Saturdays.
- 9) Prior to the commencement of development, details of water and energy efficiency measures to be used in the development shall be submitted to and approved in writing by the local planning authority. Development shall be undertaken in accordance with the details thereby approved.

DOCUMENTS PRESENTED AT THE HEARING

1. Notification of details of Hearing: Wiltshire Council
2. Written submissions: Mr Lovelock
3. Unilateral undertaking: Mr Allen
4. Full claim for costs – written submission: Mr Allen
5. Rebuttal of Costs Application: Wiltshire Council



Costs Decision

Hearing held on 9 June 2009
Site visit made on 9 June 2009

by **David Morgan BA MA MRTPI IHBC**

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

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Decision date:
26 June 2009

Costs application in relation to Appeal Ref: APP/Y3940/A/09/2098296 72 Land at Shaftesbury Road, Wilton, Salisbury SP2 0DR

- 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 Ayleswood Developments Ltd for a full award of costs against Wiltshire Council.
- The Hearing was in connection with an appeal against the refusal of planning permission for the creation of new dwelling and access.

Decision

1. The application for the award of costs made by Ayleswood Developments Ltd is allowed on the terms set out below in the formal Decision and Costs Order.

The Submissions for Ayleswood Developments Ltd

2. The application for costs is made in relation to two of the three conditions set out in paragraph 6 of Annex 1 of Circular 8/93: a) the Council has behaved unreasonably; and b) this unreasonable conduct has caused the Appellant to incur and waste expense unnecessarily because it should not have been necessary for the matter to be determined by the Secretary of State.
3. This case relates to the example set out in paragraphs 8 and 9 of Annex 3 of Circular 8/93 whereby reasons for refusal should be complete, precise, specific and relevant to the application and where planning authorities have not adopted the professional and technical advice given by their own officers or consultees and have not shown they had reasonable planning grounds for taking a decision contrary to that advice supported by relevant evidence in all respects.
4. In relation to the effect of the development on the character and appearance of the area, the Council's professional officers, after careful consideration of the application, supported its approval, yet the Council refused the application for reasons of size, height and scale. Importantly in this case, given the unusual nature of the site, the Council sought further advice in respect of such matters from its Design Panel, who supported the design approach adopted, with no concerns over size, height or scale. Indeed the Design Panel considered the proposal an 'innovative approach to the challenges of the site'.
5. Whilst the Council do not have to follow the advice of its professional officers they will need to show that they had reasonable planning grounds for doing so and are able to support it with relevant evidence. In this case a 'second opinion' was sought to assess such key impacts of the scheme and this supported officer's professional opinions that scale, height and mass were

acceptable. Paragraph 9 of 8/93 advises that if a local planning authority does not accept the advice of consultees they 'should say so and explain why'. There is no such explanation in the Council's evidence.

6. In relation to the effect on living conditions, the impact of the proposed development on adjacent properties was carefully assessed by officers, and the Companion Guide to PPS1 'The Planning System General Principles', paragraph 29 advises that the relevant test is whether the 'proposal would unacceptably affect the amenities and the existing use of land and buildings which ought to be protected in the public interest'. There is no assessment of such a test in the Council's evidence, which concludes 'on balance' harm would result.
7. It is submitted that the Council has acted unreasonably in this case in that it has failed to produce evidence to substantiate the reason for refusal contrary to the advice of its officers and specialist consultants.

The Response by Wiltshire Council

8. Whilst the decision was made contrary to the officer's advice it was made in the full knowledge of the negotiations made with the Design Panel and the amended plans received as a result of these negotiations. Members were also updated at the meeting of any late correspondence and a site visit was conducted prior to the meeting. So there is no doubt that the usual correct process was followed and there is no reason why the Council should be considered to have behaved unreasonably and expected to pay costs.

Conclusions

9. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily. The cancellation of Circular 8/93 by CLG Circular 03/2009 applies with effect from 6 April 2009 to all appeals made on or after that date. The ability to apply for an award of costs for appeals pre-dating 6 April is derived from the legislation cited at the head of this costs decision. The conditions for an award to be made, set out in the previous paragraph, are carried forward in the new Circular. Therefore for appeals like this one made before 6 April 2009 I see no difficulty in deciding whether or not to make an award of costs in the light of these well established principles.
10. Matters of design are subjective and therefore differing views on the acceptability of development or otherwise are bound to occur from time to time. However, such subjective judgements must, in the planning context, be informed by reasoned arguments and presented in evidence in the case of proposals at appeal. Such circumstances are reflected in the guidance set out in paragraph 9 of Annex 3 of Circular 8/93 which acknowledges the right of Councils not to follow professional and technical advice of officers but stipulates they have to say why they have done so and have reasonable planning grounds for taking such a decision supported with relevant evidence in all respects.
11. The Council, contrary to officers opinion, contends the proposed development would appear out of place in terms of height and scale, maintaining it does not take account of the of the position between the two roads, or the differing

height between dwellings in the respective roads. However, such a view is not substantiated with an assessment of the scale of the proposal in relation to the parameters of the surrounding space defined by the existing development. Nor does it address the fact that it would be lower than dwellings on Victoria Road.

12. Moreover, the Council do not state in evidence why they have come to a conclusion different to that of their officers. Neither do they state why they have chosen to disregard the advice of their Design Panel, not a statutory consultee, but nevertheless a body constituted by the Council specifically to offer specialist advice on design matters. The unexplained counter-view is not supported with an opinion from another acknowledged design specialist nor by any written submissions from Councillors to substantiate and explain their conclusions and recommendation in this regard.
13. Again the Council do not explain why they have come to a conclusion different to that of their officers and do not substantiate their assertion that the dwelling as proposed would be harmful to the amenities of properties in Shaftesbury Road with specific reference to what harm to living conditions of occupiers would result, other than 'over-dominance', nor which specific properties would be affected. Again no detailed submissions have been made by Councillors explaining why a different view has been arrived at nor have reasonable planning grounds been identified that justify it.
14. On both counts therefore I find that the Council has not shown reasonable planning grounds for departing from the professional and technical advice of their officers and chosen specialist consultees, nor have they produced substantive evidence to support their decision in all respects. On this basis, and with specific regard to paragraph 9 of annex 3 of Circular 8/93, I find the Council has acted unreasonably in relation to the substance of the case, causing the Appellant to incur and waste expense unnecessarily because it should not have been necessary for the matter to be determined by the Secretary of State.

Formal decisions and Costs Order

16. Accordingly, in exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Wiltshire Council shall pay to Ayleswood Development Ltd the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of an application for planning permission for the creation of new dwelling and access.
17. Ayleswood Developments Ltd are now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

David Morgan Inspector