



Appeal Decision

Site visit made on 14 November 2011

by **C J Checkley BA(Hons) MRTPI**

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

Decision date: 13 January 2012

Appeal Ref: APP/N1350/A/11/2158656

Plots 1 and 2 (formerly 59 Blackwell), Darlington, Co. Durham, DL3 8QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John Lees against the decision of Darlington Borough Council.
 - The application Ref 09/00908/FUL, dated 22 December 2009, was refused by notice dated 11 February 2011.
 - The application sought planning permission for demolition of 2 no. existing dwellings and construction of 5 no. detached dwellings to include upgrading of the river bank without complying with condition 3 attached to planning permission 05/00788/FUL dated 18 November 2005 regarding substitution of house types relating to Plots 1 and 2 and retrospective slope stabilisation works.
 - The condition in dispute is No 3 which states: "The proposed development shall be carried out in all respects in accordance with the proposals contained in the application and the plans submitted therewith and approved by the local planning authority, or as shall have been otherwise agreed in writing by the local planning authority."
 - The reason given for the condition is: "To ensure the development is carried out in accordance with the planning permission".
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr John Lees against Darlington Borough Council. The costs application is the subject of a separate decision.

Preliminary matters

3. The appeal site forms part of a larger area, since subdivided, on which detailed planning permission was granted in 2005 (ref. 05/00788/FUL) for the demolition of 2 dwellings and the erection of 5 detached dwellings and the upgrading of the river bank. At the time of my visit the slope stabilisation works had been undertaken and the foundations of 2 dwellings were in place. Since the appeal scheme appears materially different from that granted permission in 2005, I am treating the appeal as relating to an application for planning permission for the construction of 2 detached houses and the undertaking of slope stabilisation works.
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4. Permission has previously been granted (ref. 10/00040/FUL) for revised house types on Plots 3, 4 and 5 on the land adjacent. I am at the same time determining an appeal by the same appellant for the erection of a house of contemporary design on land to the immediate south of Plot 5.

Main Issue

5. The main issue is the effect of the development upon the appearance and character of the street scene and the Area of High Landscape Value (AHLV).

Reasons

6. The appeal site comprises steeply sloping riverbank land on the west side of Blackwell on the edge of a mature residential area. The site descends steeply westwards from road level down to the River Tees. The lower river banks and the open countryside beyond is part of a designated AHLV. Blackwell is residential in character with large and medium-sized detached or semi-detached dwellings predominating, including examples from the Victorian, inter/post-war and more modern periods. The result is a pleasing blend of dwellings sharing design elements in common, an attractive residential area with a strongly traditional character which is locally distinctive.
7. The Distinctly Darlington: Design of New Development Supplementary Planning Document July 2009 (Design SPD) indicates that the appeal site lies within the Outer Suburbs Character Zone where building heights should be a maximum of 2.5 storeys with no objection to the creation of accommodation within the roofspace. The predominant character of the area is defined by 2-storey buildings with pitched or hipped roofs orientated laterally with their main elevations and roof slopes facing the street, some with projecting gables set into the main roof, some with loft conversions providing living accommodation within the roofspace. The revised houses of contemporary style approved on Plots 3-5 have pitched roof forms and conform to the wording of the Design SPD guidelines, although they would be of a considerable scale and height overall within the street scene.
8. National guidance in Planning Policy Statement 1: Delivering Sustainable Development (PPS1) emphasises the importance of promoting or reinforcing local distinctiveness and indicates that design which is inappropriate in its context should not be accepted. Context is particularly important in this case. The 2 houses proposed on the appeal site would share a similar bold contemporary design in a complex segmented form. The front and rear elevations raise different considerations.
9. The 3-storey front elevations would be dominated by a split gable with monopitch roof, including glazing three full storeys high terminating in a flat roof. Large flat-roofed side dormer projections at third storey level would emphasise the areas of flat roof. Viewed in isolation I would describe the buildings as having an interesting design. However, context and setting are very important. The complex combination of these striking architectural features within the front elevations would be at odds with the characteristic form of surrounding dwellings. They would reflect little of the form or character of the surrounding residential area, even less so than the houses proposed on Plots 3-5. As a result of their contrasting design and form which would be

emphasised by their scale they would appear as discordant features in this context, out of harmony with the Blackwell street scene.

10. The appellant emphasises that the 2 appeal scheme houses would be less tall overall than the five houses originally approved in 2005 and the 3 revised houses recently approved on the adjacent Plots 3-5, which would also have greater internal floor areas. Considering scale in isolation, although the houses proposed would clearly contravene the 2.5 storey maximum guideline in the Design SPD, I find that they would not look wholly out of scale with their surroundings within the Blackwell street scene, considering the considerable height and massing of the proposed 2-storey dwellings with loft accommodation permitted on Plots 3-5. However, their scale and massing would serve to exaggerate the intrusive impact in the street scene of the alien design and form.
11. At the rear the slope falls away steeply towards the river enabling the creation of 2 additional split-level storeys set into the slope. Five full-height rear storeys with extensive glazing would be apparent overall, dominated visually by projecting gables topped by large areas of flat roof and with monopitch roofs also evident. I consider that the design, form and scale of the rear elevations would be out of character with the existing predominating 2-storey housing. Although the revised house types permitted on neighbouring Plots 3-5 would have rear elevations of a similar considerable scale with extensive glazing, their pitched roof forms would be more characteristic of the surrounding area.
12. I accept that views of the rear elevations of the appeal scheme from public vantage points would generally be either distant views from the A66 or mid-distance partially-screened tangential views from the Tees Way public footpath, with the separation distances reducing the adverse visual impact. Whilst having full regard to the context provided by the very large houses permitted on Plots 3-5, I find that the design and form of the proposed dwellings as seen from the rear would nevertheless cause some detriment to the appearance and character of the AHLV.
13. I conclude that that in this particular context and setting the contrasting and uncharacteristic design and form of the houses proposed, emphasised by their scale, would look alien and detrimental to the appearance and character of the Blackwell street scene and the AHLV. These adverse effects would be contrary to the provisions of policies E7, E8, E10, E16, E29 and H11 of the Borough of Darlington Local Plan 1997 and the Design SPD and national guidance in PPS1 which seek sympathetic developments that are appropriate to their context, respect the character of the area and reinforce local distinctiveness.
14. The Council raises no objection to the appearance of the gabion-wall slope stabilisation measures that have been undertaken and I see no reason to take a contrary view. I appreciate the costly nature of the land stabilisation measures that have been undertaken, but this is not a justification for permitting a form and design of development that would be visually harmful. I have taken account of all other matters raised in the many representations but I find none are sufficient to outweigh the considerations outlined above.

C J Checkley



Costs Decision

Site visit made on 14 November 2011

by **C J Checkley BA(Hons) MRTPI**

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

Decision date: **13 January 2012**

Costs application in relation to Appeal Ref: APP/N1350/A/11/2158656 Land at Plots 1 and 2 (formerly 59 Blackwell), Darlington, DL3 8QT

- 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 John Lees for a full award of costs against Darlington Borough Council.
 - The appeal was made against the refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted for the demolition of 2 no. existing dwellings and construction of 5 no. detached dwellings to include upgrading of the river bank.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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.
 3. The appellant seeks a full award of costs incurred, for reasons that include: the requirement by the Council for additional work to be undertaken on such matters as landslip risk; the delay in determining the application; inconsistency with the decision to grant permission for the revised houses on Plots 3, 4 and 5; and the unreasonable refusal of permission which fails to provide complete, precise, specific and relevant reasons for refusal.
 4. The power to award costs is limited to those necessarily and reasonably incurred in the appeal process. Costs that are unrelated to the appeal itself are not eligible. Expenses incurred at application stage, or any indirect expenses, cannot be recovered by an award of costs.
 5. Paragraph B18 of the Circular acknowledges that many appeals involve matters of judgement concerning the character and appearance of an area. This is one such example. The Circular adds that where the outcome of an appeal turns on an assessment of such issues it is unlikely that costs will be awarded if realistic and specific evidence is provided about the consequences of the proposed
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development.

6. The single refusal reason within the decision notice related purely to matters of appearance and character - the design, scale and massing of the proposed dwellings and their effect upon the visual appearance of the street scene and wider surroundings including the Area of High Landscape Value. There were no refusal reasons regarding other factors such as flood risk or landslide risk.
7. After considering all material factors, including the revised permission for 3 houses on Plots 3-5, I dismissed the appeal. I concluded that in this particular context and setting the contrasting and uncharacteristic design and form of the houses proposed, emphasised by their scale, would look alien and detrimental to the appearance and character of the Blackwell street scene and the AHLV. The Council's decisions were not inconsistent since the designs and forms of the houses permitted on Plots 3-5 differed significantly from the designs and forms proposed at the appeal site. I consider that the Council provided in its evidence reasons for all the elements of its decision that were complete, precise, specific and relevant, and substantiated by reference to pertinent provisions of policies in its Local Plan and Design SPD and national guidance.
8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated and conclude that an award of costs, on either a full or a partial basis, is not justified.

C J Checkley

INSPECTOR