

TITLE OF REPORT: Planning Appeals

REPORT OF: Paul Dowling, Strategic Director, Communities and Environment

Purpose of the Report

1. To advise the Committee of new appeals received and to report the decisions of the Secretary of State received during the report period.

New Appeals

2. There have been **no** new appeals lodged since the last committee.

Appeal Decisions

3. There has been **one** new appeal decision received since the last Committee:

DC/14/01160/FUL - Land At Wellington Road, Cross Lane, Gateshead
Erection of a car supermarket consisting of a concourse building with an adjoining workshop and associated vehicle storage, vehicle display and car parking areas (additional info received 07/01/15 and 30/05/16 and amended plans received 15/01/15, 30/05/16 and 01/08/16).

This was a committee decision refused on 27 October 2016.

Appeal dismissed on 17 November 2017.

Details of the decision can be found in **Appendix 2**

Appeal Costs

4. There has been one appeal cost decision:

DC/14/01160/FUL - Land At Wellington Road, Cross Lane, Gateshead
Erection of a car supermarket consisting of a concourse building with an adjoining workshop and associated vehicle storage, vehicle display and car parking areas (additional info received 07/01/15 and 30/05/16 and amended plans received 15/01/15, 30/05/16 and 01/08/16).

The costs have been refused.

Details of the decision can be found in **Appendix 2**

Outstanding Appeals

5. Details of outstanding appeals can be found in **Appendix 3**.

Recommendation

6. It is recommended that the Committee note the report

Contact: Emma Lucas Ext: 3747

FINANCIAL IMPLICATIONS

Nil

RISK MANAGEMENT IMPLICATIONS

Nil

HUMAN RESOURCES IMPLICATIONS

Nil

EQUALITY AND DIVERSITY IMPLICATIONS

Nil

CRIME AND DISORDER IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

HUMAN RIGHTS IMPLICATIONS

The subject matter of the report touches upon two human rights issues:

The right of an individual to a fair trial; and
The right to peaceful enjoyment of property

As far as the first issue is concerned the planning appeal regime is outside of the Council's control being administered by the First Secretary of State. The Committee will have addressed the second issue as part of the development control process.

WARD IMPLICATIONS

Various wards have decisions affecting them in Appendix 3

BACKGROUND INFORMATION

Start letters and decision letters from the Planning Inspectorate



Appeal Decision

Site visit made on 18 September 2017

by Elaine Gray MA(Hons) MSc IHBC

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

Decision date: 17 November 2017

Appeal Ref: APP/H4505/W/17/3172147

Land at Wellington Road, Cross Lane, Gateshead

- 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 Mr John Hobbs against the decision of Gateshead Council.
 - The application Ref DC/14/01160/FUL, dated 23 October 2014, was refused by notice dated 27 October 2016.
 - The development proposed is erection of a car supermarket consisting of a concourse building with an adjoining workshop and associated vehicle storage, vehicle display and car parking areas.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr John Hobbs against Gateshead Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The address of the appeal site varies between the application form and the subsequent documents. I have used the version given on the decision notice, as it describes the location more concisely.

Main Issues

4. The main issues are whether the proposal would prejudice the delivery of the Metrogreen Area Action Plan, and the effect of the proposal on wildlife interests.

Reasons

Metrogreen

5. The appeal site is located within the Metrogreen Area of Change, an area of brownfield land which the Council has identified for regeneration. The Council's document entitled 'Metrogreen Options Report' (MOR, November 2015) sets out the intentions for the preparation of the Metrogreen Area Action Plan (AAP), which will facilitate the regeneration project. Policy AOC2 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (CSUCP) sets out the aspirations for the location. It is envisaged that the project will be residential-led, in conjunction with complimentary mixed uses such as office space and community facilities. In this context, the appeal site

forms part of a larger piece of land that has been identified in the MOR for housing development.

6. The appellant's case focuses on the benefits that would arise from the short to medium term development of the site, stating that they would be receptive to the redevelopment of the appeal site as part of the Metrogreen regeneration project once it is further advanced. The Council accept that the development of the appeal site in the short term in advance of the delivery of the AAP would not prejudice the delivery of the regeneration scheme.
7. To that end, the Council have considered the option of granting a temporary planning permission for the development. However, they have discounted this measure on the grounds that a condition requiring the demolition, after a stated period, of a building that is clearly intended to be permanent would be unlikely to pass the test of reasonableness, as set out in paragraph 206 of the National Planning Policy Framework (the Framework). I agree with the Council's position that a temporary permission would not be appropriate on these grounds.
8. That being the case, there would be no mechanism to ensure that the appeal site would be made available for further redevelopment once the AAP had reached a more advanced stage. It is therefore necessary to consider the effect of the appeal scheme on this basis. I acknowledge that the AAP remains at an early stage, and appears to be some years away from adoption, which limits the weight I can afford to it. Nonetheless, CSUCP Policy AOC2 states that proposals made in advance of the AAP will be required to demonstrate that they would not prejudice but complement and integrate with the wider development of the area, taking into account the requirements of relevant evidence.
9. The appellant states that the scheme would contribute to the Council's aspirations for the site. I accept that the proposal would secure the redevelopment of a vacant brownfield site, and would bring economic benefits to the area. To that extent, it would accord with paragraph 21 of the Framework, which requires local authorities to support existing business sectors, and to identify and plan for new or emerging sectors likely to locate in their area.
10. It is projected that the wider regeneration scheme will deliver around 850 new homes in the period up to 2030, and the MOR shows the land including the appeal site as falling within the allocated housing sites up to 2030. As noted above, the Council's preferred option is for residential-led development, but the allocation of the appeal site remains the same within the commercial/leisure-led option. The Council estimates that the appeal site would be capable of delivering approximately 81 houses, which would be a significant proportion of the total.
11. The appeal site and the Metrogreen area are part of the Council's overall housing land requirement and so the appeal scheme would also hinder, albeit to a lesser extent, the Council's ability to deliver their overall requirement. In the absence of any substantive evidence to the contrary, I consider it likely that, by reducing the availability of the allocated housing land, the appeal scheme would jeopardise the Council's housing targets.

12. The appellant contends that the development could be integrated into the wider regeneration project, but there is little evidence before me as to how this would be achieved. Amongst its overarching principles, the MOR places a heavy emphasis on achieving a walkable area within the regeneration scheme. It states that it will be essential that new development will be accessible by foot and well connected to its surroundings, with good pedestrian and also cycle connections.
13. The MOR highlights that the Metrogreen area, particularly around the Metrocentre and Metro Retail Park, is heavily dominated by surface car parks. There is a clear concern that future development would result in greater demand for car parking. It states that 'it will be important that this demand is met through solutions that do not involve surface car parks and help achieve the place making objectives for the area including a walkable centre and creation of streets fronted by buildings with active frontages.' In my view, the development would not contribute to these aims.
14. According to the proposed site plan, the site would be surrounded by a palisade fence standing at approximately 2.4m high. It would therefore not create an active street frontage. A large area of the site would be given to surface car parking, and it appears that there would be no permeability of the site in terms of pedestrian or cycle access, or linkages to other areas. The MOR goes on to state that the preferred approach to car parking is to explore the more efficient use of existing surface car parks around the Metrocentre, and to consider the need for car park management regimes for any non-residential car parking provision. There is little evidence before me to suggest that the scheme has taken these requirements into account.
15. For these reasons alone, I consider that the development would fail to accord with the aim of CSUCP Policy AOC2 to complement and integrate with the wider development of the area. In conjunction with my concerns that the scheme would reduce the availability of housing land, I consider that the benefits of the proposal would not be sufficient to outweigh these concerns. In the absence of any compelling reason to set aside the requirements of the development plan, I conclude that the proposal would unacceptably conflict with CSUCP Policy AOC2.
16. My attention has been drawn to the planning permission¹ which was granted in 2015 for a self-storage facility. However, the full details of the circumstances in which this proposal was found to be acceptable are not before me. I have also been referred to a planning permission for a change of use² of an existing building to a mixed use. From the limited information before me, it appears that the characteristics of these cases are different, and the circumstances that applied are not directly comparable to those before me. I can therefore give them little weight. The fact that no planning application has been refused by the Council as being contrary to CSUCP Policy AOC2 has had little bearing on my consideration.
17. I have been referred to a number of appeal decisions at Enfield³, Nottingham⁴ and Lancashire⁵. Each of these cases related to the issue of whether the

¹ DC/14/01163/FUL

² DC/15/01217/COU

³ APP/Q5300/A/07/2041412

⁴ APP/Q3060/A/08/2069867

⁵ APP/P2365/A/06/201322

proposed development would prejudice the development of wider allocated sites. However, again, the details of these cases are not before me, and so I am unable to be certain that they represent a direct parallel to the case before me. I have, in any event, reached my own conclusions on the appeal proposal on the basis of the evidence in front of me.

18. The Council has recently updated the timetable for the AAP, and they envisage that development will commence in 2020. The appellant disputes this, on the basis that they consider the timetable to be undeliverable. I accept that the timetable for the project has slipped, and that a wide range of complex issues have yet to be addressed. I acknowledge also that there is a significant degree of uncertainty on a range of matters ahead of the adoption of the AAP. However, these circumstances would not justify the lack of compliance with CSUCP Policy AOC2 which I have identified.
19. The appellant has also raised viability issues in relation to the appeal site. The Council have committed funding to the project, and they confirm that they have the support of landowners, and the involvement of the Homes and Communities Agency. Within this context, whilst I acknowledge the concern surrounding viability, this has not led me to a different conclusion on the main issue.

Wildlife

20. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the Regulations) requires that if planning obligations are to be taken into account, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.
21. In relation to the Council's second reason for refusal, a signed and completed unilateral undertaking (UU) has been submitted, agreeing to deliver a compensation scheme including tree and scrub clearance and infrastructure for long term grazing management on a brownfield site elsewhere within the district. The agreement is not in contention in this appeal, and I am satisfied that the agreement meets the tests set out in the CIL regulations.

Conclusion

22. For the reasons above, I conclude that the appeal should be dismissed.

Elaine Gray

INSPECTOR



Costs Decision

Site visit made on 18 September 2017

by Elaine Gray MA(Hons) MSc IHBC

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

Decision date: 17 November 2017

Costs application in relation to Appeal Ref: APP/H4505/W/17/3172147 Land at Wellington Road, Cross Lane, Gateshead

- 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 Hobbs for a full award of costs against Gateshead Council.
 - The appeal was against the refusal of planning permission for erection of a car supermarket consisting of a concourse building with an adjoining workshop and associated vehicle storage, vehicle display and car parking areas.
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Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appellant seeks an award of costs on a number of grounds. Firstly, they consider that the Council has failed to make information publicly available in relation to the emerging Metrogreen AAP. However, the appellant does not specify, within the costs application, the information they are referring to, or demonstrate how this lack of information has given resulted in unnecessary or wasted expense within the appeal process.
4. The appellant also states that the Council has applied Policy AOC2 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 inconsistently, with reference to the recent approval of a planning permission (Ref DC/17/00474/FUL) at Derwenthaugh Road. I have been provided with some details of this case, including a copy of the planning officer's report. The report confirms that the application site was allocated for housing within the Metrogreen Area Action Plan. However, it appears that the proposal related to an existing car dealership, and that it offered a number of material benefits that were taken into account, including access to another piece of land.
5. From these circumstances, it appears that there were a number of variants between that development proposal and the appeal scheme. Moreover, there is insufficient information before me in relation to the Derwenthaugh Road case to be certain that it represents a direct parallel to the appeal scheme. I am

therefore unable to reach a firm conclusion as to whether or not the policy has been applied consistently.

6. The appellant has made reference to matters regarding the ownership and disposal of the site which was the subject of application Ref DC/17/00474/FUL. Such issues, however, are beyond the scope of my consideration and have had no bearing on this decision.

Conclusion

7. I find that unreasonable behaviour by the Council leading to unnecessary and wasted expense, as described by the Planning Practice Guidance, has not been demonstrated. As a result, no award is made.

Elaine Gray

INSPECTOR

APPENDIX 3

OUTSTANDING APPEALS

Planning Application No	Appeal Site (Ward)	Subject	Appeal Type	Appeal Status
DC/14/01160/FUL	Land At Wellington Road Cross Lane Gateshead	Erection of a car supermarket consisting of a concourse building with an adjoining workshop and associated vehicle storage, vehicle display and car parking areas (additional info received 07/01/15 and 30/05/16 and amended plans received 15/01/15, 30/05/16 and 01/08/16).	Written	Appeal Dismissed
DC/16/01182/FUL	Land At Ellison Terrace Greenside Ryton NE40 4BL	Construction of three houses with parking area (amended 16/02/17 and 08/03/17 and description amended 14.03.2017).	Written	Appeal In Progress
DC/16/01261/FUL	Coalburns Cottages 4 Coalburns Cottages Greenside Ryton NE40 4JL	Demolition of existing garage followed by erection of new dormer bungalow with four parking spaces (as amended 16.05.2017)	Written	Appeal In Progress

DC/16/01319/FUL	Former Bling Bling Car Wash Durham Road Birtley DH3 1LS	Erection of building to provide a shop and car valeting area on ground floor with storage above; Use of forecourt for parking and as a car wash	Written	Appeal In Progress
DC/17/00156/COU	Site Of Scottish Motor Auctions Group Shadon Way Birtley DH3 2SA	Change of use from unused land to a hardstanding parking area with drive through route and enclosure by means of a new perimeter security fence	Written	Appeal In Progress
DC/17/00252/HHA	37 Cromwell Ford Way Blaydon On Tyne NE21 4FH	Garage door to front and construction of wall to rear with timber doorset to the rear (retrospective)	Written	Appeal In Progress