

Appeal Decisions

SUMMARY

- 1 A summary of the appeal decisions taken in the last month.

RECOMMENDATION

- 2 To note the decisions on appeals taken.

REASONS FOR RECOMMENDATION

3. This report is for information only.

SUPPORTING INFORMATION

- 4.1 Appendices 2 and 3 give details of decisions taken.
- 4.2 The intention is that a report will be taken to a Committee meeting each month.

OTHER OPTIONS CONSIDERED

- 5 None

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	02 December 2010
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For more information contact: Background papers: List of appendices:	Paul Clarke 01332 255942 e-mail paul.clarke@derby.gov.uk Planning application files Appendix 1 – Implications Appendix 2 – Summary of appeal decision(s) Appendix 3- Decision letter(s)
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IMPLICATIONS

Financial and Value for Money

1 None

Legal

2 None

Personnel

3 None

Equalities Impact

4 None

Health and Safety

5. None

Environmental Sustainability

6. None

Asset Management

7. None

Risk Management

8. None

Corporate objectives and priorities for change

9. None

Appeal Decisions

Appeal against refusal of Outline Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/03/10/00276/PRI	Residential development (106 dwellings, vehicular accesses, landscaping, boundary treatment and drainage)	Land and industrial unit north of Goodsmoor Road Industrial Estate, Sinfen, Derby (inc Unit 2, Derby Distribution Centre, Sinfen Lane)	Allowed with conditions
<p>Comments: This outline application for a residential development of up to 106 dwellings was submitted to the City Council in early 2010. At this stage permission was sought for the principle of development together with 'access' arrangements. All other details were to be submitted in a 'reserved matters' application at a later date.</p> <p>The site was previously occupied by an industrial development and although vacant at the time of submission the previous use could be resumed at any time unfettered by any planning conditions.</p> <p>Extensive consultations were undertaken with Statutory Consultees and members of the public - from whom there was considerable opposition to the proposal.</p> <p>When presenting this proposal to the Planning Control Committee I suggested that there were two key issues in this application;</p> <ul style="list-style-type: none">- The loss of land allocated for business and industrial use.- The impact of the proposal upon the highway network and related access arrangements. <p>Given the unsuccessful attempts made by the applicant to market the site for business use for some time I was satisfied that the loss of this site would not lead to a qualitative or quantitative loss of employment land within the city.</p> <p>Highway issues were the main source of concern to members of the public who commented upon the application. However the application was accompanied by a Transport Assessment which demonstrated there would be no negative impact on the highway network from this proposal when compared to a resumption of a storage and distribution use on the site which the City Council could not control. Your Highway Officers were satisfied that the single point of access proposed from Goodsmoor Road was adequate for the development and raised no objections to the proposal.</p> <p>Therefore, the application was presented to Members with a recommendation to grant permission subject to conditions. However I am sure Members will recall their concerns about this proposal particularly relating to highway matters, and the single point of entry proposed to the site. Accordingly Members chose to refuse planning permission reasoning that the single point of entry was sub – standard and would provide an unsafe means of access to the site for the existing highways users and the future occupiers of the development.</p> <p>The appellant lodged an appeal against this single reason for refusal and requested a hearing. This took place on 9 December 2010. Councillor Shanker represented the Planning Committee and Councillor Turner spoke on behalf of the City Council in defence of the decision.</p> <p>The Inspector considered that the main issues in the appeal were the effect of the development on highway safety and traffic levels.</p>			

It was noted that discussions had taken place between the Highway Officers and the appellant and the proposed access had been designed in accordance with current DoT standards. Officers were satisfied that a single access with a dedicated right hand turn harbourage and central refuge for pedestrians were acceptable. The Inspector also noted other pedestrian routes through and close to the site.

As part of their appeal submission the appellants commissioned a Stage 1 Road Safety Audit of the proposed junction by an independent highway consultant. This raised no significant road safety concerns. Stage 2 and 3 Audits would also be carried out at the appropriate times, during the design stage and when the junction became operational.

The Inspector made a site visit following the hearing. He was satisfied that visibility was adequate in both directions and considered that there would be no adverse impact on highway safety from the proposed junction. He particularly noted that there were no objections from the Council's Highways Section and therefore concluded that the proposal complied with saved policies T1 and T4 of the adopted CDLPR.

Turning to traffic levels the Inspector noted comments from the Transport Assessment that it was usual to compare traffic flows from the proposed development with an employment use which could resume at any time. However he also took into account residents fears and concerns about congestion, but concluded that congestion was not unusual at peak times in urban areas. He judged that there would be no significant increase in traffic as a result of the proposed development and therefore concluded that when compared to any employment use on the site there would be no negative impact on the operation of the highway network. Accordingly the proposal did not conflict with the aims of saved policies T1 and T4 of the adopted CDLPR.

At the Hearing the Inspector was given a signed copy of a Section 106 Agreement with which the Council and the appellant were satisfied was reasonable.

Considering all the matters before him the Inspector gave more weight to the technical studies undertaken and the views of the professional officers as the concerns raised by members of the public and the Planning Control Committee could not be and were not substantiated. Therefore he chose to allow the appeal and grant planning permission with conditions.

Costs Decision

During the life of the appeal the appellants submitted an application for costs. Their submission reasoned that the Planning Control Committee acted unreasonably and without due propriety as no information or detail was ever provided to demonstrate the Council's Highway Officers were incorrect in judging the proposal to be acceptable.

The City Council provided a strong rebuttal to the claim noting that Members were quite entitled to reach a different conclusion than professional officers and it was their democratic right to do so. Members have local knowledge and in this case, had strong reservations about the proposal. They also attached significant weight to the concerns of local objectors. This approach was mindful of the Government's views on 'localism'.

The Inspector noted advice in the most recent 'Costs Circular' 03/2009 that Members must show reasonable planning grounds and provide evidence at an appeal why they took a contrary decision to the advice before them. The Circular also states that local opposition to a proposal must be considered but it is not in itself reasonable grounds for resisting a development.

In the Inspector's opinion the Members made 'somewhat generalised assertions' about

the proposal and these were not supported by 'substantive objective analyses'. He therefore concluded that the Council did act unreasonably in reaching its decision to refuse the application and the award of costs was justified.

The appellant is now invited to submit details of its costs to the City Council. These have to be agreed by both parties before payment is made. If an agreement cannot be reached an independent assessment can be made by the Senior Court Costs Office. At the time of writing this report the details of the cost applied for have not been received.

It is clear from this decision that whilst it is important and quite proper for Members to give weight to the concerns of their constituents, if they wish to take a contrary view to those being advanced by professional officers it is necessary to demonstrate an evidentiary basis for reaching this conclusion, particularly where technical data has been provided with an application and this is the subject of the challenge.

For appellants to hire professional witnesses to give evidence at hearings or inquires and undertake further technical assessments to support their case necessarily incurs significant cost to them. It is likely therefore, that applications for costs could become more frequent if decisions are not supported by a reasoned evidence based justification. At a time when our financial situation is so constrained I am sure this is a situation no Members would wish to see.

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/03/10/00339/PRI	Alteration and conversion of detached garage to form dwelling, and erection of boundary fence	Land at side of 56 Mayfair Crescent, Derby	Dismissed
<p>Comments: This appeal follows the delegated refusal of planning permission to alter a detached double garage with pitched roof at the side of 56 Mayfair Crescent to form a small dwelling. Mayfair Crescent and the surrounding streets consist mainly of semi-detached properties of a tradition design and very regular form. I considered that proposal would be unduly intrusive in the street scene and out of character with the form of development in the area. In addition I felt that the resulting amenity space for both dwellings would be inadequate. Therefore I judged the proposal to be contrary to policies GD4, H13 and E23 of the adopted City of Derby Local Plan review.</p> <p>The Inspector opined that there were two main issues in the appeal.</p> <ul style="list-style-type: none">– The character and appearance of the street scene– The living conditions of the future occupiers and the residents of 56 Mayfair Crescent. <p>The Inspector described the existing garage as an ancillary domestic structure in the street scene and noted that the proposed physical changes would alter this resulting in the building looking like a separate dwelling. Given that the garage is in a prominent corner position the Inspector agreed with the City Council that this change in appearance would be out of keeping with, and intrusive in, the street scene. She therefore agreed with the assessment that the proposal was contrary to the aims of GD4 in the adopted CDLPR.</p> <p>The Inspector did not share my concerns about the lack of amenity space. Noting that the proposed dwelling had only one bedroom, it was unlikely to be occupied by a family. Therefore she considered the amount of amenity space to be sufficient. She also felt that the occupiers of 56 Mayfair Crescent would not be unduly harmed.</p> <p>The Inspector considered that the harm to the character and appearance of the street scene alone were sufficient reason to dismiss the appeal.</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/06/10/00694/PRI	Erection of dwelling house	Land at side of 14 Rydal Close, Allestree, Derby	Dismissed
<p>Comments: This proposal sought permission for an additional dwelling at the side of No.14 Rydal Close and it involved the subdivision of the garden. However as the frontage of the plot is quite narrow the proposed dwelling would be set back some way. The existing street scene is made up of semi-detached and some detached bungalows dating from the 1970's. The proposed dwelling was of a slightly different design with a steeper roof pitch to allow rooms in the roof space.</p> <p>Of main concern was the impact of this proposal in the street scene. Planning permission was refused as the design was judged to be of an uncharacteristic style and therefore would appear contrived and harmful to the street scene and the surrounding built environment contrary to saved policies E23, GD4 and H13 of the adopted City of Derby Local Plan.</p> <p>The Inspector agreed that the main issue of the appeal was the impact upon the character and appearance of the area.</p> <p>Firstly the Inspector clarified the interpretation of the recently amended PPS3 with regard to garden development, noting that gardens were no longer to be viewed as 'previously developed land' but equally the amendment does not preclude development. As with all planning decisions there is a balance of different factors to be weighed when determining whether a proposal is appropriate or not.</p> <p>In the Inspector's opinion the proposed development would 'markedly depart from the established pattern of housing'. He agreed with my assessment that it would appear contrived and did not respect the wider surroundings.</p> <p>The Inspector noted the aims of saved policies E23, GD4 and H13 included preserving or enhancing local distinctiveness and respecting the urban grain of the surroundings. He considered these policies matched the aspirations of PPS1 and PPS3. He therefore concluded that the proposal was in conflict with both national and local planning policies.</p> <p>When turning to other matters the Inspector was satisfied that parking provision was adequate and the number of traffic movements would not be harmful to highway or pedestrian safety. Also he agreed with my assessment that the proposal would not materially harm the living conditions of the neighbouring properties and it would not have significant impact on trees or wildlife in the area.</p> <p>This decision clearly demonstrates the range of issues which must be weighed when looking at this type of proposal and whilst there are some mitigating factors these do not outweigh the conflict with national and local policies and accordingly he dismissed the appeal.</p> <p>This is a heartening decision as the Inspector's reasoning was almost exactly in agreement with the assessment reached when the application was first determined. This should give my officer's and Members confidence in the soundness of our judgement and the robust nature of our policies.</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/08/10/01061/PRI	Extension to dwelling (enlargement of lounge and bathroom)	85 Darby Street, Derby	Dismissed
<p>Comments:This appeal follows the delegated refusal for an extension of considerable size to this traditional terraced property with a small workshop to the side. It consisted of conversion of the workshop area to living accommodation and then infilling most of the rear yard with additional living space leaving only a very small courtyard barely 4mx 3m as external amenity space which clearly is not sufficient. In my opinion the proposal would result in poor living conditions for the occupiers and set an undesirable precedent for similar proposals nearby. It would also result in overbearing and unacceptable massing impact on the neighbouring properties. As such it is contrary to the aims of saved policy GD5 of the adopted City of Derby Local Plan Review.</p> <p>The Inspector considered there were two main issues in the appeal. The affect on the living conditions of future occupiers and the impact on the living conditions of neighbouring properties by reason of massing.</p> <p>He noted the reduction in outdoor amenity space of around 44% by the proposal and regarded this as out of proportion to the scale of the site and agreed with the City Council that this would result in a cramped outdoor living environment. This extensive building would also result in poor daylight in the existing and proposed buildings and this too he regarded as unacceptable.</p> <p>The Inspector also agreed that impact of the proposal would be harmful to the occupiers of No.86 Darby Road by reason of massing along the boundary wall. The proposed extension would have an overbearing impact on the rear amenity space of this property and he agreed that the proposal was therefore contrary to the aims of GD5 of the CDLPR.</p> <p>The Inspector did not agree with the appellant's suggestion that any future occupier would be well aware of what they were buying and therefore this made the proposal acceptable. He commented that the living conditions would be harmful and unacceptable whoever owned the property. This is an encouraging remark as this argument is often presented to justify poor design and ill conceived proposals.</p> <p>In conclusion the Inspector concurred with my assessment of the proposal and accordingly he dismissed the appeal. As a post script I am surprised that the applicant and his agent chose to promote such an over intensive scheme through to an appeal but am pleased at the common ground the Inspector shared with your officers.</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/12/09/01464/PRI	Erection of 4 office units, formation of car parking spaces and vehicular access	Land rear of 282 Uttoxeter New Road, Derby, (accessed from Rowditch Place)	Part allowed

Comments: Planning permission was granted in March 2010 for a small office development at the rear of 282 Uttoxeter New Road. This property is also a small office. The application site would have originally formed the rear garden of 282. Access to the new development is from a private drive off Rowditch Place.

A number of conditions were imposed on the development including one requiring obscure glazed, non opening windows to the rear elevation. This was to protect the amenity of occupiers of 278 and 286 Uttoxeter New Road.

'The windows in the rear south facing elevation shall be obscure glazed and with fixed non - opening lights and shall be retained as such at all times'

Reason - 'In the interests of the amenity of the nearby residents and in accordance with policy GD5 of the adopted City of Derby Local Plan Review.'

This condition was the subject of this appeal.

The Inspector considered the main issue of the appeal was necessity of condition 4 having regard to the living conditions of the nearby residents.

The Inspector noted that the windows which are the subject of the appeal have already been installed in the form the appellant wished to retain, that is, without obscure glazing and opening.

She took note of the properties at the rear of the appeal site, commenting that 278 was an office building but 286 contained flats. This building has many clear glazed windows and French doors to the rear and was less than 13m from the appeal property.

The Inspector considered that the windows in the office units 1 and 3 had only oblique views to 286 Uttoxeter New Road, so she considered it unnecessary to require these to be fixed and obscure glazed. However the rear windows of units 2 and 4, being closer to the boundary, allowed more direct views into both the habitable rooms and the rear garden. She noted too, that there was some planting which screened these views but this may not remain in perpetuity and as it was outside the appeal site, could not be controlled. Therefore she concluded that it was reasonable to require the windows in these units to be fixed non opening and obscure glazed to protect the amenity of the residents of 286 and to comply with policy GD5 of the adopted CDLPR.

The Inspector was less concerned with the impact upon the amenity of 278 and 282 Uttoxeter New Road as these were office buildings.

In conclusion the appeal was allowed in part with a variation to the original condition. The subsisted condition is as follows.

'The windows in the rear elevation, serving units 2 and 4 and the ground floor WC, as shown on the approved plans specified in condition 1, shall be obscure glazed with fixed

non opening lights and shall be retained as such at all times.'

At the time of the appeal site visit the windows had already been installed. These windows in units 2 and 4 will need to be removed and replaced with ones which will comply with the condition. My officers have advised the appellant of this on 12 January 2011. To date the condition has not yet been complied with and I have instructed my Enforcement Officers to pursue Enforcement proceedings to ensure that this happens.

Recommendation: To note the report.



Appeal Decision

Hearing held on 9 December 2010

Site visit made on 9 December 2010

by **Steve Taylor BSc (Hons) MBA DMS CEng MICE**

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

Decision date: 18 January 2011

Appeal Ref: APP/C1055/A/10/2131953

Goodsmoor Road, Sinfin, Derby

- 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 Mulgate Investments Limited against the decision of Derby City Council.
 - The application Ref DER/03/10/00276/PRI, dated 25 February 2010, was refused by notice dated 14 June 2010.
 - The development proposed is residential development together with associated highway infrastructure, children's play space, water attenuation feature and landscaping.
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Decision

1. For the reasons set out below, I allow the appeal and grant outline planning permission for residential development together with associated highway infrastructure, children's play space, water attenuation feature and landscaping at Goodsmoor Road, Sinfin, Derby in accordance with the terms of the application Ref DER/03/10/00256/PRI, dated 25 February 2010, subject to the schedule of conditions set out in the Annex.

Application for costs

2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural Matters

3. The planning application was made in outline with all matters reserved for subsequent approval, with the exception of the means of access. A site plan has been submitted for illustrative purposes. Although the layout, scale and appearance of the proposed dwellings together with the landscaping remain reserved for subsequent approval, this gives some indication as to how the dwellings would be accessed. It is within this context that I have considered the appeal.
4. A signed and dated Section 106 Agreement was presented to the Hearing. This included financial contributions to be made in respect of off-site affordable housing, community centres, highway improvements, open space and sports facilities. Also included were undertakings to support the Council's Recruitment and Training Agreement and to use all reasonable endeavours to ensure that all the residential units are constructed in accordance with the Lifetime Homes Standards. Both the appellant and the Council were satisfied that these obligations are reasonable and necessary to ensure that the proposed

development, if allowed, would meet the requirements of the development plan. From the information before me I consider these obligations to be in line with the objectives of Circular 05/2005: *Planning Obligations*.

Main issues

5. I consider the main issue to be the effect the proposed development would have on (i) highway safety and (ii) traffic levels.

Reasons

6. The appeal site is located off Goodsmoor Road within the urban area of Sinfin, approximately 4 kilometres from Derby City Centre. Goodsmoor Road links Stenson Road with Sinfin Lane, these being two main radial routes running south from the city centre. The site is triangular in shape and is bounded to the north-west by an existing railway line, to the south by the road with residential development beyond and to the east by a large distribution centre. The site is currently occupied by a large brick built industrial unit, which has been vacant for some time. The building is no longer considered fit for purpose having been unsuccessfully marketed since 2007.
7. The proposal is for the erection of a maximum of 106 dwellings. Whilst the site is designated under the adopted City of Derby Local Plan Review (CDLPR) for industrial and employment purposes, at the Hearing the Council indicated that it had no objections to the principle of residential development. The only area of dispute between the parties was the proposed single point of access to the site and the impact the proposal would have as a result on both road safety and existing traffic flows.

Highway Safety

8. The appellant referred to the discussions that had taken place with the Council's highway officers. He confirmed that the priority junction access to the appeal site has been designed in accordance with the Department for Transport Design Manual for Roads and Bridges. In this respect I note that the Council's Highway Development Control Section confirmed that the proposed single point of access was acceptable in principle subject to a dedicated right hand turn harbourage and a central refuge for pedestrians being provided on Goodsmoor Road.
9. The site is within walking distance of residential amenities within Sinfin with bus stops located along Stenson Road, Sinfin Lane and Grampian Way. In this respect I note that there will be a pedestrian route through the permitted Strata Homes development opposite the site leading towards the Sinfin local shopping centre. The appellant argued that the proposed junction design took into account the location of the access to the Strata Homes development and potential pedestrian routes.
10. The appellant pointed out that there are no historical accident problems along Goodsmoor Road with only two minor personal injury accidents recorded in the last 5 years. Further, the Stage 1 Road Safety Audit of the proposed junction carried out by independent highway consultants raised no significant road safety concerns other than the need for the pedestrian refuge. It was explained that this would be followed up by a Stage 2 audit at the detailed design stage and a Stage 3 audit when the junction was fully operational.

11. On my site visit I saw that both of the existing accesses to the site from Goodsmoor Road appeared to be sub-standard and had been closed for security reasons. I saw that there was adequate visibility in both directions at the proposed location of the new access. There was also a footpath link close by on the opposite side of the road leading in the direction of the Sinfin local shopping centre. Taking all of the above matters into consideration I saw nothing to suggest that the proposed junction would have an adverse impact on highway safety. I also note that there were no objections from the Council's Highway Section. Therefore, in conclusion on this issue, I consider that the proposal would comply with the aims of CDLPR Policies T1 and T4, which seek to ensure that proposed development makes appropriate provision for all users of the highway, and does not result in increased traffic congestion or lead to a reduction in road safety.

Traffic Levels

12. In order to assess the impact of the proposal on nearby junctions the Council's Highway Development Control Section asked that a Transport Assessment (TA) be carried out. Although this shows that the proposal will increase traffic flows, these are not significantly different to those that would occur were the site to be brought back into employment use. The appellant pointed out that it is common practice to take proper account of the traffic that could be generated by any lawful use of a site in a TA as no planning restrictions exist to prevent such fallback situations from occurring.
13. It is clear from the representations made by local residents that there is a problem of traffic congestion in the area during certain times of the day. In this respect I note that the TA identifies existing queuing on certain legs of the Goodsmoor Road/ Stenson Road and Wordsworth Avenue/Sinfin Lane Junctions. These were largely associated with turning traffic during the evening peak. However, this is not an unusual situation at peak times in an urban area such as this. Whilst the proposal would increase the length of some queues, in my judgement this would not be significant. Also, importantly, the queues would be marginally shorter than those that would result from the permitted alternative employment use of the site.
14. Reference was made by the Council to a recent public inquiry for the erection of a waste treatment plant that was dismissed on traffic grounds amongst other things. I have no background information on which to judge the extent to which this may be similar to the appeal proposal and in any case I have considered the proposal on its merits having regard to current planning policies and other material considerations.
15. Whilst the Council suggested at the Hearing that a better access to the site would be off Sinfin Lane, this is not a matter that is before me. As such I am not able to make a recommendation on any alternative access, but only consider whether the proposed access is acceptable from a highway point of view. In any event such an access would be somewhat impractical as it would have to effectively run through the distribution centre.
16. Therefore it is my judgement on this issue that the traffic generated by the proposal would not result in an overall marked difference to existing traffic flows or congestion. Furthermore, when comparing with the potential employment use, there would be no negative impact on the operation of the highway network. As such it would not conflict with the aims of CDLPR Policies T1 and T4.

Conditions

17. I have considered the conditions suggested at the Hearing and the comments of the main parties, as well as the advice of Circular 11/95 *The Use of Conditions in Planning Permissions*. In particular paragraph 45 of the Circular records that conditions in respect of certain aspects relating to outline permissions should be imposed where they are crucial to the decision, or where they confirm anything other than the reserved matters. Any conditions relating to the reserved matters should be imposed when they are approved at the subsequent stage.
18. I shall impose the three conditions suggested that are normally imposed on outline planning permission. Access is not a reserved matter. A condition to control the construction of the access is necessary in the interests of highway safety.
19. Since layout, scale, appearance and landscaping are reserved matters I see no need for separate conditions at this stage or for details of hard surfaces, boundary treatment or landscaping works.
20. The conditions concerning on-site contamination and for noise mitigation measures are necessary in the interests of public health and the living conditions of the future occupants. The condition regarding drainage is to protect the proposed dwellings from flooding. In the interests of the protected species an ecological condition has been imposed. It was agreed that a condition regarding a scheme of drainage to trapped gulleys was not necessary as this is covered by other legislation.

Conclusion

21. For the reasons given I conclude that there are no significant highway implications resulting from the proposal. Therefore, having regard to all other matters raised, I conclude that the appeal should be allowed.

Steve Taylor

Inspector

Annex

Schedule of Conditions

- 1) Details of the layout, scale, appearance of the buildings and the landscaping of the site, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence on any part of the appeal site unless or until a right hand turn priority junction and pedestrian refuge facility has been provided on Goodsmoor Road as shown for indicative purposes on Drawing Nos D671/01 Rev. A and 2377 31 Rev. C.
- 5) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented incorporating sustainable drainage systems (SUDS) in accordance with details that have been submitted to and approved in writing by the local planning authority. These details shall include the results of an assessment carried out of the potential for disposing of surface water by means of SUDS in accordance with the principles set out in Annex F of Planning Policy Statement 25: *Development and Flood Risk*. The scheme shall include details for the future retention and maintenance of the agreed system.
- 6) Before the development hereby permitted begins, a report which assesses the potential for on-site contamination shall be submitted to the local planning authority. If the report identifies potential contamination, a detailed contaminated land investigation of the site shall be undertaken and the results submitted in writing to the local planning authority. Where contamination is found, a Remedial Statement incorporating a scheme for decontamination of the site shall be submitted to and approved in writing by the local planning authority. The scheme as approved shall be fully implemented and completed and a Site Completion Report shall be submitted to and approved in writing by the local planning authority before the occupation of any of the dwellings hereby approved.
- 7) A scheme of noise mitigation measures/works shall be submitted to and approved in writing by the local planning authority. The agreed works shall be implemented in full prior to the occupation of any of the dwellings hereby approved.
- 8) Protected species mitigation measures/works shall be submitted to and approved in writing by the local planning authority. The agreed works shall be implemented in full prior to the occupation of any of the dwellings hereby approved.

APPEARANCES

FOR THE APPELLANT:

William Allwood BA DipTP MRTPI	John Martin & Associates
David Bates MSc MCIHT MILT	Cannon Consulting Engineers
Patrick Gurner BSc CEng MICE	Cannon Consulting Engineers
Maurice Fitzgerald Dip Est. Man. MRICS	Representing the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Baggy Shanker	Derby City Councillor
Robin Turner	Derby City Councillor
Ian Woodhead BA (Hons) Dip TP (Dist) MRTPI	Planning Officer - Derby City Council
Laura Raynor BA (Hons) MPlan	Planning Officer - Derby City Council

INTERESTED PERSONS:

Isabel Howden Bancroft	Derby City Council
Kerry Usher	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING.

Document 1	Signed and dated Section 106 Agreement.
Document 2	Appendix 3 of Cannon Consulting Engineers' Statement.
Document 3	The Council's response to the Appellant's Costs Application.



Costs Decision

Hearing held on 9 December 2010

Site visit made on 9 December 2010

by **Steve Taylor BSc (Hons) MBA DMS CEng MICE**

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

Decision date: 18 January 2011

Costs application in relation to Appeal Ref: APP/C1055/A/10/2131953 Goodsmoor Road, Sinfin, Derby

- 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 Mulgate Investments Limited for a full award of costs against Derby City Council.
- The hearing was in connection with an appeal against the refusal of planning permission for residential development together with associated highway infrastructure, children's play space, water attenuation feature and landscaping.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for the Applicant

1. These are contained in the statement dated 23 November 2010. In summary they are that members of the Planning Control Committee resolved to refuse the application contrary to the recommendation of their officers. This followed extensive pre-application discussions that took place with the officers. In coming to their resolution to refuse the application it is the applicant's view that members of the Planning Control Committee have acted unreasonably and without due propriety. The applicant has seen no information or detail to indicate that the view taken by the Council's highway officers was incorrect in accepting that the site access proposal was acceptable. For this reason the applicant seeks a full award of costs.

The Response by the Council

2. This is set out in a statement submitted at the Hearing. In summary the Council considers that whilst members of the Planning Control Committee arrived at a different conclusion about the merits of the application contrary to the recommendations of the Council's Director of Planning and Transportation, it was still the democratic process.
3. The decision to refuse outline planning permission was based on consideration of the Director's report to committee and the members' local knowledge of the site and existing traffic conditions on the local highway network. In this case members had strong reservations about the scale of the proposed development and the perceived detrimental impact on the local highway network.
4. Members also attached significant weight to the comments of local objectors who expressed particular concerns about the impact of the proposed development in highways/traffic terms. As such, in reaching their decision,

members were mindful of the government's emphasis on the importance of localism and local decision making.

5. The acceptability of the development in planning terms is a matter of judgement; consequently it is not altogether unexpected that the opposing parties reach a different judgement. In conclusion, the evidence contained in the Council's written statement and presented at the Hearing explains and justifies the decision to refuse permission. Therefore even if the appeal is concluded in favour of the appellant in respect of the planning merits of the development, the prerequisites for an award of costs against the Council do not exist.

Inspector's Reasoning

6. I have considered this application for costs in the light of Circular 03/2009 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 the party applying for costs to incur unnecessary or wasted expense in the appeal process.
7. It is apparent that the pre-application discussions that took place with officers considered the technical requirements for the access in some detail. Whilst the officer recommendation was to permit, I note that members are not bound to accept the recommendation of their officers. However, Paragraph B20 of the Circular indicates that the Council will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects.
8. The Council's reasons for refusal as explained in its statement were based upon the fact that it was felt that the single point of access would have a detrimental impact on highway safety. Further, it was felt that due to the scale of the proposed development coupled with the proposed single access, that the proposal would have a significant impact on the wider highway network including nearby junctions. As such it considered that the proposed single access was sub-standard. This was contrary to the highway officer's advice that a single priority junction was acceptable and that the technical evidence showed that there would be no negative impact on the highway network when comparing the proposal with the extant employment use of the site.
9. Paragraph B21 of the Circular explains that whilst planning authorities are expected to consider the views of local residents when determining a planning application, the extent of local opposition is not, in itself, a reasonable ground for resisting development. Planning authorities should therefore make their own objective appraisal and ensure that valid planning reasons are stated and substantial evidence provided. Whilst I note that the Council's decision was based upon the members' local knowledge and the significant weight given to comments of local objectors, in my judgement it made somewhat generalised assertions about the impact of the proposal which were not supported by any substantive objective analysis.

Conclusion

10. I find that the Council did act unreasonably in failing to substantiate its reasons for refusal, and that the applicant incurred unnecessary expense as a result, as described in Circular 03/2009. I therefore conclude that an award of costs is justified.

Formal Decision and Costs Order

11. 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, and all other powers enabling me in that behalf, I HEREBY ORDER that Derby City Council shall pay to Mulgate Investments Limited, the costs of the appeal proceedings, such costs to be assessed in the Senior Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 against the refusal of outline planning permission for residential development together with associated highway infrastructure, children's play space, water attenuation feature and landscaping at Goodsmoor Road, Sinfin, Derby.
12. The applicant is now invited to submit to Derby City Council, to whom a copy of this decision has now been sent, details of those costs with a view to reaching an 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 an assessment to the Senior Court Costs Office is enclosed.

Steve Taylor

Inspector



Appeal Decision

Site visit made on 16 November 2010

by **Alison Lea MA(Cantab) Solicitor**

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

Decision date: 30 November 2010

Appeal Ref: APP/C1055/A/10/2135250
56 Mayfair Crescent, Derby DE22 4HW

- 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 Andrew Henshaw against the decision of Derby City Council.
 - The application Ref DER/03/10/00339/PRI, dated 17 March 2010, was refused by notice dated 6 August 2010.
 - The development proposed is the alteration and conversion of a detached garage to form a dwelling and the erection of a boundary fence.
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Decision

1. I dismiss the appeal.

Main Issue

2. The main issues in this case are the effect of the proposal on
 - (a) the character and appearance of the street scene, and
 - (b) the living conditions of the occupiers of No 56 Mayfair Crescent and future occupiers of the proposed dwelling with particular regard to outdoor private space.

Reasons

3. The appeal property is a detached garage which serves No 56 Mayfair Crescent and is located at the corner of Mayfair Crescent and Dulwich Road. The proposal would involve a number of alterations to the garage to convert it to a one bedroom chalet style detached dwelling.

Character and Appearance

4. The existing building is clearly a garage and as such appears as an ancillary domestic structure in the street scene. The proposal would involve changes to the existing doors and windows and in particular the removal of the garage doors from the front elevation and replacement with a door and window at ground level and a first floor window. The alterations would give the building the appearance of a separate dwelling.
5. The garage occupies a prominent corner location in an area characterised predominantly by semi-detached houses of a generally uniform appearance. I agree with the Council that they form a clearly defined pattern. The garage, which is sited forward of the building line, does not form part of that pattern and, although it may be acceptable as an ancillary domestic building, if

converted to a separate dwelling it would, due to its chalet style design and prominent location appear visually intrusive and out of keeping with the street scene. Contrary to Policy GD4 of the City of Derby Local Plan Review (LP) it would not respect the urban grain of the surrounding area in terms of its scale, layout or architectural style and I conclude that it would cause significant harm to the character and appearance of the street scene.

6. I note the reference in the Council's statement with regard to the possible acceptability of the use of the garage as an ancillary residential annexe to the original property and the appellant's view that in that case the visual appearance of the converted garage would be the same as the appeal proposal. However, no such proposal has been submitted and it is not therefore possible to comment on the appearance of such a proposal and I have determined this appeal on its own merits.

Living Conditions

7. I accept that the private outdoor space remaining to No 56 would not be significantly below the amount enjoyed by a number of properties in the area. The new dwelling would be served by a lawned area with a considerable road frontage and although fencing is proposed to give some privacy to the side boundary, the appellant accepts that it would have an open and visible aspect to Mayfair Crescent.
8. However, there would also be a small private patio area to the rear and given that the property would have only one bedroom and is therefore unlikely to be occupied by a family with children I consider that the outdoor space which would be provided would be sufficient to meet the needs of the likely occupants.
9. I conclude therefore that the proposal would not cause significant harm to the living conditions of the occupiers of No 56 or future occupiers of the proposed development and that it would not be contrary to LP Policy GD5 which provides that development should provide a satisfactory level of amenity.

Conclusion on Main Issues

10. Nevertheless, although I have concluded that the proposal would not cause significant harm to the living conditions of the occupiers of No 56 or future occupiers of the appeal property I have concluded that it would cause unacceptable harm to the character and appearance of the street scene. I consider that this is sufficient reason to justify dismissing this appeal.

Other Matters

11. I acknowledge the appellant's concerns with regard to the manner in which the Council dealt with the application. However, this is not a matter for me to comment on as part of this appeal.
12. Accordingly for the reasons given, I conclude that this appeal should be dismissed.

Alison Lea

INSPECTOR



Appeal Decision

Site visit made on 9 December 2010

by **Michael R Moffoot** DipTP MRTPI DipMgt MCMI

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

Decision date: 19 January 2011

Appeal Ref: APP/C1055/A/10/2135671

14 Rydal Close, Allestree, Derby DE22 2SL

- 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 Greenbuilt Homes against the decision of Derby City Council.
 - The application Ref. DER/06/10/00694/PRI, dated 6 August 2010, was refused by notice dated 13 August 2010.
 - The development proposed is erection of single detached dwelling on land adjacent to 14 Rydal Close.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

3. Whilst saved Policy H13 of the adopted *City of Derby Local Plan Review* (LPR) favours residential development on suitable previously-developed sites within the urban area, the Government's amendment to Planning Policy Statement 3: *Housing* (PPS3) in June 2010 removes private residential gardens (such as the appeal site) from the definition of previously-developed land. However this amendment does not in itself preclude residential development within gardens, and other factors need to be taken into account.
4. The site lies at the northern end of the cul-de-sac, where the density of development diminishes and compact linear housing gives way to properties set on more generous plots which impart a sense of spaciousness that enhances the character of this pleasant residential area.
5. The site comprises garden space to the side and rear of No. 14 Rydal Close, where a detached garage would be replaced by a much bulkier structure that would significantly reduce this spacious quality. The staggered form of the proposed dwelling reflects the tapering shape and limited width of the plot and the restrictions that this imposes. As a consequence, the development would markedly depart from the established pattern of housing at the head of the cul-de-sac, and would be perceived as a contrived and somewhat cramped addition with little contextual respect for its setting and wider surroundings. The visual impact of the scheme would be compounded by hardsurfaced parking areas to the front of the proposed dwelling and compensatory parking space to the front

of No. 14 involving excavation and the regrettable loss of the front garden area. As a result, there would be very limited scope for effective landscaping to soften the appearance of the development.

6. Amongst other things, saved Policies E23, GD4 and H13 of the LPR require development proposals to preserve or enhance local distinctiveness and respect the urban grain of the surrounding area in terms of layout, density and massing in order to achieve a high quality living environment. These objectives are consistent with national policy in PPS1: *Delivering Sustainable Development* and PPS3 which states that design which is inappropriate in its context should not be accepted. The proposal would conflict with these objectives, and whilst the development may make efficient and effective use of land as promoted in PPS3, this should not be to the detriment of the visual amenity of the area.
7. I conclude on the main issue that the proposed development would severely harm the character and appearance of the area, in conflict with the national and local planning policies I have referred to.
8. Other matters have been raised in representations. The proposal makes adequate provision for off-street parking to serve both the new dwelling and No. 14, and garaging is not an essential requirement for new housing development. As most properties on Rydal Close have garaging and off-street parking space, there would be capacity on the street to accommodate occasional overspill parking that may arise as a result of the development. However if on-street parking were to regularly obstruct the turning head or elsewhere in the cul-de-sac it would be open to the highway authority to introduce parking restrictions in order to deter such practice. I have seen no clear evidence to show that any additional on-street parking would obstruct access for commercial and emergency vehicles. The proposal would not appreciably add to traffic movements on the cul-de-sac, and would not therefore harm highway or pedestrian safety.
9. The proposal would not materially harm the outlook from adjacent or nearby dwellings or the daylight and sunlight reaching these properties, nor would it result in undue loss of privacy for neighbouring occupiers or generate noise and disturbance that would justify dismissal of the appeal. Disruption for residents during the construction period is normally a short-term inconvenience that can, if necessary, be controlled by other legislation.
10. The new dwelling would be a sufficient distance from the Lombardy Poplar on adjacent land to prevent harm to the tree, and measures to safeguard it during construction works could be required by planning condition if the appeal were to succeed. The wildlife habitat provided by the tree would not therefore be compromised. As regards the potential for creation of a precedent if the appeal were to succeed, I have determined this proposal on its individual merits and in accordance with prevailing planning policies, and therefore attach very limited weight to this concern.
11. Although I have found that most of these other matters do not militate against the proposal, none of them outweighs the conflict with national and local planning policies that would occur if the appeal were to be allowed.

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

Michael R. Moffoot

Inspector



Appeal Decision

Site visit made on 5 January 2011

by **Christopher Thomas BSc (Hons) Dip TP MRTPI**

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

Decision date: 13 January 2011

Appeal Ref: APP/C1055/D/10/2141584
85 Darby Street, Derby, DE23 6UE

- 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 Iqbal against the decision of Derby City Council.
 - The application Ref. DER/08/10/01061/PRI, dated 23 August 2010, was refused by notice dated 20 October 2010.
 - The development proposed is ground floor extension for lounge.
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Procedural matter

1. The description of the proposal at the relevant bullet point above, which has been taken from the application, only refers to a lounge extension. However, I have proceeded on the basis of the description of development on the decision notice and as set out in the appeal, as corroborated by the submitted drawings, which refer in addition to the provision of a bathroom.

Decision

2. I dismiss the appeal.

Main issues

3. The main issues in this appeal are first, whether the proposal would be over-development thereby harming the living conditions of the future occupiers of the appeal property by reason of the effect on light and outlook, and second, whether it would harm the living conditions of the occupiers of neighbouring properties by reason of an unacceptable massing which would have an overbearing effect.

Reasons

4. The appeal property is a mid-terrace, two storey house incorporating a garage and workshop which extends under the side and to the rear of the building. The proposal, which involves partial demolition and redevelopment, seeks to provide additional living accommodation in the main building and by ground floor extensions at the rear. There would be an increase in the extent of site coverage resulting, according to the Council's unchallenged calculation, in a reduction of the outdoor amenity space at the property by about 44%. This leads to the conclusion that the scale of the proposal would be out of
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proportion to the available space on the site, thereby resulting in over-development and an unacceptably cramped outdoor living environment for future residents.

5. This, the Council argues, would have a knock-on effect in terms of living conditions for the occupiers of the property. It is considered, nevertheless, that the effect would not be harmful with regard to the proposed living room, where daylight and outlook would be enhanced to an acceptable degree by the window in the front elevation in addition to the double patio doors on to the courtyard. Daylighting to and outlook from the single storey lounge, which would occupy a large proportion of the space at the rear of the building, would be partly achieved by the incorporation of double patio doors on to the internal courtyard. Whilst the additional daylight entering the room through the roof light would be sufficient, the sole outlook from this room on to the small, enclosed courtyard would be of such a poor quality that the proposal would be unacceptable on this ground.
6. Little weight can be given to the appellant's argument that were the property to be sold buyers would be aware of what they would be purchasing since the harm to the living conditions of the occupiers would be unacceptable irrespective of who owns the property. With regard to precedent, the specific proposal to which the appellant has drawn attention at 112 Richmond Road was for a significantly different form of development. In any event, each proposal must be determined on its own planning merits and because of the presence of the garage/workshop the appeal site is distinguishable from other nearby properties.
7. On this issue it is concluded that the proposal would be an over-development of the site resulting in harm to the living conditions of future occupiers by reason of the unacceptable effect on outlook from the proposed lounge.
8. Turning to the second main issue, the existing garage/workshop is set off from the side boundary at the rear with the adjacent property, no.86. Therefore, even though the existing buildings are higher than the proposed lounge/bathroom and enlarged kitchen, a determining factor is the location of the side wall of the proposal on the boundary with no.86 and the effect of its projection about a metre above the existing boundary wall. It is considered that the resulting massing of the proposed extensions and their visual impact on the rear amenity space of no.86 would be overbearing. In contrast it is considered that there would be an improvement with regard to the effect on no.84 because of the reduction in the massing of the buildings on the boundary with this property.
9. In conclusion there would be a harmful effect on the living conditions of the occupiers of no.86 and this would be contrary to policy GD5 (b) of the City of Derby Local Plan Review (adopted January 2006).
10. I have taken into account all other matters raised in the representations but for the reasons I have given the appeal has been dismissed.

Christopher Thomas

INSPECTOR



Appeal Decision

Site visit made on 16 November 2010

by Mrs A L Fairclough MA, BSc(Hons), LLB(Hons), PGDipLP, MRTPI, IHBC
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 January 2011

Appeal Ref: APP/C1055/A/10/2134765

Rear of 282 Uttoxeter New Road, Derby DE22 3LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs Maria Burley against the decision of Derby City Council.
 - The application Ref DER/12/09/01464/PRI, dated 7 November 2009, was approved on 12 March 2010 and planning permission was granted subject to conditions.
 - The development permitted is described as a 'proposed office development'.
 - The condition in dispute is No 4 which states that: 'the windows in the rear elevation south facing elevation shall be obscure glazed and with fixed non opening lights and shall be retained as such at all times'.
 - The reason given for the condition is: 'in the interests of the amenity of nearby residents and in accordance with policy GD5 of the adopted City of Derby Local Plan Review'.
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Decision

1. I allow the appeal in part, and vary the planning permission Ref DER/12/09/01464/PRI for a proposed office development at the rear of 282 Uttoxeter New Road, Derby DE22 3LN granted on 12 March 2010 by Derby City Council, by deleting condition No 4 and substituting it with the following condition:
 - 4) The windows in the rear elevation serving Units 2 and 4 and the ground floor WC, as shown on the approved plans specified in condition 1, shall be obscure glazed and with fixed non opening lights and shall be retained as such at all times.

Main Issue

2. I consider the main issue is whether condition 4 is necessary and reasonable having regard to the living conditions of nearby occupiers.

Reasons

3. The appeal building, a precise address for which has not been given, is a detached building that is almost complete. Although located to the rear of 282 Uttoxeter New Road, it is quite separate from it. The appeal building is 2-storeys high with 4 office units. The rear elevation has 5 windows. One of these windows serves a WC and the other 4 windows serve each of the four office units. The windows serving the office units are clear glazed. The appellant seeks to remove condition 4, in order that the clear glazed and opening windows can be retained in this elevation.

4. The appeal building is positioned approximately to the north west of No 282 Uttoxeter New Road, which is currently unoccupied but has an approved planning use for offices with parking to the rear. No 278 to the east is another office building, but No 286 to the south contains flats.
5. No 286 has many clear glazed windows on its rear elevation serving the habitable rooms to the flats. There are also French doors at ground level allowing access to a rear garden area.
6. The windows, to which the condition relates, are less than 13m from the rear windows/doors of the flats at No 286. However, the windows serving Units 1 and 3 in the appeal building are at an oblique angle to those in the flats, and so provide minimal views into the habitable rooms and garden at No 286. I consider that it is unnecessary and unreasonably restrictive to require that these windows be obscure glazed and fixed shut.
7. The windows serving Units 2 and 4 and the ground floor WC could provide more direct as well as close views into several habitable room windows and the rear garden at No 286. I note that there are tall evergreen shrubs and trees along the boundary of Nos 286 and 282, which prevent overlooking and loss of privacy to the occupiers of Nos 286. However, this planting is outside the control of the appellant and could be removed at any time. In my view the removal of this landscape screening would create significantly harmful overlooking. To my mind it is necessary and reasonable to require that the windows serving Units 2 and 4 and the ground floor WC be obscure glazed and fixed shut.
8. I am satisfied that the rear facing windows in the appeal building would cause no unacceptable loss of privacy in the adjoining office buildings at Nos 278 and 282 Uttoxeter New Road. I acknowledge that LPA, in their statement, said that the condition as it applied to Units 1 & 3 was not essential.
9. For the reasons given above, therefore, I conclude that the disputed condition should be varied to require only that the windows serving Units 2 and 4 and the WC are obscurely glazed and fixed shut. This would be reasonable and necessary to protect the living conditions of nearby occupiers and comply with saved Policy GD5 of the *City of Derby Local Plan Review*.

Other Matters

10. I note the appellant's concern that non opening and obscurely glazed windows could result in a reduction in light and a stale and stuffy atmosphere in the appeal offices. However, obscure glazing does not normally serve to darken rooms. Furthermore, the windows on the north west elevation serving Units 2 and 4 could be opened to ensure an acceptable working environment at times when the air conditioning is not working.

Conclusion

11. For the reasons given above and with regard to all the other matters raised, I conclude that the planning permission should be varied by deleting the disputed condition and substituting it with another. I will retain all the other conditions imposed on the permission.

Mrs A Fairclough

Inspector