

Appeal Decisions

RECOMMENDATION

1. Committee is asked to note the decisions on appeals taken in the last month.

SUPPORTING INFORMATION

- 2.1 The attached appendix 2 gives details of decisions taken.
- 2.2 The intention is that a report will be taken to a Committee meeting each month.

For more information contact: Background papers: List of appendices:	Paul Clarke 01332 255942 e-mail paul.clarke@derby.gov.uk See application files Appendix 2: Response to appeal decision Appendix 3: Appeal decision
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IMPLICATIONS

Financial

1. None.

Legal

2. None.

Personnel

3. None.

Corporate objectives and priorities for change

4. None.

APPEALS DECISIONS

Appeals against planning refusal

Code No	Proposal	Location	Decision
DER/07/08/01090	Extensions to dwelling house	2 Oak Close, Allestree	Dismissed
<p>Comments: This application was a re-submission of an application refused earlier in the year. This application sought permission for bedroom, bathroom and en-suite extensions to the front and rear of the property. Discussion were held with the applicant and agent between the refusal of the first application and the re-submission which is the subject of the appeal, however the applicant did not follow the advice given by the Planning Officer and re-submitted a scheme similar to the original, but smaller in scale.</p> <p>The Inspector considered that the main issue in this case was whether or not the proposal would have consequences for the character and appearance of the area.</p> <p>The Inspector noted that the surrounding properties had been significantly altered over the years. Indeed the appeal property had been previously extended and whilst the present front elevation was of no great architectural merit, it was of a generally harmonious composition. The implementation of the proposal with a large front gable would dominate the property and the current satisfactory relationship of the various components of the dwelling would be lost.</p> <p>The Inspector commented on PPS 1 and the importance attached in this document to good design. Proposals which are inappropriate in context or fail to improve the character and quality of an area should not be accepted. Policies in the City of Derby Local Plan Review accord with this philosophy. He felt that the proposed extensions would adversely affect the character and appearance of the dwelling and the streetscene and therefore the proposal was contrary to national guidance and local plan policy.</p> <p>The Inspector noted that whilst there were similar extensions on nearby properties each case should be judged on its own merit and the previous approval of unsatisfactory designs was no reason to repeat the same mistakes again, accordingly the appeal was dismissed.</p>			

Code No	Proposal	Location	Decision
DER/04/08/00634	Extension to dwelling house	2A Pastures Avenue, Littleover, Derby	Allowed
<p>Comments: This proposal sought permission for a single first floor gable extension, facing towards the boundary with 2 Pastures Avenue. The property has been extended considerably in the past and has been the subject of some five applications to this Authority, some of which have been refused previously on the grounds of massing and impact on the amenity of the neighbouring residents. One letter of objection was received about this application.</p> <p>The inspector considered that the main issues of the appeal were the impact on the residential amenity of the neighbouring property and the impact of the proposal on the character and appearance of the property and the surrounding area.</p> <p>The inspector noted that the proposed gable, situated on top of part of the property which has previously been altered, would sit some six metres from the boundary and although there was some screening it would not be hidden. He also noted that the new ridge would be no higher than the existing ridge therefore the loss of sunlight and daylight to the neighbouring property would be very little. Visibility in itself does not necessarily cause harm and in the opinion of the inspector the proposed gable would not be dominant or oppressive. The proposed window, which serves a bathroom, would be obscure glazed, again protecting privacy.</p> <p>The Authority also considered that this extension would have a detrimental impact on the character of the building. The inspector commented that he felt the impact was small in comparison to the building as a whole and as it was at the back the appearance of the dwelling, which in his opinion, was of little architectural merit, would not be significantly altered. As the property as a whole was well screened the impact on the wider area was also minimal and for these reasons the inspector concluded that the appeal be allowed.</p>			

Code No	Proposal	Location	Decision
DER/04/08/00638	Extension to dwelling house	4 St Edmunds Close, Allestree, Derby	Dismissed
<p>Comments: This application sought permission for extensions to a Locally Listed Building within the Allestree Conservation Area. The proposed extensions were at the rear and also included formation of a room in the roof space. This application followed the refusal of one earlier in 2008 for a similar, but slightly larger proposal.</p> <p>The inspector considered that the main issue was the impact of the proposal on the Conservation Area.</p>			

In his reasoning the inspector noted that the appeal site was very prominent in the heart of the Conservation Area and would be visible from several angles. He felt that the character and scale of the dwelling house would be significantly altered by the proposal and whilst this may have been reduced from the earlier application it was still a considerable and very visible alteration which would be too dominant and obtrusive in this important position.

The inspector noted that the purpose of a Conservation Area designation was to preserve and enhance the appearance and character of particular area and that this was a distinctive traditional building of local importance. His opinions were shared by the Council's conservation officer and CAAC.

The appellant suggested that there was a precedent set in the area by other extensions which the inspector should take into account, however the inspector considered that each proposal should be judged on its own merits and in the context of its unique position, and the existence of other unsatisfactory features was not a convincing argument for allowing a damaging change elsewhere. Indeed this would lead to the gradual erosion of the character of the Conservation Area by proposals designed to reflect the lowest common denominator.

The inspector concluded that for the above reasons proposal did not accord with the CDLPR and that no other matters raised outweighed or overrode this. He therefore dismissed the appeal.

Code No	Proposal	Location	Decision
DER/10/06/01590	Construction of link route from Kedleston Road to Markeaton Street	Land between Kedleston Road and Markeaton Street	Dismissed
<p>Comments: Members will be very familiar with this application which was reported to Committee on two occasions. The application sought permission to provide a 4.5m wide vehicular route, combined with a segregated cycle way and footway, across the site which is an allocated green wedge. The proposal involved the creation of a bridge with embankment across part of the Markeaton Brook system and a small amount of tree felling was also included.</p> <p>The Assistant Director recommended that permission be granted for the proposal but Members had over-riding concerns about the proposal. Permission was refused on six grounds ranging from in-principle reasons relative to green wedge policy, the lack of arboricultural justification for the proposal, crime and community safety concerns and wildlife and ecological concerns relative to PPS9. The appeal was debated at a Public Inquiry and the Council's case was presented by Counsel and Councillor Baxter.</p> <p>Evidence was also provided by the Council's Arboricultural Manager and a member of the Council's Plans and Policies Team. The appellant was</p>			

represented by a legal team, planning consultant and other specialist advisors. Local residents and interest groups were able to engage in questioning and discussion and the Inquiry spanned three days.

In delivering his decision the Inspector concluded that the acceptability of the proposal centred on two main issues:

- the impact of the proposal on the character and appearance of the locality and the City of Derby, and
- whether the proposal would adversely affect the nature conservation and biodiversity value of the area

The first issue was addressed in reasons 1 and 2 of the Council's decision and the Inspector had regard to the nature of green wedge sites and the importance of such areas in defining the structure and character of the overall fabric of the city. In reaching his conclusions about this particular green wedge site the Inspector made decisive comments about the character of Sturgess Fields. For example, he stated that...*in its present open and undeveloped state I consider that it clearly makes a significant contribution to local distinctiveness and community identity. In my view this contribution would be significantly diminished by the existence of the vehicular roadway across the site and by its proposed use. The proposal would thus conflict with the primary function of green wedges which is to define and enhance the urban structure of the city as a whole. I conclude therefore that the proposal would conflict with policies E2 and GD2.* The Inspector paid regard to the overall content of the CDLPR and the policy support for proposals in this area to enhance the functioning of the University district. Whilst he acknowledged those policies he had regard to the caveats which precluded development proposals that would detract from the general character of the area. The Inspector had regard to the suggested benefits of the proposal and the existing access arrangements between the two arms of the University. It was accepted that the proposed route would be approximately 0.7km shorter than the existing vehicular routes on the main highway network but concluded that the detrimental impacts of the proposal outweighed the perceived benefits. Combined with the absence of an arboricultural justification for the proposed tree loss, the Inspector concluded that the proposal was contrary to policies GD2, E2 and E9 of the adopted CDLPR.

In relation to the second issue the Inspector had regard to the specialist input that was provided during the life of the application from the environmental consultees, namely the Environment Agency, Natural England and Derbyshire Wildlife Trust. The concern expressed by the Friends of Markeaton Brook that the proposal would be detrimental to nature conservation interests was acknowledged but he found that this argument was not substantiated by clear scientific evidence. As such he concluded that, in relation to this second issue, the proposal complied with policies E4 and E7 of the adopted CDLPR and with the central government guidance in PPS9. The Inspector was also satisfied that issues relative to flood risk had been addressed through the application process and the proposal was acceptable on this ground. A separate application for costs was refused.

RECOMMENDATION: To note the report.



Appeal Decision

Site visit made on 9 December 2008

by **N A C Holt** TD BArch(hons) DipTP
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for Communities and Local Government

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Decision date:
8 January 2009

Appeal Ref: APP/C1055/A/08/2086232/WF 2 Oak Close, Allestree, Derby, DE22 2JE

- 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 W Johnson against the decision of Derby City Council.
- The application Ref DER/07/08/01090/PRI, dated 22 July 2008, was refused by notice dated 28 August 2008.
- The development proposed is bedroom/en-suite and bathroom extensions.

Decision

1. The appeal is dismissed.

Main issues

2. The main issues are firstly, whether the proposal would have damaging consequences for the character and appearance of the area and secondly, whether the submitted drawings accurately depict the development proposed.

Reasons

3. The appeal premises are prominently located at the junction of Oak Close and Lockwood Road within an extensive residential area to the north west of Derby. Oak Close consists of detached houses of a similar age many of which have been significantly extended and altered over the years. The adjoining property at No. 4 has been extended so that it now presents three two storey gables to the front. To the rear of the appeal premises, work is currently in progress on major extensions at 32 Allestree Lane that will radically alter its current appearance and include an additional double storey gable on the elevation facing Allestree Lane.
4. The appeal proposal would involve a first floor extension following the existing ground floor footprint of the house which has been the subject of an earlier extension. An additional two storey gable would be introduced on the north west (front) and the south east (rear) elevations on the side of the house furthest from the junction.
5. I am concerned that the introduction of the additional gable on the front elevation would have unfortunate visual consequences. The gable would be slightly wider than the existing gable and would project forward of it. Whilst the existing flat roofed single storey extension on the frontage is of no great merit, the elevation as a whole presents a satisfactory and harmonious composition.

6. With the implementation of the proposal the frontage would be dominated by the new gable and the current satisfactory relationship between the various components of the elevation in terms of their scale and proportion would be lost. The result would be an unattractive and ill proportioned frontage with a contrived appearance. With its awkward detailing at the junction of the old and new the extension would appear as an 'afterthought' rather than a component of a well thought out design.
7. The recently produced PPS1 highlights the importance that is attached by Government to good design. Paragraph 34 states that design which is inappropriate in its context or which fails to take the opportunities available for improving the character and quality of an area and the way it functions should not be accepted. In terms of the City of Derby Local Plan Review, Policy E23 indicates that the Council will expect proposals to be of a high standard of design and Policy H16, which relates to residential extensions, states among other things that extensions should have no significant adverse effect on the character and appearance of the dwelling or the street scene in terms of massing, visual prominence, use of materials or proportions.
8. I consider that in its present form the proposal would have a significant adverse effect on the character and appearance of the dwelling and the streetscene. As such, the proposal in its current form is contrary to both national guidance and local plan policy.
9. I appreciate that there are extensions similar to that proposed elsewhere on Oak Close and I also observed that nearby at 32 Allestree Lane work on large extensions that bore some similarity to the proposal were in progress. However, each case must be considered on its individual merits and the fact that in the past extensions that are unsatisfactory in design terms have been accepted, such as those at No. 4 Oak Close, is not reason to repeat the same mistake.
10. In addition to my concern in relation to the visual impact of the extension there would appear to be inconsistency in the submitted drawings. In the proposed side (north east) elevation the roof of the proposed gables appears to line through with the existing ridge but that is not the case on the other elevations where the ridge of the roofs of the new front and rear gables are shown at a slightly lower level.
11. I have taken account of all the other matters raised in the material before me but these do not alter my conclusion that the appeal should be dismissed.

Neil A C Holt

Inspector



Appeal Decision

Site visit made on 12 January 2009

by **C S Turner** MA BA DipTP MRTPI

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Decision date:
21 January 2009

Appeal Reference: APP/C1055/A/08/2088212 **2A Pastures Avenue, Littleover, Derby DE23 4BE**

- 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 by Mr P Puri against the decision of Derby City Council.
- The planning application that led to the appeal (Council reference DER/04/08/00634/PRI) was dated 17 April 2008 and was refused by a notice dated 13 June 2008.
- The development proposed is a first floor extension to detached dwelling (bathroom).

Decision: the appeal is allowed and planning permission granted subject to the conditions set out in the Decision below.

Main Issues

1. The main issues in the appeal are:
 - (a) the impact on residential amenity in the adjoining dwelling (number 2 Pastures Avenue) with particular reference to loss of light, outlook or privacy in the garden, patio and living rooms;
 - (b) the impact of the proposed extension on the character and appearance of the property and the surrounding area.

Reasoning

2. The appeal proposal would add a gable and a higher roof above an existing ground floor bedroom to create a new bathroom at first floor level. This is a relatively small alteration to a building that has been altered and extended in the past. The ridge of the new roof would be at right-angles to the main roof on the building and would be the same height as the existing ridge. This means the proposed gable would be visible from the next door garden, patio and rear windows. Although there is a high fence and some planting between the properties, these would not hide the new gable. In particular, the tree in the appeal site (described as a copper beech but more likely a maple) that is between the site of the proposed gable and the next door patio and back windows is not an effective screen, especially in winter. The appellant also attaches some importance to the fact that the appeal site is slightly lower than the adjoining garden and lower still than the patio at the back of number 2. However, I attach relatively little importance to this because one can see the impact the proposed extension would have by looking from number 2 to where it would be. I attach more importance to the fact that the proposed new gable would be set back some way (the Council says 6 metres) from the site boundary and would not be next to the raised patio next door.

3. Taking all this into account, my assessment is as follows:

- (a) as far as sunlight and daylight are concerned, the proposed gable is to the east of the next door bungalow and garden which means that only morning light would be affected. However, because the new ridge would be no higher than the existing ridge and the new gable would be six metres back from the boundary, it would seldom, if ever, interfere to any great extent with light reaching the neighbouring property;
 - (b) as far as outlook is concerned, I have already said the proposed gable would be visible from the garden, patio and back windows next door. However, it would be no higher than the existing ridge and it would be set back from the boundary, but I accept it would be more noticeable than the present single storey gable. Nevertheless, I take that view that visibility does not, by itself, cause harm to outlook and that in this case the proposed gable would not be so dominating or oppressive as to warrant dismissing the appeal for this reason;
 - (c) as to privacy, the new first floor windows would serve a bathroom and would have obscure glass fitted. This would mean the neighbours' privacy in the garden, patio and home would be effectively safeguarded.
4. I know that the next door neighbours will not agree with this assessment but the fact of the matter is that the present proposal will make little tangible difference to their situation. Even the cumulative impact is little changed by the present proposal. Perhaps they are right to say that they should have objected to earlier extensions to the property. Be that as it may and as things stand; the present proposal has to be assessed for its impact in comparison to the situation that exists now.
5. In view of the above I conclude the appeal proposal complies with the policy in the adopted City of Derby Local Plan Review concerned with protecting residential amenity in properties next to development sites (policy GD5).
6. As far as design is concerned, the Council is concerned that the appeal proposal would have a detrimental impact on the character of the existing building. Again it is noteworthy that the present proposal is small in comparison to the building as a whole. Moreover, the proposed extension would be at the back of the property where there have not been any first floor gables or dormers added. Thus, whether viewed in isolation or cumulatively the overall design and appearance of the dwelling would be little changed. In any event, the present building has little architectural merit or distinctiveness and its appearance would not be materially harmed by the present proposal.
7. As to any impact in the wider area, the dwelling is very well screened and the proposed new gable would be difficult to see from any publicly available vantage point.
8. I conclude the appeal proposal accords with the design policies in the Local Plan and causes no harm in this respect.
9. The Council suggested two possible conditions it would like to see imposed in the event of the appeal being allowed. The first of these would control the materials to be used to ensure they are suitable. The second would ensure the

bathroom windows are glazed with obscure glass. In the circumstances of this site and proposal such conditions are reasonable and necessary, although I have simplified the wording. There is also the matter of a time limit on implementation.

10. I have taken into account all the other matters raised in the written representations sent to me but can find nothing to outweigh or override the above conclusions.
11. I conclude that the impact of this proposed development would be small and relatively benign and that it would accord with the Development Plan for the area. In the absence of any material considerations that indicate otherwise, I conclude that the appeal should be allowed.

Decision

12. I allow the appeal, and grant planning permission for a first floor extension (for a bathroom) at 2A Pastures Avenue, Littleover, Derby DE23 4BE. This planning permission is in accordance with the terms of the application (Council reference DER/04/08/00634/PRI) dated 17 April 2008 and the plans submitted with it. The planning permission is subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
 - 3) Any first floor window in the approved extension shall be glazed with obscure glass and shall be fixed and non-opening. It shall be retained as such at all times once installed.

C S Turner

INSPECTOR



Appeal Decision

Site visit made on 12 January 2009

by **C S Turner** MA BA DipTP MRTPI

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

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Decision date:
21 January 2009

Appeal Reference: APP/C1055/A/08/2087862 4 St Edmunds Close, Allestree, Derby DE22 2DZ

- 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 by Mr Neil Lewis against the decision of Derby City Council.
- The planning application that led to the appeal (Council reference DER/04/08/00638/PRI) was dated 18 April 2008 and was refused by a notice dated 16 June 2008.
- The development proposed is a rear kitchen / w.c. extension with bedroom over and studio in the roof space.

Decision: the appeal is dismissed.

Main Issue

1. The main issue in the appeal is the impact the proposed extension would have on the Conservation Area.

Reasoning

2. The appeal site is in the Allestree Conservation Area. Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of conservation areas. Such considerations are also reflected in the policies contained in the adopted City of Derby Local Plan Review.
3. The appeal site is in a very prominent and important position at the heart of the Conservation Area. It is next to the church and the proposed extension would be seen from the south from inside the churchyard and across it. It would also be seen from the east from the footpath running between the church and the appeal site.
4. From these vantage points the proposed extension would alter the scale and appearance of the appeal premises. What is presently a simple gable ended end-of-terrace house (with a single storey rear extension) would be changed into a larger and more complex structure with a larger end wall and an added rear roof and gable. Whilst the proposal may be smaller than earlier proposals to extend the property, it would nevertheless be a considerable and very visible addition.
5. I consider that the proposed changes would so increase the bulk and visual impact of the existing building as to make it too dominant and obtrusive in this important position in the Conservation Area. The altered building would be too obtrusive when viewed from the south and would dominate the view from the

east and the footpath. I conclude that this would harm the character and appearance of the conservation area and for this reason the proposal would not comply with the legal duty concerning the character and appearance of conservation areas and would not accord with the Local Plan.

6. It would also alter the nature of a distinctive traditional building recognised as having local importance.
7. Whilst I recognise that such matters are to some extent a matter of opinion, I note that my assessment is shared by Council's conservation officer and by CAAC (which I take to be a Conservation Area Advisory Committee).
8. The appellant is much taken with the notion of precedent, suggesting that other alterations and extensions in the Conservation Area provide some sort of justification for his own proposals. But in matters of design, each site is unique and each proposal has to be assessed on its own merits in the context of its unique position. In any event the existence of an unsatisfactory feature in one location is not a convincing argument for a damaging change elsewhere. Otherwise the future of the Conservation Area would be put at risk by the continual erosion of its character and appearance by proposals designed to reflect the lowest common denominator found in all previous extensions.
9. I note that the proposed extension would be built of suitable materials and have appropriate detailed design features. It would also screen the back of the rest of the terrace from wider view. However, these benefits would not outweigh the harm identified above.
10. As to the impact in the next door house, I consider that there would be some impact on light and outlook. However, because the upper storey of the proposed extension would be set back from the boundary with the next house, I take the view that the harm would not be so great as to be material. I conclude that this is not, therefore, an additional reason to dismiss the appeal.
11. I have taken into account all the other matters raised during the appeal but can find nothing to override or outweigh the conclusions reached above. The proposal does not accord with the Development Plan and there are no other material considerations of sufficient weight to set this aside.
12. For these reasons I dismiss the appeal.

C S Turner

INSPECTOR



Appeal Decision

Inquiry held on 28, 29 and 30 October 2008

Site visit made on 30 October 2008

by **Paul Dignan MSc PhD**

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Decision date:
7 January 2009

Appeal Ref: APP/C1055/A/08/2069151

Land between Markeaton Street and Kedleston Road, Derby.

- 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 the University of Derby against the decision of Derby City Council.
- The application Ref. DER/10/06/01590/PRI, dated 4 October 2006, was refused by notice dated 1 October 2007.
- The development proposed is: pedestrian, cycle and hopper bus link route from the A38/Kedleston Road to Markeaton Street, including a turning head on the site of the Markeaton Street campus.

Application for costs

1. At the Inquiry an application for costs was made by the University of Derby against Derby City Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Background and Preliminary Matters

3. The proposal seeks to improve the transport links between two University of Derby campuses, the recently built Art, Design and Technology campus at Markeaton Street and the main Derby campus at Kedleston Road. The campuses are less than 1km apart and separated by the A38 and Kedleston Road. The route would connect an existing stretch of roadway extending north from Markeaton Street and an existing roadway and bridge extending south from Kedleston Road. A bus turning area would also be constructed within the Markeaton Street campus; there are no objections to the provision of the turning area and I do not therefore consider it further.
4. The route would cross open land between Markeaton Street and Kedleston Road on the eastern side of the A38. This land consists of two fields known locally as Sturgess Fields, divided by a tree-lined stream, part of the Markeaton Brook system. Tree-lined components of the Markeaton Brook system also flow along the south, north and east of the area. Open land, comprising playing fields, then allotments and parkland, extends to the south-east. To the west on the opposite side of the A38 is Markeaton Park, also open land which extends to the open countryside further west.

5. The length of new roadway required to link the two existing sections of road is about 230m, including a new bridge over the stream between the two fields. Initially the application proposed a total surfaced width of 6.3m, including a 3m wide segregated cycleway/footpath, but this was reduced to 4.5m whilst under consideration by the Council, comprising a 3m wide bitumen-surfaced vehicular roadway and a 1.5m wide granular-surfaced pedestrian path.
6. Other revisions during the application stage include the omission of vehicle passing spaces and route lighting, the construction of drainage swales alongside two parts of the route rather than direct discharge of runoff to watercourses, revised construction details for the proposed new bridge and the provision of longitudinal section details, the proposed excavation of a flood compensation depression and clarification of the tree works proposed.
7. A further revision during the appeal period proposes minor amendments to the drainage swales for tree protection purposes (Rogers Leask Ltd Drawing D04/081 SK20 Rev. G, submitted at the Inquiry). Although this latter revision was not formally considered by the Council or publicly consulted upon, the amendments proposed are very minor in nature and I do not consider that anyone's interests would be prejudiced by my consideration of it as part of the appeal proposal.
8. The proposed 3m wide roadway would be used by cyclists and by a shuttle bus operating between the Kedleston Road and Markeaton Street campuses. One bus would operate on the route on a continuous service basis between 0800 hours and 2200 hours on term-time weekdays. Vehicular access to the route would be limited to the shuttle bus, grounds maintenance vehicles and emergency service vehicles, controlled by barriers at either end. The route would be open to unrestricted pedestrian and cycle use between 0600 hours and 2230 hours.
9. Planning permission for the Markeaton Street campus was granted subject to a Section 106 Agreement which, amongst other things, requires the University to provide a segregated cycle and pedestrian link, a minimum of 3m wide, between the northern end of Markeaton Street through to Kedleston Road and the A38, to include tactile paving, lining, additional signage and new/replacement street lighting. Amongst other things, the proposal is intended to fulfil this obligation.

Main issues

10. I consider the main issues to be:

- the impact of the proposal on the character and appearance of the locality and the City of Derby, and
- whether the proposal would adversely affect the nature conservation and biodiversity value of the area.

Reasons

Character and appearance

11. Sturges Fields is part of a network of open land known as green wedges around the City of Derby to which the protective Policy E2 of the adopted local plan (LP), the City of Derby Local Plan Review (January 2006), applies. The

text accompanying LP Policy E2 identifies two essential characteristics of green wedges, their open and undeveloped character and their penetration of the urban area from the open countryside. Their primary function is to define and enhance the urban structure of the city as a whole by, amongst other things, bringing the countryside closer to the city, maintaining open land between separate parts of the city and reducing the impression of urban sprawl. They are considered to have important existing or potential recreational and ecological value.

12. LP Policy E2 sets out limited categories of development permitted in green wedges, subject to the further provisos that proposals do not endanger the open and undeveloped character of the wedge, its links with open countryside and its natural history value, detract from an area where the open character of the green wedge is particularly vulnerable because of its narrowness or prominence, and do not lead to excessive increase in numbers of people, traffic or noise.
13. Acceptable development within green wedges includes essential buildings and activities ancillary to existing educational establishments within the green wedge. However, the accompanying text makes it clear that this exception only applies where existing education establishments have been included within green wedges in order to provide a satisfactory boundary to the wedge, which is not the case in this instance. The proposal does not fall within any of the other categories, and on the face of it the proposal would not accord with LP Policy E2.
14. By their very nature, however, some transport links across green wedges are inevitable. Indeed, an indicative route across Sturgess Fields linking Markeaton Street and Kedleston Road is shown on the LP Proposals Map (LP Policy T15) as an extension of the Markeaton Brook Walkway towards Markeaton Park, and the Council accepted at the Inquiry that a cycle/pedestrian link in line with the requirements of the Section 106 agreement would be acceptable using the appeal proposal route.
15. Other recent examples to which I have been referred are, in the main, cycleways, which the Council considers are generally compatible with the open character of green wedges and enhance the outdoor recreational use of the green wedge in terms of improving public access across it. However, the principle of a guided bus route through the green wedge using a former railway route was considered acceptable by the Inspector considering the Local Plan Review in 2004, provided that it was designed so as to avoid a material impact on the function of the green wedge.
16. Furthermore, the local plan also contains policies which support the development and functioning of the University. Specifically, LP Policy LE3 supports development associated with the University within the designated University District, which includes Sturgess Fields, provided that, amongst other things, the scale and intensity of use is sufficiently similar to the surrounding area that it would not detract from its general character or amenity. The general development policy LP Policy GD2 also provides that development should have regard to the need to protect and enhance landscape character, local distinctiveness and community identity.

17. In view of this I consider it necessary to consider the impact of the proposal on the character of the area and its green wedge function. Sturgess Fields and the undeveloped land to its east are part of a larger green wedge that extends west to the open countryside. Although there are good pedestrian and cycle links to Markeaton Park, the presence of the A38 acts as a physical and visual barrier to the countryside which serves to heighten the informal recreation value of Sturgess Fields for nearby residents living on the eastern side of the A38. Due to its narrowness and the proximity of development around its fringes, much of the green wedge area to the east of the A38 is subject to urban influences. Sturgess Fields, however, is almost completely screened from the nearby developed area by its tree lined boundaries, and despite the presence of the A38 I consider that it has an open and undeveloped character.
18. The presence of a formal cycle/walkway through the site would undoubtedly detract to an extent from this open and undeveloped character, but it would be likely to enhance its recreational value in other ways and the impact in terms of structures and additional activity would be low. The proposal has been described as no more than an additional 1.5m of surfaced route compared to the segregated footpath cycleway required by the Section 106 agreement.
19. However, while I have not been provided with any details of the structures required for a pedestrian/cycleway, it seems to me that the proposed structures necessary for vehicular travel, including the embanked bridge over the stream and the provision of drainage swales, would have a significantly greater impact on the existing open and undeveloped character of the site than would those necessary for a pedestrian/cycle link. Furthermore, the frequent passage of buses over Sturgess Fields would inevitably alter its character significantly and give the area a far more urban and developed feel.
20. The overall impact of the proposal would not be particularly evident in public views into Sturgess Fields from the surrounding area, but there is permissive, and, as I understand it, longstanding, public access over all of Sturgess Fields. Compelling evidence was provided at the Inquiry to the effect that the area is well used and valued by members of the public, and there is no suggestion that the area will not continue to be easily accessible to the public into the future.
21. In its present open and undeveloped state I consider that it clearly makes a significant contribution to local distinctiveness and community identity. In my view this contribution would be significantly diminished by the existence of the vehicular roadway across the site and by its proposed use. The proposal would thus conflict with the primary function of green wedges which is to define and enhance the urban structure of the city as a whole. I conclude therefore that the proposal would conflict with LP Policies E2 and GD2.
22. The proposal would also involve the removal or reduction of a number of trees, and could threaten the long term survival of others. All of the trees which would be affected are covered by tree preservation orders (Derby County Council TPO No. 197 of 1991 or Derby City Council TPO No. 116 of 1995) as part of either an area or woodland designation. Some of the trees need to be removed in any event for public safety reasons. However, the construction of the new bridge would involve the removal of two trees (referred to by the main parties as T27 and T37) which are of amenity value and for which there is no specific arboricultural justification.

23. The long term survival of three other protected trees (T30, T35 and T36) in the vicinity of the bridge and one close to Markeaton Street (T19) could also be threatened. The loss of trees which contribute to the amenity of the area is contrary to LP Policy E9. However, the Council's arboricultural officer accepted at the Inquiry that an Environmental Management Plan prepared for the appellant, which includes elements of woodland enhancement, would, if implemented, at least balance the harm caused by the loss of, at the very least, two protected trees. I shall return to this in the context of the development as a whole.
24. It is necessary to consider whether there are benefits of the proposal which might weigh against the harm that I have identified and the conflict with local plan policies. The benefits put forward by the appellant includes sustainability benefits that could be expected to arise from improved transport links between the campuses, benefits to local residents and business arising from a decreased need for parking and congestion of the local highway network, improved accessibility of sports facilities to students/staff and emergency vehicles, reinforcement of the perception of this part of the University as one twin-hub campus, and enhancement of the area through implementation of an Environmental Management Plan.
25. A free bus service on weekdays during University term time has operated between the two campuses since the construction of the Markeaton Street campus. Establishment of the best route appears to have been an exercise in trial and error, with some of the routes used resulting in significant delays due to traffic congestion and on-street parking. The route currently used is about 2.1km between the campuses and has the additional advantage of serving a third campus nearby, Britannia Mill. The service, using two buses, operates from 0800 hours to 1800 hours, on a half hourly basis in peak times and a 20 minute frequency in the intervening period.
26. Conflicting evidence was given at the Inquiry regarding the efficiency of the current service, but the recent imposition of parking restrictions along part of the route seems to have resulted in significant improvement and the service appears to run to the timetable. At present the service is very well patronised, with an average of just over 800 trips recorded each weekday for the week commencing 6 October 2008.
27. The bus service on the proposed route would replace the existing service. It would operate on a continuous loop system, which is expected to enable it to provide a 15 minute service. The route, at about 1.4km, would be shorter. The improved frequency would undoubtedly result in a better service, as would the shorter distance that buses would have to travel along the public highway, which would almost certainly result in a more reliable service.
28. Given that the existing service is reasonably frequent, reliable and well patronised, however, it is by no means certain that the improvements that would arise from the proposal would have a significantly beneficial effect in terms of reducing car travel between the two campuses. Along with the existing free bus service, there are already a number of other factors, principally car parking restrictions at both campuses and their relative proximity with good walking and cycling links, that act to discourage car travel.

29. For these same reasons, University students or staff parking cars on the public highway in the vicinity of either campus are unlikely to use their cars to travel between sites, particularly in light of the experience of local residents voiced at the Inquiry that on-street parking in the vicinity of the Markeaton Street campus is invariably close to capacity in business hours. There is no evidence that congestion of the local highway network arises as a result of the juxtaposition of the two campuses, and indeed a highways impact assessment prepared in support of the application for planning permission for the Markeaton Street campus concluded that the traffic impact of the new campus would be minimal.
30. The existing bridge and roadway into the playing fields next to Kedleston Road already provides good accessibility for students/staff and emergency vehicles to that part of Sturgess Fields. There is also a playing field adjoining the stream the east of the proposed route, and the existing access from Markeaton Street gives access close by, but no improvements in vehicular access to this field are currently proposed in any case. There would, however, be some benefit of the proposed route in that there would be direct access to the Kedleston Road playing fields from the Markeaton campus. That users of the route would be on University grounds for a greater proportion of the journey between the campuses would also undoubtedly help to create a greater sense of proximity, which would assist the University's vision of a unified twin-hub campus, as would shorter journey times.
31. Although not part of the appeal proposal, the University has also prepared an Environmental Management Plan (EMP) for Sturgess Fields, based to a large extent on the recommendations of the Derbyshire Wildlife Trust (DWT) and those of the arboricultural and environmental consultants involved in the preparation of the application and appeal. It is essentially an overview type document at this stage and covers some matters not related to the mitigation of potential effects of the appeal proposal, but the aspects directly related to the proposal could be secured by condition, which I consider would be beneficial in the long term in terms of the conservation value of the land.
32. A significant component of the EMP is a woodland management plan. It has been suggested that this would provide arboricultural justification for the removal of TPO trees T27 and T37. However, the need for the woodland management does not arise from the appeal proposal and would not seek to remedy any of its direct effects. Whilst laudable, it is, in my view, not so closely linked to the proposed development that it could be secured by way of condition, in that it would fail to satisfy the essential tests of necessity and relevance as set out in Circular 11/95: *The Use of Conditions in Planning Permissions*. Furthermore, other than the elements of the EMP that are specifically included to address the potential for harm due to the proposal, the principal components are those that a responsible landowner would carry out in any case. I have therefore attached limited weight to the EMP as a whole.
33. I have also considered whether there would be significant benefits arising from the proposal in terms of improved walking and cycle links between the campuses. Again, conflicting views were heard at the Inquiry, noting amongst other things that cyclists can currently travel between the campuses without using the public highway, whereas users of the proposed link would have to travel along a busy stretch of Kedleston Road.

34. There are currently good pedestrian and cycling links between the campuses. Given that, regardless of the proposal, the existing Section 106 requires a new link or improvements to existing links, my view is that in this respect, although the proposal would add to the choices available to pedestrians or cyclists, which is encouraged by Planning Policy Guidance Note 13: *Transport*, the overall impact would be no more than neutral.
35. Overall, I consider that the benefits I have found, considered individually or cumulatively, are not so great as to outweigh the harm that I have identified to the character of the area, having regard to its importance in terms of its green wedge function and its vulnerability as a narrow and prominent component. In coming to this conclusion I have also had regard to LP Policy LE3, but, as noted above, this policy also requires that University development should not detract from the area's general character or amenity, a test which the appeal proposal would fail.
36. I have noted also the previous grant of outline planning permission in 1997 (Council Ref. DER/03/97/293) for an all-weather pitch and sports pavilion with associated parking and floodlighting on the sports field adjoining Kedlestone Road. The planning permission was not implemented and has now expired. There are material differences between the current proposal and the sports field development, but I acknowledge that the grant of planning permission suggests inconsistency on the part of the Council in the interpretation or application of green wedge policy. However, this does not provide justification for a harmful form of development on the appeal site.
37. My overall conclusion on this main issue therefore is that the proposal would harm the character and appearance of the locality and the City of Derby. I find that it would be contrary to LP Policies E2, GD2 and E9.

Nature conservation and biodiversity

38. The Markeaton Brook System is a locally designated Wildlife Site (DE003), and protected species, including White-clawed crayfish, are known to be present within the brook system. However, ecological surveys of Sturgess Fields and the nearby brook system indicate that the proposal would not result in any loss of protected habitats, and some of the revisions to the proposal have been aimed at avoiding harm to protected species populations or habitat. Natural England and DWT have been consulted on the proposals and, subject to some additional matters that can be satisfactorily addressed by means of planning conditions, they accept that the revisions make the proposal acceptable in terms of nature conservation. In the light of this the Council now accepts that the proposal, as revised, would not endanger the nature conservation interests of the area.
39. I acknowledge the concerns expressed by many objectors, including the Friends of Markeaton Brook who gave evidence at the Inquiry, but no clear scientific evidence has been put forward that would lead me to a different conclusion. I conclude therefore that the proposal would not adversely affect the nature conservation and biodiversity value of the area, and I find accordingly that it would comply with LP Policies E4 and E7, which aim to prevent harm to wildlife sites and protected habitats, and with the national guidance in Planning Policy Statement 9: *Biodiversity and Geological*

Conservation (PPS9). It follows from my conclusion that the proposal accords with PPS9 that I do not need to consider whether the development could be located on the existing public highway network.

Other Matters

40. Amongst the Council's reasons for refusal is that the proposed route would not provide a safe and attractive environment for pedestrians, disabled people and cyclists, contrary to LP Policies GD1, T6 and T7. This arose as a result of the amendment of the application to exclude lighting, which was originally to be by means of eleven 7.5m high road lighting columns. This is an understandable concern, but in view of the existence of satisfactory alternative routes between the campuses it is not a matter which I consider would justify withholding planning permission.
41. The appellant has also suggested that an alternative lighting scheme using low level bollard lighting could be secured by way of condition. However, given the specific decision to exclude lighting from the proposal, my view is that the addition of lighting along the route at this stage would amount to a material change in the nature of the scheme which should not be dealt with by way of a planning condition.
42. Evidence in relation to the impact of the proposal on flooding was presented at the Inquiry by the Friends of Markeaton Brook. However, this was the subject of considerable scientific input and evaluation by the appellant's hydrology consultants and the Environment Agency, and I am satisfied that the measures now proposed would satisfactorily address the risk of flooding due to the proposal.

Conclusion

43. Notwithstanding my conclusion that the proposal would not harm the nature conservation and biodiversity value of the area, the harm that I have identified to the character and appearance of the locality and the City of Derby provides me with a compelling reason to withhold planning permission. Accordingly, for the reasons given above, having considered all other matters raised, I conclude that the appeal should be dismissed.

Paul Dignan

INSPECTOR



Costs Decision

Inquiry held on 28, 29 and 30 October 2008

Site visit made on 30 October 2008

by **Paul Dignan** MSc PhD

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

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Decision date:
7 January 2009

Costs application in relation to Appeal Ref: APP/C1055/A/08/2069151 Land between Markeaton Street and Kedleston Road, Derby.

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by the University of Derby for a full award of costs against Derby City Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for: pedestrian, cycle and hopper bus link route from the A38/Kedleston Road to Markeaton Street, including a turning head on the site of the Markeaton Street campus.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for the University of Derby

1. The application is made by reference to Annex 3 paragraph 8 of Circular 8/93 *Award of Costs Incurred in Planning and Other (including Compulsory Purchase Order) Proceedings*. This provides that the Council will be expected to produce evidence to substantiate each reason for refusal, by reference to the development plan and all other material considerations. Taking each reason for refusal in turn:
2. Reason 1: There has been no attempt on the part of the Council to produce professional evidence in support of this reason for refusal. That members may have been in a position to form their own view as to the impact on the basis of local knowledge is insufficient to remedy the failure to provide substantive evidence. None of the third party representations and other consultation responses available when the application was determined provided any evidential base to support the reason for refusal.
3. Reason 2: All of the professional evidence before the Inquiry suggests that the proposal will not offend the objectives of the green wedge designation. The advice of the Council's professional officers clearly supports the appeal proposal as an acceptable form of development within the green wedge. The only evidence of any conflict is that provided by Cllr Baxter, which is based on a clear misunderstanding of policy and misdirection as to the objectives of the requirements of Policy E2. Cllr Baxter failed to substantiate the reason for refusal by proper reference to the detailed provisions of the development plan.
4. Reason 3: This reason for refusal has been abandoned by the Council. It follows that it has not been substantiated. Given the conclusive comments of Natural England and Derbyshire Wildlife Trust, this reason for refusal could not have been substantiated in any case.
5. Reason 4: Arboricultural justification for the proposal was accepted by the Council's arboricultural witness at the Inquiry, namely that the loss of two trees was justified

if it would facilitate the substantial benefits associated with the management regime proposed by the appellant. Again the Council failed to provide meaningful evidence to substantiate this reason for refusal and the appellants have been put to unnecessary cost in dealing with an issue that could have been readily resolved through negotiations.

6. Reason 5: The Council has produced little or no evidence to suggest that there is any issue regarding crime prevention associated with the appeal proposal.
7. Reason 6: All issues relating to potential harm to biodiversity and geological conservation have been resolved. There is accordingly no longer any need whatsoever for the appellant to demonstrate the need for the development proposal, having regard to the availability or the associated disbenefits of using potential alternative routes. The appellant has been put to considerable unnecessary cost in having to prepare and present highway and transportation evidence in respect of this narrow point. In response, the Council have produced no highways evidence and simply rely upon broad and misdirected assertions.
8. Whether or not the planning issues are finely balanced, Circular 8/93 requires that each reason for refusal be substantiated. The appellant has been put to unnecessary expense in dealing with unsubstantiated reasons for refusal which would justify a full award of costs in accordance with the advice contained in Circular 8/93.

The Response by the Council

9. Paragraph 8 of Annex 3 of Circular 8/93 also says that in cases where planning issues are clearly shown to be finely balanced, an award of costs relating to substantive matters is unlikely to be made against the planning authority. In this case the planning issues are all finely balanced. The appellant frequently fell back on the Council's planning officers' views, which the planning report to Committee makes clear were finely balanced. A full explanation was given as to why the members of the Planning Committee took a contrary view. The evidence was given by a long standing member of the Planning Committee. Each reason makes reference to relevant planning policies.
10. The appellant's landscape and ecological witness's evidence concedes that there would be negative visual impacts of the proposal. The difference between the parties is whether or not the negative impacts are significant, which is a matter of judgement. The ecological difference between the parties fell away at a very late stage, and final details of the management plans etc. were not agreed until late in the day. In any case, the Friends of Markeaton Brook still opposed the proposal on ecological grounds so it is likely that the appellant's landscape and ecological witness would have had to attend the Inquiry.
11. The proposition that the need for evidence on transport matters should have fallen away with the ecological reason for refusal ignores the fact that the proposal has been promoted since the very start on the basis of the transport benefits, namely the ability to deliver a modal shift in movement between the sites. The Council's evidence relating to transport was necessary due to the emphasis that the appellant put on it. It sought merely to suggest that less weight should be given to the transport benefits.
12. The application for costs is therefore misconceived.

Conclusions

13. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
14. I have found in favour of the Council in respect of reasons for refusal 1 and 2. In my view there were reasonable planning grounds for the members of the planning committee to have reached a different conclusion to their officers. The Council's case was satisfactorily supported by analysis of the proposal in the context of the site and its surroundings, by reference to relevant development plan policies. The arboricultural reason for refusal (No. 4) was soundly based and supported by professional evidence. That some degree of agreement was reached between the main parties as to the balance between the harm due to tree loss and the off site benefits that might accrue from the implementation of the proposed management plan does not, in my view, equate to arboricultural justification for the loss of trees. The fifth reason for refusal, in respect of the security of the route if unlit as proposed, was based on the advice of the local police. Although I came to a different conclusion, I consider that the reason for refusal was soundly based and adequately supported by the evidence given at the Inquiry.
15. On the basis of the consultation responses of Natural England and the Derbyshire Wildlife Trust it should have been obvious to the Council that it would be difficult to substantiate the wildlife and nature conservation reasons for refusal (Nos. 3 and 6). The reason given for the decision to withdraw its objections at the last minute, namely that its residual concerns could be dealt with by condition, does not stand up to scrutiny. In my view this amounts to unreasonable behaviour. However, the appellant would have been aware that the Friends of Markeaton Brook (FMB) would be opposing the proposal on ecological grounds, and this aspect of the proposal would still have to be dealt with at the Inquiry.
16. Transport matters had to be dealt with in relation to reason for refusal 6. The transport benefits of the proposal were put forward as amongst the material considerations in its favour, and these benefits were vigorously contested at the Inquiry by local residents and by the FMB. Again, I consider that the transport implications of the proposal are matters that would have had to be addressed at the Inquiry in any case.
17. Consequently, despite the Council's unreasonable behaviour, I consider that the appellant did not incur wasted expense in preparing to rebut reasons for refusal Nos. 3 and 6 as they relate to matters which would have been raised in any case. None of the other matters referred to amounts to unreasonable behaviour on the part of the Council. I therefore conclude that an award of costs is not justified.

Formal Decision

18. I refuse the application for an award of costs.

Paul Dignan

INSPECTOR