

# **STRATEGIC PLANNING BOARD**

## **APPEALS**

**Application Number:** 08/1637p

**Appellant:** Cancho Coffee Company

**Site Address:** 89 Mill Street, Macclesfield

**Proposal:** Change of use from A1 retail to A3 coffee shop

**Level of Decision:** Delegated – former Macclesfield Borough Council

**Recommendation:** Refusal

**Decision:** Refused 11.9.2008

**Appeal Decision:** Allowed 6.5.2009

**MAIN ISSUES:**

The application proposed a change of use of a retail unit to an A3 coffee shop at 89 Mill Street, identified as falling within the Secondary Shopping Area (SSA) as identified by the Local Plan. Policy MTC4 states within SSA's a minimum of 50% of the frontage must remain in retail use, and concentrations of non-retail functions must be avoided in order to maintain the vitality of the area. The proposed change of use would have led to a concentration of non-retail functions within this area of Mill Street, and would also represent a drop in retail frontages to less than 50%, therefore the application was refused.

**INSPECTORS REASONS:**

The Inspector considered that the proposal would not result in less than 50% of the existing frontages being held within retail, when considering part of the southern area of Mill Street. The Inspector considered that various different uses within SSA's are appropriate, and that Mill Street represents this approach. The Inspector considered that the proposed change of use would have no impact on the character of the shopping area as many "wedges" of non-retail use were situated in between retail units, and as such the application complied with MTC4.

**IMPLICATIONS FOR THE COUNCIL**

The Inspector concluded that the character and appearance of the SSA was a subjective assessment, and in his opinion the intent of policy MTC4 was complied with. Given this statement by the Inspector, the Council can continue assess each application by its own merits.

**Application Number:** 08/1069P

**Appellant:** Mr John Ryan

**Site Address:** Centuryan House, Grotto Lane, Over Peover, Macclesfield

**Proposal:** First floor extensions

**Level of Decision:** Delegated – former Macclesfield Borough Council

**Recommendation:** Refuse

**Decision:** Refused 23.07.2008

**Appeal Decision:** Dismissed 12.02.2009

**MAIN ISSUES:**

The proposal was for two first floor extensions above existing single-storey lean-to outriggers facing Grotto Lane. Permission was refused due to the size and prominence of the extensions, and the associated increase scale and bulk of the built form immediately adjacent to Grotto Lane. The extensions would appear as visually obtrusive features within the Green Belt, which was considered to harm the appearance of this traditional and linear barn, and subsequently the visual amenities and character of the Green Belt.

**INSPECTOR'S REASONS:**

The Inspector considered that the extensions would be residential in function and appearance, which would highlight the domestic use of the building, and alter the distinctive linearity of the elevation. He considered that the departure from the existing characteristic built form would be unacceptably harmful to the character and appearance of the barn conversion.

He maintained the building is a significant element in the landscape that reinforces the rural character of the area. The prominent roadside location would highlight the development, and the harm that would occur to the barn conversion would significantly diminish its contribution to the rural character of the area.

**IMPLICATIONS FOR THE COUNCIL:**

By virtue of the identified harm to the character and appearance of the barn conversion itself and the wider area, the Inspector considered the proposal to be contrary to policies BE1, GC12, DC1 and DC2 of the Macclesfield Borough Local Plan, as well as the objectives of PPS7. The decision reinforces the strength of these policies and the impact that sympathetic barn conversions, and their extensions, can have upon the intrinsic character of the countryside.

**Application No:** 08/11733P

**Appellant:** Herring Properties Ltd

**Site Address:** 211A Peter Street, Macclesfield Cheshire, SK11 8ES

**Proposal:** Appeal against the rejection of planning permission by Macclesfield Borough Council for the construction of a two storey dwelling.

**Level of decision:** Delegated – former Macclesfield Borough Council

**Decision:** Refused: 25/09/08

**Appeal Decision:** Allowed: 24/02/09

### **MAIN ISSUES**

The Council in principle have no objection to the construction of a dwelling on the site. The key issues relate to the effect on the character and appearance of the street scene and also the impact the scheme has on highway safety.

### **INSPECTOR'S REASONS**

The Inspector notes the wide variation of properties along Peter Street, and as a result the Inspector does not believe that the street has a prevailing character or local distinctiveness. The Inspector finds that the plans offer an acceptable proposal and would not materially harm the character or appearance of the street scene.

In terms of highway safety the Inspector has followed advice from the County Highway Engineer in regards to the repositioning of parking bays and therefore imposes a subsequent condition.

In conclusion the Inspector feels with the imposition of conditions the effect of the building can be mitigated and therefore does constitute acceptable development with the imposition of conditions.

### **IMPLICATIONS FOR THE COUNCIL**

Whilst disappointing this is a site specific decision which further demonstrates the subjectivity of design in planning terms and interpretation of Policies BE1 & H13 of the Local Plan. There are no planning implications for the Council.

**Application Number:** P08/0734

**Appellant:** Future Homes

**Site Address:** Site at rear of 315-319 West Street, Crewe, Cheshire, CW1 3HU

**Proposal:** Appeal against the refusal of planning permission by the former Crewe and Nantwich Borough Council for Eight 2 Bedroom Apartments, Secure Site Enclosure, Eight Parking Spaces, Access Road and Parking Area

**Level of Decision:** Development Control Committee (Crewe and Nantwich Borough Council)

**Recommendation:** Refuse

**Decision:** Refused 14/08/2008

**Appeal Decision:** Dismissed 22/04/2009

#### **MAIN ISSUES:**

The main issues in the appeal were the effect of the proposal on the living conditions of neighbouring residents, with particular reference to privacy, light and outlook; the character and appearance of the surroundings; and the living conditions of future occupiers of the appeal site, with regard to privacy.

The appeal site is situated to the rear of No. 319 which is an end of terrace property that fronts onto the northern side of West Street. The block of land to the rear of the terrace beyond a narrow back lane comprises for the most part of gardens areas, which are associated with the terrace.

#### **INSPECTOR'S REASONS:**

The Inspector considered that the proposed scheme would have an unacceptable impact on the privacy of properties in West Street because it failed to comply with the minimum distances set out in the new Supplementary Planning Document: Development on Backland and Gardens (SPD). Whilst the scheme met the minimum distance between the flank elevation and the principal windows of the dwellings to the side, the Inspector attached considerable weight to the fact that proposed building would overshadow the garden areas of those dwellings and was in his view un-neighbourly.

He did not agree with the Appellants view that the scheme would improve the appearance of the site by reducing fly tipping and vandalism, which he said could be dealt with through relatively simple security improvements. The

Council has separate powers to deal with untidy land and to attach weight to this argument as a material consideration could encourage landowners seeking beneficial permission not to manage their land in a diligent fashion.

The Inspector considers that the massing of the building would be acceptable but that the half-hipped form of the roof and projecting stairwell would appear out of keeping with its surroundings.

He also concluded that the deck access to the proposed flats which would run directly past bedroom windows would be detrimental to the privacy and amenity of the occupants of the new properties.

Whilst the proposal would make better use of previously developed land, this did not outweigh the concerns set out above.

### **IMPLICATIONS FOR THE COUNCIL:**

This is a good decision for the Council because the Inspector gave considerable weight to the former Crewe and Nantwich Borough Councils Supplementary Planning Document: Development on Backland and Gardens (SPD) and the minimum separations distances set out in it. It can also be concluded that existing problems with vandalism and fly tipping on the site should be afforded little weight as a material consideration. Making better use of previously developed land within town centres should not be at the expense of residential amenity and quality design.

It can also be concluded that three storey development of this nature is acceptable in principle in the West-end of Crewe subject to appropriate detailed elevational design.

**Application Number:** P08/1112

**Appellant:** Mr K Taylor

**Site Address:** Rose Cottage, Longhill Lane, Hankelow, Crewe, CW3 0JQ

**Proposal:** Appeal against the refusal of planning permission by the former Crewe and Nantwich Borough Council for a Two Storey Side Extension and Single Storey Link Extension

**Level of Decision:** Delegated

**Recommendation:** Refuse

**Decision:** Refused 10/11/2008

**Appeal Decision:** Dismissed 08/05/2009

#### **MAIN ISSUES:**

The main issues of the appeal are the effect of the proposed development on the character and appearance of the existing dwelling and its surroundings.

Rose Cottage is a modest brick and tile cottage sitting below the level of the adjacent highway in a large 'L' shaped plot of land on the edge of a small cluster of dwellings in open countryside. Within the curtilage is a single storey dilapidated outbuilding of single skin brick and concrete block with no roof, which sits to its north west some 8m away from the main house.

#### **INSPECTOR'S REASONS:**

The Inspector states that there has been a previous application on this site which was approved in 2007 for a two storey extension to the dwelling together with a detached annex which would accommodate a family/garden room, and a gallery in the roof of the outbuilding. However this application has not been implemented to date. The proposed scheme differs from the previous application as it includes a linked section between the extended dwelling and annex as approved to form a single building, along with a dormer window in the attached annex roof and changes to the internal layout.

The Inspector states that the existing outbuilding is currently in a poor state, and is likely to require re-building. He considers that the dilapidated outbuilding is of humble origin and modest single storey scale which plays a subservient role to the dwelling, which is a relationship carried through in the approved scheme.

The Inspector notes that the modest cottage with dilapidated outbuilding would be replaced by a much more imposing single building which would increase the original dwelling by 135% from about 235m<sup>3</sup> to some 550m<sup>3</sup>, exceeding the 'not more than double' rule within the justification to Local Plan Policy RES.11. It was considered that linking the main part of the enlarged dwelling to the outbuilding combined with its orientation broadside to the highway, would emphasise and elongate the resultant dwellings' size and mass, creating a large, imposing and visually prominent single building more than double the size of the original dwelling.

The Inspector states that the proposed dormer window in the outbuilding would destroy the attractive and subservient relationship of the outbuilding as an annex to the main dwelling and by doing so would further emphasise the excessive size and bulk of the resultant single building.

The Inspector took account of other issues raised in relation to proposed materials, and the roof pattern. However, he did not consider that these issues outweigh the harm caused by the proposed development and therefore considers that the appeal is contrary to the policy objectives of BE.2 and RES.11 of the Crewe and Nantwich Replacement Local Plan 2011.

#### **IMPLICATIONS FOR THE COUNCIL:**

This is a good decision for the Council as the Inspector has accepted the volume calculations referred to in the Council's appeal statement which quantifies the 'no more than double the size of the originals dwelling' criteria included within the Crewe and Nantwich Replacement Local Plan Policy RES.11, and the Extensions and Householder Development SPD. This will help the Council to resist extensions which are only just over double the size of the original dwelling. Moreover the Inspector gives weight to the need to retain the existing outbuilding which is a historic but unlisted building and therefore this will strengthen the Council's case for retaining such buildings within other similar extension proposals.



**Application Number:** P08/1115

**Appellant:** Mr C McNally

**Site Address:** Swallow Croft, Egerton, Malpas, Cheshire, SY14 8AN

**Proposal:** Appeal against the refusal of planning permission by the former Crewe and Nantwich Borough Council for a Two Storey Side Extension

**Level of Decision:** Delegated

**Recommendation:** Refuse

**Decision:** Refused 05/11/2008

**Appeal Decision:** Dismissed 06/05/2009

**MAIN ISSUES:**

The main issues of the appeal were the effect of the proposal on the character and appearance of Swallow Croft and its surroundings. The appeal site is situated within the open countryside and is set apart from neighbouring development.

**INSPECTOR'S REASONS:**

The Inspector states that the appeal site is former two storey barn, with a pitched main roof. A small single storey annex with a mono-pitched roof, projects from its eastern gable and an external flight of steps which adjoins its western gable, leads to a first floor level doorway. The appeal property is not Listed nor is it sited within a Conversation Area. The Inspector states that in principle residential development within the curtilage of an existing dwelling would not conflict with the aim of Local Plan Policy NE.2 which ensures that development within the open countryside is for a use appropriate to a rural area.

The Inspector states that the building has been sensitively converted into a four bedroom dwelling which retains the simple, bold, vernacular form of a barn that contributes positively to the traditional rural landscape around. The Inspector notes that the former Crewe and Nantwich Borough Council's Supplementary Planning Document: Extensions and Householder Development (SPD) indicates that these characteristics of former rural buildings can be compromised by extensions, which for that reason, will not normally be allowed. However in some case it may be considered acceptable and should be as small as possible and sympathetic to the design of the buildings appearance. Such extensions are usually expressed as a small outshut or lean-to which has been constructed in the traditional manner.

The proposal includes the removal of the external steps at the western end of the building and the erection of a two-storey extension, in materials to match the existing dwelling. The extension, although subservient to the main building, would be substantial, being equivalent in length to around one third of the two-storey length of the existing building. The Inspector considered that the proposal would not amount to a small addition, and that the proposed roof level would be lower than that of the original building, resulting in a step in the two-storey roof line which would give the property a more complex appearance, to the significant detriment of its simple bold character, contrary to the aims of the SPD.

The Inspector notes that the English Heritage publication entitled 'The Conversion of Traditional Farm Buildings: A guide to good practice' supports the retention of features such as external staircases and considers that the loss of the distinctive flight of steps at the western end of the building would detract from the buildings original character. The Inspector notes that the staircase is not visible from public vantage points and its loss would not be sufficient on its own to justify refusal. Nevertheless the proposal, conflicts with the SPD, and would unacceptably harm the character and appearance of Swallow Croft and its surroundings, contrary to the aims of saved LP Policies RES.11 and BE.2.

#### **IMPLICATIONS FOR THE COUNCIL:**

This is an excellent decision for the Council as the Inspector has highlighted the importance of design considerations in respect of additions and alterations to barn conversions, which make up an increasingly significant number of dwellings in the Borough. It will assist the Council in resisting other proposals for inappropriate and overly domestic additions to barn conversions, which detract from their vernacular character and places weight on the former Crewe and Nantwich Borough Council's Extensions and Householder Development SPD. This prioritises the SPD as an important consideration in determining planning applications. The Inspector considers that the proposed development is contrary to the Policy aims of the Crewe and Nantwich Replacement Local Plan 2011 policies BE.2 and RES.11.

**Application Number:** 8/08/0493/CPO

**Appellant:** Mr MJ Farnell and Ms JT Cornwell

**Site Address:** Bostock House Farm, Hassall, Sandbach

**Proposal:** Raising of ground levels to drain waterlogged land.

**Level of Decision:** Committee – former Cheshire County Council Development Regulatory Committee.

**Recommendation:** Refuse

**Decision:** Refused 11/09/2008

**Appeal Decision:** Dismissed 06/05/2009

#### **MAIN ISSUES:**

Unauthorised tipping of inert wastes to infill a flooded depression at Bostock House Farm, Hassall, was brought to the attention of officers in September 2005 by local residents complaining about dangerous traffic movements on local country lanes. An enforcement notice was served requiring the import of material to cease and the land tipped to be restored. This was complied with. The appellant later submitted a planning application to complete the works undertaken and bring the remaining waterlogged land back into agricultural use. Considerable local objection was based on previous experience of traffic movements and the dangers and disturbance this would again cause.

The raising of ground levels to alleviate waterlogging by the import of 34,000 cubic metres of inert material was considered contrary to policies 12, 28 (ii) and (iii) of the Cheshire Replacement Waste Local Plan as it would have an unacceptable impact on residential amenity, recreational resources (the access was a bridleway, cycleway and PRow), and road safety. It was also considered the access arrangements were inadequate for the nature, volume and movement of traffic likely to be generated.

#### **INSPECTOR'S REASONS:**

The Inspector was not convinced of the agricultural need for the proposed infilling. The import of fill material to the site would involve considerable disturbance for the local community, and would significantly harm the amenity provided by the lanes and bridleway leading to the site. Although this would be a temporary effect, there would nevertheless be a conflict with planning policy, which is not outweighed by any cogent case for the proposed filling.

**IMPLICATIONS FOR THE COUNCIL:**

The Inspector fully supported the case put by officers to justify the refusal of the application and accepted the policy support for that decision. There are no implications arising from this decision.

Application Number: 08/1317/OUT

Appellant: Richborough Estates

Site Address: Former Bath Vale Works, Brookhouse Lane, Congleton

Proposal: Demolition of existing buildings and erection of up to 130 dwellings, provision of public open space, highway improvements and associated works.

Level of Decision: Committee

Recommendation: Refuse

Decision: Refused: 7 November 2008

Appeal Decision: Allowed 28 April 2009

#### MAIN ISSUES:

The main issue in this case is whether the proposal to provide 5% affordable housing would be sufficient to satisfy the objectives of national guidance and local policy to secure mixed housing, particularly in terms of tenure and price.

#### INSPECTOR'S REASONS:

The appeal application was submitted in July 2008 and was accompanied by an 'Affordable Housing Assessment' document (AHA). This concluded that redevelopment of the site was unviable unless the affordable housing element was reduced from 20% to 5%. The reasons behind this reassessment were increases in interest rates on borrowing, increases in building costs and income reductions arising from a fall in house sales prices.

The Council did not dispute the conclusion of the assessment however, it pointed to various trends in the market which could have had an impact in the period since the AHA was prepared.

The appellant explained that recent falls in interest rates had not been passed on to borrowers and that the 'real' cost of borrowing remained much the same as it was in July 2008. While the appellant accepted that indicators of building costs showed that the cost of building the scheme was static at present, it was likely to rise as contractors found that they could no longer afford to take on work with no profit margin and as the construction industry began to shrink. With regard to falling house prices, the AHA produced in 2008 was based on a projected 6% fall. At the time of the appeal, the actual decline in prices was more than double this figure.

The Council pointed out that in their currently volatile and unpredictable state, economic conditions could change quickly. It argued that economic circumstances could change over the life of any planning permission granted

which would make a higher affordable housing requirement viable. The Council went on to argue that there is a requirement for affordable housing in the district which needs to be met, irrespective of current economic conditions. If decisions are made to reduce or remove requirements placed on developers to provide affordable housing, the Council's ability to meet the housing needs of the district would be curtailed and the opportunities which sites present would be lost.

The Council explained to the Inspector that it is currently considering a number of housing sites and fears that, if the affordable housing requirement is reduced in response to financial reassessments based on falling house prices in this case, other developers may put forward similar arguments.

The overall effect on affordable housing provision could be substantial. It also argued that it was possible that developers who secured planning permissions with reduced affordable housing requirements at this time could 'bank' sites until economic circumstances improved and thereby avoid providing appropriate levels of affordable housing. The appellants explained that repayments on existing borrowing made such a scenario financially impossible in the appeal case.

The Inspector recognised that the Council's arguments in this regard were understandable. However, he also argued that current economic circumstances are very unpredictable. Whilst it is possible that house prices could begin to rise again and the 'real' cost of borrowing could reduce in the near future, there are few signs that this will happen. Most indicators of the economy tend to suggest that recovery from the current downturn is likely to be slow and protracted. Circumstances are just as likely to become worse as they are to become better and it would, therefore, be unwise to base any decision on predicted changes.

In the Inspectors view there was little alternative to making the decision on current costs and values. National guidance and local policies require that the Inspector should take economic viability into account in determining an appropriate level of affordable housing provision on the site.

In the Inspectors opinion, redevelopment of the site would secure substantial environmental benefits. The existing dereliction would be removed, current anti-social behaviour issues would be resolved, the contamination would be removed together with the threat which it poses to adjacent watercourses, existing overgrown woodland which makes up a large part of the site would be managed, wildlife would be encouraged through habitat enhancement and car parking facilities would be provided for the nearby footpath/cycleway. The development would also assist the Council in meeting its 5 year land supply for which it was currently falling short.

In this case the Inspector considered that the benefits were so substantial that redevelopment should not be unnecessarily hindered. He accepted that although other proposals may come before the Council which have similar benefits they will need to be assessed on a case by case basis. In closing, the

Inspector accepted that his decision in this case would not set a precedent which would make unacceptable schemes difficult to resist.

## IMPLICATIONS FOR THE COUNCIL:

### Policies supported by the Inspector

The three areas of policy at the heart of the appeal decision were:

- Policy H13 of the adopted Congleton Borough Local Plan First Review
- Planning Policy Statement (PPS) 3: Housing
- Supplementary Planning Document (SPD) 2006 Affordable Housing and Mixed Communities'

The Inspector in principal supported all three strands of policy. The balance of judgement lay in the consideration of the issue of viability which is referred to in Policy H13 as the '... economics of provision ...' and in paragraph 19 of the supplementary document to PPS3, Delivering Affordable Housing.

In coming to his decision, the inspector did not challenge the value of Policy H13 which provides one of the cornerstone elements of planning policy for affordable housing provision within the former Congleton Borough Council area of Cheshire East and it is felt that this policy is sufficiently robust to continue being used in the determination of applications.

### Current market conditions

In coming to a judgement on the balance of weight to be applied to the policy and the market appraisal undertaken by the applicant, the Inspector considered the case in the context of the current market conditions.

It would appear from the Inspectors report that if the appeal had been heard two years ago when the market was stronger, then less weight would have been given to the appellant's arguments and the appeal may have been potentially dismissed.

This approach taken by the Inspector reinforces the need to consider each development on its merits.

### Future Considerations

Clearly the ability (or not) of the Council to provide affordable housing, or to secure other community benefits e.g. public open space, through application of appropriate planning policies will have implications for future provision of community facilities.

Clearly, there will be some developments where the viability is exceptionally tight and the immediate community development of securing development on site will outweigh the loss of long-term strategic infrastructure for example the development of derelict sites in the centre of town centres. But at the same

time, each developer will also be seeking to minimise the overheads their scheme has to carry.

However, as the Inspector concluded, careful assessment of future applications will need to be made on a case-by-case basis to consider which schemes can be fully justified without compliance with normal planning policy.