



# Appeal Decision

Inquiry held on 23 June 2010

Site visit made on 24 June 2010

by **Keith Manning BSc (Hons) BTP MRTPI**

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

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**Decision date:**  
**4 August 2010**

**Appeal Ref: APP/D1780/A/10/2123911**

**134 Bassett Avenue & 1 Beechmount Road, Southampton SO16 7EZ**

- 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 D Grimes against the decision of Southampton Council.
- The application Ref 09/01313/FUL, dated 30 November 2009, was refused by notice dated 16 February 2010.
- The development proposed is the demolition of 1 Beechmount Road and 134 Bassett Avenue and development of 13 X 3 bedroom and 1 X 2 bedroom flats with associated access and parking.

## Procedural Matters

1. For clarity and consistency I have deployed the post code cited on the application form and the Council's decision letter rather than the adjacent post code subsequently cited on the appeal form.
2. The description of the proposed development, however, differs from that used on the application form, and also the appeal form and the decision notice, to reflect a change made, pre-determination, to reduce the number of bedrooms in one of the proposed flats. The revised description above was agreed by the parties to be appropriate and I determine the appeal on the basis of the revised plans that were before the Council when it decided the application.
3. The main parties both availed themselves of the opportunity to supplement their evidence in the light of the changes announced to PPS3 Housing concerning minimum densities and the definition of previously developed land.<sup>1</sup>
4. Subsequent to that announcement, and the Inquiry, Regional Strategies were revoked with immediate effect on 6 July 2010.<sup>2</sup> However, given the scope of the relevant policies that remain in the development plan, the main thrust of my reasoning, as outlined below, is not disturbed in any material way by the revocation of the South East Plan. I am therefore satisfied that it is not necessary to seek the views of the parties on this matter.
5. A Unilateral Undertaking dated 18 June 2010 was submitted during the course of the Inquiry. In the event of the appeal being allowed this would provide for allocated parking within the scheme and specified financial contributions in respect open space, sports pitches, play space and strategic and site specific transport measures. It would also provide for the inclusion of one affordable housing unit within the development.

<sup>1</sup> Written Statement by the Minister for Decentralisation of 9<sup>th</sup> June 2010

<sup>2</sup> Secretary of State's Parliamentary Statement of 6 July 2010.

6. I was referred to three recent appeal decisions of relevance, 'the April 2007 Appeal Decisions' and 'the May 2009 Appeal Decision'. The former were linked appeals (Ref APP/D1780/A/05/1194944 & 1196597) concerning the site of 136 Bassett Avenue, adjacent to this appeal site, and the latter was an appeal concerning the proposed re-development of 1 Beechmount Road (Ref APP/D1780/A/08/2088525) a property which is included within the site of the present appeal.

### **Decision**

7. I dismiss the appeal.

### **Main issues**

8. I consider the main issues to be as follows:
- Whether the recent changes to PPS3 and the development plan have significant implications for the principle of the proposed scheme;
  - The effect of the proposed development on the character and appearance of the area;
  - Whether the proposed development, if allowed, would create a precedent that could result in harm to the character and appearance of the area;
  - The effect of the proposed development on the living conditions of neighbouring occupiers with regard to privacy and outlook;
  - The potential impact of the proposed development on the infrastructure of the area; and
  - Having regard to the development economics of the proposed scheme, whether it would be appropriate to require an element of affordable housing within it and, if so, whether more than one unit would be necessary.

### **Reasons**

9. The appeal site is formed by the adjoining curtilages of two detached houses on separate roads, the junction of which defines the northern and western boundaries of the site subject to the April 2007 Appeal Decisions. As a consequence of one of those appeals being allowed, this corner site, upon which the detached house 136 Bassett Avenue formerly stood, has been redeveloped for flats. Nos. 134 Bassett Avenue and 1 Beechmount Road abut the curtilage of the new flats to the south and east respectively. The rear garden of 1 Beechmount Road extends fully across the rear boundaries of 134, 132 and 130 Bassett Avenue. These form part of a row of similar, albeit not identical, detached Edwardian houses that extends southwards along Bassett Avenue as far as 122, beyond which there is a further detached house, a modern church building in grounds with extensive car parking and then the junction with Chetwynd Road. Although not identical, Nos. 122-134 are very much of a type, with simple hipped roofs and front facing subsidiary gables. No 134 is wider, more symmetrical and more imposing than the other houses within the group, with matching full bays and tall chimney stacks to either side, plus a central porch with a smaller bay above. Nevertheless it is part of the group and reads as such within the street scene.

10. The new flats on the site of the former 136 Bassett Avenue range from 3 to 4 storeys and are of a distinctive modern design with a mono-pitched roof arrangement that slopes down towards 134. Views evidently differ as to the success of the design within the street scene, both in Bassett Avenue and within Beechmount Road. Be that as it may, to my mind it effects a comfortable transition from the regular rhythm of the gabled roofs of the two storey houses forming the group I have described on Bassett Avenue to the dramatic bulk of the multi-storey Brampton Tower on the north side of its junction with Beechmount Road, whilst signifying the corner yet remaining subservient to the nearby large mature trees. Such trees are typical of Bassett Avenue, which is an important route into and out of the City, but its characteristic leafiness is diminished locally where the prominence and significance of the group of detached houses I have described can be partly ascribed to the relative paucity of significant vegetation in their front gardens. However, from around 122 southwards there is a return to a greater dominance of trees within the immediate street scene.
11. The area of suburban gardens to the rear of the group within the block formed by Bassett Avenue, Chetwynd Road, Glen Eyre Road and Beechmount Road is, however, dominated by trees and these can readily be discerned through gaps between the buildings I have described, a quality enhanced by the form of their roofs. It is common ground that the proposed development, if carefully executed, need not harm the existing significant trees, including those beyond the site boundary subject to specific protection. Trees are a significant and attractive feature of Beechmount Road, which is characterised by varied architecture, including student residential blocks such as Beechmount House adjacent to the appeal site, Brampton Tower and of course the new flats on the corner with Bassett Avenue. The suburban layout and dominance of gardens and trees within the block as I have described it can be readily appreciated from the top floor of the Brampton Tower, which I had an opportunity to visit, as can the eclectic mix of architectural styles within the area referred to in the May 2009 Appeal Decision. It appears to me, both with the advantage of that overview and having walked around the area, that it is an area that has evolved over time to include a variety of residential formats including purpose-built student accommodation, flats and substantial individual houses, generally within a framework of tree-lined roads and generous gardens. Within this context, it is acknowledged by the Council that the loss to more intensive redevelopment of 1 Beechmount Road would not, of itself, be objectionable. \*

#### *Policy Background*

12. A number of policies of the RSS were cited in the Council's decision notice. The subject matter of these included urban renaissance and sustainable development, local distinctiveness and design in context, and the provision of infrastructure. The RSS policies are now revoked and no longer form part of the development plan. I therefore accord them no weight. In any event, the intentions of the RSS relevant to my decision on the proposed development at issue are otherwise reflected in relevant local and national policy, the latter including PPS1 *Delivering Sustainable Development* and PPS3 *Housing*. The effect of the revocation in those respects is therefore essentially neutral.
13. Certain saved policies of the City of Southampton Local Plan Review ('the local plan') remain fully or partially in force, notwithstanding the recent adoption of

the Council's Core Strategy, which has replaced a selection of previously saved local plan policies or specific aspects of them: The local plan policy NE 6 protects the landscape character of the northern approach to Southampton, including Bassett Avenue; SDP1 is about quality of development and is concerned, amongst other things, with amenity; SDP7 is concerned, essentially, with the character and/or appearance of areas; SPD9 is concerned with quality of design in context broadly assessed in terms of scale, massing, appearance and impact on amenity; H2 seeks to maximise the use of derelict, vacant and underused land for residential development, amongst other things subject to considerations of the amenity of adjoining occupiers; and H7 is concerned in a general sense with quality and design standards in the residential environment. However, parts (i) and (iii), the more specific intentions of that policy cited in the Council's decision notice, are now replaced by policy CS 13 of its Core Strategy which promotes context driven, innovative and sustainable development that responds positively to and integrates with its context without being a pastiche of the past and makes higher densities work in terms of a number of specified design parameters including appropriate scale, massing and appearance.

14. Other relevant policies in the Core Strategy include CS 4 concerning housing delivery; CS 15, which concerns the provision of affordable housing; CS 16 concerning housing mix and type; CS 18 concerning transport; CS 19 in respect of car and cycle parking; CS 21 concerning open space; and CS 25 which addresses the delivery of infrastructure and developer contributions.
15. The Council's Supplementary Planning Guidance (SPG) on planning obligations and that on residential standards, the Residential Design Guide (RDG) are also relevant. The latter replaces the *Residential Standards Development Control Brief* and is intended to replace a number of area-specific residential briefs including the 1982 brief produced for Bassett Avenue. However, the RDG states that these area specific documents will continue to be used as a reference pending specific replacement.

#### *Revocation of Regional Spatial Strategy and changes to PPS3*

16. The starting point for determining this appeal remains the development plan and that has been altered by the revocation of the Regional Spatial Strategy (RSS) known as the South East Plan. Moreover, statements of national policy are material considerations that are capable of outweighing the provisions of the development plan. Hence, notwithstanding the provisions of the development plan, a determination may be made contrary to its intentions if changes to national policy indicate that the balance of planning considerations, including such changes, lead to the conclusion that should be the case. The revocation of the RSS and the changes to PPS3 concerning the definition of previously developed land and minimum housing densities are therefore both, potentially, of relevance to my decision.
17. The Council maintains that the appeal site is not necessary to help deliver the five year supply in the context of the relevant local Development Document which PPS3 requires. On that basis, the Council would meet its PPS3 supply obligations under policy CS4 of its Core Strategy, which remains in force, without reliance on windfalls such as the appeal site. Bearing in mind the recent inclusion of Southampton within the list of South East Authorities

confirmed as having a five year land supply<sup>3</sup>, I have been given no cogent reason to doubt that is the case. The revocation of the RSS therefore has no decisive influence upon whether or not this particular development should proceed, whether considered to be entirely previously-developed or partially greenfield. I therefore consider the revocation to be neutral in its effect in this respect, as in other material respects previously referred to.

18. The same cannot be said of the changes to PPS3. The Council suggests in its supplementary evidence that followed the change in the definition of previously developed land to exclude domestic gardens that its decision on the proposed development may have differed if the new definition of previously developed land had been effective at the time, in that some of the land should no longer be classified as previously developed. This would presumably have been reflected in an additional or a reinforced reason for refusal, but that is not the case and nor is it clear, in retrospect, exactly what would have been the case.
19. Be that as it may, the appellant's computer based calculations of the areas involved, when parking areas and driveways together with existing patio and other hardstanding is included as development, actually shows only a marginal net decrease in garden space when soft landscaping is taken as the proxy for this. On the other hand, if building footprint alone is taken into consideration, the coverage of the site by building would increase from a little under 15% to 19% in round terms. However, this takes no account of the hard surfacing proposed in the formal communal garden area between the two blocks of flats, or the seven small patio areas associated with the ground floor units, and I am not satisfied that like is being compared with like for this purpose. Moreover, it would appear from the changed definition of previously developed land that gardens in their totality (along with areas such as parks, recreation grounds and allotments) are excluded from the definition although they may feature "paths, pavilions and other buildings".
20. The Council's witness expressed the clear view that the change in definition should not be taken to preclude the redevelopment of existing houses on broadly their existing footprints and I consider that to be a sensible inference. The definition continues to make it clear in any event that "there is no presumption that land that is previously developed is necessarily suitable for housing development nor that the whole of the curtilage should be developed". In other words, even when residential curtilages were classified as wholly previously developed, that did not render them automatically suitable for redevelopment, either in whole or in part. Other planning considerations were relevant then, as now, and I consider it pertinent to retain that point in mind.
21. Even so, it seems to me that the intention of the change in definition, when taken together with the removal of the national indicative minimum density, is to shift the balance of planning considerations so as to enable local planning authorities to more readily resist pressures locally to overdevelop established neighbourhoods where characteristically spacious gardens are valued for their contribution to amenity but vulnerable to sometimes opportunistic development projects justified by reference to the national planning objective of efficient use of previously developed land. That is clear from the Ministerial Statement announcing the change.

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<sup>3</sup> Five-year housing land supply coverage in England DCLG March 2010

22. Whilst, given the above, I am inclined to the view that the most pertinent calculation relates to the building footprints combined with the parking and vehicular access provision, as suggested by the Council, I am conscious that even such a straightforward approach is not without its difficulties, bearing in mind permitted development rights for permeable hardstanding, for example, to the front of individual dwellings and the scope for hard landscaping to play a part in overall garden design in any event, albeit that paths, sheds and the like would be excluded from the definition of previously-developed land. Nevertheless, it seems to me that, in this case, while the hardstanding for parking and vehicular access, which I consider should logically be regarded as developed land in a literal sense (whether or not for PPS3 policy purposes) would be appreciably reduced on the Bassett Avenue frontage, more extensive parking to the front of the proposed Beechmount Road block would combine with a considerable incursion of such hardstanding into the existing rear garden of No 1 Beechmount Road and the significant increase in building footprint within that part of the site in particular and the site taken as a whole; so as to increase its coverage by permanently required built features to a noticeable, albeit not dramatic, extent.

23. The perceived impact of that increase in the coverage of the site by the main components of development, represented by the buildings themselves and their associated hardstanding for parking and access, would be diluted to some degree by the significant depth of each of the plots proposed to be combined. Although the recent change to PPS3 cannot logically favour the proposed development in principle, I do not consider that in this case it should, of itself, weigh decisively against it. Notwithstanding the proposed increase in density and site coverage and the fact that the proposed development involves apartments, they would nevertheless be to a generous standard and capable of use in part as family housing with a good standard of amenity space, as acknowledged by the officer's committee report. I therefore do not consider the proposed development to be a good illustration of the overdevelopment and "garden grabbing" targeted by the Minister's Parliamentary Statement. Notwithstanding that the officer's recommendation in favour did appear to be partially influenced in principle by government exhortation to use brownfield land more efficiently, I have no evidence to suggest that the recommendation was unduly influenced by pressure to meet a specific brownfield target.

24. Having said that, it is nevertheless clear that there is now more latitude for local planning authorities to resist intensification of suburban areas such as that in which the appeal site is situated and that principle cannot be entirely disregarded in this case. However, the Council's retrospective position on the matter has not been made clear, beyond the suggestion that the revisions to PPS3 lend further weight to its refusal, despite the opportunity having been taken to comment on those revisions, whereas the fundamental intention behind them is to place responsibility firmly with local planning authorities to determine what is appropriate to their local circumstances in any particular case.

25. For all the above reasons, and in the absence of a specific Council position on the matter, the weight that I accord to the implications of the PPS3 changes, although it must count against the proposed development and is therefore significant, is relatively limited nonetheless in this case and certainly not, of

i.e. the \*  
change to \*  
the definition  
of previously  
developed land,  
still part of  
the NPPF, which  
has supers-  
eded PPS3.

\*

itself, decisive in principle. The revocation of the RSS, on the other hand, has no material bearing on the outcome, for the reasons previously indicated.

Effect on character and appearance of area

26. The 1982 Bassett Avenue development control brief describes the verdant nature of Bassett Avenue and its importance as an entrance to the City. It refers to visually pleasant but generally not outstanding traditionally built houses with pitched roofs, in addition to the various flat developments that have taken place, including the fourteen-storey Brampton Tower, and suggests that the overall special quality of the area is due mainly to its extensive wooded plots. Notwithstanding the reduced status of the document itself, that description generally holds good.
27. The Edwardian detached houses forming the row 122-134 Bassett Avenue accord with the description of the more traditional houses on Bassett Avenue, albeit that 134 is more imposing than its neighbours, as I have previously noted. Notwithstanding that the majority of the group is less well screened by trees from the road than much of the property on Bassett Avenue, it nevertheless forms a distinctive and visually attractive element in the established street scene at this point. Although there are subtle differences between individual houses, the overall visual cohesion of the row is pleasing to the eye and the generous spacing of the houses, with views between, is complemented by the regular rhythm and overall predominance of the hipped roofs which serve to reinforce that sense of suburban spaciousness which is a defining characteristic of the locality, countering the impression that might otherwise be given at this point of a densely built-up frontage to the street.
28. There is of course a quite dramatic change across Beechmount Road, where the Brampton Tower projects upwards from its verdant setting of mature trees. Whatever view is taken of the impact of the proximity of the northern elevation of the flats recently constructed following the April 2007 Appeal Decisions on Beechmount Road itself, the successful transition between the spaciousness and rhythm of the Edwardian roofscape and the drama of the Brampton Tower, by the insertion of a defining corner feature, as encouraged by the Council's RDG, effects a delicate balance between the various elements in the Bassett Avenue Street scene, including the dominance of the mature trees in the vicinity of the corner with Beechmount Road. To my mind, the success of that transition is in large measure dependent on retaining those few simple elements I have described and, while I acknowledge that the appellant seeks to effect a transitional element between the Edwardian house at 132 (and its neighbours to the south) and the new flats, by redeveloping 134, I do not consider that to be a necessary rectification of harm in urban design terms.
29. Moreover, although conceived of as a transitional element, in close consultation with officers of the Council, and with articulation and complexity to diminish perceived bulk, and careful avoidance of pastiche, I consider that its overall bulk and distinctiveness would nevertheless harmfully disrupt the transition that has already been effected. In place of simplicity and a relative lightness of structure, the proposed block to replace 134 Bassett Avenue would combine with the new flats in a complex fashion to create what would be perceived as a bulky mass of development extending south from the corner and composed of disparate elements which would, overall, create a dominance of built form at

the corner which would go beyond the formation of a distinctive corner feature to harmfully erode the character of the established street scene as I have described it. Notwithstanding the qualities of the proposed block as an individual building of contemporary design, and the measures incorporated to reduce its apparent bulk and to some extent align it to the lower element of the new flats, I do not consider that its overall impact on the street scene would be a positive one. The insertion of further radically differing elements within what presently appears to be a relatively cohesive street scene would, in my view, be harmful and hence contrary to the intentions of those elements of the local plan and Core Strategy which promote design that is appropriate to its context and the equivalent intentions of PPS1 and PPS3. Although certain elements of development plan policy, for example the encouragement of innovative and distinctive buildings and the avoidance of pastiche, arguably pull in the opposite direction, that is qualified in any event by the concept of appropriate location and I consider that in this location, for the reasons I have given, the balance of advantage is strongly in favour of retaining the simple and successful relationship that has been achieved between the new flats and the row of Edwardian houses that I have described.

30. I am conscious that the development of the Bassett Avenue block as proposed would create an opportunity to introduce planting to the front, thereby helping to mitigate the uncharacteristic paucity of significant vegetation at this point, but I do not consider that advantage sufficient to outweigh the permanent harm to the Bassett Avenue street scene that the building itself would cause.
31. Considerable emphasis was placed on the comprehensive nature of the proposed redevelopment of 134 Bassett Avenue and 1 Beechmount Road, despite the largely separate nature of the proposed blocks and the fact that they are very largely confined to the respective plots of the two houses as they currently stand. As I do not consider it necessary or desirable to alter the established relationship between the new flats that have been built and 134 Bassett Avenue through redevelopment of the latter, it follows that I am not persuaded of the virtues of a comprehensive approach in this instance, albeit that I acknowledge that such an approach was motivated in part at least by a desire to overcome difficulties previously encountered. Notwithstanding those difficulties, redevelopment of 1 Beechmount Road, as has previously been proposed but rejected on the specifics of the scheme, ultimately through the May 2009 Appeal Decision, does not seem to me to be inherently impractical in the absence of the land associated with 134 Bassett Avenue; and I note that the Council has stated that it is not opposed in principle to its redevelopment. Given that it does not form part of a group and that Beechmount Road is characterised by individual developments, I have no reason to differ from that position. Nor do I have any reason to disagree with my colleague who determined the appeal that an individual building of distinction would be appropriate given the varied architecture of Beechmount Road and the manner in which the area generally has evolved to accommodate an eclectic mix of styles. \*
32. What is proposed in this instance is a distinctive modern block characteristic of the present time set well back from the road, which would be complemented by the presence of the mature trees which would form its setting. Individual buildings of their era in a mature setting, albeit mainly in broad fronted plots



are the defining characteristic of Beechmount Road and a building such as that proposed would accord with that tradition. Although I have some reservations about the additional visual impact of the broad expanse of hard surfacing proposed immediately to the back of the pavement, bearing in mind the nature of the road and the proximity of the new flats on the adjacent plot to it, I am of the view that, in terms of the character and appearance of the area, the proposed Beechmount Road block itself would appear appropriate in the context of the Beechmount Road street scene. The replacement of the existing dwelling on the site with a flatted development as proposed would, in that respect, make a positive contribution to the character and quality of the area consistent with the intentions of the development plan and relevant national policy in that regard.

*The issue of precedent*

33. It is of course the case that planning applications and appeals are determined on their individual merits having regard to prevailing development plan policy and other material considerations and in my experience fears of creating a precedent are frequently overstated. Moreover, if a development is considered acceptable, it is frequently argued, how can that create a bad precedent? On that basis, I would accept the proposition that precedent cannot stand alone as a sound reason for refusal.
34. That said, the circumstances of this case are such that I find part of the proposed development to be unacceptable in context. If that context were to be changed in a negative way, as I consider would be the outcome as far as the Bassett Avenue frontage is concerned, then it follows that the present character could be further harmed by subsequent developments that would be progressively harder to resist in the light of that change to its character and appearance. Given its quality and local distinctiveness, albeit not protectively designated, such a process could lead by default to a substantial loss of character and a less satisfying appearance overall. While I acknowledge that the plots to the south are narrower, I do not consider that would afford any guarantee that such a process could not be initiated. The present scheme combines two adjacent plots and I have no doubt that similar initiatives could, if circumstances permitted, lead to similarly comprehensive land assembly.
35. For these reasons, while I accept that precedent could not appropriately be regarded as a sole reason for refusal, the potential future exacerbation of the harm that the current proposal would in my view cause, is a factor that further weighs against it nonetheless.

*Living conditions*

36. For the most part, the potential harm to living conditions of neighbouring occupiers has been carefully designed out of the proposals and it is common ground that the relevant window to window privacy distances in the Council's RDG are complied with. However, the RDG is essentially guidance to be applied to the specific circumstances of development proposals and tends by its nature to convey minimum expectations rather than necessarily indicate what is acceptable. In any event paragraph 2.2.18 of the RDG concerns the principle, without quantification, of development on or close to a garden boundary. This is a particular concern in respect of 132 Bassett Avenue,

although it is understood that the current occupiers, having secured a change to the proposed balcony arrangements, do not object. However, it is accepted practice to look beyond the perceptions and preferences of present occupiers to the living conditions that any future occupiers may reasonably be expected to enjoy.

37. Although, the plot within which 132 is situated is large, the house is well set back from the road and has a large footprint. Consequently the rear garden, whilst sizeable, is not in my view so large that it could readily absorb the impact of a substantial block in close proximity, as is proposed in this instance at its north east corner. Although the fourth storey and roof terrace have been skilfully designed to reduce the impact, both in terms of privacy and outlook, there would remain scope for significant overlooking of this rear garden from the third storey in particular, albeit obliquely, from bedroom and main living space windows in the south west corner of the block. Although the smaller secondary windows to the relevant rooms could be obscure glazed, this would not be appropriate for the principal windows, which would in the form of French windows with 'Juliet' balconies in the case of the bedrooms and full length windows in the case of the main living spaces.
38. Although there would doubtless be some scope for mitigation by selective planting and arrangement of space for private use within the garden, there would nevertheless remain, to my mind, an uncomfortable sense of proximity and intrusion that would harm the enjoyment of the garden. Moreover, the close proximity of the block would introduce a significant and rather overbearing visual element which, combined with the sense of intrusion, I would consider unacceptably oppressive within what would otherwise be a pleasantly spacious suburban environment. Although paragraph 2.2.18 of the RDG suggests that such a consideration will be less important where gardens are large and enjoy outlook in a number of directions, the fact is that the proposed block is also relatively large and would be sited at close quarters. In my estimation it would harmfully dominate a substantial part of the outlook from the garden.
39. For these reasons I attach significant weight to the considerations of outlook and privacy I have identified and, on balance, consider that, despite the design efforts that have been made in recognition of the potential problem, the impact on the living conditions of neighbouring occupiers are outside the margins of acceptability and therefore contrary to the intentions of those elements of the development plan that seek to protect residential amenity.

#### *Effect on infrastructure*

40. At the time of determination by the Council, there was nothing before it in the way of an obligation under S106 of the Act to mitigate the potential impact of the proposed development in respect of open space, sports pitches, play space and strategic and site specific transport measures. On that basis, there was a clear conflict with development plan policy and notably the intentions of the Council's Core Strategy as set out in policies CS 16, CS 18, CS 19, CS 21 and CS 25. Detailed guidance on the Council's expectations as to appropriate financial contributions is set out in the Council's SPG on planning obligations and the unilateral undertaking of 18 June 2010 provides for a range of contributions to mitigate the impact of the development on infrastructure in the

locality. The Council did not contest the appropriateness of the proposed contributions notwithstanding reservations in respect of the undertaking itself, a matter to which I shall return, and to that extent I am satisfied that the Council's second reason for refusal could be overcome as far as the necessary contributions in respect of infrastructure are concerned.

### *Affordable Housing*

41. I acknowledge that the adoption of the Core Strategy has lowered the threshold above which affordable housing is expected to be included in any housing scheme within the City, since the genesis of and application for the proposed development at issue. That said, I have no doubt that the process of formulating the Core Strategy gave adequate opportunity for such a change to be anticipated and I am obliged to consider the appeal in the light of policy as it now is, not what it has been in the past, and the delivery of affordable housing is an important planning objective.
42. In any event, Policy CS 15 is clear that the provision of up to 20% affordable housing on sites where 5 – 14 net dwellings are proposed is a matter of negotiation taking into account, amongst other things, the financial viability of developing the site, by reference to an approved viability model.
43. The model deployed at the inquiry by a well established and experienced firm of property advisers and agents factored in the S106 contributions in respect of infrastructure and utilised a straightforward and conventional approach, the appropriateness or content of which was not challenged by the Council. That demonstrated a significant negative value if the site was developed in current circumstances without any element of affordable housing and an even larger loss if only one, let alone two, affordable units were to be included.
44. The viability of the proposed scheme is therefore seriously in doubt irrespective of whether or not affordable housing is proposed to be delivered as an integral part of the scheme. The appellant contends that his personal circumstances, including the current ownership of the site and his intention that he and possibly other family members should occupy the scheme, with the balance of the units being sold on the open market, could ultimately make it viable in his terms. Moreover, costs would be reduced by virtue of the appellant developing and project managing the scheme. By dint of such an arrangement, it is contended that the scheme could be viable in 4 or 5 years time, beyond the normal timescale of a planning permission.
45. I am not persuaded that such a scenario amounts to an appropriate viability model for the purposes of policy CS 15, or that it would be appropriate to extend the timescale of a planning permission in anticipation of better times ahead, as requested, whilst at the same time absolving the appellant of all responsibility for affordable housing provision. As the appellant himself acknowledges, predicting the market over such a timescale is inexact and whilst it may improve sufficiently to render the scheme viable in his terms, it seems to me possible, bearing in mind the Savills Research publication (Document 6), that market circumstances might also change sufficiently to render it conventionally viable over that timescale with one or more affordable units. The Council's suggestion that if permission were to be granted, then it should initially require one affordable unit, but allow for a review of the

situation, and if necessary an agreed variation of the undertaking immediately prior to implementation of the scheme, would seem to me to be a reasonable one in all the circumstances. Moreover, such an approach would give the Council a proper opportunity to understand the development economics of the site as proposed to be developed in person by the appellant, without compromising the intention of policy CS 15 that all qualifying schemes capable of doing so should deliver an element of affordable housing.

46. My overall conclusion on this issue is that, were the scheme to become demonstrably viable, on anybody's terms, within a defined timescale, then there would be no reason to exempt it from the requirement to provide up to 20% affordable housing in accordance with the intentions of policy CS 15. Whether such provision should be one unit or two, or whether the requirement should be waived altogether in response to particular circumstances, for example marginal viability, could only reasonably be decided between the Council and the appellant on the basis of an adequately transparent viability model, whether of a standard type or, in the alternative, an agreed model reflecting the particular circumstances. To exempt the scheme in the absence of such clarity would in my view harmfully undermine the intentions of the policy.

*The unilateral undertaking*

47. A unilateral undertaking of the type put forward is necessary to satisfy policy requirements concerning infrastructure and to deliver an appropriate level of affordable housing if the scheme were to be demonstrably viable and sufficiently so to support an element of affordable housing. The undertaking submitted provides for infrastructure contributions and for one affordable housing unit. To that extent I accord it weight.
48. However, that weight is diminished, albeit not negated, by the refusal of the current mortgagee of 134 Bassett Avenue, as a matter of policy, not to enter into planning obligations. This is a matter which I appreciate is out of the appellant's control pending a switch in the relevant financing arrangements, but one which creates difficulties nonetheless. Based on the model condition 42 in Circular 11/95, the appellant puts forward an inventive mechanism to so phase the proposed development by condition that the obligation would bite on the first phase of development, which would be the Beechmount Road block, so as to secure all of the S106 provisions, including if so desired the affordable unit within that first phase before the land in which the recalcitrant mortgagee has an interest was permitted to be developed so as to construct the second phase, i.e. the Bassett Avenue block.
49. Although the Council accepts that this is legally possible, it seems to me that it is akin in some respects to using a planning condition to require an obligation to be entered into or financial contributions to be made. Moreover, it would in theory at least be possible to undermine the enforceability of the obligation by applying to have the phasing condition removed and if necessary appealing against a refusal to do so and I am not satisfied that a phasing condition imposed simply to rectify a flaw in the planning obligation is reasonable. Bearing in mind the generality of the advice in Circulars 11/95 and 05/2005, it seems to me that an arrangement of this sort is inherently undesirable, whatever its legality.

*Other matters*

50. Third parties have raised a number of other matters, notably highway safety, traffic congestion and parking. However, I have little evidence to suggest that these matters should weigh significantly against the proposed development.

Overall conclusions

51. I am conscious that, in consultation with officers of the Council, a great deal of effort has been put into the proposed scheme and that a favourable officer recommendation was achieved. I am also conscious that there is a great deal of common ground between the parties on matters of detail concerning the site. Be that as it may, I am obliged to take the proposal as I find it, in the light of the development plan as a whole and all other material considerations.

52. Notwithstanding its acceptability within the street scene and an apparently relaxed attitude on the part of its current occupiers, I consider the Beechmount Road block, as proposed, would harm the living conditions of occupiers of 132 Bassett Avenue, contrary to the intentions of relevant development plan policy. Moreover, although distinctive and modern in appearance and with architectural devices to reduce its impact, the scale, massing and complexity of the proposed Bassett Avenue block, in close proximity to the recently developed flats forming a corner feature, would nevertheless harmfully disrupt the harmonious relationship that has been achieved in the street scene between those flats and the traditional houses to the south. This would conflict harmfully with the overall thrust of development plan and national policy which seeks to promote appropriate design in context, thereby ensuring that new development makes a positive contribution to its surroundings.

53. It has not been demonstrated that there are material considerations sufficient to outweigh the harmful conflict with the development plan that I have identified. Moreover, the acceptance of proposals that do not make a positive contribution to their surroundings, as I consider would be the case with the Bassett Avenue element of the proposed development, would erode the existing character and appearance of the area, possibly on a progressive basis if new proposals came forward to reflect the changing context. The changes to PPS3, although not fatal to the proposal, in my view, if it was acceptable in all other respects, do nevertheless weigh against it for the reasons I have indicated, as does its demonstrable inability to deliver even a small element of affordable housing at the present time. Although it appears that there could be a means of ensuring delivery of the substance of the unilateral undertaking, in spite of the acknowledged problems with a specific mortgagee, so as to overcome the Council's second reason for refusal, and my decision does not turn on the point in any event, the weight that I can accord to the undertaking is necessarily diminished, as I am not persuaded that the problems would be appropriately overcome by the suggested device, even if legally effective.

54. For the reasons given above, and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

*Keith Manning*

Inspector

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY: Miss Ann Greaves, Council advocate

She called Mr Richard Plume BA(Hons), DIP.TP, DIP.MAN

FOR THE APPELLANT: Mr Stephen Bowden, solicitor, Dutton Gregory LLP

He called Mr Chris Edmond Dipl Arch RIBA of Chris Edmond Associates  
Mr Richard Sturt MRICS, MSC, BSc (Hons), FRGS of Savills (L&P) Ltd

## INTERESTED PERSONS:

Mrs J Wawman	Secretary, East Bassett Residents Association
Mrs K Welham	Brampton Tower Residents Association
Mr M Love	Brampton Tower Residents Association

## DOCUMENTS

- 1 Council's notification of Inquiry and list of those notified
- 2 Council's opening statement
- 3 Prepared appearances details for appellant
- 4 Unilateral Undertaking dated 18 June 2010
- 5 Letter from Northern Rock dated 18 March 2010
- 6 *Residential Property Focus: Savills, May 2010*
- 7 List of suggested conditions
- 8 Outline of statement by Mr M Love on behalf of Brampton Tower Residents Association
- 9 Council's closing submissions
- 10 Appellant's closing submissions