



Costs Decisions

Inquiry opened on 17 October 2006, resumed on 20 & 21 February 2007

Site visit made on 21 February 2007

by **A J A Ritchie** MA (Oxon) LARTPI Solicitor

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

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Date **18 APR 2007**

Costs application in relation to Appeal Ref: APP/D1780/A/05/1194944 136 Bassett Avenue, Southampton SO16 7EZ (Appeal A)

- 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 Nationwide Construction Ltd for a full award of costs against Southampton City Council.
- The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for the redevelopment of the site with the erection of a 3-4 storey block comprising 9 x 2-bedroom flats with associated car parking.

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

Costs application in relation to Appeal Ref: APP/D1780/A/05/1196597 136 Bassett Avenue, Southampton SO16 7EZ (Appeal B)

- 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 Nationwide Construction Ltd for a full award of costs against Southampton City Council.
- The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission for the redevelopment of the site, demolition of the existing building and erection of a part 3-storey and part 4-storey block of 10 x 2-bedroom flats with associated parking.

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

The Submissions for the appellants

1. The appellants seek a full or partial award of costs in respect of both appeals. Their application was put forward under a number of headings, each of which they considered to be fully supported by a passage in Department of the Environment Circular 8/93 *Awards of Costs Incurred in Planning and Other Proceedings* (the Circular).
 2. Firstly, they considered that the Council had inhibited development that could reasonably have been permitted, having failed to take into account all material considerations and having taken into account immaterial considerations (Annex 3 to the Circular, paragraph 7). In particular, the Council had considered the applications on the basis of policy in the Bassett Avenue Development Control Brief (BADCB) that the Council itself acknowledged was out of date and had been superseded by other supplementary planning guidance in the form of their Residential Design Guide (RDG). The RDG and other advice contained guidance as to the treatment of corner sites that had been followed in a recent appeal
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decision relating to development at 209 Manor Road North, Southampton (Appeal Ref: APP/D1780/A/06/2012298) in which costs had been awarded against the Council partly on account of their having failed to take proper account of the RDG. They had misunderstood the height of the buildings in both of the appeal schemes and in relation to the Appeal B scheme had misapplied advice in the RDG resulting in their having raised a reason for refusal in relation to the living conditions of the occupiers of No134 Bassett Avenue that was untenable.

3. Secondly, they had failed to substantiate reasons for refusal (paragraph 8 of Annex 3 to the Circular) and thirdly had failed to accept officers' recommendations in the absence of substantial evidence to the contrary (paragraph 9). The 4th heading of the application was that the Council adopted the views of local residents which were unsupported by substantial planning evidence (paragraph 15).
4. Finally, they had failed to reconsider their decisions when appropriate to do so (Annex 2, paragraph 15). The reasons for refusal of both schemes had cited policies in the BADCBC as a basis for refusing planning permission and in January 2007, the Council's officers had taken a report to members seeking endorsement of an amendment of the reasons for refusal to insert a correct paragraph reference in the BADCBC. The report did not remind members that the BADCBC was in effect defunct as planning advice and the opportunity to re-appraise the reasons for refusal and indeed the decisions was therefore not taken.
5. The Council had concealed that the BADCBC was no longer valid as policy relating to the need to adhere to the generally established building line in Bassett Avenue and the need to maintain the dominance of landscape features over built development. Furthermore, the Council had attempted to withhold from the inquiry vital parts of the RDG which in effect replaced these outdated policies of the BADCBC and which supported the appellants' case.

The Response by the Council

6. The appellants' application was largely based on inference as to what was in the minds of elected members when the decisions were made; there was little in the way of proof of unreasonable conduct. At the time when the applications were determined, it was proper for reliance to be placed on the BADCBC, since it was adopted supplementary planning guidance at the time and the adoption of the RDG was a long way off. Irrespective of the status of the BADCBC and the advice contained in the RDG, it was still necessary to consider the effect of the schemes on the character and appearance of the area. There was no evidence that members had misunderstood the height of the proposed buildings and the officers' report on the Appeal A scheme clearly indicated that in relation to the impact of the proposals in Beechmount Road it was a "balanced judgement" as to whether harm would be caused to the character of the area.
7. Members were *functus officio* once the applications had been refused and therefore it would not have been appropriate to take the applications back to them to be re-determined. In any event there is no certainty that the outcome would have been to the appellants' advantage since matters of character and appearance still had to be explored.
8. The Manor Road North decisions were irrelevant both as to their findings as to the merits of the case and as to costs. The circumstances were different, particularly as the Council had

made important concessions at the inquiry into that appeal. Also, in that case permission was being sought for a 10-flat block of flats and the appellants were able to argue that a fallback situation existed, since the Council had already granted permission for an 8-flat block on the appeal site.

9. The issue over whether the Appeal B proposal would be overbearing when seen from the back garden of No.134 was a matter of judgement as there were no firm rules that could be applied.
10. The award of costs is in effect discretionary and infringements of paragraphs in the Circular do not need to result in an award of costs as a matter of course. To secure an award of full costs the appellants would need to prove that it had been unreasonable to refuse planning permission in these cases. In this case they had not done so, and in the Council's opinion the most they could reasonably expect was a partial award based on the Council's wrongful reliance on the BADCB.

Conclusions

11. 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.
12. My decisions in these appeals indicate that the determination of the first main issue (the effect of the proposals on the character and appearance of the area) substantially depended on an assessment of the height, bulk and massing of the proposals, including the effect of their projection forward of the established building line in this part of the east side of Bassett Avenue and the impact of the schemes on Beechmount Road. The BADCB could have been a major determining factor in my decision on this issue if it had still been adopted policy guidance. However, as my decision indicates, irrespective of the status of the BADCB and the advice provided by the RDG, it was still necessary to consider the effect of the 2 proposals on the character and appearance of the area, particularly in view of Policies SDP7 and SDP9 of the City of Southampton Local Plan Review. Both of the schemes would result in a building projecting forward of the established building line formed by the row of houses to the south of the appeal site and a building having a significant effect on the street scene in Beechmount Road, but only in the case of the Appeal B scheme did I find these impacts to be unacceptable.
13. In view of my decision that the Appeal B scheme should not be granted planning permission, it follows that I was satisfied that the Council had produced a strong enough case with enough evidence to justify their members' decision. It is not therefore open to the appellants to argue that planning permission was unreasonably withheld or that the Council should have invited members to determine not to contest the appeal. Nor is it in my view open to them to argue that the Council paid undue regard to the views of interested parties. The differences between the 2 appeal schemes, whilst in my opinion being significant enough to allow one scheme and not the other, are not so substantial that it can be argued that it was unjustifiable to have withheld planning permission for the scheme that was

allowed. I therefore consider that the appellants should not succeed with their application for full costs.

14. The outcome of Appeal A might have been different if the Council had been able to rely on the BADCB as up-to-date supplementary planning guidance that should be followed. In those circumstances, the paragraphs of the BADCB relied upon by the Council could have been fatal to both schemes. The appellants had to go to considerable trouble to establish and demonstrate that the BADCB had been superseded and replaced by the RDG. The Council's handling of this matter, in particular their failure to disclose (a) that the BADCB had been superseded by the RDG and (b) the true effect of the RDG in relation to the treatment of corner sites, together with their continued reliance on the BADCB in their proofs of evidence and evidence in chief amounts to unreasonable behaviour. The explanation given by their witness for omitting relevant parts of the RDG from extracts of that document that were produced to the inquiry was in my view unconvincing. I therefore consider that the appellants should be awarded their costs that flow from this aspect of the Council's behaviour.
15. The Council's evidence to the inquiry suggested that the proposed buildings would be taller than the trees on the appeal site. If accepted, this could have had a significant bearing on the outcome of the appeals; although the BADCB's advice as to the dominance of landscape features no longer carries weight, it was not disputed that the character of the area owes much to the preponderance of many mature trees and to allow a building higher than the mature trees in the area would have been a significant step. The appellants were able to demonstrate that the Council's view was erroneous and even though the Council's witness may have been in no doubt as to the actual height of the proposed buildings, his statement that they would be taller than the trees amounted in my view to unreasonable behaviour. The appellants should be able to recover the costs which they incurred in dealing with this allegation.
16. The reason for refusal of the Appeal B scheme based on the implications of the scheme for the living conditions of the occupiers of No.134 Bassett Avenue did not appear in the decision notice when the 10-flat scheme was initially refused in February 2005. When the resubmitted scheme was refused in November 2005, the reason for refusal was added. The Council's evidence in support of the reason for refusal was in my view very thin and I was unable to find any substance in the claim that the outlook from the back garden of No.134 would be adversely affected. I therefore consider that the Council behaved unreasonably in failing to substantiate this reason for refusal in respect of the Appeal B scheme and that the appellants' costs of dealing with it should be reimbursed.
17. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated. I therefore conclude that an award of partial costs is justified.

Formal Decisions and Costs Orders

Appeal A & Appeal B

18. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers

enabling me in that behalf, I HEREBY ORDER that Southampton City Council will pay to Nationwide Construction Ltd the costs of the proceedings in both appeals limited to those costs incurred in

- establishing the status at the date of the inquiry of the Bassett Avenue Development Control Brief (BADCB)
- establishing the status at the date of the inquiry of the Council's Residential Design Guide (RDG) and considering the contents of the guide that are relevant to the appellants' case in the appeals
- preparing those parts of the appellants' evidence to the inquiry that dealt with the status and contents of the BADCB and RDG
- dealing with the above items at the inquiry, including the cross-examination of the Council's witness
- establishing that the proposed buildings would not be taller than the mature trees on the appeal site, preparation and presentation of material to substantiate this, including costs associated with the cross-examination of the Council's witness

such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of applications for planning permission for the redevelopment of the site with the erection of a 3-4 storey block comprising 9 x 2-bedroom flats (Appeal A) and a part 3-storey and part 4-storey block of 10 x 2-bedroom flats (Appeal B), both with associated parking, on land at 136 Bassett Avenue, Southampton SO16 7EZ.

19. The applicant is now invited to submit to Southampton City Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Appeal B only

20. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Southampton City Council will pay to Nationwide Construction Ltd the costs of the appeal proceedings limited to those costs incurred in preparing evidence in relation to the implications of the scheme for the living conditions of the occupiers of No.134 Bassett Avenue together with those costs incurred in dealing with that issue at the inquiry, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of an application for planning permission for the redevelopment of the site and the erection of a part 3-storey and part 4-storey block of 10 x 2-bedroom flats with associated parking on land at 136 Bassett Avenue, Southampton SO16 7EZ.

21. The applicant is now invited to submit to Southampton City Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

A J A Ritchie

INSPECTOR



Appeal Decisions

Inquiry opened on 17 October 2006

Site visit made on 21 February 2007

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Date **18 APR 2007**

20 APR 2007

SUSTAINABILITY

Appeal A: APP/D1780/A/05/1194944

136 Bassett Avenue, Bassett, 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 Nationwide Construction Ltd against the decision of Southampton City Council.
- The application Ref 05/00404/FUL, dated 18 March 2005, was refused by notice dated 7 June 2005.
- The development proposed is redevelopment of the site with the erection of a 3-4 storey block comprising 9 x 2-bedroom flats with associated car parking.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Appeal B: APP/D1780/A/05/1196597

136 Bassett Avenue, Bassett, 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 Nationwide Construction Ltd against the decision of Southampton City Council.
- The application Ref 05/01498/FUL, dated 19 October 2005, was refused by notice dated 29 November 2005.
- The development proposed is redevelopment of the site, demolition of the existing building and erection of a part three-storey and part four-storey block of 10 x 2-bedroom flats with associated parking.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. At the inquiry an application for costs was made by the appellants against the Council. This application is the subject of a separate decision.
2. The inquiry was opened and then immediately adjourned on 17 October 2006. It was resumed on 20 February 2007 and was held on 20 & 21 February 2007.
3. The descriptions of the proposed development given above are those which appear on the Council's decision notices and on the appeal forms. These descriptions in my opinion describe what is proposed more accurately than those appearing on the application forms.
4. At the inquiry, the appellants submitted unilateral undertakings to deal with issues raised in the Council's reasons for refusal in relation to the lack of contribution made by the schemes towards the provision of public open space, play space and sustainable transport infrastructure. The landowner's solicitor agreed to amend the date of one of these

documents and subject to this correction, the undertakings were acceptable to the Council. In my view, the documents overcome the planning objections raised by the Council in relation to these issues and I shall therefore give no further consideration to them.

Main Issues

5. I consider that the main issue in both appeals is the effect of the proposed blocks of flats on the character and appearance of the area, with particular regard to their impact on the street scene in Bassett Avenue and Beechmount Road by reason of the height and massing of the proposed buildings, their projection forward of the established building line in Bassett Avenue and proximity to the site boundary in Beechmount Road. In the case of the Appeal B scheme there is also an issue in relation to the implications of the scheme for the living conditions of the occupiers of No.134 Bassett Avenue in terms of outlook.

Planning Policy

6. The development plan for the area includes the City of Southampton Local Plan Review (the Local Plan). The Statement of Common Ground (SoCG) noted that the following Policies of the plan are relevant to the appeals. Policy SDP1 requires development amongst other things to respect and improve the quality of Southampton's built and natural environment. Policy SDP6 sets out urban design principles which should be covered by a design statement to be submitted for all residential schemes of 5 units or more and specifically states that the Policy does not seek to restrict innovative designs. Policy SDP7 does not allow development that would be harmful to the character and/or appearance of an area and includes requirements that development should be compatible with existing land forms and natural features that contribute to the quality of the local environment and should respect the scale, density and proportion of existing buildings. High quality design is sought by Policy SDP9 which requires proposals to respect their surroundings in terms of matters including scale, massing and visual impact, impact on the skyline and on surrounding land uses and local amenity.
7. High quality of residential design is also sought by Policy H7, and Policy H8 encourages the maximisation of housing density in accordance with a site's accessibility. This reflects a well-established theme of Government policy as previously expressed in Planning Policy Guidance Note 3: *Housing* (PPG3) and now being carried through into Planning Policy Statement 3: *Housing* (PPS3).
8. Following the production of the SoCG, the Council introduced reference to Policy NE6 of the Local Plan; this does not permit development which would adversely affect the landscape character of the northern approach to the city along Bassett Avenue, the Avenue and Chilworth Road.
9. When the applications were determined, the Council were guided by the policies of the Bassett Avenue Development Control Brief (BADCB), supplementary planning guidance adopted in 1982. However, it became clear during the inquiry that this had been superseded by a Residential Design Guide (RDG) which was adopted in September 2006 as a supplementary planning document to the new Local Development Framework that will replace the Local Plan.

Reasons

Character and Appearance – both Appeals

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10. There was no dispute that demolishing the existing undistinguished dwelling on the appeal site and replacing it with a block of either 9 or 10 flats would serve the objectives of making more efficient use of land by providing new housing at higher density on recycled sites as expressed in PPG3, PPS3 and Policy H7 of the Local Plan. The essence of the disagreement between the parties was whether the schemes would achieve this without compromising the quality of the environment.
 11. The Bassett Avenue environment is in my view characterised by the preponderance of trees and shrubs which range the whole length of Bassett Avenue, often in extensive wooded residential plots. These characteristics had been recognised by the now superseded BADCB. Relevant characteristics of the appeal site include prominent mature trees, some of which are protected, and the position of the existing building at the end of a distinct building line made out by the fronts of the row of dwellings to the south of the site.
 12. The principal objections taken by the Council to the appeal buildings when seen from Bassett Avenue were that their height and massing would fail to ensure the dominance of landscape features namely trees in relation to adjacent properties and that they would project beyond the front of No.134, thus breaching the building line.
 13. Regarding the first of these objections, the mature trees on the appeal site, including a large oak at the front of the plot on the corner of Bassett Avenue and Beechmount Road would be unaffected by the proposed development. Although in each case at its highest point the proposed building would be some 2m higher than the ridge of the neighbouring dwelling No.134 Bassett Avenue, it would not be taller than the most prominent trees on the site and would be lower than some larger trees growing in the grounds of Brampton Tower, a 14-storey block of flats immediately to the north of the appeal site across Beechmount Road.
 14. The proposed buildings would be most visible from the western side of Bassett Avenue, particularly from northbound traffic. They would also be seen clearly from the pavement on the eastern side of Bassett Avenue but only when within a relatively short distance from the appeal site. From these viewpoints, each of the proposed buildings would be more noticeable than the existing dwelling, but their impact would be significantly mitigated by the trees which I have mentioned above and the presence of Brampton Tower behind. The buildings would provide a visual step between the lower dwellings to the south and Brampton Tower and I accept the view of the appellant's witness that this is an appropriate streetscape approach in this location. In my view, in terms of their height and massing, neither of the proposed buildings would be dominant in these views and their scale would be subservient to that of the nearby trees.
 15. The Appeal A building would project forward of the bay at the front of No.134 by about 1.3m and the Appeal B building by about 4.9m. If the projections are measured from the front façade of No.134, they would be increased in each case by some 1m which in my estimation is the approximate depth of the bay. Both of the proposed buildings would be articulated so that parts of their front elevations would be set back; in the case of one of the proposed buildings, the set back would result in part of the front elevation being behind the front of No.134 and in the case of the other proposed building, the set back part would be in line with the front façade of No.134 but behind its front bays.

16. In the case of the Appeal A building, the extent of the projection forward of the building line is so small that in my judgement the projection would hardly be noticeable, but this is not the case with the Appeal B scheme. The parts of the RDG which were before me do not contain any requirements or advice about respecting building lines and the RDG supports the concept of visual focus at the corner or end of a street by means of a building which, for example, is taller or larger in scale than the general scale or proportion of development in the street. This was said by the appellants at the inquiry to echo well-established principles of urban design, an approach which had recently been endorsed by the Inspector in appeal (Ref: APP/D1780/A/06/2012298) relating to flatted development at 209 Manor Road North, Southampton. This was not contested by the Council.
17. However, the RDG does not in my opinion give *carte blanche* in respect of what may be permissible on corner sites and it is still necessary in my view to ensure that any corner building relates well to the neighbouring properties and would present a harmonious prospect when seen from the street.
18. In the case of both schemes, the articulated design of the front of the proposed building and the contrasting design with No.134 and other dwellings in Bassett Avenue would add interest to the street scene in this corner location and would not be harmful to the character and appearance of the area. However, in the case of the Appeal B scheme, the forward projection of the building at nearly 6m from the front façade of the neighbouring dwelling would in my view be so substantial as to make the building appear excessively prominent and incongruous in relation to its neighbours to the south. In the case of the Appeal A scheme, however, I agree with the view expressed in the Council's officers' report that the significantly reduced forward projection would not be harmful.
19. Both schemes would be built close to the back of the pavement in Beechmount Road. This feature of the scheme was objected to by the Council and was particularly criticised by interested parties. In each case, the restricted space between the building and the pavement would limit the opportunity for the building to be screened by landscaping. The 3 and 4 storey structures close to the road built up to a height of some 13.4m would contrast with flatted and residential development nearby, including Brampton Tower, which are set back from the road, with tree and shrub screens intervening and therefore less prominent when seen by users of the street. The fact that the proposed blocks would be about 2m higher than the ridge of No.134 is not as significant as it might initially seem, since the roof of neither of the appeal schemes would be hipped away from the side elevation of the building as is the case with No.134. However, the existing view of the appeal property when seen from Beechmount Road is not particularly attractive and much of the building itself is not screened from the road. The view of both new buildings would only be obtainable over a relatively short distance in Beechmount Road, but they would be prominent, for example on leaving Brampton Tower via the access opposite.
20. Although there are many examples of blocks of flats in the area and the passer-by would not be surprised to find one in this location, the mass, bulk and height of these proposals when seen from Beechmount Road, and particularly bearing in mind that the buildings would only be some 1m behind the back of pavement line, is in my view a significant difficulty with the schemes. I recognise however that an attempt has been made with the Appeal A scheme to diminish the bulk of the building by reducing part of it to 3 storeys. Although this scheme would be slightly nearer to the pavement than the Appeal B scheme, the reduction

in bulk and mass that it offers is in my opinion sufficient to make it an acceptable addition to the street scene in Beechmount Road, which in my judgement the Appeal B scheme would not be.

21. My conclusion in respect of this main issue is therefore that the Appeal A scheme would respect the character and appearance of the area and would therefore comply with the Policies of the SoCG that were identified by the parties as being relevant. It would also comply with Policy NE6 of the Local Plan and with the RDG. However, the Appeal B scheme on account of its substantial projection in front of the distinct line provided by the fronts of the dwellings to the south and its increased bulk on the Beechmount Road frontage would be harmful and would therefore not be in compliance in particular with Policies SDP7 and SDP9 of the Local Plan.

Living Conditions – Appeal B

22. The 4 storeys of the Appeal B building would extend further back than the rear elevation of No.134 and the Council considered that the building would be overbearing when seen from the garden of that dwelling. No claim was however made by the Council that the outlook from any habitable rooms of No.134 would be adversely affected or that the garden of No.134 would suffer from any unacceptable overlooking from the appeal building.
23. The majority of the part of the Appeal B building that would be beyond the rear elevation of No.134 would not be alongside the boundary between the 2 properties, being separated from the boundary by a proposed garden area. A substantial outbuilding at No.134, which includes a pool, is between the rear patio of the dwelling and the boundary with the appeal site. Further down the garden, there is a substantial tree screen along the boundary with the appeal site.
24. The Appeal B building would be seen partly against the backdrop of the 14-storey Brampton Tower, which although not in close proximity to No.134 already appears prominent in views from the rear patio and garden. In view of the tree screen and the degree of separation, the new building would not in my view have a significant adverse effect on the outlook from any part of the garden of No.134. Paragraph 2.2.18 of the RDG upon which the Council substantially relied to support their reason for refusal makes it clear that in larger gardens which enjoy an outlook in a number of directions other than the land being developed (which in my view is the case with the garden of No.134) the new structure is less likely to be overbearing.
25. The proposal would therefore not be harmful to the living conditions of the occupiers of that dwelling and would comply with Policy SDP9 of the Local Plan. However, this finding does not outweigh the conclusion that I have reached regarding the Appeal B scheme in relation to the first main issue.

Other Matters

26. Amongst other matters of concern raised by interested parties were highway conditions in the vicinity of the appeal site and the possibility of an alternative development scheme. It was considered that the narrowness of Beechmount Road together with the high volume of traffic carried by Bassett Avenue would give rise to significant problems, particularly when accesses for the proposed developments would be close to the junction with Bassett Avenue. There had been a number of accidents (including 2 fatal ones) at this junction over

recent years. However, the Council's highways officers did not indicate any concern on this account in their response to either application, and in my view the increase in vehicular activity in the vicinity of the site would not be so great as to compromise highway safety. I am obliged to consider and reach decisions on the 2 appeal schemes before me and, as no alternative redevelopment scheme for No.136 is before me, I am unable to consider suggestions that there would be a better way of redeveloping the site in conjunction with other land.

27. The other matters that were raised do not outweigh the considerations that have led to my decisions.

Conditions

28. The SoCG included a list of conditions that had been agreed by the parties. I have considered these in the light of the advice contained in Department of the Environment Circular 11/95: *The Use of Conditions in Planning Permissions* and in the light of discussions at the inquiry.
29. The Council agreed that the time limit for commencement of development with the Appeal A scheme should be set at 5 years in view of the date of submission of the application. Conditions requiring approval of external materials and the approval of boundary treatments are needed to secure the satisfactory appearance of the finished development. The contribution made by trees to the character and appearance of the area is undisputed and to that end I shall impose conditions which will secure that the site is appropriately landscaped and existing trees on the site which merit retention are protected.
30. The living conditions of occupiers of neighbouring property should be protected by conditions requiring obscure glazing and opening restrictions on windows on the south elevation of the building, the prevention of materials being burnt on site and restriction of hours of operations during the building of the flats. To ensure satisfactory living conditions for the occupiers of the flats, I will impose conditions requiring the provision of the garden areas and refuse storage areas and requiring soundproofing of the flats which is needed in view of the amount of traffic carried by Bassett Avenue.
31. I note the proposed condition prohibiting the formation of any access directly onto Bassett Avenue, but as the application plans do not show such an access and separate planning permission would be required for the formation of such an access, I will not impose this condition. Conditions requiring the formation and retention of the parking and turning areas prior to the occupation of the dwellings and the provision of wheel cleaning facilities for construction vehicles are however needed in the interests of highway safety. I will also add the suggested condition requiring the provision of the cycle parking as this is necessary to ensure that residents have the possibility of using private transport facilities other than cars.
32. As it was accepted at the inquiry that the appeal site has in the past been used for the repair and servicing of vehicles, I consider it prudent to apply a condition requiring a site investigation for contamination and the carrying out of any necessary subsequent remediation. The condition will be in the form of Example E in Appendix 2B of Annex 2 to Planning Policy Statement 23: *Planning and Pollution Control*.

Conclusions

33. For the reasons given above and having regard to all other matters raised, I conclude that Appeal A should be allowed and Appeal B should be dismissed.

Formal Decisions

Appeal A: APP/D1780/A/05/1194944

34. I allow the appeal, and grant planning permission for the redevelopment of the site with the erection of a 3-4 storey block comprising 9 x 2-bedroom flats with associated car parking at 136 Bassett Avenue, Southampton SO16 7EZ in accordance with the terms of the application, Ref 05/00404/FUL, dated 18 March 2005, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
- 2) No development shall take place until full details of the manufacturers, types and colours of the materials to be used in the construction of the external surfaces of the building hereby permitted, including samples if required, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the first occupation of any of the dwellings hereby approved. Development shall be carried out in accordance with the approved details and the boundary treatment shall subsequently be retained.
- 4) A detailed landscaping scheme and implementation timetable which clearly indicates the trees to be retained and the numbers, planting densities, types, planting size and species of trees and shrubs to be planted and treatment of hard surfaced areas shall be submitted to and approved in writing by the local planning authority before the commencement of any site works. The treatment of hard surfaced areas shall include the provision of a permeable surface beneath the canopy of any tree to be retained. Any trees, shrubs, seeded or turfed areas which within a period of 5 years from the date of planting die, fail to establish, are removed or become damaged or diseased shall be replaced by the developer in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation. The developer shall be responsible for any replacements for a period of 5 years from the date of planting. The approved scheme shall be carried out within 12 months of the first occupation of any of the dwellings hereby approved.
- 5) No trees on or overhanging the site shall be cut felled or uprooted otherwise than as shall be agreed in writing by the local planning authority. Any tree removed or significantly damaged other than as shall be agreed shall be replaced by the owners of the site by trees of a size, species and type and at a place and before a date to be determined by the local planning authority.
- 6) All trees to be retained pursuant to any other condition of this permission shall be fully safeguarded during the course of building operations and if in the opinion of the

Council any such tree is materially damaged by such operations that tree shall be replaced by the landowner by trees of a number, size and species to be determined by the local planning authority at a place and before a date specified by the local planning authority.

- 7) No storage of building materials shall take place beneath the crown spread of any tree or trees to be retained on the site.
- 8) The approved refuse storage areas, including collection point, shall be provided in accordance with the approved plans prior to the occupation of any dwelling hereby approved and shall thereafter be retained and maintained for that purpose.
- 9) The communal garden areas shown on the approved plans shall be laid out prior to the first occupation of any dwelling hereby approved and shall thereafter be made available for the benefit of all residents.
- 10) No burning of any materials, including cleared shrubs and trees, shall take place on the site unless otherwise agreed in writing by the local planning authority.
- 11) Before the development hereby approved is implemented a detailed scheme for the soundproofing of the flats shall be submitted to and approved in writing by the local planning authority. The agreed scheme of soundproofing shall be fully implemented before any of the flats hereby approved are first occupied.
- 12) All works relating to the construction of the development hereby approved, including demolition and ground preparation prior to building operations and any works to regrade the level of the site, shall only take place between the hours of 0800 and 1800 on Monday to Friday and 0900 to 1300 on Saturdays and at no time on Sundays and Bank Holidays. Any works outside the permitted hours shall be confined to the internal preparations of the building without audible noise from outside the building, unless otherwise agreed in writing by the local planning authority.
- 13) The 4 windows at first and 2nd floor level on the south facing elevation of the building hereby approved shall be glazed with obscure glass and fitted so as to be openable up to only 35°. The windows shall be retained and maintained in such condition at all times in the future.
- 14) Before any dwelling hereby approved is occupied, both the on-site parking areas and proper vehicular access to them shall be laid out and hard-surfaced. The car parking areas shall thereafter be retained for the parking of vehicles only, in connection with the dwellings hereby approved, and not for any trade, business or industrial use.
- 15) The approved cycle storage facilities shall be provided in accordance with the approved plans prior to the occupation of any of the dwellings hereby approved and shall thereafter be retained and maintained for that purpose.
- 16) During the period of the preparation of the site, excavation for foundations or services and the construction of the development, wheel cleaning facilities shall be available on the site and no lorry or construction vehicle shall leave the site until its wheels have been cleaned sufficiently to prevent mud being carried onto the highway.
- 17) No development approved by this permission shall be commenced until:

- a) the application site has been subject to a detailed scheme for the investigation and recording of contamination and remediation objectives have been determined through risk assessment and agreed in writing with the local planning authority
- b) detailed proposals for the removal, containment or otherwise rendering harmless of any contamination (the reclamation method statement) have been submitted to and approved in writing by the local planning authority
- c) the works specified in the reclamation method statement have been completed in accordance with the approved scheme
- d) if during reclamation works any contamination is identified that has not been considered in the reclamation method statement, then remediation proposals for this material should be agreed with the local planning authority and implemented.

Appeal B: APP/D1780/A/05/1196597

35. I dismiss the appeal.

A J A Ritchie

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Ward of Counsel, instructed by the City Solicitor,
Southampton City Council

He called

Mr S Lawrence BA Dip Tp Planning Officer & Team Leader, Southampton City
Dip Urb Design MRTPI Council

FOR THE APPELLANT:

Mr S Head of Counsel, directly instructed by the appellants

He called

Mr R Tear BSc(Hons) Dip Principal, Richard Tear Architects, agents for the
Arch RIBA appellants

INTERESTED PERSONS:

Mr M Moore 13 Bassett Close, Southampton SO16 7PE
Mr D R Gilbert 41 Brampton Tower, Bassett Avenue, Southampton
SO16 7FB
Mr W M Cox 62 Brampton Tower, Bassett Avenue, Southampton
SO16 7FB
Mr M Grimes 134 Bassett Avenue, Southampton SO16 7EZ

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Letter 11/10/06 to Planning Inspectorate from KBM Management
2. Extract from Guidelines for Landscape and Visual Impact Assessment (The landscape Institute & Institute of Environmental Management & Assessment)
3. Extract from Circular 05/2000 Planning Appeals Procedures
4. Record of Executive Decision 18/9/06
5. Thoroughness in Design
6. *By Design* p29
7. Overlay of SCC 16.9: Visibility analysis of additional effects of Appeal Scheme B
8. RTA-20 – overmarked RTA-11: comparative street scene massing
9. RTA-21 – overmarked RTA-16: overbearing and visibility analysis
10. RTA-22.1 – geometric accuracy check of RTA-1.5
11. Appeal Decision Ref APP/D1780/A/06/2012298
12. Costs Decision in relation to above appeal
13. Determination of Application No.04/01923/FUL dated 8/2/05
14. Report to Committee & Confirmation of Cabinet Decision: Residential Design Guide
15. Diagram showing angle of vision of photograph at SCC Appendix 11
16. Plan showing appeal proposals in context of average building line as per SCC 17.1
17. Aerial photographs showing appeal site
18. Unilateral Undertaking: Appeal A scheme
19. Unilateral Undertaking: Appeal B scheme

20. Extracts from Residential Design Guide: paragraphs 1.13.1-1.13.5 and 2.2.18-2.2.23
21. RTA-16 showing 15m arc
22. Letter 29/4/05 Mr M J Grimes to Development Control Manager, Southampton City Council
23. Closing submissions on behalf of local planning authority
24. Appellants' closing submissions
25. Appellants' application for costs

PLANS

APPEAL A SCHEME

	Drawing No.	Description
Plan A.1	No number	Location Plan (copy extract from street plan)
Plan A.2	P010	Location Plan
Plan A.3	P011	Site Survey
Plan A.4	P012	Site Plan
Plan A.5	P013	Floor Plans
Plan A.6	P014	Elevations
Plan A.7	P014 Revision A	Elevations with additional information (materials)
Plan A.8	P015	Street scene elevations

APPEAL B SCHEME

Plan B.1	P010	Location Plan
Plan B.2	P02	Site Survey
Plan B.3	P03 Revision C	Site Plan
Plan B.4	P04 Revision B	Floor Plans
Plan B.5	P05 Revision D	Elevations
Plan B.6	P06 Revision C	Street Scene Elevations

Plan B.7	P07	Street Scene Elevation to Bassett Avenue
Plan B.8	P08	Site Layout (contextual)