



# Appeal Decision

Inquiry held on 1-2 April 2009

Site visit made on 2 April 2009

by **Martin Pike BA MA MRTPI**

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

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**Decision date:  
13 May 2009**

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## Appeal Ref: APP/D1780/A/08/2088525

### 1 Beechmount Road, Bassett, Southampton SO16 3JD

- 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 & Mrs Daniel Grimes against the decision of Southampton City Council.
- The application Ref: 08/01081/FUL/28627, dated 18 June 2008, was refused by notice dated 18 September 2008.
- The development proposed is demolition of existing detached house and erection of a four-storey block of eight 3-bedroom flats with associated car parking.

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## Decision

1. I dismiss the appeal.

## Procedural matters

### *Revised plans*

2. Prior to the inquiry the appellants produced a series of revisions which sought to overcome a number of the Council's reasons for refusal. The amendments relating to the treatment of the access drive and the position of the bin and cycle stores are relatively minor in nature. The revision to the drawings which shows only the top floor windows in the west-facing elevation to be obscure-glazed, rather than all the windows in that elevation, corrects an earlier error and make the drawings consistent with appellant's evidence. The Council does not object to these revisions. As they do not alter the substance of the scheme, I indicated at the inquiry that they could be accepted.
3. The final revision is a reduction in the number of on-site parking spaces from 14 to 8 to better accord with the Council's sustainability requirements. Whilst acknowledging that this amendment would meet its concern, the authority felt that the reduced parking provision might have elicited further objections from local residents, some of whom had objected on the grounds that the proposed 14 spaces were insufficient. Consequently the Council stated that it would have reconsulted local residents on this matter.
4. I note that the appellants undertook a reconsultation exercise prior to the inquiry in an attempt to ensure that local residents were aware of the proposed changes, though (through no fault of the appellants) one objector was missed. I also accept that the reduced parking provision has the potential to reduce the traffic impact of the development, though it could have other consequences such as increased competition for on-street parking spaces. On balance,

applying the principles established in the case of *Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another [1980]*, I consider that the reduction in parking changes the substance of the proposal and is a matter on which local residents should reasonably have expected to have had the opportunity to comment. The Council's intention to reconsult was therefore correct; as this reconsultation has not properly taken place, it is not appropriate to accept this element of the proposed revisions.

5. Consequently I have determined this appeal on the basis of the minor revisions shown on drawings 28397: 102 Rev F, 103 Rev F and 104 Rev F apart from the parking provision, which remains at 14 spaces as shown on drawing 28397: 102 Rev B. There is one further matter regarding the supplementary plans submitted prior to the inquiry. Two drawings showing computer generated images of the proposed development were incorrectly numbered – drawings 28397: 107 and 108, dated March 09, duplicate earlier, different drawings with the same number and were renumbered 28397: 111 and 112 respectively.

#### *Section 106 obligation*

6. One of the Council's reasons for refusal relates to the failure of the applicants to make any provision to meet the additional demands that the development would place on local infrastructure and facilities. To mitigate such impacts, the Council is seeking financial contributions in respect of strategic transport initiatives, sustainable modes of transport in the vicinity of the site, the repair of highways damaged during construction, and public open space and children's play space facilities. Despite the Inspectorate's advice that such matters should be resolved well in advance of an inquiry, negotiations on these matters were only completed during the inquiry. As a result, the appellants were unable to submit a signed version of a unilateral planning obligation, prepared under section 106 of the 1990 Act, which would have overcome the Council's concern.
7. The Council confirmed on the second day of the inquiry that the final draft version of the obligation was satisfactory, both in terms of overcoming that particular reason for refusal and in its ability to deliver what is intended. The obligation also includes a clause which requires the development to achieve Level 3 of the Code for Sustainable Homes, thereby resolving another of the authority's concerns. Because the final draft effectively resolves these matters, I gave the appellants a short time after the inquiry to submit an executed version of the obligation. I return to this matter later in the decision.

#### **Main issues**

8. With many matters once in dispute being resolved before or during the inquiry, there are three remaining main issues in this appeal:
  - (i) the effect of the proposed development on the character and appearance of the surrounding locality;
  - (ii) the implications for the living conditions of neighbouring occupiers and the occupiers of the proposed flats, with particular regard to privacy; and
  - (iii) with regard to the proposed car parking provision, whether an appropriate balance has been achieved between sustainable travel objectives and highway considerations.

## Reasons

### *Character and appearance*

9. 1 Beechmount Road is a detached double-fronted two-storey house occupying a long, almost rectangular plot within an established suburban area of Southampton. The appeal site extends beyond the curtilage of No 1 to include a strip of the rear garden of 134 Bassett Avenue and a small corner of the neighbouring plot, No 132. The existing dwelling would be replaced by a four-storey Regency-style block of 8 flats set back slightly behind the existing building line and projecting some 16m beyond the main rear wall of the dwelling. At its widest point, the flats block would extend across almost the full width of the rear garden of No 1 and encroach slightly onto the garden of No 134.
10. I saw on my visit that the Bassett area is characterised by predominantly residential buildings set in large, mature wooded plots. Bassett Avenue is a busy 4-lane radial route (A33) to and from the city centre; whilst generally bordered by two-storey houses such as Nos 132 and 134, there are a number of blocks of flats including, to the north of the junction with Beechmount Road, the fourteen-storey high-rise block of Brampton Tower. Blocks of flats are the main built form on Beechmount Road, though both the low-rise three-storey blocks opposite (Brampton Manor) and east of the appeal site (Beechmount House) are subservient to the wooded setting and have limited visual impact on the street. By contrast, the recently completed part three-storey and part four-storey block at 136 Bassett Avenue, on the corner of Beechmount Road, is a far more dominant building especially when seen from the latter street.
11. In this context the existing dwelling is a relatively small-scale component of the Beechmount Road street scene. It is not disputed that the appeal site is capable of accommodating a building of greater mass and presence: the issue is whether or not the size of the proposed four-storey building is excessive. The building would be about the same overall height as the four-storey element of 136 Bassett Avenue, though it would not appear as tall because of the slight fall in ground level, the low-pitched roof and the significant set back from Beechmount Road. It would also be below the canopy height of the mature trees that would partly screen it in views from the street. On the other hand, the building would appear substantially taller than the nearest building, Beechmount House, as a result of its greater height and proximity to the street, though the large trees on the common boundary would mask this relationship to some degree.
12. Expert opinions about the height and massing of the proposal vary. The Council's urban design officer does not object to the scale of the building but is concerned about the detailed design and materials. The case officer (who has an urban design qualification) considers that the fourth storey would be too massive and visually discordant in the context of the adjacent buildings. The Architect's Panel, an independent source of advice for the Council, felt on two occasions that the fourth storey represented too high a building. I acknowledge that the Panel was not quorate on either occasion, but nevertheless its views were expressed by three architects overall.

13. I consider that there is an appreciable difference between the larger scale of Bassett Avenue, a wide main road where some taller flats buildings are found, and the more low-key residential street of Beechmount Road. Indeed, this is apparent in the reasoning of the Inspector who allowed the appeal for the flats now built at 136 Bassett Avenue, but dismissed the proposal for a fully four-storey development partly on the grounds that its bulk did not respect the Beechmount Road street scene (APP/D1780/A/05/1194944 & 1196597). Thus the context for the proposal before me is set more by the low rise and spacious setting of the three-storey flats opposite and to the east than by No 136, which provides a visual focus on a street corner and essentially responds to Bassett Avenue.
14. I acknowledge that the articulation of the building, particularly the way that the full width of the structure would be set back behind a narrower front section, would lessen the visible mass when seen from the street. Nevertheless I believe that the full four-storey height and the massing of the proposal would not sit comfortably in the context of Beechmount Road. I saw on my visit that almost the full depth of the building would be visible across the car park at the rear of 136 Bassett Avenue, while along the access drive the flats block would be seen to extend beyond the width of the plot. Coupled with the fact that the structure would come uncomfortably close to the canopies of many adjacent large trees, I consider that the combination of height and massing would result in a building that appears too big for the site and at odds with the more spacious setting of other developments fronting Beechmount Road.
15. The detailed design and the proposed materials would give emphasis to the size of the building. The use of a 'heavy' granite on the ground floor and a complementary material on the upper floors would give a solidity to the structure which the narrow horizontal banding would do little to relieve. Consistent rather than reducing floor-to-ceiling heights would underline the height and massing of the structure. The wide balconies mounted on a projecting section that terminates in a parapet above eaves level would contribute further to the obvious size of the building.
16. I agree with the Council that this modern interpretation of a Regency style building would be somewhat incongruous, being more suited to the city centre than a residential suburb. However, given the eclectic mix of architectural styles in the locality, it is difficult to argue that the proposed style would not fit in. Moreover the appellants' desire to create a high quality building of distinction is to be welcomed. The problem in this case is that the treatment designed to achieve that aim would accentuate rather than diminish the apparent size and massing of the building.
17. For these reasons I conclude that the proposal would conflict with the elements of policies SDP 1, SDP 7, SDP 9 and H 7 of the City of Southampton Local Plan Review that seek development which respects the scale, massing and proportion of its surroundings and enhances the character of the locality.

*Living conditions*

18. The main concern of the Council is that the development would be too close to the rear of Nos 134 and 136 Bassett Avenue, leading to overlooking of those properties (especially from the top floor flats) and a significant loss of privacy.

The basis for this contention is the authority's Residential Design Guide (RDG), which sets out minimum back-to-back separation distances for windows serving habitable rooms. The RDG indicates that there should be 28m between two/three-storey housing and other three-storey housing, and 35m between three/four-storey housing and other four-storey housing. According to measurements agreed between the main parties at the inquiry, the proposed building would be about 28m from the rear of the house at No 134 and the new flats at No 136. Because the flats block would be four-storeys high, the Council believes that overlooking from residents in the top floor flats would cause harm to the living conditions of the occupiers of these Bassett Avenue properties. The appellants argue that this problem could be overcome by ensuring that the top floor windows on the west-facing elevation of the flats are obscure-glazed.

19. Whilst the RDG separation distances do not strictly apply to a situation where four-storey flats face two-storey houses, the Council believes that the 35m standard is appropriate. In general terms I agree, for in my experience the broad principle promoted by the RDG, which is that taller buildings require greater separation if privacy is to be safeguarded, is generally accepted. The important point, as the RDG acknowledges, is that the standards are applied flexibly according to the circumstances. In this case I believe that the issue is not whether particular windows just satisfy or fall slightly short of the required standard, but the overall impact of the development on the privacy of the occupiers of Bassett Avenue properties.
20. I saw on my visit that the west-facing elevation of the development would be visible across the full width of the shortened rear garden of 134 Bassett Avenue. On each floor there would be four windows to bedrooms about 28m from habitable rooms at the rear of No 134 and three windows to a kitchen/lounge at a distance of 34-35m. Whilst overlooking from the lower floors could be prevented by intervening fencing and hedges, I believe that the sheer number of windows on the upper floors would engender a significant feeling of being overlooked for the occupiers of No 134. To my mind the insertion of obscure glazing in the fourth-storey windows so that the development does not fall foul of the RDG standards would make little difference to the occupiers of No 134, for the likelihood is that they would still feel that their privacy was being invaded.
21. I appreciate that the current occupiers of No 134, who are the parents of one of the appellants, do not object. Indeed, as there are plans to redevelop No 134 it is possible that the problems I have identified would not exist in the future. But in the absence of an approved scheme of redevelopment I must base my decision on the situation that currently exists. In my view future occupiers of No 134 would experience a degree of overlooking that they should not reasonably be expected to tolerate. In reaching this conclusion I have had regard to the flexibility sought by the RDG according to the context of the site. However, as this spacious suburban area is not the sort of location where reduced separation distances are characteristically found, there is no justification for a significant relaxation of the RDG criteria.
22. The separation distances between the proposed development and the new flats at 136 Bassett Avenue are similar to the distances to No 134, though the relationship is rather different. The proposed development would be set back some 14m from the highway, so the main outlook from the rear of the new

flats (notwithstanding the tree cover) would be across the front garden and access, rather than the building itself. Thus most views between windows would occur at an oblique angle, reducing the scope for overlooking and lessening the extent to which future occupiers of No 136 would feel that their privacy was being invaded. Consequently, although the RDG standards would not be fully met, I do not believe that the development would cause unacceptable harm to future occupiers of No 136.

23. The Council is also concerned about the proximity of the proposed development to Beechmount House, the student accommodation to the east. On each floor, two bedroom windows of the proposed flats would be quite close (minimum 16.6m) to a kitchen/dining room window of the student block. I saw on my visit that there are some sizeable shrubs that would prevent any overlooking between accommodation on the ground and first floors, though I think it likely that there would be a direct line of sight between the top floor window of the student block and the windows on the two upper floors of the proposed flats. The extent to which students use the kitchen/dining room is not known, though I suspect its use is intermittent; moreover, the absence of an objection from the University suggests that this proximity not likely to be a serious concern for students. Potential occupiers of the proposed flats would be aware of the student accommodation and could decide whether or not this relationship was acceptable to them. Whilst this proximity is not ideal, given its limited impact I consider that, by itself, it would not be sufficient reason to reject the proposal.
24. There would also be a marginally below-standard separation distance between the west-facing bedroom windows on the southern wing of the student block and a lounge/kitchen window of the proposed flats. However, the presence of an intervening beech tree in the grounds of Beechmount House would (even in winter) filter views sufficiently, in my view, to ensure that no serious loss of privacy would occur.
25. I turn finally to the effect on the occupiers of the proposed third-floor flats of the proposal to obscure-glaze their west-facing windows in an attempt to comply with the Council's RDG. Three windows to the lounge/kitchen area of one flat and four of the six windows to two bedrooms of the other flat would be treated in this way, substantially restricting the outlook from these rooms. Aside from my conclusion that this would not overcome the overlooking problem, I regard it as a wholly contrived and unsatisfactory solution. Despite each room having one clear-glazed window facing north or south, I believe that the extent of obscure glazing would result in a poor standard of accommodation for occupiers of the flats. Moreover, it would detract significantly from the high quality of design that is promoted by the appellants.
26. For these reasons I conclude that the proposal is contrary to the elements of Local Plan policies SDP 1, SDP 9 and H 2 which seek to protect and respect the amenity of the occupiers of adjoining land.

#### *Car parking provision*

27. Appendix 1 of the Local Plan establishes maximum parking standards according to the accessibility of a site to public transport. In low accessibility areas the maximum on-site provision for a 2-3 bed dwelling is 1.5 spaces per unit, equivalent to 12 spaces for the 8 flats proposed. In medium accessibility areas

the maximum provision is reduced by 50%. The appeal site is in (albeit on the edge of) a medium accessibility area by virtue of being within 400m of the Bassett Avenue/ Winchester Road corridor. In recognition of the fact that the site is close to the outer edge of the medium accessibility area, the Council considers that a maximum of 8 parking spaces should be provided on site.

28. For the reasons explained in paragraphs 3-5 above, it is necessary to consider the proposal on the basis of the plan that shows 14 parking spaces. The Council indicated at the inquiry that the standards in Appendix 1 include an allowance for visitor parking, so the argument that the provision should be regarded as 1 space per flat plus 6 for visitors does not mean that the level of provision accords with the Local Plan, even allowing for a flexible interpretation of policy. Policy SDP 5 states that the maximum standards should not be exceeded; the proposal is clearly in conflict with this policy.
29. Planning Policy Statement (PPS) 3: *Housing*, which was published after the Local Plan, seeks a design-led approach to the provision of car parking space. I have some sympathy with the argument that, because Bassett is an area of high car ownership and the proposal is to build luxury three-bedroom flats which would be suitable for families, it is likely that occupiers of the flats would, on average, own more than one vehicle per unit. However there is no evidence that the development would create a demand for 14 spaces, so I find no basis for accepting a level of on-site provision that even exceeds the maximum that would be allowed in a low accessibility area under policy SDP 5. Over-provision of parking spaces would detract from the high quality design sought by PPS3, and would also be contrary to the wider sustainability objective which aims to reduce dependence on the private car.
30. In reaching this conclusion I have taken into account the view that, if the demand for on-site parking spaces is greater than the supply, the consequence is more likely to be displaced parking occurring on the street rather than a reduction in vehicle ownership. I also note the concern of local residents about the high level of parking on Beechmount Road. No surveys have been conducted, however, and on an evening visit to the area I observed some vacant spaces close to the site and ample unused provision in nearby Glen Eyre Road. Thus whilst a reduced level of on-site provision might cause slight inconvenience to nearby residents as a result of increased competition for on-street parking, I do not believe that the problem would be so serious as to justify rejection of the proposal on this basis.

#### *Other matters*

31. I describe in paragraphs 6-7 above the failure of the appellants to complete a section 106 planning obligation which would overcome the Council's concern that, without mitigation, the development would place unacceptable demands on local infrastructure. However, because a final draft obligation was produced at the inquiry and agreed by the Council to be acceptable, I allowed a short period after the inquiry for the completed obligation to be submitted.
32. The appellants subsequently advised that they were unable to obtain the signature of all parties within the required timescale. Instead, they reached agreement with the Council to pay a cheque to the authority equivalent to all the monies required under the section 106 obligation; this cheque would be

held by the authority for 3 months to allow time for the obligation to be signed by all parties. The cheque would either be returned by the Council on receipt of an executed section 106 obligation or, if that does not transpire, cashed at the end of the 3 month period so that the contributions to infrastructure provision would be fully met.

33. I have considerable doubts about the appropriateness and propriety of this arrangement, which appears to have the potential to be outside the scope of Government advice on planning obligations in Circular 05/2005. I note, in particular, that the post-inquiry correspondence states that two mortgagees have refused to sign the obligation on the basis that it is not company policy. If that situation were to endure the fallback arrangement agreed with the Council, whereby the cheque is cashed, would come into play (had I been minded to allow the appeal and grant planning permission). A direct payment of this nature is wholly contrary to the Government's policy that the decision making process should be transparent. Consequently I cannot be certain that the means of payment has been properly secured.
34. The Council produced evidence at the inquiry which demonstrated that the contributions it was seeking accorded with Local Plan policy and the criteria in Circular 05/2005. I am satisfied, therefore, that the contributions are necessary to mitigate the impacts of the development. The absence of any certainty that an appropriate mechanism is in place for the payment of such contributions is a further reason why the proposal is unacceptable.
35. I have taken account of all the other matters raised. I note the concern of some local residents about increased traffic and turning movements to and from the busy Bassett Avenue, but there is no evidence before me of a serious highway safety problem. I find nothing to outweigh my findings on the main issues.

*Conclusion*

36. For the reasons given above I conclude that the appeal should be dismissed.

*Martin Pike*

INSPECTOR



## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Ann Greaves <i>She called</i>	Solicitor, Legal Services, Southampton City Council
Mr S Lawrence BA(Hons) DipTP DipUD MRTPI	Planning Officer Team Leader, Planning & Sustainability Division, Southampton City Council

### FOR THE APPELLANTS:

Gary Grant of Counsel <i>He called</i>	
Mr C Edmond DipArch RIBA	Principal, Chris Edmond Associates, 1-3 Lyon Street, Southampton SO14 0LD
Mr G Rogers MRICS MRTPI	Planning Consultant, Luken Beck Ltd, 30 Carlton Crescent, Southampton SO15 2EW

### INTERESTED PERSON:

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## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1 Letter dated 1.4.09 from Dr Croudace
- 2 Letter to Southampton CC from Mr Moore, East Bassett Residents Association
- 3 Note on proposed amendments – Mr Grant
- 4 Opening statement for appellants
- 5 Letter to Southampton CC from Mr Price
- 6 Letter to Southampton CC from D & P Jenkins
- 7 Amended proof of evidence – Mr Edmond
- 8 Draft Unilateral Planning Obligation
- 9 Letters from Luken Beck advising third parties of proposed amended plans
- 10 Addendum to Statement of Common Ground
- 11 Extract from emerging Core Strategy
- 12 Final Draft Unilateral Planning Obligation
- 13 Amended lists of conditions
- 14 Closing submissions for Council
- 15 Closing submissions for appellants
- 16 E-mail trail dated 17.4.09 regarding section 106 and alternative arrangement

## **PLANS SUBMITTED AT THE INQUIRY**

- A Site plan of approved development at 136 Bassett Avenue
- B Proposed site plan with agreed dimensions - Drawing 28397 114
- C Proposed street scene – Drawing 28397 105 Rev C