



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

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,
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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:

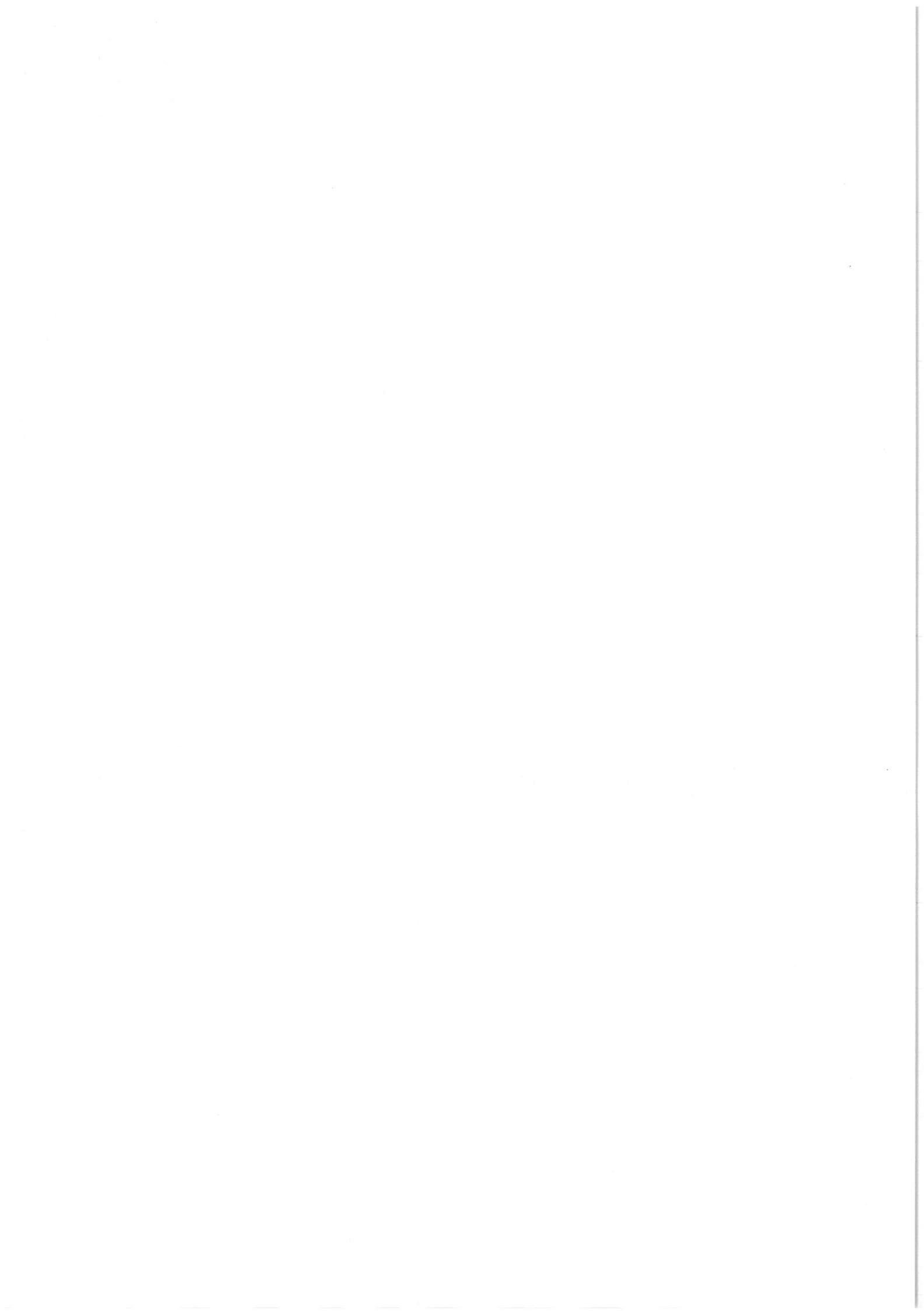
Dr I Croudace	14 Chetwynd Road, Bassett, Southampton SO16 3JD
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 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





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.¹
4. Subsequent to that announcement, and the Inquiry, Regional Strategies were revoked with immediate effect on 6 July 2010.² 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.

¹ Written Statement by the Minister for Decentralisation of 9th June 2010

² 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 supply³, 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.

³ 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 superses-
seded 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