



Appeal Decision

Site visit made on 23 July 2024

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

Appeal Ref: APP/A4520/W/24/3340346

Caesars Den Restaurant and Bar, 97 Newcastle Road, South Shields, South Tyneside NE34 9AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Florence Property Developments Ltd against the decision of South Tyneside Council.
 - The application Ref is ST/0218/23/FUL.
 - The development proposed is the demolition of the Simonside Arms and planning permission for the proposed erection of 13 no. residential dwellings and associated access and landscaping.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of the Simonside Arms and planning permission for the proposed erection of 13 no. residential dwellings and associated access and landscaping at Caesars Den Restaurant and Bar, 97 Newcastle Road, South Shields, South Tyneside NE34 9AA in accordance with the terms of the application, Ref ST/0218/23/FUL, subject to the conditions in the attached schedule.

Application For Costs

2. An application for costs was made by Florence Property Development Ltd against South Tyneside Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of development on the application form includes the appeal location which I have removed in the banner heading as this is not an act of development. The Council have confirmed that the submitted plan TPS004/BOUNDARY PLAN DWG No. 005A received 25/01/2024, showing the proposed boundary treatments is one of the plans their decision was based on, and I have determined the appeal on this basis. A signed and dated Unilateral Undertaking (UU) has been submitted which I will consider later in my decision.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area, including protected trees;
 - the effect of the proposal on highway safety; and

- whether the proposed layout would facilitate convenient and safe routes for existing and future residents.

Reasons

Character and appearance

5. The appeal site is located in between Newcastle Road and Hyperion Avenue and accommodates a fire damaged building centrally within the site. It is within a predominantly residential area, characterised by semi-detached properties set back from the highway. The area has verdant qualities owing to front gardens, hedges and trees, contributing positively to the character and appearance of the area and providing visual relief from the urban character of the area.
6. Several individual and groups of trees lie within the site and the two trees at the boundary with Hyperion Avenue, Tree 9 and Tree 10 as shown in the Arboricultural Method Statement Including Impact Assessment (October 2023) (AMS), are protected by a Tree Preservation Order (TPO). These mature tall trees are clearly valued by local residents and have amenity value through public views which I observed along the length of Hyperion Avenue and from several vantage points in the surrounding streets in the immediate locality.
7. To facilitate the access from Hyperion Avenue Tree 9 would be removed and the visual relief Tree 9 and Tree 10 make together with their continuous canopy in a prominent roadside location would be diminished, as would the contribution they make to the character and appearance of the area. Several groups of trees are also proposed for removal to facilitate the development. However, owing to their location at the site's eastern boundary, less prominently in the townscape, their removal would not affect the character and appearance of the area in the way that the removal of the Tree 9 at Hyperion Avenue would.
8. A comprehensive landscape strategy is proposed, including new trees, shrubs, plants and grassed areas and I note that during the course of the application the replacement tree planting was amended to ensure that larger tree species would be planted, with more significant height and girth to mitigate for the loss of the trees at the site. The proposed dwellings fronting the highway would be set back from the road, with ornamental hedges and grass and shrub planting at the boundaries with the roads. Furthermore, the retained tree at the site's boundary with Hyperion Avenue would still be visible from numerous vantage points along the road and a new tree would be planted next to this to mitigate for the loss of the tree to be removed. Consequently, the proposal would have verdant qualities and reflect the character and appearance of the area.
9. A suitably worded planning condition would secure the ground and tree protection measures set out in Sections 5 and 6 of the AMS to ensure the retained trees are protected, and in time, the replacement tree planting and landscaping would ensure that the site continues to contribute positively to the character and appearance of the area. As such, the proposal would create a high-quality green setting for the new homes, integrating existing, and incorporating new natural features and contributing to local distinctiveness. In doing so the design of the scheme responds positively to the surrounding context beyond the site boundary, having been influenced by the soft landscape in the area. It would therefore comply with the aims set out in the National Design Guide to achieving well designed places.

10. Policy DM1 of the South Tyneside Local Development Framework Development Management Policies (2011) (DMP) and Paragraph 136 of the National Planning Policy Framework (the Framework) both seek to protect trees, retaining them wherever possible. While I acknowledge the important contribution the trees on Hyperion Avenue make to the character and quality of the local environment, in the circumstances of this case, it is not possible to retain both trees and accommodate the necessary access into the site. While it is suggested that removing the access to the site from Hyperion Avenue would retain both protected trees, I do not have any plans showing this and it would not be appropriate to comment on a scheme I have not seen.
11. As set out in the tree survey data in the AMS, Tree 10 is displaying dieback that may be symptomatic of ash dieback. While it is regrettable that it is Tree 9 that is proposed to be removed, which is of a higher retention category quality, both Tree 9 and Tree 10 have the same estimated remaining contribution of 20+ years. In any event, were it necessary to remove Tree 10 due to deteriorating quality from ash dieback, there would be a requirement for its replacement given its TPO status.
12. Concerns have been raised regarding the appearance of the proposal and the use of dormer windows in some of the properties, however I note that the Council has no concerns regarding the effect of the design of the proposal on the prevailing character and appearance of the area. Given the set back from the street frontages and the corner plot location on Hyperion Avenue, I have no clear reason to disagree. I acknowledge resident's frustrations that applications for dormer windows on existing properties in the locality have been refused, however the small scale and positioning of the proposed dormers at the appeal site would not be detrimental to the character and appearance of the area.
13. Overall, the proposal would not be unduly harmful to the character and appearance of the area, including protected trees, and so accords with Policy DM1 of the DMP. Amongst other things, this policy requires development to convey sensitive consideration of its surroundings, protecting existing soft landscaping, including trees, where possible or provide replacement planting where necessary.
14. In addition, it would be in line with the provisions of paragraph 136 of the Framework in relation to trees and achieving well-designed and beautiful places

Highway safety

15. Five of the proposed dwellings would be accessed from the Newcastle Road junction and eight dwellings would be accessed from Hyperion Avenue. There is no dispute regarding the Newcastle Road access, however concerns have been raised from the Council and many local residents regarding the Hyperion Avenue access. While several residents have suggested that an appropriate access can be achieved from Newcastle Road without the need for the Hyperion Avenue access this is not what is shown on the plans before me as part of this appeal and is not something I can comment on further.
16. The proposed access from Hyperion Avenue would be in proximity to a bend in the road which also serves two existing dwellings. A previous scheme at the site was allowed at appeal with a similar access from Hyperion Avenue¹.

¹ Appeal Ref: APP/A4520/A/04/1154455, as provided by the appellant.

However, it is suggested that since that decision there has been a significant increase in car ownership, parking demand and vehicle movements. Nevertheless, as shown at Appendix D of the Technical Note (July 2023) prepared by TPS Transport Consultants Ltd, appropriate visibility splays can be achieved at the Hyperion Avenue access, which I observed would not be compromised by obstructions. In addition, the Highway Authority raised no objections to the scheme, advising that it would generate a negligible increase in traffic movements.

17. Residents have also indicated that they have witnessed several near misses on Hyperion Avenue, including when vehicles are picking up passengers from the nearby metro and perform three point turns in the road. While acknowledging that residents have local knowledge of the road, a review of historic accident data in the technical note has not shown that there are any existing road safety issues along Hyperion Avenue. Furthermore, swept path analysis of a refuse vehicle manoeuvring demonstrates satisfactory access in this regard. Despite the absence of road markings and even if there was on-street parking in the vicinity of the proposed access, Hyperion Avenue is a reasonably wide road, and vehicles would be turning into and out of the site at a time when other vehicles would be at a reduced speed owing to the bend in the road.
18. As such, I have no clear reason to disagree with the conclusions of the technical note or the Highway Authority's response with regard to the proposed site access in this location. Furthermore, a condition to secure a construction transport management plan would ensure that appropriate routes were taken during the construction stage by heavy goods vehicles to avoid any damage to the surrounding roads.
19. The properties on Hyperion Avenue benefit from a driveway which I did not observe to be unduly narrow. There is no substantive evidence to indicate that they cannot be used for off-street parking for at least one vehicle. As such, there is not a limited availability of off-street parking as suggested by the Council. I observed some on-street parking at the time of my site visit, and even if residents may well choose to park on the road, on-street parking did not appear to affect the free flow of traffic, reduce visibility, or pose a danger to highway safety.
20. Paragraph 115 of the Framework states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. The proposal would provide sufficient in-curtilage parking spaces per dwelling to meet the Council's parking standards, and for the eight dwellings accessed from Hyperion Avenue would provide two visitor spaces, one space short of the advised number of visitor spaces.
21. However, even if Hyperion Avenue and other local roads are heavily congested at certain times of the day, there is no substantive evidence to suggest that the proposal would result in an increase in on-street parking of such a scale that it would restrict the free flow of vehicle movements that would be harmful to highway safety or the operational performance of the road network.
22. To conclude on this main issue, the proposal would not be harmful to highway safety, and accords with Policy DM1 of the DMP, which includes a requirement for the impact of development to be acceptable in relation to highway capacity

and safety. The proposal would also be in line with the provisions of the Framework at Section 9 in relation to sustainable transport.

Convenient and safe routes

23. The appeal site is located close to facilities and services and a segregated footpath through the site is proposed, linking the northern and southern parts of the site to these local facilities and services to increase accessibility for pedestrians, in accordance with Policy DM1 of the DMP. Subject to revisions to the irregular alignment and narrowing near to Plot 11 to be secured through a planning condition, the Highway Authority have not raised concerns with the pedestrian link.
24. I have carefully considered concerns regarding limited natural surveillance along the pedestrian link owing to the orientation of the proposed dwellings and the absence of openings on the elevations facing the footpath. However, as suggested by Northumbria Police, appropriate lighting would ensure that the footpath was a safe route for residents, and a condition can be imposed to requiring that details of external lighting be submitted.
25. There is no substantive evidence to indicate that the footpath would become an escape route for e-bikes and motor bikes, or that vegetation would overhang the footpath to narrow and partially conceal the route. In any event, the management and maintenance of the landscaping strategy at the site can be secured through a planning condition. Northumbria Police and the Council's Community Safety Officer raised no objection to the proposed pedestrian route, and I have no clear reason to come to a different view.
26. As such, the layout of the proposal would therefore facilitate convenient and safe routes for existing and future residents. It would be in accordance with Policy DM1 of the DMP which amongst other things, requires that site layouts facilitate convenient and safe routes between facilities, prioritise movement by pedestrians and cyclists and that development has an acceptable impact on residential amenity.

Protected Sites

27. The appeal site lies within the zone of influence for protected coastal sites, including the Durham Coast Special Area of Conservation and the Northumbria Coast Special Protection Area and Ramsar Site. The sites are protected pursuant to the Conservation of Habitats and Species Regulations 2017 (the Regulations) and are recognised for their value as coastal habitats and support internationally important populations of breeding and non-breeding birds and natural fauna. Qualifying features include vegetated sea cliffs of the Atlantic and Baltic coasts, Purple Sandpiper and Ruddy Turnstone.
28. The protected sites have been identified as being vulnerable to harm from new housing, including disturbance to bird species and their special features through increased recreational activity on the coast. Additional residents from the proposal would therefore be likely to have a significant effect on the protected sites.
29. As the competent authority I am required to carry out an appropriate assessment in relation to the effect of granting permission on the integrity of the protected sites. Mitigation has been developed to avoid such adverse effects, funded through proportionate developer contributions. The Interim

Supplementary Planning Document 23: Mitigation Strategy for European Sites (Recreational Pressure from Residential Development) (2018) (SPD) sets out a package of mitigation measures to avoid or mitigate for increased recreation pressure that would otherwise occur as a result of new growth within South Tyneside. Measures include raising awareness and promoting behavioural change among visitors to the coasts and implementing signage to manage visitor access.

30. Pursuant to the SPD, arrangements are in place for financial contributions to be sought in connection with new residential development, to fund mitigation measures. The UU includes an obligation to secure the required mitigation payment and I am satisfied that this would be effective in securing the required contribution. In addition, it meets the relevant tests for planning obligations in the Framework.
31. On this basis, in carrying out the appropriate assessment, the adverse effects of the proposal on the integrity of the protected sites would be avoided. Consequently, with the above mitigation measures in place, the proposal would not adversely affect the integrity of the protected sites, either alone or in combination with other development.

Other Matters

Planning obligation

32. Paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) confirm that planning obligations must only be sought where they meet each of the following three tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
33. Alongside the contribution to the mitigation strategy for protected sites discussed above, the UU contains a planning obligation relating to off-site biodiversity net gain. Taking account of the planning obligations that are set out in the UU, I conclude that the proposal makes adequate provision for ecology and biodiversity. The proposal is therefore in accordance with Policy EA3 of the South Tyneside Local Development Framework Core Strategy (2007) and Policy DM7 of the DMP. Amongst other things these policies require that development secures and enhances the integrity of designated sites and does not result in any net loss of biodiversity value.

Housing

34. The principle of housing at the appeal site is not disputed, nor is it in dispute that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. The proposal makes efficient use of a brownfield site and would deliver 13 dwellings in an accessible location, which would be a clear benefit of the scheme.

Other points raised by interested parties

35. Other concerns have been raised, including the loss of the public house and the effect on neighbouring occupiers living conditions, with regard to noise, light and privacy. These matters are largely identified and considered within the officer report and were also before the Council when it prepared its evidence.

Other than the main issues set out above, the Council did not conclude that they would amount to reasons to justify withholding planning permission. I have been provided with no substantiated evidence which would prompt me to disagree with the Council's conclusions in these respects.

Conditions

36. The conditions suggested by the Council have been considered and amended as necessary to ensure compliance with the Planning Practice Guidance and the Framework. Furthermore, the appellant is in agreement with the pre-commencement conditions.
37. It is necessary to impose a condition identifying the approved plans for clarity, this includes reference to the engineering plan which shows ground floor levels and so a separate condition on this matter is not imposed. To manage the risk of flooding a pre-commencement condition is imposed in relation to drainage to ensure a suitable scheme can be achieved at the site. This includes surface water drainage and reference to verification reports and so separate conditions are not required.
38. The submission and approval of a construction transport management plan is required in the interest of highway safety and protecting the living conditions of neighbouring occupiers, and before the commencement of development as the details relate to the construction phase. I also impose a condition in relation to contamination to protect living conditions, which is required before the commencement of development to ensure that the proposal can be carried out safely. It covers remediation, verification reports and contamination not previously identified therefore separate conditions are not necessary.
39. In the interest of historical recording of the site and its likely archaeological interest a condition is imposed in relation to archaeological recording, including a report of the results so a separate condition is not necessary. This is required before the commencement of development so that a programme of archaeological recording can take place to ensure that ground works do not impact on any surviving archaeological remains.
40. A condition is imposed to secure details of both hard and soft landscaping, including biodiversity enhancement measures in the interest of character and appearance, biodiversity and living conditions of existing and future residents. This covers boundary treatments, external lighting and a habitat landscaping management and monitoring plan and as such separate conditions are not required. For the same reasons, conditions are imposed to make sure that the development is carried out in accordance with appropriate tree and ground protection measures and a wildlife protection plan. These conditions are required before the commencement of development to ensure the retained trees are not damaged and wildlife is not harmed during the construction stage. Additionally, in the interest of the biodiversity of the site I impose a condition to prevent any habitat disturbance to nesting birds during the clearance of the site.
41. To protect living conditions and highway safety a condition is imposed to secure details of the pedestrian route through the site. It is required before the commencement of development to ensure a suitable route can be achieved. I have removed reference to ground protection measures as this is covered by the tree and ground protection condition. In addition, in the interest of highway

safety, a condition is imposed to ensure all areas to be used by pedestrians and vehicles are fully laid out prior to occupation. This includes car parking, the resurfacing of the retained access and the management and maintenance of the streets and so separate conditions are not necessary. For the same reason, a condition is imposed to secure the closure and reinstatement of associated works at the vehicle access opposite Plot 1. A condition requiring cycle parking is provided is imposed in the interest of delivering sustainable development.

42. To ensure proper arrangements are in place to protect living conditions a condition is imposed in relation to bin storage. Similarly, a condition in relation to demolition and construction hours is necessary. In the interest of protecting the character and appearance of the area, a materials condition is imposed, however I have removed reference to hard surface treatments as this is covered in the landscaping condition.

Conclusion

43. For the reasons given above, I conclude that the proposal accords with the development plan read as a whole. There are no material considerations that indicate that I should take a decision otherwise than in accordance with it. Therefore, the appeal is allowed.

F Harrison

INSPECTOR

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: TPS002 FULL PLANS DWG No. 002E; TPS004/STREETSCENE DWG No. 004A; TPS004/BOUNDARY PLAN DWG No. 005A received 25/01/2024; TPS006/CONVEYANCE PLAN DWG No. 006A; TPS003E/EX & PROP PLAN DWG No. 003E; LANDSCAPE STRATEGY No. D346.L.001 REV E, PROPOSED ENGINEERING DWG No. D001 REV 5 17.01.2024; and SURFACING PLAN DWG No. D500 REV 2 31.08.2023.

Pre-commencement

- 3) No development shall take place until a detailed drainage scheme for the disposal of foul and surface water from the site, including to manage run off from private land onto the highway/adoptable highway, has been submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and as shown on PROPOSED ENGINEERING DWG No. D001 REV 5 17.01.2024. Details shall include:

- a timetable for implementation;
- construction details (component drawings, materials, vegetation);
- verification report(s) to include construction details and as built drawings (in dwg/shapfile format) for all sustainable drainage system components, including dimensions (base levels, inlet/outlet elevations, areas, depths, lengths, diameters, gradients etc) and supported by photos of installation and completion; and
- a management and maintenance plan for the lifetime of the development.

The development shall be carried out in accordance with the approved details before any part of the development is first occupied. Thereafter, it shall be managed and maintained in accordance with the agreed management and maintenance plan.

- 4) No development shall take place, including site clearance, until a wildlife protection plan has been submitted to and approved in writing by the local planning authority. It shall include the measures to be taken to minimise the impacts of any works on amphibians, hedgehogs and bats at the site, including the following:

- details to clarify that any excavations left open overnight will have a means of escape for mammals that may become trapped in the form of a ramp at least 300mm in width and angled no greater than 45°;
- a plan showing the extent and location of relevant works;
- a timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction; and
- the persons responsible for implementing the protection measures.

The protection plan shall be implemented and the development carried out in accordance with the approved details.

- 5) No development shall take place, including site clearance, and no plant, machinery or building materials shall be brought on to the site, until the tree and ground protection measures detailed in the Arboricultural Method Statement Including Impact Assessment Ref: ARB/CP/3017 (October 2023)(AMS) by Elliott Consultancy Ltd have been implemented on site and a certification of inspection has been submitted to and approved in writing by the local planning authority. All tree work shall be carried out in accordance with British Standard BS 3998: Tree work: Recommendations (or an equivalent British Standard if replaced) and shall be retained for the duration of the construction works at the site.
- 6) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
- i. a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii. the site has been remediated in accordance with the approved measures and timescales; and
 - iii. a verification report has been submitted to and approved in writing by the local planning authority.
- If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:
- i. additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii. a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 7) No development shall take place until a programme of archaeological recording has been undertaken by an appointed archaeologist, in accordance with a specification provided by the local planning authority. The appointed archaeologist shall be present at relevant times during the undertaking of groundworks in accordance with a programme of visits to be agreed in writing by the local planning authority. A report of the results shall be submitted to and approved in writing by the local planning authority before any part of the development is first occupied.
- 8) No development shall take place until a Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of:
- temporary traffic management measures, temporary boundary treatments, vehicular/pedestrian gates, visibility splays, temporary access routes (avoiding Hyperion Avenue and Fenwick Avenue) for vehicles;

- vehicle cleaning facilities and/or measures to ensure that the public highway is cleansed of debris from the construction vehicles;
- the parking of vehicles of site operatives and visitors;
- the loading/unloading of plant and materials, including turning area facilities;
- the storage of plant and materials used in demolition/constructing the development; and
- the disposal of surface water from the site for the duration of the demolition/construction phases.

The approved CTMP shall be adhered to throughout the demolition and construction period.

- 9) No development shall take place until details for the segregated pedestrian footway through the site (north to south), as shown on TPS003E/EX & PROP PLAN DWG No. 003E, PROPOSED ENGINEERING DWG No. D001 REV 5 17.01.2024 and SURFACING PLAN DWG No. D500 REV 2 31.08.2023, have been submitted to and approved by the local planning authority. Details shall include the width and alignment at the footway tie-in at the southeast corner of plot 11. The development shall be carried out in accordance with the approved details thereafter.

After commencement

- 10) Hedges, trees and shrubs shall only be cleared outside of the bird nesting season (1 March to 31 August inclusive), unless, before the clearance commences, a report has been submitted to and approved in writing by the local planning authority to establish whether the site is utilised for bird nesting. Should the report reveal the presence of any nesting species, then no development shall take place during the period specified above unless a mitigation strategy has first been submitted to and approved in writing by the local planning authority which provides for the protection of nesting birds during the period of works on site and shall then be implemented as agreed.
- 11) Demolition and construction work, and deliveries taken at the site shall only take place between 8am and 6pm on Mondays to Fridays, 8am and 1pm on Saturdays, and not at any time on Sundays or Bank and Public Holidays.
- 12) Notwithstanding the description of materials shown on approved plan TPS002 FULL PLANS DWG No. 002E, no development above ground level shall take place until full details/samples of all external facing materials to be used in the construction of all the development have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details/samples.
- 13) Notwithstanding the details shown on TPS004/BOUNDARY PLAN DWG No. 005A received 25/01/2024, LANDSCAPE STRATEGY No. D346.L.001 REV E, Biodiversity Net Gain Assessment (October 2023) by Origin Planning Services Ltd and the Biodiversity Net Gain Metric V2, no development above ground level shall take place until details of both hard and soft landscape works, including biodiversity enhancements measures, have been submitted to and approved in writing by the local planning authority. These details shall include:

- planting plans, specifications and schedules (including planting size and numbers/densities, seeding or turfing and topsoil depths);
- retained trees and new tree planting, hedges and shrubs;
- hard surfacing materials;
- means of enclosure and boundary treatments, including invisibility details for the boundary fence adjacent to the footpath link and amendments to include a 2x2m splay to plot 11. Boundary treatments shall include gaps with dimensions of 13cm x 13cm in fences between gardens and landscaped areas to allow hedgehog movement and foraging;
- a minimum of 7no integrated roosting features for birds on north and northeast elevations and 7no integrated bat boxes on southwest elevations;
- external lighting, including a phasing plan to secure its completion; and
- a scheme for the timing/phasing of implementation works;

The hard landscaping works shall be carried out in accordance with the approved scheme before any part of the development is first occupied and thereafter maintained as such. The soft landscaping works shall be carried out in accordance with the approved scheme for timing/phasing of implementation, or within the next planting season following final occupation of the development hereby permitted, whichever is the sooner. The biodiversity enhancement measures shall be managed and maintained in accordance with an approved habitat landscaping management and monitoring plan, in accordance with the requirements of British Standard BS 8683; Process for designing and implementing biodiversity net gain – Specification (or equivalent British Standard if replaced).

Prior to occupation

- 14) Prior to the occupation of the development hereby permitted, refuse storage as shown on approved plan TPS002 FULL PLANS DWG No. 002E shall be installed, made available for use, maintained, and retained as such thereafter.
- 15) Prior to the occupation of the development hereby permitted, all areas shown on the approved plans to be used by pedestrians and vehicles shall be fully laid out, including car parking which shall be implemented, made available for use and retained as such thereafter. The management and maintenance of the streets within the site thereafter shall be in accordance with details agreed by the local planning authority.
- 16) Prior to the occupation of the development hereby permitted, cycle parking for each dwelling shall be provided and retained thereafter, in accordance with details submitted to and approved in writing by the local planning authority.
- 17) Prior to the occupation of the development hereby permitted at plots 1-5, the closure of the existing redundant vehicular access on the northern boundary of the site, opposite plot 1, together with reinstatement of kerb lines, footway, boundary treatments, including associated works, shall be implemented in accordance with details first submitted to and approved in writing by the local planning authority.

End of Conditions



Costs Decision

Site visit made on 23 July 2024

by F Harrison BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

Costs application in relation to Appeal Ref: APP/A4520/W/24/3340346
Caesars Den Restaurant and Bar, 97 Newcastle Road, South Shields, South
Tyneside NE34 9AA

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Florence Property Developments Ltd for a full award of costs against South Tyneside Council.
 - The appeal was against the refusal of planning permission for the demolition of the Simonside Arms and planning permission for the proposed erection of 13 no. residential dwellings and associated access and landscaping.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant is seeking a full award of costs and highlights substantive issues. It is alleged that the Council acted unreasonably by refusing the proposal based on vague generalised and inaccurate assertions that are contradictory and unsubstantiated. In addition, it is suggested that the decision was politically driven rather than based on sound planning grounds.
4. While it is also suggested that the decision was pre-determined because some Members of the Committee read their objections to the proposal from a script, and notwithstanding the Council's costs rebuttal, this is a separate issue relating to administrative matters. Any potential issues of pre-determination should be addressed directly with the Council outside of the appeal process and are not matters on which I can comment as part of this costs decision.
5. The proposal was recommended for approval in the officer report, however after discussion and debate it was refused at committee because in the committee's view the proposal, involving the loss of a protected tree on Hyperion Avenue, would harm the character and visual amenities of the area and would be harmful to highway safety from increased car parking and vehicle movements. It was also considered that the segregated pedestrian route through the site would result in harm to the safety and security of existing and future residents because of a lack of natural surveillance. In doing so, the proposal would be contrary to the provisions of Policy DM1 of the South Tyneside Local Development Framework Development Management Policies (2011) and the National Planning Policy Framework.

6. As accepted by the applicant, the Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence. The PPG sets out that a local planning authority is at risk of an award of costs if it makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
7. In my view, the committee minutes are sufficiently detailed and explain the reasons why Members of the Council did not agree with the officer's assessment and came to a different conclusion. That is a matter of planning judgement, notwithstanding the officer recommendation.
8. It seems to me that the committee had regard to the representations made, the officer report and relevant planning policy and the reason for refusal is clear and sufficiently detailed. No substantive evidence has been provided to demonstrate that the decision was made for political reasons. While the Committee undoubtedly considered the views of objectors, it was quite right to do so. Furthermore, there is no evidence of the decision having been unreasonably influenced by them.
9. The applicant may disagree with certain matters raised by Members of the Council, however the reason for refusal clearly identified the alleged harm arising from the development. Therefore, and whilst I found differently to the Council; in that there would not be a conflict with the development plan, I am satisfied that the Council substantiated its reasons for refusing the planning application, demonstrating on planning grounds why the proposal would be unacceptable in their view.

Conclusion

10. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and I therefore conclude that the application for an award of costs is refused.

F Harrison

INSPECTOR