DERWENTSIDE DISTRICT COUNCIL

DEVELOPMENT CONTROL COMMITTEE

4th June 2007

REPORT OF THE DIRECTOR OF ENVIRONMENTAL SERVICES

APPEAL DECISION

Appeal against the refusal to grant outline planning permission for the erection of one dwelling on land west/south west of Bloemfontein Co Junior School, The Middles, Craghead, Stanley.

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1. A planning application was refused under the Council's delegated powers for the above development on 30th August 2006. The reason for refusal was: -

   'The proposed dwelling is located within the open countryside and no agricultural or forestry justification has been put forward. The proposal is therefore contrary to policies EN1, EN2 and HO15 of the Derwentside District Local Plan which seeks to control sporadic residential development in the countryside'.

2. The applicant appealed against the Council's Decision and the appeal was considered under the written representations procedure. A copy of the Inspectors decision letter is attached. The Planning Inspector dismissed the appeal.

3. The Inspector considered the appeal site to be outside of the existing settlement. Consequently, the construction of a dwelling on the site would result in the encroachment of built development into the countryside, and the proposal would therefore be contrary to policy EN2 of the Local Plan.

4. The Inspector was also of the opinion that the dwelling proposed was not an occupational dwelling required for the needs of a full time worker in connection with the stables on site as the stables were run as a hobby and not for business purposes and no other information as to the care needs of the horses was supplied. The Inspector therefore concluded that the presence of the stables did not establish the basis for an exception to be made to local planning policies EN2 and HO15 and national planning policy and the appeal was dismissed.

   Recommendation

5. The decision be noted.
   Report Prepared by Miss Louisa Fleming, Area Planning Officer

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4th June 2007

REPORT OF THE DIRECTOR OF ENVIRONMENTAL SERVICES

APPEAL DECISION

Appeal against the refusal to grant full planning permission for the demolition of a double garage and the erection of bungalow at 31 Parklands

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1. The Development Control Committee refused to grant full planning permission for the above development on 1 June 2006. The reason for refusal was:

   "The proposed new dwelling would result in a cramped form of development which would not respect the existing pattern and form of development in the settlement which is characterised by dwellings in larger spacious plots. The development is contrary to Policy HO5 of the Local Plan".

   The application had been recommended for approval by Planning Officers.

2. The appeal was considered at a Hearing, held on 13 March 2007 and reconvened on 31 March. A copy of the Inspector's decision letter is attached, however the appeal has been upheld, and an award of costs made against the Council.

3. The Inspector concluded that the bungalow would be modest, set well back from the road and would be unobtrusive. She felt that it would not detract from the openness of the estate, and would not be too large on a small plot in comparison with the size of other plots on the estate.

4. One issue concerned the effect the bungalow would have on the rural nature of the area when viewed from the B6310. The Inspector has dismissed the Council's and third parties views that the bungalow would have significant impact in this respect, and seems to have accepted the Appellant's assurances that the existing hedge would be retained, even though this did not form part of the original application. At the Hearing the view was put forward by the Council and third parties that it was highly unlikely that the hedge would survive the construction of the bungalow. The retention of the hedge has not been made a planning condition, so the Appellant is under no obligation to try to retain it or replace it should it die.

5. Local residents also argued that building the bungalow on the garden land involved would be contrary to a covenant. Although there was much debate about the relevance of the covenant at the reconvened hearing on 31 March, the Inspector has simply concluded that this is a legal matter that does not

affect her conclusion on the planning merits.

6. The reason for the award of costs relates to the need to hold a second session of the Hearing on 31 March (a Saturday morning). This arose because the third parties (i.e. the objectors to the planning application) were not notified of the original hearing date, 13 March. This is very regrettable, however the procedure that is followed in such cases is that a first letter is sent to the Council by the Inspectorate proposing a provisional date for the Hearing. Once agreed by the Council and the Appellant, a further letter is sent by the Inspectorate confirming the date, and reminding the Council of the need to notify interested parties. The first letter was received and is on file, but the second letter is missing from the file. Whilst there is little alternative but to accept that the error lies with the Council, there is no way of establishing whether the second letter was in fact received, and if it were not this would account for the failure to notify the objectors. In the event, the Planning Inspector adopted a very sensible approach and heard the Appellant's and Council's evidence on 13 March and then reconvened on the 31 March to hear the third parties' case. No injustice was caused, however the Appellant is clearly entitled to claim that he had to attend unnecessarily for a further half day, and will now proceed to submit his costs in that respect.

7. The Council also submitted a claim for costs against the Appellant. The reason for doing this was that the same site was subject to a planning application in 2005 (ref 1/2005/0176) which was refused planning permission. That application related to a larger dwelling that included first floor accommodation and retained the existing double garage. In that case there was also an appeal, but a different Planning Inspector decided to dismiss the appeal. However he also made an award of costs against the Council over a question about which elements of the proposal required planning permission and which did not. That appeal decision is subject to High Court Challenge by the Appellant, and a decision is still awaited. The Council's case in applying for an award of costs in the second appeal was that there were insufficient differences between the two applications. The second application did not overcome the reasons put forward by the Inspector for dismissing the appeal, and therefore a second appeal should not have been brought. Unfortunately the Inspector did not accept that argument, noting in her decision that the second application was materially different in terms of scale and appearance and therefore it was not unreasonable to make an appeal.

Recommendation

8. The Council could consider whether it wishes to Challenge the Inspector's decision in the High Court. Before so doing, the Council would need to seek specialist legal advice on whether there is a strong case for seeking a review. The recommendation is that the decision is noted.

Report Prepared by Mr T. Wheeler, Head of Planning and Building Control