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## Appeal Decision

Site visit made on 28 September 2015

**by D M Young BSc (Hons) MA MIHE**

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

**Decision date: 28 October 2015**

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**Appeal Ref: APP/K2420/W/15/3013851**  
**148 Kirkby Road, Barwell, Leicestershire LE9 8FS.**

- 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 Nick Jollands against the decision of Hinckley & Bosworth Borough Council.
  - The application Ref 14/01074/FUL, dated 23 October 2014, was refused by notice dated 18 December 2014.
  - The development proposed is erection of one detached house (re-submission of previous refusal 14/00652/FUL).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Council determined the planning application in light of the Secretary of State's Written Ministerial Statement of 28 November 2014 and subsequent alterations to the Planning Practice Guidance (PPG) concerning planning obligations for social infrastructure contributions. As such it did not consider it appropriate at that time to apply policies IMP1 and REC3 of the Hinckley and Bosworth Local Plan 2001 (LP) which seeks financial contributions towards public play and open space facilities from such proposals.
3. Following the High Court judgement of 31 July 2015 in relation to the Written Ministerial Statement, the Court made a Declaration Order on 4 August 2015, confirming that the policies in the Written Ministerial Statement must not be treated as a material consideration in the decision making process. Consequently, it is necessary for me to consider the appeal proposal in the light of policies IMP1 and REC3. The main parties were given the opportunity to comment on the implications of the Declaration Order and the Council now takes the view that a contribution to play and open space provision should be made.

### Main Issues

4. The main issues are, firstly, whether a social infrastructure contribution should be made and how should that be secured and, secondly, the effect of the proposal on the character and appearance of the area.

## Reasons

### *Social infrastructure contribution*

5. On the basis of policies IMP1 and REC3 of the LP and the Play and Open Space Supplementary Planning Document, a contribution of £1,250.80 has been requested to support the provision of off-site public play and open space facilities for children. On the basis of the information provided, I am satisfied that the requirement for such a contribution would be in accordance with the statutory tests.
6. I have had regard to comments made by the appellant regarding the current uncertainty over the Declaration Order. However at the time of writing, although permission has been granted to appeal the judgement, both it and the Declaration Order remain in place and I am required to have due regard to them.
7. Given the above, I find that a contribution towards social infrastructure should be made. The appellant has not submitted a planning obligation although has confirmed that he is willing to do so. I have therefore considered the possibility of imposing a negatively worded condition. The PPG states; "*A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases*". It goes on to say that these conditions should only be used in "*exceptional*" circumstances where the case is "*complex*" and "*strategically important*".
8. I am not persuaded that the circumstances of the appeal scheme before me fulfil the aforementioned criteria and therefore, I conclude that it would not be appropriate for me to deal with this issue by way of a planning condition. Accordingly, the lack of such an obligation means the development would be at odds with policies IMP1 and REC3 of the LP.

### *Character and appearance*

9. The appeal site comprises a rectangular plot of land between 148 and 146 Kirkby Road. No 148 is a large, recently extended detached property whereas No 146 is a semi-detached property occupying a smaller plot. The site has been cleared and it is proposed to erect a new two-storey detached property with a shared access with No 148.
10. The appeal property is situated on the edge of a small enclave of 3 large detached dwellings. These properties all occupy large plots and are set well back from Kirkby Road. The character of this area is in marked contrast to the wider area which has a higher density and a more varied character, being made up of dwellings of differing age and styles with smaller plot sizes. I do not therefore agree that the character of the street scene is characterised entirely by well spaced dwellings of regular width as suggested by the Council.
11. The proposal would respect the front building line and height of adjacent properties and the Council raise no objection to the design which would incorporate features found in adjacent properties. The Council argue that the constrained width of the plot would result in a dwelling that would fail to integrate with the street-scene.

12. Whilst I accept the dimensions of the plot would differ to those on either side, there is already a significant difference in this regard between Nos 148 and 146, the former being a detached property on a large plot and the latter a semi-detached property on a smaller plot.
13. The appeal scheme would undoubtedly have a narrower design and plot than the 3 detached properties to the north. However, seen in its immediate context alongside Nos 148 and 146, the plans indicate there would be a reasonable degree of separation, particularly above ground-floor level. In view of these considerations and the fact that the dwelling would be set well back from Kirkby Road, I do not consider, despite it being visually different to adjacent properties, that it would be inappropriate or unduly harmful.
14. I therefore conclude that the proposal would not harm the character and appearance of the area. As such, it would accord with the aims and objectives of policy BE1 of the LP, the New Residential Development Supplementary Planning Guidance and the relevant sections of the National Planning Policy Framework which collectively seek a high standard of design which safeguards and enhances the existing environment.

#### *Other Matters*

15. I have had regard to concerns raised by adjacent occupiers in relation to the effect of the development on privacy, outlook and loss of light, however, the relationship between No 146 and the proposed dwelling appears to be similar to that which was granted planning permission under the scheme for two dwellings (Ref: 13/00833/FUL). In any event, I have not been provided with details of any local standards in relation privacy and/or separation distances that might be breached if the appeal were allowed. Consequently, I see no reason to dispute the Council's conclusions on these matters.

#### *Conclusion*

16. Whilst I have found the proposal's effect on the character and appearance of the area to be acceptable, this does not outweigh the conflict I have identified with LP policies IMP1 and REC3. For the reasons given above, I therefore conclude that the appeal should be dismissed.

***D. M. Young***

Inspector