

# Appeal Decision

Site visit made on 17 February 2016

**by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM**

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

**Decision date: 01 March 2016**

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## **Appeal Ref: APP/P0119/W/15/3137527**

### **Land at Laurel Hill, Cribbs Causeway, Bristol**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Dick Lovett Companies Ltd against the decision of South Gloucestershire Council.
  - The application ref. PT14/1886/O, dated 9 May 2014, was refused by notice dated 30 September 2015.
  - The development proposed is: residential development of up to 110 dwellings (net increase of up to 108 no. dwellings), open space, parking, landscaping, ecological corridor and associated engineering works; vehicular access to be provided from Catbrain Hill including removal of two existing dwellings (5 and 6 Catbrain Hill).
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### **Decision**

1. The appeal is allowed and planning permission is granted for residential development of up to 110 dwellings (net increase of up to 108 dwellings), open space, parking, landscaping, ecological corridor and associated engineering works with vehicular access to be provided from Catbrain Hill, including removal of two existing dwellings (5 and 6 Catbrain Hill), on land at Laurel Hill, Cribbs Causeway, Bristol in accordance with the terms of the application, ref. PT14/1886/O, dated 9 May 2014, subject to the conditions set out in the schedule at the end of this decision.

### **Application for Costs**

2. An application for costs was made by Dick Lovett Companies Ltd against South Gloucestershire Council. This application is the subject of a separate decision.

### **Preliminary Matter**

3. The application form indicates that all matters of detail apart from access are reserved for future determination.

### **Main Issues**

4. **The Council raises no objections to the principle of the site's development for residential use.** The land lies within the Cribbs/Patchway New Neighbourhood (CPNN) as defined by policy CS26 of the South Gloucestershire Local Plan: Core Strategy 2006-2027 (CS) adopted in 2013. The CPNN Supplementary Planning Document (SPD) (2014) in support of CS policy CS26 contains a framework diagram that indicates residential development in this location.
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5. In respect of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> refusal reasons, a legal agreement under section 106 of the Act has been submitted containing covenants regarding highway improvements, open spaces, an off-site public open space contribution and affordable housing. I return to this below.
6. Bearing the above factors in mind, the main issues in this appeal are the effects of the proposed development on:
  - (a) the safety and convenience of non-car users; and
  - (b) the character, distinctiveness and amenity of the locality.

## **Reasons**

### ***Safety and Convenience of Non-Car Users***

7. The appeal site, which comprises pasture land and former woodland, is bounded to the east and north-east by the rear of residential properties. To the north-west lies a commercial area (The Laurels), with commercial uses in the ownership of the appellant lying further to the west.
8. It is proposed to create an access onto Catbrain Hill by demolishing two dwellings (nos. 5 and 6). Catbrain Hill is a cul-de-sac with a line of dwellings along its western side and a hedgerow to the east. A more recent housing development (Medlar Close) lies to the east of the hedgerow. Catbrain Hill does not have a footway and is of variable width. The boundary between the highway and adjoining properties is, in places, poorly defined on the ground. A number of cars were parked on-street at the time of my site visit.
9. The road to the north of the junction with Medlar Close (Catbrain Lane) is somewhat wider than Catbrain Hill, and has a footway on one side for most of its length. A traffic-calmed pinch point leads to a roundabout: access to the main road network (at Lysander Road) is by a signal-controlled junction.
10. During the **application's consideration, the appellant submitted additional** details of off-site highways works on Catbrain Hill. In summary, these include resurfacing of the adopted highway, the provision of a 1.2 metre wide footway, introduction of a priority junction at the site access (giving priority to traffic entering and leaving the appeal site) and the introduction of lay-by parking. Areas of carriageway that have been subsumed into the curtilage of adjacent dwellings may be returned to a highway use, thereby increasing carriageway width. The resulting highway would be of a variable width, with pinch points located immediately to the north of the proposed access and in the vicinity of some steps which protrude into the carriageway. Provision for the proposed off-site highway works is made in the submitted Section 106 agreement.
11. **The Council's** first refusal reason refers to the potential for conflict from additional vehicles and the pedestrians/cyclists and non-car users of Catbrain Hill and alleges that the proposal would fail to ensure safe and convenient use of Catbrain Hill for non-car users. The CPNN SPD shows the road as part of a proposed pedestrian/cycle route that is intended to form part of a network linking the new neighbourhood to the Cribbs Causeway developments. It would join a proposed east-west Cycle Trunk Route. While the Council accepts that the above-noted changes to Catbrain Hill would provide safe access for cars and lorries, it feels that the arrangements now proposed – including the above-noted pinch points – would not result in a convenient, attractive or comfortable route for cyclists.

12. The Council has not presented any technical highway or road safety evidence to support its assertions. When the matter was reported to the relevant Committee<sup>1</sup>, no objection **was raised by the Council's** Highway Officer to the scheme as revised. In particular, the Officer noted that the revised layout would reflect what is commonly found in many rural roads, with a minimum pinch point of 4.1 metres but typically varying between 4.8 and 5.5 metres. The pinch point would enable cars to pass while acting to slow vehicles down. Cars and lorries could pass in the 4.8 metre wide sections, while lorries could pass each other in the 5.5 metre section. The Officer added that a refusal on the grounds of highway safety would not be sustainable at appeal.
13. I share that view. The proposals as submitted include improvements to the road surface, road carriageway and parking provision, as well as the addition of a footway. They have been subject to technical assessment including a Stage 1 Road Safety Audit, and have **been amended to take account of the audit's** recommendations with the inclusion of **a 'ghosted' footpath around the** above-noted projecting steps and white-lining at the proposed site access point. These changes would not provide a barrier to pedestrian or cycle movement along the route. Indeed, I agree with the appellant that the works now proposed would result in some improvements over present conditions in respect of the new footway and the intended carriageway resurfacing.
14. It is accepted that, as a matter of principle, high traffic volumes can discourage cycle use. However, in the present case the likely levels of traffic flows on Catbrain Hill, which are anticipated to peak at some 63 extra vehicular movements between 1700 and 1800 hours (amounting to some 515 extra daily movements overall), taken together with vehicle movements arising from the existing dwellings on Catbrain Hill, would not fall into that category. National guidance in the *Manual for Streets* (2007) notes that there is a self-limiting factor on pedestrians sharing space with motorists of around 100 vehicles per hour. Even at peak times, vehicle usage on this route would be likely to be well below that figure. **The Council does not seek to challenge the appellant's** assessment of likely traffic flows. Notwithstanding the concerns raised by local residents in respect of this matter, I have seen no authoritative technical evidence that would cause me to take a different view.
15. While it is clear that vehicle numbers on Catbrain Hill would increase as a result of the development, it has not therefore been shown that the additional flow of vehicles on the road or the highway works that are proposed would either cause safety problems for cyclists or would discourage the use of the road as part of the proposed cycle route network. Accordingly, I conclude that the safety and convenience of non-car users would not be materially harmed. In this regard the scheme would accord with CS policies CS1 and CS26. It would also be in line with paragraph 32 of the National Planning Policy Framework (the Framework) which states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

### ***Character, Distinctiveness and Amenity of the Locality***

16. As already described, Catbrain Hill contains a line of dwellings on its western side. These are of a variety of styles and ages. Several have been subject to alteration and extension. The Council notes that the street represents a

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<sup>1</sup> Development Control (West) Committee meeting on 24 September 2015.

survival from the loss of Charlton Village in the 1940s due to airfield construction. However, bearing in mind the findings of its own heritage assessment, the Council accepts that buildings on Catbrain Hill do not comprise heritage assets (either designated or undesignated) in the terms of the Framework. I have no reason to disagree.

17. Notwithstanding the proximity of more recent residential developments such as Medlar Close and the presence of substantial areas of housing and commercial development in the wider locality, it seems to me that Catbrain Hill has a semi-rural character that derives in particular from the presence of the hedgerow along its eastern side. However it is clear that significant change in the wider locality is likely to occur as a result of **the street's location within the CPNN** policy area. In particular, CS policy CS26 seeks to provide for developments including approximately 5,700 dwellings, around 50 hectares of employment land and a greater diversity of commercial uses.
18. As already noted, highway improvements are proposed to Catbrain Hill. For highway safety reasons, as discussed, these include resurfacing, some widening and the provision of a footway. This would result in some change to the existing appearance of the road carriageway. However, it seems to me that the works that are proposed would not amount to unusual or materially harmful features within the local street scene. For example, Catbrain Lane to the north has a footway on one side. Importantly, the submitted drawings show that the existing hedgerow along the east side of Catbrain Hill would be retained, thereby maintaining the semi-rural character noted above. Although the houses at nos. 5 and 6 would be removed, the other buildings on the west side of road would remain in place, proving visual separation between the new houses and Catbrain Hill.
19. The Council has provided no technical evidence to suggest that the proposed number of vehicle movements on Catbrain Hill would be of a level that would be likely to create material problems of noise, disturbance or pollution. It is noted that no in-principle objections in respect of noise disturbance arising **from the effects of traffic on Catbrain Hill were raised by the Council's** Environmental Protection Officer.
20. Taking these matters together, I conclude that the proposed development would not materially harm the character, distinctiveness or amenity of the locality. In this regard, it would accord with CS policies CS1 and CS9.

### ***Other Matters***

21. The Council considers that there is no apparent physical reason why an alternative means of access could not be achieved. However, the present proposal must be assessed on its own merits and in that regard I have concluded above that it would not materially harm the safety and convenience of non-car users or the character, distinctiveness and amenity of the locality. Nevertheless, and in any event, I have seen no substantive evidence to challenge the **appellant's submissions** that, first, access to the site from The Laurels is precluded by ownership constraints and, second, that access through **the appellant's land to the west would pose road safety concerns in respect of** the relationship between residential traffic and commercial vehicle movements – as set out in a Road Safety Audit.

22. Third parties raise a range of other concerns about the appeal proposal. As already noted, the Council accepts that the two dwellings to be demolished do not constitute heritage assets in the terms of the Framework. Potential noise **concerns regarding the site's relationship** with the commercial uses to the north, and in respect of the effects of construction activities on existing residents, can be addressed by the imposition of conditions as described below. Subject to other conditions, I consider that protected species would be **safeguarded and the site's biodiversity value could potentially be enhanced**. The Environment Agency raises no in-principle objection on flood risk grounds and I have no reason to take a different view.

### *Planning Balance*

23. With reference to a June 2015 appeal decision, the appellant considers that the Council cannot demonstrate a five year supply of land for housing as is required by the Framework. This is not disputed by the Council. In such circumstances, paragraph 49 of the Framework states that relevant policies for the supply of housing cannot be considered to be up-to-date. Paragraph 14 of the Framework states (unless material considerations indicate otherwise) that where the development plan is absent, silent or out-of-date planning permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
24. In the present case, the appeal scheme would contribute towards meeting the housing shortfall. It would result in the development of land within the CPNN CS allocation that has identified for residential development in the SPD. The appellant states that the proposal would assist in securing further commercial investment in the redevelopment of the adjacent site. Along with the provision of affordable housing, as set out in the Section 106 Agreement, these matters represent benefits within the social and economic dimensions of sustainable development. While the scheme has the potential to result in biodiversity improvements, the full details of such proposals are not before me. However, bearing in mind my comments on the second main issue it seems to me that the scheme would be at least neutral in respect of the environmental dimension of sustainable development. Overall, it would therefore amount to sustainable development in terms of the Framework. Accordingly, and notwithstanding that there is a significant amount of opposition from local residents, planning permission should be granted in line with paragraph 14 of the Framework.

### *Planning Obligations*

25. As already noted, an agreement under Section 106 of the Act has been submitted in respect of highway improvements, open spaces, an off-site public open space contribution and affordable housing. For the reasons set out above, and bearing in mind the evidence provided by the Council, I consider that these obligations accord with the requirements of CIL Regulation 122.

### *Conditions*

26. The Council has suggested a list of possible conditions in the event that the appeal is allowed. I have considered these in line with national policy and guidance. I have imposed a condition specifying the relevant drawings, so far as relevant to the matters to be determined, as this provides certainty. For the

same reason it is necessary to specify the upper limit of the number of houses that have been approved and to ensure that the reserved matters accord with the parameters of the submitted Design and Access Statement.

27. The approval and implementation of a noise attenuating feature on the site's northern boundary is required to safeguard the living conditions of future residents, while a Construction Environmental Management Plan is needed to protect those of existing residents. Submission, approval and implementation of an Ecological Protection and Enhancement Plan, including a reptile mitigation strategy and badger re-survey, is necessary in order to safeguard biodiversity.
28. In order to ensure satisfactory provision in line with relevant development plan policies, details are needed of other matters that are not subject to reserved matters approval – namely drainage, external lighting (although only one condition is needed for this purpose), archaeology, public art, waste management and internet provision. Details of the intended type and distribution of affordable housing within the scheme are needed in line with CS policy CS18: I have amended the timing of this requirement for reasons of clarity. Submission of further Energy Statements to accompany the reserved matters applications is needed to achieve improved energy conservation.
29. Given that further details will be considered at the reserved matters stage, the conditions that have been suggested in relation to landscaping, parking provision, walking and cycling routes (including the width of the re-routed right of way), slab levels, boundary treatments, cross-sections showing the scheme in relation to nearby commercial development, details of landscaped areas to be retained or transferred, and the maintenance of access to the nearby watercourse all fail the test of necessity. They have not been imposed.

### ***Overall Conclusion***

30. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

### **Schedule of Conditions**

- 1) Details of the layout, appearance, landscaping, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: BRS.4751\_01-1c; BRS.4751\_21-1e; BRS.4751\_36H; BRS.4751\_41; TP5344-007A; TP5344-SK13A but only in respect of those matters that are not reserved for later approval.
- 5) Applications for the approval of the reserved matters shall be in accordance with the parameters described in the Design and Access Statement ref. BRS.4751\_25 dated May 2014.

- 6) Applications for the approval of the reserved matters shall be accompanied by an Energy Statement.
- 7) No more than 110 dwellings shall be constructed and occupied as part of this planning permission.
- 8) Development shall not commence until an Ecological Protection and Enhancement Plan, in accordance with the recommendations of part IV of the Protected Species Report (June 2014) and including a badger re-survey, a reptile mitigation strategy and a programme of monitoring of all works for a five year period following the commencement of development, is submitted to and approved in writing by the local planning authority. All works shall accord with the approved Ecological Protection and Enhancement Plan and the recommendations of part IV of the Protected Species Report.
- 9) Development shall not commence until a site specific Construction Environmental Management Plan, demonstrating the use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting, has been submitted to and approved in writing by the local planning authority. The development shall take place in accordance with the approved plan.
- 10) Development shall not commence until details of the proposed means of surface water drainage, based upon sustainable drainage principles and **an assessment of the scheme's hydrological and hydrogeological context** and including details of how the scheme shall be maintained and managed, have been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved details.
- 11) Development shall not commence until a programme of archaeological work including a revised desk-top assessment and a mitigation strategy with timetable has been submitted to and approved in writing by the local planning authority. Development shall accord with the approved details.
- 12) Development shall not commence until a strategy for public art provision has been submitted to and approved in writing by the local planning authority. Development shall accord with the approved details.
- 13) Development shall not commence until a detailed waste management and recycling strategy has been submitted to and approved in writing by the local planning authority. Development shall accord with the approved details.
- 14) Development shall not commence until a plan and schedule have been submitted showing the number, distribution and type of the affordable housing to be provided. Development shall accord with the approved details.
- 15) No dwelling shall be occupied until a scheme of external lighting, including details to avoid light spill adversely impacting upon nocturnal wildlife, has been submitted to and approved in writing by the local planning authority. Development shall accord with the approved details.
- 16) No dwelling shall be occupied until a scheme for the provision of internet connection infrastructure to serve residents of the proposed development, including a timetable for implementation, has been

submitted to and approved in writing by the local planning authority.  
Development shall accord with the approved details.

- 17) No dwelling shall be occupied until a noise attenuating feature has been **put in place on the site's northern boundary** in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. It shall thereafter be retained.

*M J Hetherington*

INSPECTOR



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## Costs Decision

Site visit made on 17 February 2016

**by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM**

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

**Decision date: 01 March 2016**

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### **Costs application in relation to Appeal Ref: APP/P0119/W/15/3137527 Land at Laurel Hill, Cribbs Causeway, Bristol**

- 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 Dick Lovett Companies Ltd for a full award of costs against South Gloucestershire Council.
  - The appeal was against the refusal of planning permission for residential development of up to 110 dwellings (net increase of up to 108 no. dwellings), open space, parking, landscaping, ecological corridor and associated engineering works; vehicular access to be provided from Catbrain Hill including removal of two existing dwellings (5 and 6 Catbrain Hill).
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Reasons**

2. 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. The **costs application and the Council's response** are submitted in writing. With reference to PPG paragraph 16-049-20140306, the applicant considers that the Council behaved unreasonably by refusing planning permission for the appeal scheme. Among the examples of unreasonable behaviour mentioned by the PPG in that respect are a failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions **about a proposal's impact, which are unsupported by** any objective analysis.
  3. The applicant considers that it has worked closely with the Council at both the pre-application and application stages. Additional clarification was provided to Committee members following an initial deferral of the scheme. However, planning permission was eventually refused against officer recommendation. It is submitted that Committee members did not take account of the planning assessment and technical advice that was before them and, moreover, that they had no technical evidence to support their eventual decision.
  4. The Council argues that the applicant has misunderstood its first refusal reason. **In the Council's view**, it is not a technical highway safety matter but a **wider conflict with the Council's aspiration to deliver safe** and convenient routes for non-car users within the Cribbs/Patchway New Neighbourhood and as a result, promote other modes of transport than the private car in the interest of providing sustainable development.
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5. Nevertheless, the refusal reason itself states **that the scheme 'would fail to ensure safe and convenient use of Catbrain Hill for non-car users'.** Clearly, this refers to a highway safety concern. However, no technical road safety evidence has been produced by the Council to support this allegation. It is accepted that **the Council's** appeal submissions comment on the **scheme's** potential impact in respect of **the route's** convenience to non-car users. However, given the level of traffic flows that are envisaged, which the Council does not seek to dispute, and the nature of the off-site improvements that are proposed, these submissions do not provide a robust explanation of why the Council feels that the appeal proposal would create sufficient harm to justify refusing planning permission in that regard. Paragraph 32 of the National Planning Policy Framework (the Framework) states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are **severe** (my emphasis).
6. The Council states that the decision was made by Committee members following careful consideration through a detailed and lengthy debate. However, given that the application was supported by technical evidence, including evidence on matters that had been requested at an earlier Committee meeting, and had been recommended for approval by Council officers, it seems to me that similarly robust and objective evidence and analysis is required to support a contrary view. As is described in the main decision, this was not provided in respect of either the safety or the convenience elements of the first refusal reason. As such, the Council behaved unreasonably in respect of its first refusal reason.
7. In respect of the second refusal reason, the Council considers that the assessment of harm to character, distinctiveness and amenity requires a subjective judgement. However, as already noted, the PPG states that vague, **generalised or inaccurate assertions about a proposal's impact, which are** unsupported by any objective analysis, can constitute unreasonable behaviour on behalf of a local planning authority.
8. It is accepted that the Council makes clear that its concerns in respect of the second refusal reason do not involve harm to a designated or non-designated heritage asset in terms of the Framework but instead relate to the particular nature and distinctiveness of Catbrain Hill. Reference **is made to the area's** wider history including the loss of the village of Charlton due to airfield construction in the 1940s.
9. However, the Council does not set out in any detail what particular elements of character, distinctiveness or amenity would be harmed by the appeal scheme. It is noted that the Council does not object to development of the appeal site itself or to the proposed demolition of the houses at nos. 5 and 6 Catbrain Hill. While a general statement **is made about the 'urbanisation' of Catbrain Hill,** it is not explained how this would result from the street works that are now proposed – which, as noted in the main decision, would retain the hedgerow on the eastern side of the street. Furthermore, while an increase in traffic flow along Catbrain Hill **would result from the scheme, the Council's appeal** submissions do not explain why the resulting movements would be of such a scale that would result in harm in respect of character, distinctiveness and amenity. For example, technical evidence in respect of matters such as noise and disturbance is not presented. For these reasons, the second refusal reason

is insufficiently supported by objective analysis. This amounts to unreasonable behaviour in the terms of the PPG.

10. Taking the above matters together, I consider that the Council behaved unreasonably in respect of its first and second refusal reasons. Given that these are the matters that separate the two main parties – agreement having been reached in respect of the requirements that are listed in the three remaining refusal reasons – I agree with the applicant that it should not have been necessary for the matter to have been taken to appeal.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

### **Costs Order**

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Gloucestershire Council shall pay to Dick Lovett Companies Ltd the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to South Gloucestershire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*M J Hetherington*

INSPECTOR