



# Appeal Decision

Site visit made on 20 November 2006

by **Nigel Harrison** BA (Hons) MRTPI

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

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Date: 4 December 2006

**Appeal Ref: APP/Z0923/A/06/2013327**

**Flosh Meadows, Cleator, Cumbria, CA23 3EP**

- 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 Mr R W Mulholland against the decision of Copeland Borough Council.
- The application (Ref: 4/05/2816/001), dated 14 November 2005, was refused by notice dated 11 January 2006.
- The development proposed is "a new-build 3-bed bungalow".

**Summary of Decision: The appeal is dismissed.**

## Procedural Matters

1. The application is made in outline, with permission sought for siting at this stage. The siting is shown on the accompanying plans. Any other details shown on the plans such as the position of rooms and windows I shall treat as being for illustrative purposes only. Design, external appearance, landscaping, and means of access are reserved for subsequent approval.
2. The appellant has also submitted three alternative schemes showing amended siting and footprint sizes for the proposed bungalow. However, the Council did not consider these alternative schemes, and as siting is not a reserved matter, and as the interests of other parties may be prejudiced, I shall not consider them.

## Main Issues

3. I consider that there are three main issues in this case:
  - The effect of the proposal on the character and appearance of the surrounding residential area.
  - The effect of the proposal on the living conditions of the occupiers of No 2 Cross Grove with particular regard to outlook, privacy and daylight.
  - The effect of the proposal on the site's protected tree.

## Planning Policy

4. I have been referred to the Copeland Local Plan 2001-2016 (2nd Deposit Version), dated April 2005 (LP). Whilst I am aware that the Council resolved to adopt the Plan on 27 June 2006, I have no more recent information as to whether the Plan has yet been formally adopted. Nonetheless it is clearly at a very advanced stage and I therefore afford it very substantial weight.

5. LP Policy DEV7 covers sustainability in design. Criterion (1) requires a high standard of design where scale, density, proportion, landscaping and overall layout contribute to achieving a strong sense of place and efficient use of land. Criterion (4) states that development should avoid the loss of or damage to important open spaces. Criterion (9) requires development to create or maintain reasonable standards of general amenity. Policy ENV10 states that land and trees protected by Tree Preservation Orders will be protected from inappropriate development.

### **Reasons**

6. The appeal site is an irregularly shaped piece of land, narrow at both ends, widening to approximately 12m towards its centre. It is level, grassed and has an open frontage to Flosh Meadows. A mature oak tree is situated close to the main road frontage. The layout plan shows the proposed bungalow being positioned centrally on the site, approximately one metre from and parallel to the eastern boundary.

#### *Effect on character and appearance of the area*

7. The pattern of development in the vicinity of the site comprises a group of five bungalows, set somewhat irregularly around Flosh Meadows. To the east of the site is another small group of dwellings, predominantly bungalows, on the west side of Cross Grove. The appeal site is an open piece of land separating these two small developments.
8. The recent planning history is somewhat complex, though the site has been retained as an area to be landscaped throughout the series of applications. Although it appears to have been used informally for recreation purposes by local residents it is not a public open space, and signs now indicate that it is private land. Nor is it specifically identified as an Area of Landscape Importance or as recreation/amenity space in the Local Plan. However I consider that the site is important in that it provides a valuable visual break between the two housing developments, an appropriate setting for the protected oak tree, and in the significant contribution it makes to the open and spacious character of the area.
9. I also consider that the bungalow would appear cramped and incongruous in comparison to the size of neighbouring and nearby plots, and the reasonably generous spacing of the dwellings in Flosh Meadows and Cross Grove. I therefore conclude on this issue that the proposal would significantly detract from the established character and appearance of the area. I find that it would conflict with criteria (1) and (4) of LP Policy DEV7.

#### *Effect on living conditions – No 2 Cross Grove*

10. I have approached the question of outlook on the basis of any harm that could be caused by an overbearing development rather than a loss of view. The bungalow would be sited approximately 9.5m from the closest part of the rear elevation of No 2 Cross Grove, where the Council states that a minimum distance of 12m would normally be expected. I appreciate however that the bungalow has been positioned such that the direct outlook from the rear-facing living room, conservatory and kitchen/dining room of No 2 would be retained. Nonetheless I consider that the physical presence of the bungalow in such close proximity will have an overbearing effect on the property, and worsen the outlook from those rooms to an unacceptable degree.
11. The appellant has submitted a daylight report, based on an interpretation of the submitted plans. It concludes “whilst the BRE guidelines appear to have been met, the bungalow

would undoubtedly have some effect on the amount of daylight and sunlight available to the rear of No 2, although the reduction would be slight". However, I consider that as a result of the position of the proposed bungalow to the southwest, and its proximity to the boundary, the reduction in daylight would be sufficient to diminish the reasonable enjoyment of the adjoining part of the garden and the rear-facing rooms, particularly during the winter months.

12. I note from the illustrative details that no habitable room windows are proposed in the east elevation of the bungalow and that as a consequence, no direct overlooking would occur. As a consequence, although I am satisfied that there would be no significant effect on privacy levels, I conclude that the proposal would significantly harm the living conditions of the occupiers of No 2 in respect of outlook and daylight. I find that the proposal would conflict with criterion (9) of LP Policy DEV7.

#### *Effect on the protected tree*

13. There is one tree on the site, an oak situated close to the main road frontage, and protected by a Tree Preservation Order. It is a mature specimen and appears to be in reasonable health. It is prominent in the street scene and makes a valuable contribution to the character and appearance of the area.
14. The site layout plan shows the bungalow sited approximately 11m from of the trunk of the tree and clear of its drip line. I consider that this distance is the minimum required to ensure that there should be no direct harmful effect, and that based on the details shown on the submitted plan, it would be afforded sufficient protection. I therefore conclude on this issue that the proposal would not significantly harm the health and viability of the oak tree, and accordingly would not conflict with LP Policy ENV10.

#### **Other Matters**

15. I note that the Highway Authority is now satisfied that the existing visibility splays at the junction of Floss Meadows and the A5086 are of sufficient standard to serve the proposed development, and that no upgrading of the splays, which may have affected other protected trees, would be required to serve one additional dwelling. However, no highway reasons were included in the Council's reasons, and whilst I note that earlier concerns on this matter appear to have been resolved, it has not influenced my considerations of the main issues.
16. I have considered the appellant's argument that the site is on a bus route and also easily accessible by foot to shops, schools and other facilities. However, whilst acknowledging the accessibility of the site, to my mind this factor is clearly outweighed by the harm that would be caused by the proposal.

#### **Conclusion**

17. In summary, notwithstanding my conclusion regarding the effect on the oak tree, I nonetheless consider that the harm that would be caused to the character and appearance of the area, and the living conditions of the occupiers of No 2 Cross Grove in respect of outlook and daylight, represent significant and substantial objections. Therefore I conclude that the proposed development is unacceptable and I intend to dismiss the appeal.

18. For the reasons given above and having regard to all other matters raised, including the letters of representation from local residents and the Town Council, I conclude that the appeal should be dismissed.

**Formal Decision**

19. I dismiss the appeal.

*Nigel Harrison*

INSPECTOR

