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## Appeal Decision

Site visit made on 17 August 2015

by **Anthony Lyman BSc (Hons) DipTP MRTPI**

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

Decision date: 29 September 2015

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**Appeal Ref: APP/N1350/W/15/3025085**  
**182 Woodland Road, Darlington DL3 9AB**

- 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 Partner Construction Limited against the decision of Darlington Borough Council.
  - The application Ref 14/00276/FUL, dated 18 March 2014, was refused by notice dated 18 December 2014.
  - The development proposed is for residential purposes comprising two, three storey apartment buildings to accommodate 46 dwellings (39 No. Class C2 units and 7 No. Class C3 units) with associated access, car parking and landscaping.
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### Preliminary Matter

1. The application form describes the proposed development as *46 No. residential apartments for over 55s (Use Class C2) including 2 No. apartment blocks, access from Woodland Road, and landscaping*. Subsequently, during the application process, additional information and amended plans were submitted to the Council. The parties agreed an amended description mainly to reflect the change to a mix of Class C2 and Class C3 apartments. I have determined the appeal on the basis of the revised description and plans.

### Decision

2. The appeal is dismissed.

### Main Issues

3. The main issues are, i) the effect of the proposal on the residential amenity of nearby neighbours particularly with regard to potential overbearing impact, overlooking, noise and disturbance, ii) the effect on the significance of heritage assets.

### Reasons

#### *Background*

4. The appeal site largely comprises a former garage and car wash site from which all buildings have been removed, and part of an area of hard standing to the rear of the Cockerton Band and Musical Institute/Club. During the application process the site was extended to include part of the curtilage of 180 Woodland Road, which is one of a pair of Grade II listed cottages. The

main part of the site is overgrown with shrubs and trees, some of which are protected by a Tree Preservation Order (TPO).

5. The proposal is to provide 46 self contained apartments in two separate blocks. The smaller southern building would have an elevation facing on to Woodland Road. The northern block, containing 34 flats, would run largely parallel to the rear of the club building, separated from it by a rear roadway to be retained by the club. Both buildings would have three full storeys under pitched roofs, albeit part of the northern building would also have an undercroft basement area. Each building would be provided with a private landscaped garden, although there would be little meaningful landscaping elsewhere on the site. Access to the development would be from the existing entrance from Woodland Road.
6. The apartments would generally be intended for occupants over the age of 55 years. Seven of the flats would be Use Class C3 open market units, albeit subject to the age restriction. The rest of the units would be Use Class C2, intended for occupants in need of some form of care, and would be affordable housing, either rented or shared ownership. The Council point out that as the need for care is not a strict prerequisite of occupation, some elements of the scheme could be taken out of the Use Class C2. Nevertheless, in determining this appeal, I will have regard to the intended mix of units as proposed.

#### *Residential amenity*

7. The site lies within the development limit of the urban area, in a sustainable location close to the Cockerton District Centre, and has good public transport services nearby. The redevelopment of this largely previously developed land for residential use is acceptable in principle, and accords with the locational strategy objectives of Policy CS1 of the Darlington Local Development Framework–Core Strategy (the Core Strategy) which seeks, amongst other things, to concentrate new development in sustainable locations within the main urban areas. Several local residents, who objected to the proposed development, confirmed that they were not opposed in principle to some form of residential development on the site.
8. The eastern boundary of the appeal site mainly adjoins the rear gardens of traditional semi-detached houses in Newlands Road. The gardens are not particularly extensive and, in the case of Nos. 56 and 54 Newlands Road at the southern end of the development, the rear gardens are very short. Currently, many occupants enjoy a high degree of privacy in their rear rooms and gardens, partly because of the trees and shrubs on the appeal site. These would be cleared as part of the development to make way for car parking and the access road.
9. The eastern elevation of the northern block, which contains the main entrance to 34 flats, would be only approximately 6.6m from the rear garden fences of Nos. 42-46 Newlands Road, and between 19m and 21m from the rear elevations of the houses. Beyond No. 42 the distance between the houses and the northern block gradually increases as the proposed building splays to the north-west.
10. The Council's Supplementary Planning Document – *Design for New Development 2011* (SPD), amongst other things, provides guidance on separation distance to be met between dwellings in order to provide an

acceptable spatial relationship. The distances between Nos. 42-46 Newlands Road and the northern block would fall below the guidance figure for habitable rooms in a three storey development.

11. The appellants argue, however, that many of the windows in the eastern elevation would not serve habitable rooms and that No. 42 Newlands Road, would directly face only windows to kitchens, the office and lobby. The SPD treats kitchens as non-habitable rooms, although I note that the flats have an open plan layout with the kitchen area being part of the living room. No. 46 Newlands Road would face side windows to the living rooms in three flats.
12. To prevent overlooking of the nearest properties on Newlands Road, the application was amended to include obscure glazing to all windows in the eastern elevation of the northern building. Subject to this obscure glazing and the restrictions on window opening being controlled and retained by condition, there would be little loss of privacy for the occupants of Nos. 42-46 Newlands Road in their gardens or their dwellings. There would be some overlooking of the gardens of other properties in Newlands Road from windows in the north-east elevation of the northern building and the eastern elevation of the southern building. However, in these cases the separation distances would generally exceed the requirements of the SPD.
13. The extensive and continuous ridge line of the northern building would predominantly be at a height of about 12.5m. According to the Council, this would be approximately 5m higher than the overall height of the existing houses in Newlands Road, with the eaves of the proposed building about 3m higher than on the dwellings. Given that the existing screening vegetation to the rear of the gardens would be removed and replaced with a 2m high fence, the scale, mass and height of the proposed buildings would wholly dominate the outlook from the properties on Newlands Road. From the rear windows of the nearest houses, and particularly from the private gardens from which I viewed the site on my visit, the over-bearing dominance of the northern building in such close proximity would significantly harm the residential amenity of existing residents to an unacceptable degree. Despite the obscure glazing of windows referred to above, the perception of overlooking and the impact of numerous illuminated windows over three floors so close to residents' dwellings would exacerbate the over-bearing impact of the development.
14. The living conditions of the nearest residents would also be harmed by the comings and goings associated with the flats intended mainly for people in need of care, as the main entrance to the northern building would be directly opposite, and close to, the rear boundary to No. 42 Newlands Road.
15. The very short rear gardens to Nos. 56 and 54 Newlands Road immediately adjoin the boundary to that part of the garden to No. 180 Woodland Road that would be used for car parking. Vehicles parked in this area would be close to the rear elevation of these houses. There would be the potential for harm to the occupants' quiet enjoyment of their small private gardens and habitable rear rooms, from the noise of engines and car doors being shut in such close proximity.

16. The appellants argue that the appeal proposal is broadly similar to a previous scheme on the site for 32 Use Class C3 flats allowed on appeal in 2004<sup>1</sup>, but never implemented. According to the appellants, the principles applied in the consideration of the previous scheme are appropriate to the consideration of the appeal proposal. In that case the Inspector concluded that, although there would be a change of outlook for nearby residents, their living conditions, with particular reference to over-dominance, overshadowing and privacy, would not be unacceptably harmed. However, the plans of the approved scheme show that the parts of the building nearest to the properties on Newlands Road were to be only two storeys high to minimise any impact on the amenities of neighbouring residents. Furthermore, according to the plans submitted by the Council, the separation distances between that development and the nearest houses appear to be greater than on the appeal scheme. These are fundamental differences to the scheme before me and, therefore, I attach limited weight to this previous appeal decision.
17. The separation distance between the flats in the southern building with windows facing Woodland Road, and a development of apartments, Squires Court, on the other side of the road, would not satisfy the guidance in the SPD. However, given the main road location and the desirability of maintaining a continuous urban street frontage, this relationship would be acceptable.
18. The Council's reason for refusal states that the development would be contrary to Policy CS16 of the Core Strategy. The appellants challenge this and argue that the decision is flawed as Policy CS16 relates to matters including flood risk, air quality and pollution. The Policy requires new development to protect environmental resources, whilst ensuring there is no detrimental impact on the environment, general amenity and health and safety of the community. Although the Policy and the supporting text refer mainly to environmental factors referred to above, the Council argue that the policy is relevant as the overall objectives of the Policy include the protection of the general amenity and health and safety of communities. The Council submitted a recent appeal decision<sup>2</sup> in which the Inspector agreed with the Council regarding Policy CS16.
19. The appellants contend that Core Strategy Policy CS2 is more relevant to this appeal. However, CS2 is a broad overarching policy relating to achieving high quality, sustainable design, and makes no reference to the consideration and protection of the residential amenity of neighbours. Irrespective of these policy arguments, one of the core planning principles of the National Planning Policy Framework (the Framework), which is an important material consideration, seeks to secure high quality design and good standards of amenity for all existing and future occupants of land and buildings.
20. I conclude that the proposal would not accord with this core planning principle of the Framework. The scale, siting and design of the proposal would cause significant and unacceptable harm to the living conditions of nearby residents due to its dominant, overbearing impact, and the disturbances that the development would cause as set out above.

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<sup>1</sup> APP/N1350/A/03/1132366

<sup>2</sup> APP/N1350/A/14/2221206

*Heritage assets*

21. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Section 72(1) of the Act sets out that, with regard to conservation areas, special attention shall be paid to preserving or enhancing their character or appearance.
22. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 132 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Substantial harm to or loss of a Grade II listed building should be exceptional.
23. Planning Practice Guidance (PPG) confirms that what matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset, and that, in general terms, substantial harm is a high test and may not arise in many cases. Works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all.
24. The heritage assets relating to this appeal are the two Grade II Listed cottages, 178 and 180 Woodland Road, and the Cockerton Village Conservation Area. Although the appellants state that the conservation area boundary forms the southern boundary of the site, a plan submitted by the Council shows the extreme southern tip of the site as being within the conservation area.
25. Unlike the more distant northern block, the southern building would be readily seen in the context of the two listed cottages, separated from them by the access road and narrow open areas on either side. Although the proposed building would be a significantly larger structure, its design incorporates varying roof heights and different elevational treatments to break up the mass of the facade. Design features such as chimneys and sash windows also make the design of the building more sympathetic to the heritage assets. The position of the southern building relative to the cottages would ensure that, when approaching along Woodland Road, the facades of the listed buildings and views into the conservation area would not be obscured. Bearing in mind the former garage and car wash use of the site, albeit now demolished, and the existing negative impact of the overgrown vacant site, I am satisfied that the proposal would not harm the setting of the listed buildings and would preserve the character and appearance of the conservation area.
26. Consideration must also be given to the effect on the significance of the heritage assets arising from the loss of part of the garden within the setting of one of the listed buildings, and its intended use as a fenced-off car park. The setting itself is not a heritage asset but is a material consideration. PPG confirms that the extent and importance of setting is often expressed by reference to visual considerations and that, views of or from an asset, will

play an important part in the experience of an asset in its setting. PPG also advises that the experience can be influenced by other environmental factors or by an understanding of the historical relationship between places.

27. In this case, the land to be used for the car park is furthest away from the listed building. The cottage would retain a fairly substantial private rear/side garden and would continue to be read largely in its setting from Woodland Road. Therefore, I conclude that this element of the proposal would not harm the contribution that the setting makes to the significance of the listed building or the conservation area.

#### *Other matters*

28. Concerns were raised by local residents about the impact of the development on highway safety and the adequacy of the on-site car parking. The existing access to the site would be upgraded and the visibility splays would meet the required standards. The Council confirm that the proposed car parking spaces satisfy the requirements for a mixed C2 and C3 Use Class development. Subject to conditions, the highway authority raised no objections to the proposal on highway safety grounds, and I have no reason to disagree.
29. The flats with windows to habitable rooms in the south-west elevation of the northern building would face directly on to the lengthy blank rear brick wall of the Cockerton Club building only a short distance away across a the club's retained roadway. The club is said to have wall mounted cooling fans, a floor mounted compressor unit, wall vents to the concert room and roof vents in the flat roof. Mitigation measures are proposed in the submitted noise assessment report which could be secured by conditions, although I note that some matters require further appraisal work. The Council raised no objections to the proposal on the grounds of the living conditions of future occupants. Although I note the concerns raised by local residents about the impact of noise from the club, particularly during concerts, I have no evidence to substantiate the claim that the living conditions of future residents would be harmed.
30. A number of trees on the site would be lost as a result of the development, including an oak and a sycamore protected by the TPO dating from 1952. These two trees are said by the Council's arboricultural officer to be in reasonable condition. Although I note the officer's concerns about the felling of these trees, the loss would be partly offset by new tree and shrub planting proposed in the landscaping scheme. Despite the loss of the trees within the site, Woodland Road would largely retain its tree lined character as a result of mature trees retained within the grounds of the club and between the club access and the southern building.
31. A completed s106 agreement relates to the affordable and shared ownership units, and confirms the restrictions on occupancy of the open market flats. A commitment to fund an emergency telecare system for twelve months and a contribution towards green infrastructure provision to mitigate the impact of the development are also included in the agreement.

#### **Conclusion**

32. The scale, mass and layout of the development would be detrimental to the living conditions of nearby residents, whose enjoyment of their private

gardens, conservatories and houses would be significantly and permanently harmed by the overbearing presence of the northern building and, by disturbance generated by cars being parked in such close proximity to some of their homes. The proposal would demonstrably fail to satisfy one of the core planning principles of the Framework that advocates high quality design and good standards of amenity for all existing and future occupants of land and buildings. Although the proposal would provide a variety of open market and mixed tenure flats in a sustainable inner suburban area, wherein three storey developments are permissible, these benefits would not outweigh the substantial harm I have identified.

33. Therefore, for the reasons given, the appeal is dismissed. In these circumstances, there is no need for me to consider further the s106 agreement.

*Anthony Lyman*

INSPECTOR

