

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE:** 30 June 2010

**Page**

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<b>APPLICATION REF. NO:</b>	<b>10/00270/FUL</b>
<b>STATUTORY DECISION DATE:</b>	<b>21 June 2010</b>
<b>WARD/PARISH:</b>	<b>MIDDLETON ST GEORGE</b>
<b>LOCATION:</b>	<b>65 Middleton Lane, Middleton St George</b>
<b>DESCRIPTION:</b>	<b>Erection of a dwelling house and detached garage</b>
<b>APPLICANT:</b>	<b>Mrs M F Owen</b>

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**APPLICATION AND SITE DESCRIPTION**

The application site comprises of an area of the rear garden of a semi- detached dwelling situated on the western side of Middleton Lane within the Middleton One Row Conservation Area. The site is bounded to the north by the wooded grounds of Almora Hall, to the west and south by residential properties and to the east by the public highway beyond which are further dwellings.

Several mature trees are located along the northern boundary of the site within the grounds to Almora Hall which are the subject of a tree preservation order. The application site is enclosed by a brick wall of approximately 2m in height. There are no significant ground level changes within the site or in respect of adjacent properties.

A Grade II listed stone archway is situated close to the side of the attached dwelling to the south (No. 64 Middleton Lane).

The application proposes the erection of a two storey detached dwelling and a detached garage within the rear garden of the existing property. The proposed dwelling would be 3 storey in height (the roof space effectively forming the third floor). It would have maximum dimensions of some 11.8m in depth, 11.6m in width and 9.3m in height at ridge level. The dimensions of the proposed garage would be approximately 5.5 m x 5.5m with a roof height of 5m at ridge level.

The proposals include the modification of the existing vehicular access off Middleton Lane to serve the development and the existing dwelling.

Planning permission was refused for a similar scheme in April 2008 for the following reasons: -

- 1) The proposed development would involve the construction of an additional dwelling in the rear garden space of the existing property (No. 65 Middleton Lane), a development*

*that would be out of step with the character of the surrounding area and would fail to pay respect to the context of the site and the surrounding area by virtue of its scale and siting and cumulatively with other developments and extant permission would have a resultant detrimental impact on the character and appearance of the Middleton One Row Conservation Area.*

- 2) *The proposal would have a negative impact on the street scene by virtue of the removal of the existing entrance piers, which are considered to contribute to the character and appearance of the Middleton One Row Conservation Area.*
- 3) *The proposed development would have a significant detrimental impact on the long term health and vitality of trees within the site protected under the Borough of Darlington Tree Preservation (No. 7) Order 2008 and outwith the site protected under the Borough of Darlington Tree Preservation ( No.7) Order 1980.*
- 4) *The submitted application contains insufficient information for the Local Planning Authority to ascertain and make an informed decision on the impact of the proposal on local wildlife, and in particular bats and owls.*

*The fifth refusal reason simply lists the development plan policies that the above reasons would be contrary to.*

The application is accompanied by the following documents: -

- Design and Access Statement
- An Arboricultural Implications Assessment and Method Statement; and
- Bat and Owl Report

The application is before the Planning Committee for consideration at the request of a ward councillor.

## **PLANNING HISTORY**

75/489 - An application was submitted for residential development in 1975 which was subsequently withdrawn in August 1996.

81/73 – Consent was granted for the demolition and replacement porch at the side of the dwelling.

07/1137 – In November 2007 an application was made for the erection of a dwelling and garage which was withdrawn in December 2007.

08/125 – Planning permission was refused for the erection of a dwelling house and detached garage in April 2008. The refusal reason for this are set out in the previous section of this report.

## **PLANNING POLICY BACKGROUND**

### **Development Plan**

*RSS: The North East of England Plan, Regional Spatial Strategy to 2021:*

Policy 2 – Sustainable Development  
Policy 8 – Protecting and Enhancing the Environment  
Policy 11 – Rural Areas

*Saved Policies of the Borough of Darlington Local Plan:*

E2 – Development Limits  
E3 - Protection of Open Land  
E8 - The Area of High Landscape Value  
E11 – Conservation of Trees, Woodlands and Hedgerows  
E12 – Trees and Development  
E13 – Tree Preservation Orders  
E14 – Landscaping of Development  
E29 – The Setting of New Development  
H3 – Locations for New Housing Development  
H9 – Meeting Affordable Housing Needs  
H11 – Design and Layout of New Housing Development  
H13 – Backland Development  
T13 – New Development Standards  
T24 – Parking and Servicing Requirements for New Development  
T31 – New Development and Public Transport

**National Planning Policy**

Parts of the following *Planning Policy Statements* are material considerations:

PPS3 – Housing  
PPS5- Planning for the Historic Environment

**RESULTS OF CONSULTATION AND PUBLICITY**

One letter has been received from a local resident objecting to the development on the following grounds: -

- It is out of character with the surrounding buildings and unsuitable for the conservation area within which it would be situated on the basis of the cumulative negative impact it will have on the conservation area.
- There will be a potential traffic hazard from vehicles entering Middleton Lane through the narrow driveway to the property.
- It would result in overlooking and loss of privacy of adjoining and surrounding buildings.
- The height of the building would have a detrimental visual impact on the area and restrict light to adjacent dwellings.
- There are already too many developments in the village which are seriously affecting the infrastructure of the village. This development will exacerbate the problem.

**Middleton St George Parish Council** has objected to the application on the grounds that there should be no more infill development in the conservation area.

**CE Electric UK** has raised no objections to the proposed development

**Northern Gas Networks** has no objection to the development.

**Natural England** has commented that the bat mitigation measures set out in the application are noted but that no survey and assessment of the potential harm to all protected species /habitats in the garden area has been undertaken. They advise that it is the responsibility of the local planning authority to fully assess the proposal and suggest that further information from the applicant should be sought prior to any decision being made.

**The Council's Highways Engineer** has advised that it would not be possible to achieve the advised visibility splay (2.4m x 43m) onto Middleton Lane. However modifications are proposed to the front boundary wall to provide a visibility splay of 2m x 43m which is considered acceptable. He has also raised an issue in respect of access for emergency service vehicles and comments: -

*“The requirements for access for a pump appliance (Fire and Rescue Service) is for that appliance to be able to get within 45m. of a dwelling entrance. In this instance the entrance to the new dwelling is in excess of this dimension from the adopted highway. The private shared drive must be constructed to a width of 3.7 m. and this would accommodate a pump appliance however it will not be able to manoeuvre within the site. It should therefore be made a condition of approval that the layout provides for sufficient space for a fire service vehicle to be able to turn within the site. The current proposed turning facility is not of sufficient size to allow a fire appliance to turn. Alternatively discussion could take place with the Fire and Rescue Service as there are instances where they will allow the 45m. to be exceeded if residential sprinkler systems are provided within the properties.*

*Provided the above conditions, in relation to drive width (min. 3.7 m.), visibility at the access and access by the Fire and Rescue Service, are included with an approval I would raise no highway objection to the proposal.”*

It is also requested that a number of informatives be attached to any grant of planning permission.

**The Council's Public Protection Division** has requested the imposition of the standard condition in respect of contamination and a condition controlling the hours of construction work.

**The Council's Arboricultural Officer** is satisfied that the mitigation measures set out in the submitted Arboricultural Implications Assessment and Method Statement are sufficient to safeguard the long term health of the protected trees adjacent to the northern boundary of the site. However he has questioned whether there is sufficient space within the site to store construction materials without damaging the roots of the trees through compaction.

## **PLANNING ISSUES**

The main issues raised by the submission of this application are as follows: -

- Planning Policy
- Impact on the Character and Appearance of the Area and Setting of the Listed Building
- Residential Amenity
- Ecology and Nature Conservation

- Trees
- Highway Matters

### **Planning Policy**

The Government's objectives in respect of housing development are set out in Planning Policy Statement 3: Housing (PPS3). One of the main commitments of PPS3 is to promote more sustainable forms of development. The focus for additional housing should be within the urban areas.

PPS3 recommends that good design and layout of new development can help to achieve the Government's objectives of making the best use of previously developed land. Also new development of whatever scale should not be viewed in isolation. Considerations of design and layout must be informed by the wider context, not just the neighbouring buildings but the townscape and landscape of the wider locality. PPS3 has recently been revised and now excludes private garden areas from the definition of previously developed land.

Against this national policy background, it is important to consider the policies within the Borough of Darlington Local Plan, as a basis for considering this application.

The site lies within the development limits of Middleton St George and therefore falls within the provisions of Policies E2 (Development Limits) and H3 (Locations for New Development) of the Local Plan. It is not a site that is specifically identified as being subject to any particular policies or proposals.

### **Impact on the Character and Appearance of the Area and Setting of the Listed Building**

The main issues to be considered here are the character of the existing area, the impact of the development on the existing character and its design and visual appearance. In this respect it is essential to consider the proposal in the context of recent planning applications for similar development proposals within the proximity of the site.

Following the refusal of the original planning application in April 2008 an application for the erection of 2 dwelling houses in the rear garden of No. 63 Middleton Lane was refused around the same time for the following reason: -

*“The proposed development would result in the loss of a substantial garden area, which together with other similar gardens nearby contribute towards the character and appearance of the Middleton St George Conservation area. The loss of this garden area and those of properties to the north for similar residential development would cumulatively erode the character of this part of the conservation area to its detriment. The development would thereby be contrary to policies-----.”*

An appeal was lodged against this decision, which was subsequently allowed in November 2008. In arriving at his decision the appointed Inspector made the following comments: -

*“The Middleton Lane part of the Conservation area was described in the original designation document as ‘consisting of mature parkland and woodland, fenced and walled with some architecturally interesting Victorian villa properties. During recent years, there has been considerable new housing development along the west side of Middleton Lane: this includes the former Ropner Convalescent Home, a bungalow and dairy building redeveloped as Cedar Grove, and the Thorntree House site. In addition, planning permission was granted in January*

*2008 for the conversion of the adjoining house at 64 Middleton Lane to four apartments and the erection of three townhouses in the rear garden.*

*There were special circumstances, which distinguish the former Ropner Convalescent Home Site and the dairy site from the current appeal. The redevelopment of the former dairy removed a commercial use from a residential area and could be seen as an enhancement of the Conservation Area. Nevertheless, the plans and aerial photographs show that the dairy site included a large expanse of undeveloped garden attached to the bungalow. This open land has now become part of the Cedar Grove development.*

*The density of housing in this part of Middleton Lane has greatly increased in recent years and extensive open areas of gardens have been developed. There will be a further erosion of open space if the development at No. 64 is carried out. The Council argues that the cumulative erosion of large gardens would detract from the character of this part of the Conservation Area. On the other hand, the appellants' agent suggests that the planning approval at No. 64 sets a precedent.*

*Each case must be considered on its individual merits, but despite the differences between the various sites, it seems to me that the Council has accepted the general principle of more intense backland development. Whatever the background reasons for the planning permissions, the density of development and the Victorian villa character of the area have changed. Nevertheless, the mature parkland and woodland appearance has, to a large extent, been retained because of the front boundary trees, the spacious front gardens, and glimpses of large houses seen through the trees. The two new dwellings would be well screened by the existing dwelling and by the frontage trees and bushes. They would have very limited impact visual when seen from Middleton Lane and would not significantly detract from the wooded appearance of the street scene.*

*I conclude that the cumulative effect of development of this secluded site would not cause undue additional harm to the area. The development would have a 'neutral' impact on the Conservation Area and would, therefore, preserve its character and appearance with PPG15. It would also comply with Local Plan Policy E29- The setting of New Development."*

Prior to the refusal of planning permission at No. 63, approval had been given in January 2008, for the conversion of No. 64 Middleton Lane dwelling to four apartments and the erection of three no. town houses in three storey form in the rear garden. Recently (March 2010) planning permission was granted for a revised scheme at No64 for the erection of two detached dwellings.

Notwithstanding these approvals and the Inspector's observations in respect of the recent appeal decision regarding No 63 Middleton Lane the Council's Conservation Officer is of the view the proposal is unacceptable and has made the following comments: -

*"Nationally, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (hereafter The Act) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Policy HE7.5 of Planning Policy Statement 5: Planning for the Historic Environment states Local planning authorities should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment. The consideration of design should include scale, height, massing, alignment, materials and use.*

*Locally, the recently drafted Middleton One Row Conservation Area Character Appraisal, which has received internal support and is currently out to public consultation, describes and assesses the significance of the Conservation Area: Middleton One Row Conservation Area is designated for its high quality, intact rural qualities. Greenspace is a key feature as is the River*

*Tees. Historic development is primarily in the form of Georgian and Victorian residential and villa development, but also includes a Norman Scheduled Monument and a Victorian church, by local architect J.P. Pritchett (junior). The draft Character Appraisal identifies Middleton Lane as one of three character areas within the Conservation Area: Middleton Lane, evidencing Victorian and Edwardian lodges and villas with large gardens, much of the later twentieth century cul-de-sacs, red brick walls and green space. I would question whether the proposal conforms to policy H13 – backland development – of the Local Plan.*

*I am aware there have been previous schemes, which have been either refused or withdrawn and am also aware of the recent approval for new dwellings in the back garden of neighbouring no. 64 Middleton Lane, which I argued should not have been approved because it was contrary to The Act and PPG15. However, regardless of other approvals, Planning Policy Statement 3: Housing says When considering applications relating to sites for which planning permission has been previously granted for a similar proposal...there is no presumption that planning permission should be granted because of a previous approval.*

*Whilst the proposed new dwelling is fairly well designed and makes use of high quality traditional materials, I am of the opinion that the principle of development in this location is inappropriate because it is contrary to The Act, PPS5 and the draft Character Appraisal. Development on this site would result in loss of private garden land and green space, both of which are identified in the draft Character Appraisal as being key features making a positive contribution to this Conservation Area. The draft Character Appraisal also identifies planning approvals for backland, garden land development incrementally harming the character and appearance of this Conservation Area, advising that they should be resisted.*

*I also have concerns about a precedent continuing to be set for additional garden land development within the Conservation Area; based on recent form it seems approving this scheme will encourage future, comparable schemes each one more difficult to resist than the last, which would further degrade the quality of the Conservation Area.*

*Recent news from central government backs up my views on the damage garden development can cause to the character and appearance of an area, not just Conservation Areas and not just Conservation Areas characterised by green space as Middleton One Row is. On 9 June 2010, Decentralisation Minister Greg Clark announced plans to take gardens out of the Brownfield category, a simple step that will dramatically transform councils' ability to prevent unwanted development on gardens to protect the character of neighbourhoods. This shows a clear intention to enable Local Planning Authorities to resist garden land development where it is shown to harm the character of an area. We have plenty of examples of approved garden land development in this Conservation Area to evidence that this has been the case, that part of the character of Middleton One Row Conservation Area is being slowly eroded as a result of development on garden land.*

*Consequently I object to the principle of development in this location because it will not preserve or enhance the character and appearance of Middleton One Row Conservation Area as required by The Act and because it does not make a positive contribution to the character and local distinctiveness of the historic environment in Middleton One Row Conservation Area as required by PPS5. Approving this development will result in loss of garden land and green space and will therefore compromise the significance of Middleton One Row Conservation Area.”*

Taking all the above factors into account it is considered that a refusal of planning permission would be justified in this case on grounds of adverse impact on the character of the area.

### **Residential Amenity**

Policy H11 (Design and layout of New Housing Development) sets out a number of criteria against which new housing development must be assessed, which relate to the need to provide an attractive and safe environment, adequate privacy standards in rooms and gardens, the relationship of the proposed dwellings with existing dwellings, car parking standards and safe pedestrian access.

With regard to the relationship between the existing dwelling and the proposed new build, a privacy distance of at least 21m is provided which complies with the minimum privacy distance between facing windows in principal rooms, used by the Council.

The relationship with existing dwellings in the Paddock (along the western boundary) is also considered acceptable. The proposed dwelling would be set back some 13m from the boundary with No 9 The Paddock and approximately 17m from the nearest part of the neighbouring dwelling. In view of this and that the proposed dwelling would be set at an oblique angle to the existing property there would be no direct overlooking of any windows.

Similarly there are unlikely to be any adverse effects on the property to the south (No. 64 Middleton Lane where again the privacy distances provided exceed the minimum adopted standards. It should be noted that planning approval was recently granted for the erection of two detached dwellings within the rear garden of No.64. The physical relationship between these and the proposed dwelling would ensure that satisfactory privacy levels are provided for all the future occupants.

Overall the scheme would not harm the amenities of existing residents or future occupants of the recently approved residential scheme to the south.

### **Ecology and Nature Conservation**

The ecology report provided with the application indicates that bats were found to roost in several locations in the existing house, which would not be affected by the proposed development. However it states that the new dwelling would occupy an area of garden used by foraging bats and therefore it is proposed to install three new bat roost units to provide compensation for this loss. The report considers that the development would have a neutral or minor negative impact on the local bat population. During the surveys which were undertaken no evidence of owls was found in the garden or trees adjacent to the site. Natural England has raised no objections to the mitigation measures but has questioned the fullness of the survey work in respect of other species and advises the local authority need to be satisfied that the proposed development will not impact on other protected species. In this respect the extent of the survey work was established with the local authority prior to the submission of the application and is considered acceptable.

### **Trees**

As mentioned previously an Arboricultural Implications Assessment and Method Statement has been submitted with the application regarding the potential impact of the development on the protected trees along the northern boundary of the site, within the grounds of Almora Hall. The potential impacts identified in the Assessment are damage to the roots of the protected trees, damage to tree canopies as a consequence of construction traffic accessing the site and damage during the construction phase. Taking each of these issues in turn it is proposed to use a



'no dig' system of construction for the new driveway within the root protection areas of the trees, to be constructed prior to the main development works on the house and garage. With regard to the tree canopies it is proposed to crown lift one of the trees adjacent to the existing vehicular access to allow a 4m clearance. During the main construction it is proposed to protect the root protection areas with fencing to avoid compaction by construction traffic and storage of building materials. In the main the Council's Arboricultural Officer is satisfied with the mitigation measures set out in the submitted Arboricultural Implications Assessment and Method Statement. However he has expressed a concern that there may be insufficient space to store building materials on site without damaging the roots of protected trees from compaction. If members are minded to grant planning permission it would be prudent to attach a condition requiring details of a scheme for the storage of materials during construction to be submitted and agreed prior to the commencement of any works.

### **Highway Matters**

The proposed access arrangements and parking provision are considered acceptable. The existing entrance piers are to be retained within the scheme but set further back from the roadside to improve the visibility splay onto Middleton Lane which would address one of the previous refusal reasons.

In respect of the issue raised by the Council's Highways Engineer concerning the issue of access for emergency vehicles the Fire and Rescue Service have advised that a sprinkler system would be acceptable as an alternative to this. However it is considered inappropriate to seek such a requirement through this planning application. Fire safety is covered within the Building Regulations and this matter would be addressed under that legislation when an application is made to the Council's Building Control Section.

### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

### **CONCLUSION**

The application site is situated within the development limits of Middleton St George and therefore in principle would normally be acceptable. The design of the dwelling and garage are again acceptable and the development is unlikely to adversely affect the amenities of neighbouring residents or result in conditions that would prejudice highway safety. However in this instance the site comprises a significant private garden area which contributes to the openness and greenery of the Middleton One Row Conservation Area and it is considered that the loss of the garden area would have a detrimental impact on its character and appearance. On balance the proposed development is not considered to be acceptable in this location.

### **RECOMMENDATION**

THAT PLANNING PERMISSION BE REFUSED FOR THE FOLLOWING REASON: -

- 1) The proposed development would result in a loss of private garden area which contributes to the openness and greenery of the Middleton One Row Conservation Area. Consequently it is considered that the loss of this garden area would have a detrimental impact on the character and appearance of the conservation area. The development would thereby be contrary to policies E3 (Protection of Open Land), E29 (The Setting of New Development) and H13 (Backland Development) of the Borough of Darlington Local Plan 1997, Planning Policy Statement 3 (PPS3) Housing and 5 (PPS5) Planning for the Historic Environment.