

Item 9(iii)

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Mr K Hodgson  
Darlington Borough Council  
Dept of Development  
Town Hall  
Feethams  
Darlington  
Co Durham  
DL1 5QT

Your Ref: 13/01006  
Our Ref: APP/N1350/A/14/2221206  
Date: 9 October 2014

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Dear Mr Hodgson

**Town and Country Planning Act 1990**  
**Appeal by c/o Agent**  
**Site at Land To The Rear Of 3-4 Hill Garth, Darlington, DL3 9ET**

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

If you have queries or feedback about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.

Yours sincerely

Bridie Campbell-Birch

COVERDL2

*You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>  
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*

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## Appeal Decision

Site visit made on 17 September 2014

by **George Arrowsmith BA, MCD, MRTPI**

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

Decision date: 9 October 2014

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### Appeal Ref: APP/N1350/A/14/2221206

#### Land to the rear of 3-4 Hill Garth, Darlington, DL3 9ET

- 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 c/o Agent, against the decision of Darlington Borough Council.
  - The application Ref 13/01006/FUL, dated 12 December 2013, was refused by notice dated 6 June 2014.
  - The development proposed is residential.
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#### Application for Costs

1. An application for costs was made by the appellant against the Council. The application is the subject of a separate decision.

#### Decision

2. The appeal is dismissed.

#### Main Issues

3. The main issues are whether, i) the reliance on on-street parking would lead to a loss of highway and pedestrian safety and/or, ii) the proposed housing would have a seriously overbearing impact on nearby residential property on Hill Garth.

#### Reasons

4. The proposed development consists of 5 one-bedroom dwellings in a short terrace of 1½ and 2 storey buildings.

#### Highway Safety

5. The proposed houses would have no off-street parking but would instead rely on on-street parking on Prior Street. The Council consider that the additional on-street parking would interrupt the free flow of traffic and prejudice the safety of road users.
  6. The site is in an area where a number of properties have no off-street parking. Provision already exists for on-street parking on the east side of Prior Street where spaces for approximately 15 cars are designated, with the result that passing drivers must already beware of cars turning into or pulling out from the
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spaces. It is undoubtedly the case that the appeal proposal would increase the use of the spaces but I consider that the increase generated by 5 one-bedroom dwellings in an area where council officers report that there is a good bus service would be limited. I recognise that the on-street parking is already used by parents of children attending a nearby school but the maximum demand from the proposed dwellings is likely to occur when demand for parent parking is low. The Council in their appeal statement accept that the bays do not appear to be well used outside school hours, an observation that was confirmed by the evidence of my mid-morning site visit. In these circumstances I consider that the on-street additional parking activity generated by the appeal proposal is unlikely to lead to a significant loss of highway safety and would not conflict with the relevant objectives of Core Strategy policy CS2

7. The Council's Highways Team has made comments similar to those in the previous paragraph and has raised no objection to the proposal. My attention is also drawn to the Government's Manual for Streets which says that it is not always necessary to provide parking on-site. In the present case I am satisfied that the site's position in a conservation area puts increased emphasis on respecting the character of the area even though this might mean compromising the convenience of car users.

### ***Pedestrian Safety***

8. There is no footpath alongside the designated on-street parking spaces on Prior Street. This means that, in order to reach the proposed dwellings, residents or their visitors would either have to walk in the carriageway or cross and re-cross the road. The Council consider that this arrangement would not be safe, attractive or convenient for pedestrians and therefore that it conflicts with the objectives of policy CS2.
9. I consider that crossing or walking along a road is not unacceptably dangerous or inconvenient when, from my observation during my site visit and the nature of the proposal, I expect neither traffic nor pedestrian flows to be unduly heavy. My judgement appears to be consistent with that exercised by the Council in their original designation of the on-street spaces.
10. I am aware of my colleague's comment in a previous appeal that usage by the occupiers of the dwellings then proposed, and that by their visitors, would be likely to be more frequent and intensive than that generated by parents dropping off and collecting pupils from the school. The previous Inspector also commented that movements from the parking spaces to the school would be away from the junction of Prior Street with Newton Lane and Cockerton Green whereas some of the pedestrian movements to and from the proposed dwellings would be along the stretch of highway between the parking spaces and the junction. The implication is that he found these movements more problematical in terms of safety. It is nevertheless significant that the dwellings proposed in that earlier appeal comprised one 4-bedroom house and two 3-bedroom houses, giving a total of 10 bedrooms compared with the 5 bedrooms in the dwellings now proposed. For this reason the number of pedestrian movements to and from the parked cars would now be significantly less than those envisaged by my colleague and in my view would not sufficient to pose a significant threat to pedestrian safety

11. As with the more general issue of highway safety, I consider that the present appeal proposal would not cause unacceptable inconvenience or loss of safety for pedestrians or otherwise conflict with the objectives of policy CS2. Here again my judgement is consistent with the observations of the Council's Highways Team and does not conflict with the guidance in the Manual for Streets.

***Impact on nearby residential property***

12. The proposed terrace would be close to the site's boundary with the small rear gardens of existing houses on Hill Garth. Its rearmost corner would be only about 0.8m from the boundary with 3 Hill Garth. Of the existing houses the two that are closest to the proposed terrace, Nos 2 and 3 Hill Garth, have rear conservatories. In the case of No 3, the distance from its main rear elevation to the terrace's nearest corner would be less than 10m and that from the face of its conservatory significantly less. The impact of the new building would however be mitigated by the difference between the ground level at the appeal site and the higher level at Hill Garth. The appellant's grounds of appeal quote a difference of 2m whereas the Council in their appeal statement say 3.5m. During the site visit the parties agreed that 2m was the appropriate figure although this would be reduced to a difference of one metre when account is taken of the proposal to raise the ground level at the appeal site to alleviate potential flooding.

13. A number of the Hill Garth residents share the Council's view that the proposed development would have an overbearing impact on their properties. I have no doubt that the outlook from the nearest properties would deteriorate because, while they presently look out towards the greenery on the appeal site, they would in future look towards a substantial building. However, the planning system is not intended to protect the outlook that residents might enjoy at a particular point in time but to maintain an outlook that meets acceptable standards of amenity

14. With regard to acceptable standards, the committee report on the application says that the distances between the existing residential development and the proposed dwellings would be acceptable and generally accord with the requirements in the Council's adopted Design SPD. The report does not refer to specific guidance in the SPD and the only extract from the SPD that has been provided to me relates to distances between rooms. The specifically relevant issues in this appeal are the effect of the proposed building on the outlook from the rear elevations of the Hill Garth houses, the outlook from conservatories, which appear to function as habitable rooms, and the outlook from their short rear gardens. The SPD might or might not give guidance on these matters but none is reported in any of the representations before me. In the absence of formal guidance I must rely on my own judgement.

15. When seen from the rear of No 3 or from its conservatory or garden the new building would extend well above the top of the boundary fence. At ridge height the 1½ storey element of the proposed terrace would be more than 3½m higher than the top of the fence while the ridge of the 2 storey element, which would be only a little further away, would be around 5m higher.

16. For the appellant it is claimed that all that would be seen of the 1½ storey dwelling from the Hill Garth from their gardens is its roof line. This statement is not consistent with application drawing No 777-06A, which shows the side wall of that dwelling extending above the boundary fence.
17. During my site visit I saw that No 3's occupier had marked a point on a tree within his garden to show the height of the new building. Whilst I have no reason to question the accuracy of this mark it has to be appreciated that the new building's roof ridges would be set away from the boundary so that its perceived height when seen from No 3 would be reduced. I am nevertheless satisfied that the building would still form a dominant and overbearing feature in the central field of view from the rear of No 3. The effect on 2 Hill Garth would be smaller, mainly because the new building would take up a lesser proportion of the view but also because that house does not face directly towards the appeal site. The effect on No 2 nevertheless reinforces my view that the proposal would have an unacceptably overbearing impact on existing residential property and would thereby conflict with the objectives of Core Strategy policy CS16.
18. The occupier of 4 Hill Garth is concerned with overlooking from the new dwellings. This would however be at an oblique angle and I do not consider that it would result in a loss of privacy sufficient to warrant a refusal of permission. This judgement does not affect my finding that the proposal as a whole is unacceptable because of its overbearing impact on nearby residential property.

***Other Matter***

19. The appellant refers to the Council's lack of a 5 year housing supply. From this they conclude that the Council's policies for housing supply are out-of-date and therefore that the appeal proposal should be considered in accordance with the presumption in favour of sustainable development set out in paragraph 14 of the National Planning Policy Framework (NPPF). Whilst I accept that the proposal would be a sustainable form of development I do not consider that policy CS16 can properly be described as one for the supply of housing and therefore I do not consider that it is out-of-date. Moreover, even if the policy was out of date, NPPF paragraph 14 recognises that the presumption against sustainable development can be overridden when, as in the present case, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits.

*George Arrowsmith*

INSPECTOR

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## Costs Decision

Site visit made on 17 September 2014

by **George Arrowsmith BA, MCD, MRTPI**

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

Decision date: 9 October 2014

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### **Costs application in relation to Appeal Ref: APP/N1350/A/14/2221206 Land to the rear of 3-4 Hill Garth, Darlington, DL3 9ET**

- 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 c/o Agent for a full award of costs against Darlington Borough Council.
  - The appeal was made against the refusal of planning permission for residential development.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance 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.
  3. The appellant argues that the Council have not justified their decision to refuse the application contrary to their officers' advice. In refusing permission on grounds of highway and pedestrian safety they are said to have overridden the recommendation of their own Highways Team and advice in the Manual for Streets, choosing instead to rely on a previous Inspector's decision in relation to a different scheme proposed at a different time. In refusing permission on grounds of residential amenity, again contrary to an officer's advice, they have unreasonably disregarded the fact that the proposal complies with their own adopted design guidance. They have offered only generalised and inaccurate assertions to justify their opinion that the proposal would have an adverse effect on residential amenity.
  4. I will consider the appellant's arguments in turn.
  5. In the previous appeal an Inspector found that the proposal would result in significant harm to highway users. The factors in the present appeal are the same in kind but different in degree. Deciding whether these differences justify a different finding requires the exercise of judgement in which members are entitled to differ from their officers. The Council's decision does not conflict with policies in the National Planning Policy Framework or the advice in the Manual for Streets. The latter publication indicates that on-street parking might be a
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suitable solution for this type of development in this type of location but falls short of saying that it will always be suitable. The fact that I agree with the appellant and the Council's officers does not therefore mean that the Council's judgement was unreasonable.

6. In relation to residential amenity I agree with the Council that the proposed development would have an unacceptably overbearing impact on the nearest residential property. Here again a decision on whether an impact is unacceptable requires subjective judgement. The objective evidence on which that judgement is based is found in the submitted application drawings, especially 777-05A (extended site plan) and 777-06A (street elevation). In regard to the appellant's specific assertion that the proposal complies with the Council's own design guidelines, the reason for refusal concerns matters that do not appear to be covered by the guidelines, specifically the visual impact of a building on residential properties with short rear gardens and rear conservatories.
7. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*George Arrowsmith*

INSPECTOR