



# Appeal Decision

Site visit made on 15<sup>th</sup> March 2010

by **Jonathan G King** BA (Hons) DipTP MRTPI

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

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: enquiries@pins.gsi.gov.uk

Decision date:  
6 April 2010

**Appeal Ref: APP/N1350/A/10/2120034**

**Garden land, Cockerton Green, Darlington, County Durham DL3 9AF**

- 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 Dr James Gordon against the decision of Darlington Borough Council.
- The application Ref 09/00195/FUL, dated 30<sup>th</sup> March 2009, was refused by notice dated 3<sup>rd</sup> July 2009.
- The development proposed is the erection of a 2 bedroom bungalow on garden land to the rear of 29, 33 & 35 Cockerton Green; and demolition of commercial garage.

## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Dr James Gordon against Darlington Borough Council. This application is the subject of a separate Decision.

## Main issues

3. The main issues in this case are the effect of the proposed development on:
  - (a) the character and appearance of the area, including on the Cockerton Conservation Area;
  - (b) the living conditions of the occupiers of nearby properties; and
  - (c) local wildlife, particularly bats.

## Matters of clarification

4. There are inconsistencies between the plans submitted with the appeal. The predicted Flood Risk Assessment (FRA) Plan [plan No HN / 20207 (30) 01A] was, I understand, prepared to support an earlier proposal. The shape of the building is different, and reference is made to "GL" meaning "garage level" when there is no garage presently proposed. The plan also shows the floor level of the bungalow. Surrounding spot levels on this plan appear to correlate with those on the Site Plan [plan HN / 20207 (20) 35B] and on the Site Layout Plan [HN / 20207 (20) 32A], but the Survey Plan [HN / 20207 (00) 02] uses a different datum.
5. The Site Layout shows a spot level at 50.14m on the proposed hardstanding to the north of the bungalow, but does not show any for the building. There is another at the rear corner of the hair salon close by. The difference between

these heights correlates with comparable points on the Survey Plan, notwithstanding the different datum. It may therefore be taken that these levels are not proposed to be changed. However, a level of 50.49m is shown for the proposed patio that would lie between the bungalow and the side boundary with No 14 Waterside. By reference to the survey levels, this appears to be rather higher than the present ground level on that part of the site. There is presently a retaining wall along the boundary, and this is also shown on the Site Layout. Though there is insufficient information to determine the proposed height of the wall, it would appear that the patio and garden to the proposed bungalow would remain higher than the neighbouring land. The elevations [plan HN / 20207 (20) 33] show the ground level at the front door (from the patio) to be about the same as the floor level. Certainly, no steps are shown on any plan leading either up or down into the building. It is reasonable, in my view, to work on the basis that the floor level of the building would not be dissimilar to that of the patio (ie at a level of over 50m, and possibly up to about 50.5m). The FRA Plan shows floor levels at No 14 of 48.94m and 48.12, with the former confirmed on the Site Plan. On this basis, there would appear to be a floor level difference of over a metre between that building and the floor of the proposed bungalow. In marked contrast, the "Street Scene Elevations" [plan HN / 20207 (30 02B)] show the eaves of the proposed bungalow at broadly the same level as No 14, indicating that the floor levels would also be about the same.

6. First, I shall regard the FRA plan as having relevance only insofar as it shows the predicted flood levels and surveyed spot heights. I shall therefore disregard the outline of the building and the floor levels indicated. Second, although no firm details of the floor levels of the proposed bungalow have been provided, there is a clear difference between what is shown on the Site Layout Plan and on the Street Scene Elevations. When clarification about the inconsistency of the plans was sought at the site visit, the appellant indicated that it is the street scene elevations that should be regarded as representative of what is intended. Neither the application form nor the decision itemise the application plans. I note that the street scene plan is dated December 2009, the time when the appeal was made. Notwithstanding the appellant's assertions, it does not appear to be an application plan. It can be regarded at best as illustrative of what may have been intended. However, since it is at odds with the Layout Plan, which is an application plan, the weight I can accord it is extremely limited.
7. Taking all of the foregoing into account, I conclude that there is considerable uncertainty over precisely what is proposed with respect to the floor level of the building. Nonetheless, the application plans, on which basis the Council's decision was made, show the proposed bungalow at a higher level than its neighbours in Waterside, and I must proceed on that understanding.

## **Reasons**

### *Character and appearance*

8. Cockerton Green is an attractive open green space bounded on its southern side by a characterful row of mostly nineteenth century and earlier, 2-storey buildings of varying design and generally domestic-scale. It is behind a number of these that the site lies, with access presently permissible through 2

narrow openings, the westernmost of which is intended as the entrance to the development. The conservation area is drawn widely to include not only the Green and these older properties, but also several modern retail units of little architectural merit. To the south, it is bounded by the line of the Cocker Beck, and includes the site and part of Waterside, a development of bungalows of conventional suburban appearance arranged fronting a limb of the cul de sac.

9. Other than a glimpse through the proposed access, the proposed bungalow would not be visible from ground level when viewed from the Green, even from the higher parts to the north and irrespective of the uncertainties concerning its height. In this it would be broadly comparable to part of the Waterside development which is just discernable through an opening further west.
10. Views from Waterside towards the back of the older properties fronting the Green would be impeded somewhat by the bungalow, at whatever height it might be built. But, as these are not a main defining element of the character of the road, I am satisfied that it would not be altered significantly thereby. The proposed bungalow is to a design and detailing that would be compatible with the existing dwellings in Waterside. But it would not take access from that road, nor would it face it. Rather, public views would be towards the mostly blank southern gable and only obliquely to the principal western elevation. Irrespective of its height, it would be visually separated from the road by a fence atop a retaining wall. For these reasons it would fail to integrate satisfactorily with the remainder of the street scene, in which the bungalows (other than No 15 which does not have a conventional frontage) have direct access; and most have open frontages. Moreover, if it were to be located on or about present ground levels, as the application plans appear to show, it would sit higher than its neighbours. This would tend to draw undue attention to a building that would not respect the characteristic form of development in the road. Planning Policy Statement 1 *Delivering Sustainable Development* says that design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area should not be accepted. Though Waterside is a fairly modern development, it forms a pleasant, if unremarkable part of the conservation area which is deserving of protection from unsympathetic change. I conclude that the proposed development would be counter to Policy H11(1) and E29 of the Borough of Darlington Local Plan (LP) and the objectives of the *Design of New Development* Supplementary Planning Document.
11. The Council has expressed concern at the "tandem" nature of the development. Dwellings behind the frontage properties to the Green and taking indirect access from it is not a principal feature of the area. But neither is it unknown: for example Nos 23 and 25 adjoining the site lie behind No 27; and on a larger scale, Aston Terrace lies behind the Methodist Church a short distance to the west. However, those are older buildings that sit comfortably in the context of the frontage to the Green and retain the grain of the plots, said by the Council to be mediaeval in origin. In scale, design and character, the proposed bungalow would not follow that pattern; and I see no benefit in the appellant's claimed "rationalisation of the boundaries". Though the historical layout has been affected by more modern building, not least Waterside, the proposed development, in occupying land behind 4 frontage properties, would further erode this pattern.

12. The setting of the Listed cottages at Nos 39 and 39a Cockerton Green would be only marginally affected. No 14 Waterside is already located directly behind these properties, and the proposed bungalow would make little if any difference.
13. To conclude on this issue, I am satisfied that the effect of the proposed development on the Green and on the Listed cottages would be broadly neutral. But otherwise the attempt to integrate the development into the urban fabric would not be successful. It would metaphorically turn its back on a suburban setting which provides the source of its design and character; and owing to that very character, it would not respect the more traditional setting in which it would be placed. In terms of the statutory duty, it would neither preserve nor enhance the character or appearance of the conservation area; and would be contrary to LP Policy H13(3).

#### *Living conditions*

14. The site is surrounded by existing development, but the Council does not argue that there would be any significant opportunity for overlooking or loss of privacy. I agree. The proposed bungalow would be located with its main (western) elevation, containing the front door and principal windows facing towards the side of No 14. That contains a window and a part glazed door, but I do not know what rooms they serve. Nonetheless, irrespective of the proposed floor level, I would estimate that provided a suitable fence was placed on the boundary, the opportunities for overlooking would be negligible. The southern gable would contain a small utility window. This would look towards the side of No 16 which contains 2 windows and the front door. If built at the higher level, there might be some limited potential for overlooking, but this could be obviated by requiring the utility window to be obscure glazed. If the bungalow was to be built at the lower level, there would be intervening fencing. To the east would be the greater part of the garden, terminating at the back walls of Nos 23 and 25 Cockerton Green. There are some windows in those elevations, but they are at a high level and the occupiers would not be susceptible to any loss of privacy from facing windows of the proposed bungalow. On the remaining side, there would be 2 secondary windows serving the lounge. These would look towards the entrance to the site, which has a window above. But in view of the separating distance and the small size of the windows, I am satisfied that there should be no significant loss of privacy for either party.
15. The presence of the bungalow would doubtless affect the outlook from a number of upper windows of properties fronting Cockerton Green. It is this which is of greater concern to the Council. But the relationship would not be significantly different to that which presently exists between the Listed cottages and No 14 Waterside. In a predominantly urban situation such as this, some limitation on outlook compared to a wholly residential area is not uncommon, and is acceptable.

#### *Wildlife*

16. There is some dispute between the parties concerning the availability of a bat survey of an outbuilding on the site. The Council Officer's report confusingly says both that it was submitted, and that it was not. What is not at issue is

that a report was produced which states that although there are bats in the general area, something that would justify putting mitigation measures in place, the building itself is unsuitable as a bat roost. It has not been used as such and consequently its demolition would present a very low risk of harm to the creatures. Although reference has been made by a number of local residents to the wildlife value of the site, it appeared to me to have no greater potential than any other garden in an urban setting. No evidence has been put forward by the Council in relation to wildlife interest. Against that background, and subject to the mitigation measures which could be assured by means of a condition, I am satisfied that there would be no substantial harm to wildlife on the site.

#### *Other matters*

17. The FRA shows that parts of Waterside are at risk of flooding from the Cocker Beck, but this does not extend to the appeal site. It is possible that the increase in the proportion of the site that would be built over or hard surfaced would give rise to increased or more rapid surface water run-off. The site plan shows a drainage run going northwards towards Cockerton Green. If the site were to be drained in that direction, there should not be any significant implications for flood risk in Waterside. I do not know whether, if the levels were to be lowered, that drainage solution would still be possible. The FRA was carried out in the context of higher levels, so I can draw no firm conclusions on the matter. I note, however, that it shows predicted flood levels barely below the floors of some of the dwellings in Waterside, so there is clearly little room for error, should the development affect the direction of drainage. Consequently, although it cannot be a determinative issue, the implications for drainage adds some weight to my general concern about the lack of clarity over the proposed levels.
18. A number of other matters have been raised by local residents. Some are misconceived: for example the fear of additional traffic in Waterside and the potential for disturbance during construction, when no access is proposed from that road. Some appear to relate to an earlier proposal for a split-level bungalow. Others, such as concerns about increased activity and overshadowing, or conversely, light pollution are overstated given the small size of the development. The occupier of No 23 Cockerton Green is worried about the possible loss of a discretionary rear access. But that is a legal issue that would have to be resolved separately from the planning position. None of these matters carries any substantial weight for my decision.

#### *Overall Conclusions*

19. Notwithstanding my conclusions with respect to the effect on wildlife and on the living conditions of those living in the vicinity, I take the view that the proposed development would sit awkwardly within the urban fabric, both with respect to Waterside and to the rear of the properties on Cockerton Green, thereby adversely affecting the character and appearance of the area, including the conservation area.
20. I also conclude that there is substantial uncertainty concerning the precise floor levels that are proposed. This complicates the assessment of its local impact and would make granting planning permission problematical, even if I were to

be satisfied on all other matters. But I am certain that, whether located at present levels as appears to be shown by the application plans, or lower, as shown on the illustrative street scene elevations, my conclusions regarding the effect on the character and appearance of the area would be the same. However, if the former, I consider the harm would be somewhat greater.

21. In reaching these conclusions, I have had regard to all other matters raised by the appellant. The location is undoubtedly sustainable, in that it is centrally located to the settlement on previously developed land. There is no dispute between the parties that the principle of residential development on this site is acceptable in that context having regard to LP Policy H3. However, that does not itself justify the development when balanced against other considerations. I am aware that other development has been permitted locally by the Council in recent times, but these are much larger and are not comparable to the present proposal, for which they do not set any kind of precedent. I acknowledge that the old shed or garage which is in a poor state of repair would be removed as part of the development. But this is not prominent in the street scene from Waterside. It does not require this development to facilitate its removal, repair or visual improvement. There is no evidence of crime or obvious vandalism of the site. But even if there were, this would not be a good reason to justify an unacceptable form of development. Finally, I do not doubt that construction of the bungalow would bring some temporary employment to the area. But this can never be a conclusive argument, since it could be applied to all development irrespective of its merits.

*Jonathan G King*

Inspector