



Appeal Decision

Site visit made on 15 February 2012

by **D R Cullingford BA MPhil MRTPI**

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

Decision date: 6 March 2012

Appeal Ref: APP/N1350/A/11/2165354

2 & 4 Burtree Lane, Darlington, DL3 0XQ

- 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 by Mr Jay Patel against the decision of the Darlington Borough Council.
- The application (ref: 11/00400/FUL and dated 20 June 2011) was refused by notice dated 7 November 2011.
- The development is described as the 'conversion of first floor to form 4 No. apartments, erection of 2-storey extension to rear and change of use to convenience store (Use Class A1). (Amended plans received 30 September 2011.)

Decision

1. For the reasons given below, I allow this appeal and grant planning permission for the conversion of the first floor to form 4 apartments, the erection of 2-storey extension to the rear and a change of use of the ground floor to form a convenience store (Use Class A1) at 2 & 4 Burtree Lane, Darlington in accordance with the terms of the application (ref: 11/00400/FUL) dated 20 June 2011, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the plans collectively numbered as 10.114.00A and dated 30 September 2011, unless otherwise agreed in writing by the Local Planning Authority or required by a condition set out below.
 - 3) No development shall take place until samples of the materials to be used in the construction of the alterations to the buildings, hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 - 4) The sales area of the convenience store (Use Class A1 – Shop) hereby permitted shall be limited to 100m² and shall not be increased unless otherwise approved in writing by the Local Planning Authority.
 - 5) The convenience store hereby permitted shall only be open for business between the hours of 07.30 and 22.00 hours on Monday to Saturday and between 07.30 and 21.00 hours on Sundays and Bank Holidays.
 - 6) Prior to the commencement of the development hereby permitted, a scheme of sound insulation shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include a 'noise impact assessment report' which must assess the noise associated with all plant and machinery to be installed together with the impact of the commercial use and road traffic noise on the first floor apartments. The results of that assessment must be used to prepare a scheme for sound insulation between the commercial and residential elements of the permitted development. In addition, the background noise level shall be measured at locations, and in a manner, to be agreed in writing with the Local Planning Authority and the sound insulation scheme shall incorporate measures to ensure that the noise rating level from all plant and machinery associated with the development combined shall be at least 5dB(A) below the background noise level at the nearest dwelling in Princess Road, when measured in accordance with BS4142:1997. All works which form part of the approved sound insulation scheme shall be completed prior to any part of the development being first occupied or used.

- 7) No development shall commence until details of the proposed lighting scheme have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) Development shall not begin until a scheme to enhance road safety in the vicinity of the shop, hereby permitted, has been submitted to, and approved in writing by, the Local Planning Authority. The scheme may incorporate such measures as: waiting and loading restrictions, the installation of a guard rail, the provision of a central refuge (including dropped crossings and tactile paving) or a light controlled crossing. All works which form part of the approved scheme shall be completed prior to any part of the development being first occupied or used.
- 9) Development shall not begin until details of the access to the car park have been submitted to, and approved in writing by, the Local Planning Authority. Those details shall provide for delivery vehicles. The building shall not be occupied until that access has been constructed in accordance with the approved details.
- 10) The development, hereby permitted shall not be occupied or brought into use until space has been marked and laid out within the car park to allow vehicles to enter and leave in forward gear and to accommodate 2 parking spaces for disabled people, 4 parking spaces for the occupants of the apartments, 5 parking spaces for customers of the store and 1 space for the loading and unloading of vehicles, all in accordance with a scheme that shall first have been submitted to, and approved in writing by, the Local Planning Authority. The spaces, marked and laid out as approved, shall thereafter be retained.
- 11) The development, hereby permitted shall not be occupied or brought into use until space has been laid out to accommodate 4 bicycles for the occupants of the apartments and 2 bicycles for customers at the store. in accordance with a scheme that shall first have been submitted to, and approved in writing by, the Local Planning Authority. The spaces, marked and laid out as approved, shall thereafter be retained.
- 12) No development shall commence until a scheme to widen the footway over the whole length of the frontage and to provide a pedestrian access to the apartments has been submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development, hereby permitted, shall not be occupied or brought into use until these works have been implemented in accordance with the approved details.

Reasons

2. The appeal premises are a pair of small terraced cottages marooned in front of a large car park at the back of Harrowgate Hill Lodge (a roadside hotel) and behind the White Horse Public House. They face Burtree Lane (which provides a link between the A68 and the A167) and the side elevations of the neat semi-detached dwellings astride the junction with Princess Road. Otherwise the nearest residential property lies some 40m distant across the car park. The hotel faces the A167 (which continues as North Road into the town centre) and the public house stands at the junction of the main road with Burtree Lane, heralding the approach of ribbon development and open countryside; there is also a large 'car centre' at this junction.
3. The proposal involves the conversion of the 2 cottages to provide 4 self-contained apartments on the first floor and a shop on the ground floor. Each apartment would accommodate a bedroom, a bathroom and a kitchen-cum-lounge, with access via 2 rear external staircases; a modest 2-storey extension, projecting some 2.2m from the rear-most wall, would be erected resulting in a matching rear gable to the rear elevation. The apartments are intended to be used in conjunction with the hotel, which is in the same ownership, providing self-contained visitor accommodation. The ground floor shop is envisaged as a 'One-Stop-Shop' neighbourhood convenience store with the main windows facing Burtree Lane and deliveries being from the car park at the rear. The gross area (including storage facilities and toilets) would amount to about 135m², but an amendment to insert a stud-partition wall would reduce the sales area to 100m².

4. The Council have refused permission for the project first, because the store would exceed the 100m² gross floorspace limit usually imposed by policy CS9 of the Core Strategy for shops serving the day-to-day needs of local people: second, because the activity generated would be likely to cause noise and disturbance to local residents, contrary to policy CS16: third, because necessary highway safety measures would be unsightly, contrary to policy CS2: and fourth, because parking and servicing arrangements could cause hazards at this busy junction and the location of the store would lead to an increase in overall car travel, contrary to policy CS2. Those are the issue on which this appeal turns.

The shop

5. I realise that the scheme would result in a slightly larger neighbourhood store than might normally be permitted under policy CS9 without demonstrating a geographical deficiency in provision. But the proposal has been amended to limit the net floorspace to 100m². And, although the Parish Council asserts that there are plenty of shops in the area to serve the community, they are not especially evident here. Indeed from what I saw, I agree with the planning officer that, given the relative lack of food shops amongst these suburban surroundings, the appeal scheme could appropriately meet the day-to-day needs of nearby residents without generating significant patronage from further afield. It would thus contribute to fostering the provision of locally accessible shops and services along the lines indicated in the Core Strategy. It would do more, for the store would stand beside the public house and the hotel, thereby providing some opportunity for 'linked trips' and, perhaps, some modest support for such leisure uses, identified in the Core Strategy as remaining 'important in providing for residents' everyday needs close to their homes'. And, of course, the apartments would diversify the type of accommodation that could be offered at the hotel and thereby contribute to the range of provision available for visitors just as policy CS6 (dealing with culture and tourism) encourages; both the proposed shop and the apartments would be accessible by public transport.
6. Moreover, it seems to me that the scheme would involve quite an imaginative refurbishment of these cottages. The properties might not offer ideal residential accommodation, being surrounded by the hotel car park and next to a public house. But the proposal would build on their juxtaposition and connection with the hotel and utilise the intervening car park. Moreover, it would refurbish an interesting remnant of earlier development (the decorative brickwork and the different 'designs'); my understanding is that redevelopment had previously been mooted.
7. For those reasons, and subject to restricting the net floorspace to that now proposed, I consider that this shop would be warranted here, in spite of the normal limit imposed by policy CS9.

Noise and disturbance

8. I am not entirely sure that policy CS16 is directly relevant to the sort of noise and disturbance that might possibly emanate from the operation of a neighbourhood store. However, in this case the shop would stand a little apart from neighbouring dwellings. Only the side elevations of the nearest properties astride Princess Road and the flank wall of a garage would face the proposed store across Burtree Lane and even then those structures would be about 19m

away. Other dwellings would lie some 40m distant across the car park. Moreover, this is not a particularly quiet, nor is it an exclusively residential, area. The store would stand on a triangle of land between Burtree Lane and the busy A167, the latter connecting the town to the Tyneside conurbation. And, it would stand beside the White Horse Public House and the hotel. It follows that there must already be some activity and noise emanating from the existing traffic and from the coming and going of the customers at the adjacent leisure uses; there must also be the sounds of car repairs emanating from the nearby car centre. Hence, provided opening hours were to be appropriately restricted (07.30-22.00 hours on Monday to Saturday and 07.30-21.00 hours on Sunday is suggested), I consider that the scheme would not seriously impinge on the amenities that local residents might reasonably expect to enjoy here, given the modest size and local accessibility of the proposed store.

Highway safety measures

9. It is suggested that significant highway installations would be required to accommodate the proposed store safely (such as safety railings and traffic restrictions), thereby damaging the roadside scene. In fact the Highway Engineer reports that there have been no recorded personal injury accidents in the immediate vicinity of the site in the last 5 years and although a package of measures are listed as capable of ameliorating concerns about a development that would encourage the crossing of a busy road, no evidence is adduced to show that all would actually be necessary. For example, I would rather doubt that either the traffic or the activity likely to be generated by this store would justify the installation of both a guard rail and a pedestrian refuge. In any case, some measures would serve to improve the street scene and the environment (such as widening the pavement, which could largely be accommodated within the confines of the appeal site) or they would entail works in the car park (which would not greatly affect the character of the surroundings). Moreover, the road markings and roadside paraphernalia that might eventually be required would be seen in conjunction with the signs, lighting and street furniture evident at the nearby junction. Consequently, I doubt that the installations and works required would greatly impair the street scene or contravene the requirements of policy CS2.

Road hazards and car travel

10. It is baldly asserted that the car parking and access arrangements are not considered adequate to address highway safety issues in the vicinity of this busy junction and that the proposal would lead to an increase in car travel. No evidence of any kind is submitted in support of those assertions. Given the visibility evident along Burtree Lane and the size of the adjacent car park, the technical advice is (understandably) that, subject to suitable conditions, no undue road hazard would ensue. And, given the likely local accessibility of the proposed store, it is difficult to see how it would lead to any increase in car travel, even were it to attract some passing trade. I read in the committee minutes that '*Whilst local feelings were strong regarding highway safety problems the lack of evidence of this meant that it would be difficult to support a refusal reason at appeal ...*'. Quite so.

Conclusion

11. I have found that, subject to suitably restricting the net floorspace of the scheme, the proposed shop could provide an appropriately accessible local facility to meet the day-to-day needs of the neighbourhood without seriously

impinging on the amenities that local residents might reasonably expect to enjoy or harming the street scene. Moreover, subject to appropriate conditions relating to access, parking and safety arrangements, the proposal would not unduly exacerbate traffic hazards. Hence, and in spite of considering all the other matters raised, I find nothing sufficiently compelling to alter my conclusion that this appeal should be allowed, subject to the conditions set out above.

12. Most of those conditions are intended to ensure that the proposal would be implemented as intended and the reasons for imposing them are set out above. The requirements relating to operating hours, sound insulation and lighting are intended to safeguard the amenities of surrounding and prospective residents. The requirements relating to access and parking arrangements are integral to the proposals, though I think that the parking provision suggested by the Council is a little excessive. In my view the store would be likely to operate as a 'locally accessible shop' rather than as a 'supermarket' and, given that there ought to be some scope for the dual use of parking spaces at the hotel, I doubt that provision 'at the top of the range' would be necessary. In addition, the apartments are intended to be used in conjunction with the hotel, so that it should not be necessary for more than 1 parking space to be available for prospective occupants. And, given the nature of those apartments, I think that a similar provision would suffice even if they were eventually to be used as separate dwellings.



INSPECTOR

