



## Appeal Decision

Site visit made on 5 February 2020

**by S R G Baird BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21<sup>st</sup> February 2020**

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**Appeal Ref: APP/A2335/W/19/3235191**

**Former Bowling Green and Barn at the Bowerham Hotel, Bowerham Road, Lancaster LA1 4DT**

- 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 AG Enterprises (Lancaster) Limited against the decision of Lancaster City Council.
  - The application Ref 18/01526/FUL, dated 18 December 2018, was refused by notice dated 21 February 2019.
  - The development proposed is the erection of a 3/4 -storey building to accommodate 2 retail units at the ground floor with 49 units of student accommodation above and the conversion of a redundant barn to 4 student units.
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### Preliminary Matters

1. The appellant submitted 2 amended plans with the appeal statement (Drawing Nos. 5855(P)106 Rev B and 5855(P)107 Rev A). These plans show the removal of a roof terrace and delete a door from the second floor onto a flat roof. The local planning authority (lpa) has no objection to the proposed substitution. As no party would be prejudiced, I will deal with the appeal based on the amended plans. These substitutions address, in part, the issues raised by reason for refusal No. 3.
2. The appellant has submitted a signed Unilateral Undertaking under S106 of the above Act to pay a financial contribution to be used for improvements to recreational facilities.
3. Further to Reason for Refusal 6, the appellant submitted details of a surface water drainage strategy. The lpa confirmed that the necessary works are a matter that could be dealt with by imposing a planning condition and did not submit any further representations on this matter.

### Decision

4. The appeal is dismissed.

### Main Issues

5. These are: 1) the effect on the character and appearance of the area and a non-designated heritage asset; 2) the implications for neighbours' living conditions with reference to privacy, daylight and outlook; 3) the implications for the living conditions of future residents with reference to daylight and outlook; and 4) the implications for the safety and free flow of traffic on the local highway network.

## Reasons

6. The development plan includes the Core Strategy (CS) adopted in July 2008 and A Local Plan for Lancaster District 2011-2031 - Development Management DPD<sup>1</sup> (LP) adopted in December 2014. The lpa have published a draft Strategic Policies and Land Allocations DPD that is at an advanced stage of preparation.

### Character and Appearance

7. The appeal site is a former bowling green at the Bowerham Hotel. The lpa identify the hotel as a non-designated heritage asset. LP Policy DM33 indicates that proposals within the setting of a non-designated heritage asset will be required to give due consideration to its significance and ensure that this is protected or enhanced where possible. LP Policy DM35 seeks to ensure that new development contributes positively to the identity and character of the area through good design having regard to local distinctiveness. Chapter 12 of the Framework promotes high quality design as a key element of sustainable development. The Framework seeks, amongst other things, that developments are visually attractive, are sympathetic to local character and establish a strong sense of place. Framework paragraph 130 emphasises that permission for poor design that fails to improve the character and quality of the area should be refused. Framework paragraph 197 indicates that when determining proposals affecting a non-designated heritage asset, a balanced judgement is required based on the scale of any harm and the significance of the asset.
8. The general area is largely residential, characterised by mature, mostly 2-storey sandstone faced terraced dwellings. Within this context, the Bowerham Hotel is a largely unaltered Victorian period hotel with eclectic revival architectural influences. The hotel is an attractive and distinctive landmark feature on the corner with Newsham Road. Given the contribution of the hotel to the streetscape, I consider it to be a heritage asset of moderate significance. Opposite the hotel and the appeal site is a row of retail/commercial properties, some with residential uses above. In this context, a mixed-use development of retail on the ground floor with residential above would be consistent with the character of the area.
9. The proposed flat-roofed building with a frontage of some 29.5m to Bowerham Road would largely fill the gap between the hotel and Nos. 1-3 Hanmer Place. At 3-storeys, matching the parapet height of the hotel and the ridge heights of Nos. 1-3, the building would have a substantial presence and influence in the street scene. I appreciate that an attempt has been made to mitigate the visual bulk of the building through a staggered front elevation, setting back the second storey and finishing this part of the building in grey metal cladding. The setback of the main entrance to the flats would be significant setback. However, for the remainder of the building, the depth of the staggered elevation and the setback of the second floor would be marginal and would not visually break-up the substantial flat appearance of the front elevation. These factors combined with the lack of detail and interest at first and second floor and the design of the northern end of the frontage, where the proportions of the entrance doors would appear at odds with the amount of stonework and window detailing above, would result in a building that

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<sup>1</sup> Development Plan Document.

would appear, bland and uninteresting. In this context, the building would appear as an incongruous feature in this mature and visually diverse street scene.

10. For the above reasons, I consider the design of the building fails to take account of the local distinctiveness of the area and would result in some moderate harm to the setting and significance of the Bowerham Hotel as a non-designated heritage asset. As such the proposal would conflict with LP Policies DM33 and 35 and Framework policy.

#### Neighbours' Living Conditions

11. LP Policy DM 35, criterion 2, expects new development to ensure no significant detrimental impacts to amenity in relation to overshadowing, privacy, overlooking and massing. The appellant submits that this policy makes no mention of the residential amenity of neighbours. After careful reading of the policy and its supporting text, I consider that this criterion is relevant when testing the impact of a proposal on its neighbours. Moreover, Framework paragraph 127(f) requires the creation of places with a high standard of amenity for existing users.
12. No. 3 Hanmer Place is a 3-storey end of terrace dwelling located immediately to the north of the site. Adjoining the common boundary, the main rear elevation has habitable room windows on the ground, first and second floors. The northern elevation of the development would comprise 2 and 3-storey high, blank gable walls that would project some distance behind the main rear elevation of No. 3. The gable elevation of the proposed building would be stepped, with a gap of some 2.5m (the lpa say 2.2m) from the 3-storey gable wall and a 5m gap from the 2-storey gable wall to the common boundary. Given the substantial rearward projection of the proposed building and the limited setback from the boundary, there would be a material reduction in the amount of daylight received by the main rear elevation of No. 3. In addition, these blank gable walls would appear dominant and overbearing when viewed from the rear facing windows of No. 3. The combination of a material reduction in daylight and over-dominance would make No. 3 a less pleasant place to live in.
13. The rear 3-storey elevation of the proposed building would have windows in the lower ground, ground and first-floor rooms facing the side elevation of No. 1 Trafalgar Road. This elevation would be some 9m from the main side elevation of No. 1, which has a small secondary window serving a first-floor bedroom. Views from the lower ground floor windows would be obscured by a retained wall. Notwithstanding the limited gap, the small size of the side window to No. 1 would minimise and mitigate any potential overlooking. Accordingly, there would be no material loss of privacy. The proposed window serving the first floor north-facing room in the barn would be set at what appeared to me to be a similar distance from the main rear elevation of No. 1. This elevation contains main windows on the ground and first floor that serve habitable rooms. Given the limited separation, I consider the development would result in overlooking resulting in a material loss of privacy.
14. On this issue, I conclude that the living conditions of residents would be unacceptably affected. As such there would be conflict with criterion 2 of LP Policy DM35.

### Living Conditions of Future Residents

15. The lpa and appellant refer to different elements of the LP. These are, LP Policy DM35 – Key Design Principles, Policy DM46 – Accommodation for Students, Appendix D – Purpose Built and Converted Shared Accommodation and Appendix F – Studio Accommodation. The appellant makes the same point regarding Policy DM 35 in that it makes no mention of the amenity of future residents. The supporting text to this policy sets out the key design principles that are applied to new development. This includes a reference, albeit under the heading of ensuring privacy, that main habitable rooms should not be overshadowed by boundary walls, fences or 2-storey gables. These principles are reflected in criterion 2 of the policy. Moreover, Framework paragraph 127(f) requires the creation of places with a high standard of amenity for future users.
16. Policy DM46, which makes no reference to light or outlook, indicates that new purpose-built accommodation for students will be supported where it meets the criteria set out in Appendix D. Appendix D refers to shared student accommodation and as such it would not be relevant to the proposal before me. Both the lpa and the appellant refer to Appendix F, which makes no reference to light or outlook. That said, as a general principle new accommodation should be designed and located to provide adequate levels of natural light and provide an adequate outlook. Such an approach is consistent with the requirements of Framework paragraph 127(f). Moreover, whilst student accommodation is aimed at a transient population, there is no reason why students should be expected to accept lesser standards of accommodation than the general population. Moreover, the rooms would be occupied almost full-time at those times of the year when daylight is at a premium.
17. The lower ground floor layout shows the windows to Rooms 5 and 6 would be some 3m from a tall retaining wall on the boundary with the Bowerham Hotel. The hotel is a tall building and towards the rear its height is accentuated by the significant change in ground levels from east to west. Rooms 11 and 12 on the ground floor and 18 and 19 on the first floor would be opposite the side elevation, which contains several windows and a smoking platform. To minimise overlooking, the windows to Rooms 11, 12, 18 and 19 are angled to face south-west. As to the barn conversion, the first floor, north facing room, No. 52, would be served by a window inserted into an existing small opening. All the rooms are deep, which would exacerbate the effects of reduced levels of daylight. Due to their location, orientation and size of window opening, several of the studio rooms, would receive inadequate levels of daylight. The outlook from Room 5 and 6 would be dominated by the retaining wall. In these circumstances, contrary to the objectives of LP Policy DM35, the proposed scheme would not provide acceptable living conditions for future occupiers.

### Highway Safety

18. Policies DM20 and DM22 seek to avoid unacceptable impacts on the safety and free flow of traffic and require appropriate levels of parking. Bowerham Road is a main route into the town centre and a bus route. At the time of my visit traffic flows were high and the bus service appeared frequent. I have no reason to conclude that that situation was unique. From south to north

between Newsham Road and Avondale Road there is a bus layby, a Zebra crossing and a layby part of which is controlled by the zig-zag lines denoting no parking with the remainder is used for on-street parking. On the opposite side of the road there is a long layby for on-street parking. Although the permitted parking areas were well used there was some availability of parking.

19. The 2 retail units would be serviced from a layby to the front. This loading bay would take up all the Zebra crossing zig zag lines on the west side of the road. Given its depth and length, the layby would be large enough to accommodate a service vehicle clear of the highway without excessive manoeuvring to restrict the flow of traffic. However, that is not the main concern. The proposal includes 17 off-street parking spaces to the rear of the building accessed via Avondale Road and Trafalgar Road, compared to the 19 required by the Highway Authority. The reduction in the proposed provision is marginal and would not conflict with the requirements of Policy DM22. However, given their location and the nature of the access via Avondale Road and Trafalgar Road they are unlikely to be attractive to most potential customers, particularly passing trade.
20. Most customers would seek to park as close to the store as possible either on-street on Bowerham Road or in the side roads. At the time of my visit parking was available in the side roads. That said, it requires a conscious decision from a passing driver to park in the side road. Generally, customers would be in competition with others using the parking laybys on Bowerham Road and I have no doubt that some would park in the service layby.
21. Retail units of the type proposed generally have more than one service delivery per day and there is a high probability of conflict between customer parking and delivery vehicles. Given that parking could occur at random times and delivery schedules would be fixed the potential for this conflict would not be mitigated by a condition requiring a servicing plan to be agreed. Cars parked in the service layby would mean that delivery vehicles would have to stand and wait in the highway. Given the nature of the road, delivery vehicles standing in the highway would result in unacceptable vehicle conflict and obstruction. Moreover, large vehicles standing in the highway would obstruct visibility of the pedestrian crossing. In these circumstances, I conclude that the proposal would unacceptably affect the safety and free flow of traffic on Bowerham Road in conflict with LP Policy DM20.

#### Other Considerations

22. The site is located outside Lancaster city centre and although located within a cluster of retail and commercial uses Bowerham is not identified as a Local Centre in the development plan. As such, the proposed retail units would conflict with CS Policy ER 5 and LP Policy DM1, which seeks to focus retail development in existing centres. Policy TC1 of the emerging Local Plan locates the appeal site within the proposed Bowerham Urban Local Centre and Policy DM 18 indicates that commercial development on the ground floor may be permitted. The emerging Local Plan has reached an advanced stage and there are no objections to the designation of Bowerham as local centre. Accordingly, significant weight can be attached to the proposed allocation. As such the proposal would not require to be sequentially tested.

23. Whilst the inclusion of Undercroft parking is not ideal, I note that there is no objection from the Police and concerns regarding security and surveillance could be addressed by conditions. From my reading of the plans there is one single-storey element to this building; the main entrance to the flats. This is a tall single storey element and the opportunity to gain unauthorised access to this area would be limited
24. The flats would be adequately served by a substantial bin store to the rear of the site. The layout plans for the retail units do not show any specific provision for storing refuse and I can understand the lpa's concern. Inadequate or no provision for refuse storage can result in commercial sized bins being sited in inappropriate and visually intrusive locations. However, it appears that there would be scope within the respective internal layouts to provide the necessary facilities and this is a matter that could reasonably be dealt with by condition.
25. Significant concern has been raised by residents about increased pressure on on-street parking exacerbating existing problems. Most of the terraced houses in the surrounding area have no off-street parking, on-street parking is unregulated and there is no residents' parking scheme in place or proposed. Whilst on weekdays during working hours there would be available on-street parking, I have no doubt that during the evenings and weekends there is considerable pressure on availability.
26. The area is conveniently located for the town centre and the University and served by a frequent bus service. No on-site parking is proposed for the student flats. The appellant's strategy is a combination of, the provision of a large bicycle store, discouraging car use by residents through the terms of their tenancy agreement. Moreover, as I understand it the University operates strict control over the level of student car parking on the campus. Whilst I acknowledge that enforcing parking controls through a tenancy agreement where parking in an area is unregulated might be difficult, it is not impossible. Whilst I appreciate the concerns of residents, I do not have the evidence to suggest that this development would cause unacceptable pressure on the availability of on-street parking in the general area.

## Conclusions

27. The provision of student accommodation is a component of the housing requirement and the lpa acknowledge that, in accordance with the requirements of the Framework it currently cannot demonstrate a 5-year supply of land for housing. As such this is a case where planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in the Framework when taken as a whole.
28. The development of 53 units of accommodation, albeit student housing, would be a significant contribution towards the supply of housing and a benefit. As such, I attach significant weight to this benefit as a material consideration. However, in this case, the unacceptable adverse effects on highway safety and the free flow of traffic, the living conditions of existing and future residents and on the appearance of the area and the setting of a non-designated heritage asset would significantly and demonstrably outweigh the benefits of the development.

29. As I am dismissing the appeal for other reasons, it is unnecessary for me to reach a conclusion on the S106 Unilateral Undertaking and it has not formed part of my conclusions on the merits of this appeal.
30. Accordingly, having taken all other matters raised into consideration, I conclude that this proposal would conflict with the provisions of the development plan and the Framework when taken as a whole and the appeal is dismissed.

*George Baird*

Inspector