



Appeal Decision

Site visit made on 7 January 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th April 2020

Appeal Ref: APP/W4515/W/19/3239220

8 Marine Gardens, Whitley Bay NE26 1EQ

- 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 Mr Sukhwinder Dhillon against the decision of North Tyneside Metropolitan Borough Council.
 - The application Ref: 19/00868/FUL, dated 24 May 2019, was refused by notice dated 13 September 2019.
 - The development proposed is a change of use of existing office/workshop and storage building to restaurant at ground floor with 4no. flats above at first floor and extension at second floor.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The planning application form described the proposed development as 'Change of use of existing office/workshop and storage building to Restaurant at Ground Floor with Flats above at First Floor and extension at 2nd Floor'. The decision notice issued by the Council uses the description 'Change of use of existing office/workshop and storage building to restaurant at ground floor with 4no. flats above at first floor and extension at second floor'. This latter more accurately sets out the development proposed, and I note that the appellant has stated on the appeal form that he does not have any objection to the Council's description. I have therefore used this for the purposes of the appeal.
3. As part of his appeal submission, the appellant submitted two amended drawings that show the position and appearance of an extractor flue for the restaurant kitchen (Drawing Numbers 38.19 201 Revision A and 38.19 202 Revision A). No specifications of the flue or extraction system were submitted. Whilst these amended drawings were not before the Council when the application was determined, the Council had the opportunity to comment on them as part of the appeal process. The amendment makes only very minor changes to the proposed external appearance of the building and I am satisfied that no parties interests would be prejudiced if I were to accept these amended drawings.

Main Issues

4. The main issues in this appeal are:

- The effect of the proposed development on the living conditions of the occupiers of neighbouring residential properties, with particular regard to noise, odours and privacy;
- The effect of the proposed development on the character and appearance of the area;
- The effect of the proposed development on highway safety in the vicinity of the appeal site, with particular regard to car parking; and
- The effect of the proposed development on the Northumbria Coast Special Protection Area and Ramsar Site, the Northumberland Shore Site of Special Scientific Interest, and the Tynemouth to Seaton Sluice Site of Special Scientific Interest.

Reasons

Living conditions of the adjoining occupiers

5. The appeal building is situated on a predominantly residential street with only the appeal building and its neighbour at number 10 Marine Gardens being in commercial use. Commercial buildings, fronting Park View, are located at the opposite end of the street. The appeal site is located within an area designated as a town centre by the North Tyneside Local Plan 2019 (the Local Plan). Local Plan Policies S2.1 and S3.1 seek to locate retail, leisure, and office development in the Borough's town centres, and support proposals for main town centre development, appropriate residential, and mixed-use schemes in addition to encouraging the growth of the evening economy with leisure, culture and arts activities. The supporting text to Policy S3.1 clarifies that restaurants are considered a main town centre use and, whilst it is not being defined a main town centre use, that housing is recognised as having an important role in town centres. Policies S1.4 and DM6.1 expect new development to not adversely impact upon local amenity for new or existing residents and businesses.
6. Although the appeal site is within the designated town centre area, I saw when I visited the site that the town centre area contains a significant proportion of housing and many of the streets within the designated area are wholly residential. Commercial uses are primarily located in a linear form along Whitley Road and Park View and along the seafront, with a cluster around the Spanish City and the junction of Marine Avenue with the A193. A few individual streets have high concentrations of hotels and guest houses with public houses and drinking establishments often also present in these streets.
7. The appeal site is located on the periphery of the cluster of commercial and public uses at the junction of Marine Avenue with the A193, although it is separated from them by the public car park at the north east end of Marine Gardens. The closest physical relationship that the appeal building has is to the residential properties on Marine Gardens and Marine Avenue. The proposed restaurant use would introduce a use that would operate into the evening. No opening times are specified on the planning application, although in his comments on the suggested conditions the appellant has stated that the

proposed restaurant should be allowed to operate until 23:00. The proposed restaurant use would bring additional people to the area, particularly in the evenings and at weekends, which would increase noise and disturbance to the nearby residential properties through extra activity. Whilst there is a building between the appeal premises and the nearest house, which would act as a buffer to noise transferred through the fabric of the buildings, the appeal building is only approximately 6 metres from the closest house and noise from patrons entering and exiting the premises would not be significantly altered by this distance.

8. Although there is a slight tension in the Local Plan between those policies that seek to support the town centre and those that seek to ensure that the living conditions of existing residents are not adversely affected by new development, no one policy, or set of policies, is given precedence by the Local Plan. It is also clear from the mixed nature of the designated town centre area that there are parts of it where not all main town centre uses would be appropriate.
9. The appellant suggests that the appeal proposal would have a lesser effect on nearby residents than the current lawful use of the premises. I accept that current building could be used for commercial purposes and that the operating hours are not controlled by a planning condition. The Council state that the building currently has a B1 use, which is not disputed by the appellant. The Town and Country Planning (Use Classes) Order 1987 (as amended) describes a B1 use as being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. These requirements would necessarily restrict the potential uses of the existing building in order to remain lawful. The appeal proposal, whilst described as being modest, would, nonetheless, according to the submitted drawings, cater for up to 52 covers. This combined with opening into the late evening would lead to additional pedestrian movements and activity over extended periods of time at which the adjacent residential occupiers might reasonably expect lower levels of noise and disturbance despite their nominal town centre location. Consequently, I am not persuaded that the appeal proposal is a more desirable use of the site than the current lawful use, such that this would justify the appeal proposal.
10. Whilst details of the appearance of the proposed extractor flue have been provided with the appeal, no technical specifications have been provided nor is there any evidence from either party in respect of levels of background noise in the area. I have noted the Council's point that no extraction and filtration scheme is 100% efficient at removing odours, however, Local Plan Policy DM5.19 requires only that new development should to incorporate measures to prevent or reduce their pollution so as not to cause nuisance or unacceptable impacts on the environment or to people. Within this context, I am satisfied that, through the use of a planning condition, a suitable extraction and filtration system could be installed at the premises that would prevent odour nuisance and could operate without causing undue disturbance to nearby properties. This would meet the requirements of Policy DM5.19. Nevertheless, this would not overcome the increased levels of disturbance arising from larger numbers of people in an area that contains a significant number of residential properties.
11. The proposed new development would result in two floors of residential accommodation being provided above the restaurant use, consisting of two

flats on each floor. From the submitted floor plans, the windows serving the principal living rooms of two of the flats would face towards the rear elevations of existing residential properties in Marine Avenue. These are terraced properties with projecting rear additions, and I observed when I visited the site that there are windows to habitable rooms on the rear elevations.

12. The Council's Design Quality Supplementary Planning Document 2018 (DQSPD), which is to be read alongside the more general design policies in the Local Plan, sets out that privacy distances of 21 metres, where properties face back to back, and 12 metres, back to gable, are advisable with particular regard to be given to the impact on neighbour's habitable windows. Due to the configuration of the appeal building and the proposed extension to create the upper floor flats, with the ridge of the roof running perpendicular to the highway, although the elevation closest to the properties on Marine Terrace would take the form of a gable, it would be, in effect, the rear elevation.
13. Neither party has provided any distances between the appeal building and the residential properties on Marine Avenue. However, it was clear from my observations at the site that, as the appeal building occupies the whole of the site up to the rear lane separating Marine Gardens from Marine Avenue, the separation distances between the proposed new windows in the rear elevation of the appeal building would not meet the required 21 metres separation from existing windows at the rear of Marine Avenue, especially those in the rear addition. This would result in overlooking of habitable rooms of neighbouring properties and a consequent loss of privacy to the occupiers.
14. The proposed extension would include windows on the side elevation facing the properties in Marine Gardens. These windows would serve passageways and, due to the relative positions of the appeal building and the nearby houses, there would be limited opportunities for casual overlooking. As the appeal building is located to the north east of the residential properties on Marine Gardens, the proposed extension would not block direct sunlight to these properties and due to the degree of separation, the extension would not appear unduly overbearing.
15. This notwithstanding, when taken as a whole, the proposal would have an adverse impact on nearby residential properties through increased noise and disturbance to those on Marine Gardens and loss of privacy to those on Marine Avenue.
16. I therefore conclude that the proposed development would cause harm to the living conditions of the occupiers of neighbouring residential properties with particular regard to noise and privacy. It would not comply with the relevant requirements of Policies S1.4 and DM6.1 of the Local Plan.

Character and appearance

17. When read together Local Plan Policies S1.4 and DM6.1 seek, amongst other matters, to ensure that development proposals make the most effective and efficient use of available land; are of a high standard of design, specific to the place, based on a clear analysis the characteristics of the site, its wider context and the surrounding area; and to demonstrate a positive relationship to neighbouring buildings and spaces. The DQSPD expects all new development adopt the highest standards of design. Whilst the Council's second reason for

refusal also cites Policy DM5.19, as this relates to pollution, it is not relevant to this issue.

18. The appeal building is a brick built, commercial premises, with a two storey element at the front, facing Marine Gardens, and a lower element to the rear. The building occupies almost all the plot that it sits on apart from a small forecourt between the front elevation and Marine Gardens. The two storey element occupies approximately one quarter of the plan form of the building.
19. The built form of Marine Gardens is primarily two storey houses with pitched roofs that have the ridge running parallel to the highway. The side of the street where the appeal building is located is comprised of terraced properties, with semi-detached houses on the opposite side. At the south west end, larger commercial buildings turn the corners with Park View. At the north east end, beyond the appeal site is a large surface car park with a small brick built substation adjacent to the appeal building. Opposite is a cleared site, currently laid to grass, that is allocated for housing in the Local Plan.
20. Due to its location on the periphery of the town centre, the wider surrounding area has a mixed character with some commercial properties interspersed with the housing. Adjacent to the car park at the north east end of the street is the large structure of the Playhouse theatre. To the north east, there is a modern school building adjacent to a public park with the Spanish City leisure complex and seafront beyond. The appeal site is separated by a back lane from the older terraced properties on Marine Avenue. A small cluster of commercial buildings is located at the junction of Marine Avenue and the A193. To the south, Coquet Avenue is comprised of two storey semi-detached properties of a similar age and style to the houses on Marine Gardens with the Romanesque style St Edward's Church at its north east end. Park View to the south west is one of the main commercial streets in the town.
21. The appeal proposal was not accompanied by a Design and Access Statement and, consequently, I have very little information in respect of the rationale behind the proposed design of the extension. The proposal would effectively add an additional storey to the full extent of the building by removing the existing roof structure and increasing the existing wall heights to accommodate the four flats over the two upper floors. The new upper levels would be clad externally with zinc cladding panels, which would also be used for the new roof.
22. The two storey element of the existing building is presently approximately the same height as the houses in the adjacent terrace and with which it has the closest visual relationship. The appeal proposal would substantially increase the overall height of the building across its whole plan form. I saw when I visited the site and the surrounding area that taller buildings were generally present on the principal streets in the area, Park View, Marine Avenue, the Promenade and Whitley Road. Elsewhere, the properties on secondary streets, such as Marine Gardens, were predominantly two storey except for a number of churches within the residential area. I have had regard to the appellant's point that the appeal proposal would not be taller than the Playhouse theatre and would be seen in context with this building in a number of views. Nevertheless, the appeal building's closest visual and physical relationship is with the adjacent, two storey, terrace to which it is physically joined by the neighbouring property, and to which it forms a visual termination.

23. In its present form the appeal building has a similar frontage width and height to the houses in Marine Gardens, despite differing in having a gabled frontage. Although it is of a different building typology and use, the similar proportions mean that it sits comfortably alongside the neighbouring buildings and within the street scene. These proportions would be altered by the proposed additional storey and steeper roof pitch, that would give the resulting building a much more vertical emphasis to its frontage than at present, contrasting with the strong horizontal form of the adjacent terrace. The height difference between the resulting building and the adjacent houses would be exacerbated by the presence of the single storey unit joining the appeal building to the terrace, and the free standing single storey substation within the open car park area to the opposite side. This, in conjunction with the introduction of metal cladding on the upper level of the front elevation, which is not present elsewhere in the street, would result in a building that would not appear well integrated with its surroundings.
24. In the surrounding area, where buildings have rear additions, these are lower and subordinate to the main part of the building. This is echoed in the current built form of the appeal building where the rear section is lower than the front and mirrored in the Playhouse theatre where the fly tower exceeds the height of the main part of the building. Marine Park First School is also a multi-level structure where elements of different heights break up the massing of the building. This contrasts with the appeal proposal, which would extend the building to a uniform height across the whole footprint. Whilst metal roofing panels have been used on the Playhouse and school building, metal cladding is not used as a walling material elsewhere in the vicinity where the dominant materials are brick or render, with stone or timber detailing. In these respects, and in the absence of any evidence that the design has been informed by an analysis the characteristics of the site and its wider context, the appeal proposal would be inconsistent with the surrounding built form and would appear as an incongruous feature in the street scene and surrounding area. As such it would be harmful to the character and appearance of the area.
25. I have noted that the Framework encourages making effective use of previously developed sites, such as the appeal site, and is supportive of building above existing commercial premises. However, this is contingent upon the development being consistent with the prevailing height and form of neighbouring properties and the overall street scene. From the submitted drawings and from my observations when I visited the site, the appeal proposal would not meet this criterion. Development proposals must also be considered in the context of other requirements of the Framework that expect new development to add to the overall quality of an area and be sympathetic to its local character.
26. I conclude that the proposed development would cause harm to the character and appearance of the area. It would not comply with the relevant requirements of Policies S1.4 and DM6.1 of the Local Plan or the DQSPD.

Highway Safety

27. Marine Gardens is an urban street subject to a 20 mph speed limit. The north east end of the street carries two way traffic, however, just past the appeal site the street becomes one way for vehicles traveling south west only. There is no entry to the street from Park View. The north west side of the street is subject

to a no waiting restriction between 08:00 – 18:00, Mon – Sat, which becomes a no waiting at any time restriction from just beyond the appeal site to the junction with the A193 at the north east end of the street. The opposite side of the street is subject to resident permit, or pay and display, parking between 09:00-17:30, Monday to Saturday. Marked parking bays run the length of this side of the street and, together with vehicles parked within them, restrict the effective available carriageway width to single file traffic even on the two way section of the street. Immediately adjacent to the appeal site is a surface level public car park.

28. The principal matter in dispute is the level of parking provision. The planning application states that the site has three existing parking spaces, which will be retained. The submitted drawings show a forecourt area at the front of the building that is annotated as parking but does not show this divided into bays or otherwise how parking would be accommodated. It is also not clear from the submitted drawings how vehicle parking would be accommodated without obstructing access to the entrance to the proposed restaurant or the entrance to the proposed flats above, as both of these would be located on the front elevation of the building immediately to the rear of the parking area.
29. The Highway Authority have questioned whether three vehicles could be parked off the highway at the site. From what I saw when I visited the site, I would agree that, whilst it may be possible to park a vehicle in front of the building and not obstruct the footway, the site is not sufficiently wide for it to be practical to park three vehicles and still allow drivers and passengers to open the vehicle doors. In practical terms, at most, the forecourt area would be able to functionally accommodate the parking of two vehicles.
30. Local Plan Policy DM7.4 states that the transport requirements of new development should be commensurate to the scale and type of development and seeks to promote sustainable travel. It also expects that the number of car parking spaces provided in new developments will be in accordance with standards set out in the Council's Transport and Highways Supplementary Planning Document 2017 (THSPD). Applying the standard in the THSPD, the Highway Authority calculate that the proposed development would require 14 spaces, 9 for the restaurant use and 5 for the proposed flats. Neither Policy DM7.4, nor the THSPD, make provision for providing differing levels of parking provision dependent on location.
31. The appeal site is within a town centre area and has access to public transport nearby. Although the Metro stations and some of the bus services, particularly those to central Newcastle, may be slightly beyond the ideal walking distances from the appeal site, they are not so remote that they are inaccessible or impractical to use. In addition, the principal shopping area around Park View and Whitley Road is also nearby and I saw that there are a wide range of shops and services in this area. Consequently, the occupiers of the proposed flats may not necessarily be dependent on the private car for their day to day travel needs and restaurant patrons would not necessarily need to drive.
32. However, car usage and car ownership not the same. Residents of the proposed flats, whilst not necessarily reliant on a car for daily travel may, nonetheless, wish to own and park a car near to their place of residence as not all journeys are possible or practical using public transport. Similarly, patrons of the restaurant will not necessarily be local residents and may not wish to

travel there by public transport. No mechanism is proposed that would prevent occupiers of the new flats applying for a residents parking permit, for which the Council states there has been a substantial uptake. In addition, no compelling evidence has been put to me that restricting car parking spaces discourages car use or ownership. Whilst noting the appellant's points regarding Manual for Streets 2007 and that car parking standards are to be treated as maximums, the Manual for Streets predates the cancelling of the advice regarding maximum car parking standards in 2011 and the 2015 Written Ministerial Statement¹ (WMS) which set out that arbitrarily restricting new off-street parking spaces does not reduce car use. The WMS set out that local parking standards for residential and non-residential development should only be set where there is clear and compelling justification that it is necessary to manage their local road network. This policy is carried forward in the most recent version of the Framework which states that maximum car parking standards should only be applied where there is clear and compelling justification that it is necessary to manage their local road network or to optimise density of development in city and town centres. There is no evidence that would indicate that the Councils car parking standards in the THSPD are excessively high or that it is necessary to restrict parking provision in order to optimise development density in Whitley Bay town centre.

33. The appeal proposal falls significantly short of the parking provision required by the Local Plan and the THSPD, and the proposal effectively relies on existing on-street parking capacity and the presence of a public car park adjacent to the appeal site to accommodate parking generated by the scheme. Neither of the parties have provided any substantive technical evidence in respect of current parking availability and demand in the area. However, the presence of a residents permit scheme and metered on-street parking is indicative that there is parking stress in the area. When I visited the site, on a typical weekday morning, the on-street parking provision was well used, although there were a number of spaces available. Similarly, the public car park adjacent to the appeal site was also well used with only two or three free spaces. Whilst I accept that this is only a snapshot of the situation at the time of my visit and that parking demand will vary at different times, with the exception of the two potential spaces in front of the appeal building, the areas available for parking are outside the control of the appellant and cannot be guaranteed as being continually available. From the evidence before me, I am not satisfied that the parking requirement for the proposed development could be satisfactorily accommodated within the existing provision.
34. Due to the shortfall in parking provision on site, the proposed development would put additional pressure on available parking in an area that is subject to parking stress, particularly at times when the permitting scheme and waiting restrictions on other sections of the road are not operative. This would result in parking in locations that would obstruct the footway or carriageway or would affect visibility near junctions, which would be detrimental to the safe operation of the highway in the vicinity of the appeal site.
35. I have had regard to the appellant's point that the existing lawful use of the premises would generate traffic and parking demand, however, there is little evidence in respect of the nature of the previous operations of the building, or its previous transport requirements. I have nothing before me that would

¹ Planning Update March 2015 Published 25 March 2015

indicate that the appeal proposal is preferable to the parking and servicing demands of the lawful use and, in any event, the appeal proposal must be considered against the current requirements of the Local Plan and the THSPD as it includes a substantial addition to the existing building to accommodate the proposed residential units.

36. The Framework sets out that development should only be prevented on highways grounds if there would be an unacceptable impact on the highway safety, or residual cumulative impacts on the road network would be severe. It is not argued by the Council that there is insufficient capacity on the road network to accommodate the traffic movements, and I have no reason to find differently. However, I have found that the parking requirement that would be generated by the proposed development would have an unacceptable impact on road safety in the area.
37. I therefore conclude that the proposed development would cause harm to highway safety in the vicinity of the appeal site, with particular regard to car parking. It would not comply with the relevant requirements of Local Plan Policy DM7.4 or the THSPD. It would also be inconsistent with the requirements of the Framework.

Effect on designated sites

38. The appeal site is located close to the boundaries of several designated sensitive areas: the Northumbria Coast Special Protection Area (SPA) and Ramsar Site; the Northumberland Shore Site of Special Scientific Interest (SSSI); and the Tynemouth to Seaton Sluice SSSI.
39. Although the appellant suggests that the appeal site is far enough away from the actual coast that the proposed development would have no tangible impact upon it, the North Tyneside Coastal Mitigation Supplementary Planning Document 2019 (the CMSPD) sets out that the Appropriate Assessment carried out for the Local Plan concluded that implementation of the Local Plan could cause adverse impacts to the Northumbria Coast SPA/Ramsar site through residential pressure within a local catchment, and visitor pressure from a wider catchment, and that this would particularly arise from development within a 6km buffer zone of the coast. It is not in dispute that the appeal site is within 6km of the coast.
40. The boundaries of the Northumberland Shore SSSI and the Seaton Sluice to Tynemouth SSSI overlap with each other at this point and overlap with the boundary of the SPA. The SPA/Ramsar Site was designated as the coastal area regularly supports internationally important numbers of purple sandpiper and turnstone. Both SSSIs include habitat areas for these species and other seabirds in their interest features, and the Seaton Sluice to Tynemouth SSSI, in particular, covers intertidal rock formations that are important habitat areas for purple sandpiper and turnstone. Seabirds are vulnerable to disturbance from human activity and recreational use of the coastline, and their range is not restricted to within the boundaries of the designated areas.
41. Policy DM5.6 of the Local Plan seeks to protect International Sites, in the case of this appeal the SPA/Ramsar site, and sets out a range of mitigation measures for which developer contributions will be sought. The CMSPD states that it is proposed to introduce a coastal warden service that will implement a range of targeted and coordinated physical projects to mitigate the impacts at

- the coast and undertake many of the activities identified as mitigation in Local Plan Policy DM5.6. This would be funded through developer contributions, secured through a planning obligation or unilateral undertaking under S106 of the Town and County Planning Act 1990 (as amended), from all new housing development, regardless of scale, and from certain other forms of development. A tariff, based on the type of accommodation proposed and its proximity to the coast, is set out in the CMSPD. The CMSPD also identifies that potential effects on the interest features of SSSIs are likely to be mitigated by measures to protect the integrity of the SPA.
42. Due to the proximity of the appeal site to the designated sensitive sites and the absence of any outdoor amenity space for the residents of the proposed flats, I find that it would increase demand for recreational use of the coastline and therefore needs to meet the requirements of Local Plan Policy DM5.6 and the CMSPD.
43. No planning obligation or unilateral undertaking has been provided and the appellant suggests that, as the appeal proposal is for fewer than 10 dwellings, it should not attract any developer contributions. An exemption for small sites from tariff based contributions was introduced by a WMS in 2014² and a subsequent change to the Planning Practice Guidance (PPG).
44. The revised National Planning Policy Framework was published in 2018 and updated in 2019. This sets out the Government's latest national policy. Prior to this, it was set out within the original, 2012 Framework and, additionally, through a series of WMS issued in the period following its publication. A WMS cannot be cancelled or withdrawn and, as they remain extant, the statements of policy within them may remain a potential, relevant material consideration in decision-making. As statements of policy, they are unlikely to be remain relevant where the policy they contain has clearly been overtaken by more recent statements of policy, such as the revised Framework.
45. The provisions of the WMS exempting small sites from tariff-style contributions have not been incorporated into the Framework and were removed from the PPG chapter on Planning Obligations when it was updated in March 2019, although the exemption from providing affordable housing on small sites is retained. Consequently, it is not clear whether the exemption claimed by the appellant is applicable and there is no evidence from either party in respect of this matter. The WMS, however, remains extant and the updated PPG states that the Community Infrastructure Levy is the most appropriate mechanism for capturing developer contributions from small developments.
46. This notwithstanding, the Framework seeks to protect designated sites and also gives a high level of protection to SSSIs. The appellant has submitted no substantive evidence in respect of the effect of the proposed development on these protected sites. The evidence from the CMSPD is clear that, in order to avoid the potential adverse effects arising from new residential development that was identified in the Appropriate Assessment for the Local Plan, mitigation is required. The conservation of the nearby protected sites is a matter which must carry considerable weight as a material consideration. Whilst the WMS may also be a material consideration, based on the evidence before me in this case, it would not outweigh the need to mitigate the effects of the proposed development on protected sites and species, or indicate that the requirement

² Support for small scale developers, custom and self-builders - 28 November 2014

for developer contributions in the CMSPD, which are necessary in order to comply with Local Plan Policy DM5.6, should be set aside.

47. In the absence of a planning obligation or unilateral undertaking, I cannot be satisfied that the proposed development would not cause harm to the nearby protected sites. The PPG is clear that a planning condition cannot be used to require the payment of money and that a positively worded condition which requires the applicant or appellant to enter into a planning obligation is unlikely to pass the test of enforceability. The PPG is also clear that a negatively worded condition limiting the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases. Such a condition may be appropriate only in exceptional circumstances, for example, where there is clear evidence that the delivery of a major or complex development would otherwise be at serious risk. The appeal proposal is not a major or complex development scheme, nor would it deliver any significant public benefits. Consequently, I do not find that there are any exceptional circumstances that would allow this matter to be dealt with by way of a planning condition.
48. In the absence of a planning obligation or unilateral undertaking to secure the required mitigation, I conclude that it has not been demonstrated that the appeal proposal would not cause harm to the Northumbria Coast Special Protection Area and Ramsar Site, the Northumberland Shore Site of Special Scientific Interest and the Tynemouth to Seaton Sluice Site of Special Scientific Interest. It would not comply with the relevant requirements of Policies S5.4, DM5.5 and DM5.6 of the Local Plan or the CMDPD, which expect new development to protect the Borough's biodiversity and geodiversity; conserve protected and priority species; and not adversely affect internationally designated sites.

Conclusion

49. Section 38(6) of the of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise. I have found that the appeal proposal would not comply with policies S1.4, S5.4, DM5.5 and DM5.6, DM6.1 and DM7.4 of the Local Plan. It is not argued by the appellant that any of these policies are out of date.
50. The Framework seeks to significantly boost the supply of housing. However, this is not an objective to be pursued at any cost. The appeal proposal would result in a small addition to the housing stock in the area. The Council states that it can demonstrate a deliverable 6.1 year supply of housing land and this is not challenged by the appellant. There is also no evidence that the Council is not currently meeting its targets for housing delivery. Whilst the five year housing land supply is a minimum, there is no evidence to indicate that there is a pressing need for additional housing at this time and the modest increase that would result from the appeal proposal would not overcome the harm that I have found it would cause.
51. The proposal would also have some regeneration value in that it would create a new business use within the premises that would contribute to the evening economy of the area. I accept that the building may not currently be in use, nevertheless, there is no evidence before me that a viable economic use cannot

be found for the building in its present lawful use class. From what I saw when I visited the site, the condition of the building is not such that it adversely affects the appearance of the area. Consequently, this point carries little weight.

52. Neither of these points, either individually or collectively would overcome the harm that I have identified and no other material considerations have been identified that would indicate that planning permission should be granted for a proposal that does not comply with relevant policies in an up to date development plan.
53. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR