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## Appeal Decision

Site visit made on 20 June 2022

**by Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

**Decision date: 30 June 2022**

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**Appeal Ref: APP/M4510/W/22/3295079**

**13-14 Portland Terrace, Newcastle upon Tyne NE2 1SN/NE2 1QQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Rajeev Saggarr, Shivji Properties Ltd against Newcastle-upon-Tyne City Council.
  - The application Ref 2021/2307/01/DET, is dated 29 November 2021.
  - The development proposed is described as change of use from offices (Class E) to 9 x apartments (4 x 1 bed (class C3), 1 x 2 bed (class C3), 1 x 3 bed C4 (HMO) and 3 x 4 bed C4 (HMO). Construction of new extension to rear and pitched roof to existing single storey extension, 10 x cycle rack positions (external) with canopy and 8 x cycle rack positions (internal) in hallway. 4 x dormer windows at 4th floor level, 12 x conservation roof lights to rear offshoot and new extension, reinstatement of front boundary wall and railings, and refuse storage area to rear.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council confirm that had it had the opportunity to determine the appeal, it would have refused the application on three grounds: the effect of the proposal on the living conditions of future occupiers in terms of noise and disturbance and loss of privacy; and that there is insufficient information to determine whether the proposed residential accommodation would be suitably insulated against external noise.
3. The postcode of the appeal site is different on the application form to the appeal form. The appeal proposal actually covers both No.13 and No.14 Portland Terrace. I have, therefore, amended the banner heading above to more accurately reflect the address of the appeal site.

### Main Issue

4. Taking into account the above, the main issue in this case is:
  - The effect of the proposal on the living conditions of future occupiers with specific reference to noise, disturbance, loss of privacy and sunlight/daylight.

### Reasons

5. The appeal properties are situated to the west side of Portland Terrace, a street of Victorian terraced houses which have been converted into offices, flats and Houses

in Multiple Occupation (HMOs). It lies within the South Jesmond Conservation Area.

6. The appeal properties are currently in use as offices laid out over four floors. It is proposed to convert the offices into 9 residential units including the partial removal of an external staircase to the rear and the construction of a new single storey extension to the rear of the existing single storey off-shoot and the provision of cycle and refuse storage.
7. Four x 1100 litre refuse and recycling bins would be provided to the rear. Access to and from the refuse storage for flats 1, 5, 6, 7, 8 and 9 would be from the door to the northern elevation of the existing off-shoot. Occupants of Flats 1, 5, 6, 7, 8 and 9 would, therefore, need to walk past the bedroom window of Flat 1, and the living room, kitchen and bedroom of Flat 2 and bedroom and kitchen of Flat 3. A maximum number of around 28-30 persons could occupy the appeal proposal. Whilst I acknowledge that the proposal may not be fully occupied at any one point in time, there is still potential for a significant number of movements per day. Occupants of flats 1, 2 and 3 would be subject to noise and disturbance from people walking past their windows carrying bags of rubbish and recycling. People walking past their windows on a regular basis would also result in a loss of privacy.
8. Furthermore, occupiers of Flat 4 would be required to walk in front of the living room, kitchen and bedroom windows of Flat 3 creating noise, disturbance and a loss of privacy. I note that the rear garden of Flat 4 is situated outside the living room window of Flat 3 which could also result in a loss of privacy for the occupiers of Flat 3.
9. Similarly, the cycle provision would, in part, be provided in the rear yard by means of 5 Sheffield style racks situated on the northern boundary. The cycle racks would be outside of the bedroom window of Flat 1, and the living room, kitchen and bedroom of Flat 2. Residents walking past those windows would result in the loss of privacy to future occupiers. Furthermore, the loading and unloading of bikes onto the racks would result in noise and disturbance to occupiers.
10. The bedroom of Flat 1 would be situated beneath the external staircase which extends upwards to the second floor, and which would project around 3.5m from the main western elevation. I acknowledge that the window serving this bedroom is large; however, taking the staircase, the three-storey rear projection and the proposed single storey extension together it may be difficult to achieve sufficient sunlight and daylight to this room.
11. The living room of Flat 2 is served by only one window situated on the ground floor on the northern elevation. The window overlooks the boundary wall and the three storey off-shoot of the adjoining premises which when combined with the orientation of the room could result in a dark room to the detriment of future occupiers. A daylight/sunlight assessment has not been submitted in support of the application and so I cannot be certain that these rooms would receive sufficient daylight or sunlight.
12. Attention is drawn to a number of properties in Portland Terrace (nos 3 and 5 and no 19) which have been converted to residential accommodation and which contain north and west facing windows. However, no detailed information is provided on these cases and so it is not clear as to whether those windows serve habitable rooms or whether they are the only windows serving those rooms. I

cannot, therefore, be certain that these cases are directly comparable to the appeal proposal which limits the weight which I can attach to them in my decision.

13. In terms of noise, a Noise Impact Assessment (NIA) was submitted alongside the planning application; however, it would appear to refer to a different site. The noise consultant clarifies that the NIA contains noise measurement data taken at the rear of 18 Portland Terrace which it considers is a suitable proxy for the rear of 13 Portland Terrace as the rear facades of 13/14 Portland Terrace are very similar. However, no detailed layout plans were available at the time of writing the report and so it could not be assumed that the appeal site would be developed in a similar way to No 18. Overall, I consider that the NIA cannot be relied upon as it relates to the wrong site; is not based on detailed layout plans; and does not fully reflect 'non-lockdown' conditions.
14. The appeal site is situated on a busy road, close to the A1068 and A167(m) and near a large bus depot. Whilst I understand that the bus depot may be redeveloped, there were buses within the depot at the time of my site visit and I must, therefore, assume that it is still operational. I noted on my site visit that the ambient noise climate is dominated by road traffic. No movements were observed at the bus depot at the time of my site visit; however, the NIA refers to the bus depot being operational 0500 – 0000 hours. Consequently, future occupiers could be subject to significant noise and disturbance which could be early in the morning and late at night. Whilst some attenuation measures are suggested in the NIA, given the unreliability of the NIA, I cannot be certain that they would be effective. Given the proximity of those noise sources it would not be reasonable to leave the acceptability of any such noise measures to be approved by way of a planning condition. Consequently, I cannot be certain that future occupiers would not be subject to undue noise and disturbance.
15. In conclusion, on the basis of the evidence before me, the proposal would be harmful to the living conditions of future occupiers with specific reference to noise and disturbance; privacy; and daylight and sunlight. The proposal would, therefore, conflict with policies DM23 and DM24 of the Council's Development and Allocations Plan (2020) and Criteria I of Policy SC1 of the Maintaining Sustainable Communities SPD which collectively, amongst other things, seek to ensure a good standard of residential amenity for existing and future occupiers of land, ensure a good standard of daylight, sunlight, outlook and privacy and ensure that noise and disturbance does not have an unacceptable adverse impact on residential amenity.

#### *Other matters*

16. The proposal is situated within the South Jesmond Conservation Area (CA) to which I am required to have special regard and attention and to which the courts judge I am required to give considerable importance and weight. The proposal would involve a new rear extension, dormers to the front and rear and boundary enclosures to the front and rear. The proposed rear extension and dormer windows would be similar to existing extensions to the rear of Portland Terrace. I noted on my site visit that there are a number of existing dormer windows to the front of Portland Terrace. The proposed dormers would be modest in size, with a pitched roof and tiles would match those of the existing roof. The reinstatement of the stone pillars and iron railings would reflect the traditional boundary treatment remaining to the front of some properties. Furthermore, details of the materials to be used in the extension, dormers and boundary treatment could have been

secured by condition had I decided to allow the appeal. Consequently, I am satisfied that the proposal would preserve the character and appearance of the CA.

**Planning balance and conclusion**

17. The proposal would have some benefits in terms of the provision of a variety of residential units in C3 and C4 use in a sustainable location, retaining a traditional building in use and improving the physical state of the building. However, I have identified that the proposal would harm the living conditions of future occupiers. The significant harm which I have identified would outweigh the benefits of the proposal. There are no material considerations which would indicate a decision other than in accordance with the development plan.
18. For the reasons stated and taking all other matters into consideration, the appeal should be dismissed.

*Caroline Mulloy*

Inspector