



Appeal Decision

Site visit made on 8 June 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/W4515/W/23/3315527

The Sandpiper, Farringdon Road, Marden, Cullercoats NE30 3ER

- 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 Ian Tubman (Malhotra Leisure Ltd) against the decision of North Tyneside Council.
 - The application Ref 21/02539/FUL, dated 22 December 2021, was refused by notice dated 15 December 2022.
 - The development proposed is Demolition of existing public house and redevelopment of site to provide 1no.retail unit (Class E), 1no.drinking establishment with expanded food provision (Sui Generis) and 14no. apartments, associated car parking, infrastructure and landscaping works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Ian Tubman (Malhotra Leisure Ltd) against North Tyneside Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development given on the decision notice differs from that stated on the application form. This reflects the fact that amended plans were submitted, which included a reduction in the number of proposed apartments from 18 to 14. As Section E of the appeal form confirms that a change was made to the description in this manner, I have used the amended description in the banner header above.

Main Issues

4. The main issues are the effect of the proposed development on (i) the character and appearance of the area, (ii) the living conditions of the occupiers of nearby dwellings, with particular reference to privacy and (iii) whether or not adequate parking would be provided.

Reasons

Character and appearance

5. The proposed development would be of three full storeys in height with living accommodation also being built into its roof space. At such a height, it would be considerably higher than the existing development in the area, which

consists predominantly of two storey dwellinghouses and the adjacent two storey parade of shops. The proposal would also have a large footprint, when compared to the footprints of existing buildings in the vicinity.

6. However, the appeal site occupies a large corner plot adjacent to the junction of Farringdon Road and Shaftesbury Crescent. The proposed building would be sited centrally within it, and well back from the frontages the site shares with those two roads. There would also be a substantial visual separation between the proposal and both the two storey element of the adjacent parade of shops and the dwellings on the opposite side of Shaftesbury Crescent. Within the Shaftesbury Crescent street scene it would be the side elevation of the proposal that would relate visually to existing dwellings, and again there would be a separation between what is proposed and the existing built development.
7. The Council's own Design Quality Supplementary Planning Document 2018 (DQSPD) states that *corner plots are ideal opportunities for raising the height of a building to provide a prominent landmark that can also provide additional floor space*. Furthermore, I note that the Urban Design consultation response referred to the proposal as being a well-considered development that will stand out as a focal point in the street scene. It is evident from the information that is available that the proposed scheme has evolved with the aim of addressing matters relating to how its height and general size would integrate into the surrounding area.
8. Whilst the proposed building would appear as a notably higher building in the Farringdon Road and Shaftesbury Crescent street scenes, it would not be so close to existing buildings so to visually dominate them. It would be prominent within both street scenes, but the size of the appeal site and the positioning of the proposed building within it mean that it would be visually absorbed into the area in an acceptable manner. In the circumstances that prevail in this instance, a building of the height, bulk and massing proposed could be accommodated within the street scenes without causing harm to the character and appearance of the area.
9. The proposal would also be of a design that would integrate well into the surrounding area, and the plans show an appropriately laid out parking arrangement with landscaping which would aid visual integration. The impact on the character and appearance of the area would be acceptable in these respects too.
10. For these reasons, I conclude that the proposed development would accord with Policy DM6.1 of the North Tyneside Local Plan 2017 (LP), where it seeks to promote high quality design. There would also be no conflict with the aims of the National Planning Policy Framework (the Framework), where it seeks to achieve well-designed places.

Living conditions

11. The primary windows serving the habitable rooms of the proposed apartments would be located on the front and rear elevations. There would also be a first floor terrace area on the front elevation. Given the distance between the front elevation and the existing dwellings on the opposite side of Farringdon Road, there would not be a harmful impact on the living conditions of those properties in terms of overlooking from either the windows or the terrace, from a loss of light or through the massing of the proposal.

12. The rear elevation would also face towards existing dwellings, of which 4 Shaftesbury Crescent and 12 Cranbourne Grove are the closest. It would not allow overlooking towards the primary windows of those dwellings but would face towards their garden areas. The separation distance provided between the rear elevation and the boundaries with No 4 and No 12 would be typical of that found in an urban area and would be adequate to prevent unacceptable overlooking. Indeed, the relationship of what is proposed would be consistent with the relationship of the windows of existing dwellings, which themselves allow a degree of overlooking towards neighbouring rear gardens.
13. Although there are a number of windows in the proposed rear elevation, due to the positioning of the proposed building in relation to No 4 and No 12, approximately half of these would not face towards the rear garden areas of either dwelling. Of those that do face these gardens directly, the windows would serve 3 of the proposed apartments. These factors would also aid in reducing the impact of the proposal on those adjacent dwellings and those beyond them on both Shaftesbury Crescent and Cranbourne Grove.
14. The reason for refusal does not refer to any other concerns relating to the living conditions of the occupiers of nearby dwellings. On the basis of the information that is available, I concur that the positioning of the proposal relative to existing dwellings would ensure that it would not cause undue harm to the living conditions of their occupiers with respect to light, its overall massing or in terms of outlook.
15. In conclusion, the proposed development would not cause harm to the living conditions of the occupiers of nearby dwellings. Consequently, it would accord with Policies S1.4 and DM6.1 of the LP, where they seek to safeguard living conditions. There would also be no conflict with the aims of the Design Quality DQSPD or the Framework in that respect.

Parking

16. The proposal would provide 14 spaces to serve the apartments on a 1:1 basis, together with 22 spaces for the ground floor units and for visitors to the apartments. Highway considerations have been informed by a Transport Statement (TA) and Supplementary Traffic Note provided by the appellant. No objection was raised to the proposed level of provision by the Highway Authority (HA). Cycle parking would also be provided as part of the proposal.
17. Notwithstanding this, the Council considers that, depending on how the commercial floorspace is calculated, either 46 or 48 spaces should be provided. Reference is made to the Transport and Highways Supplementary Planning Document 2022 (THSPD) as providing the most up to date guidance with regard to parking provision.
18. It is notable that the THSPD states that the requirements set out within it are the expected levels of parking provision, however in areas with good accessibility, appropriate parking management and robust Travel Plan measures in place, a reduction in these requirements may be considered. The appeal site is in an established residential urban area, where many people could walk to the proposed retail unit and drinking establishment. There is a sheltered bus stop immediately outside the appeal site and other stops nearby which the TA suggests provides access to frequent bus services. The Cullercoats Metro station is also said to provide a frequent service to and from

destinations including Newcastle city centre and South Shields. A Framework Travel Plan has been provided which sets out measures to reduce car use. Therefore, both visitors to the commercial units and future residents of the proposed apartments would have good access to a number of different modes of transport.

19. In this context, and in particular as the parking provision proposed does not raise an objection from the HA, there is no substantiated technical evidence to suggest that the parking level put forward would not meet the needs of the proposed development or would result in harm to the surrounding highway network. The Council's concern relating to the delineation of visitor parking spaces could be satisfactorily resolved by way of a planning condition.
20. For these reasons, I conclude that the proposal would accord with Policy DM6.1 of the LP, where it seeks to ensure that sufficient car parking is well integrated in the design of development. There would also be no conflict with the aims of the THSPD or the Framework where it comes to parking or highway safety.

Other Matters

21. A great number of representations have been made by interested persons during the course of the planning application and the appeal. These include concerns relating to noise, general highway safety and traffic, air and light pollution, the impact on wildlife, the loss of trees, drainage and flooding, the impact on health, anti-social behaviour and litter. However, based upon the responses from the relevant consultees and upon the information available to me, there is no substantive evidence that harm would arise with respect to these matters. Furthermore, I am satisfied that, where necessary, any additional measures required could be adequately secured by planning conditions.
22. Reference is made to the loss of the public house, which is said to serve as a community facility and which provides jobs and a play area. In addition, concern has been raised as to the effect that the proposed commercial elements would have on shops nearby and that the proposed retail unit is not required. These matters do not however form a reason for refusal, and submissions have been made by the appellant to demonstrate that there would be no conflict with planning policy in these regards.

Planning Obligations

23. The report to Planning Committee sets out that contributions would be required towards affordable housing, ecology and biodiversity, parks and greenspace, equipped play, primary education, highways to provide a new pedestrian crossing on Farringdon Road, and towards coastal mitigation. It would appear that agreement was reached between the Council and the appellant during the course of the planning application that these contributions would meet with the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010, which are also contained within paragraph 57 of the Framework. The appellant does not advance a contrary case in their appeal submissions.
24. On the basis of the information that I have before me, which includes the Council's Planning Obligations Supplementary Planning Document 2018 (POSPD) and the position of the parties, I have no reason to consider that the

contributions sought by the Council would not meet with the tests set out in Regulation 122 and paragraph 57. They would therefore be necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonably related in scale and kind to the development. However, no planning obligation has been submitted with the appeal in order to secure these contributions.

25. In the absence of a planning obligation, I have given consideration as to whether the necessary obligations could instead be secured by way of a planning condition. But in that regard, the Planning Practice Guidance¹ states that *in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk.*
26. No evidence has been provided to demonstrate that the delivery of the development would be at serious risk if a planning condition were not to be used. It is also not suggested by either of the main parties that a planning condition could or should be used. Therefore, there are no exceptional circumstances and the use of a planning condition to secure the obligations would not be appropriate in this instance.
27. Whilst I find the proposed development to be acceptable with respect to each of the three main issues, in the absence of a planning obligation to secure the obligations that are necessary to make the development acceptable in planning terms, the appeal must be dismissed.

Conclusion

28. For the reasons given above, I conclude that the appeal should be dismissed.

Graham Wraight

INSPECTOR

¹ Paragraph: 010 Reference ID: 21a-010-20190723