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# Appeal Decision

Site visit made on 4 July 2023

**by M J Francis BA (Hons) MA MSc MCIfA**

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

**Decision date: 26 July 2023**

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**Appeal Ref: APP/M0933/W/23/3317947**

**49 Daltongate, Ulverston LA12 7BE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Ms Claire Barrowdale against the decision of South Lakeland District Council.
  - The application Ref SL/2020/0076, dated 20 January 2020, was refused by notice dated 7 September 2022.
  - The development proposed is a two-storey dwelling with integral garage.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The application is in outline with approval of access, layout and scale sought. However, as none of the plans have been marked indicative only, the Council have determined it on the basis of all matters. The appellant has subsequently clarified that the application seeks approval of access, layout and scale, and that details submitted were to enable a discussion towards developing the proposal. I have therefore determined the application on the basis of approval of access, layout and scale as shown on the application form.
3. The appellant has submitted revised drawings with the appeal submission. I am mindful, however, that the appeal process should not be used to evolve a scheme to overcome the Council's concerns and reasons for refusal and instead a fresh planning application should be made.
4. Whilst in certain circumstances, a proposal can be amended through revised plans during an appeal, in line with the 'Wheatcroft principles'<sup>1</sup>, it is my view in this case that the appeal must be determined on the basis of the plans as originally submitted to the Council and upon which it based its decision. To do otherwise would prejudice the interests of the Council, interested third parties and consultees, who have not been consulted on the revised scheme and who may have observations to make. I have therefore proceeded to determine the appeal on the basis of the plans as originally submitted.

## Main Issue

5. The main issue is the effect of the use of the proposed access on the safety of pedestrians, cyclists, and drivers.

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

## Reasons

6. The proposal is within the grounds of a semi-detached dwelling, which is accessed from and has dedicated parking on Daltongate. It is a long, linear plot that slopes away from the house. This provides an extensive garden which is covered by lawns and flower beds and a greenhouse at the furthest end. The site is bounded at the rear by a traditional stone wall, and hedging, trees and a wooden fence.
7. The rear boundary of the site separates it from the town's bowling green. Adjacent to this are double metal gates which provide a right of access that leads from the corner of the garden of No 49. The access lane extends around one side of the bowling green, in front of 'Westside' and 'Eden Garth', before a 90 degree turn and a short stretch between further housing and then beneath the upper floor of No 18 Queen Street and its exit through an archway leading onto Queen Street. It is through this archway, and this shared access track, that both vehicular and pedestrian access to the proposed dwelling would be provided.
8. Queen Street, the B5281, is a one-way street. The road has double yellow lines and 'Keep Clear' is painted on the road in front of the archway. The access across the pavement is demarcated by stone setts, with the pavement sloping down towards the dropped kerb. The surface under the archway is both paved and cobbled and has some steps on one side leading to the entrance to the flat located on the 1<sup>st</sup> floor of No 18.
9. Although traffic along Queen Street only travels in one direction, which has reputedly reduced the volume of traffic and made access to and from the lane easier, the access point is narrow. Vehicles entering the site through the archway would have a view ahead as far as the 90 degrees turn, therefore it is unlikely that a driver would be unable to see a vehicle, or pedestrians, approaching them and need to reverse back onto the road.
10. The lane to the site is, however, single, uneven in parts with differing surfaces, and has no formal passing places. Furthermore, as I saw from my visit, there is no separation between vehicles and pedestrians using it, and while many pedestrians may be local and aware of this, others will not. The entrance also provides the only access to the bowling green, which has no parking provision, and so those using this facility, including any visiting teams, would do so by foot.
11. Whilst vehicles exiting the site through the archway would do so with care based on the nature of the access, a driver would not be able to see pedestrians until the vehicle was already on the pavement. This is on a street with a number of shops, businesses and housing, where there is potentially a steady flow of people using this stretch of pavement throughout the day. Whilst the road markings indicate the existence of the entrance to vehicle drivers, the markings and the narrowness of the entrance between buildings, would not point to an obvious vehicular access to pedestrians. Although there is a change in both the gradient and the paving at the access point, this may not be obvious to all users crossing the pavement.
12. No substantive evidence has been provided as to the numbers of vehicles that use this entrance daily, although as commercial enterprises no longer use it, the volume of traffic is reputed to have reduced. This entrance already provides

the only vehicular and pedestrian access to several properties. The appellant suggests that there would be up to six vehicle movements a day for the proposal, although an occupier may not, in this central location, be reliant on a car. Notwithstanding this, there are likely to be delivery vehicles and visitors which would be over and above the existing traffic using this entrance. Whilst Crashmap data referred to by the parties, points to a lack of accidents at this point, a third party has referred to damage to the building and to 'near misses' at the entrance to the site.

13. It has been pointed out that there is no limit to the numbers of vehicles that can be parked within existing properties, and vehicle numbers cannot be restricted where a property has existing established rights. Even if the dwelling is smaller than No 49, the use of the access would be greater than the incidental use that currently exists by the occupiers of No 49, as their main point of access and parking is on Daltongate. Furthermore, despite planning permission being granted previously for two dwellings, 'Westside' and 'Eden Garth' that are accessed along this lane, I must look at the planning merits of this case.
14. The proposal would introduce a new dwelling which could only be accessed from Queen Street. This would result in an intensification of the use of the entrance way and increase the volume of traffic travelling along the lane to the site. As the access is between existing buildings, there is not adequate visibility for all users, and this could not be improved upon. It would therefore not provide a safe and suitable access and entrance onto Queen Street for the proposed new dwelling. Therefore, I conclude that the proposal would unacceptably affect the safety of pedestrians, cyclists and drivers accessing the site and using the lane.
15. It would therefore not accord with Policies DM1 and DM2 of the Local Plan Development Management Policies<sup>2</sup>, 2019, which combined requires inclusive design and access for all, including ensuring that there is adequate and safe movement of pedestrians, cyclists and motor vehicles, and provision of parking/servicing. It would also not accord with Policy CS10.2 of the South Lakeland Local Development Framework Core Strategy, October 2010, and paragraph 110 of the National Planning Policy Framework, which requires proposals to be served by a safe and convenient access.

## **Other Matters**

16. The site is within the Ulverston Conservation Area. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The significance of the Ulverston Conservation Area arises from its medieval street plan, the expansion of the town in the 18<sup>th</sup> and 19<sup>th</sup> centuries demonstrated by the large number of Georgian town houses, and following the introduction of the railway and its later prosperity, the construction of Victorian civic and commercial buildings.
17. The significance of the appeal site is that it is a backland site that is previously undeveloped, located to the rear of Queen Street which has high quality town houses and buildings with shop fronts to the ground floor. These are largely of

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<sup>2</sup> For South Lakeland District outside the Lake District and Yorkshire Dales National Parks

the Georgian period, three storeys in height and reached by steps up from the street. Many of them are grade II listed, which includes No 18 Queen Street, a late 18<sup>th</sup> or early 19<sup>th</sup> century shop and flat whose archway provides access to the appeal site. Its significance arises from its decorative shop front and arched entrance which contributes to the architectural features of this important row of Georgian buildings within the town.

18. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires when considering granting planning permission for development affecting a listed building or its setting, that there must be special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
19. The location of the proposal, set as it is some distance from many listed buildings around the site and located to the rear of the bowling green, would preserve No 18 Queen Street and its setting, and preserve the character or appearance of the Ulverston Conservation Area.
20. Cumbria Fire and Rescue are reputed to have confirmed that the site would be reachable by hose, and as both this and the collection of waste affects all properties located along the lane, this is a neutral matter.
21. Any discussions between the appellant and the Council during the course of the application and the procedure used to determine it, is a matter between the parties and does not affect the outcome of this appeal.
22. Third parties have provided some support for this scheme, in that it provides a good use of an area of disused garden. The Council does not dispute that the proposal would have an acceptable impact on the character and appearance of the area, parking provision, flood risk and drainage, living conditions and biodiversity. The site is on the edge of the town centre with facilities and services and access to a regular bus and rail service. Whilst the provision of one new house would provide some economic and social benefits, these are neutral factors which would not overcome the harm that I have identified.

### **Conclusion**

23. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict.
24. For the reasons given above, I conclude that the appeal is dismissed.

*M J Francis*

INSPECTOR