



Appeal Decision

Site visit made on 23 September 2025

by **N Armstrong BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2025

Appeal Ref: APP/X1355/W/25/3368528

Land east of 7 Church Street Villas, Durham DH1 3DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr William Byng against the decision of Durham County Council.
 - The application Ref is DM/24/00766/FPA.
 - The development proposed is 3 no. new 1.5 storey high 2 bedroom dwellings with associated parking/turning area.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal submission includes updated drawings which show the height of the base of the rooflights increased from 1635mm above floor level to 1800mm. Paragraph 16.1 of the Procedural Guide: Planning appeals – England (June 2025) is clear that the appeal process should not be used to evolve a scheme and there are no provisions within the rules for amendments to be submitted. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning Authority and by interested parties at the application stage.
3. Furthermore, where amendments are proposed, regard should be had to the principles established in *Holborn Studios Ltd*¹ - including whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. Although the amendments to the height of the rooflights would not amount to a substantial change, accepting the revisions could deprive those who were entitled to be consulted of the opportunity to make any representations as part of an appeal, which, given the matters that have been raised, they may have wished to make. For this reason, I have determined the appeal on the basis of the plans that were before the Council when it made its decision.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbouring residents and future occupiers of the development, with regard to privacy and outlook.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

Reasons

5. The appeal site comprises the rear garden land of 7 Church Street Villas and its associated access from Boyd Street. The garden is relatively large in an area that is otherwise predominantly characterised by higher density, two-storey terraced housing surrounding the site, which includes the properties to either side of the site on Boyd Street and High Wood View. The site is enclosed by a stone wall to parts of the northern boundary as well as timber fencing. Beyond the lawned area immediately to the rear of the appeal property, the garden area was heavily overgrown, and trees and hedgerow are within and to the boundaries of the site.
6. The front elevations of the new dwellings would be constructed on the northern boundary of the site, with the front doors providing access onto a lane between the site and the rear of Boyd Street, which was overgrown at the time of my visit limiting access. The dwellings on Boyd Street run parallel to and are in close proximity to the site. There are variations in the extent of single and two-storey projections to their rear elevations, with first floor windows of habitable rooms in the rear elevations and projections facing towards the appeal site. The proposal would see a considerable number of trees removed towards the northern boundary with Boyd Street to accommodate the development, which would open up views of the site from the neighbouring properties.
7. As indicated on the section drawings, the properties on High Wood View would be at a higher level to the finished floor levels of the development, and similar to Boyd Street, there are variations to the rear of the existing properties in terms of layout and projections, with first floor windows that face the appeal site. There would be a greater separation between the new dwellings and the properties on High Wood View in comparison to Boyd Street, with the gardens of the new dwellings and new landscaping comprising the southern part of the site. This separation increases to the western part of the site due to the more angled layout of the terrace at High Wood View.
8. The Council's Residential Amenity Standards Supplementary Planning Document (2023) (the SPD) aims to promote high quality amenity and design. There is no dispute between the parties that the proposed development does not meet the minimum separation distances with Boyd Street and High Wood View that the SPD highlights will usually be required. There is a considerable shortfall for both, and particularly in relation to the proximity of the development with the existing properties on Boyd Street.
9. The potential impacts of the development with properties on High Wood View would be mitigated to some degree by the greater distance between properties, the angle of the layout between them combined with the existing and proposed landscaping along the southern boundary, which would include evergreen hedge planting and new trees. The benefits of the landscaping would depend upon the height of the existing and proposed hedges, which would likely need to be relatively high, and would also be reduced when there is less leaf coverage on the proposed tree species. The use of rooflights where the relationship is closer to the eastern end of the development would also help to reduce potential significant adverse effects of overlooking between the properties. Due to the scale of the new dwellings and the extent of separation in this area, there is unlikely to be any significant impact on the occupants at High Wood View in terms of loss of light or unacceptable, overbearing impacts.

10. There is an existing situation with clear glazed first floor windows of properties on High Wood View facing towards the existing larger garden area of the host property. The proposal would result in the gardens and only external space of the new dwellings being overlooked to varying degrees from existing properties at a higher level. The potential for adverse effects from this would be greater for proposed dwellings 2 and 3 given their closer proximity to neighbouring properties and the first floor clear glazed window in the projection to No 5 High Wood View. Due to the proximity and potential for overlooking of the new garden areas from the higher level windows of High Wood View, future residents would feel heavily overlooked, thereby having a harmful effect on their living conditions. From the information before me, I am not satisfied that there would be adequate landscaping to sufficiently mitigate this harm.
11. The proposed development would be positioned significantly closer to the existing properties on Boyd Street, resulting in increased overlooking between the existing and proposed dwellings. Whilst I acknowledge the proposed rooflights serving bedrooms and their intended siting, significant overlooking would result from the number and orientation of habitable room windows on both sets of elevations. The proximity of the development to the rear of the dwellings on Boyd Street would potentially reduce the outlook for occupiers of the existing properties. Based on what I was able to observe at my site visit and the evidence before me, the relatively low eaves height and overall scale of the proposed buildings mitigate the impact on outlook from the rear windows of properties on Boyd Street. As a result, the effect would not be significant or unduly harmful.
12. As a result of the close proximity and significant shortfall below the SPD requirements, the development would not provide a high standard of amenity for existing and future occupants, particularly in respect of the potential for loss of privacy and overlooking between windows with the properties on Boyd Street. There would be some potential for a harmful effect on the privacy of the external amenity spaces to the rear of Boyd Street. This would be mitigated by the height of the rooflights relative to the eyeline of the occupants of the development, which would likely limit the potential for direct, downward views over these areas. However, despite the appellant's references to average male and female heights, this mitigation would not apply in all cases and would not justify the harm from overlooking between windows that would arise in very close proximity between the proposal and properties on Boyd Street. Whilst future occupants of the development would be aware of the layout and may choose to accept the situation, this would not equate to a lack of harm or justify the inadequate arrangement.
13. I have considered the prevailing character of the area, noting that the SPD acknowledges circumstances where standard separation distances may be appropriately relaxed. The wider area features some housing development at a relatively higher density, although the properties on Boyd Street and High Wood View have historically benefitted from the more open outlook towards the garden of the appeal site for some time. Other development in the area that I have been directed to in the appellant's evidence also appears to have largely been established for some time. Whilst these examples are part of the existing character of housing in the area, this would not justify the considerable shortfall in separation distances between the existing and proposed dwellings, and the adverse effects on amenity through privacy and overlooking between them.

14. The appellant references the appeal decision² for the adjacent development at Peartree Cottages. This has some similarities to the scheme before me having regard to the layout and scale of new housing and its relationship with existing properties on Boyd Street and High Wood View. However, there is a material difference on the basis that the Inspector highlighted there were no habitable room windows being proposed in the rear elevation or roof slope facing Boyd Street. As such, it has a different effect on the living conditions of neighbouring occupiers to that proposed and it does not justify the harm I have identified. That appeal was also determined prior to the adoption of the guidance within the SPD.
15. For the reasons given above, whilst I find there would not be significant or unacceptable harmful effects on outlook, I conclude that the proposed development would have an unduly harmful impact on the living conditions of neighbouring occupiers at Boyd Street and future occupiers of the development with regard to privacy. It would therefore conflict with Policies 6, 29 and 31 of the County Durham Plan (2020), which amongst other matters require development to be appropriate in terms of scale, design, layout, provide high standards of amenity, and ensure that proposals will not have an unacceptable impact on living conditions.

Other Matters

16. The appeal site is located within the Durham City Centre Conservation Area (the CA). Insofar as it is relevant to this case, its significance is founded on its architectural and historic interest. Although representations have been received from interested parties, the Council does not identify any harm to the CA from the proposal. On the evidence before me, and from my observations on site, due to the location of the development, and its layout, scale and design, I consider that the development would preserve the character and appearance of the CA and its significance as a whole.
17. I have had regard to the appellant's objectives and suggested benefits, which include the redevelopment of an underutilised site, the delivery of additional housing in an accessible location to meet local need, the design quality and internal space standards, and modest economic benefits. However, it has not been demonstrated that the development is the only way to achieve those objectives, and the stated benefits do not justify the harm I have identified.
18. The concerns expressed regarding the Council's failure to accept additional amended drawings during the processing of the planning application fall outside of the remit of this decision.

Conclusion

19. The proposal conflicts with the development plan as a whole and material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above, I conclude that the appeal should be dismissed.

N Armstrong

INSPECTOR

² Appeal Decision APP/X1355/W/16/3165827, dated 16 March 2017