

**TITLE OF REPORT:** Planning Appeals

**REPORT OF:** Paul Dowling, Strategic Director, Communities and Environment

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### **Purpose of the Report**

1. To advise the Committee of new appeals received and to report the decisions of the Secretary of State received during the report period.

### **New Appeals**

2. There have been **no** new appeals lodged since the last committee.

### **Appeal Decisions**

3. There have been **four** new appeal decisions received since the last Committee:

DC/17/01110/COU - 321 And 323 Rectory Road, Bensham, Gateshead NE8 4RS  
Change of use from dwelling (use class C3) to an eight-bedroom house in multiple occupation (HMO) (sui generis use).

This application was a committee decision refused on 3 January 2018.

Appeal dismissed 3 July 2018.

DC/17/01142/ADV - Land At Abbotsford Road, Felling

Proposed siting of internally illuminated digital hoarding display.

This application was a delegated decision refused on 26 January 2018.

Appeal dismissed 29 June 2018.

DC/17/01153/HHA - 65 King Oswald Drive, Stella, Blaydon, NE21 4FD

Retrospective dropped kerb and provision of new path and parking space to front of property to provide disabled access.

This application was a delegated decision refused on 26 January 2018.

Appeal allowed 17 July 2018.

DC/18/00081/HHA - 16 Cowen Gardens, Allerdene, Gateshead NE9 7TY

Two storey side and front extension, rear ballustrade to first floor rear window and new boundary fencing and gates (revised application).

This application was a delegated decision refused on 29 March 2018.

Appeal dismissed 17 July 2018.

Details of the decisions can be found in **Appendix 2**

### **Appeal Costs**

4. There has been **one** appeal cost decision:

DC/18/00081/HHA - 16 Cowen Gardens, Allerdene, Gateshead NE9 7TY  
Two storey side and front extension, rear ballustrade to first floor rear window and new boundary fencing and gates (revised application).

The costs have been refused.

Details of the decision can be found in **Appendix 2**

### **Outstanding Appeals**

5. Details of outstanding appeals can be found in **Appendix 3**.

### **Recommendation**

6. It is recommended that the Committee note the report

**Contact: Emma Lucas Ext: 3747**

**FINANCIAL IMPLICATIONS**

Nil

**RISK MANAGEMENT IMPLICATIONS**

Nil

**HUMAN RESOURCES IMPLICATIONS**

Nil

**EQUALITY AND DIVERSITY IMPLICATIONS**

Nil

**CRIME AND DISORDER IMPLICATIONS**

Nil

**SUSTAINABILITY IMPLICATIONS**

Nil

**HUMAN RIGHTS IMPLICATIONS**

The subject matter of the report touches upon two human rights issues:

The right of an individual to a fair trial; and  
The right to peaceful enjoyment of property

As far as the first issue is concerned the planning appeal regime is outside of the Council's control being administered by the First Secretary of State. The Committee will have addressed the second issue as part of the development control process.

**WARD IMPLICATIONS**

Various wards have decisions affecting them in Appendix 3

**BACKGROUND INFORMATION**

Start letters and decision letters from the Planning Inspectorate



The Planning Inspectorate

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## Appeal Decision

Site visit made on 19 June 2018

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2018

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**Appeal Ref: APP/H4505/W/18/3196256**

**321 Rectory Road, Bensham, Gateshead NE8 4RS**

- 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 Jomast Accommodation Ltd against the decision of Gateshead Council.
  - The application Ref DC/17/01110/COU, dated 2 October 2017, was refused by notice dated 3 January 2018.
  - The development proposed is planning permission for use as an 8 bedroom HMO.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues of the appeal are:
  - the effect on the character and appearance of the area, including the supply and choice of housing suitable for family occupation;
  - the effect on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance, and;
  - whether the proposal would provide a suitable living environment for its occupiers, with particular regard to internal living space.

### Reasons

*Character and appearance – including the supply and choice of housing*

3. The appeal site consists of a large mid-terraced property located on the eastern side of a section of Rectory Road between Westfield Road and Saltwell View. The building was originally two separate properties (Nos. 321 and 323). However, internal changes have resulted in a single property comprising 8 bedrooms, including accommodation in a two storey rear outrigger and in converted roofspace which is served by roof lights. The property sits behind a shallow front yard and has a rear yard that wraps around the outrigger at different levels. The higher level of the rear yard towards the rear boundary has level access onto a shared rear passageway that runs the full length of the terrace. The surroundings are urban in character with terraced rows in back to back arrangements to each side of the shared rear passageway and an evident mix of individual dwellings, flats and houses in multiple occupation (HMOs) within each terraced row.

4. Policy CS9 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010 - 2030 (CS&UCP), adopted March 2015, seeks that existing communities will be sustainable places of quality and choice. The policy indicates that this will be achieved by, amongst other things, preventing the loss of family homes through sub-division, change of use or redevelopment, and preventing an over concentration of shared accommodation. Nonetheless, paragraph 10.11 of its supporting text indicates that shared accommodation (including HMOs) forms a very significant and valuable part of the private sector and provides for market housing needs of a variety of people. It also identifies that permitted development rights will be removed where high concentrations of shared accommodation create problems in terms of environmental quality and residential amenity.
5. With regard to the above, there is no evidence before me that the Council has sought to remove permitted development rights under Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). Schedule 2, Part 3, Class L of the GPDO, amongst other things, permits development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of that Order. The Use Classes Order 1987 (as amended) defines Class C4 as use of a dwellinghouse by not more than six residents as a HMO.
6. The appellant has drawn to my attention that a licence had been granted separately in 2017 for the property to operate as a HMO by the Council's Licensing Team. During my visit, the building was partly occupied and it was evident that the conversion of the property from an 8-bedroom dwelling to a HMO had taken place given that each bedroom door was capable of being locked from the outside and communal facilities such as the showers and WCs at first floor level were as proposed within the submitted plans. Nonetheless, I observed that some bedrooms had been left vacant which could enable the use of the existing property within the definition of a HMO under Class C4. As the change of use to a HMO in Class C4 can take place under permitted development rights in the GPDO, it represents a fallback position should this appeal be unsuccessful. Consequently, I find that the proposal would not result in a harmful loss of a family dwelling and does not conflict with the related point 4 of Policy CS9 of the CS&UCP in that respect.
7. The Council has drawn to my attention that there are at least 19 HMOs within the longer section of Rectory Road between Whitehall Road and Saltwell View. However, during my visit it was evident that family housing remains the predominant property type within the local area. Based on my observations, the individual or cumulative effect of the property being used as a HMO would not reach a tipping point where the balance of accommodation in the area would be significantly altered. In any case, the proposal of itself would not cause a harmful increase in shared accommodation on Rectory Road, given the fallback position of the property operating as a HMO in Class C4 if the property were not occupied by more than six residents.
8. The proposal relates to a reconfiguration of the internal layout of the property to provide the 8-bedroom HMO with no external changes proposed. The exterior of the building and its communal outdoor amenity spaces are well-maintained and harmonise with the appearance of other residential properties

in Rectory Road and the surrounding area. Furthermore, there is no evidence to suggest that the quality of accommodation or the visual appearance of the property would deteriorate in the future through use as a HMO given that other similar properties assimilate appropriately with surrounding housing. The proposal would, therefore, maintain the residential appearance of the area.

9. The character of the area is not solely influenced by matters of appearance and visual impact. The development would consist of a total of 8 bedrooms which would be the same as the previous large family house or if used as a HMO falling within Class C4. However, based upon the evidence before me and the submitted plans, the proposal intends that each of the bedrooms would be let as a double that could be occupied by up to two people. The proposed use of the property as an 8-bedroom HMO, therefore, has the potential to result in up to 16 residents within the property. Consequently, there would be a significant intensification of the use of the building when compared with the property being occupied as a family dwelling (Class C3) or as a HMO (Class C4), both of which have a restriction of not more than 6 residents. It is, therefore, reasonable to consider that the use of a property as a large 8-bed HMO with the potential for a significant increase in number of residents and separate households would result in a greater number of comings and goings to the property. However, on balance, given the density of surrounding properties and the presence of shared accommodation and HMOs nearby, the proposal would not result in material harm to the character of the area in that respect.
10. I conclude that the proposal would not result in material harm to the character and appearance of the area or a detrimental impact upon the supply and choice of housing suitable for family occupation in the locality. The proposal, therefore, does not conflict with Policy CS9 of the CS&UCP.

*Living conditions*

11. Policy CS14 of the CS&UCP, amongst other things, seeks to prevent negative impacts on residential amenity from noise. Saved Policy DC2 of the Unitary Development Plan for Gateshead (UDP), adopted July 2007, amongst other things, also identifies that planning permission will be granted for new development that would not have an adverse impact on amenity and does not cause undue disturbance to nearby residents or conflict with other adjoining uses. In that respect, the adjoining properties in the terraced row are in residential use. Whilst I note that a HMO licence has been granted, there is no substantiated evidence before me that such a decision took account of the potential of the proposal to be occupied by up to 16 residents and the resultant effect upon the living conditions of occupiers of neighbouring properties.
12. The use of the appeal property as an HMO is markedly different from occupation as a family house. Although some tenants may be more considerate than others, the general level of activity associated with a HMO is significantly greater than a typical family house and therefore, increases the potential for noise and disturbance. As previously mentioned, the use of the property as an 8-bedroom HMO as proposed has the potential to result in up to 16 residents within the property, which would be a significant intensification of the use of the building and associated activity when compared with occupation as a single family dwelling under Class C3 or a HMO under Class C4, which are restricted to no more than 6 residents.

13. With regard to the above, the layout of the property has a communal dining / lounge area, kitchen and shower / WC facilities for up to 16 residents. It is reasonable to consider that residents of the HMO as proposed and visitors would use the internal communal areas and rear yard more intensively than a typical family terraced house or the fallback position of a much smaller number of occupants in a HMO falling under Class C4. This would result in a considerable increase in and concentrations of activity, particularly internally and externally at the rear with associated noise and disturbance that would result in significant harm to the living conditions of the occupiers of neighbouring properties.
14. There is no evidence before me that sound proofing works could mitigate the additional noise and disturbance from activity arising from an increase in up to 10 people occupying the property, so as to overcome the harm I have identified. Furthermore, a condition could not be reasonably imposed to limit the occupancy of bedrooms, as it would remove the benefit of the planning permission sought. In any case, such a condition would be too difficult to enforce given the nature of comings and goings in a HMO. Although the appellant has indicated that management arrangements are in place to respond to and address any noise and anti-social behaviour complaints, such a reactive approach would not of itself prevent the harm from occurring and would likely increase the burden upon the Council to also respond to complaints.
15. In reaching the above findings, I have taken account of appeal decisions drawn to my attention relating to retrospective change of use to a 7-bed HMO<sup>1</sup> and change of use of a dwelling into a 4-bed HMO (C4)<sup>2</sup> in Leeds. However, the individual circumstances of each of those proposals were considerably different to the proposal before me in terms of the potential increase in number of residents. Furthermore, the full details of the Council decisions relating to a large HMO at 80 Raby Street, Gateshead<sup>3</sup> and an 8-bed HMO at 416 Sunderland Road, Gateshead<sup>4</sup> are not before me and I cannot be certain that their locational circumstances or potential level of occupancy are a direct parallel with this appeal proposal. Consequently, it is necessary that I consider the appeal proposal on its own merits and reach my own conclusions.
16. I conclude that the development would have an unacceptable impact upon the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance. The proposal would, therefore, conflict with Policy CS14 of the CS&UCP and Saved Policy DC2 of the UDP. The policies are consistent with the core principle of the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings.

#### *Living Environment*

17. Policy CS11 of the CS&UCP indicates that a good range and choice of accommodation will be achieved by, amongst other things, providing adequate space inside and outside of the home to meet the needs of residents. The Council's concerns relate specifically to proposed bedrooms 7 and 8 in the converted roofspace of the property. However, each of those bedrooms would have internal floorspace with suitable headroom of not less than 1.5m that

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<sup>1</sup> Appeal Ref: APP/N4720/W/16/3155456 - Allowed with Conditions - 18 November 2016

<sup>2</sup> Appeal Ref: APP/N4720/W/17/3183537 - Allowed with Conditions - 22 January 2018

<sup>3</sup> Council Ref: DC/16/00682/COU - Planning Permission Granted with Conditions - 24 August 2016

<sup>4</sup> Council Ref: DC/16/00773/COU - Planning Permission Granted with Conditions - 28 September 2016

would exceed the floorspace of bedrooms 2, 4 and 5. During my visit, I observed that the individual bedrooms would clearly accommodate suitable furniture such as a double bed, wardrobe and chest of drawers/desk, with adequate circulation space remaining. Each bedroom would be served by a window, aside from bedrooms 7 and 8 which would be served by rooflights that nonetheless would provide appropriate outlook, light and ventilation.

18. The Council has not drawn any specific requirements to my attention in terms of WCs and washing facilities, kitchens and communal areas required for a certain number of bedrooms or residents in a HMO. It is, therefore, a matter of judgement. In that respect, it is not uncommon for 6 residents within a dwelling to have a suitable living environment whilst sharing single facilities. Consequently, to my mind, four showers, four WCs, together with a large kitchen and lounge as proposed on the submitted plans would adequately serve the 8 bedroom HMO consisting of double units suitable for up to 16 persons. Furthermore, there is no substantive evidence that the proposal would be incapable of compliance with Building Regulations with respect to fire safety.
19. The privacy and form of amenity space required to serve a dwelling functioning as a single household differs to the communal amenity space that characterises a HMO. There is no guidance before me with respect to standards relating to the provision of amenity space and private gardens to serve HMOs. The rear yard of the property would provide adequate communal space for occupants sit outside, dry clothes and store bins, and, therefore, would meet the needs of residents of the HMO. Parks and other open spaces within walking distance of the site also offer significant opportunities for amenity and recreation.
20. Taking all of the above into account, I conclude that the development would provide a satisfactory living environment for its occupiers. The proposal, therefore, would not conflict with Policy CS11 of the CS&UCP in that respect.

#### **Other Matters**

21. I have taken account of the potential benefits of the appeal proposal as part of a range of housing that meets the needs of local people and different groups in the community, including demand for HMOs. The proposal would also make a potential contribution to the creation of sustainable, inclusive and mixed communities in that respect and would prevent under-occupancy of bedrooms. However, the balance in this case, rests in favour of preventing harm to the living conditions of occupiers of neighbouring properties.
22. The property and those surrounding are reliant upon on-street parking and there are existing parking restrictions close to the site. During my site visit undertaken in the early morning, I observed low levels of traffic, together with significant availability of on-street parking close to the property and in the surrounding area. It is reasonable that demand at peak times (i.e. evenings and overnight) would likely be higher. However, I have no substantive evidence which would indicate that the local area is subject to significant parking pressure or that the increase in car parking demand arising from the development could not be adequately accommodated on-street.



**Conclusion**

23. I have found no material harm with respect to the character and appearance of the area, including the supply and choice of housing suitable for family occupation. The development would also provide a satisfactory living environment for its occupiers. Nevertheless, such matters do not justify the harmful effect of the development on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance, which would be significant and overriding.
24. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

*Gareth Wildgoose*

INSPECTOR



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## Appeal Decision

Site visit made on 12 June 2018

**by John Dowsett MA DipURP DipUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29<sup>th</sup> June 2018

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**Appeal Ref: APP/H4505/Z/18/3196560**

**Land at Abbotsford Road, Felling Bypass, Gateshead NE10 0AZ**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Mr Khristos Oliver of Insite Poster Properties against the decision of Gateshead Council.
  - The application Ref: DC/17/01142/ADV, dated 16 October 2017, was refused by notice dated 26 January 2018.
  - The advertisement proposed is an internally illuminated digital hoarding display measuring 6m by 3m.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The Town and Country Planning (Control of Advertisements) Regulations (England) 2007 (the Regulations) and the National Planning Policy Framework (the Framework) require that control over advertisements should only be in the interests of amenity and public safety, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors. It is common ground between the parties that the proposed advertisement display would not cause harm to the amenity of the area. Therefore, the main issue in this appeal is the effect of the proposed advertisement on public safety.

### Reasons

3. The appeal proposal is a 6 metre by 3 metre internally illuminated, pole mounted sign, with an overall height of 6 metres. The sign would use light emitting diode technology and the advertisement display would change approximately every ten seconds. The appeal site is an area of unused land on the south side of the A184 Felling By-pass (Abbotsford Road). It is situated adjacent to an acceleration lane next to the main carriageway that allows drivers egressing from a drive through restaurant to re-join the main road.
4. The A184 is a dual carriageway with a speed limit of 40 mph and is one of the principal routes into and through the Tyneside conurbation, linking the A19 to Gateshead town centre and the A1 in the west. The road curves round from a signalised junction at Heworth Station to the east, dropping in level toward the appeal site. Past the appeal site, to the west, the road level rises as it bridges over Stoneygate Lane.

5. The Planning Practice Guidance (the Guidance) advises that all advertisements are intended to attract attention and that there are less likely to be road safety problems if the advertisement is on a site within a commercial or industrial locality, such as the area within which the appeal site is located. Nevertheless the Guidance also states that proposed advertisements at points where drivers need to take more care are more likely to affect public safety. It gives as examples, at junctions, roundabouts, pedestrian crossings, and on the approach to a low bridge or level crossing. In addition the Guidance identifies, among other matters, that advertisements that are subject to frequent changes of the display are most likely to cause a danger to road users.
6. The appeal site is located approximately half way along the acceleration lane and I note that the appellant's Highways Assessment comments that the acceleration lane appears to be very long in the context of the current speed limit on the main carriageway. Due to the nature of the road, the A184 carries a high volume of traffic. At the time of my site visit, in the early afternoon, the road was carrying a relatively high volume of traffic and due to the type of road and the function that it serves, it is likely that it does so for large parts of the day.
7. When I visited the site I saw that there were gaps in the flow of westbound traffic caused by the phasing of the traffic lights at the signalised junction at Heworth station. During the course of my site visit I observed a number of vehicles using the acceleration lane upon leaving the car park of the drive through restaurant. I saw that vehicles which left the site when there was a gap in the traffic flow re-joined the main carriageway almost immediately after leaving the car park area, whereas if there was traffic flowing on the main carriageway, drivers used the acceleration lane to match the speed of the traffic flow before joining. Due to the distance from the traffic lights to the appeal site, vehicle speeds on the main carriageway were relatively high by the time they had reached the appeal site.
8. The accident data provided by the appellant shows that there have been 24 accidents on this stretch of road in the past 20 years with roughly half occurring in each direction of travel. Whilst I note the appellant's point that none of the accidents involved vehicles using the acceleration lane, this is not determinative that the positioning of an illuminated advertising sign adjacent to it would not distract drivers. It is, however, indicative that the acceleration lane functions safely at present without advertising being present.
9. I also note that none of the accident data cites driver distraction as a cause, but am mindful that fewer than half of the accident records list causation factors and also of the comment of the Highway Authority that driver distraction is a very subjective causation factor which is rarely recorded.
10. The advice in the guidance is that advertisements near junctions and points where drivers need to take more care are more likely to affect public safety is relevant to this site. The proposed position of the advertisement is such that it may not cause a distraction at those times where there is a gap in the westbound traffic and driver can join the main carriageway almost immediately before accelerating. Nonetheless, at other times when drivers are obliged to use the acceleration lane to match speeds with the main carriageway, the potential for distraction is much greater due to the changing nature of the

display and the fact that the advertisement would be, if not in direct line of sight, prominent in the peripheral vision of drivers for longer.

11. Whilst I accept that drivers typically process a lot of information and that there are not a large number of other advertisements in the immediate area, those adverts that are present of a different nature to appeal proposal being totem pole type signs relating to various business premises and do not feature changing displays. I would also disagree with the appellant's suggestion that the proposed sign would not represent an unusual feature to passing motorists, as it is larger and the display changes. I saw during my site visit that there are no other signs of this nature on A184 between junction with A19 and Gateshead town centre and, consequently, the proposed advertisement would be very much an uncommon and novel feature in the area.
12. I have had regard to the case studies presented in the Highways Assessment which indicate in the circumstances of those cases that there does not appear to be a correlation between accidents and the presence of advertising. However, on the basis of the limited information that has been provided these none of the case studies address the situation where traffic is merging onto a dual carriageway and the circumstances are, consequently, not directly comparable to those in the case before me.
13. Within this context and from the evidence before me, my observations during the site visit, and having regard to the advice in the Guidance, I do not find the appellant's argument a persuasive one and find that in this location the proposed advertisement would be prejudicial to public safety. Although I would agree with the appellant that it is unlikely that the proposed advertisement would cause a distraction to eastbound motorists due to its orientation and speed that vehicles would be travelling at this point, this does not lead me to a different conclusion.
14. I therefore conclude that the proposed advertisement would cause harm to public safety in the vicinity of the appeal site.

#### **Conclusion**

15. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*John Dowsett*

INSPECTOR



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## Appeal Decision

Site visit made on 10 July 2018

by **C L Humphrey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17<sup>th</sup> July 2018

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**Appeal Ref: APP/H4505/D/18/3201049**

**65 King Oswald Drive, Stella, Blaydon NE21 4FD**

- 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 David Burns against the decision of Gateshead Council.
  - The application Ref DC/17/01153/HHA, dated 19 October 2017, was refused by notice dated 26 January 2018.
  - The development proposed was originally described as 'Lowered curb to match with neighboring property to provide access to front of property. There is one parking space at the rear of the property but this is inaccessible for a wheelchair user. Part of the front garden will be taken up and replaced with gravel to provide direct parking and path to front door.'
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### Decision

1. The appeal is allowed and planning permission is granted for a vehicular access and hard surface at 65 King Oswald Drive, Stella, Blaydon NE21 4FD in accordance with the terms of the application Ref DC/17/01153/HHA dated 19 October 2017 and plans submitted with it subject to the following condition:
  - (1) The development hereby permitted shall be removed and all materials brought onto the land for the purposes of such development shall be removed within 60 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
    - (i) Within 3 months of the date of this decision a scheme for hard and soft landscape works shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
    - (ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
    - (iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
    - (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Procedural Matters**

2. Notwithstanding the description of development set out in the banner heading above, which is taken from the application form, based upon the submitted evidence it is clear that the development involves the formation of a means of vehicular access to the highway and the provision within the curtilage of the dwellinghouse of a hard surface. The development would therefore be more appropriately described as a vehicular access and hard surface. This revised description would not prejudice the parties involved and so I have considered the appeal on that basis.
3. At the time of my site visit the development had commenced.

### **Main Issues**

4. The main issues are the effect of the development upon highway safety and the character and appearance of the area.

### **Reasons**

#### *Highway safety*

5. The hard surface occupies the area between the front of the house and the back of the footway to the west of the path which leads to the front door. The adjacent property at 63 King Oswald Drive has a hard surfaced parking space to the front which is of a very similar overall depth, and I observed during my site visit that it is possible for a vehicle parked in that space to be wholly contained within the curtilage. Thus, if the entire length of the hard surfaced area was utilised, I see no reason why cars parked perpendicular to the road within the appeal property would be likely to overhang the footway and cause an obstruction to pedestrians. In any event, obstruction of the highway can be controlled via other legislation.
6. At the time of my site visit, which took place mid-afternoon on a weekday, traffic along King Oswald Drive was fairly light and speeds were low. Many properties fronting the road have vehicular accesses and drives to the front. Given the number and frequency of existing vehicular accesses along the road, drivers would be aware of the possibility that vehicles may manoeuvre in and out of the appeal site and would thus be vigilant. Similarly, pedestrians would be alert to the likelihood of vehicles entering and exiting the site and would exercise caution accordingly. Drivers seeking to manoeuvre in and out of the appeal site are unlikely to do so at speed.
7. I noted during my site visit that, on the inside of the bend just west of the appeal site, cars parked in the carriageway and planting and parking in front gardens limited openness and visibility. Thus, additional parking in the front garden of the appeal property would not worsen visibility for eastbound traffic. Visibility around the outside of the bend for vehicles travelling west would not be affected by the development.
8. Whilst the use of gravel would be likely to result in displacement onto the highway and thus potentially create an unsafe environment for pedestrians and cyclists, precise details of the hard surface materials could be controlled by condition to overcome this concern.

9. Overall in respect of the first main issue I conclude that, subject to a condition to secure a suitable hard surface material, the development would not have a harmful effect upon highway safety and so would accord with the transport and wellbeing aims of Policies CS13 and CS14 of the Gateshead and Newcastle upon Tyne Core Strategy and Urban Core Plan (CSUCP) and the Gateshead Council Household Alterations and Extensions Supplementary Planning Document (HAESPD)

*Character and appearance*

10. As many houses along the road have parking spaces within the front gardens the development is not uncharacteristic of the area. Moreover, the garden is wide and not entirely given over to hard surfacing. A scheme to ensure the use of suitable materials and supplementary soft landscaping could be secured by condition.
11. Therefore, with regard to the second main issue and subject to the condition outlined above, I conclude that the development would not have a harmful effect upon the character and appearance of the area and would accord with the design aims of CSUCP Policy CS15, Gateshead Unitary Development Plan Policy ENV3 and the HAESPD.

**Conditions**

12. The purpose of condition 1 is to require the appellant to comply with a strict timetable for dealing with details of hard and soft landscape works which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters because the development has already started. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved either by the local planning authority or by the Secretary of State on appeal, and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

**Conclusion**

13. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

*CL Humphrey*

INSPECTOR



## Appeal Decision

Site visit made on 26 June 2018

by **Caroline Jones BA (Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17<sup>th</sup> July 2018

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**Appeal Ref: APP/H4505/W/18/3199071**

**16 Cowen Gardens, Allerdene, Gateshead NE9 7TY**

- 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 A Fenwick against Gateshead Council.
  - The application Ref DC/18/00081/HHA, is dated 29 January 2018.
  - The development proposed is two storey extension to side with forward projection and rear balustrade to first floor rear window, boundary fencing and gates.
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### Decision

1. The appeal is dismissed and planning permission for two storey extension to side with forward projection and rear balustrade to first floor rear window, boundary fencing and gates is refused.

### Application for costs

2. An application for costs was made by Mr A Fenwick against Gateshead Council. This application is the subject of a separate decision.

### Procedural Matters

3. I saw at my site visit that a single storey rear extension has been constructed at the host property which is not shown on the submitted existing or proposed plans. For clarification I have considered the appeal on the basis of the above description of development and the submitted proposed plans.
4. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction was taken away when the appeal was lodged. However, I note the assessment and conclusions submitted in the Council's statement and I have treated those as the basis of the decision the Council would have made, had it been empowered to do so. The Council is principally concerned by the effect on the Green Belt and the character and appearance of the area. I have drawn on the Council's concerns, together with other evidence before me to inform the main issues in this appeal.



### **Main Issues**

5. The main issues are:
- (i) Whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies.
  - (ii) The effect on the openness of the Green Belt and the purposes of including land within it.
  - (iii) The effect of the proposed development on the character and appearance of the area.
  - (iv) Would the harm by reason of inappropriateness, and any other harm be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

### **Reasons**

#### *Whether or not the proposal would amount to inappropriate development*

6. 16 Cowen Gardens is a semi-detached two storey property within a cul-de-sac that is washed over by the Green Belt. Policy CS19 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (2015) (CS) states, amongst other things, that the Green Belt will be protected in accordance with national policy. Section 9 of the National Planning Policy Framework (the Framework) attaches great importance to the Green Belt, the essential characteristics of which are its openness and permanence.
7. Paragraph 89 of the Framework establishes that new buildings within the Green Belt are inappropriate, unless, amongst other things, it involves the extension of a building. This is provided that it does not result in disproportionate additions over and above the size of the original building. The glossary within the Framework defines the 'original building' as the building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was originally built.
8. The appeal scheme comprises a two storey extension, approximately 3.7m in width, 8.4m in height and 6.4m in depth and features a facing gable projection of around 1.1m. A boundary wall with fence and gate would replace the existing boundary fence to the front of the property.
9. The Framework does not define 'disproportionate' in terms of a specific numerical threshold. Nor does Policy CS19. The Councils Supplementary Planning Document 'Householder Alterations and Extensions' (2012) (SPD) does set out that extensions which comprise development which is more than a third of its original volume will have an adverse effect on the Green Belt. However, I accept that this is guidance rather than being enshrined in policy.
10. Whilst each case must be considered on its merits, assessing proportionality is primarily an objective test based on size. The Council state that the existing volume of the property is approximately 261m<sup>2</sup> and that the proposed development would add a further 196m<sup>2</sup>, representing an overall increase of some 75%. The appellant has not disputed these figures.

11. I note that there is an extant permission for a two storey extension similar to the appeal scheme with the exception of the facing gable projection. The appellant advances that the issue is whether the increase in size over and above the extant permission would be disproportionate. However, the test in the Framework is against the original building. That is a test to be done in the absence of whether or not the existing building could be enlarged. Nonetheless, I shall return to examine this fallback position within the 'other considerations' section below.
12. In light of the above, comparing the original building to the one that would result if the proposal were to go ahead would, in my view, result in disproportionate additions over and above the size of the original building.
13. The proposal would therefore be inappropriate development which is by definition harmful to the Green Belt, contrary the third bullet point of paragraph 89 of the Framework and in conflict with Policy CS19 of the CS. I attach substantial weight to this harm.

*The effect of the development on the openness of the Green Belt and the purposes for including land within it*

14. The fundamental aim of Green Belt policy, as set out in paragraph 79 of the Framework, is to prevent urban sprawl by keeping land permanently open. In that the footprint, general bulk and volume would be increased by additional built development the appeal scheme would have a greater effect on the openness of the Green Belt which would conflict with the Framework. Given the scale of the proposal, the removal of an existing shed and its location surrounded by residential development the loss of openness would be limited.
15. The appeal scheme would be contained within the existing residential plot and would not lead to any substantial encroachment on the countryside. Accordingly, it is concluded that the proposed development would not conflict with this purpose of the Green Belt as identified in the Framework. However, this does not override the limited harm that it would cause to openness.

*Character and appearance*

16. The appeal property belongs to the only pair of semi-detached properties within Cowen Gardens, the remainder of the cul-de-sac comprising blocks of terraced properties. Projecting facing gables are a prominent feature of the street scene.
17. The Councils Householder Extensions and Alterations Supplementary Planning Document (2012) (SPD) advises that as a general rule, side extensions should be no more than 50% of the width of the existing and two storey extensions on a semi-detached property should be set back from the main front wall and the roof set down from the ridge of the existing house.
18. The proposed side extension would be just over half of the existing width and features no set down or set back. Whilst not in strict accordance with the guidance within the SPD, given the cul-de-sac is characterised by blocks of terraces, an extension of this width and height would not look discordant, particularly given the angled position of the property relative to the street. The projecting gable would harmonise with those of its neighbours and would not have a detrimental impact on the pair of properties which do not present as strongly symmetrical given the step down in height and their orientation.

19. I therefore conclude that the proposal would not have a materially harmful impact on the character and appearance of the host property or surrounding area and find no conflict with Policy CS15 of the CS or Policy ENV3 of the Gateshead Unitary Development Plan. These seek, amongst other things, high quality design that makes a positive contribution to the established character and identity of its surroundings.

*Other considerations*

20. The appeal property benefits from an extant planning permission<sup>1</sup> for a two storey side extension. I have had regard to the approved plans and note that, contrary to the assertions of the Council, the plans do not include a garage, porch or rear extension.
21. The extension now proposed is similar in width and height to that already approved. However, the approved scheme would run flush with the front wall of the existing house and does not include the two storey gable projection. The appellant submits that the additional floor space within this element of the scheme amounts to only 12m<sup>2</sup> over and above that approved and a 55% increase in volume compared to the 75% increase if the appeal were to be allowed.
22. It is clear that the appellant intends on extending his home and I have no reason to doubt that there is a real prospect that what could be built as approved would actually be built and so this represents a valid fallback position. However, whilst acknowledging that the approved scheme also represents an increase of more than a third, I have come to the view that the appeal scheme would be inappropriate and have some effect on the openness of the Green Belt due to its size. It would be larger in both floorspace and volume than the extant permission and would therefore have a more harmful impact upon the openness of the Green Belt. Therefore, the fallback position would be less harmful than the proposal before me and I attach limited weight to this matter.
23. The appellant advises that the extension would significantly improve the way in which he and his aging parents live, enabling them to live together following his father's ill health. Whilst recognising the private benefits for the family, personal circumstances seldom outweigh general planning considerations. Moreover, although the dwelling is small, little evidence has been provided to support the assertion that the existing dwelling based on its current size and layout are unsuitable for modern living and as such I can only give limited weight to such matters.
24. The appellant has drawn my attention to other extensions within Cowen Gardens, in particular those constructed at 17 Cowen Gardens. However, I have not been provided with the background or circumstances that led to their construction and cannot therefore make direct comparisons. Moreover, I note that the planning permissions predate the Framework, the CS and the SPD which limits the weight that can be afforded.
25. I have had regard to the appeal decision<sup>2</sup> put forward by the appellant. However, the scheme in that case is not directly comparable to that before me given it relates to a basement construction in a different local authority area.

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<sup>1</sup> Ref: DC/16/01022/HHA

<sup>2</sup> Ref: APP/N5090/D/17/3174495

In any case, each application and appeal must be considered on its own merits and I attach limited weight to this matter.

**Conclusion**

26. The Framework indicates that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. In addition, any harm to the Green Belt carries considerable weight. In this case, I have found harm from inappropriateness as well as a limited loss of openness to the Green Belt. Whilst I have found no harm in terms of the impact on character and appearance, nor have I identified any positive enhancement and I regard this as a neutral factor which does not weigh significantly either for or against the appeal. In addition, I give only limited weight to the other considerations referred to above. I consider that the substantial weight to be given to Green Belt harm is not clearly outweighed either individually or cumulatively by other considerations sufficient to demonstrate the very special circumstances that are necessary to justify inappropriate development in the Green Belt.
27. For the above reasons and taking all other matters into consideration, I conclude that the appeal should be dismissed.

*Caroline Jones*

INSPECTOR



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## Costs Decision

Site visit made on 26 June 2018

by **Caroline Jones BA (Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17<sup>th</sup> July 2018

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### **Costs application in relation to Appeal Ref: APP/H4505/W/18/3199071 16 Cowen Gardens, Allerdene, Gateshead NE9 7TY**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr A Fenwick for a full award of costs against Gateshead Council.
  - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for a two storey extension to side with forward projection and rear balustrade to first floor rear window, boundary fencing and gates.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant submits that it was unreasonable for the Council not to have determined the planning application within the prescribed period, failing to explain why this was the case. The applicant also considers that the Council have behaved unreasonably during the appeal process by causing delay. Furthermore, it is claimed that the Council's assessment and conclusion is inconsistent with other decisions it has taken, principally the fallback position for the appeal property and those at 17 Cowen Gardens.
4. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Given that the appeal has been dismissed, the Council has not prevented or delayed development which should clearly be permitted, having regard to its development plan, national policy and any other material considerations.
5. The appeal does relate to a non-determination of a planning application by the Council. The applicant states that he did not hear from the Council until the expiry date that a decision could not be reached in time and the reason for not being able to do so was due to the officer not being in the office until later that

- week. That of itself is not a good reason for failing to determine an application and I can appreciate the applicants frustrations in this regard.
6. It is regrettable that the Council failed to determine the application within the prescribed period. Nonetheless, had the application been determined in all likelihood the Council would have refused permission. In that situation, I consider it probable that the applicant would have appealed the decision and he would have therefore incurred the costs associated with the making of an appeal in any event. It therefore follows that the Council's behaviour in this regard did not incur the applicant unnecessary expense in the appeal process.
  7. There has been no failure by the Council to produce timely and relevant evidence to substantiate its stance against the development during the appeal process. It has accorded with the timetable and submitted representations within the set deadlines and has therefore caused no delays to the appeal process.
  8. Turning to the matter of consistency. It can be seen from my decision that I have found harm to the Green Belt by way of inappropriateness and its impact on openness. I note that the Council mistakenly referred to the extant permission including a porch, rear extension and detached garage. I accept that this is frustrating. That said, the Council concluded that the appeal proposal amounted to disproportionate additions irrespective of the potential enlargements which is the correct test having regard to the National Planning Policy Framework. Furthermore, irrespective of the removed porch, rear extension and garage, the appeal proposal was clearly distinguishable from the extant permission, being larger in both floorspace and volume. The permissions approved at No 17 also predated both current national and local policy and it can be seen from my decision that I attached limited weight to both the fallback position and the permissions at No 17 in the overall planning balance.
  9. The applicant also contends that the Council were inconsistent in referencing that the proposed extension would exceed the 50% increase in width advocated in the Council's Supplementary Planning Document (SPD) when the extant permission is of the same width as that proposed. Whilst I do not dispute this is the case, the Council does not rely solely on this matter in their conclusions on character and appearance, referring to the scale of the proposal and its impact to the character of the original dwelling. Moreover, findings relating to character and appearance arise from a matter of judgement on a subjective issue. I find that the Council adequately substantiated their conclusions in this regard and I cannot find that the Council behaved unreasonably in reaching a different view to my own given the subjectivity of judgements made. For the aforementioned reasons, I cannot find that the Council behaved unreasonably in reaching different conclusions to previous decisions either at the appeal site or at No 17.
  10. I therefore conclude unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated, and an award of costs is therefore not justified.

*Caroline Jones*

INSPECTOR

### APPENDIX 3

#### OUTSTANDING APPEALS

<b>Planning Application No</b>	<b>Appeal Site (Ward)</b>	<b>Subject</b>	<b>Appeal Type</b>	<b>Appeal Status</b>
DC/17/00473/HHA	17 Limetrees Gardens Low Fell Gateshead NE9 5BE	First floor extensions to side and rear	Written	Appeal in Progress
DC/17/01110/COU	321 And 323 Rectory Road Bensham Gateshead NE8 4RS	Change of use from dwelling (use class C3) to an eight-bedroom house in multiple occupation (HMO) (sui generis use)	Written	Appeal dismissed
DC/17/01142/ADV	Land At Abbotsford Road Felling	Proposed siting of internally illuminated digital hoarding display.	Written	Appeal dismissed
DC/18/00081/HHA	16 Cowen Gardens Allerdene Gateshead NE9 7TY	Two storey side and front extension, rear ballustrade to first floor rear window and new boundary fencing and gates (revised application)	Written	Appeal dismissed

DC/17/01087/FUL	Woodlands Birtley Lane Birtley DH3 2LR	The felling of 5 Tree Preservation Order (TPO) trees and the replacement with 7 new trees and the erection of a Use Class C3 detached dwelling-house, with three bedrooms and two floors (one within pitched roof void) on existing rear garden lands, with associated new access, hardstandings and car parking spaces (as resubmission and re-siting of DC/16/1289/FUL)	Written	Appeal in Progress
<b>DC/17/01153/HHA</b>	<b>65 King Oswald Drive Stella Blaydon NE21 4FD</b>	<b>Retrospective dropped kerb and provision of new path and parking space to front of property to provide disabled access.</b>	<b>Written</b>	<b>Appeal allowed</b>
DC/18/00105/FUL	Smileys Car Wash Nobles MOT Centre Sunderland Road Gateshead		Written	Appeal in Progress