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## Appeal Decisions

Inquiry held on 20 August 2013

Site visit made on 20 August 2013

by **Simon Hand MA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 September 2013

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### Appeal A: APP/E2530/C/12/2188351

**Land adjacent to 3 High Street, Pointon, Sleaford, Lincolnshire, NG34 0LX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr W Addison against an enforcement notice issued by South Kesteven District Council.
  - The Council's reference is S12/2920.
  - The notice was issued on 30 October 2012.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling house on the land.
  - The requirements of the notice are (i) remove the dwelling; (ii) remove from the land all building material and rubble arising from compliance with the first requirement above.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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### Appeal B: APP/E2530/A/13/2191541

**Land adjacent to 3 High Street, Pointon, Sleaford, Lincolnshire, NG34 0LX**

- 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 W Addison against the decision of South Kesteven District Council.
  - The application Ref S12/2920/FULL, dated 5 November 2012, was refused by notice dated 21 January 2012.
  - The development proposed is resubmission of previously approved dwelling incorporating amendments proposed.
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## Decisions

### Appeal A - 2188351

1. The enforcement notice is varied by deleting the words "3 calendar months" from the Time for Compliance, and replacing them with "9 months". Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

### Appeal B - 2191541

2. The appeal is dismissed.

## **Background to the Appeals**

3. In 2002 a house was granted planning permission on the site following a successful appeal. Mr Addison began work on the site in 2003, and by 2008 had built the house that appears on the site today. Work stalled at that point, and in 2011 the Council notified him that the house had not been built according to the plans. An application was then made for a grant of planning permission for a somewhat different house, with dormer windows in the roof. This and a subsequent 2012 appeal were both refused. The Council then issued an enforcement notice and shortly after that the appellant made a new application for planning permission for a different house again. Both the notice and the subsequent refusal of the planning application have been appealed.
4. The appellant argues that the 2002 planning permission was implemented in 2003, and so remains a valid planning permission and is the fallback position. In any event, the house was substantially completed in 2008, more than four years before the issue of the enforcement notice and so is immune from enforcement action. Finally the house proposed in the s78 appeal is smaller than that currently on the site, much closer to the original 2002 permission. The Council claim that the original 2002 planning permission has never been implemented. The house was begun in 2003 on a different footprint and subsequently built to a substantially different design. Furthermore it has never been completed. Consequently, the 2002 planning permission has now expired and the house on the site is not immune from enforcement action. Since the 2002 permission was granted the policy situation has changed and no new dwellings are allowed in Pointon except those that meet certain, restricted criteria. Therefore the complete removal of the house with the plot remaining vacant is the outcome they most desire. The appellant responded to that by claiming the housing policies of the core strategy were out of date as they predated the Framework and the Council have no 5 year housing land supply. These then are the main issues.

### **Appeal A: ground (d)**

5. The notice was issued on 29 November 2012, so the appellant needs to demonstrate that on the balance of probabilities the dwelling was completed by 29 November 2008. I heard a considerable amount of evidence concerning the state the building was in by the end of 2008. All parties are agreed that it was completed externally to the level seen today by April 2009. At that time Jenny Dexter (now Ballam) visited the property for Council Tax purposes and took a photograph showing it looking, essentially, like it does today. The dispute is over her record of a previous visit on 19 November 2008. She recorded that the shell was "nearly complete". She explained this meant the main body was finished and the roof was going on. That is, 10 days before the notice was issued the building was not yet watertight.
6. Mr Addison, although a bricklayer by trade is not a builder, earning his living from a game business. He built the house in his spare time with the help of various friends. Several of these gave evidence, which although not entirely in agreement with each other, suggested that the roof was completed on the main house by early 2008. In particular wiring for a burglar alarm and room sensors was installed by Mr Cook, a specialist alarm fitter, in the week commencing 25 August 2008. This work would not be carried out unless plastering was also virtually complete, implying by then the building was

watertight. There is also a valuation report by local estate agents dated 7 February 2008. Although describing the house as 50% complete the photograph attached to the report shows the roof complete. The windows are not yet installed and the garage has not been begun. It was suggested that it was the garage, under construction in late 2008 that Jenny Dexter saw on her November visit, although she was confident that it was not.

7. Jenny Dexter's 2009 photograph shows a plasterer's van outside the property, suggesting plastering was still going on. Mr Mears, the appellant's building consultant issued a certificate dated 31 December 2008, stating the building, as at 7 November 2008, was "being roofed in, windows and external doors fixed and first fixing in progress". Another officer from the Council's valuation section (Trish Appleyard) visited in May 2010 and noted all the downstairs plastering was complete by then, but the appellant told her the upstairs plastering was not begun. That was almost completed, according to Ms Appleyard's record of a conversation with Mr Addison, by October 2010, and the Council issued a completion notice for tax purposes in March 2011. Such a notice is issued once all the wiring and plumbing is in place and plastering complete, ie "second fix".
8. I am aware there is also evidence from the Valuation Tribunal, when in 2011 Mr Addison claimed the building was incomplete and so tried to avoid paying council tax. The Tribunal disagreed with Mr Addison and concluded the building was complete for Council Tax purposes. This does not help matters greatly, except that Mr Addison's description of the state the house was then in appears similar to that it is in now.
9. It is difficult to disentangle this evidence, but it seems most likely that the roof of the house was completed by mid to late 2008, before the notice was issued, but the garage was not completed until some time before Jenny Dexter's visit in April 2009. Even then there were still some internal works of plastering, wiring and plumbing going on until 2010. It is important to note that at no time has the house been connected to water, sewerage or electricity. No bathroom or kitchen units have been installed, and the wiring and plumbing has not been completed.
10. The question is therefore was the house substantially complete on or before 29 November 2008 and the answer has to be no. In the case of Sage<sup>1</sup> it was held that a building could not be regarded as substantially completed even if the outstanding works affected only the interior. I note these comment were obiter, and so not binding, but the Gravesham<sup>2</sup> case defines a dwellinghouse as a building that afforded those who used it the facilities required for day to day domestic existence. Thus the building constructed on the appeal site does not become a dwellinghouse, and therefore cannot be said to be substantially complete, until it contains day to day living facilities. Such facilities are not present today, and certainly were not in late 2008. Regardless of whether it appeared externally to be virtually finished, the building was not 'substantially complete' in planning terms at 29 November 2008 and the appeal on ground (d) fails.

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<sup>1</sup> Sage v SSETR & Maidstone BC [2003] UKHL 22254

<sup>2</sup> Gravesham BC v SSE and O'Brien [1983] JPL 306263

### Appeal A: ground (f)

11. This turns on whether the 2002 planning permission remains as a fallback. The Council produced a document that showed the footprint as built compared to that which was granted planning permission. This document was not challenged at the Inquiry and shows that none of the walls are in the correct place. The southern side wall and part of the front are close to the proper position, but the rear, the front gable and the whole of the garage differ by considerably more than a de minimis amount. The garage is attached and although not currently linked to the main house, contains rooms in the roof, lit by dormer windows. Visually it forms an integral part and a significant element of the whole building and should be considered as part and parcel of the development that was granted planning permission in 2002. It thus seems to me, based on the footprint alone, the building as constructed on the plot, was not the same as that granted planning permission in 2002.
12. Mr Addison gave evidence that he had always intended to build the 2002 building, and put in footings to that end. Once work on the walls began it became clear the front gable would not work, and he made it larger so that the roof trusses could be accommodated. The garage was also made wider, so that it went right up to the boundary with the northern neighbour, but these were the only departures, in footprint terms. The changes were made after the original foundations had been dug, and so the 2002 planning permission was implemented, but subsequently altered. As I explain above, I do not agree with this. Whatever Mr Addison intended to do, it does not seem that he did put the footings in the correct place. However, even if I am wrong on that, the building has to be treated as a single operation. The Copeland<sup>3</sup> case confirmed that new development on land not previously developed should be treated as a single operation. Once construction departs from what has permission in a material way then the resulting building becomes unlawful.
13. In this case the differences are not only in the footprint, but the front gable, which occupies over a third of the front façade of the house, is noticeably different from that granted planning permission. It sticks out further forward, but is narrower, with an offset central ridge leading to a very uncomfortable gable end. It also has a bow window at ground level rather than one flush with the wall. The roof of the main house is taller than that allowed by at least 70cm, and the garage roof is at least 1m taller. These differences, along with the enlarged footprint, have created a building that appears to be substantially larger than that which was granted planning permission in 2002. There is no doubt in my mind, that the building as constructed is so different that it does not benefit from the 2002 planning permission. Treated as a single operation it is clear to me the building granted planning permission in 2002 has not been built. The appellant cannot pick and choose certain parts of the building and say because they are in accordance with the plans the original building was begun. It follows that the 2002 permission was never begun, has now expired and does not exist as a fallback position.
14. I note the 2012 Inspector treated the 2002 permission as if it were still possible to be implemented, and compared the proposal before him with that permission. However, as far as I can ascertain, the issue of whether the 2002 planning permission was still extant was never raised, and so he never made a

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<sup>3</sup> Copeland BC v SSE [1976] JPL 304202

finding on that matter, it was just a background assumption held by the parties at that time. The situation before me is different, as this has become a central plank of the Council's argument and is a matter of fact and degree which I have to determine.

15. The situation is, therefore, the building as constructed does not have planning permission and there is no fallback position. The requirements follow from the allegation of an unlawful building and the only remedy is to remove that building. The appeal on ground (f) fails.

### **Appeal B: The s78 Appeal**

#### *Development in villages*

16. At the time of the 2002 planning appeal, the proposal was judged against policy H1 of the then Local Plan. The Council alleged the building was out of character with the area and so contrary to that policy. The Inspector disagreed and granted planning permission. In 2010 the Council adopted a Core Strategy which significantly changed the planning status of the site. SP1 directed housing development to certain main centres and local service centre villages (LSCs). Pointon is none of these and so comes under "all other villages" where housing will be restricted to various categories, none of which cover the house on the appeal site. This is repeated in new policy H1, which allocates the housing requirements taken from the Regional Spatial Strategy (RSS), subsequently revoked, to the various towns, to the LSCs and to "rural areas". The small figure for rural area is, I assume, made up of the houses that meet the exceptions in SP1. There is no doubt that taken at face value the construction of an open market house on this site is contrary to these policies.
17. The appellant argues that the publication of the Framework has changed the situation once again. Paragraph 55 deals with housing in rural areas. It makes no differentiation between villages, but advises that houses should be located where they will "enhance or maintain the vitality of rural communities" and where there are groups of smaller settlements, housing in one may support facilities in another. The appellant argues that Pointon is a sustainable location, as it has a pub, petrol filling station, village hall and school. It is also close to other small settlements and so a house here will help support the facilities in a cluster of villages. The Council's policy to define a village hierarchy is thus out of date. Houses can be allowed anywhere that fulfils the criteria of paragraph 55.
18. I cannot read the Framework to say that village hierarchies are out of date. It is up to Council's to interpret paragraph 55 for their own area. In South Kesteven, the Council considers that only certain villages are suitable for open market housing development, and that does not seem unduly controversial to me. The Council have considered the Framework and have no plans to alter their Core Strategy, which they feel is compliant. I do not think, therefore, that paragraph 55 overrides the Core Strategy.
19. The appellant raises an appeal decision in North Kesteven, where the Inspector decided that a locational strategy policy was outweighed by the Framework. But in that case the local plan was much older and the Council did not have a 5 year supply of housing land, which is quite different to the case before me.

*5 year housing supply*

20. The appellant also argues that the Council cannot identify a 5 year supply of housing land. The latest Council document is "5 Year Housing Land Supply 2013-2018" (5YHLS). This shows the position as at 31 March 2013, but was not published until 29 July 2013. It shows the Council need to find land for 3370 houses in the period or 674 a year, with an additional 5% buffer of 169 houses. Their analysis shows they have land for 3480 houses or 5.1 years supply, with further land for 210 homes that could be brought forward to provide the 5% buffer.
21. Mr Sibthorpe's analysis, based on his own knowledge of the locality was that the supply picture is overstated by at least 499 dwellings so only 4.36 years supply can be shown. In addition the buffer should be reduced to 130 dwellings, less than the 5% required. Looked at another way the Council need 5.25 years to include the 5% buffer and they only have, according to Mr Sibthorpe 4.61 years supply in total. In support of this he noted the Council itself, in two Development Control Reports dated 25 June and 16 July accepted it only had 4.8 years supply. The Council argue that these reports were issued before the 5YHLS was published and so did not have access to these up to date figures.
22. I note the Council did consider it only had a 4.8 year supply, and the reason given for this is explained in detail in the June report to committee. It seems the withdrawal of the Grantham Area Action Plan (GAAP) in January 2013, left a hole in the land supply figures, reducing them from 5.1 to 4.8. I also note the 5YHLS specifically states it has excluded all developments in the GAAP (other than 2 sites already in the Core Strategy) from the figures. So by taking into account the withdrawal of the GAAP it would seem the 5YHLS is more up to date than the two committee reports referred to by Mr Sibthorpe.
23. All of this demonstrates to me how volatile the housing situation is for any Council trying to crystal ball gaze into the future. The March 31<sup>st</sup> figures are very up to date, and show a 5.1 years supply. Mr Sibthorpe's criticisms are based on his local knowledge and talking to developers and agents, but I assume the Council too has local knowledge and has talked to developers and agents. The situation is thus that the Council have between a 4.5 and 5.5 years supply of land, depending on which figures are relied on. The evidence does not point strongly in one direction or another, but given the Council's figures are only a few months old, I cannot accept the Council's figures are out of date in the sense required to bring paragraph 49 of the Framework into play.
24. I do not find, therefore, that the Council's housing policies should be superseded by the Framework and so the development of the site for housing, other than for the categories described in SP1, is contrary to policy.

*Other Matters*

25. As pointed out above, Pointon does have certain facilities and is not an entirely unsustainable location. The appellant argues that the removal of the house would leave a vacant plot which would disrupt the street scene. I am not convinced by this. By this point in the village the houses are beginning to peter out. On the same side of the road, there is only one house further south, and that, although recently extended, is still some way from the site, separated

by a large barn like structure. The empty site would not necessarily stand out as an obvious infill plot waiting to be developed.

26. I note the 2002 Inspector described the proposal then as taking its place "unobtrusively in a row of frontage development"<sup>4</sup>. I am not so sure this is true of the appeal proposal. This would be 15cm from the northern boundary. That house is close to its boundaries, but otherwise the houses to either side and across the road, are all in more spacious plots. Even with the ridge height of both the main and garage roofs reduced, the end result would be a massive and disproportionate house, out of scale with its neighbours and dominating the street scene. I also note the appeal proposal is still substantially deeper than that allowed in 2002.
27. The Council also refused planning permission because of overlooking issues. There was some dispute as to whether this was reasonable or not. Overlooking had been considered in the 2012 appeal and the Inspector found it would be no worse than if the 2002 house were built. In this case I have found the 2002 house cannot be built, so overlooking is a potential issue. The houses to the front, across the road, are a considerable distance away, but to the rear is a close of bungalows. As I saw on the site visit the existing property is dominant in views from a number of back gardens, and the first floor windows have clear views into their gardens and the back of the houses. The 2012 Inspector says in paragraph 13 "I consider that the main effect arises from the house as originally approved which, presumably, was considered acceptable at that time". I read this as saying that in his view the first floor windows do cause harm but because the 2002 house, with similar windows can still be built, and at that time the Inspector found it to be acceptable, that carries little weight. In my view the appeal house would have a ridge a little lower, but the windows would be in the same place and still overlook the backs of the bungalows. The house would also still appear to be large and dominant. There is no fallback, so I consider there is harm by way of overlooking and over dominance, contrary to policy EN1 and that this adds to the policy harm identified above.
28. It could be argued that regardless of the lapse of the 2002 planning permission, the Inspector at that time still considered issues such as dominance, scale and amenity and found the 2002 house to be acceptable. However, the appeal proposal, although reduced in size from that built, is still larger than that allowed in 2002. The ridge height may be similar, but that is achieved by introducing a flat roof section, so the bulk of the roof and of the building as a whole is hardly changed. I have also had the opportunity of seeing the house built, and even taking into account the changes proposed in the current appeal can see how dominant and out of scale it would be.

### **Conclusions and Appeal A: ground (g)**

29. Setting aside the Council's policy objections for a moment, in terms of the street scene it is possible a more modest dwelling would be acceptable on the site, but neither the appeal proposal nor the existing dwelling are. The proposal is thus contrary to EN1 of the Core Strategy which requires proposals to be considered in relation to the scale of buildings and visual intrusion, amongst other things, and to policy SP1.

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<sup>4</sup> APP/E2530/A/02/1094826/P4: paragraph 5

30. I shall uphold the notice and refuse planning permission for the development subject to the s78 planning appeal. Consequently, the house will have to be demolished. I accept that for Mr Addison to do this on his own will take some time, and in that context 3 months is not long. The 12 months suggested is akin to granting a temporary permission, but the Council are not opposed to an extension and I shall extend the compliance period to 9 months.

*Simon Hand*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Jack Smyth	Of counsel
He called	
W Addison	Appellant
A J Mears MRICS MBEEng	Building Consultant
Andrew Jagger	
John Loveday	
Steve Cook	Zone Systems Ltd
Mike Sibthorpe MRTPI	Planning Consultant

### FOR THE LOCAL PLANNING AUTHORITY:

Hashi Muhamed	Of counsel
He called	
Jenny Ballam	South Kesteven District Council
J Short	
Louise Parker	

## DOCUMENTS

- 1 Diagram of angles of appeal and approved dwellings to No12 St Gilbert's Close
- 2 Local Planning Authority opening remarks
- 3 Statement of common ground
- 4 Mike Sibthorpe's rebuttal of 5 year housing land supply
- 5 Appeal form and Appellant's Statement from 2012 planning appeal
- 6 Suggested conditions
- 7 Text of policy H1
- 8 Closing for both parties
- 9 Council's costs application and rebuttal by appellant
- 10 Appellant's costs application and rebuttal by Council

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## Appeal Decisions

Hearing held on 8 October 2013

Site visit made on 8 October 2013

by **P N Jarratt BA(Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 October 2013

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### **Appeal A: APP/E2530/C/13/2199123**

**The William Cecil, 36-38 High Street, St Martins, Stamford, Lincolnshire, PE6 2LJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr P Brown (Hillbrooke Hotels Ltd) against an enforcement notice issued by South Kesteven District Council.
  - The Council's reference is ENF11/00414.
  - The notice was issued on 9 May 2013.
  - The breach of planning control as alleged in the notice is the unauthorised erection of a marquee and canopy (as shown coloured yellow on the plan marked 'B' attached to the notice) on the land.
  - The requirements of the notice are to remove the marquee and canopy from the land.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since the development is exempt from the payment of fees, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
  - **Summary of decision: appeal allowed, the enforcement notice is quashed and planning permission is granted.**
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### **Appeal B: APP/E2530/A/13/2197276**

**The William Cecil, 36-38 High Street, St Martins, Stamford, Lincolnshire, PE6 2LJ**

- 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 D Pennell (Burghley House Preservation Trust) against the decision of South Kesteven District Council.
  - The application Ref S12/1665/FULL, dated 29 June 2012, was refused by notice dated 10 April 2013.
  - The development proposed is the erection of a marquee with associated bar/servery and toilets (retrospective).
  - **Summary of decision: appeal allowed and planning permission granted.**
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### **Preliminary Matters**

1. Appeal A is made by Hillbrooke Hotels Ltd, who have recently taken over the management of the William Cecil Hotel and Appeal B is made by the Burghley House Preservation Trust, the owners of the appeal premises.
2. The description of the development in Appeal B makes reference to an associated bar/servery and toilets although the Council confirmed at the

hearing that these facilities had been erected some time ago and had become lawful due to the passage of time, hence the wording of the allegation in Appeal A being restricted to the unauthorised erection of a marquee and canopy. Notwithstanding this I have retained the original description.

### **Appeals A and B, appeal on ground (a) and the s78 appeal**

#### **The appeal site and its surroundings**

3. The marquee is located within the landscaped grounds of a hotel of which Grade II\* and Grade II listed buildings form part. It is within the Stamford Conservation Area. The marquee is constructed of white PVC material on a metal frame having a ridge height of 4.9m. It has a solidly constructed bar/servery to one side and mobile toilets connected to the marquee by a canopy on the other side. The marquee is retained on site as a permanent structure. To the south of the marquee are gardens and the car park and to its west is a pathway through lawned areas giving access to the hotel buildings. Flanking the marquee and ancillary structures are well established hedges beyond which is a less formal area of the grounds towards the northern boundary with a number of mature trees.
4. Adjacent to the northern boundary on Burley Lane is a three storey relatively modern building known as Park House which provides accommodation for 37 residents comprising boarding pupils and houseparents of the Stamford High School. There are a number of nearby dwellings on Burley Lane and Park Lane.
5. It is common ground that there has been a permanent marquee of similar type and scale to the current marquee in this location for a period of about 27 years. The original marquee was removed in 2011. Whilst the original marquee was the subject of an extant enforcement notice, the local planning authority (which previously was the City of Peterborough Council prior to a boundary change) did not seek compliance with the notice.
6. Planning permission was refused on 7 October 2013 for the proposed erection of a marquee with associated bar/servery and toilets at a location to the south of the car park, on three grounds: that the proposed development would harm the setting and significance of Burghley House registered park and garden, Stamford Conservation Area and the designated heritage assets forming the William Cecil Hotel; there is an inadequate assessment of potential noise implications; and, no arboricultural impact assessment had been submitted.

#### **Main issue**

7. From my inspection of the site and its surroundings, and from the representations made at the hearing and in writing, I consider that the main issue in these appeals is the effect of the development on the living conditions of the occupants of Park House and other nearby properties.

#### **Reasons**

8. The use of the original marquee for functions generated a number of noise complaints over a period of years although such complaints appear generally to have been resolved by the previous hotel management. Since the current hotel operators erected the new marquee, complaints from the residents of Park House and other nearby dwellings in Burley Lane and Park Lane have become more frequent.

9. Since August 2011 the Council's Environmental Protection Team has received 15 complaints of loud music and noise from guests at functions held in the marquee. The Council served a noise abatement notice on 11 October 2011. In response the hotel installed a directional sound system in the marquee and a noise limit was agreed with the Council. The control mechanism is contained in a lockable box in the bar/servery and is accessible only to the hotel manager. However, complaints about noise continued and further monitoring by the Environmental Protection Team identified that the music and the guests attending the marquee were both loud and intrusive, resulting in an unacceptable level of noise and disturbance. The appellants strongly deny an allegation that the maximum noise output of the control mechanism had been altered during events either by a DJ or by the manager.
10. At the hearing I heard detailed accounts about the noise disturbances from the Bursar and Principal of the Stamford Endowed Schools, from the Houseparents of Park House, from their 12 year old daughter and from two 16 and 18 year old students who board at Park House. I also heard from a spokesperson for local residents and also from a resident of a dwelling on Burley Lane.
11. Some 21 complaints have been documented by the school although I note that some of these complaints related to noise from the hotel and not from the marquee. So far as I am aware there are no planning conditions that limit the lawful use of the hotel within Use Class C1.
12. A sound recording was played at the hearing that related to a function in the marquee that was held on 6 October 2012. The recording was carried out by Mrs Vié on the Council's equipment. The equipment had been placed on the window cill of a first floor bedroom with the window open. The window is about 10m or thereabouts from the northern end of the marquee. The music and bass beat were clearly audible together with general noise from guests at the function and the noise of guests singing. Mr Jephson, for the appellants, considered that the equipment should have been located 1m from the window and not on the cill. He further stated that there would be a 15 decibel difference in noise levels if the recording had been taken 0.5m into the room. I recognise that there are areas of disagreement between the noise specialists of both parties. However in my view it is not unreasonable for a person to be able to sleep wherever they choose in their bedroom and if they wish to ventilate the room, with a window open, they should not be prohibited from doing so.
13. The Council's monitoring recorded noise levels in the bedrooms in Park House of 56-57 dB(a) with the windows open and 36-37 dB(a) with the windows closed. The World Health Organisation guidelines<sup>1</sup> advise that for a good night's sleep, the equivalent sound level should not exceed 30dB(A) for continuous background noise, and individual noise events exceeding 45dB(A) should be avoided. A further noise abatement notice was served on the William Cecil on 9 November 2012.
14. From the statements made at the hearing and from the sound recording I consider that the noise from functions held in the marquee has been intrusive, unacceptable and disruptive to both students and local residents.

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<sup>1</sup> Guidelines for Community Noise, World Health Organisation 1999

15. The National Planning Policy Framework (the Framework) at paragraph 123 indicates that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. Policy EN1 of the South Kesteven Core Strategy indicates that development must be appropriate to the character of the district and noise is one of the factors that proposals are assessed against.
16. Following a noise monitoring exercise of 4 January 2013, it was accepted that guest noise rather than music noise was the principal concern and the appellants considered two options to mitigate the effects of the noise. The first involves the installation of an acoustic barrier on the boundary with Park House which would be lowered when the marquee was not in use. A temporary structure 6m high was erected 1m from the rear of the marquee to test the performance of the acoustic barrier. Despite the Council not attending the demonstration, the Council had reservations about the effectiveness of the barrier. The appellants considered that the mitigated noise levels when tested on Burns Night would provide a satisfactory noise environment within Park House associated with both music and guests although it was accepted that the appearance of the barrier was an issue.
17. The second option involves the installation of an acoustic lining in the marquee and double-lining the closest quarter of the marquee to the northern boundary. It would have similar acoustic properties as the barrier although the acoustic benefits of low frequencies would not be great. At the time of my site inspection the sides of the marquee at its northern end had been single-lined.
18. The appellants have suggested that a condition requiring the provision of an acoustic lining of the marquee coupled with a condition limiting the noise output of the amplified sound system. They consider that such conditions would provide sufficient mitigation to reduce noise levels to an acceptable level in respect of the living conditions of the occupants of Park House and elsewhere (Document 2) and that this would be beneficial to the viability of the hotel. I acknowledge that there has been a marquee at the hotel for many years and that there are no planning restrictions on the operation of the hotel business and the use of the grounds for purposes ancillary to the hotel. It is apparent that the hotel relies on business arising from the use of the marquee for events. I note also the positive references in the Framework to support economic development.
19. It is evident that the appellants have attempted to introduce measures to reduce the impact of noise from amplified music and disturbance from guests, such as by introducing the directional sound system, moving the smoking area, erecting signs requesting guests to respect neighbours and directing guests to use specific paths. Notwithstanding these and the proposed mitigation measures, I am not convinced that the harm to the living conditions of neighbours from the continued use of the marquee, even with the suggested conditions, would be reduced to an acceptable level. The proximity of the marquee is too close to living accommodation and whilst controls can be exercised over amplified music, the noise and disturbance from persons attending some events is more difficult to manage and would in my view continue to be disruptive, particularly later in the evening when some guests may be boisterous in their behaviour or when singing. Accordingly such conditions would not overcome the harm identified.

20. However, the appellants have also suggested further alternative conditions (Documents 2 and 9). They have proposed using the marquee in a different way than hitherto with the marquee being used for the reception/dining phase of functions with only background music being played. Any amplified music would cease no later than 2100 hours on Mondays to Saturdays and no later than 20.00 hours on Sundays. Any live bands, discos and dancing would take place in the main hotel building (which can occur now without limitation). Furthermore the appellants consider that it would be realistic for the marquee not be used for functions outside the hours of 1200 to 2200 on Mondays to Saturdays and 1200 to 2000 on Sundays although they would need to access the marquee prior to that time to set up for a function.
21. Although the operation of the marquee for functions would be limited by the conditions, I am satisfied that these conditions would be reasonable and that they are the minimum necessary that would significantly reduce the potential for noise and disturbance to the occupants of Park House and nearby dwellings, particularly late in the evenings. I am satisfied that the conditions meet the tests in Circular 11/95. At the hearing, the Council and third parties acknowledged that these more restrictive conditions would overcome their concerns about noise and disturbance.

*Other matters*

22. Neither the Council nor third parties have raised any issues relating to the impact of the marquee on heritage assets. The marquee is relatively modest in size and it is sited in a discrete position at the rear of the hotel. I consider that the marquee with the bar/servery and toilets, do not adversely affect the setting of the listed buildings or the character or appearance of the Conservation Area.

*Conclusion*

23. With the imposition of the conditions limiting the type of music in the marquee and limiting the times when it can be used for functions, the development would be in accord with the Framework and the Core Strategy. For the reasons given above and having had regard to all other relevant considerations I conclude that the appeal should be allowed.

**Appeal A, appeal on ground (g)**

24. In view of the success on ground (a) and the s78 appeal, the appeal under ground (g) does not fall to be considered.

**Formal decisions**

**Appeal A: APP/E2530/C/13/2199123**

25. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a marquee and canopy on land at The William Cecil, 36-38 High Street, St Martins, Stamford, Lincolnshire, PE6 2LJ referred to in the notice, subject to the following conditions:

- i) No music shall be played in the marquee other than background music associated with functions taking place therein. For the purposes of this

condition, background music excludes discos, and amplified bands comprising more than one musician. Noise from the music played shall not exceed an LAeq, 15min noise level 5dBa above the represented background noise level (LA90) measured on the site's northern boundary at its nearest point to the marquee, and any such amplified music shall not take place after 2100 hours on Mondays to Saturdays and no later than 20.00 hours on Sundays.

- ii) Other than for the setting up of functions, the marquee hereby permitted shall not be used for functions outside the hours of 1200 to 2200 on Mondays to Saturdays and 1200 to 2000 on Sundays.

**Appeal B: APP/E2530/A/13/2197276**

26. The appeal is allowed and planning permission is granted for the erection of a marquee with associated bar/servery and toilets (retrospective) at The William Cecil, 36-38 High Street, St Martins, Stamford, Lincolnshire, PE6 2LJ in accordance with the terms of the application, Ref S12/1665/FULL, dated 29 June 2012, and the plans submitted with it, subject to the following conditions:

- i) No music shall be played in the marquee other than background music associated with functions taking place therein. For the purposes of this condition, background music excludes discos, and amplified bands comprising more than one musician. Noise from the music played shall not exceed an LAeq, 15min noise level 5dBa above the represented background noise level (LA90) measured on the site's northern boundary at its nearest point to the marquee, and any such amplified music shall not take place after 2100 hours on Mondays to Saturdays and no later than 20.00 hours on Sundays.
- ii) Other than for the setting up of functions, the marquee hereby permitted shall not be used for functions outside the hours of 1200 to 2200 on Mondays to Saturdays and 1200 to 2000 on Sundays.

*P N Jarratt*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

M Flood BA(Hons) Dip TP MRTPI	Insight Town Planning Ltd
L Jephson BEng(Hons) MIOA	LF Acoustics Ltd
P Brown	Hillbrooke Hotels Ltd
C Brooke	Hillbrooke Hotels Ltd
D Pennell	Burghley House Preservation Trust

### **FOR THE LOCAL PLANNING AUTHORITY:**

J Johnson	Planning Officer
M Clift	Enforcement Officer
P Rogers	Environmental Health Officer
Ms M Braithwaite	Legal Executive

### **INTERESTED PERSONS:**

S Piggott	Bursar, Stamford Endowed Schools
S Roberts	Principal, Stamford Endowed Schools
Mrs C Vié	Houseparent, Park House
Mr F Vié	Houseparent, Park House
Ms J Vié	Student
Ms C Chang	Student
Ms A Cooper	Student
Mrs L Findley	Local resident
I Campbell	On behalf of St Martins Residents

**DOCUMENTS**

- 1 Opening Statement by the Appellants
- 2 Planning Conditions suggested by the Appellants
- 3 Letter dated 18 September from Insight Town Planning to LPA
- 4 South Kesteven Core Strategy (LPA)
- 5 National Planning Practice Guidance 'Noise' (Beta status)  
(Appellant)
- 6 Recorded noise levels 6 October 2012 (LPA)
- 7 Recorded complaints 13 August 2011 to 12 September 2013 (Mr  
S Roberts)
- 8 Decision Notice S13/2082/FULL (LPA)
- 9 Revised wording of condition (Appellant)



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## Appeal Decision

Site visit made on 27 September 2013

by **George Arowsmith BA, MCD, MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: **24 October 2013**

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**Appeal Ref: APP/E2530/A/13/2197153**

**Casterton House Rest Home, 51 Casterton Road, Stamford, PE9 2UA**

- 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 C Dunmore against the decision of South Kesteven District Council.
  - The application Ref S12/1852/FULL, dated 23 July 2012, was refused by notice dated 20 November 2012.
  - The development proposed is the demolition of an existing C2 usage property and the erection of 3 residential dwellings.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are whether, i) the proposed development would, as a form of backland development, conflict unacceptably with the prevailing character of this part of Stamford and/or, ii) the proposed house on plot 3 would have a harmfully overbearing impact on neighbouring residential property.

### Reasons

#### *Character of the Area*

3. Although most development in this part of Stamford has access directly to a highway, backland development is by no means absent. The existing Casterton House is itself set well back from Casterton Road. I am therefore satisfied that the appeal proposal would not introduce a type of development that is alien to the surrounding area and I have no reason to think that it would have an adverse impact on its general character. As such I am satisfied that the appeal proposal does not conflict with the objectives of policy EN1 in the South Kesteven District Council Core Strategy or guidance in the National Planning Policy Framework (NPPF).
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***Impact of the proposed house on plot 3 on neighbouring residential property***

4. The appellant argues that the distance between the house proposed for plot 3 and the existing dwellings at Nos 2 and 3 Vence Close is sufficient to avoid any overbearing impact. Specific reference is made to, what the appellant describes as, a frequently adopted space standard of 13m for the distance between habitable windows and a gable wall with no habitable room windows. Reference is also made to greater separation distances to reflect differences in height and ground levels. Making adjustments to reflect the particular circumstances of the appeal proposal, the appellant concludes that the proposed dwelling would be far enough away from both Nos 2 and 3 to avoid it having an unacceptable effect on their outlook. I agree with the assessment insofar as it relates to the outlook from the main rear elevations of both properties. It is however relevant that the second reason for refusal refers to the overbearing impact on properties, a term which includes outdoor areas as well as dwellings.
5. I am concerned about the effect of the proposed house on the private amenity space at the rear of the existing houses. In particular No 3's relatively small rear garden would be faced with a more than 9m high gable wall located close to its south eastern boundary. Although the gable would not extend across the whole of the boundary the remainder of the view to the south east would be taken up by the 3.3m high side wall of the new house's single storey element. In my judgement this amount of built development so close to the boundary would have a seriously overbearing effect on the garden's character and therefore the occupants' amenity. For that reason I consider that the proposal would fail to maintain a good standard of amenity for existing occupants and would conflict with one of the core principles in paragraph 17 in the NPPF.
6. The appellant makes the point that there is an existing 6m high conifer hedge on the boundary between the appeal site and No 3. It is argued that the impact of the proposed building will not be materially greater than that of the hedge. I disagree with this assessment for a number of reasons. First, the psychological impact of a hedge, even a high one, is different from that of a wall; second, even a conifer hedge is likely to allow some penetration of light; third, a hedge is less permanent than a building, and, fourth, the proposed gable would be even higher than the hedge.
7. The proposed house would also impact on the view from the rear of No 2's garden. In this case the existing house also has a large conservatory which extends about 4m out from its main rear elevation so that its distance from the proposed house would be less than that quoted in the grounds of appeal. In addition the proposed house's floor level would be between 1m and 1½m above that of No 2's garden. On the other hand the new house would not extend along the common boundary, as it would at No 3. As a consequence I consider that the overall impact on No 2 would be less than it would on No 3 and would not in itself justify a refusal of permission. It does nevertheless strengthen my

finding that the proposal is unacceptable, which depends primarily on the impact on No 3.

*George Arrowsmith*

INSPECTOR

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## Appeal Decision

Site visit made on 27 September 2013

**by George Arowsmith BA, MCD, MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 24 October 2013**

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**Appeal Ref: APP/E2530/A/13/2198234**  
**Land off Eastgate, Bourne, PE10 9JY**

- 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 Mr F Sandall against the decision of South Kesteven District Council.
  - The application Ref S12/3003/OUT, dated 20 November 2012, was refused by notice dated 23 January 2013.
  - The development proposed is residential.
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### Procedural Matters

1. The application was in outline and, although the appellant's agents used the form for outline permission with some matters reserved, they indicated that approval was not being sought for any of the reserved matters. The application included a drawing showing layout and views but this is clearly labelled as indicative. The Design and Access Statement says that the plans show an indicative layout only and the grounds of appeal stress that all matters were reserved for subsequent approval.
  2. The application form indicates that permission is sought for 9 proposed residential units, consisting of 7 three-bedroom units and 2 two-bedroom units, and that there is one existing residential unit. However the indicative layout submitted with the application shows 6 three-bedroom houses and 2 two-bedroom houses within the main body of the site, the conversion of an existing barn to a two-bedroom house and a two-bedroom cottage following the demolition of outbuildings at the front the site. This is a proposal for 10 residential units, which is consistent with the description of the proposal in the Design and Access Statement, the refusal notice, the grounds of appeal and the Council's appeal statement.
  3. The reason for the difference between the application form and the other documents is unclear. The Design and Access Statement and the indicative layout refer to the refurbishment of an existing frontage cottage, which is within the appeal site, but there is no suggestion that this requires planning permission. The existence of the cottage might explain the application form's reference to an existing residential unit but it still leaves a discrepancy between the 9 proposed residential units specified in the application form and the 10
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proposed units specified in all the other documents. Despite the inconsistency I am satisfied that the appellant intended the application as one for 10 residential units, including one in a former barn, and also that the Council considered the application to be one for 10 residential units. I have therefore determined the appeal on that basis.

### **Decision**

4. The appeal is allowed and planning permission is granted for residential development on land off Eastgate, Bourne, PE10 9JY in accordance with the terms of the application, Ref S12/3003/OUT, dated 20 November 2012, subject to the following conditions:
  - 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
  - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
  - 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
  - 4) No more than 10 dwelling units shall be provided.
  - 5) The development hereby permitted shall not begin until details of the means of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the drainage scheme has been implemented in accordance with the approved details.
  - 6) The layout details required in accordance with condition (1) shall make provision for the turning of vehicles within the site so that they may enter and leave the highway in forward gear

### **Main Issues**

5. The main issues are whether the proposed development would, i) be unacceptably detrimental to the amenity of surrounding residential and commercial users through loss of light, privacy and noise and/or, ii) be out of character with the surrounding area.

### **Reasons**

6. In their appeal statement the Council make no reference to the principle of residential development. However, the officer's report on the application says that some form of residential development on the site, which is a disused former butcher's yard, is acceptable in principle. Whilst the Council's appeal statement does not confirm that the principle is acceptable it does not identify any objection to residential redevelopment. It refers only to the number of residential units and the design details, particularly heights, shown on the indicative layout. I therefore conclude that the Council have no objection to the principle of residential redevelopment.

7. An assessment of the indicative scheme is not in itself decisive, since approval is not sought for any of the reserved matters. Even so, consideration of the scheme is relevant as an indication of whether any development of 10 residential units can avoid harming the amenity of surrounding residential and commercial users or the character of the surrounding area.
8. The Council's comments about light, privacy and noise are expressed in general terms as opposed to the identification of specific effects on specific properties. They do not persuade me that the indicative scheme would be seriously harmful in any of these respects although I recognise the bus company's concerns about proximity to high level windows in their vehicle workshop and inspection building. In reaching this conclusion I am influenced both by the computer generated imagery submitted with the application and the seasonal shadow plan submitted with the appeal. In particular, I consider that the distance between the 8 residential units in the central block and existing residential property would be sufficient to avoid unacceptable loss of natural light or privacy. Similarly I do not think that the amount of vehicular traffic generated by 10 residential units in this urban location would cause unacceptable noise disturbance.
9. I do however consider that the bulky flat-roofed three-storey block shown in the centre of the site would fit incongruously with the more traditional, albeit varied, character of the surrounding area. In particular it would be an uncomfortable neighbour for the small cottages on the site frontage. The appellants refers to the height of other existing buildings on Eastgate but it is the contrast with the buildings at the front of the appeal site that would make the indicative scheme seem out of place.
10. In spite my reservations about the appearance of the indicative scheme it gives sufficient information to satisfy me that it would be possible to provide 10 new residential units on the appeal site in a way that respects the character of the surrounding area without causing an unacceptable loss of light or privacy to nearby residential or commercial property, and without causing significant disturbance through noise. As such I am satisfied that the proposed redevelopment can comply with the objectives of policies SP1 and EN1 in the South Kesteven Core Strategy.
11. In addition to the standard outline conditions I have imposed the additional conditions suggested by the Council, which I consider necessary in the interests of efficient drainage and highway safety. I also have imposed a condition limiting the number of residential units that can be provided, which is necessary in the interests of clarity and to avoid overdevelopment.

*George Arrowsmith*

INSPECTOR

## Appeal Decision

Site visit made on 27 September 2013

by **George Arrowsmith BA, MCD, MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 October 2013

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**Appeal Ref: APP/E2530/A/13/2196445**

**Woolpack Inn, 33 Main Street, Claypole, Newark, NG23 5BA**

- 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 Mrs Rachel Holborn against the decision of South Kesteven District Council.
  - The application Ref S12/3212/FULL, dated 12 December 2012, was refused by notice dated 8 April 2013.
  - The development proposed is a 4 bedroom bungalow.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the proposal would be unsustainable development which would conflict with the objectives of policy SP1 in the adopted South Kesteven Core Strategy 2010.

### Reasons

3. Policy SP1 in the Council's adopted Core Strategy allows development in one Sub-Regional Centre, 3 market towns and a number of local service centres. Claypole is not one of the villages classified as a local service centre. The policy says that development will be restricted in other villages and the countryside. Proposals will be considered only when they fall into defined categories, none of which apply to the present appeal proposal. I read that the policy meets Spatial Objectives 1, 2 and 3 but I am not told what these are. From the context of the officer's report and the wording of the reason for refusal I nevertheless conclude that the objectives include sustainability.
4. Policy SP1 also says that planning permission will only be granted on a less sustainable site where it has been proven that there are no other more sustainable options available or where there are no other overriding material considerations. The meaning of this part of the policy is not entirely clear but I take it to apply to sites in the countryside and in villages like Claypole which are not classified as local service centres. In this regard I have no evidence that the appellant's proposal would meet a need that could not be met on a more

sustainable site elsewhere. With regard to other material considerations the appellant questions the validity of the Core Strategy and the issue of consistency, both of which I consider below.

5. In challenging the Core Strategy the appellant focusses on its designation of Claypole as a village where development will be restricted. In particular, reference is made to the village's proximity to Newark and its even closer proximity to the Fernwood development in the neighbouring district council area. The Strategy has however been adopted in accordance with statutory procedures following public consultation. Unless the plan was manifestly out of date it would be inappropriate for me to re-examine it or set aside its provisions in the context of a single planning appeal.
6. Although the appellant does not explicitly say that the Core Strategy is out of date she refers to "*the general revocation of this policy in line with Government plans to abolish this type of strategy*". Taken together with her reference to the Fernwood development, this appears to amount to a claim that the Strategy is out of date. Even so, whilst reflecting her genuine disagreement with policy SP1, her argument is more a disagreement with the Council's judgment about the suitability of Claypole as a sustainable location for new development than a demonstration that either the Strategy as a whole or the specific provisions of SP1 are out of date. In support of my view that the Strategy is not out of date I note that the Core Strategy's approach of directing development to particular villages is consistent with Government Guidance as expressed in paragraph 55 of the National Planning Policy Framework.
7. The appellant also argues that it is inconsistent to allow affordable housing while refusing that which would be for sale on the open market. She argues that occupiers of affordable housing are more likely to be dependent on public transport and are therefore more likely to be disadvantaged by living in an unsustainable location. I am nevertheless aware that there are strong social reasons for providing affordable housing to serve local communities and that these might outweigh other considerations. Here again I am aware that the Council's approach will have been developed through a process of analysis and consultation and that I have neither the information nor the remit to set it aside in the context of an individual appeal.
8. The second material circumstance identified by appellant relates to alleged inconsistency on the Council's part. It is difficult for me to assess the degree of inconsistency, if any, because I do not have full details of the considerations that led to any of the Council's other decisions. The appellant has provided me with a copy of the Council's reason for approving one recent development at Gordon House Farm. This justifies a single dwelling on the grounds that it would be fewer than the 2 dwellings authorised by a still extant earlier permission. The appellant tells me that this earlier permission was also approved after the adoption of the Core Strategy but I do not know the reasons for that original decision.
9. Even if the Council has acted inconsistently that would not override my obligation to determine the proposal before me on its own merits in the light of a clearly phrased development plan policy, namely SP1.

10. I have considered the appellant's claim that her human rights have been breached by her treatment by the Council. It is not clear what specific acts she considers to have breached her rights but I have no reason to think that the refusal of her planning application, which is in accordance with adopted planning policy, breaches those rights.

*George Arrow smith*

INSPECTOR

## Appeal Decision

Site visit made on 7 October 2013

by **Andrew Dale BA (Hons) MA MRTPI**

Date 29 October 2013

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**Appeal Ref: APP/E2530/A/13/2201597**

**No. 1 Albert Road, Stamford, Lincolnshire PE9 2EA**

- 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 Philip Heath against the decision of South Kesteven District Council.
  - The application ref. S13/0491/FULL, dated 13 February 2013, was refused by notice dated 14 May 2013.
  - The development proposed is "*Proposed alterations and improvements to No. 1 Albert Road including the demolition of an existing extension and construction of a new extension. Proposed new dwelling house on land to west of No. 1 Albert Road.*"
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### Decision

1. The appeal is dismissed insofar as it relates to the proposed new dwelling house on land to west of No. 1 Albert Road. The appeal is allowed insofar as it relates to proposed alterations and improvements to No. 1 Albert Road including the demolition of an existing extension and construction of a new extension, and planning permission is granted for proposed alterations and improvements to No. 1 Albert Road including the demolition of an existing extension and construction of a new extension at No. 1 Albert Road, Stamford, Lincolnshire PE9 2EA in accordance with the terms of the application (ref. S13/0491/FULL, dated 13 February 2013) and the plans submitted with it (so far as relevant to that part of the development hereby permitted) subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Map and Drawings 1, 2 and A3.
  - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall be natural local stone and natural slate to match those same materials where used in the existing building.

### Procedural matters

2. The proposal has two elements – a new dwelling house and works to an existing dwelling house. The new passageway through the existing dwelling would provide access to the new dwelling. However, that passageway could equally be constructed as just part of the overall alterations and improvements to the existing dwelling, and thus consideration can be given to a split decision.

3. The application was amended prior to its determination by the Council. In addition, further revised drawings A3 (relating to the existing dwelling) and C4 (relating to the new dwelling) were submitted when the appeal was first lodged. The Council has not objected to these drawings being considered. The drawings address some of the minor design issues raised by the Council's Conservation Officer and do not fundamentally change the proposed scheme. As such, I too see no objection to those revised drawings being considered.

### **Main issues**

4. When read together the Council's two reasons for refusal cover several issues associated with the proposed new dwelling. These are picked out in paragraph 1.4 of the appellant's statement of case. Third party representations on the appeal cover similar grounds although add concerns over a loss of privacy to the occupiers of No. 2 Albert Road. The appeal site is within the Stamford Conservation Area and I have a statutory duty to ensure that special attention be paid to the desirability of preserving or enhancing the character or appearance of the conservation area in the determination of this appeal. Assessments of whether there will be "an overdeveloped or cramped appearance to the site" or detrimental impacts on "the visual appearance and character of the locality" are best made in the context of the conservation area.
5. Therefore, the main issues in this appeal are the proposed new dwelling's implications for:
  - a) the area's character and appearance, bearing in mind the site's location in the Stamford Conservation Area;
  - b) the provision of amenity space;
  - c) parking and road safety; and
  - d) the living conditions of neighbouring residential occupiers in terms of the potential for loss of privacy, noise nuisance, an overbearing impact on outlook and loss of light.

### **Reasons**

6. The planning system is plan-led. The development plan includes the South Kesteven Core Strategy (CS) July 2010. I have been referred to CS Policies H1 (Residential Development), SP1 (Spatial Strategy), EN1 (Protection and Enhancement of the Character of the District), EN2 (Reducing the Risk of Flooding) and EN4 (Sustainable Construction and Design). There is no suggestion that these policies are inconsistent with the National Planning Policy Framework (the Framework) which indicates that achieving sustainable development involves, amongst other things, ensuring the vitality of town centres, delivering a wide choice of high quality homes, requiring good design, and conserving and enhancing the natural environment and the historic environment.
7. One of the Framework's core planning principles referred to by the appellant is that planning should encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value. This is of little benefit to the appellant's case since the private residential garden where the new dwelling would be sited is not classed

as previously developed land. With reference to paragraph 53 of the Framework, local planning authorities are advised to consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. I now turn to judging whether any harm would result from the new dwelling under each of the main issues.

*Character and appearance*

8. The new dwelling would be sited in the long rear garden of No. 1 Albert Road, a three-storey terraced house at the southern end of Albert Road. The long southern boundary to No. 1 Albert Road runs parallel to and is defined by the northern bank of the River Welland. Close to the south-eastern corner of the appeal site and dating from 1881 is Albert Bridge, a footbridge over the river linking Albert Road to Water Street on the southern side of the river. To the west of the appeal site is three-storey residential development in Riverside Place. The blank gable end of No. 29 Riverside Place is sited close to the western boundary of the appeal site. The long back gardens of nos 2-5 Albert Road in the rest of the short terrace lie to the north of the appeal site.
9. The key public viewpoints of the development from within the conservation area would be from Albert Bridge and from Water Street and its associated public open space above the southern bank of the river. There has been a notable degree of development along the northern bank of the river in this part of the conservation area. The proposed dwelling would be viewed as a continuation of that development. It would reinforce the enclosure along the river. At the same time there would be suitable spaces left between the dwelling and the opposing main three-storey walls of the neighbouring developments at No. 29 Riverside Place and No. 1 Albert Road so as to afford observers some views towards the buildings and conservation area to the north. This, added to its lower height than those adjacent properties, would ensure that the development would not produce an overdeveloped or cramped appearance to this riverside site in townscape terms.
10. Whilst the appellant is critical of the Riverside Place development, in particular the lift/stair towers, and of the rear gardens in the existing terrace, they are not identified as negative buildings or areas on the analysis map of the Medieval Core Character Area of Stamford Conservation Area. Diminishing the views of those features does not weigh heavily in favour of the project. However, I commend the wharfage design for the new house which is crisp and simply detailed, whilst avoiding mimicry. It was broadly supported by the Council's Conservation Officer. There is a wide palette of materials evident in the local area and I can see no objection to the combination of materials chosen. In particular, the timber cladding would clearly define the main upper storey of the building.
11. The Conservation Officer's reservations about the south-facing ground floor windows and the three-storey staircase tower did not feature in the Council's decision notice. I can see nothing fundamentally wrong with those elements. There is variety in the built form hereabouts and there is scope for a degree of originality as expressed in the tower. It and the overall scheme would not compromise the nature, visual appearance or character of this part of the town.

12. I conclude on this issue that the new dwelling would preserve the character and appearance of the Stamford Conservation Area and accord with the relevant CS policies and the Framework in this respect.

*The provision of amenity space*

13. I have not been referred to any development plan policies or supplementary planning documents relating to the provision of amenity space in South Kesteven. The guidance documents of three other Councils (as submitted by the appellant) cannot apply to sites in South Kesteven and I have therefore attached very little weight to them.
14. The new dwelling would benefit from garden areas, a terrace and decking over the edge of the riverbank. The overall size of the available amenity space would be ample for the two-bedroom dwelling proposed. Given the outlook over the river, the outdoor space would be of high quality. I have similar views about the outdoor space retained with No. 1 Albert Road. Whilst the amenity space to the rear of that dwelling would be severely curtailed, the principal southern elevation of the dwelling would look over an attractive, high quality riverside garden of sufficient size.
15. This is a town centre site and the size of the available amenity spaces would compare favourably with many of the gardens in the vicinity of the site, notably nos 6-9 Albert Road, nos 8-12 Wharf Road and various dwellings in Phillips Court. This lends weight to my conclusion on this issue that the provision of amenity space would be acceptable and would not conflict with the relevant CS policies or the Framework in this regard.

*Parking and road safety*

16. The Council's second reason for refusal mentions a lack of off-road parking for the new dwelling. However, no local parking standards have been produced and the local highway authority considered that the proposal would not be detrimental to highway safety or traffic capacity.
17. A short section of Albert Road is available for parking near the terrace containing No. 1 Albert Road. Given the need to allow for clearance from front doors, a wide passageway door between nos 3 and 4 Albert Road and the new passageway proposed in the appeal scheme, I doubt very much whether an additional (seventh) on-street parking space would be available here for the occupiers of the new dwelling.
18. Nonetheless, this town centre site is clearly in a very sustainable location. Many services will be accessible by foot or by cycle. Bus routes and the railway station are close to the site. The new occupiers need not necessarily be dependent on the private car for access. If they are car owners, the appellant indicates that they could pay for a permit to park on the Albert Road public car park and this has not been contradicted by the Council.
19. I conclude on this issue that there would be no adverse implications for parking and road safety. I find no conflict with the relevant CS policies or the Framework in relation to this issue.

*Living conditions of neighbouring residential occupiers*

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20. The proposed dwelling would have no windows in the eastern elevation facing No. 1 Albert Road. In the northern elevation facing towards the rear garden of No. 2 Albert Road there would be three roof lights at ground floor level and two at first floor level providing light to the landing. The four windows in the west elevation would allow for views across only the very far end of the back garden to No. 2 Albert Road. I am satisfied the scheme would not result in any significant overlooking that would cause a material loss of privacy at any neighbouring property.
21. Whilst concern is expressed that the new pedestrian passageway through the dwelling at No. 1 Albert Road could lead to a source of noise nuisance for the occupiers of both nos 1 and 2 Albert Road, the Council's Environmental Health Officer indicated that there would be no noise issues associated with the development. There is the possibility, as asserted by the appellant, that the passageway may reduce the degree of noise transfer between nos 1 and 2 Albert Road. Such passageways are typical of many terraced housing developments. I do not envisage any significant adverse impacts arising as a result of noise.
22. I have approached the effect of the proposal on the outlook from neighbouring properties on the basis of any harm that would be caused by any overbearing development rather than through loss of views, including those of the River Welland. Here, I find that a key constraint of the site comes to the fore. Whereas a new house running parallel to the length of the plot and the riverbank allows the building to address the river in a positive and active manner, this is at the expense of an appropriate and neighbourly relationship with the adjacent dwelling in the terrace, No. 2 Albert Road. Despite the broadly east-west orientation of that dwelling, the new dwelling would be very much in vision.
23. The appellant has made a valiant attempt to limit the visual impact of the new dwelling in terms of storey heights, positioning and roof pitches. Nonetheless, the height and length of the proposed house, combined with its proximity and alignment to the common boundary with No. 2 Albert Road, would result in a solid structure seen at close quarters from a significant portion of the narrower rear garden of No. 2 and from the ground floor conservatory attached to the rear of this house. From these vantage points I consider that the new dwelling would be likely to have an overwhelming physical presence, dominating the outlook of the adjoining occupiers to the detriment of their living conditions.
24. The harm I have identified to the living conditions of adjoining residents in terms of outlook would be significant. The shading study carried out by Encon Associates demonstrates to me that overshadowing of No. 2 would not be so significant as to warrant refusal on this ground alone. Nonetheless, the increased amount of shading over No. 2, found in some of the winter, spring and autumn shading studies, lends a limited degree of weight to the harm I have already found in relation to outlook as it would add to the overall oppressiveness of the development as perceived by the neighbours at No. 2.
25. Nos 3 and 4 Albert Road are set a sufficient distance away from the development so that no unacceptable impacts on outlook or light would occur. The residents in No. 1 Albert Road would continue to enjoy a good outlook across the river and would not encounter any serious overshadowing effects.

26. However, I conclude on this issue that the new dwelling would be harmful to the living conditions of the neighbouring residential occupiers at No. 2 Albert Road in terms of the overbearing impact on their outlook. There would be conflict with paragraph 17 of the Framework which seeks, amongst other things, to secure a good standard of amenity for all existing and future occupants of land and buildings.

*Conclusion in relation to the proposed dwelling*

27. I have found in favour of the appellant in relation to the first three main issues. However, this does not outweigh the harm that would be caused to the living conditions of the neighbouring occupiers at No. 2 Albert Road through the overbearing impact on their outlook.

28. The harm cannot be mitigated by the imposition of conditions. Having regard to all other matters raised, including the intention to build the house to Passivhaus standards, I also find that the harm is not outweighed by other material considerations. I therefore conclude that the appeal should not succeed in relation to the proposed dwelling.

**Extension and alterations to the existing dwelling**

29. The Council raises no specific objections to this part of the project. The replacement extension would improve the appearance of the existing dwelling. Drawing A3 responds sufficiently to the points raised by the Council's Conservation Officer about the other alterations proposed. I am satisfied that this part of the scheme would preserve the character and appearance of the conservation area. My findings on the inclusion of a passageway through the existing dwelling apply equally to the situation whereby only the extension and alterations would take place.

30. The conditions suggested by the Council have been framed with the new dwelling in mind. The standard conditions I intend to attach in relation to that part of the appeal concerning the existing dwelling – covering the time limit for commencement, plans and matching materials – should not come as a surprise to any party.

**Overall conclusion**

31. I intend to issue a split decision; this will dismiss the appeal insofar as it relates to the new dwelling and allow the appeal insofar as it relates to the works to the existing dwelling.

*Andrew Dale*

INSPECTOR