



## Appeal Decision

Hearing Held on 5 December 2018

Site visit made on 5 December 2018

**by Beverley Wilders BA (Hons) PgDurp MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22<sup>nd</sup> January 2019

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**Appeal Ref: APP/W0734/W/18/3208917**

**Land at Strait Lane, Stainton TS8 9BB**

- 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 Angela Swift (Angela Swift Developments Ltd) against the decision of Middlesbrough Borough Council.
  - The application Ref 16/5284/OUT, dated 7 October 2016, was refused by notice dated 6 March 2018.
  - The development proposed is described as outline application for the development of a assisted living apartment building (use class C2), land at Strait Lane, Stainton.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The proposal is for outline planning permission with approval being sought for all matters except for landscaping which is a reserved matter.
3. At the hearing the Council stated that it no longer wishes to defend the second reason for refusal relating to highway capacity and safety. This decision was taken following the submission of additional highway evidence by the appellant and further discussions between the appellant and the Council. I have determined the appeal accordingly.

### Background and Main Issues

4. The Council dealt with a planning application on land including the appeal site for a residential care home and a supported living accommodation block, granting planning permission in May 2016 (Ref M/FP/0141/16/P). The care home has since been built.
5. The description of development on the Council's decision notice for application reference M/FP/0141/16/P referred to "outline permission for 1no supported living accommodation block with associated access", though no conditions were attached to the permission requiring either the submission of reserved matters or applying any restrictions or limitations to the approved plans to exclude the approval of details shown in relation to the proposed supported living accommodation block. In the absence of this and having regard to the Ashford

judgement<sup>1</sup> provided by the appellant, notwithstanding the description of development and the Council's view of what it thought it had permitted, by granting permission without any specific restrictions relating to the supported living accommodation block, the Council permitted the development as shown on the approved plans. Consequently as the previous permission remains extant, it is a material consideration in the determination of this appeal.

6. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- the effect of the proposal on the living conditions of the occupiers of nearby dwellings having particular regard to privacy and outlook;
- whether there is a requirement for the proposal to make provision for affordable housing;
- the effect of the proposal on highway safety having particular regard to parking provision.

## **Reasons**

### *Character and appearance*

7. The appeal site comprises a rectangular shaped piece of open, undeveloped land. It adjoins Strait Lane to the south west, two storey semi-detached and detached dwellings to the north east and south east forming part of a modern housing estate and a recently constructed three storey care home to the north west. The site is clearly visible from Strait Lane, from surrounding dwellings and there are glimpsed views of it from Low Lane. The land level falls across the site by approximately 3 metres from the south eastern boundary with the dwellings on Primrose Way towards the care home.
8. The proposed building would mainly be three storeys in height and would extend across the majority of the length of the site positioned at an angle to the site boundaries. It would be larger in scale and wider than the adjacent care home and would be significantly larger in scale than the nearby residential dwellings. Though existing land levels would be altered in order to set the building down within the site, it would nevertheless be greater in height than the surrounding dwellings.
9. I note that the design of the proposed building was altered prior to the application being determined by the Council in an attempt to overcome the Council's concerns regarding its scale and design. It now comprises three linked blocks incorporating different materials and design features some of which can be found in the locality. However I do not consider that the elevational details proposed or the staggered and angled footprint and form of the building means that its large scale and mass would not be legible and it would be out of keeping with surrounding development. The proposed building would be a dominant feature and it would be harmful to the character and appearance of the area.
10. At the hearing discussions took place regarding the scale of the proposed building when compared to the building shown on the site plans approved by application M/FP/0141/16/P. Whilst I acknowledge that the previous

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<sup>1</sup> R v Ashford Borough Council, Ex Parte Shepway District Council [1999] PLCR 12

permission and approved plans show a footprint and sections for the approved supported living accommodation and that this permission appears to remain extant, I have seen no approved elevations or floor plans for this element of the previously approved scheme. Consequently though it seems that the Council has previously approved a large scale building on the site, it is not clear from the evidence how the appearance of that building would compare with the proposed building and whether or not it would be more or less harmful. In addition, given that further details would need to be approved by the Council, including the external appearance of the previously approved building, I do not consider that at the present time there is a clear prospect of the alternative proposal being carried out. I therefore attach limited weight to the previous permission insofar as it relates to the proposal.

11. Taking the above matters into consideration, I conclude that the proposal would have a significant adverse effect on the character and appearance of the area. It is therefore contrary to policies DC1 and CS5 of the Middlesbrough Local Development Framework Core Strategy adopted February 2008 (CS) and to relevant paragraphs of the National Planning Policy Framework (the Framework). These policies seek, amongst other things, a high standard of design for all development and development to have regard to its relationship with the surrounding area in terms of scale, design and materials.

#### *Living conditions*

12. As stated, the appeal site is located near to existing two storey dwellings and a care home. The north eastern and south eastern site boundaries adjoin a number of residential gardens with the rear elevations of a number of dwellings facing towards the site and containing ground and first floor windows. The ground and garden level of the dwellings adjacent to the south eastern boundary is higher than the proposed ground levels and the common boundary is marked by a retaining wall with timber fencing above meaning that the ground floor windows of the dwellings are not visible from ground level within the site.
13. A plan submitted by the appellant shows the distance between the south eastern elevation of the proposed building and nearby dwellings varying between 17.6 metres and 34.5 metres when measured in a straight line from the proposed building with the minimum distance between windows being 27 metres. Whilst the Council does not dispute these figures, it says that the distance should be measured in a straight line from the dwellings rather than from the proposed building and that this measurement provides reduced distances of 23 metres between 34 Primrose Way rising to 33 metres between No 20 and the proposed building. These figures have not been disputed by the appellant.
14. At the hearing discussions took place regarding the Council's privacy standards as set out within Middlesbrough's Urban Design Supplementary Planning Document (SPD) adopted January 2013 (UDSPD) and there was agreement that the proposal exceeds the stated minimum distance of 21 metres between principal room windows which face each other where buildings exceed single storey. The UDSPD does not appear to contain any guidance in relation to situations where residential properties face each other at an angle or differ in height as is the case here. It specifically states that primary room windows would never be bedroom windows.

15. The angle of the proposed building relative to dwellings on Primrose Way means that there would not be a direct facing relationship with the dwellings and gardens. However notwithstanding this and the fact that the Council's minimum distance standards would be met by the proposal, the large scale and particular layout of the proposed building is such that it would result in the potential for significant overlooking of rear gardens and rear facing windows of dwellings on Primrose Way.
16. The south eastern elevation of the proposed building contains a number of living room windows at first and second floor level, in some cases only just beyond the minimum 21 metre distance away from dwellings. Whilst these windows would be at a similar height or above first floor bedroom windows in the dwellings, given their height and the proposed use of the rooms that they would serve, they would allow for and would be likely to result in the undue overlooking at reasonably close quarters of the rear elevations and rear gardens of a number of nearby dwellings. This would be materially harmful to the living conditions of the occupiers of these dwellings.
17. The sheer size and scale of the proposed building relative to nearby dwellings together with its proximity to them also means that it would unduly affect the outlook from these properties, including those located to the north east of the site and facing towards it.
18. Whilst I note that the Council also had concerns regarding the impact of the proposal on the living conditions of residents of the care home, I do not share these concerns noting the larger scale and communal nature of the care home facility and gardens and that at its closest point the proposed building is further away from the care home than is the case with the dwellings.
19. As is the case with the previous issue, though I have had regard to the previous permission and the apparent scale and footprint of the building permitted, I attach limited weight to it for the reasons previously stated.
20. Taking the above matters into consideration, I conclude that the proposal would have a significant adverse effect on the living conditions of the occupiers of nearby dwellings having particular regard to privacy and outlook. It is therefore contrary to Policy DC1 of the CS and to relevant paragraphs of the Framework which seek, amongst other things, to ensure that the effect on the amenities of occupiers of nearby properties will be minimal.

*Whether there is a need for affordable housing provision*

21. There is disagreement between the main parties as to whether the proposal falls within use class C2 (residential institution) or C3 (dwelling houses) of the Use Classes Order<sup>2</sup>, the appellant favouring the former. The Council's evidence states that which use class it falls within is a matter of interpretation and judgement. At the hearing the Council confirmed that it is generally supportive of assisted living facilities and that its only concern in respect of the use relates to whether or not there is a need for affordable housing provision as a C3 use class would attract a requirement for affordable housing contributions in accordance with Policy H12 of the Middlesbrough Housing Local Plan adopted November 2014 (HLP). A C2 use would not require such a contribution.

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<sup>2</sup> Town and Country Planning (Use Classes) Order 1987 (as amended)

22. The proposed development is described as “a assisted living apartment building (use class C2)”. As originally submitted, the application proposed that residents would need to be a minimum age of 55, with at least one resident occupying each unit being in need of a minimum level of care. Following the determination of the application by the Council, the proposal has been altered and the minimum age requirement has been raised to 60 with the basic care package also having been revised as outlined in the submitted unilateral undertaking.
23. Residential accommodation of varying size and configuration would be provided across three floors together with a number of communal facilities including a restaurant, shop, hairdresser, therapy and treatment room and shared activity and lounge areas. An Operational and Design Overview (ODO) of the proposal has been prepared by the appellant in response to the concerns raised by the Council in respect of the nature of the proposal and the level of care to be provided to residents.
24. In addition to the information provided in the ODO, at the hearing I heard compelling evidence from Ms Swift about the need for a more flexible approach to providing care for people as they move into older age. A model which provides a safe and secure environment for people, a level of independence to suit each individual and allows couples to remain living together even if the support needs of one person are in excess of the other. Such a model aims to meet the changing needs of people in one location, preventing the need to move between facilities as needs change over time.
25. Whilst I understand the Council’s concerns to ensure that affordable housing provision is secured where required, in this case and based on the evidence before me, I am satisfied that what is being proposed is a C2 rather than a C3 use, though I accept that some residents would have a greater level of independence than others. Nevertheless I do not agree with the Council that the different elements of the proposal could be disaggregated and separated into different use classes, particularly given the clear functional relationship between the residential units and the wider communal facilities.
26. I consider that it is clear that the proposal aims to provide much more than residential accommodation for the over 60s but rather that it seeks to offer a flexible package of varying services, including care to residents and including the provision of all meals, as set out within and secured by the submitted unilateral undertaking. The cost of the accommodation would be priced to reflect this and would be likely to be significantly higher than the cost of a more general residential retirement scheme. I agree with the appellant that this is likely to deter prospective occupants who are not in need of such services and facilities. The unilateral undertaking would provide certainty in restricting the age of primary occupants and ensuring that a minimum level of care is needed and taken up by future residents.
27. In reaching my decision I have had regard to the various appeal decisions and guidance relating to assisted living accommodation referred to me and in particular note that what is being provided by the proposal is similar to what was proposed by a scheme for assisted living in Sidmouth accepted as being a C2 use by the Inspector in that case (Ref APP/U1105/W/17/3177340). Though as the Council has pointed out the Sidmouth scheme also appeared to include a staffed physiotherapy and hydrotherapy pool, I do not consider that this means

that the Sidmouth decision is not relevant to the proposal, particularly as the minimum age limit for both schemes is now the same.

28. Taking the above matters into consideration, I conclude that the proposal should be considered as a C2 residential institution use and as such there is no requirement for affordable housing provision having regard to Policy H12 of the HLP.

#### *Highway safety*

29. Whilst the Council stated at the hearing that it no longer wishes to defend its reason for refusal relating to highway safety and capacity, I am considering this issue as concerns have been raised in relation to parking and highway safety by interested parties.
30. Following the determination of the application by the Council, a Hearing Statement Relating to Highway Issues dated November 2018 (HSHI) was produced by the appellant. The HSHI concludes that sufficient on-site parking is proposed for the proposal and that there would be no detrimental impact on the highway network resulting in harm to highway safety.
31. The proposal is for a 60 unit assisted living apartment building and 60 parking spaces are proposed. When it considered the application the Council applied a maximum car parking standard of 1.5 spaces per unit giving a total maximum requirement of 90 spaces. It considered that the appellant had not justified a lower amount, particularly given the appeal site location relative to local shops and other facilities and expressed concerns that any overspill parking onto Strait Lane would be detrimental to highway safety. These concerns were also shared by a number of interested parties.
32. As can be seen from my conclusion in relation to the previous issue, I consider that the use of the proposed building is not a C3 dwelling house use but rather a C2 residential institution use. Consequently I agree with the appellant that it is not reasonable to apply the parking standards of 1.5 spaces per unit relating to a C3 use as set out in the Tees Valley Design Guide. I am satisfied based on the evidence including the HSHI, that the amount of parking proposed would be sufficient to serve the needs of the building. If I were allowing the appeal the proposed parking together with the other measures proposed by the appellant included within the submitted unilateral undertaking and the suggested travel plan condition would ensure that the proposal would not result in any harm to highway safety. It would therefore accord with Policy DC1 of the CS insofar as it requires development proposals to have no impact on highway safety.

#### **Other Matters**

33. In reaching my decision I have had regard to the fact that the proposal would provide an additional 60 units of assisted living residential accommodation and would contribute to the supply of this type of accommodation in the area. However this benefit of the proposal would not outweigh the significant harm that I have identified to the character and appearance of the area and to the living conditions of the occupiers of nearby dwellings.
34. As referred to above, a unilateral undertaking was submitted by the appellant at the hearing. However as I am dismissing the appeal, there is no need for me to reach a finding on the undertaking.

## **Conclusion**

35. I am satisfied that no affordable housing provision is required in connection with the proposal and that it would not have an adverse impact on highway safety. However the proposal would have a significant adverse effect on the character and appearance of the area and on the living conditions of the occupiers of nearby dwellings having particular regard to privacy and outlook.
36. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

*Beverley Wilders*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Sarah Reid	Of Counsel
Richard Borrows	Agent
Chris Shearman	Architect
Neil Appleton	Highways Consultant
Angela Swift	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Andrew Glossop	Middlesbrough Borough Council
Simon Thompson	Middlesbrough Borough Council

### INTERESTED PARTIES:

Alan Liddle	Parish Council
Cllr David Coupe	Ward Councillor
Gail Starling	Manager, Montpellier Manor Care Home
Steven Longstaff	ELG Planning on behalf of Taylor Wimpey
Stephen Winter	on behalf of local resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Copy of S106 legal agreement attached to appeal decision APP/U1105/W/17/3177340 – The Knowle, Station Road, Sidmouth, Devon EX10 8HL.
2. Copy of R v Ashford Borough Council, Ex Parte Shepway District Council [1999] PLCR 12.
3. Copy of decision notice and drawing number 1411 CL (2-) 07 and 1411 CL (0-) 02g relating to application reference M/FP/0141/16/P.
4. Copy of drawing number L5393 920 – Landscape Proposals.
5. Copy of Extract from Tees Valley Design Guide relating to parking standards.
6. Hearing Statement relating to highway issues dated November 2018.
7. Copy of drawing number A173001 SK(2)220 – Proposed site sections outline approval overlay.
8. Suggested wording for travel plan condition.



9. Copy of bus timetable for services 13 and 13A.
10. Operational and design overview in response to local authority's statement of case.