

**AGENDA ITEM: 5**

**PLANNING & DEVELOPMENT COMMITTEE**

**27 NOVEMBER 2009**

**TITLE OF THE REPORT: PLANNING AND  
HOUSEHOLDER APPEALS**

**RICHARD LONG  
DIRECTOR OF LEGAL & DEMOCRATIC SERVICES**

**PURPOSE OF THE REPORT**

1. To report the findings of the Inspector appointed by the Secretary of State for the Environment, Transport and the Regions in regard to the following planning and householder appeals.

**BACKGROUND – SITE AT 34 LINTHORPE ROAD, MIDDLESBROUGH -  
M/LBC/0211/09/P & M/ADV/0210/09/P**

2. The retrospective application for the installation of two internally illuminated surface mounted signage boxes in aluminium and perspex to replace two similar previously existing signs, utilising the same fixing points was submitted to Planning & Development Committee on 20 March 2009.

Members were advised that the building was a Grade II listed building and that listed building consent was required to make any alterations to the building.

Neighbourhood consultations had taken place and no comments on the application had been received. The Council's Conservation officer had considered the application and recommended that it be refused on the grounds that it contravened guidance contained in PPG15. The Conservation Officer was invited to address the Committee.

Officers recommended that the application be refused and enforcement action be authorised. After consideration of the application and taking into account the representation from the Conservation Officer, the decision of Members was to refuse the application.

The applicant submitted an appeal against the refusal to grant listed building consent in relation to M/LBC/0211/09/P and a refusal to grant express consent in

relation to M/ADV/0210/09/P to the Planning Inspectorate which was determined by written representations.

**The decision of the Planning Inspector was to dismiss both the appeals.**

**See copy of decision notice (Appendix A).**

A copy of the decision notice has been placed in the Members' Resource Centre for information.

### **RECOMMENDATION**

3. That the report be noted.

### **BACKGROUND PAPERS**

4. Planning & Development Committee – 20 March 2009  
Decision letter from the Planning Inspectorate dated 5 November 2009.

### **BACKGROUND – 2 HEREFORD CLOSE, MIDDLESBROUGH - M/FP/0882/09/P**

5. The application for a bedroom extension and ensuite was submitted to Planning & Development Committee on approved on 4 September 2009.
6. Neighbourhood consultations had taken place and one written objection was received from the occupier of 4 Hereford Close.

The development was contrary to Policies DC1 and CS5 and for this reason, officers recommended that the application be refused. After consideration of the application and taking into account the representation received, the decision of Members was to refuse the application.

The applicant submitted an appeal to the Planning Inspectorate, which was determined by written representations.

**The decision of the Planning Inspector was to dismiss the appeal.**

**See copy of decision notice (Appendix B ).**

A copy of the decision notice has been placed in the Members' Resource Centre for information.

### **RECOMMENDATION**

7. That the report be noted.

### **BACKGROUND PAPERS**

8. Planning & Development Committee – 4 September 2009  
Decision letter from the Planning Inspectorate dated 10 November 2009.

**BACKGROUND – SITE AT 70 PARLIAMENT ROAD, MIDDLESBROUGH -  
M/FP/0511/09/P**

9. The application for an extension to the rear and change of use from first floor flat to 2 first floor studio flats was submitted to Planning & Development Committee on 3 July 2009.
10. A Site Visit was held prior to the meeting to enable members to view the site prior to making a decision.
11. Neighbourhood consultations have taken place and a letter of objection received from the occupant at 68 Parliament Road who objected on the grounds that the flat would overlook their rear yard, block out sunlight and daylight.

An objector was present at the meeting and elected to address the Committee.

Officers recommended that the application be approved subject to certain planning conditions. After consideration of the application the decision of Members was to refuse the application.

The applicant submitted an appeal to the Planning Inspectorate, which was determined by written representations.

**The decision of the Planning Inspector was to allow the appeal subject to certain conditions.**

**See copy of decision notice (Appendix C).**

A copy of the decision notice has been placed in the Members' Resource Centre for information.

**RECOMMENDATION**

12. That the report be noted.

**BACKGROUND PAPERS**

13. Planning & Development Committee – 3 July 2009  
Decision letter from the Planning Inspectorate dated 17 November 2009.

14. **COSTS DECISION**

An application for the full amount of costs against the Council was submitted by the appellant.

The Inspector stated that he had considered the application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

The appellant claimed that the Council failed to provide evidence on planning grounds to substantiate the reasons for refusal. The planning officer recommended approval of the proposed development. The application was refused by the Planning Committee following a site visit to the development. The Inspector pointed out that the Committee members were fully cognisant of the issues relating to the application and determined that on balance the harm they perceived the development would have on the occupiers of 68 Parliament Road outweighed the benefits of providing an additional unit of residential accommodation.

The Inspector pointed out that Circular 03/2009 makes it clear that planning authorities are not bound to accept the recommendation of their officers but would need to demonstrate reasonable planning grounds for not supporting the decision. The Inspector considered that the way in which the Council reached its decision and the justification given was not unreasonable.

**The Inspector's decision was to refuse the application for the full award for costs.**

**See copy of decision notice (Appendix D)**

A copy of the decision notice has been placed in the Members' Resource Centre for information.

## **RECOMMENDATION**

12. That the report be noted.

## **BACKGROUND PAPERS**

13. Planning & Development Committee – 3 July 2009  
Decision letter from the Planning Inspectorate dated 17 November 2009.

**RICHARD LONG**  
**DIRECTOR OF LEGAL & DEMOCRATIC SERVICES**

Contact Officer : Bernie Carr  
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# Appeal Decisions

Site visit made on 21 October 2009

by **John L Gray** DipArch MSc Registered Architect

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

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Decision date:  
**5 November 2009**

## Appeal Ref: APP/W0734/E/09/2104502

### 34 Linthorpe Road, Middlesbrough, TS1 1RD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Sam Hamadi of Trafalgar Leisure Limited against the decision of Middlesbrough Borough Council.
- The application, ref. M/LBC/0211/09/P, dated 1 February 2009, was refused by notice dated 23 March 2009.
- The works proposed are the installation of two internally-illuminated surface-mounted signage boxes in aluminium and perspex to replace two similar previously-existing signs, utilising the same fixing points.

## Appeal Ref: APP/W0734/H/09/2104836

### 34 Linthorpe Road, Middlesbrough, TS1 1RD

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Sam Hamadi of Trafalgar Leisure Limited against the decision of Middlesbrough Borough Council.
- The application, ref. M/ADV/0210/09/P, dated 5 January 2009, was refused by notice dated 23 March 2009.
- The advertisements proposed are two internally-illuminated surface-mounted signage boxes to replace two similar previously-existing signs.

**Decision: I dismiss both appeals.**

### Reasons

1. No. 34 Linthorpe Road is a striking building. It seems to me fully to warrant its status as a grade II listed building. From the list description, one might wonder if the red brick first floor with white terracotta bands and dressings would be too much of a contrast with the ornate faience-faced ground floor façade. The overall symmetry pulls the whole façade together, however; so too does the arrangement of the semi-circular false gable within the parapet and the segmental elements of the string course at first floor level.
2. Judging from the photographs, the previous signs had the merit of maintaining the segmental curves of the string course and abutting its underside. As such, they sat reasonably satisfactorily within the façade composition. Also, so far as I can tell, they completely obscured the original (1911) lettering below the segmental upstands.
3. The new signs are very different. Although they are essentially circular, they have a different radius and a different centre to the segmental arches of the string course beneath which they are fixed. The resultant inconsistent

geometry means that, visually, the signs sit very uncomfortably within the façade. Moreover, they sit proud of the actual wall surface and do not wholly obscure what lies behind. Seeing something of the lettering behind the signs, but only a part of it, simply exacerbates the visual damage. Also, when illuminated, the form, materials and colours of the signs detract and distract from the architectural quality and ornament of the façade.

4. Accordingly, I conclude that the signs which have been fixed, and for which consent has been sought, run contrary to the guidance in Annex C of Planning Policy Guidance Note 15: Planning and the Historic Environment (PPG15) – in particular paragraphs C.25 on original features and C.57 on illuminated signs generally. They also conflict with saved Policy E44 of the Middlesbrough Local Plan, which resists illuminated signs which conflict with the character of a listed building. The policies of the Development Plan do not apply to listed building control, which is exercised under a different Act; nevertheless, the signs fail to meet the design aspirations of Core Strategy Policies CS5 and DC1, which are consistent with government guidance relating to design and listed buildings.
5. The Council also criticises the fixings of the signs, saying that they have damaged the faience work of the façade. The application says specifically, “same fixing points utilised”. It is impossible to tell from ground level, although, had it not been said otherwise, my assumption would be that the type of fixing used would be very unlikely to have fitted previous fixing points in the faience. If that assumption is correct, then the harm done by the fixings would be significant in my conclusion on the listed building appeal. If it is not, then my conclusion on the harm to the architectural and historic character of the listed building is nevertheless sufficient on its own to warrant dismissal of the appeals.
6. There is no public safety concern in relation to the advertisement appeal but that cannot outweigh my conclusion on visual amenity grounds that the signs cause significant harm to the character of the building to which they are fixed. The Regulations enable other advertisements to be disregarded in determining an appeal; even so, I noted the numerous other signs and fascias in Linthorpe Road, concluding that neither the signs nor the buildings had such similar characteristics as to influence my conclusion that these advertisement and listed building appeals should be dismissed.

*John L Gray*

Inspector



## Appeal Decision

Site visit made on 26 October 2009

by **Anthony Lyman** BSc(Hons) DipTP  
MRTPI

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**Decision date:**  
**10 November 2009**

**Appeal Ref: APP/W0734/D/09/2114359**

**2 Hereford Close, Middlesbrough, Cleveland, TS5 6PL**

- 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 Kosal Bona against the decision of Middlesbrough Borough Council.
- The application Ref M/FP/0882/09/P, dated 10 July 2009, was refused by notice dated 4 September 2009.
- The development proposed is a bedroom extension and en-suite.

### Decision

1. I dismiss the appeal.

### Main issue

2. The main issue relating to this appeal is the effect of the proposed development on the living conditions of the occupants of the adjoining dwelling.

### Reasons

3. The appeal property is a semi-detached house which has had a single storey kitchen extension built on to the rear elevation. The proposal is to build directly above the extension, to create a first floor bedroom and en-suite bathroom.
4. The existing ground floor extension projects approximately 4.75m from the original rear elevation of the property and is only about 1.5m from the common boundary with the adjoining semi. The window in the kitchen extension and the rear door face this nearby common boundary and directly overlook the neighbouring property. However, the window to the proposed bedroom above would look out over the rear garden and the upper side wall facing the neighbouring dwelling would be blank brickwork.
5. The extension would create a wall approximately 5.5m high to the eaves and 4.75m wide in very close proximity to the neighbour's property. This would dominate the garden and rear windows of 4 Hereford Close and would appear overbearing and oppressive. Furthermore, as this wall would be to the south of the adjoining semi, it would overshadow the neighbour's property and significantly reduce the amount of daylight and sunlight which the neighbour currently enjoys. In particular, I consider that the neighbour's downstairs rear rooms and the patio area would become unacceptably gloomy in the shadow of the extension.

6. Policy CS5 of the Middlesbrough Local Development Framework – Core Strategy (MCS) requires all development to demonstrate high quality of design in terms of layout, form and contribution to the character and appearance of an area. Policy DC1 of the same document stipulates amongst other things, that new development proposals should have minimal effect on the surrounding environment and the amenities of the occupiers of nearby properties. I conclude that the proposal, by virtue of its scale, mass, design and proximity to the neighbouring property would have a significant detrimental impact on the living conditions of the occupants of 4 Hereford Close, contrary to these two policies of the MCS.
7. Therefore, for the reasons given and having had regard to all other matters raised, I dismiss the appeal.

*Anthony Lyman*

INSPECTOR





## Appeal Decision

Site visit made on 26 October 2009

by **Anthony Lyman** BSc(Hons) DipTP  
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Decision date:  
17 November 2009

### Appeal Ref: APP/W0734/A/09/2109266 70 Parliament Road, Middlesbrough, TS1 4LA

- 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 Ms Samina Afzal against the decision of Middlesbrough Borough Council.
- The application Ref M/FP/0511/09/P, dated 10 April 2009, was refused by notice dated 6 July 2009.
- The development proposed is an extension to the rear and the change of use from first floor flat to 2 first floor studio flats.

#### Application for costs

1. An application for costs was made by Ms Samina Afzal against Middlesbrough Borough Council. This application is the subject of a separate Decision.

#### Procedural matter

2. The above description of the proposed development is taken from the application form. However, in determining this appeal, and for the avoidance of doubt, I will have regard to the Council's more accurate description, namely, a first floor only extension at rear and change of use of first floor to 2 No. studio flats.

#### Decision

3. I allow the appeal, and grant planning permission for a first floor only extension at rear and change of use of first floor to 2 No. studio flats at 70 Parliament Road, Middlesbrough, TS1 4LA in accordance with the terms of the application, Ref M/FP/0511/09/P, dated 10 April 2009, and the plans submitted with it, 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 not be carried out except in complete accordance with the details shown on the submitted plans, numbers 02 (revision A); 03 (revision A); 05 (revision A) deposited with the local planning authority on 10 June 2009.
  - 3) Before the first occupation of the building/extension hereby permitted the first floor bathroom window on the side elevation facing No. 68 Parliament Road shall be fitted with obscured glass and shall be permanently retained in that condition.

- 4) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

### **Main issue**

4. The main issue relating to this appeal is the effect of the development on the living conditions of neighbours.

### **Reasons**

5. The appeal property is an end of terrace building comprising a hairdressing salon and studio flat on the ground floor, and a one bedroom flat on the first floor. The proposal is to build a first floor extension above an existing garage and part of the ground floor accommodation and to convert the enlarged upper floor into two studio flats.
6. The side elevation of the new extension facing Lonsdale Street would be flush with the existing ground floor wall which is immediately to the back of the pavement. The garage and the existing ground floor extension occupy the full width of the plot and share a common boundary with 68 Parliament Street. When the application was made in April 2009, the appellant's intention was for the first floor extension to span the full width of the plot. However, the common boundary wall would have dominated the neighbours' property, depriving the rear amenity space and windows of significant amounts of daylight. Subsequently, the appellant submitted revised plans on 10 June 2009 showing the width of the first floor extension reduced and inset from the common boundary with No. 68 by about 2m. These changes are shown on the plans referred to in my formal Decision above.
7. The reduced width of the extension results in a narrower pitched roof with consequent lower ridge. Although the proposal would partially obscure outlook from the neighbouring dwelling, I am satisfied that the revised scheme would not have a significantly detrimental effect in terms of daylight, on the living conditions of the neighbours. However, to ensure that the privacy of the neighbours is not harmed, I have imposed a condition requiring the bathroom window in the elevation facing No. 68 to be obscure glazed.
8. Policy CS9 of the Middlesbrough Local Development Framework - Core Strategy (MCS) calls for a balanced and sustainable housing stock, and Policy CS4 requires development to be located in sustainable locations, accessible to services and facilities whilst making the most efficient use of land. The proposed development would accord with both of these policy aspirations. By virtue of its scale, design and use of matching materials, which I have secured by condition, the proposal would also comply with Policy DC1 of the MCS which stipulates that development should reflect its surroundings.
9. The Council requested that I impose a condition relating to the soundproofing of walls and ceilings between the flats. Circular 11/95 - The Use of Conditions in Planning Permissions states that a condition which duplicates the effects of other controls will normally be unnecessary. As the suggested condition specifically refers to Building Regulations Approved Document E - 2003, I consider that it would duplicate the requirements of that document and is therefore unnecessary.

10. I conclude that the revised scheme before me would accord with the MCS and that the proposal should succeed. Therefore, for the reasons given, and having had regard to all other matters raised, I allow the appeal subject to the conditions I have imposed.

*Anthony Lyman*

INSPECTOR





## Costs Decision

Site visit made on 26 October 2009

by **Anthony Lyman** BSc(Hons) DipTP  
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Decision date:  
17 November 2009

### **Costs application in relation to Appeal Ref: APP/W0734/A/09/2109266 70 Parliament Road, Middlesbrough, TS1 4LA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Ms Samina Afzal for a full award of costs against Middlesbrough Borough Council.
- The appeal was in connection with the refusal of planning permission for an extension to rear and change of use from first floor flat to two first floor studio flats.

**Summary of Decision: The application fails and no award of costs is made.**

#### **Procedural matter**

1. The application for costs is made with reference to Circular 8/93. However, as the appeal was made after the 1 April 2009, I will determine this application with regard to Circular 03/2009.

#### **Reasons**

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The basis of the appellant's claim is that the Council failed to provide evidence on planning grounds to substantiate the reasons for refusal. The appellant argues that the development is acceptable within the residential area and that the local planning authority acted unreasonably by refusing planning permission, basing the decision on subjective opinion, failing to balance the recognised benefits of the scheme and failing to demonstrate harm to the area or neighbours. Furthermore, the appellant submits that the local planning authority inappropriately interpreted the policies in the Decision Notice and was unduly swayed in its decision by opposition from local residents.
4. The planning officer recommended approval of the proposed development. Nevertheless, the application was refused by the planning committee, following a site visit, which enabled its members to judge for themselves the impact that the proposed scheme would have on nearby residents. It is therefore, clear to me that, the planning committee members were fully cognisant of the issues relating to this application and on balance determined that, the harm that they perceived, to the occupants of No 68 Parliament Road, outweighed the benefits of providing an additional unit of residential accommodation.

5. Circular 03/2009 makes it clear that planning authorities are not bound to accept the recommendation of their officers and that in such circumstances authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision. In this case the Decision Notice sets out clear reasons for the refusal, stating the adopted policy and the specific sub-section with which the proposal did not comply. These reasons were explained and substantiated in the Council's Appeal Statement.
6. Although planning decisions have to be determined in accordance with adopted policies, the weight attributed to each policy and the degree to which a proposal complies with that policy is a matter of judgement. I have reached a different conclusion to the local planning authority on the application. However, I consider that the way in which the Council reached its decision and the justification given for it was not unreasonable.
7. I do not find that the Council were unduly influenced by the objections of the neighbours. It seems to me that the occupants of the adjoining house raised legitimate planning concerns regarding the potential loss of light to their premises. The Council took a view on this issue, which they were obliged to do.
8. Therefore, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and that an award of costs is not justified.

**Formal Decision**

9. I refuse the application for an award of costs.

*Anthony Lyman*

INSPECTOR