



## Appeal Decision

Site visit made on 21 July 2009

by **Wenda Fabian** BA Dip Arch RIBA IHBC

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

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Decision date:  
20 August 2009

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**Appeal Ref: APP/H0738/A/09/2103841**  
**1 Westgate, West Street, Yarm, Cleveland TS15 9QT**

- 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 Brian Thomas against the decision of Stockton-on-Tees Borough Council.
- The application Ref 08/2816/OUT, dated 16 September 2008, was refused by notice dated 12 November 2008.
- The development proposed is a single family dwelling.

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### Decision

1. I dismiss the appeal.

### Main issues

2. The main issues are whether the proposal would:
  - i) preserve or enhance the character and appearance of the Yarm Conservation Area; and
  - ii) accord with national and local policy objectives to appraise, manage and reduce the risk of flooding.

### Reasons

3. The proposal was made in outline but includes details of access, layout, scale and landscaping with only appearance reserved for a future application. I have considered the appeal on this basis.

### Conservation Area

4. The appeal site is the extensive corner garden of No 1, a large detached late 20<sup>th</sup> century house on a short cul-de-sac development. The site has a long side frontage onto West Street, which lies parallel to Yarm High Street, behind the prominent brick railway viaduct and within the historic core of the Yarm Conservation Area.
  5. The site is within the settlement limit within easy reach of public transport and services, where policy HO3 of the *Stockton on Tees Local Plan, 1997*, (LP) supports the principle of residential development. The proposed access would be via the cul-de-sac and I see no reason to disagree with the Council's assessment that this would be acceptable. Policy EN24 follows national legislation, which imposes a duty on decision makers to pay special regard to the desirability of preserving or enhancing the character or appearance of conservation areas.
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6. I have not been supplied with a conservation area appraisal, however, I saw that the attractive character of this street is mainly derived from the historic properties on the opposite side, balanced by the leafy openness around the appeal site. Apart from a utilitarian workshop and yard, the older buildings opposite are mostly modestly scaled two storey terraced and semi-detached brick houses set close to the footway. Adjacent to the appeal site, the church is set well back and has a wide frontage planted with a trees and shrubs enclosed by a stone wall, beyond this is a mix of newer houses, also set back, with sporadic older properties close to the street and an infill block of recent flats.
7. The small sensitive infill development directly opposite the appeal site demonstrates that, with careful design and detailing, new houses in close proximity to each other and to the street can be successfully integrated with the surroundings. In this mixed context a single two storey dwelling in the position indicated by the submitted layout could preserve the character of the conservation area, if its form and design addressed the main street frontage rather than the cul-de-sac. This aspect of the proposal would be subject to a future application and it would be open to the Council at this later stage to ensure that the appearance of the proposed dwelling would be compatible with the street.
8. I conclude that the proposal would preserve the character and appearance of the Yarm Conservation Area, in accordance with local and national policy.

**Flood Risk**

9. The appeal site and the whole of the central part of Yarm lie on a peninsula formed by a tight loop of the River Tees. This is located within Flood Zone 3a, which is defined as at high risk of flooding.
10. The appellant has supplied a Flood Risk Assessment (FRA), which records that the flood mechanism in Yarm is via overtopping of the flood wall and that this would result in flood levels within Yarm of 8.50m AOD in the 100 year plus climate change period, as set out in the government's PPS25<sup>1</sup>. The Environment Agency requirement is for the finished floor level of the proposal to be 0.6m above this, more than 2m above the ground level on the appeal site.
11. The proposed floor level is considered the highest practicable by the appellant. The FRA acknowledges that, although higher than the adjacent house, No 1 Westgate, it would be substantially below the level required by the Environment Agency. In mitigation, it points out that flood resilient construction with a water entry strategy is proposed and the ground floor level would be above the predicted 100 year flood level. In addition, it records that the proposed dwelling would have no impact on the overtopping flow routes due to its position to the east of No 1 Westgate (the flood defence wall is to the west of No 3) and that emergency access and egress could be maintained up to a 75 year flood. It also notes that Yarm has an effective flood warning system based on a Real Flow Forecasting System.

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<sup>1</sup> Planning Policy Statement 25: Development and Flood Risk

12. However, LP policy EN32a follows PPS25 and sets out that new development will not be permitted within Flood Zones 2 or 3 unless the applicant can demonstrate by means of a FRA and Sequential Test (ST) that: there is no alternative site at no risk or at lower risk of flooding; and there will be no increased risk of flooding to the development; and there will be no increase in risk of flooding elsewhere as a result of it.
13. The appellant considers that the Council's pre-application advice indicated that a full FRA and ST were not necessary in this case and has drawn my attention to a single dwelling granted planning permission nearby within the town centre area during 2008. However, the full planning history of this is not available to me and the Council's handling of applications is not a matter for my consideration. PPS25, at Table D3, is clear that a proposal for a dwelling is classed as a 'more vulnerable' form of development and that within an area at high risk of flooding proposals of this type should be accompanied by both a FRA and a ST. It further clarifies that unless a site has been allocated for the proposed use following sequential testing, underpinned by a Strategic FRA (which the appeal site has not), it is the responsibility of the developer to demonstrate that a proposal would satisfy the ST.
14. The appellant has not supplied a formal Sequential Test but states that in April 2009 and the preceding six months there were no single development sites within Yarm town centre and that even were one to become vacant it would also lie within Flood Zone 3 and, thus, would be no more suitable than the appeal site. The appellant has acknowledged that were a borough wide catchment area applied, as required by the Council, then the appeal site would fail the ST. He points out that this would effectively preclude any further single residential infill within Yarm town centre and this would conflict with the PPS3<sup>2</sup> objective of providing new dwellings on previously developed land in sustainable locations. However, these objectives should not be achieved in isolation, at the expense of the objective of limiting flood risk.
15. The Practice Guide to PPS25 clarifies that for individual planning applications where there has been no sequential testing of the allocations in the Local Development Document, the area in which to apply the ST will be defined by local circumstances. In this case there is no obvious basis, such as a need for affordable housing, on which to base a definition of the catchment area for the test. It seems to me that on balance a wider area should be applied than the small central part of Yarm and I saw that the land levels rise steeply on the other side of the river, where there are residential areas also within easy walking distance of local services.
16. Notwithstanding this, even were the town centre alone used for the ST, and this were to demonstrate that there is no reasonable available alternative site, the proposal must meet the Exception Test. For the Exception Test to be passed the FRA must demonstrate that the development would provide wider sustainability benefits to the community that outweigh flood risk and will be safe, without increasing flood risk elsewhere and if possible will reduce flood risk overall. Compliance with the Exception Test should be demonstrated in an open and transparent way. I am not convinced from all that I have seen and read that each of these steps has been adequately demonstrated or that there

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<sup>2</sup> Planning Policy Statement 3: Housing

would be any discernible community benefit (such as meeting a locally identified housing need) that would accrue from the proposal, sufficient to outweigh the flood risk overall.

17. I conclude that the proposal would fail to accord with national and local policy objectives to appraise, manage and reduce the risk of flooding.

**Other Matters**

18. The proposed house would be set close alongside No 1 Westgate but existing windows in its side gable would be removed or obscure glazed. I have seen that these are within the appellant's control and are mainly secondary windows or that the use of the room could be altered to be non-habitable, such that the proposal would not result in a significant loss of daylight or outlook. As this could be secured by a condition potential harm to the living conditions of these adjacent occupants would not justify dismissing the appeal.

**Conclusion**

19. I have found that the outline proposal, subject to a future satisfactory design for the appearance of the dwelling, would preserve the character and appearance of the conservation area. However, this positive finding does not outweigh the wider harm, identified above, which would arise in respect of flood risk.
20. For the reasons given above I conclude that the appeal should be dismissed.

*Wenda Fabian*

Inspector

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