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## Appeal Decisions

Site visit made on 5 July 2021

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 October 2021**

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**Appeal A: Appeal Ref: APP/H0738/W/21/3272218**  
**Vane Arms, Darlington Road, Long Newton TS21 1DB**

- 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 Camfero Homes against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 20/0718/FUL, dated 8 April 2020, was refused by notice dated 10 March 2021.
  - The development proposed is conversion and alterations to existing public house and first floor accommodation to create 1 no. residential property with associated access.
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**Appeal B: Appeal Ref: APP/H0738/W/21/3272225**  
**Vane Arms, Darlington Road, Long Newton TS21 1DB**

- 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 Camfero Homes against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 20/0717/FUL, dated 8 April 2020, was refused by notice dated 10 March 2021.
  - The development proposed is erection of 1 no. 3 bedroom dwelling with associated access.
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### Decision

**Appeal A: Appeal Ref: APP/H0738/W/21/3272218**

1. The appeal is allowed and planning permission is granted for conversion and alterations to existing public house and first floor accommodation to create 1 no. residential property with associated access at Vane Arms, Darlington Road, Long Newton TS21 1DB in accordance with the terms of the application, Ref 20/0718/FUL, dated 8 April 2020, subject to the conditions set out in the Schedule at the end of this decision.

**Appeal B: Appeal Ref: APP/H0738/W/21/3272225**

2. The appeal is allowed and planning permission is granted for erection of 1 no. 3 bedroom dwelling with associated access at Vane Arms, Darlington Road, Long Newton TS21 1DB in accordance with the terms of the application, Ref 20/0717/FUL, dated 8 April 2020, subject to the conditions set out in the Schedule at the end of this decision.

### **Preliminary Matter**

3. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeals were lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeals. I have had regard to the revised Framework in reaching my decision.

### **Background and Main Issue**

4. With regards to Appeal A, the conversion of the property would lead to the loss of the public house. In respect of Appeal B, the dwelling would be constructed to the rear of the Vane Arms and would result in the loss of much of the premises' beer garden, with commensurate harm to the operation of the business.
5. On that basis, in respect of both appeals, the main issue is whether the proposals would comply with local and national planning policies which seek to protect community facilities.

### **Reasons**

6. Policy T12(2) of the Local Plan<sup>1</sup> seeks to protect community infrastructure to meet the needs of the population within the Borough. Proposals which would lead to the loss of valued public houses, amongst other things, and which would reduce the community's ability to meet its day-to-day needs will not be supported unless (a) there is no demand for the facility and its continued use would be economically unviable, or (b) equivalent alternative facilities are available nearby and the proposal would not undermine the community's ability to meet its day to day needs.
7. The appeal site is located within the village of Long Newton. As well as the appeal site, the village also contains another public house and restaurant namely The Londonderry Arms, also known as 'The Derry'. There are also other facilities in the village including the Wilson Community Centre, a church and school.
8. The Vane Arms is a long-established pub in the village, although the evidence indicates that it closed for over 2 years in 2008, and more recently in August 2019. The recent on-going closure took place prior to the Covid-19 pandemic.
9. The proposals would result in the loss of the public house, and policy T12(2)(a) of the Local Plan states that proposals such as this will not be supported unless there is no demand for the facility and its continued use would be economically unviable.
10. With regards to economic viability, the appellants have provided a Viability Assessment which concluded that the Vane Arms is not economically viable for continued use as a public house. This took into account historic trading information and likely trade potential. An independent Critique commissioned by the Council agreed that the conclusions reached by the Viability Assessment were reasonable and realistic, in that the Vane Arms is not economically viable to operate as a public house by a reasonable commercial operator.
11. However, the Critique referred to the potential for the public house to be operated by a Community Trust for the benefit of the community, where a

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<sup>1</sup> Stockton-on-Tees Borough Council Local Plan 2019

- lower level of turnover can be acceptable as long as the asset covers its costs. Based on a fair maintainable trade value identified in the Viability Assessment, the Critique specified that the Vane Arms could in theory operate at a surplus. However, this was based on the property being staffed on a volunteer rota.
12. The comments submitted in support of the retention of the Vane Arms as a public house indicate that there is continuing demand, although the evidence suggests that this demand is not sufficient to support it as an economically viable commercial operation.
  13. The Council's Critique refers to the potential to operate the premises as a Community Trust. A Community Group<sup>2</sup> has been established and evidence including a Business Plan and Prospectus for Investment have been submitted. The comments from the Community Group indicate that approximately £194,000 has been invested<sup>3</sup> as a result of a share offer, with a further £51,000 identified through pledges.
  14. However, the Council's Critique refers to a realistic asking price for the property as circa £275,000-£285,000. Even allowing for the amount raised through pledges, the total amount raised by the Community Trust would fall short of that asking price.
  15. There is no adopted planning policy requirement for a marketing exercise to be undertaken, but this is a common and robust method for establishing if a community facility has a reasonable prospect of being retained. The evidence suggests that the business was originally marketed at £345,000 in early 2018, and subsequently reduced in stages down to £325,000. Whilst the appellant contends that this price was recommended by agents, with an allowance for reduction during negotiation, there is no substantive evidence that the price indicated in the Council's Critique is unrealistic. On the basis of the evidence before me, the appellant's asking price was not realistic or reasonable. However, this does not negate the evidence that the Community Group has been unable to meet even the Council's indicative value.
  16. Moreover, the evidence suggests that a proportion of the Community Group's funds has been raised through pledges, as opposed to direct investment. Also, rather than running the public house on a voluntary basis, it is proposed to appoint a tenant which would introduce a significant wage bill. The Council's Critique considers that the addition of a wage bill would mean that the business would be non-viable. Whilst reference is made to other sources of funding, such as the Community Ownership Fund, there is no substantive evidence that this can be relied upon.
  17. The scope of the Community Group's proposals for the public house includes elements such as offering bed and breakfast accommodation, a post office, shop and other facilities. Diversifying the business may generate further income streams as well as providing further benefits to the community. However, given the evidence in respect of the previous operation of the business and viability, the Community Groups financial projections appear to be overly optimistic and do not lead me to a different conclusion in respect of the appellant's evidence or the Council's independent Critique. Viewed objectively, the Community Group's proposals to continue operating the Vane

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<sup>2</sup> The Long Newton Community Hub Ltd

<sup>3</sup> As of 15 June 2021

Arms would not appear to be suitably robust. Although there is reference to a formal offer submitted to the property owner by the Community Group, this carries very limited weight given the evidence in respect of funds raised and viability.

18. Policy T12(2)(b) also refers to whether equivalent alternative facilities are available nearby and the proposal would not undermine the community's ability to meet its day to day needs. The village also contains The Derry, which is a larger public house than the appeal site. At the time of my visit The Derry appeared to include a significant element of food-led business, although I also observed that it served drinks and operated in a manner representative of a public house. Different pubs in the same village can serve differing roles, and that weight can be apportioned to those roles accordingly. However, given my conclusions in respect of the viability of the Vane Arms, The Derry could go some way to compensate for the loss of the appeal premises and the village would not be without a public house. Due to the size of the premises, the operation of The Derry could also be adapted to provide for demand which would otherwise be catered for by the Vane Arms. Even allowing for potential changes in the tenancy of The Derry, there is no substantive evidence before me that it will permanently cease operation.
19. As well as the Vane Arms and The Derry, reference has been made to various other public houses in the wider area. But they are some distance away and are not accessible by routes conducive to pedestrian access from Long Newton, for example due to the distances involved and the unlit nature of the route. These other public houses are not in the immediate vicinity and do not offer equivalent alternative facilities for residents of this settlement.
20. The village also contains the Wilson Community Centre as well as a church and school. Although these may be able to provide some of the facilities proposed as part of the community use of the Vane Arms, the role of these facilities is very different to a public house and would not provide equivalent alternative facilities. Nevertheless, these matters do not detract from my conclusions in respect of The Derry and the contribution it would make to community facilities in the village.
21. The appeal site is designated as an Asset of Community Value (ACV). This is a material consideration which weighs against the loss of this community facility, as is reflected in Policy T12(3) of the Local Plan. However, designation as an ACV does not mean that the land owner has to retain the use or sell the property to the community. I am mindful of the wider sustainability benefits of the retention of the Vane Arms, including the social benefits arising from a community hub and economic benefits relating to employment and investment. I have also had regard to paragraph 93(a) of the Framework which emphasises that decisions should plan positively for community facilities, such as public houses, to enhance the sustainability of communities. However, given my conclusions in respect of the viability of the Vane Arms and the availability of alternative facilities, designation as an ACV and the wider sustainability benefits in this case are not of sufficient weight to lead to refusal of planning permission for the proposals.
22. Drawing the above together, despite the obvious community support for the retention of the Vane Arms, I conclude that its continued future use would be economically unviable. I also conclude that there are equivalent alternative

facilities nearby to ensure that the community would be able to meet its day to day needs. Whilst I have had regard to the status of the property as an ACV, for the reasons given, the proposals would comply with policy T12 of the Local Plan in respect of economic viability and, in particular, whether equivalent alternative facilities are available nearby as well as that the proposals would not undermine the community's ability to meet its day to day needs. The proposals would also comply with the Framework with regards to promoting healthy and safe communities.

### **Other Matters**

23. Reference has been made to the backland nature of the proposed dwelling within the enclosed garden of the public house. However, there is residential development in the vicinity of the site which is located to the rear of buildings which front the highway. Therefore, the proposed dwelling would not appear to be out of context. The scale, arrangement and design of the dwelling and its garden is also such that it would not have an unacceptable impact on the privacy and outlook of neighbouring properties, including consideration of the first floor windows.
24. The nature and volume of traffic movements from the proposed dwellings would not be of a degree that would be likely to lead to damage to nearby properties or unacceptable levels of noise and disturbance, including the immediately adjoining dwellings. The access to the rear of the site is also of sufficient width to provide for private vehicular access. Details such as the parking of vehicles as well as the unloading and storage of plant and materials during construction can be addressed by conditions.

### **Conditions**

25. The Council and consultees have suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance and the Framework. As a result, I have amended some of the conditions for clarity and precision.
26. With regard to both appeals, in addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty. Conditions in respect of hours of construction are appropriate with regard to the living conditions of nearby residents. Conditions in respect of ducting to the highway are appropriate to ensure that the developments are properly serviced. Conditions regarding ecological mitigation are required in the interests of conserving and enhancing the natural environment. Exceptionally, due to the relationship between existing and proposed dwellings, conditions removing permitted development rights are required in the interests of the living conditions of residents.
27. Conditions in respect of a construction method statement are appropriate in respect of living conditions and highway safety. Conditions in respect of means of enclosure and boundary treatment are required in the interests of the privacy of neighbouring residents and the character and appearance of the area. Conditions in respect of landscaping are required in the interests of biodiversity as well as character and appearance. These details should be submitted to and approved by the local planning authority at the pre-

- commencement stage as they relate to matters which need to be established before the commencement of development.
28. In respect of Appeal A, a condition requiring the installation of obscure glazing is required in the interests of the privacy of neighbouring and future residents.
29. In respect of Appeal B, a condition requiring details of materials is required in the interests of character and appearance. A condition in respect of contamination is required in the interests of public safety. A condition in respect of waste storage is appropriate to ensure that the site is properly serviced and in the interests of the living conditions of residents. A condition regarding lighting is necessary in the interests of the living conditions of residents as well as conserving and enhancing the natural environment. A condition for the protection and retention of boundary hedges is required in the interests of the living conditions of neighbouring residents and the character and appearance of the area. Exceptionally, due to the layout of the site, a condition removing permitted development rights to ensure that the garage is retained for the parking of motor vehicles is required in the interests of highway safety and the living conditions of residents.
30. Further in respect of Appeal B, a condition regarding site levels is required in the interests of the living conditions of neighbouring residents. A condition regarding surface water drainage is required to ensure that the site is properly drained. A condition regarding the protection of trees is required in the interests of biodiversity as well as the character and appearance of the area. These details should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.

### **Conclusion**

31. For the reasons given above, I conclude that the appeals should be allowed.

*David Cross*

INSPECTOR

### **Conditions Schedule - Appeal A**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan\_Refurb 001 A; Proposed Site Layout\_Refurb 002 A; Proposed Ground Floor Plan VA\_REF\_003; Proposed First Floor Plan VA\_REF\_004; Proposed Elevations VA\_REF\_005 A; and Proposed Basement Plan VA\_REF\_011.
- 3) No construction/demolition works, or deliveries shall be carried out except between the hours of 8.00am and 6.00pm on Mondays to Fridays and between 9.00am and 1.00pm on Saturdays. There shall be no construction activity, including demolition, on Sundays or on Bank Holidays.
- 4) Notwithstanding the submitted details, no development shall take place until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the Local Planning Authority relevant to that



element of the development hereby approved. The approved CMS shall be adhered to throughout the construction period relating to that element of the development and shall provide details of the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding; wheel washing facilities; measures to control and monitor the omission of dust and dirt during construction; a Site Waste Management Plan; details of the routing of associated HGVs; measures to protect existing footpaths and verges; and a means of communication with local residents. The development shall be carried out in accordance with these approved details.

- 5) Notwithstanding the proposals detailed in the submitted plans, prior to the commencement of the development hereby approved details of the means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. Such means of enclosure shall be erected prior to the occupation of the development in accordance with the approved details and be maintained as such thereafter.
- 6) No development shall commence until full details of Soft Landscaping has been submitted to and approved in writing by the Local Planning Authority. This will be a detailed planting plan and specification of works indicating soil depths, plant species, numbers, densities, locations inter relationship of plants, stock size and type, grass, and planting methods including construction techniques for pits in hard surfacing and root barriers. All works shall be in accordance with the approved plans. All existing or proposed utility services that may influence proposed tree planting shall be indicated on the planting plan. The approved details shall be completed in the first planting season following:
  - (i) Commencement of the development;
  - (ii) or agreed phases;
  - (iii) or prior to the occupation of any part of the development.
- 7) Prior to the occupation of the development hereby approved, the ground floor side window on the East Elevation (as specified on Proposed Elevations VA\_REF\_005 A) shall be obscure glazed to a minimum opaque level 4 and shall be fixed closed, and thereafter shall be retained as such for the lifetime of the development.
- 8) Open access ducting to facilitate fibre and internet connectivity shall be provided from the dwelling to the public highway.
- 9) Notwithstanding the provisions of classes A, B, C and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order), the buildings hereby approved shall not be extended or altered in any way, without the written approval of the Local Planning Authority.
- 10) All ecological mitigation measures within Chapter 6 (Biodiversity Mitigation Proposals) of the submitted Preliminary Ecological Appraisal (Date of Issue February 2021) shall be implemented throughout the development in full accordance with the advice and recommendations.

### **Conditions Schedule - Appeal B**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Site Layout\_New Build 002a A; Proposed GA Floor Plans 006 F; Proposed Elevations 007 H; and 3D Views 010 F.
- 3) No development shall commence until full details of Soft Landscaping has been submitted to and approved in writing by the Local Planning Authority. This will be a detailed planting plan and specification of works indicating soil depths, plant species, numbers, densities, locations inter relationship of plants, stock size and type, grass, and planting methods including construction techniques for pits in hard surfacing and root barriers. All works shall be in accordance with the approved plans. All existing or proposed utility services that may influence proposed tree planting shall be indicated on the planting plan. The approved details shall be completed in the first planting season following:
  - (i) Commencement of the development;
  - (ii) or agreed phases;
  - (iii) or prior to the occupation of any part of the development.
- 4) No construction/demolition works, or deliveries shall be carried out except between the hours of 8.00am and 6.00pm on Mondays to Fridays and between 9.00am and 1.00pm on Saturdays. There shall be no construction activity, including demolition, on Sundays or on Bank Holidays.
- 5) Notwithstanding any description of the materials in the application, precise details of the materials to be used in the construction of the external walls and roofs of the building shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the external walls and roofs of the building. The development shall be carried out in accordance with these approved details.
- 6) Notwithstanding details shown on the plans hereby approved, prior to any works commencing on site a scheme of existing and proposed ground levels, including those in adjacent land and finished floor levels for all buildings within the development, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.
- 7) Prior to the commencement on site full details of all boundary treatments proposed and to be retained shall be submitted to and agreed in writing by the Local Planning Authority. The approved boundary treatment shall be implemented in full prior to the occupation of the hereby approved dwelling and shall thereafter be maintained.
- 8) Open access ducting to facilitate fibre and internet connectivity shall be provided from the home to the public highway.
- 9) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, works must



be halted on that part of the site affected by the unexpected contamination and it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken to the extent specified by the Local Planning Authority prior to resumption of the works. Following completion of measures identified in the approved remediation scheme, a verification report must be submitted in writing and approved by the Local Planning Authority.

- 10) Notwithstanding the provisions of classes A, B, C and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order), the buildings hereby approved shall not be extended or altered in any way, without the written approval of the Local Planning Authority.
- 11) Development shall not commence until a detailed scheme for the disposal of surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall take place in accordance with the approved details.
- 12) Notwithstanding the submitted details, no development shall take place until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the Local Planning Authority relevant to that element of the development hereby approved. The approved CMS shall be adhered to throughout the construction period relating to that element of the development and shall provide details of the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoarding; wheel washing facilities; measures to control and monitor the omission of dust and dirt during construction; a Site Waste Management Plan; details of the routing of associated HGVs; measures to protect existing footpaths and verges; and a means of communication with local residents. The development shall be carried out in accordance with these approved details.
- 13) Notwithstanding the proposals detailed in submitted plans no development shall commence until a Tree Protection Plan is approved in writing by the Local Planning Authority. This must be in close accordance with:
  - BRITISH STANDARD 5837:2012 Trees in relation to design, demolition and construction - Recommendations
  - NJUG Guidelines For The Planning, Installation And Maintenance Of Utility Apparatus In Proximity To Trees (Issue 2) - Operatives Handbook 19th November 2007

Any such scheme agreed in writing by the Local Planning Authority shall be implemented prior to any equipment, machinery or materials being brought to site for use in the development and be maintained until all the equipment, machinery or surplus materials connected with the development have been removed from the site.

- 14) The boundary hedge located along the western and eastern boundary of the site shall be protected during the course of the construction period of the development with protective fencing and the boundary hedge shall be

retained for the lifetime of the development. If within a period of five years from the date of the development being completed, the hedge dies, is removed, becomes seriously damaged or diseased, it shall be replaced in the next planting season with others of a similar size and species.

- 15) Prior to the installation of any external lighting full details of the method of external LED illumination including:
  - (i) Siting;
  - (ii) Angle of alignment;
  - (iii) Light colour; and
  - (iv) Luminance.

of building facades and external areas of the site shall be submitted to and agreed in writing by the Local Planning Authority before development is commenced and the lighting shall be implemented wholly in accordance with the agreed scheme prior to occupation.

- 16) All ecological mitigation measures within Chapter 6 (Biodiversity Mitigation Proposals) of the submitted Preliminary Ecological Appraisal (Date of Issue February 2021) shall be implemented throughout the development in full accordance with the advice and recommendations.
- 17) Prior to the development hereby approved being brought into use a plan shall be submitted to and agreed in writing by the Local Planning Authority for the management of waste collection, including location of bin storage. The waste storage arrangements shall be maintained for the life of the development to the satisfaction of the Local Planning Authority.
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revising, revoking and re-enacting that Order with or without modification), no internal or external alterations shall take place to any garage, which would preclude its use for housing motor vehicles

**End of Schedules**