
Appeal Decision

Site visit made on 27 May 2025

by **C Livingstone MA(SocSci) (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2025

Appeal Ref: APP/F0935/W/25/3359400

108 Victoria Road, Whitehaven, Cumbria CA28 6JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant technical details consent.
 - The appeal is made by Mr Roy Donnan against the decision of Cumberland Council.
 - The application Ref is 4/23/2164/PIP.
 - The technical details consent (TDC) application for three dwellings pursuant to a Planning-in-Principle permission granted on appeal on 9th July 2020 under reference APP/Z0923/W/20/3246227 (Copeland Borough Council Reference 4/19/2246/PIP). This TDC application seeks to provide the necessary technical details to support development of the scheme. No EIA was required with the Planning-in-Principle permission.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The permission in principle (PiP) has established that the location, land use, and amount of development is suitable in principle. The technical details consent that is the subject of this appeal can consider the remaining detailed matters but cannot reopen what has been approved at the permission in principle stage. I have determined the appeal on that basis.
3. The Council has confirmed that the policies from the Copeland Local Plan 2013-2028 and the saved policies of the Copeland Local Plan 2013-2016 referred to in the Decision Notice have been superseded by policies from the Copeland Local Plan 2021-2039 (LP). Appeal decisions must be based on the policies from the development plan prevailing at the time of determination. In the case of this appeal, the Council has suggested that Policies DS4 and H6 of the LP are now the policies most important to the determination of the appeal. The appellants have had the opportunity to comment upon its relevance to the proposed scheme.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on the living conditions of the occupants of 106-110 Victoria Road in regard to privacy.

Reasons

Character and appearance

5. The appeal site comprises land to the rear of 106 and 108 Victoria Road, although the site includes some areas of levelled ground it generally slopes upwards from the back rear boundaries of these properties and in light of this the ground level within the appeal site is significantly higher than Victoria Road. The site is bound by the private rear gardens of neighbouring properties, grassland and mature trees.
6. Neighbouring dwellings are varied in terms of their design, form and external materials. However, the properties facing Victoria Road that are in front of the appeal site are single storey and modest in terms of their scale and massing, their design is simple with standard sized windows and their external elevations are finished in off-white render. Nearby dwellings on Rosemary Close are larger in terms of their built form and due to the variance in ground level in the area the height of their front and rear elevations differ. Their gable design also demonstrates the use of a simple built form and the utilisation of standard sized windows in the immediate area. Although they are varied, buildings in the locality are unified by a simple design and fenestration pattern that establishes the character of the architecture in the area.
7. The proposed detached dwellings would be built into the slope of the land. The split level design would be single storey at the rear and at the front the dwellings would include a garage at ground level, with living accommodation and a terrace at first floor level and bedrooms on the second floor within the attic. A contemporary design is proposed with large areas of feature glazing on the front elevation. External materials include render and cladding with a grey tile roof.
8. From the front it would appear that the proposed dwellings would appear significantly taller than neighbouring dwellings 106-110 Victoria Road, and their overall scale and massing would be much greater. While it is acknowledged that the dwellings on Rosemary Close are similar to the proposed scheme in terms of size; the layout of the properties on this street and their relationship with surrounding properties is not reflected in the scheme before me, which is more constrained.
9. Design elements such as the large dormers and the elevated external terrace are contemporary and not reflected elsewhere in the immediate vicinity. Also, the extent of glazing on the front elevation of the dwellings would result in these elevations having a greater solid to void ratio than neighbouring properties. In addition, the extent of the front roof plane, coupled with two large dormer windows, which together take up the majority of the width of the roof, results in the dwellings having a top heavy appearance. These factors combined with their elevated position would result in an incongruous and overly dominant development. My concerns in this regard are not addressed by an absence of landscape or ecological designations on the appeal site.
10. The appellant asserts that the scheme before me is the only practical way of designing the proposed development. However, I am not certain that it would not be possible to design a scheme that is appropriate to the locality.

11. For the reasons detailed above the proposed scheme would have a harmful effect on the character and appearance of the area. Therefore, the proposal would conflict with policies H6 and DS4 of the LP which requires that the design, layout, scale and appearance of the development is appropriate to the locality and that it creates and enhances locally distinctive places which are sympathetic to the surrounding context of the built, historic and natural environment and local landscape character.

Living conditions

12. As detailed above the proposed dwellings would have elevated terraces on their front elevations as well as expansive glazing which would face the rear of 106-110 Victoria Road.
13. There is some dispute between the main parties regarding the separation distance between the proposed dwellings and their external terraces and the closest habitable rooms and private rear garden areas of 106 and 110 Victoria Road. The information submitted in support of the development indicates that a separation distance of at least 21m would be achieved between habitable room windows in each dwelling and the nearest gable end window at No 108 Victoria Road. Still, the Council assert that a separation distance of only 12.5m between the rear of 108 and the closest raised terrace within the proposed development. The supporting information states that the rear extension on No 108 covers a swimming pool and as such would not be considered habitable accommodation. However, there is no substantive evidence before me to demonstrate that this is the case.
14. The proposed section plan shows a sight line from the terrace and a site line from the rear garden between a proposed dwelling and No 106 Victoria Road. The drawing indicates that a 2m high fence between the two properties would be sufficient to mitigate potential overlooking issues. Notwithstanding this, the drawing does not include a sight line from the windows on the top floor. Also, given the variance in ground levels across the site I am not certain that this plan is sufficient to demonstrate that the proposal would not harm the living conditions of the occupants of all neighbouring properties.
15. Based on the evidence before me, which includes my observations on the ground, the proposed separation distances are insufficient given the height of the proposed dwellings in relation to 106-110 Victoria Road. The large windows and external terrace would result in a significant increase in opportunities for overlooking and also perceived overlooking towards these properties resulting in the loss of privacy that occupants of these properties could enjoy.
16. It is acknowledged that the rear of 5 and 6 Rosemary Close are of a similar height when compared to the proposed dwellings and also occupy an elevated position. However, the separation distance between these dwellings and the closest dwellings on Victoria Road is greater.
17. The ownership of Nos 108 and 110 Victoria Road and their support or lack of objections of the proposal is not material to the planning merits of the development, which must consider the impact upon the living conditions of both current and future occupants.

18. Due to the variance in ground level across the site and the height of the proposed dwellings, I am not satisfied that additional planting would be a satisfactory mechanism to mitigate the harm identified.
19. For the reasons detailed above the proposed development would have a harmful effect on the living conditions of the occupants of 106-110 Victoria Road in regard to privacy. Therefore, the proposal would conflict with policy H6 of the LP which requires that privacy is protected through distance or good design.

Other Matters

20. My attention has been drawn to a housing development further along Victoria Road named 'the Mount'. However, these dwellings are lower than the dwellings proposed. In addition, photographs have been provided to highlight that housing in the locality is stepped and varied in height reflecting the sloping land level. It is not clear where this photo was taken or that it reflects the immediate context of the site before me. In light of these factors, I cannot be certain that the examples provided reflect the circumstances before me.
21. The Government is seeking to significantly boost the supply of housing. The Framework recognises that small sites can make an important contribution to the Council's housing supply. Although the proposed development is for just three dwellings, this would make a positive contribution and add diversity to the housing mix in the area and would provide social benefits. There would also be economic benefits in terms of the generation of economic activity during the construction of the houses and the provision of homes to residents who would contribute to the local economy. However, due to the small scale of the scheme, these benefits would be limited.
22. The Council raised no concerns in regard highway safety and drainage. Based on the evidence before me I have no reason to disagree with the Council on these matters. Nonetheless, an absence of harm in these respects is a neutral factor weighing neither for nor against the development.
23. I have found that the proposed scheme would harm the character and appearance of the area and the living conditions of neighbouring occupants. The adverse effects in these respects are considerable and outweigh the benefits detailed above.

Conclusion

24. The proposed development would conflict with the development plan. This conflict is not outweighed by other considerations. Therefore, the appeal is dismissed.

C Livingstone

INSPECTOR