



Appeal Decisions

Inquiry opened on 16 November 2021

Accompanied site visits carried out 16 and 17 November 2021

by Mrs J A Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Appeal A: APP/M4520/W/20/3263625

Appeal B: APP/M4510/W/20/3263441

**Former Westgate Road Police Station, Westgate Road,
Newcastle upon Tyne NE4 8RP**

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant planning permission.
 - Both appeals are made by Hadrian Property Investments Ltd against the decisions of Newcastle Upon Tyne City Council.
 - The application the subject of Appeal A, No 2020/0934/01/DET and the application the subject of Appeal B, No 2020/0933/01/DET, both dated 3 July 2020, were refused by notices dated 21 September 2020.
 - In relation to **Appeal A**, the development proposed comprises redevelopment of former Police Station (east) including demolition of cell block and erection of a small extension to create a commercial mixed-use development to include three ground floor units comprising two retail/shops units (A1 Use Class) and a dental surgery (D1 Use Class) and conversion of offices on upper floors to 15 No. apartments (C3 Use Class).
 - In relation to **Appeal B**, the development proposed comprises redevelopment of former Police Station (west) including part demolition and erection of a stand-alone hot food restaurant/takeaway with drive through (A3/A5 Use Class).
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Documents handed up during the Inquiry are listed at Annex B below and are prefixed with 'Doc'. Core Documents are prefixed with 'CD' and can be accessed via the electronic Inquiry library

<https://www.newcastle.gov.uk/planning/westgateroadpublicinquiry>

Decisions

Appeal A

1. For the reasons that follow, the appeal is dismissed.

Appeal B

2. For the reasons that follow, the appeal is dismissed.

Procedural and Preliminary Matters

3. The Inquiry sat for a total of six days, 16-19 and 23-24 November. I carried out an accompanied site visit on the first day of the Inquiry, inspecting the site, including the police building, and its surroundings. I returned to the site at 08.15 on the second day of the Inquiry, again on an accompanied basis, to observe pedestrian and vehicular traffic flows and movements at the junction of Dunholme Road with Westgate Road.
4. As set out on the planning application form in relation to Appeal A, the original

proposal included 18 apartments. However, the scheme was amended prior to determination of the application by the Council, including a reduction in the number of proposed apartments to 15. That is reflected in the agreed description of development set out in the header above.

5. Each appeal was accompanied by a schedule of planning obligations by way of a deed in the form of a unilateral undertaking under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). The provisions were discussed at the Inquiry and, with the agreement of the parties, engrossed versions were submitted shortly after its close.¹
6. Additional drainage details/information submitted to the Council prior to the Inquiry addressed related reasons for refusal in both appeals. As a consequence, this matter was not pursued at the Inquiry subject to the imposition of conditions securing an archaeological watching brief.
7. An amended plan was before the Inquiry revising the lane markings within the Appeal B site.² In relation to Appeal A, a further plan reduced the number of parking spaces served off the back lane from 6 to 3.³ It was a matter of agreement that no parties' interests would be materially prejudiced were I to determine the appeals on the basis of those plans.
8. The submitted plans in relation Appeal B include details of external signage. Were the appeal to succeed, any signage would need to be subject of a separate application under the Town and Country Planning (Control of Advertisements)(England) Regulations 2007. I have had no regard to the proposed signage in coming to a view on the planning merits of the proposed scheme.
9. Prior to the Inquiry, one of the identified main issues relevant to both appeals related to biodiversity and the level of green infrastructure provision. As a consequence of the evidence that emerged during the Inquiry,⁴ Mr Edwards accepted for the Council (during his evidence in chief) that issue was no longer taken in terms of biodiversity net gain, subject to conditions. No other party took any point on this matter. I have therefore dealt with green infrastructure provision/landscaping as part of my considerations in relation to character and appearance. As agreed by the main parties to the Inquiry, that is reflected in the wording of the related main issue set out below.

Main Issues

10. In light of the forgoing, the main issues in relation to Appeals A and B relate to:
 - the effect of the developments proposed on the character and appearance of the sites and the surrounding area, including the detailed design of the buildings in both schemes and green infrastructure provision;⁵

¹ Doc38 and Doc39

² Plan No 20-098/007A – West site highways layout (CD12.3 in the Plans Bundle for Appeal B)

³ Plan No 20-098/006B (Doc23)

⁴ Including Doc25

⁵ Whilst the design of the building the subject of the Appeal B scheme was a reason for refusal, the Council took no issue with the detailed design of the Appeal A scheme. The R6 party took no issue in terms of design, character and appearance in relation to either scheme. However, local residents had concerns in relation to the design of both schemes. It was agreed at the case management conference that the design of both schemes should form part of this main issue.

- the effect of the proposed access, parking and servicing arrangements on highway safety, when the schemes are considered both individually and in combination; and,
 - the effect on the living conditions of neighbouring occupiers in terms of privacy and noise and disturbance.
11. An additional main issue in relation to Appeal A, relates to whether future occupiers of the development proposed would be provided with acceptable living conditions in relation to outlook, privacy, and noise and disturbance from the Appeal B scheme and from servicing of both sites generally.
12. An additional main issue in relation to Appeal B, relates to the effect of the scheme on the health and wellbeing of local people and communities.

Reasons for the Decisions

Character and Appearance (Appeals A and B)

13. The appeals site is located in the Elswick area of Newcastle, on the southern side of the A186 Westgate Road, adjacent to the junction of Dunholme Road, opposite the campus of the Centre for Ageing and Vitality (the former Newcastle General Hospital site). The site comprises a former, 24 hour operational police station dating from the late 1960s, comprising a central core office block over four storeys, with two wings – a single storey wing extending to the east (former cells/custody suite) and a two storey maintenance wing extending to the west with an enclosed compound/ maintenance yard in front. The built form of development is located along the rear (southern) boundary of the site, backing onto what is referred to locally as the back lane, a narrow service road that is sandwiched between the rear of the appeals site and properties on Lynnwood Avenue. The back lane runs between Dunholme Road and Bentinck Road, both of which have priority junctions with Westgate Road. The remainder of the appeals site previously accommodated some 31 surface parking spaces, enclosed by metal railings along the main road frontage. I understand the police station use to have ceased in around 2017.⁶

Appeal A

14. The Appeal A scheme, which occupies the eastern part of the site but with its main vehicular access taken from Dunholme Road through the Appeal B site, includes demolition of the single storey east wing and the erection of a new single storey extension to facilitate a change in use of the ground floor of the main building to provide two retail/shop units and a dental surgery. The upper floors of the police office block would be converted to 15 residential flats, five on each floor, with remodelling of the external elevations.
15. The existing police station building is dated and of its time. Whilst the ground floor is of dark blue brick, the upper floors have a strong horizontal emphasis, with bands of windows at cill to ceiling height around each floor alternating with horizontal bands of white spandrel cladding beneath. There is no suggestion in this regard that the building is of any particular architectural merit. Moreover, it is not in keeping with the existing design typology of the area: it does not use traditional building materials of the area; it is not of a domestic scale and it is flat roofed. As such, it appears as somewhat incongruous in its context, with

⁶ Eg Freedom of Information request appended to Ms Jubb's statement (R6 party)

- the Newcastle Character Area Assessment identifying the premises as a negative landmark.⁷ That said, the combination of the location of the building at the rear of the site, together with the light material palette to the upper floors, does help minimise its visual impact to some extent, helping ensure that it does not dominate the street scene.
16. The appeal site occupies a prominent location alongside a major movement corridor, as defined in the Development and Allocations Plan (DAP).⁸ These routes are identified as being key to promoting the perception of Newcastle as an attractive and interesting place, meriting special attention where high quality design is particularly important. In that context, policy CS15 of the Core Strategy⁹ and policy DM20 of the DAP (both agreed as among the most important policies in this case, any conflict with which can be given full weight¹⁰) require that development should respond positively to local distinctiveness and character, delivering high quality and sustainable design by, among other things, securing opportunities to improve the character and quality of an area using materials, colours, tones and textures appropriate to the characteristics of the area, and enhancing the appearance of the city from major movement corridors.
 17. The ground floor of the refurbished building would be of dark blue brickwork to match the existing, with aluminium framed shopfronts. However, the proposed remodelling of the external elevations of the upper floors replaces the visually lightweight bands of glazing around the building with slightly recessed areas of dark charred cedar cladding, within which new, smaller window openings would be created for the apartments. Those areas would be set within the retained building frame, with the bands of white cladding replaced with a darker, blue-grey cladding. The dark charred cladding is also shown to the full height, slightly projecting element on the western elevation of the block, with a small obscure glazed bathroom window inserted on each floor.
 18. Whilst the Council took no issue in principle with remodelling of the external elevations, concerns were raised in relation to the cladding colours proposed. However, as officers felt that a condition could require external materials to be agreed, this did not form part of any reason for refusal. I do not agree. This is not a case where a small aspect of a proposed materials palette might reasonably be reserved for future approval. Here, the external remodelling and materials palette are integral to the overall design.
 19. In my view, the darker materials palette, especially in combination with the smaller window openings, particularly to the more prominent front elevation, gives the building a heavy, oppressive, almost monolithic feel that draws attention to its scale and proportions, emphasising its incongruity in its more traditional setting. This might well be a site where a building of individual appearance could be appropriate, given that there is some variety in terms of the architecture of its immediate and wider context. However, any building on the site, be it refurbished or new build, needs to respond the Government's drive for good design as expected by paragraphs 126 and 130 of the National Planning Policy Framework (the Framework). The modelling and materials palette proposed here does not, in my view, amount to good design.

⁷ Newcastle Character Assessment: Urban Areas (CD16.3) The appeals site lies within Area K136:Bentinck.

⁸ Newcastle upon Tyne Development and Allocations Plan 2015-2030 (June 2020)

⁹ Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (March 2015)

¹⁰ Policy Position Statement (CD17.1)

20. In terms of green infrastructure, paragraph 6.6.5 of the DAP sets out that enhancement along major movement corridors could include tree and hedgerow planting and improving forecourts. Reflecting that, Core Strategy policy CS18 and policies DM20, DM27 and DM28 of the DAP, together and among other things seek to enhance green infrastructure, including trees and hedgerows, by incorporating hard and soft landscaping and maximising tree planting where appropriate, in order to contribute to the quality, character and visual amenity of the development and the surrounding area.
21. There was, until relatively recently, boundary planting roughly 1.3 metres in depth behind the railings along the site frontage, together with other small areas of ground cover and a sizeable apple tree alongside the pedestrian entrance to the police station. At the time of the Inquiry, that had all been removed. However, neither the tree nor the areas of planting were covered by any form of protection. The starting point for consideration of this proposal, therefore, is the site in its current state i.e. there is no green infrastructure on the site.
22. A total of 22 parking spaces are proposed within the site frontage, 12 of which would back onto the retained railings. The landscaping plan¹¹ shows deciduous shrub planting within an extremely narrow strip between the rear of spaces 1-6 and the retained railings. Four, roughly parking space size areas of ground cover planting and low shrubs are located within the parking area, and three shrub planters would be placed across the current vehicular access off Westgate Road. No trees are shown.
23. In my view, even acknowledging the absence of any green infrastructure on the site at present, and putting to one side the proposed green roof to the extension which would not be seen from the road, the minimal planting proposed, particularly along the site frontage, has very little landscaping value, falling well short of what is required to enhance, to any meaningful degree, the appearance of this site from the adjacent major movement corridor. Again, that does not equate to good design.
24. For the above reasons, I conclude that significant harm would be caused to the character and appearance of the area, bringing it in to conflict with the relevant development plan policies which together seek to protect such interests. It would also conflict with Section 12 of the Framework, which promotes good design, seeking to ensure that developments are visually attractive and sympathetic to local character, adding to the overall quality of an area.

Appeal B

25. Appeal B involves demolition of the western, two storey wing and the erection of a two-storey drive-thru hot food takeaway and restaurant. A total of 16 parking spaces are shown on the site frontage, with access to be taken via a new access to be created off Dunholme Road (shared with the Appeal A scheme).
26. The location of the new building, towards the rear of the site, is appropriate. Whilst its front elevation would sit forward of the two storey wing to be demolished, it would still lie behind the front of the retained police office block, allowing for continued views from Westgate Road of the adjacent Angel

¹¹ Plan No 20-13/P108 (CD6.2)

Heights, a non-designated heritage asset. The Council takes issue with what it describes as the bulk of the proposed building. However, although it is slightly taller, its scale reflects the existing two storey police station wing. In my view, a smaller building in this location would be lost here, given its juxtaposition with the retained four storey police office block and the substantial, four and half storey, pitch-roofed Angel Heights on the opposite side of Dunholme Road and would, it seems to me, be seen as a weak architectural treatment of this corner site.

27. Good design is, in general, inherently informed by its context. Whilst the flat roof of the proposed building is uncharacteristic of the wider area, the two-storey wing to be demolished is flat roofed, as is the larger four storey block which would be retained. That block clearly forms part of the immediate context for the proposed building. More than that, the two buildings would be read together were the appeals to succeed. I am mindful, in this regard, that the evidence of the appellant is that redevelopment of the site as a whole is not financially viable. As such, retention and refurbishment of the building on the Appeal A site represents the only feasible option in today's market.¹² Given that context, I consider that a flat roofed building on the appeal building is not necessarily inappropriate. At the very least, its scale and form would not compete with the Appeal A scheme, the Angel Heights building or the two storey dwellings that around the site on Dunholme Road, Lynnwood Avenue and Bentinck Road.
28. There is no escaping that the building proposed is, in essence, a two storey box. That is generally the nature of the type of establishment proposed. Again, I am mindful in this regard that, on the evidence of the appellant, the use proposed is the only one that stacks up financially in terms of location and the size of the site. Indeed, the finances are such that the development is required to 'subsidise' the Appeal A scheme.¹³ Be that as it may, that does not mean that good design has to be thrown out of the window.
29. With the exception of the monolith signage column embedded in the front elevation, which would be finished in horizontal blue grey cladding, dark charred cedar cladding is proposed for the entire building. It may well be that the dark colour is intended to reference the dark blue brick of the existing wing, but that dark brick is contained, especially on the Westgate Road elevations to the ground floor for the most part. The upper floor of the police office block and the majority of the two storey wing to be demolished, draw from a light material palette. I recognise that the proposed materials are intended to chime with those proposed for the retained police office block, but I have found the colours to be inappropriate here.
30. Full height curtain glazing is proposed to the ground and first floors of part of the Westgate Road elevation and part of the Dunholme Road elevation, providing some relief. Even so, the extensive dark cladding gives the building an almost brooding presence. The materials and the detailing say nothing about the location. I agree with the Council and other objectors in this regard, that the building takes no visual cues from the local area. Rather it is an anonymous, context-less black box, more suited to a retail park. Indeed, it

¹² Sanderson Weatherall letter dated 18 October 2021 (Appendix 9 to Mr Hedley's proof in relation to Appeal A and Appendix 11 to his Appeal B proof)

¹³ Ibid

would seem that the design is informed by a Burger King on the Anchor Road retail park in Hartlepool, a quite different context to that here.

31. I recognise that there are individual buildings nearby on Westgate Road that are not of traditional brick with a pitched roof. In those instance however (for example the Beacon building within which the Inquiry was held, or the nearby medical practice building) the buildings are generally of higher quality design and of greater architectural interest than is demonstrated here. The design of the restaurant building proposed is not specific to its context and does not appear to be based on an understanding of the way the local area looks and works. Neither is it of sufficiently high quality or interest to stand on its own. Good design should create successful places with character, variety and identity. The appeal scheme does not deliver that.
32. In terms of green infrastructure, whilst a couple of areas of shrub adjacent to the existing parking spaces have been removed, a narrow planted strip with four trees (between some of the parking spaces and the frontage railings) has been retained. During the Inquiry, a Tree Preservation Order was served in relation to those remaining trees. That Order has immediate, albeit provisional effect.¹⁴
33. The existing planting strip along the site frontage would be retained and extended to return along the Dunholme Road frontage. The existing trees would be retained with new shrub planting beneath. In light of the need for excavations adjacent to the planting strip for a new fin drain (as shown on the original plans) there was concern as to whether the trees would survive. Additional information submitted by the appellant during the Inquiry confirmed that, if necessary, an alternative route outwith the root protection area could be accommodated.¹⁵ Although that would involve some minor adjustment of current ground levels (increasing levels at the northern end of the parking spaces by some 50mm) I see no reason why that would necessarily impact on the health and longevity of the protected trees. Similarly, whilst the parking spaces here would be beneath the tree canopies, a condition could secure their construction using a no dig method. I find no harm in these regards.
34. With retention of the trees plus the additional, albeit limited planting on the Appeal B site, which could be secured by conditions, I consider the green infrastructure provision to be adequate and I find no policy conflict in this regard.
35. The Council has strong design led policies, particularly in important locations such as this, adjacent to a major movement corridor. The Government too places great emphasis on well-designed places, with the Framework confirming that good design is a key aspect of sustainable development. Whilst I consider the green infrastructure proposed in scheme B to be adequate, and I take no issue with the siting, scale or form of the proposed restaurant building, I consider the design in relation to architectural detailing and the proposed materials palette to be inappropriate in this setting. The scheme does not respond positively to local distinctiveness and character and it would do little to enhance the appearance of the city from a major movement corridor, with consequential harm to the character and appearance of the area. That brings it

¹⁴ The protection afforded lasts for six months unless the Authority confirms the Order to provide long-term protection, or decides not to confirm it.

¹⁵ Doc21 and Doc24

in to conflict with policies CS15 and DM20 of the development plan which seek to protect such interests. There would be conflict too with Section 12 of the Framework, which confirms that high-quality beautiful buildings and places are fundamental to what the planning and development process should achieve. The proposal does not represent good design.

Highway Safety (Appeals A and B)

36. Currently, vehicular access to the site is taken from three points. The Westgate Road entrance to the site, at the eastern end of the road frontage, is barrier controlled. The first Dunholme Road entrance, also barrier controlled, is located around 7.5m back from the give way line at the junction with Westgate Road.¹⁶ Both provide vehicular access to the car parking area at the front of the site as a whole. A second Dunholme Road access, located some 19m from the junction, provides access to the enclosed maintenance yard/compound and is secured by manually controlled gates on the highway boundary.
37. The centre line of the proposed new access off Dunholme Road would be just under 15 metres from the give way line, some 20.91 metres from the centreline of Westgate Road.¹⁷ The three existing vehicular access points would be closed off. Access to the Appeal A scheme, which occupies the eastern part of the site, would be taken through the Appeal B site, via the proposed new access.
38. There was no evidence to contradict the appellant's position that the commercial elements of both schemes would be largely reliant on 'pass by' traffic which is already on the highway network. I am mindful, in this regard, that the Council takes no issue with the appeal schemes in terms of general highway capacity and accepts that both sites are very accessible. I have no reason to take a different view on this.
39. Whilst the evidence to the Inquiry of Mr McGillivray for the Council was that, in terms of quantum, sufficient on-site parking spaces would be provided for both appeal schemes, much time was spent looking at the operation of the proposed parking, servicing and vehicle circulation areas within the appeal sites.
40. In relation to Appeal A, there was particular concern about operation of the larger vehicle turning space at the far (eastern) end of the site, adjacent to proposed parking spaces and a proposed pedestrian link along the eastern site boundary between the main road and the proposed commercial units. There was no dispute in this regard, that there would be sufficient space for a larger delivery vehicle to be able to enter and leave the site in a forward gear using that turning area. Whilst it may not, necessarily, be feasible for all vehicles to do that as a three point turn it would, nevertheless, be feasible without overly complex manoeuvring. Yes, space is constrained within this part of the site and any manoeuvring may, at times, bring the vehicle into conflict with other vehicles within the site. But that is the case in many a small car park adjacent to commercial units where manoeuvring takes place with caution. I am not persuaded in this case, that the manoeuvring required would be so onerous or so inherently unsafe that the appeal should fail in this regard. In coming to that view, I am mindful that agreed conditions could secure a servicing and delivery management plan, particularly for larger vehicles, and a refuse

¹⁶ This and the next measurement are taken from the appellant's Transport Assessment (CD3.2)

¹⁷ Doc33

storage, collection and management strategy, which together would minimise the potential for conflict.

41. The Appeal A scheme includes three additional chevron parking spaces accessed off the back lane.¹⁸ The lane is very narrow and I am in no doubt that driving/reversing into and/or driving/reversing out of those spaces would require care. However, similar manoeuvres are carried out by Lynnwood Avenue residents when entering and leaving their garages, which are accessed off the back lane. In their context, I am satisfied that the manoeuvres would not be inherently unsafe given the nature of the lane as a straight service road with good visibility in both directions, where users would be well aware of the need to proceed with caution. I recognise that if vehicles were parked on the back lane opposite the proposed spaces, access to those spaces would be less straightforward. However, Manual for Streets recognises that where space is limited, it may not be possible to provide for vehicles to get into parking spaces in one movement and that some back and fore manoeuvring may be required.¹⁹ It goes on to note that this is likely to be acceptable where vehicle speeds are low. The nature and width of the back lane are such that traffic speeds are, necessarily, low. I am content, in the circumstances that prevail here, that the proposed arrangement would not give rise to material issues of highway safety.
42. Criticisms were also levelled at the Appeal B scheme. The revised layout plan provides a dedicated right turn lane within the site, allowing up to five vehicles waiting to enter the drive-thru circulatory to queue clear of traffic looking to access parking spaces within Appeal site B or travelling through to Appeal site A.²⁰ Much of the Council's concern in this regard related to the implications of any queues from the proposed drive-thru backing up through the site and out onto Dunholme Road, given the proximity of the new access to the junction with Westgate Road.
43. The appellant undertook queuing surveys at a number of existing drive-thru establishments between 11.00-14.00 on a consecutive Friday and Saturday.²¹ I was advised, in this regard, that the peak activity for hot food takeaways such as that proposed, is over the lunchtime period. At the request of the Council, the surveyed sites included a McDonalds drive-thru on the Fellings by-pass. However, for reasons relating to its very different characteristics and location,²² I agree with the appellant that the figures for that facility can be put aside. Looking at the other surveyed premises, the average queues from the collection windows comprised between 1-5 vehicles and a maximum of 9. In relation to the latter figure, that represents a queue of 9 vehicles once during a 15 minute interval during peak operational hours.
44. The Council also undertook a survey, comprising snapshot queue lengths at a specific point in time at a number of establishments.²³ The survey included the Fellings by-pass McDonalds which, for the reasons referred to above, can be discounted for the purpose of this exercise. It also included a number of other McDonalds premises. I was advised that McDonalds has a quite different drive-

¹⁸ Plan No 20-098/006B (Doc23)

¹⁹ Paragraph 8.3.53 (Doc22)

²⁰ Plan No 21E31-QU01 at page 2 of Appendix B to Mr McGillivray's rebuttal proof

²¹ Including a KFC and three Burger Kings. Transport Witness Statement (TWS) appended to the appellant's Statement of Case for Appeal B (CD14.4 Appendix 1)

²² CD14.4 Appendix 1 paragraph 5.10

²³ CD14.5

thru profile compared to other establishments. In recognition of that, the related planning obligation excludes McDonalds as a potential end user of the site.²⁴ On that basis. I am content that it would not be appropriate to include the surveyed queue lengths at those other McDonalds premises for the purposes of this appeal. The surveys at the other two premises looked at by the Council²⁵ showed maximum queue lengths of 9 and 11 vehicles.

45. The proposed layout can accommodate a maximum queue from the collection window within the circulatory of some six vehicles plus, as already referred to, a further five on the internal right turn lane within the site.²⁶ A total of 11 vehicles.
46. Drive-thru activity has, anecdotally, been above normal levels during the pandemic, reflecting the lower capacity of restaurants due to social distancing measures etc. If that is the case, then the observed figures can be treated as being very robust. I am also aware that the Council's surveys were simply snapshots, as opposed to a longer survey period on any day which may have given a better indication of average queue lengths over the lunch time periods. Even so, on the basis of the information that is before me, and with the proposed restriction on end users in place, I consider that sufficient space is available within the site such that the proposed drive-thru operation would not be likely to lead to queues backing out onto Dunholme Road.
47. I recognise that the location of the two proposed grill order bays would require drivers emerging from the circulatory to cross other traffic exiting and entering the appeals site. I see no reason however, why that could not be managed with, for instance appropriate road markings and/or signage. That arrangement is not unusual in my experience. In addition, it was agreed that a condition controlling the timing of service deliveries for the Appeal B site could ensure avoidance of any conflict with customer parking requirements and/or drive-thru related traffic.
48. Other concerns in relation to both appeals related to traffic turning off Westgate Road, into Dunholme Road suddenly meeting traffic, particularly right-turning traffic, exiting the appeals site.
49. The centre point of the new access would be 20.19 metres from the centre point of Westgate Road, just under 15 metres from the give way line.²⁷ The Council's guidance on 'Design and Construction of Roads and Accesses to Adoptable Standards' (October 2015) sets out that the spacing of junctions should accord with its Table 4.4.²⁸ However, the two scenarios envisaged in that Table - centre to centre junction spacings where junctions are on the same side of the principal road, and centre to centre spacings for junctions on opposite sides of the principal road, do not reflect the arrangement here.
50. The Council argued that as the proposed access is parallel to Westgate Road, it should be treated as being on the same side and as such, a separation of at least 30 metres is required (as per Table 4.4). I find that overly contrived. It assumes that the principal road is Dunholme Road and that the appeal site and

²⁴ Doc31

²⁵ A KFC and a Burger King

²⁶ Based on a combination of Fig 5 in the proof of Mr McGillivray, Plan 21E31-QU01 attached to his rebuttal and allowing for up to six vehicles within the circulatory from the collection window as confirmed by Mr McGillivray in his oral evidence. See also paragraph 5.17 of the Transport Assessment for the Appeal B scheme (CD9.2).

²⁷ Doc33

²⁸ CD16.1

Westgate Road are the two relevant junctions for spacing. That is patently not the case: Westgate Road is the principal road. The appeal site access forms a priority junction with Dunholme Road. There is no through traffic passing two distinct minor road junctions. In my view therefore, the Council has no guidance on junction spacing that is relevant to the arrangement that exists here. The appeal schemes therefore fall to be assessed in the round, considering a wide range of factors, as recommended at paragraph 9.2.2 of Manual for Streets 2.²⁹

51. Dunholme Road, a residential access road, is subject to a 20mph speed limit. In the vicinity of the site, there are five on-street parking bays reserved for police vehicles on the west side, and double yellow line waiting restrictions on the east side that extend to the south, beyond the Lynnwood Avenue junction.
52. In cross-examination, Mr Tucker put to Mr McGillivray that the Sight Stopping Distance (SSD) for drivers travelling at 20 mph is 12 metres. On the basis that the shortest distance from Westgate Road is around 15 metres, and assuming that traffic was travelling no faster than 20 mph, Mr McGillivray agreed that in principle, there was enough space to slow and stop if the access was blocked. No-one at the Inquiry challenged the figure, and it was repeated a number of times by others thereafter. However, Table 7.1 of Manual for Streets, which sets out SSDs, indicates that for speeds of up to 20 mph, the SSD is 22 metres. The 12 metre SSD relates to a speed of 20 kph. That said, advice in Manual for Streets 2 is that there appears to be little evidence that junction spacing criteria based on SSDs are justified on safety or other grounds.³⁰ I have, therefore, considered the arrangement proposed on its own merits.
53. The distance between traffic turning right off Westgate Road (at the centreline) and the centreline of the proposed access, is just over 20 metres. Drivers waiting to turn would have clear views into Dunholme Road, including the proposed site entrance, and would be able to see at a glance if there was any traffic blocking their way. As such, the oncoming driver is not in the position of having to commit to the right turn manoeuvre if they are unable to complete it safely and would have plenty of time to adjust their speed to suit.
54. In terms of drivers turning left off Westgate Road, the boundary of the appeals site along the main road frontage currently comprises railings atop a low boundary wall. These are to be retained. There are views through the railings into the proposed parking/vehicle circulation areas across both appeal sites on that approach. Closer to the junction, there are also views into Dunholme Road. As such, drivers would have some forewarning on their approach of any queues within the site, or on the side road, before committing to the turn at an appropriate speed.
55. However, a bus stop is located along the frontage to site B. If a driver was tempted to overtake a stationary bus before turning left, views into the Dunholme Road junction, would be obscured. Even in these circumstances though, the manoeuvre would not necessarily be hazardous. The driver would be some 16-17 metres from the proposed access when starting the turn into the side road, having been forced out towards the middle of Westgate Road because of the overtaking manoeuvre, giving a longer sight distance. Drivers would also, it seems to me, proceed cautiously precisely because of the lack of

²⁹ Doc22

³⁰ Paragraph 9.2.1 (Doc22)

- forward visibility and the potential for pedestrians to be crossing the mouth of the junction.
56. This a manoeuvre that will have been taking place for many years, including when the police station was operational.³¹ The Personal Injury Collision data over the five years 31 March 2015 - 31 March 2020 shows no incidents on the main part of Dunholme Road, including in the vicinity of the existing accesses to the appeals site, and just four incidents in the vicinity of the Dunholme Road/Westgate Road junction.³² One of those is unrelated to highway safety and two others appear to have occurred on Westgate Road. Only one appears to have occurred in the mouth of the Dunholme Road junction itself, where a vehicle failed to give way to a pedestrian crossing the carriageway, resulting in an injury recorded as slight.
57. The developments proposed would increase vehicular, and presumably pedestrian movements at the junction. I also recognise that not everybody looks around them before crossing and am mindful of the video clips shown to the Inquiry by the Residents' Association of pedestrians, particularly school children, crossing the junction mouth without looking. However the data does not show that operation of the junction historically, where vehicles have been turning into Dunholme Road in any of the circumstances outlined above, either at a time when police staff would have been entering/exiting the site at a point much closer to the junction than is proposed, or now in connection with the current use of the site for parking by Westgate College (using that same access) presents a particular safety issue with this junction.
58. I have already established that vehicles queuing within the Appeal B site are unlikely to block back onto the road. I also consider that any delay to vehicles looking to turn left into the site due to parking manoeuvres within the site, would be fleeting. In any event, for the reasons set out above, it seems to me that oncoming drivers would be sufficiently aware of any blockage, and would travelling at such a speed, that they would be able to stop in time.
59. There were concerns that drivers turning right out of the appeals site may, on occasion, block oncoming traffic on the southbound side of Dunholme Road. The peak hour for traffic generation associated with the proposed restaurant/drive-thru is between 12.00-13.00. The junction capacity assessment submitted with the Appeal A scheme³³ shows the Dunholme Road/Westgate Road junction operating well within capacity, with minimal queuing even over the lunch time peak³⁴ and sufficient reserve capacity. That assessment included, as a sensitivity test, traffic associated not only with Appeal A, but also Appeal B. I have no reason to suppose therefore, on the evidence before me, that queues at the junction would be such that they would necessarily lead to right turning vehicles exiting the appeals site having to wait within the southbound carriageway before completing the turn.
60. Due to the pandemic restrictions and the implications of that for traffic survey data, the junction capacity analysis used 2018 TADU traffic flow data.³⁵ There

³¹ From April 2015 to 2017 personnel on the site numbered between 80/90 (as per Freedom of Information Request appended to the statement of Ms Jubb for the R6 Party)

³² Section 3.27-3.32 Transport Assessment Appeal B (CD9.2)

³³ Sections 5 and 6 of the appellant's Appeal A Transport Assessment (CD3.2)

³⁴ Max mean vehicles queues in the peak ranged from 0.0-0.3.

³⁵ Traffic and Accident Data Unit. TADU had a 2018 traffic counter on Westgate Road some 200 metres from the appeal site.

was much criticism of that. However, the identified weekday peak hour traffic flow on the road network (17:00-18:00) was combined with the anticipated traffic generated during the peak hour of the proposed drive-thru (12.00-13.00). The 2018 survey flows were also used without adjustment, a robust approach given that traffic flows on Westgate Road appear to have been declining in recent years. As a sense check, a snapshot survey of actual June 2020 traffic flows on Westgate Road was undertaken in the lunchtime peak hour, the results of which were comparable to the 2018 data. The turning flows at the Dunholme Road junction were also observed then and were added to the Westgate Road flows to give an indication of baseline traffic flows for assessment purposes. The development traffic movements in the weekday peak hour for both the Appeal A and Appeal B schemes were added to the robust baseline to give an indication of how the junction would operate. The approach also assumed all traffic was new, with no reductions for pass-by or linked-trip traffic from Westgate Road. All in all, I am satisfied that the assessment comprises a sufficiently robust approach in the circumstances that prevail here.

61. There is space for at least three queuing cars from the site access/egress up to Westgate Road.³⁶ In light of the results of the junction capacity assessment, I am content that traffic waiting to exit Dunholme Road onto Westgate Road would be unlikely to result in queues that could impede right-turning traffic looking to exit the appeal site which might, in turn, present a hazard for southbound traffic on Dunholme Road. Even were their way to be blocked for some reason, drivers entering Dunholme Road would be unlikely, for the reasons set out above, to be travelling at such a speed that they would be unable stop safely.
62. The appellant's Road Safety Review was also the subject of much discussion. In terms of its status, whilst it is not a full Road Safety Audit, it does identify potential theoretical conflicts, which I have assessed above.

Overall Conclusion on Highways

63. Subject to conditions, I have found the proposed parking and servicing arrangements for both appeal schemes to be acceptable. There would be no conflict, in this regard, with policy DM12 of the DAP which, among other things, seeks to secure safe and useable vehicle parking that satisfies the operational requirements of a proposed development, with adequate servicing and loading facilities.
64. As with any highway where pedestrians and vehicular traffic mix, there is always a residual risk. On the evidence before me however, including my observations during the accompanied site visits, and having regard to the specific reasons for refusal in each case, as well as the concerns of the R6 party and local residents, I am not persuaded that the appeal schemes, either individually or in combination would necessarily give rise to unacceptable safety concerns in the circumstances that prevail here. I find no conflict, in this regard, with Core Strategy policy CS13 and policy DM14 of the DAP, which together and among other things require that new development adequately

³⁶ Although Figure 3 in the proof of Mr McGillivray shows two vehicles on this stretch, with one vehicle straddling the highway, they are widely spaced and the front car is shown set well back behind the give way line. In normal circumstances, I see no reason why three vehicles, even were they all looking to turn right onto Westgate Road, could not queue here.

mitigates against its impact on the highway network in the interests of safety, efficiency and accessibility. There would be no conflict either with paragraph 111 of the Framework, which advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or that any residual impacts on the highway network would be severe.

Living Conditions for Neighbouring Residents (Appeals A and B)

Privacy (Appeal A only)

65. The Appeal A scheme proposes conversion of the upper three floors of the four storey block to 15 apartments, five on each floor. At present, the upper floors are glazed from cill to ceiling height across the full width of the back lane elevation. The proposed conversion includes a significant reduction in the amount of glazing to this elevation and reduces the height of the top of the windows, although the cill heights would remain the same.
66. The rear of a number of Lynnwood Avenue properties directly face the rear elevation of the block, with their gardens extending up to the back lane, coming to within around 6 metres of that rear elevation.³⁷ Six of the proposed apartments (two one-bedroom flats on each of the first, second and third floors) each have three rear facing windows to principal habitable rooms: two to a lounge/dining/kitchen area and the third to a bedroom.
67. Other than in a single instance, the separation distances between facing windows to habitable rooms would be in the region of some 22-25 metres. The Council has no standards for minimum window to window distances for habitable rooms. In my experience, as a general rule of thumb, whilst a separation of around 21 metres for facing two storey properties can generally be considered sufficient to provide a reasonable degree of privacy, that should increase where the number of storeys is greater. Here, the two storey Lynnwood Avenue properties (some with accommodation within the roof space lit by rear facing dormer windows) face a four storey building.
68. Given the greater height of the proposed apartments, I consider that the distance separation that exists would not be sufficient to prevent direct overlooking down into the habitable rooms opposite, materially affecting the privacy of existing residents. That is exacerbated by the fact that the proposed apartments would be little more than 6 metres from the rear gardens of the Lynnwood Avenue properties, with elevated views directly into those garden areas, in particular into those parts of the gardens closest to the houses which are likely to be more intensively used.
69. I acknowledge that a degree of overlooking is not uncommon within urban areas and that the proposed accommodation relates to an existing building in an urban location. I also recognise that the number and size of windows as existing would be significantly reduced by the appeal scheme. However, that doesn't address the different characteristics of office occupation compared with residential occupation. I saw during my site visit, that the offices were spacious, with multiple windows, the corner offices having windows to the side

³⁷ This measurement and those that follow are taken from Plan Nos 20-13/P205D and 20-13/P204BC (CD17.4) which show the agreed distance separations, although they do not appear to take account of the fact that the upper floors of the four storey block overhang the footway, coming slightly closer to the rear of the Lynnwood Avenue properties.

as well as the rear. As such, views out would have been more wide ranging, rather than focussing on the rear windows and gardens of the opposite properties. Office workers are also more likely to have been focussed on their work, rather than sitting looking out of the windows. In contrast, the apartments proposed would be compact, with internal floor areas of some 43-45 sqm.³⁸ More importantly, they would be single aspect,³⁹ such that the only views for future residents would be focussed directly towards the Lynwood Avenue properties and their associated rear gardens.

70. The exception in terms of separation distances referred to earlier, relates to a small, north facing window in the gable end above a garage to one of the Lynnwood Avenue properties, which is located at the back of the footway on the back lane, just over 6 metres from the rear wall of the police building. However, whilst that window is at a lower level than the proposed apartments, it is obscure glazed with a top hung opening light. I am content, in this regard, that the privacy of existing occupiers of that particular accommodation would not be compromised by the development proposed. That aside, I consider that the proximity of the block to the boundary, combined with the nature of the rear facing windows proposed and their elevated position, means that the appeal scheme would have a material adverse impact on the living conditions of neighbouring occupiers in terms of overlooking and loss of privacy.

Noise and disturbance (Appeals A and B)

71. The new building the subject of Appeal B would be set off the rear site boundary, some 8 metres to the west of the police office block. An acoustic fence is proposed along the length of the rear boundary of the Appeal B site with the back lane, extending from the police office block, returning part way along the Dunholme Road frontage. The 1.8 metre high fencing would sit on top of a low retaining wall and would have an overall effective height of some 2.65 metres in relation to ground levels within the site (2.2 metres high from the roadside).
72. The noise climate here is mainly influenced by road traffic, particularly on Westgate Road and local traffic on residential streets. The existing buildings on the site provide a degree of attenuation for Lynnwood Avenue residents in relation to traffic noise on Westgate Road. In relation to Appeal B, whilst the western, two storey wing on site would be demolished, it would be replaced with a slightly taller, detached. That would also provide sound attenuation. Notwithstanding the proposed acoustic fencing, the Rule 6 party and local residents were concerned about the 8 metre 'gap' within the site between the four storey block and the proposed restaurant/drive-thru building and the potential for increased traffic noise at the rear of their properties.
73. The first point to note is that planning permission is not required for demolition of the building, which could be undertaken at any time subject to any necessary prior approvals in relation to the method of demolition and any proposed restoration of the site. Putting to one side for the moment noise that may occur from the proposed development itself, it was confirmed in the oral evidence of Ms Alderson for the appellant that the LA90 background noise level for existing occupiers is unlikely to be affected by the proposed arrangement.

³⁸ Plan No 20-13/P106B

³⁹ Each of the flats is shown as having a side facing bathroom window, which would be obscure glazed. That would not provide any secondary views from the habitable rooms.

Even were it a material consideration, there is no evidence before me to demonstrate that any increase would be to an unacceptable degree.

74. Noise monitoring was undertaken in February 2019 from a point at second floor level at the rear of the police office block to represent the noise climate at potentially the most sensitive receptors. Background noise levels were recorded as being in the region of 44dB L_{AF90} between 07.00-23.00 hours on a weekday, with an L_{Aeq} level of 51dB over the same period. The background noise climate between 23.00-07.00 was 34dB L_{AF90} with an L_{Aeq} level of 42dB.⁴⁰
75. The noise evidence of the R6 party⁴¹ was concerned that background levels were not monitored over a weekend. However, additional noise monitoring was carried out over the weekend of 17-21 September 2021. That recorded higher background noise levels than did the earlier assessment. I am content in this regard, that assessment against the earlier, slightly lower levels, with the attenuation provided by the existing buildings, represents a robust worst case scenario for both day and night time periods against which to assess the impact of the development proposed.
76. At the Inquiry, opening hours for customers of the Appeal B scheme were confirmed as 08.00-22.00 hours daily, with servicing and deliveries restricted to 07.00-08.00 hours, all of which can be secured by conditions were the appeal to succeed. I am mindful, in this regard, that the noise climate is relatively steady throughout the day, with the background level only beginning to reduce significantly after midnight, a couple of hours after the proposed premises would have closed.
77. Parking for the Appeal B scheme is shown on the site frontage, adjacent to Westgate Road, separated from the back lane and the Lynnwood Avenue properties by the proposed building. In addition, the front entrance to the proposed building would be on the northern elevation, facing onto the proposed parking area. It was confirmed that all deliveries etc would take place via that front door entrance.⁴² A binstore is shown adjacent to the eastern (side) elevation of the building. Although the plans show gates on the southern side of that enclosure, it was agreed at the Inquiry that were the appeal to succeed, a condition could ensure that additional gates were installed to the northern elevation of the enclosure to facilitate bin collection from the car park area, with the width of the gates on the southern side of the enclosure restricted to pedestrian access only. I am content, in this regard, that the noise attenuation that would be provided by the building itself, together with relevant conditions, would be sufficient to ensure that servicing and delivery events would not give rise to an unacceptable noise climate for existing residents.
78. Whilst there is no standard for noise in car parks, the Noise Policy Statement for England (NPSE) applies everywhere. Among other things, it aims to avoid significant adverse impacts on health and quality of life and mitigate and minimise adverse impacts on health and quality of life. All bar a couple of parking spaces on the Appeal B site would be screened from the rear of the Lynnwood Avenue properties by the proposed building. I have no reason to suppose, in this regard, that the building would not sufficiently mitigate the

⁴⁰ Tables 2 and 3 in the Noise Assessment that accompanied the Appeal B application (CD9.15)

⁴¹ NOVA Acoustics Report No 5533CD dated 29 January 2021 (Appended to the statement of Ms Jubb)

⁴² The NOVA report refers to deliveries being taken from Dunholme Road. i

majority of potential noise impacts arising on the front part of the site in the same way that the existing two storey wing does.

79. However, the easternmost parking space closest to Lynnwood Avenue, a disabled parking space, would be located opposite the 'gap' between the police office block and the proposed building. There was concern in this regard, particularly in relation to sudden noises from car doors slamming. The nearest windows at the rear of the Lynnwood Avenue properties facing the 'gap' would be some 40 metres or so away from those spaces. Even discounting any attenuation provided by the proposed intervening bin store, the rebuttal evidence of the appellant's noise consultant demonstrates that with the acoustic fence in place, even a car door slamming in that nearest parking space would be attenuated to some 42dB L_{Amax} at the nearest rear facing window through the 'gap'. That would be below the L_{A90} levels recorded up to 23.00 hours with the attenuation provided by the existing buildings. Moreover, the premises would be closed to customers after 22.00 hours.
80. The proposed circulatory for the drive-thru traffic runs from the car parking area between the police office block and the proposed building, turning along the rear site boundary with the back lane, before turning north, between the proposed building and Dunholme Road to re-join the internal access road. The customer order point is shown between the police office block and the proposed building: the payment and subsequent collection windows are shown on the rear elevation of the proposed building.
81. The appellant's rebuttal evidence demonstrates that, in relation to the Lynnwood Avenue properties at both ground and first floor levels, any noise associated with the customer order point would be more than adequately mitigated by the acoustic fencing to 25-28 dB $L_{Aeq,1hr}$, well below the existing (attenuated) noise climate. The payment and collection windows would be immediately adjacent to and below the height of the acoustic fencing. As confirmed in oral evidence by Ms Alderson during the related discussion, since the acoustic fence would be very close to potential noise sources here, mainly vehicles on this section of the circulatory, it would have maximum effect and would mitigate vehicle noise from the drive-thru, although I recognise that no detailed figures are before me to support that.
82. In relation to external fixed plant, I was advised that the noise modelling did not allow for any rooftop screening or enclosure whereas in fact, a parapet wall is shown on the plans. Moreover, whilst concerns were raised as to whether the proposed condenser units within the bin enclosure had been assessed correctly, Ms Alderson advised that the assessment had assumed three condensers there, mounted at a height of 2 metres with no enclosure, when in fact only two are proposed, mounted at 1.5 metres above ground level within the proposed enclosure. In both these regards therefore, the modelling represents a worst case scenario. The modelling demonstrates that predicted noise levels from the external plant at the nearest façades would be lower than the existing noise climate resulting from road traffic, although I recognise that there may well be tonal differences. Conditions could ensure in this regard that any refrigeration/heating system to be used on the site at night did not exceed 29dB L_{Aeq} at the site boundary.⁴³

⁴³ As suggested at paragraphs 7.2.7, 7.2.8 and 8.4.5 of the appellant's Noise Assessment (CD9.15)

83. The evidence before the Inquiry demonstrates that, in relation to Appeal B, the proposed restaurant building, combined with the proposed acoustic fence and the use of appropriate conditions, would provide sufficient amelioration, such that existing noise levels at the Lynwood Avenue properties would not be exceeded by the development itself.
84. In terms of servicing related to the Appeal A site, the main concerns related to waste collection. Even taking account of different waste streams, I have no reason to suppose that arrangements would necessarily be materially different from when the site was operating as a police station when, I was advised, bins were wheeled to the ends of the back lane. In any event, a condition was proposed that would secure the submission of a refuse storage, collection and management strategy for the site, which would help minimise any potential issues in relation to associated noise and disturbance. Again, I find no harm in this regard.

Litter

85. Concerns voiced by local residents in relation to littering that may be associated with the proposed takeaway restaurant could be addressed through the use of conditions to secure litter bin provision on the site (as shown on the submitted plans) and details of a strategy for daily litter picking in the nearby area.

Overall Conclusion on this Issue

86. In relation to both appeals, I have found no harm in relation to noise and disturbance. There would be no conflict in this regard, with Core Strategy policy CS14, policies DM23 and DM24 of the DAP or policies HFT4, HFT6 and HFT7 of the Council's SPD, which together and among other things seek to protect the living conditions of existing residents in this regard. There would, however, be material harm in terms of the effects of the Appeal A scheme on the privacy of occupiers of a number of properties on Lynwood Avenue, bringing it into conflict with policy DM23 of the DP which, among other things, seeks to protect the living conditions of existing residents in terms of their privacy. Inasmuch as that would not create an equitable environment, there would be conflict too with Core Strategy policy CS14.

Living Conditions for Future Occupiers (Appeal A only)

Noise and Disturbance

87. Concerns in this regard related to road traffic noise and noise from operation of the proposed restaurant/drive-thru on the Appeal B site, including noise and disturbance from comings and goings, deliveries and extraction plant, as well as cooking odours.
88. The appellant's technical noise evidence confirms, based on a representative worst case scenario, that all potential issues in relation to prevailing noise levels (predominantly road traffic noise) can be ameliorated successfully with the use of acoustic glazing. However, in order to achieve an acceptable internal noise environment, the windows would have to be kept shut. Whilst it is proposed that the windows to the affected elevations would remain openable at the occupant's choice, that means the acoustic performance of the building could be reduced when the windows were open as and when required by an occupier. That said, were the appeal to succeed, a condition to secure

provision of mechanical ventilation with minimum performance equivalent to a mechanical heat recovery system with cool air bypass as an alternative means of cooling and ventilation, would help moderate room temperatures to an acceptable level.

89. In terms of Appeal B, the appellant's rebuttal noise evidence includes a single car door slamming event at the nearest point in the car park to the apartments (94dB L_{Amax}).⁴⁴ Even were more doors slammed at the same time, that would not increase the L_{Amax} figure. The appellant's noise rebuttal shows the sound reducing to 58dB L_{Amax} at the nearest apartments, which is within the existing measured range of L_{Amax} events at the site and would be ameliorated when windows were shut. Moreover, as noted below, the premises would be closed after 22.00 hours, reducing the likelihood of such events on the site at night. I am mindful in this regard, that the premises are not, for instance, a drinking establishment, where departing patrons may perhaps be noisier. Moreover, no bedroom windows are proposed on the western elevation of the apartment block facing the Appeal B site.
90. As referred to earlier, a condition was agreed to ensure that servicing and deliveries could take place only between 07.00 – 08.00 hours. Although suggested for different reasons, that arrangement would help ensure that deliveries etc, which would be from the car parking area to the front door (on the north (road) facing elevation) would not have any material implications in terms of noise and disturbance for future occupiers of the Appeal A scheme. Other conditions were also agreed in relation to the location of gates on the bin store, so that the bins would also be collected from the front elevation, again for other reasons but with the added effect of minimising potential impact in terms of noise and disturbance for future residents.
91. The evidence included an assessment of noise from fixed plant at the proposed restaurant/drive-thru, including condensers that would be mounted within the bin store enclosure. It was confirmed in this regard, that predicted noise levels from the external plant at the nearest façade would be lower than the existing noise climate resulting from road traffic, although I recognise that there may well be tonal differences. Conditions, were the appeal to succeed, could ensure that the any refrigeration/heating system to be used on the site at night did not exceed 29dB L_{Aeq} at the boundary.⁴⁵
92. As for cooking fumes, the extraction plant would be roof mounted, behind a low parapet wall. Provided that the system is properly installed and maintained, a matter that could be controlled by condition, I consider that living conditions for future occupiers would be acceptable in this regard.

Outlook

93. As noted above, in order to protect the living conditions of future occupiers in terms of noise and disturbance from the proposed drive-thru restaurant, the west facing windows to apartment Nos 1, 6 and 15 are shown as high level. In addition, the west facing kitchen window to each apartment is shown as obscure glazed. The only outlook from the living rooms to each of those apartments at normal cill height would be via a north facing window. Whilst

⁴⁴ Fig 2-1 These are the same spaces referred to in my assessment above in relation to effects on existing residents.

⁴⁵ As suggested by LA Environmental Consultants (Report No LAE1043.1 Dated 2 July 2020) paragraphs 7.2.7, 7.2.8 and 8.4.5 (CD9.15)

not ideal, occupiers would, nevertheless, have sufficient outlook from the living room, out across the old General Hospital site (now the Newcastle Campus for Ageing and Vitality). I find no harm in this regard.

Privacy

94. As already noted, the rear facing elevations of a number of the Lynnwood Avenue properties directly face the rear elevation of the police station building. Six of the proposed apartments (two on each floor) would have south facing windows to habitable rooms at first floor level and above. Other than in a single instance, the separation distances between facing windows to habitable rooms would be some 22-25 metres. The proposed apartments would also be higher than the facing Lynnwood Avenue properties, such that existing residents would be looking across at, or up at the proposed windows. For those looking straight across, the distance separation would be acceptable, with much reduced inter-visibility in upward views. I am content in this regard, that future occupiers of the proposed flats would be provided with sufficient privacy. Moreover, it would be a matter of choice for future occupiers on taking one of the proposed apartments as to whether the level of privacy afforded was acceptable to them.

95. A north facing window in the gable end above a garage to one of the Lynnwood Avenue properties is located at the back of the footway on the back lane, approximately 6 metres from the rear wall of the police building. However, that window is obscure glazed, with a top hung opening light. It is also at a lower level than the cill heights on the first floor of the police building. I am content that the privacy of future occupiers of the police station building would not be compromised in this regard.

Overall Conclusion on this Issue

96. I am satisfied that living conditions for future occupiers in relation to noise and disturbance, outlook and privacy would be acceptable. I find no conflict therefore, with policy CS14 of the Core Strategy, or policy DM23 of the DAP, which together and among other things seek to protect such interests.

Health and Wellbeing (Appeal B only)

97. An important contributing factor to poor diet and health in certain parts of Gateshead and Newcastle is the distribution of, and access to, unhealthy eating outlets. Recognising that planning has the ability to positively influence these matters through, among other things, access to healthy food, Core Strategy policy CS14: Health and Wellbeing sets out a strategic approach for maintaining and improving the health and wellbeing of communities. Part 3 of the policy seeks to do this by controlling the location of, and access to, unhealthy eating outlets. Supporting text to the policy confirms that access to such uses will be considered further in subsequent LDDs and/or Supplementary Planning Documents (SPDs).

98. The intended end user of the proposed fast food restaurant and drive-thru is Burger King. The Council's Hot Food Takeaway SPD (2016)⁴⁶ supports part 3 of policy CS14. As confirmed in the SPD, obesity and being overweight comprise major public health problems for the City. Although the health of people in Newcastle is improving, it is still much worse than the national average. I

⁴⁶ CD1.3

- heard evidence in this regard that the appeal site lies within Elswick ward, the third most deprived ward in Newcastle, one of the 10% most deprived wards in England, and is a ward with one of the highest rates of takeaways in England. The wealth of evidence before me on this matter demonstrates that the high levels of deprivation in this area are linked to high levels of obesity, particularly childhood obesity, health inequalities and attendant poor health impacts.
99. Against that background, the SPD includes a number of policies, the most relevant of which for the purposes of this appeal, is policy HFTA1. In locations such as this, outside of a centre in the retail hierarchy, the policy resists hot food takeaways where they would be within a designated school exclusion zone, based on a realistic 10 minute walk time from the entrance points of a secondary school (rather than using a simple radius approach).
100. The proposed takeaway/restaurant building would be outwith any defined exclusion zone.⁴⁷ However, a very small part of the drive-thru circulatory route, within the southeastern corner of the Appeal B site, lies within the exclusion zone for the Bahr Academy, located a few streets away to the southeast.
101. There is no indication in the SPD as to whether the reference to hot food takeaways is a reference to the building itself or the wider site on which the building might be located. However, policy HFTA1 is specifically based on walking times from the school entrance. In coming to a view on whether the situation that occurs here brings the development into conflict with the policy, the natural corollary to that, it seems to me, is to look at the location of the entrance to the proposed takeaway facility. The entrance is located on the northern side of the building, accessed from Dunholme Road.
102. The development scheme includes acoustic fencing along the entire length of the southern boundary of the Appeal B site, along the back lane, returning part way along the Dunholme Road frontage. That arrangement would prevent any access to the proposed establishment from within the 10 minute exclusion zone. The entire Dunholme Road frontage, and the building itself, including the entrance to it, lie outwith the exclusion zone. As a consequence, potential customers from the school would need to travel beyond the 10 minute walk time exclusion zone in order to get to the entrance of the proposed establishment.
103. Policy HFTA1 is binary – proposals within the defined exclusion zone will be resisted. Inasmuch as a small part of the site lies within the exclusion zone there may, technically, be a breach. It is very clear however, that students would, as a matter of fact, have to walk beyond the defined 10 minute exclusion zone to gain access to the proposed hot food takeaway. There was no suggestion in this regard, that the site layout has been designed to circumvent the policy provisions, the fencing preventing access from the back lane being required to protect the living conditions of existing residents. When looked at in the round, and with the specific purpose of the policy in mind, I agree with the appellant that since the hot food takeaway building itself, but more importantly the entrance and access to it, lies outwith the defined exclusion zone, there is no meaningful breach of the policy. It was accepted for the Council during cross-examination, that if there was no breach of HFTA1, then there would be no breach of CS14.

⁴⁷ Appendix 6 of the SPD

104. Post-dating the Core Strategy and the SPD, paragraph 92 of the National Planning Policy Framework states that planning decisions should aim to achieve healthy places which, among other things, enable and support healthy lifestyles, especially where this would address identified local health and wellbeing needs such as access to healthier food. The Government's Planning Practice Guidance confirms that planning can influence the built environment to improve health and reduce obesity and excess weight in local communities and that planning policies can, where justified, seek to limit the proliferation of particular uses where evidence demonstrates this is appropriate.
105. Whilst I was advised that the Council intends to update the policies in the SPD as part of a more holistic approach to the problems outlined above, no additional or even embryonic policies were drawn to my attention in this regard. In Newcastle, the relevant planning policies at the present time are CS14 of the Core Strategy and policy HFTA1 of the SPD. The policies in the SPD, which are clearly derived from significant concerns based on evidence of the links between deprivation and obesity etc, provide the policy means for controlling the location of unhealthy eating outlets at the present time. I have assessed the proposal against the relevant SPD policy and have found no meaningful breach. It was a matter of agreement between the parties that both CS14 and the policies in the SPD are up to date and do not conflict with the Framework.
106. I understand the Council's concerns on this matter, and indeed have some sympathy with them. However, whilst both the Framework and the Planning Practice Guidance are a material consideration in this case, the latter refers to justified planning policies being used to limit proliferation of such uses. The Council has such policies and I am charged with determining this appeal with the primacy of the policies of the development plan at the forefront of my consideration.
107. For the reasons set out above, no material policy conflict has been substantiated in this instance. Therefore, in the circumstances of this particular proposal, and in light of the current policies that provide the framework for my decision, the health and wellbeing of local people and communities, very important though that is, would not be adversely affected sufficient to warrant the withholding of planning permission in this instance.

Benefits of the Appeal Schemes

108. There was no dispute that the appeal sites occupy a highly accessible location that is well served by numerous frequent bus services, close to the city centre. However, that is not a benefit that carries with it any positive weight in the planning balance, rather it is an absence of harm. Similarly, the intended use of energy efficient building materials and other efficiency measures amount to an absence of harm, as opposed to positive benefits, as they would be required in any case.
109. The appeals site comprises a vacant, previously developed site within a settlement. Paragraph 120c) of the Framework advises that substantial weight should be given to the value of using such sites for homes etc.
110. In relation to Appeal A, the gross development value of the scheme would be in the region of £2.1 million, with the scheme predicted to support 10 part time and 50 full time construction jobs using local companies, also providing

apprenticeship and work experience opportunities, plus 10 part time and 17 full time jobs in the three commercial units proposed. In addition, the scheme is predicted to generate some £250,000 in local business rates over five years, plus £101,250 in Council Tax revenue over the same period.

111. The gross development value of the Appeal B scheme would be in the region of £1.3 million, with the scheme predicted to support 5 part time and 25 full time construction jobs, again using local companies and providing apprenticeship and work experience opportunities, plus and 10 part time and 15 full time jobs associated with the completed facility. The proposal is also predicted to generate some £250,000 in tax revenue over five years.
112. With the exception of the Council Tax revenue, the combination of these employment and economic benefits is, in both cases, substantial, particularly noting that this is the third most deprived area in the City, with the developments acting potentially as a stimulus to the local economy. In relation to increased Council Tax, since the development would result in a corresponding increase in demand on local services etc, that is not a consideration to which I attach positive weight.
113. The unilateral undertaking for Appeal A secures a financial contribution towards improvements to the Tweed Street Allotments and landscape improvements and recreation facilities at Elswick Park. Whilst those works are intended as mitigation for the increased use that would be a consequence of the development scheme, there would be some benefits for other users. I afford such benefits moderate weight.
114. The improvements to biodiversity across both sites are set out in the OS Ecology Note to the Inquiry.⁴⁸ In relation to Appeal A, there is no biodiversity at present and so a percentage change in biodiversity cannot be calculated. I am mindful, however that, including the proposed green roof, as well as the limited forecourt planting, there would be some 215 sqm of planting, plus 3.5 metres of hedgerow. That is a consideration to which I afford moderate weight. In relation to Appeal B, there would be a net biodiversity net gain of 127.7%, but that is from a very low starting point. Nevertheless, that is a consideration to which I afford moderate weight.
115. Appeal A would deliver 15 flats. Although there was no suggestion that the Council cannot demonstrate the required five year supply of housing land, it is still a consideration that attracts at least limited weight in light of the Government's desire to significantly boost the supply of homes.

Other Matters

Heritage Assets

116. Westgate Road was one of the earliest and most important routes through the city walls and is closely aligned with the route of Hadrian's Wall which forms part of the Frontiers of the Roman Empire World Heritage Site. That said, there is no surviving visible evidence of the Wall on this section of Westgate Road. At this location, it seems to me that the heritage significance of the Wall derives largely from its historic illustrative and evidential value. Any contribution that the appeal sites may have made to that significance has long gone, the site having been redeveloped over many years, most recently as a

⁴⁸ Doc25

police station. Trial trench investigations prior to the Inquiry to assess whether any remains might be impacted by the proposed drainage scheme for Appeal B, confirmed that the area has been substantially truncated by modern activity, with no significant archaeological resource identified. It was agreed that a planning condition to secure a watching brief for other parts of the sites would be sufficient to protect any heritage significance. On that basis, I am content that the developments proposed would not have any impact on the heritage significance of the designated heritage asset, or the ability to interpret or experience it.

117. Occupying a prominent location on the opposite corner of the Dunholme Road/Westgate Road junction to the appeal sites is Angel Heights, a non-designated heritage asset that dates from the 1920s. Formerly a nurses' home, more recently a centre for asylum seekers, the building has been empty now for a number of years and is falling into disrepair. It is a large, red brick building with a sandstone ground floor and prominent stone quoins. It is set over four stories beneath a pitched roof with a ridgetop clock crowned by a cupola on the main road elevation. Its heritage significance derives largely from its architecture and history, and its immediate rather than extended setting.
118. The buildings the subject of the appeals are/would be set back from the main road frontage and would not adversely affect the ability of the public to experience or interpret the heritage significance of Angel Heights on any of the approaches. I therefore find no harm in this regard.

Permitted Development Rights

119. The appellant made a case that were planning permission for the appeal schemes to be refused, then an application for prior approval would be submitted to the Council for conversion of the office floorspace to residential. It was argued, in this regard, that the impacts of such development would be worse than any adverse impacts that may be a consequence of the Appeal A scheme, for instance in terms of overlooking of adjacent properties. The Council's position was that since the police station is a *sui generis* use, no such permitted development rights are applicable in this instance.
120. No application for a certificate of lawfulness for a proposed use is before me as part of these appeals and the comments that follow do not purport to comprise such. Neither do my findings prejudge determination of any formal application in the future. I am however, required to come to a view on this matter in order to properly carry out the planning balance, given my findings on the main issues above.
121. I have considered very carefully the submissions of Mr Tucker on this and, tempting though they are, I cannot agree with them. It is suggested that the concept of the planning unit is not relevant in determining whether a permitted development right is engaged. In my view, that is not correct in this instance. For all of the 'change of use' permitted development rights, it is necessary to establish what the 'from' use is, in order to know whether the relevant permitted development right is engaged. The appropriate way to establish that, is by looking at the planning unit.

122. In this case, the appellant seeks to rely on the rights afforded by Schedule 2 Class MA,⁴⁹ which covers a change from Class E uses (commercial, business and services) to dwellinghouses. There was no dispute that the offices on the site were used by staff in connection with the police force. Moreover, the offices formed part of the same building, occupied and used by the police force for its operations. This is not a case where, for instance, the police force has occupied a separate building purely as offices and for no other purpose. It seems to me that the office accommodation, although extending over three floors, was an integral part and parcel of the police station use of the building. As such, that part of the building does not comprise a separate planning unit in Class E use (specifically, E(g)(i) office use). A police station does not fall into any of the classes specified by the Town and Country Planning (Use Classes) Order 1987 (as amended) and is therefore to be regarded as a *sui generis* use. As such, my view is that it does not benefit from the permitted development rights relied on by the appellant and there is no fallback use to be taken into account in the overall planning balance.

Overall Planning Balance and Conclusions

Appeal A

123. I have found no material harm in relation to highway safety, nor in relation to living conditions for nearby residents in terms of noise and disturbance. I have also found that future occupiers of the scheme would be provided with acceptable living conditions in relation to outlook, privacy and noise and disturbance. Moreover, there would be no harm to the significance of the identified heritage assets. There would be no conflict with the relevant development plan policies in these regards.

124. However, the scheme has significant shortcomings in terms of design and in terms of the effect that it would have on the privacy of existing residents on Lynnwood Avenue. I have given very careful consideration as to whether these matters might be overcome through the use of appropriate conditions but in my view, they cannot. As such, the provisions of the relevant policies would not be met. There was no suggestion in this regard, that those policies are out of date for any reason.

125. In the overall balance, the benefits that I have identified, substantial though they are, do not outweigh the negative aspects of the scheme. There would be conflict with the development plan as a whole in this regard. Accordingly, I conclude, on balance, that the appeal should not succeed.

Appeal B

126. I have found no material harm in relation to highway safety, nor in relation to living conditions for nearby residents in terms of noise and disturbance. There would be no harm either to the significance of the identified heritage assets. I have also found no policy support for finding against the proposal in terms of its impact on the health and wellbeing of local people and communities. There would be no conflict with the relevant development plan policies in these regards, policies which, as set out in the agreed Position Statement,⁵⁰ can be considered as not out of date.

⁴⁹ of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

⁵⁰ CD17.1

127. However, the scheme has significant shortcomings in terms of its design. As such, there would be conflict with the provisions of the relevant policies. There was no suggestion in this regard, that these policies are out of date for any reason.
128. In the overall balance, the benefits that I have identified, substantial though they are, do not outweigh the negative aspects of the scheme. There would be conflict, therefore, with the development plan as a whole. Accordingly, I conclude on balance, that the appeal should not succeed.
129. I appreciate that these conclusions will be disappointing for the appellant who has worked with the Council over a considerable period to try and secure a scheme to regenerate this site, a site that is in much need of improvement. I recognise, in this regard, that dismissal of these appeals can only prolong the current, unsatisfactory appearance of the land. I have taken that into account in the overall planning balance. Even so, that is not a reason to allow development that does not represent good design and which would have significant implications for the privacy of existing residents.

Jennifer A Vyse
INSPECTOR

ANNEX A APPEARANCES

FOR THE APPELLANT:

Paul Tucker, of Queen's Counsel

Instructed by Sean Hedley

He called

Sean Hedley
BA(Hons) DipTP, MRTPI
Darran Kitchener
FCIHT, CMILT, BEng(Hons)
Ian McGregor
BArch(Hons)
Louise Alderson
BSc(Hons) MIOA
Peter Armstrong
BA(Hons) Dip, CMLI
Mark Osborne
BTech, CECOL, CIEEM

Managing Director, Hedley Planning Services Limited
Director Milestone Transport Planning Limited
Elder Lester Architects
Environmental Consultant, Founder and Managing Director of LA Environmental Ltd
Associate Director, One Environments
Founding Director at OS Ecology Limited

FOR THE LOCAL PLANNING AUTHORITY:

Isabella Tafur, of Counsel
and Esther Drabkin-Reiter⁵¹

Instructed by Elena Plews on behalf of the City Council*

She called

Amie Robson
BA(Hons) MSc
Keith McGillivray
BSc(Hons) TPP, MCIHT
Lloyd Jones
BDes(Hons) AILA, CMLI
David Stobbs
BA(Hons) PgCert
Stephen Edwards
BSc(Hons) MSc, MRTPI
Angela Wallis
BA(Hons)

Urban Design Officer with the Council
Associate with SYSTRA Limited
Landscape Design Officer with the Council
Health Improvement Practitioner
Development Management Planning Officer with the Council
Environmental Health Officer with the Council

*Ms Plews assisted the Inquiry in the discussion on the planning obligations

FOR THE WEST END RESIDENTS' ASSOCIATION (RULE 6 PARTY):

Joseph Thomas, of Counsel

Instructed by Charles Dix on behalf of the Residents' Association

He called

Michael Moore
Dr Elspeth Scott
Helen Jubb

Local resident
Local resident and retired GP
Local resident

⁵¹ Due to prior commitments, Ms Tafur was unable to represent the Council during the second week of the Inquiry. Ms Drabkin-Reiter led the case for the Council in the second week and presented closing submissions.

INTERESTED PERSONS:

Cllr Joyce McCarty	City Councillor
Helen Dix	Local resident
Michele Wright	Local resident
Dr David Webb	Local resident
Elspeth Kirkwood	Local resident
Dr Kirstie McAlpine	Local resident
Adrian Swales	Local resident
Mr C F Hodder	Local resident
Helen Hodder	Local resident
Niem Gany	Local resident
Phil Rigby	Local resident
Shamsun Choudhury	Local resident
David Cullingford	Local resident
Mr Dix	Local resident
Janet Longbottom	Local resident
Mr P Jubb	Local resident
Mohamed Suliman	Ex local taxi driver
Andrew Scott	Local resident

ANNEX B DOCUMENTS HANDED UP TO THE INQUIRY

- ID1 List of appearances for the Appellant
- ID2 List of appearances for the Council
- ID3 Draft Planning Obligations Appeal A (superseded by ID30)
- ID4 Draft Planning Obligations Appeal B (superseded by ID31)
- ID5 Appellant's opening submissions
- ID6 Council's opening submissions
- ID7 List of appearances for the R6 Party
- ID8 R6 Party opening submissions
- ID9 Helen Dix – speaking notes
- ID10 Michele Wright – speaking notes
- ID11 Dr David Webb – speaking notes
- ID12 Elspeth Kirkwood– speaking notes
- ID13 Dr Kirstie McAlpine – speaking notes
- ID14 Adrian Swales – speaking notes
- ID15 Mr and Mrs Hodder– speaking notes
- ID16 Niem Gany – speaking notes
- ID17 Phil Rigby – speaking notes
- ID18 Mrs S Choudhury – speaking notes
- ID19 David Cullingford – speaking notes
- ID20 Cllr McCarty – speaking notes
- ID21 Letter from SHED re proposed fin drain (16 November 2021)
- ID22 Extracts from Manual for Streets 1 and Manual for Streets 2
- ID23 Highways layout - combined west and east sites (Plan No 20-098/006B)
- ID24 Alternative fin drain layout (Plan No C001 Rev D)
- ID25 Note on aggregate biodiversity net gain for both Appeal sites
- ID26 Letter re air quality NJD Environmental Associates (22 November 2021)
- ID27 Letter of objection from Menisha Gela (16 November 2021)
- ID28 PPG extract - Healthy and Safe Communities
- ID29 Amended list of suggested conditions
- ID30 Draft Planning Obligations Appeal A (superseded by ID38)
- ID31 Draft Planning Obligations Appeal B (superseded by ID39)
- ID32 Plan showing location of Tweed Street Allotments and Elswick Park
- ID33 Plan showing agreed centreline measurements at the Dunholme Road/Westgate Road junction in relation to the access to the Appeals site
- ID34 Cabinet Report relating to Council charges for flood management planning etc (12 July 2019)
- ID35 Council closings
- ID36 R6 Party closings
- ID37 Appellant closings

DOCUMENTS SUBMITTED AFTER CLOSE OF THE INQUIRY

- ID38 Engrossed Planning Obligation Appeal A
- ID39 Engrossed Planning Obligation Appeal B