

**Item No: 3**

**Planning and EP Committee 3 April 2018**

**Planning Enforcement Notice – 89 Fengate, unauthorised residential use**

**Referred by:** Director of Growth & Regeneration

**Reason:** To ensure that Committee supports the delegated decision to serve an enforcement notice

**Case Officer:** Nick Harding

**Telephone:** 01733 45441

**Email:** [Nicholas.harding@peterborough.gov.uk](mailto:Nicholas.harding@peterborough.gov.uk)

**Recommendation:** That the enforcement notice is not withdrawn

### **1. Background**

The site is currently used by the occupier as a car sales lot (the occupier operated another car related business from a nearby building off site). There is a property on the site that was in the past used for residential occupation but most recently the authorised use was as an office associated with a car hire operation. The operator of the car sales business has been residing at the property for a number of years. As given in the Appendix 1 (delegated officer report) there has been a series of applications that have sought to enable the residential occupation of the property. All of the applications have been refused with a key reason being that the occupiers would not enjoy a satisfactory degree of residential amenity. There has also been an appeal against the refusal of one of these applications and the Inspector agreed with the Council that residential use was not appropriate (see Appendix 2 for a copy of the Inspector's report).

Following the most recent refusal of planning permission for residential use of the site (as part of a mixed use) officers served an enforcement notice to prevent the residential occupation becoming lawful through the passage of time. The enforcement notice has been appealed but not yet determined. In addition the refusal of planning permission has been appealed but is not yet determined. There is scope for the notice for the notice to be withdrawn if Committee decides that the use is acceptable. In such a situation the Planning Inspectorate would be advised of the council's decision in relation to the enforcement appeal and appeal against the refusal; of planning permission.

### **2. Human Rights**

Article 1 of Protocol (peaceful enjoyment of property), and Article 8 (right to respect for private life & home) apply to planning decisions.

However the above convention right is qualified and a planning authority must take into account and balance these convention rights against the public interest that exists in taking enforcement action against a breach of development control. In carrying out this balancing exercise between private rights and public interest it is considered that the taking of

enforcement action is reasonable and proportionate and notwithstanding the convention right, and is justified in the circumstances of this case

### **3 Conclusion**

For the reasons set out in the officer delegated report in Appendix 1, officers consider that residential use of the property is inappropriate and therefore that the Enforcement Notice should not be withdrawn.

Committee may consider, contrary to both delegated decisions on previous applications and the appeal decision office, that the level of amenity for the residents at the property is after all acceptable and give weight to the fact that the site is being used as a 'live work' space i.e. the operator lives on site with his family.

Whilst officers recommend that the enforcement notice is not withdrawn, should members disagree it is suggested that a new planning application is sought so that the residential occupation of the site is linked to the operation of the business on site.

### **4. Recommendation**

The Head of Planning recommends that the enforcement notice is not withdrawn.

Ward Councillors: Cllr Azher Iqbal, Cllr Jo Johnson, Cllr Matthew Mahabadi

**Appendix 1 – Officer Delegated Report (most recent change of use application)**

## Delegated Report

**Application Ref:** 17/01112/FUL

**Proposal:** Change of use at first floor only to 2-bed residential dwelling (retrospective)

**Site:** 89 Fengate, Peterborough, PE1 5BA,  
**Applicant:** Mrs Kiran Shazadi

**Agent:**  
**Site visit:** 22.08.2017

**Case officer:** Mrs Louise Simmonds  
**Telephone No.** 01733 454439  
**E-Mail:** louise.simmonds@peterborough.gov.uk

**Recommendation:** REFUSE

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### 1 Description of the site and surroundings and Summary of the proposal

#### Site and Surroundings

The application site comprises a detached two storey building which is situated immediately adjacent to an area of enclosed hardstanding to the east. The site forms part of a single planning unit with this adjacent land and was last lawfully used for offices associated with vehicle rentals (sui generis use).

The site is bound to the north by several small B2/B8 industrial units, with one much large B8 storage warehouse further to the north-east. To the west, the site is bound by a sui generis vehicle sales premises. The southern boundary is formed by the public highway, with residential dwellings beyond and there are more residential dwellings further to the east.

The site is enclosed by a mixture of 2-2.4 metre high boundary treatments (metal wire fencing, low brick wall and close boarded timber fencing). Vehicular access is currently taken from No.89 Fengate via a dropped kerb onto the highway and gates to the side of the building.

The site is located within the identified Eastern General Employment Area, as set out in Policy SA11 of the Peterborough Site Allocations DPD (2012).

#### Proposal

The application seeks planning permission for the change of use of the premises to a residential unit at first floor (Class C3). The open car sales within the outside areas and a ground floor office associated with the car sales are proposed to be retained. It should be noted that the residential use has already commenced and as such, the application is retrospective.

It should also be noted that this application follows a number of previous refusals for residential development on the site, including at first floor, all of which are set out in Section 2 below.

## **2 Planning History**

<b>Reference</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
P0632/78	Change of use of house to offices; use of land as building contractors yard, erection of building for use as workshop and for storage of plant and materials, and associated parking and landscaping; also independent industrial/storage building on rear part of site	Permitted	04/09/1978
P0857/78	Erection of joinery workshop and office extension and approval of details of other buildings (stores and workshop, etc) in connection with builders yard	Permitted	02/11/1978
P1016/78	First floor extension to house to provide office accommodation	Permitted	20/12/1978
P0489/79	Construction of porch at rear	Permitted	19/06/1979
92/P0710	Erection of industrial unit as amended by revised parking and storage layout as received by the Local Planning Authority on the 6th October 1992	Permitted	15/10/1992
05/00615/FUL	Change of use to extension of car park, erection of fence, changes to driveway including gates and lockable bollards	Permitted	08/09/2005
14/01268/PRIOR	Change of use from office (B1a) to dwellings (C3)	Prior Approval Refused	03/09/2014
14/01986/FUL	Insertion of an additional unit for use classes B1, B8 and showroom	Withdrawn by Applicant	11/12/2014
15/00606/FUL	New unit for use classes B1, B8 with trade counter	Permitted	18/06/2015
15/00610/FUL	Change of Use to Dwellinghouse	Withdrawn by Applicant	18/06/2015
15/01244/FUL	Change of use of office to dwellinghouse - re-submission	Refused	15/09/2015
16/01535/FUL	Proposed change of use to external car sales use and office on the ground floor and (C3) residential flat on the first floor - Retrospective	Refused	28/09/2016

## **3 Planning Policy**

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise.

### **National Planning Policy Framework (2012)**

#### **Section 1 - Alternative uses for Allocated Employment Sites**

Where there is no reasonable prospect of an employment use being implemented applications for alternative uses should be considered, having regard to market signals and the need to support sustainable local communities.

### **Peterborough Core Strategy DPD (2011)**

#### **CS14 - Transport**

Promotes a reduction in the need to travel, sustainable transport, the Council's UK Environment

Capital aspirations and development which would improve the quality of environments for residents.

**CS16 - Urban Design and the Public Realm**

Design should be of high quality, appropriate to the site and area, improve the public realm, address vulnerability to crime, be accessible to all users and not result in any unacceptable impact upon the amenities of neighbouring residents.

**Peterborough Site Allocations DPD (2012)**

**SA11 - General Employment Areas and Business Parks**

Within the allocated General Employment Areas and Business Parks planning permission will be granted for employment uses (classes B1, B2 and B8 within the GEAs, classes B1(a) and B1(b) within the Business Parks).

**Peterborough Planning Policies DPD (2012)**

**PP03 - Impacts of New Development**

Permission will not be granted for development which would result in an unacceptable loss of privacy, public and/or private green space or natural daylight; be overbearing or cause noise or other disturbance, odour or other pollution; fail to minimise opportunities for crime and disorder.

**PP04 - Amenity Provision in New Residential Development**

Proposals for new residential development should be designed and located to ensure that they provide for the needs of the future residents.

**PP12 - The Transport Implications of Development**

Permission will only be granted if appropriate provision has been made for safe access by all user groups and there would not be any unacceptable impact on the transportation network including highway safety.

**PP13 - Parking Standards**

Permission will only be granted if appropriate parking provision for all modes of transport is made in accordance with standards.

**Peterborough Local Plan 2016 to 2036 (Preliminary Draft)**

This document sets out the planning policies against which development will be assessed. It will bring together all the current Development Plan Documents into a single document. Consultation on this document took place between December 2016 and 9 February 2017. The responses are currently being reviewed. At this preliminary stage only limited weight can be attached to the policies set out therein.

**4 Consultations/Representations**

**PCC Enforcement Team**

No comments received.

**PCC Wildlife Officer (25.07.17)**

No comments.

**PCC Peterborough Highways Services (04.08.17)**

Further information required – The relationship of the commercial aspects of the site appears to be at odds with the need to sell cars, with only a very small space available to the front of the site. It is evident from the amount of hard surfacing that the sales area will significantly eat into the amenity space for occupiers of the residential unit. No proposals have been suggested as to how all of the areas are to be accessed, or how they will be used. If the Applicant were to provide more information, then the Local Highway Authority could provide further assessment and comment.

## Local Residents/Interested Parties

Initial consultations: 11  
Total number of responses: 0  
Total number of objections: 0  
Total number in support: 0

No public representations have been received.

## 5 Assessment of the planning issues

The main considerations are:

- Principle of development
- Flood risk
- Amenity for future occupants
- Parking and highway implications

### a) Principle of development

As detailed in Section 1 above, the application site is located within the allocated Eastern General Employment Area. Whilst Policy SA11 of the Peterborough Site Allocations DPD (2012) clearly states that within these areas 'planning permission will be granted for development within Use Classes B1, B2 and B8', it does not explicitly preclude other forms of development.

Notwithstanding this, it is necessary to ensure that the intended use is compatible with its surroundings.

Section 2 above details the planning history of the site, and it should be noted that the application property was previously a residential dwellinghouse. Furthermore, there are a number of residential properties within the immediate locality and as such, it is considered that the principle of a residential dwellinghouse on the site is not unacceptable. However, the proposal must satisfy all other relevant material planning considerations and for the reasons given below, the current proposal is unacceptable.

With regards to the car sales use of the site, it has previously been established that the site was used for car sales (as part of consideration of an earlier prior approval application from the change of use from B1 offices to C3 dwellinghouses which was refused as not being permitted development). Accordingly, it is therefore accepted that car sales on this site is an established lawful use.

### b) Flood risk

The application site partially falls within Flood Zone 2 and therefore, is at risk from flooding. In accordance with the National Online Planning Practice Guidance, the proposed residential use falls within the 'more vulnerable' classification and, according to paragraph 067 (Reference ID: 7-067-20140306) is appropriate. However, the proposal must still pass the Sequential Test to accord with the National Planning Policy Framework (2012). Whilst this is noted, the development represents a change of use and, whilst a considerable period of time has elapsed, a reversion back to a dwellinghouse. Similarly, there are numerous residential properties within the surrounding locality which are also within Flood Zone 2.

Accordingly, whilst it is accepted that there are likely to be more sequentially preferable locations for the intended residential unit, a reason for refusal on this basis would not be appropriate. The proposal has been safe for its lifetime, with no known flooding incidents, and would remain so into the future. On this basis, it would not be at unacceptable risk from flooding and is therefore in accordance with Policy CS22 of the Peterborough Core Strategy DPD (2011).

### c) Amenity for future occupants

In the time period since the property was last a residential dwellinghouse, a considerable level of

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industrial development has taken place surrounding the site. Indeed, the small industrial estate immediately to the north of the site was accepted on the provision that the application site itself was converted to a commercial/industrial use itself (application reference P0632/78).

Notwithstanding this, the City Council's Pollution Control Officer has previously raised no objections to a proposed residential use of the entire site. In terms of noise and general disturbance to future occupants, there are a number of examples of residential development within the locality which the relationship to industrial units is similar. However, the current proposal seeks a mix of car sales and residential unit on the same site. Whilst car sales in itself is not a generally noisy use, commercial development surrounding the entire proposed residential unit would create some level of disturbance to future occupiers which is not considered compatible with affording an acceptable level of amenity.

In addition, a recent planning permission (under application reference 15/00606/FUL) that has been partially implemented (i.e. the building has been erected) results in development which conflicts directly with the amenities of future occupants. This permission relates to the immediately adjacent site to the east. A new industrial unit for Class B1 or B8 uses (with ancillary trade counter) set back from the back edge of the public highway by an area of associated car parking has recently been constructed and there is a pending application to change the use of the site to a D1 training facility (reference 17/01512/FUL). The unit building is sited only 1.3 metres from the shared boundary with the application property, and projects beyond the rear elevation by approximately 7.25 metres. Whilst of mono-pitched roof design (sloping upwards into the site), the maximum overall height extends to 6.7 metres which effectively represents two storey development.

The current proposal (unlike the last refused scheme, reference 16/01535/FUL) does not seek to alter any of the facing windows within the property and is therefore very similar in layout (albeit this related to the entire building) as application reference 15/01244/FUL which was refused by the Local Planning Authority and upheld at appeal.

The proposed kitchen, a primary habitable room, would solely be served by a window to the eastern elevation. This window would be significantly dominated by the adjacent industrial unit, given the lack of separation and orientation. The building would appear unduly obtrusive, overbearing and result in an unacceptable level of natural daylight/sunlight. Furthermore, to the rear, one of the proposed bedrooms would also face directly out onto the adjacent industrial building. Given its close proximity, it would afford future occupants a poor outlook and an unacceptable level of natural daylight.

Turning to the ground floor, the proposal seeks an outdoor garden/amenity area to the rear of the building. Given the siting of the adjacent industrial building, which would abut the site along half the depth of the garden proposed, the area would be wholly dominated and subject to an unacceptable degree of overbearing and overshadowing impact. Accordingly, this would render the outdoor amenity space an unattractive place in which to reside, and would fail to afford future occupants with sufficient 'liveability'.

On this basis, the proposal would be subject to unacceptable disturbance from the ground floor/outdoor car sales business, would not provide acceptable outlook or natural daylight to primary habitable rooms and would not afford a usable outdoor amenity space which is considered essential for occupants. The proposal would not provide an acceptable level of amenity for future occupants and is therefore contrary to Policy PP4 of the Peterborough Planning Policies DPD (2012).

#### **d) Parking and highway implications**

The Local Highway Authority (LHA) has raised objections to the current proposal on the basis of insufficient information, and requested that further clarification be sought. This request was noted, however Officers do not consider that it would be prudent to require the Applicant to incur further expense given that the scheme is deemed unacceptable for the reasons set out above. Furthermore, notwithstanding the position of the LHA, it is not considered that the site can safely or



acceptably accommodate the level of development proposed in terms of safe access or parking.

As set out above, it is proposed for the existing car sales use to remain at ground floor whilst a 2-bed flat would be created at first floor. The submitted drawings propose that both uses utilise the existing vehicular access to the site, with 2no. residential parking spaces and turning created to the rear of the building, and car sales retained to the front. As the proposed uses would not be linked - no evidence has been provided that the residential accommodation would be tied to the car sales - the proposal would result in independent traffic generation. There would be insufficient space on which to display cars for sale within the area shown without significantly impeding the access/egress of the proposed residential unit. Accordingly, it is considered that the proposal poses an unacceptable risk in terms of conflict from vehicles associated with both uses which could overspill onto the highway, particularly in terms of vehicles waiting to enter the site whilst another leaves. The proposal therefore poses an unacceptable risk to highway safety through insufficient parking and access, which is contrary to Policy CS14 of the Peterborough Core Strategy DPD (2011) and Policies PP12 and PP13 of the Peterborough Planning Policies DPD (2012).

## **6 Conclusions**

The proposal is unacceptable having been assessed in light of all material considerations, including weighing against relevant policies of the development plan and for the specific reasons given below.

## **7 Recommendation**

The case officer recommends that Planning Permission is **REFUSED** for the following reasons:

- R 1 The proposed change of use to a residential flat at first floor, by virtue of its relationship to the ground floor car sales use and industrial building to the east (No.99 Fengate), would not afford future occupants an acceptable level of amenity. The ground floor/outdoor car sales use would generate an unacceptable level of noise and general disturbance. In addition, the siting of the adjacent industrial building would result in an unduly dominant feature which results in unacceptable overbearing and overshadowing impact to the proposed primary habitable rooms and outdoor amenity area. Accordingly, the proposal is contrary to Policy PP4 of the Peterborough Planning Policies DPD (2012).
  
- R 2 The application site is not of a sufficient size to accommodate the access and parking requirements associated with the lawful car sales (sui generis) and proposed residential uses. Owing to insufficient parking, access and turning areas, the proposed mix of uses within the site would generate conflict between vehicle movements which is likely to spill out onto the adjacent public highway, causing an impediment to the free flow of traffic and danger to highway safety. Accordingly, the proposal is contrary to Policy CS14 of the Peterborough Core Strategy DPD (2011) and Policies PP12 and PP13 of the Peterborough Planning Policies DPD (2012).

## Appendix 2 – Appeal Decision (change of use of whole property)



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### Appeal Decision

Site visit made on 22 March 2016

by **Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC**

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

Decision date: 7 April 2016

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**Appeal Ref: APP/J0540/W/15/3139114**  
**89 Fengate, Peterborough PE1 5BA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended, against a refusal to grant planning permission.
  - The appeal is made by Jellings Properties Ltd against the decision of Peterborough City Council.
  - The application Ref 15/01244/FUL, dated 2 August 2015, was refused by notice dated 15 September 2015.
  - The development proposed is change of use to a dwellinghouse.
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#### Decision

1. The appeal is dismissed.

#### Main Issue

2. The main issue is whether the proposed change of use would provide acceptable living conditions for future residents of 89 Fengate in terms of outlook and light.

#### Reasons

3. No 89 Fengate is a former residential property which has accommodated a number of different uses over many years. The area in general is a mix of uses, including residential dwellings, shops, offices and B1, B2 and B8 industrial units. The neighbouring property to the west (No 87) includes a cafe, with residential accommodation above. There is a large area of hard standing between the appeal property and No 87 which leads to a garage repair unit, set behind this. To the rear of No 89 there is a large open area of land, leading to other industrial units beyond.
4. To the east of the appeal site there is currently a large area of enclosed hard standing which has extant consent for the construction of a new unit for use classes B1 or B8<sup>1</sup>. There is no reason to suppose that this permission will not be built out and it is therefore an important material consideration for the purposes of my decision.
5. To the east, the approved industrial unit would be set just under 1.5 metres from the boundary with No 89. This would be around 12 metres in depth, with an approximate 7 metre projection beyond the rear elevation of No 89. The roof would be a shallow mono-pitch design, sloping upwards towards the rear

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<sup>1</sup> 15/00606/FUL, approved 18 June 2015.

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- of the unit to around 6.5 metres in height. To the front, the eaves of the unit would appear to be just below the eaves height at No 89.
6. Two first floor windows to the rear elevation of No 89 (windows 2 and 3 as annotated on the appellant's drawing number AP023), serving a bedroom, would look across towards the flank elevation of the permitted unit. There would be only a small gap between the new unit and the appeal property and the height of the unit would be equivalent to a two-storey building. Therefore the relationship of these windows with the new unit would be in close proximity at first floor level and as indicated on drawing number AP023<sup>2</sup>, both windows would fail the horizontal 45 degree test.
  7. The combination of the height and siting of the new unit, along with the approved length of the projection of this beyond the rear of No 89, would mean that the outlook would be impeded. This effect would be felt from both windows and I am not persuaded that the presence of window 3, as located further away from consented unit, would offset any impacts as viewed from window 2, which would be closest to the new unit, in any way. The result would be to enclose and dominate the view from both windows and, overall, I find that this would have an overbearing impact by restricting the current open outlook from these windows to an unacceptable level.
  8. I also consider that the outlook from the side bedroom would be adversely affected. This window would look towards the unit and the customer car park. While I acknowledge that the unit would not cut directly in front the window, the set back of the unit from the window is small at around 0.75 metres. This close proximity, in combination with the height of the unit, would therefore be prominent and dominant in the view and would enclose the outlook from this bedroom to a harmful degree. My view is again supported by the failure of the horizontal 45 degree test, as indicated on drawing number AP023.
  9. In relation to light, while I find that the outlook would be restricted to both bedrooms, I do not consider that daylight would be restricted to a harmful degree. I note that this would not exceed the 45 degree test in respect of the vertical sky component in either bedroom. The windows to the rear of the property are north facing and thus natural light is already limited due to their orientation and would not be further compromised to a detrimental level. While the other bedroom is on the eastern elevation and therefore would experience greater levels of natural light, I find that levels of sunlight and daylight would not be compromised here, as the unit, located to the north of this window, would not cause any overshadowing due to the tracking of the sun.
  10. Nevertheless, this does not outweigh my findings in respect of harm to outlook from both of the bedrooms. I consider that this would be experienced by future occupants to a significant level and I do not agree that both 45 degree tests must fail in order to be a significant issue; my assessment is based my own findings on the specific circumstances of the site as well as on failure of the horizontal test. I am also not persuaded that as bedrooms, the impacts are less significant than other rooms, as they are all habitable rooms and it is therefore necessary to ensure adequate levels of amenity. Rooms designated

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<sup>2</sup> The appellant's statement refers at paragraph 4.3 to drawing number AP040 as showing the 45 degree lines in plan. However, as no such drawing is before me and AP023 clearly fulfils that function I have assumed the reference to be erroneous.

on plan as bedrooms are commonly used for dual or alternative purposes, such as a home office.

11. Turning now to the effect on the outdoor amenity area, I saw that this space is currently hardstanding, surrounded by various types of boundary treatment which are around 2metres in height. The size of the garden is generous and the area closest to the eastern boundary would be landscaped to provide a grassed area, with the rest of the garden used for parking. The projection of the proposed unit would extend approximately half way along the length of the rear garden.
12. Here I find that the outdoor amenity space would also be harmed. Due to the proximity and height of the permitted unit along part of the eastern boundary, rather than positively adding to a sense of enclosure, I find that this would have an overbearing impact, dominating and diminishing the open outlook currently gained from the outdoor area to the rear of the property.
13. While I acknowledge that the garden is north facing and is therefore currently shaded by the house during much of the day, a further shading effect would be experienced in the morning due to the tracking of the sun from east to west. While the garden is of a reasonable length, the area beyond the projection of the unit towards the top of the garden would be overshadowed by this. On this basis, I find that this would also reduce the levels of natural light to this area to a harmful degree. This effect would not be mitigated by the condition in place for the unit relating to materials and their colour.
14. I note the comments by the appellant that the proposals are commensurate with the level of amenity usually enjoyed and expected within high density town centre areas and that the current outlook from the appeal property is towards industrial units. However, the appeal property is a detached building set in reasonably large grounds. None of the industrial buildings in the locality are in close proximity and do not give rise to the impacts on outlook and light that I have identified.
15. Overall, I have found that the permitted new unit to the east of No 89 Fengate would cause would cause harm to the living conditions of its future occupiers of this property as a dwellinghouse. The adverse effect on outlook from first floor habitable rooms, and the rear garden, as well as the overshadowing of this, would be significant. Accordingly the proposal would not accord with Policy PP4 of the Peterborough Planning Policies Development Plan Document (adopted 2012) which seeks to protect amenity levels in new residential development.

#### **Other Matters**

16. The appellant has submitted a number of examples of residential dwellings adjacent to industrial units. However, I saw on my site visit that the outlook of residential properties was not affected by those units, as these were located at a greater distance away. Where units were in closer proximity, there were no facing windows serving habitable rooms or the units were at a smaller scale to the proposals before me. In addition, the examples of residential flats above business units are not directly comparable as there is no impact on outlook from these dual uses within a single building. In any case, I have determined the appeal on its own merits.

17. The appellant advises that he has experienced difficulty in finding suitable commercial tenants for No 89. However, no detail of the efforts made in this respect has been provided. Therefore, neither these nor any other matters raised are of such significance as to outweigh the considerations that have led to my conclusion on the main issue.

**Conclusion**

18. For the reasons I have set out above, and having considered all matters raised, I dismiss the appeal.

*C Searson*  
INSPECTOR

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