



Appeal Decision

Site visit made on 2 November 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th December 2023

Appeal Ref: APP/Y3940/W/23/3321615

The Old Vicarage and Staverton House, 51A New Terrace, Staverton BA14 6NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ashley Jones of Fidelia Care Ltd against the decision of Wiltshire Council.
 - The application Ref PL/2021/10237, dated 26 October 2021, was refused by notice dated 19 January 2023.
 - The development proposed is Demolition of existing care home with replacement building providing 9 bedrooms on lower ground floor, 9 bedrooms on ground floor and 14 bedrooms on first floor, all with auxiliary space, & together with the existing home would provide 52 bedrooms in total.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Ashley Jones of Fidelia Care Ltd against Wiltshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The address in the banner heading above has been taken from the Council's decision notice and the appellant's statement of case for clarity purposes.
4. I note that a revised application has been submitted to the Council¹. Whilst I note that this application has been through the required public consultation procedure, interested parties will be expecting my decision to be based on the plans before the Council at the time the decision was made on the appeal proposal. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought².
5. Both parties have provided me with an electronic link to watch the relevant Development Control Committee meeting at which the appeal application was discussed. I have not watched this as I cannot be sure that all relevant interested parties have access to the facilities to watch it. It also does not bear directly on the planning merits of the case and therefore does not materially affect my judgement of the appeal.

¹ Planning Application Reference PL/2023/04128

² Annex M of the Procedural Guide Appeals

Main Issues

6. The main issues in this case are:

- the effect of the proposal on the living conditions of the existing occupants of 6 Littlebrook, 50b and 52 New Terrace, and 12 Smallbrook Gardens, with respect to privacy and outlook; and
- the effect of the proposal on the Old Vicarage, a non-designated heritage.

Reasons

Living conditions

7. The Old Vicarage and Staverton House is an existing care home facility. The Old Vicarage, a 2 storey building with a lower ground floor due to the changes in the site levels, has provided extra care facilities since 1984. Staverton House, a 2 storey building situated to the south of the site, was constructed to provide additional bedrooms³. A single storey structure runs off the rear of the Old Vicarage towards Staverton House, albeit it does not physically link the 2 buildings. The Old Vicarage and single storey structure have been vacant since November 2021, due to the buildings no longer being fit for purpose.
8. The appeal site is situated in a predominantly residential area and consequently forms a close relationship with the neighbouring residential properties. The proposal involves the erection of a 2-3 storey building, replacing the Old Vicarage towards the north of the site and the introduction of a 3 storey, flat roofed central building, linking the new building to the north to Staverton house to the south.

6 Littlebrook

9. No 6 Littlebrook is a modest semi-detached property, situated adjacent to the southern half of the western boundary. Its main external amenity space is its side garden which lies immediately adjacent to the shared boundary with the appeal site. The single storey structure attached to the Old Vicarage is visible from No 6's side garden albeit its impact is relieved by its low height. There are a handful of trees in No 6's garden along the shared boundary, although I noted that the canopies are sparse in places, and the single storey building and associated windows still visible. Staverton House is also an imposing building when viewed from No 6's garden, though its impact is mitigated by its siting.
10. The proposed site plan⁴ annotates the distances between the new 3 storey central structure and the side elevation of No 6. This is calculated to be 16m. I note that the Council has calculated the 3 storey structure to be 9.6m high and that it would be 'within 9 metres' of the boundary with No 6. The appellant has not disputed these measurements or distances.
11. I acknowledge that the 3 storey structure would be positioned further away from the boundary with No 6 than the existing single storey structure. However, the introduction of the substantial 3 storey building, by virtue of its size, massing and proximity, would have an unacceptable overbearing effect upon the outlook from the modest external amenity space to the side of No 6.

³ Council application Refs - W/03/02197/OUT & W/05/01212/FUL)

⁴ Proposed site plan with sight lines - drawing ref: A-840 113 E

The presence of the trees along the boundary would do little to alleviate this harm, given the scale of the proposal. This harm would particularly be felt in the winter months when the trees are not in leaf.

12. I note the windows that would look towards No 6 include angled modules, in order to restrict the potential for future residents of the proposal to overlook No 6. Whilst it is noted that the lower 1.6m of these windows would have opaque glass, the proximity of these windows, which would be at first and second floor level, would lead to the perception of being overlooked.
13. Therefore, for the above reasons, the proposal would harm the living conditions of the existing occupants of No 6, in respect of privacy and outlook.

50b New Terrace

14. No 50b New Terrace is an end of terrace, of a group of 3 properties, situated to the east of the appeal site. At present, the vehicular access to the parking area associated with the care home runs to the west of the shared boundary with No 50b, with the parking area situated along the boundary with No 50b's rear garden. There are no windows in the gable end of 50b.
15. The proposed built form would bring the proposals closer to No 50b and at a greater scale. I also note that it would be approximately 1.1m higher than the existing Old Vicarage. However, the proposed building that would replace the Old Vicarage would be sited roughly in line with No 50b. The siting of the 3 storey central building would be positioned a sufficient distance from No 50b so as not to be materially harmful to the existing outlook and privacy enjoyed by No 50b. Therefore, it is considered that the living conditions of No 50b would not be materially harmed by the proposed buildings.
16. The front garden of No 50b is an open, landscaped area to the side of the access drive serving Nos 50, 50a and 50b New Terrace. It is their rear garden which offers greater privacy as external amenity space. The internal access for the proposal would run alongside the shared boundary with No 50b's front garden and would be slightly elevated. It is considered that the internal access would create some noise, overlooking and car fumes close to the boundary with No 50b. However, the access to the rear parking area of Staverton House is already alongside the boundary with No 50b. Furthermore, the proposal would move the parking associated with Staverton House to the front of the site, which currently lies to the west of No 50b's rear garden. On balance, whilst the proposal would elevate the access track slightly, it is not considered to be materially harmful given the status of the area to the front of No 50b's house, and the existing parking and access arrangements of Staverton House.
17. Whilst the siting of the service area and refuse storage close to the boundary with No 50b, again in a slightly elevated position, is not ideal, it is not considered that any harm by way of noise, smell or overlooking would be significant enough to be materially harmful. They would be positioned adjacent to the blank gable end of No 50b, rather than being adjacent to their rear garden. I also note the suggestion for a landscaping condition to secure some mature evergreen trees around the refuse storage area. It is considered that this would ensure that the privacy of No 50b, in regard to mitigating any overlooking to their rear garden, would not be harmed.

18. Therefore, the proposal would not harm the living conditions of the existing occupants of No 50b, in respect of privacy and outlook.

52 New Terrace

19. No 52 New Terrace is one half of a pair of semi-detached properties situated adjacent to the northern half of the western boundary. It has a long rear garden. No 52 is currently subject to overlooking from the existing first and second floor windows of the Old Vicarage along its western elevation. The siting of the existing Old Vicarage building, as well as the single storey link building, are also prominent in the outlook from No 52's rear garden.
20. Taking in to account the existing situation, the scale and bulk of the proposal would allow the outlook enjoyed by No 52 to not be materially harmed. The new building to the front of the site, whilst it would be positioned closer to the shared boundary with No 52 and would be wider and longer than the existing building, would be further to the south than the existing Old Vicarage. The impact of the new central link building would be largely screened by the new building at the front. It is also positioned close to the bottom of No 52's rear garden. The proposal would therefore not result in a significantly overbearing structure and the outlook enjoyed by No 52 would not be harmed.
21. The positioning of the windows in the new central link building would overlook the southern part of No 52's rear garden. However, the use of opaque glass in the bottom half, as well as their distance from No 52 and their angled view, would ensure that the degree of overlooking that would result would not be materially harmful.
22. Therefore, the proposal would not harm the living conditions of the existing occupants of No 52, in respect of privacy and outlook.

12 Smallbrook Gardens

23. No 12 Smallbrook Gardens is situated to the east of Staverton House, towards the south of the appeal site. Due to its position directly adjacent to the boundary with No 12, Staverton House is highly prominent in the outlook from No 12, both from the rear window of No 12 and from the rear garden. I also note there are 2 existing first floor windows of Staverton House which directly overlook No 12.
24. Whilst I acknowledge that the proposal, in particular the 3 storey central element, would be more visible and prominent in the outlook from the first floor bedroom window and rear garden of No 12, given the distance from the boundary with No 12, it is not considered that the bulk and design of the proposal would be materially harmful to the outlook currently enjoyed by No 12. The distance from the boundary with No 12's garden would also ensure that any windows along the eastern elevation of the 3 storey central building would not result in a material loss of privacy due to overlooking to No 12.
25. Therefore, for the above reasons, the proposal would not harm the living conditions of the existing occupants of No 12, in respect of privacy and outlook.

Other Matters in regard to Living Conditions

26. Whilst it did not form part of the reason for refusal, in its Statement of Case the Council has stated that the proposal would cause overshadowing of No 6

and No 52's gardens in morning hours for long periods of the year. In response to this, the appellants have provided a shadow desk based analysis conducted at 9:05 am on July 21, 2023. This demonstrates that there would be minimal variation in the shadows cast on the neighbouring properties to the west when comparing the existing built form on site and the proposed development. Therefore, the amount of light received by the properties to the west would be similar to that which they enjoy currently. Consequently, based on the evidence before me, I consider that the proposals would not be significantly overshadowing to the neighbouring properties. Nevertheless, despite the lack of harm to the amount of light received by No 6, this does not overcome my concerns in regard to their outlook and privacy.

27. For the reasons given above, whilst I have found that the proposals would not be harmful to the outlook or privacy enjoyed by 50b and 52 New Terrace and 12 Smallbrook Gardens, the proposal would harm the living conditions of the occupants of 6 Littlebrook, in respect of privacy and outlook. It would be contrary to Policy 57 of the Wiltshire Core Strategy (adopted 2015) (Core Strategy), which states that proposals should make a positive contribution to the character of Wiltshire through having regard to the compatibility of adjoining buildings and uses and the impact on the amenities of existing occupants. It would also be contrary to paragraph 130 (f) of the National Planning Policy Framework 2023 (the Framework), which states that development should have a high standard of amenity for existing users, which the proposal would fail to achieve.

Non-Designated Heritage Asset

28. The Old Vicarage, a former Victorian vicarage, was constructed between 1860 and 1886 to serve the vicar of St Paul's Church in Staverton. The 1886–87 map included in the appellants 'Built Heritage Assessment'⁵ shows that the vicarage was sited in an isolated location, surrounded by agricultural land. Over time, extensive residential development has occurred in the immediate vicinity of the former vicarage, including that of New Terrace, Smallbrook Gardens and Littlebrook. The vicarage, which subsequently became known as the 'Old Vicarage', was converted to a care home in approximately 1984. Various extensions and alterations were added to facilitate this new use. The significance of the building for the purposes of this appeal is its architectural and historic interest as a former vicarage.
29. The Old Vicarage possesses some aesthetic merit due to its external stonework, including the carved hoodmoulds, porch and windows. However, it is not particularly original in its style and has been considerably altered internally in order to serve its modern use as a care home. Original elements of the building, such as the main entrance, have been covered and have been replaced with modest additions to facilitate its use. On the ground floor, the sills of the former windows in the north and west elevations have been removed to create large doorway openings into the conservatory extensions. Where early floorboards were visible under the modern carpets, these have evidently been cut, presumably in order to install modern services. There are also signs of rot and instability.
30. Internally, some original features remain. These include moulded cornices with typical Victorian profiles, window shutters and a few early ceiling roses at

⁵ Prepared by Pegasus Group, dated 07/03/2023, Pegasus Ref P23-0380

ground-floor level. There is also evidence of some early joinery around the internal doorways and the staircase has 'simple turned balusters and robust but plainly carved newel posts and handrails'. Nevertheless, I consider that those features that do remain are not especially unusual or special for a property of this period.

31. In summary, the building, whilst attractive with some pleasing external and internal architectural features, is typical of its era. There is nothing inherently special about its design that sets it apart from other buildings of this period. It has been extended, unsympathetically in places, and interior features have been lost. It does not meet the criteria for statutory listing. Whilst the Council have not articulated the level of significance, the appellant considers that the building has a moderate level of significance. This has taken into account the modern accretions and alterations which are considered to detract from the architectural and historic interest of the asset.
32. In my view, taking account of the above, I consider it has a moderate level of significance. Demolition of the building, as proposed, would result in its total loss. Paragraph 203 of the Framework, in respect of non-designated heritage assets, requires decision makers to make a 'balanced judgement' having regard to the scale of any harm or loss and the significance of the heritage asset. I return to this matter in the heritage balance.

Other Matters

33. The appeal site is within 4 km of a Greater Horse Shoe bat 'core roost', as identified in the Bath and Bradford on Avon Bat Special Area of Conservation (SAC). The Council's Ecologist state that the proposal 'has potential to result in significant adverse impact either alone or in combination with other projects on the statutorily designated Bath and Bradford on Avon Bats SAC'. Had I been minded to allow the appeal, I would have sought more information on this matter. However, given my conclusion on the main issues, it is not necessary for me to do so as I do not need to carry out an Appropriate Assessment as required under The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
34. I note that the proposal was submitted following pre-application advice from the Council. This did not raise any concerns regarding the loss of The Old Vicarage, nor was the building considered at the time to be of heritage value and a non-designated heritage asset. I also note the Conservation Officer did not comment at the pre-application stage. Nevertheless, at appeal the proposal is considered afresh, and any omission to address or raise a matter as part of any pre-application advice does not warrant allowing the appeal.

Heritage Balance

35. The proposal would result in the total loss of a non-designated heritage asset of moderate significance. The loss of a building of moderate significance would result in a moderate level of harm. Paragraph 203 of the Framework, in respect of non-designated heritage assets, requires decision makers to make a 'balanced judgement' having regard to the scale of any harm or loss and the significance of the heritage asset.
36. The proposal would provide enhanced dementia care at an existing facility and would maximise the number of beds on a viable basis. This is in recognition

that there is a growing demand for dementia care accommodation. It is noted that the Cabinet member for Adult Services recognised the value of the site in providing care that is needed within Wiltshire. They also stated that the need for such forms of care is due to the aging population in the UK, and in particular in Wiltshire. I also note the content of the 'Planning Need Assessment'⁶ prepared by Carterwood, in regard to the need for care facilities in Wiltshire. This found that 'even on the basis of minimum market standard care beds, shortfalls are expected to increase to 421 and 1,854 in the market catchment and local authority area, respectively, by 2036.....reflecting the sustained and escalating nature of need'. I therefore attach significant weight to the provision of the care home facilities that the proposal would deliver.

37. It is agreed that the Council is currently unable to demonstrate a 5 year housing land supply. The Council have confirmed that the proposed C2 accommodation can be included in the Council's Housing Land Supply. The proposal would result in a net gain of 12 rooms which, when applying the Wiltshire ratio to the C2 rooms, would equate to a gain of 7 dwellings to the housing shortfall. I attach significant weight to this benefit.
38. An analysis of the existing building has been submitted with the appeal⁷, which discusses the key reasons against the use of the existing Old Vicarage building as part of a refurbishment scheme. The appellant has considered the reuse of the existing vicarage building, showing an attempt to ensure all bedrooms include a full ensuite wet room as standard, and that every room has a minimum of 15m² of space for each resident to live in. However, due to the inadequate vertical circulation within the building and particularly the convoluted arrangement within the Old Vicarage, this idea has been dismissed due to the inability to effectively provide quality care within the building. The Council still consider that it has not been adequately demonstrated that the Old Vicarage, alongside 'an appropriate extension behind it linking with Staverton House' could not provide for non-care rooms or an alternative arrangement.
39. However, regardless of whether it would be viable or even feasible to convert the existing Old Vicarage building to provide for modern care needs, having carefully considered all of the evidence, I find that the benefits of the scheme, taken together, outweigh the harm arising from the total loss of a non-designated heritage asset of moderate significance. Hence, there would be no conflict with the relevant criterion of Core Policies 57 and 58 of the Core Strategy or the Framework. These policies, in combination, seek to ensure that distinctive elements of Wiltshire's historic environment, including non-designated heritage assets, which contribute to a sense of local character and identity will be conserved, and where possible enhanced. Proposals should also ensure a high standard of design and enhance local distinctiveness by responding to the value of the historic environment.

Planning Balance and Conclusion

40. Although acceptable in some regards, I have identified that there would be conflict with the development plan as a whole, as the proposal would harm the living conditions of the occupants of 6 Littlebrook, in respect of privacy and outlook. I attach significant weight to this harm. Taking in to account the benefits outlined above, I find that the adverse impacts of the proposed

⁶ Appendix G of Appellant's Statement of Case - Planning Needs Assessment, Carterwood (March 2023)

⁷ Appendix F of Appellant's Statement of Case - Existing Building Review, Carless and Adams

development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.

41. Therefore, considered in total, the material considerations referred to above, including the approach of the Framework, do not outweigh the conflict with the development plan. The appeal is therefore dismissed.

Laura Cuthbert

INSPECTOR



Costs Decision

Site visit made on 2 November 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

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

Decision date: 6th December 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3321615 The Old Vicarage and Staverton House, 51A New Terrace, Staverton BA14 6NX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Ashley Jones of Fidelia Care Ltd for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for Demolition of existing care home with replacement building providing 9 bedrooms on lower ground floor, 9 bedrooms on ground floor and 14 bedrooms on first floor, all with auxiliary space, & together with the existing home would provide 52 bedrooms in total.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 31 of the PGG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive. Paragraphs 047 and 049 of the PPG sets out some examples of unreasonable behaviour by local planning authorities. The applicant considers that the Council have exhibited unreasonable behaviour on a number of these.

The recommendation of approval

3. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. Given that the building had been identified as a non-designated heritage asset and given the appeal site's close relationship with the neighbouring properties, it was reasonable of Council Members to consider both of these matters, and their decision on these matters is an exercise of judgement. Clear evidence was provided which substantiated their reasoning. I consider that it was not unreasonable for the Council to come to a different conclusion on these matters.
4. The lack of identification at the pre-application stage that the building was a non-designated heritage asset was not unreasonable. I note that the Council informed the applicant of this designation early on in the application process.

The application form was dated 26 October 2021, and according to the email correspondence provided by the applicant, they were advised of its designation at the site meeting on 8 November 2021.

5. Whilst there might not be evidence of a specific request for a Heritage Assessment, it is for an applicant to submit information at the planning application stage in support of his/ her case and it was open to the applicant to submit a heritage assessment during the course of the application. This is particularly so as the applicant was aware of the objection from the Conservation Officer in relation to the proposal.
6. Given the advice set out in paragraph 203 of the National Planning Policy Framework 2023 (the Framework), and whilst I have found in favour of the applicant on this particular matter in my decision, it was not unreasonable for the Council to refuse the application given the total loss of the non-designated heritage asset and the balanced judgement that is required.
7. Furthermore, whilst paragraph 38 of the National Planning Policy Framework 2023 (the Framework) requires local planning authorities to approach decision in a positive of creative way, the Council are under no obligation to defer a decision pending receipt of further information. This is particularly given the length of time the application had been with the Council. The Council determined the application on the basis of the information before it at the time and that was not an unreasonable course of action, in my view.
8. It is clear that the length of time taken to report the proposal to a committee meeting, 'some 15 months', was as a result of complex discussions that naturally occur between local planning authorities and applicants. It was not unreasonable for the Council to request additional information and amendments and I note that amended plans were submitted during the application process, including revised plans in October 2022, which needed further consultation. It is my view that this was not a deliberate obstruction to delay the application process.
9. Given the requirement to conserve non designated heritage assets, it was not unreasonable for the Council to suggest alternative schemes that would utilise the existing Old Vicarage building. I appreciate that this was not initially raised as part of the application process and that this was something new for the applicant to consider at the appeal stage. However, given that this was only a matter raised at the committee meeting, it was not unreasonable for the Council to raise it in their statement. Furthermore, the applicant submitted material in respect of the use of the former vicarage in order to respond to the reasons for refusal¹. Whilst I note the applicant had to produce further work into the practical re-use of the former vicarage as part of their final comments², this was not unreasonable work to carry out as part of their rebuttal comments.
10. There was no mention of harm to daylight or sunlight in the reason for refusal. I also note that the author of the committee report carried out their own assessment of the shadow cast by the proposal. However, it was raised as a matter of concern in the Council's Statement of Case. Consequently, shadow cast modelling had to be addressed by the applicant as part of the appeal

¹ Appendix F of Applicant's Statement of Case - Existing Building Review, Carless and Adams

² Appendix V of Application's Final Comments - Architect's (Carless & Adams) response to architectural and site layout design matters as well as the practical re-use of the former vicarage raised within Wiltshire Council's Appeal Statement. This includes November 2021 email correspondence with the Wiltshire Council Case Officer.

proceedings in Appendix V of their final comments. However, this was produced as part of the architect's wider response to the Council's Statement of Case, with only part of this document addressing shadow cast modelling. Again, whilst there might not have been a specific request for a shadow cast modelling assessment during the application process, the applicant would have been aware that daylight and sunlight was a relevant matter given the relationship with the neighbours. There would have been the opportunity to submit an assessment to assist the Council's consideration of the proposal.

11. Whilst reference to additional 'harm' in relation to the living conditions is discouraged and could be considered unreasonable, the impact on the living conditions was a relevant matter already raised in the reason for refusal. It did not introduce any new policies into the proceedings. Therefore, the allegation of the Council that there would be harm to daylight or sunlight has not resulted in any unnecessary or wasted expense in the appeal process.

The failure to apply the presumption in favour of sustainable development as required by national planning policy.

12. In my view, it was unreasonable behaviour for the committee report to not make the Committee members aware that they should undertake the balancing exercise, required by paragraph 11 of the Framework 2023, particularly given that the applicant state that 'at least one member of the Committee conceded that the considerations were evenly balanced'. However, the Council has undertaken the balancing exercise in its statement of case. Furthermore, I have carried out my own 'planning balance' in my decision and concluded that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the omission to carry out the balancing exercise has not resulted in any unnecessary or wasted expense in the appeal process.
13. I acknowledge that the lack of progress on the revised application submission³ must be frustrating for the applicant. However, costs can only be awarded in relation to unnecessary or wasted expense during the appeal process itself. The lack of progress on the revised application, even though it has been submitted in response to the concerns raised by the Committee members, is not therefore a matter related to the appeal proposal before me.

The determination of the Planning Application

14. The issue of 'pre-determination' raised by the applicant is a matter between the two parties. The planning committee decided that permission should be refused and that was the Council's formal decision. If the applicant is not satisfied with the response from the Monitoring Officer, then they can ask the Ombudsman to look into the matter. That would be the appropriate channel through which to resolve this matter.

Conclusion

15. For the reasons set out above I conclude that, whilst the Council exhibited unreasonable behaviour in some respects in terms of the PPG, I find that no wasted or unnecessary expense has been incurred by the appellant in the

³ PL/2023/04128

appeal process. I conclude therefore, that the application for an award of costs should be refused.

Laura Cuthbert

INSPECTOR