

Committee Report

Application No:	DC/17/00363/FUL
Case Officer	David Morton
Date Application Valid	23 May 2017
Applicant	Mr Daron Hodgson
Site:	45 Cornmoor Road Whickham Whickham NE16 4PU
Ward:	Dunston Hill And Whickham East
Proposal:	Proposed Detached Dwelling on the land to the rear of 45 Cornmoor Road (amended 04/07/17).
Recommendation:	REFUSE
Application Type	Full Application

1.0 The Application:**1.1 DESCRIPTION OF THE SITE**

The application site is currently a garden to the rear of the single storey dwelling 45 Cornmoor Road.

1.2 The site is located within the Whaggs Lane/Broom Lane Area of Special Character, as identified by saved UDP Policy ENV25. The site was typical of the original layout of plots in the area where properties have large elongated rear gardens with dense landscaping, albeit a large part of the curtilage has been annexed off through the introduction of a boundary treatment across the garden.

1.3 The site remains relatively well planted and there is dense planting along the common boundary with 47a Cornmoor Road.

1.4 The rear elevations of the property to the rear of the plot 34a Whaggs Lane is approximately 18 metres from the common boundary to the rear (west) of the site. 47a Cornmoor Road is located 1.6 metres from the southern boundary.

1.5 DESCRIPTION OF THE APPLICATION

The application seeks planning consent for the erection of a single detached dwellinghouse, the application proposes that the dwelling has two levels of accommodation with one level being provided within the roofspace.

1.6 The separation distance between the proposed dwelling and the existing bungalow at 47a (to the south) is 3.5 metres. The distance to the rear elevation of 34a Whaggs Lane is in excess of 40 metres. The garage of the proposed dwelling is 27 metres from the rear elevation of 25 Cornmoor Road.

1.7 The dwelling would have a maximum width of 9.8 metres and a maximum depth of 25.6 metres, this would result in a separation distance of 3.6 metres between the habitable rooms in the closest part of the side elevation of 47a Cornmoor

Road to the south and the side elevation of the proposed scheme. The application proposes two living room windows, a study window and a lobby window within the southern elevation of the proposed dwelling (at ground floor level) in addition to two rooflights at first floor level.

1.8 The applicant has not indicated the proposed boundary treatment which would surround the application site.

1.9 The following documents were submitted with the application;

- Coal Mining Risk Assessment

1.10 **PLANNING HISTORY**

The relevant planning history associated with the application site is summarised as follows:

- DC/14/01096/CPL was an application for a certificate of lawfulness for Demolition of existing garage and extension followed by erection of detached garage, swimming pool building and area of hard standing (amended 07/07/16).' The application was approved on 17 August 2016.

2.0 Consultation Responses:

Coal Authority No objection subject to conditions.

3.0 Representations:

3.1 Neighbour notifications were carried out in accordance with the formal procedures introduced in the Town and Country Planning (Development Management Procedure) Order 2015. A single letter of objection to the proposal has been received, in addition to a request for the application to be considered by Planning and Development Committee from a Ward Councillor (Councillor Peter Maughan). The letter of objection is summarised as follows:

- Works have already been undertaken on site;
- The proposed development is two-storey and not single storey as suggested by the applicant and;
- The development would impact on residential amenity.
- The proposal would restrict access.
- The proposal would cause issues with the maintenance of the site access.

4.0 Policies:

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

H2 Five Year Supply Figures

H4 Windfall and Small Housing Sites

H12 Housing Density

H13 Local Open Space in Housing Developments

H14 Neighbourhood Open Space-New Housing Dev

H15 Play Areas in Housing Developments

ENV3 The Built Environment - Character/Design

ENV25 Areas of Special Character

ENV44 Wood/Tree/Hedge Protection/Enhancement

ENV54 Dev on Land Affected by Contamination

CFR28 Toddlers' Play Areas

CFR29 Juniors' Play Areas

CFR30 Teenagers' Recreation Areas

DC2 Residential Amenity

CS10 Delivering New Homes

CS11 Providing a range and choice of housing

CS14 Wellbeing and Health

CS15 Place Making

CS18 Green Infrastructure/Natural Environment

GPGSPD Gateshead Placemaking Guide SPG

5.0 Assessment:

- 5.1 The key planning considerations are whether the development would comply with relevant national, regional and local housing policies, the principle of the development in an Area of Special Character, the impact on the visual amenity of the site, the residential amenity of neighbouring properties, density, any impact on trees, any highway safety implications, open space and play provision, land conditions and any other issues arising.
- 5.2 PRINCIPLE OF THE DEVELOPMENT
- 5.3 Housing demand and policy

As the application site is not specifically allocated for housing in the UDP, proposals for housing would need to be considered in terms of windfall housing under policy H4 of the UDP. Policy H4 of the UDP gives a number of criteria that need to be assessed.

- 5.4 The site forms a windfall site. The NPPF states that "*... housing applications should be considered in the context of the presumption in favour of sustainable development.*"
- 5.5 It is considered that the site meets the saved criteria set out in policy H4 in relation to its sustainable location within an established housing area, close to local services and public transport routes, and it would help to sustain the local community. As a result the principle of developing this site for residential use is considered acceptable should all other material planning considerations be satisfied.
- 5.6 **Housing choice**
Policy CS11 of the Core Strategy and Urban Core Plan requires 60% of new private housing across the Plan area to be suitable for and attractive to families, defined as dwellings of three or more bedrooms. The application proposes the erection of a single family home and as such the development is considered appropriate in the context of the NPPF, saved policy H4 of the UDP and policies CS10 and CS11 of the CSUCP.
- 5.7 **Residential space standards**
Policy CS11(4) requires that new residential development provides "adequate space inside and outside of the home to meet the needs of residents". It is considered based upon the submitted information that the application meets the above requirements, providing an acceptable level of internal and external space for existing and proposed properties.
- 5.8 **AREA OF SPECIAL CHARACTER**
The application site is within the Broom Lane/Whaggs Lane Area of Special Character and therefore saved policy ENV25 of the UDP applies. This policy states that certain areas of the borough have '*...a distinctive built character deriving from their buildings and spaces, which are worthy of recognition.*' Specifically referring to the Broom Lane/Whaggs Lane area, the policy identifies low density housing, a dense coverage of mature trees and long, well established gardens as the key characteristics of the area.
- 5.9 The supporting text of this policy states that the detrimental development allowed in the 1980's and 1990's, namely small housing estates and single dwellings on infill and rear garden plots has had an adverse impact on the established character of the area and that 'The area's protection under this policy will control similar damaging development in the future.'
- 5.10 The current UDP was adopted in 2007. The previous UDP was adopted in 1998 and had a policy relating specifically to the Broom Lane/Whaggs Lane area alone. This policy (E12) identified specific blocks within the area where single residential developments at the rear of properties would be unacceptable but

that 'elsewhere, they will be permitted at the rear of properties' but only if new dwellings were not '*visually intrusive*' and that new access arrangements were linked to existing access into the site and that parking capacity and any trees were not detrimentally affected.

- 5.11 The two policies are considered to be fundamentally different. The 1998 policy focuses on the design of backland development as opposed to the principle, except within very specific parts of the Broom Lane/ Whaggs Lane area where it was clear such development was not acceptable. The current UDP policy adopted in 2007 focuses on the principle and states that backland development damages the character of the area and should be resisted.
- 5.12 Whilst eight backland developments have been granted permission within the Area of Special Character since 2007, all of these have been revised and resubmitted versions of schemes originally determined under the previous UDP (adopted in 1998) or have been significantly different from the one currently proposed. Where original schemes had been approved, the principle of development had been established as acceptable, under policy E12 of the 1998 UDP. Where schemes had been refused, the refusal reasons were not based on the principle of backland development, due to the more relaxed nature of the policy in the previous UDP policy (adopted in 1998) and were refused on design.
- 5.13 Where extant permissions existed which could be implemented and were approved prior to 2007 the Council took a pragmatic approach to resubmissions of schemes where it was considered these were an improvement on the extant permissions that could be implemented.
- 5.14 Schemes that were refused permission under the former Policy E12 (1998 UDP) were refused due to the design considerations of the scheme rather than the principle of developing in rear gardens and in those cases if resubmissions were made post adoption of the 2007 policy these would need to be considered against the current development plan in force which resists the principle of backland development in this area unless there are material considerations of significant weight to outweigh that policy (ENV25).
- 5.15 The three most recent approvals for a backland development within the area were at 35A Broom Lane, 36A Cornmoor Road and 25 Cornmoor Road. The application at 35A Broom Lane was not considered to be further detrimental to the character of the area due to an existing tandem arrangement of dwellings on that specific plot where one dwelling sat behind the other (albeit linked) and where the elongated garden was already subdivided and also where important mature trees and landscaping were being retained. In assessing the application at 36A Cornmoor Road significant weight was offered to the fall back position of a previously approved detached granny annex - it was concluded, given the proposed dwelling was "*... almost identical [to the annex] except for the ground floor window arrangement...[,] that the effect of the proposed bungalow on the character and appearance of the area would not be different from that of the previously approved granny annex.*" The same view was taken in approving the development at 25 Cornmoor Road given the existence of a certificate of

proposed lawful development which allowed the erection of a swimming pool building. In approving the application Officers concluded *'It is considered that the fallback position open to the application is of such material weight that the non-compliance with Policies ENV25 and ENV3 are outweighed in this instance.'*

5.16 It is therefore considered that a precedent has not been set for the approval of new schemes submitted since 2007 and although backland development has been allowed, the policy acknowledges this and aims to prevent further detriment to the character of the area.

5.17 In assessing previous planning applications for housing development within the Broom Lane/Whaggs Lane Area of Special Character, Policy ENV25 has been viewed as, and applications determined on the basis of it being a restrictive policy. In considering the previous appeal (DC/10/01349/FUL) at 25 Cornmoor Road the Planning Inspector concluded;

"The proposal does not strictly conflict with the wording of policy ENV25 which seeks to encourage development that maintains and/or enhances Areas of Special Character. However, when read in conjunction with the supporting justification, it is clear that the intention of the policy is to control development which would damage the character and appearance of the Broom Lane/Whaggs Lane area"

5.18 Further to the above, the Gateshead Placemaking Supplementary Planning Document which has been prepared as an accompaniment to the Local Plan makes specific reference to Broom Lane within Appendix B - Local Character Guidance - 'Place Portraits'. It is stated within the Design Guidance for Broom Lane that the aims of the LPA should be to;

"Resist backland development within the gardens of existing properties to protect the character and setting of existing properties."

5.19 It is considered that the proposal for the dwelling at the rear in a tandem arrangement would not accord with Policy ENV25 of the current development plan.

5.20 In assessing the current application, consideration must be offered to a certificate of lawful development which currently exists on the application site (DC/16/00621/CPL). The application sought a Certificate of Proposed Lawful Development, pursuant to s.192 Town and Country Planning Act 1990 (the Act), for the provision within the curtilage of 45 Cornmoor Road of two buildings required for purposes incidental to the enjoyment of the dwellinghouse and the creation of a hardstanding associated with 45 Cornmoor Road.

5.21 The larger of the two detached structures was to be used as a swimming pool structure. It was proposed for the swimming pool structure to be single storey with a footprint of 7.4 metres by 37.4 metres, an eaves height of 2.25 metres and ridge height of 4 metres. It was proposed for the building to be located 2.5 metres from both the northern and southern boundaries while being 7.796

metres from the western boundary. The applicant has identified the footprint of this building on the submitted layout plan.

5.22 It must be noted that a Certificate of Lawfulness application is determined not on the basis of planning policies or material planning considerations, but in accordance with the specific factual matrix and in accordance with all relevant legal principles. Therefore, while it is considered that the erection of such a detached building would undoubtedly have a significant detrimental impact on the application site and the wider area in direct conflict with saved UDP Policy ENV25 this was not material in determining the application for the swimming pool structure.

5.23 Once granted, a certificate of lawfulness remains valid for the use or development described in it, on the land it describes, provided there is no subsequent material change in the circumstances. This is clearly set out in Section 192 of the Town and Country Planning Act 1990;

"The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness."

5.24 Following the grant of the Certificate of Lawfulness significant changes have been undertaken on site; a fence has been erected on site effectively separating the application site from the dwellinghouse and its curtilage. Further, an access has been created to the south of the application site onto an existing private access and drainage works have been undertaken. Based on these facts and based upon the fact the property (45 Cornmoor Road) is being marketed for sale separately from the application site Officers are now of the view that the application site is no longer within the curtilage of 45 Cornmoor Road. On this basis, the swimming pool structure would no longer benefit from a deemed planning permission by virtue of Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) as amended.

5.25 It is, therefore, considered that no fallback position exist on the site despite this assertion being forwarded by the application. It is suggested (based on the submitted plans) that the applicant believes that were the current application to be refused then the detached swimming pool building could be erected.

5.26 It is accepted by officers that the subdivision of the land could be reversed and as such a fallback could be re-established. The Case Law on the issue of fallbacks (R (on the application of Zurich Assurance Ltd) v North Lincolnshire Council [2012] EWHC 3708 (Admin)) is clear.

5.27 The judgement states;

"The prospect of the fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect. Where the possibility of the fallback position

happening is "very slight indeed", or merely "an outside chance", that is sufficient to make the position a material consideration (see Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government [2009] EWCA Civ 333 at [20]-[21] per Sullivan LJ). Weight is, then, a matter for the planning committee."

5.28 Therefore, even if a fallback position does exist, as set out above the weight attached to such a fallback is a matter for the decision maker.

5.29 In this instance, it is considered that such a fallback position should be attributed little weight, given that it is considered that there is no genuine prospect of the (swimming pool building) development coming forward. This view is taken given the clear intention shown by the applicant to subdivide the land and sell the property (45 Cornmoor Road) separately from its former curtilage.

5.30 Section 38(6) of the Planning & Compulsory Purchase Act 2004 specifies that:

'If regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the Plan unless material considerations indicate otherwise.'

5.31 As set out above, it is considered that the proposed development would conflict directly with the requirements of saved UDP Policy ENV25. In the absence of a fallback position no material considerations exist which would outweigh the presumption to refuse the application based upon its non-compliance with saved Policy ENV25.

5.32 **IMPACT ON THE STREETSCENE AND APPEARANCE OF THE AREA**
The NPPF encourages design quality and sets the scene for building a strong and competitive economy. Good design is identified specifically as being important in establishing a strong sense of place. New development should optimise the potential of a site to accommodate development, create and sustain an appropriate mix of uses and support local facilities and transport networks. The NPPF states that new development should respond to local character and history, reflecting the identity of local surroundings.

5.33 The CSUCP reflects the general aims of the NPPF encouraging economic growth and identifying the importance of quality of place. Policy CS15 refers specifically to Place Making and the need for new development to demonstrate high and consistent design standards in line with the Council's design guidance contained in the Gateshead Placemaking SPD.

5.34 The NPPF requires that development should 'make a positive contribution to local character and distinctiveness' (paragraphs 126 and 131). This is reinforced by paragraphs 58, 60, 61 and 64. These require development to respond to local character by promoting or reinforcing local distinctiveness, reflect the identity of local surroundings and materials and promote good architecture and appropriate landscaping. Development of poor design which

fails to respond to opportunities for improving the character and quality of an area should be refused.

- 5.35 The Gateshead Placemaking SPD amplifies Saved UDP Policy ENV3 and the emerging CSUCP Policy CS15 Place Making. This sets out a series of key design principles which will be used to assess development proposals.
- 5.36 The proposed dwelling is considered to be of a much larger scale (in terms of its footprint) to the adjacent properties to the east and south of the application site, resulting in an incongruous appearance. Further, while it is considered that while the proposed dwelling would not be visible, in the large part, from the public domain it would still be prominent and cause a visual intrusion when seen from surrounding properties. Further, it is considered that the proposal would not maintain the essential spacious distinctiveness of the Area of Special Character, contrary to the objectives of the NPPF, saved policy ENV3 of the Council's UDP and policy CS15 of the CSUCP.
- 5.37 It is considered that the proposed development would conflict directly with the requirements of the NPPF saved UDP Policy ENV3 and policy CS15 of the CSUCP.
- 5.38 RESIDENTIAL AMENITY
It is considered that the separation distances afforded to those properties located to the east, west and north would ensure that no unacceptable impact on residential amenity would occur in regard to these properties.
- 5.39 It is, however, considered that the proposed development would result in significant harm to the occupiers of 47a Cornmoor Road, as referenced previously the proposed development would be located 3.6 metres to the north of the neighbouring property. The proposal would also project almost 13 metres beyond the front elevation of 47a Cornmoor Road. It is considered that the projection beyond the front elevation combined with the scale and mass of the proposed development would result in an unacceptable loss of outlook and would create an opportunity for looking; both to the detriment of the occupiers of 47a Cornmoor Road.
- 5.40 It is considered that the proposal would have an adverse impact on the amenity of the occupiers of 47 Cornmoor Road and as a result it would fail to comply with the aims and objectives of the NPPF, saved policy DC2 of the Council's UDP and policy CS14 of the CSUCP.
- 5.41 HIGHWAY SAFETY
The application proposes that an existing access (which is in the ownership of the applicant) be used to access the site. It is considered that the small number additional trips created by the development would not result in any unacceptable impact on the access or the wider highway network. Further, the development allows for turning within the site and therefore allows cars to leave the site in forward gear.
- 5.42 The application allows for the storage of cycles within the proposed garage.

5.43 Given the above, it is considered that the proposal would comply with the aims and objectives of the NPPF and policy CS13 of the CSUCP.

5.44 LAND CONDITIONS

5.45 Contaminated Land

As the applicant proposes a sensitive end use on the site, a Preliminary Risk Assessment (PRA) was submitted with the application. The historical use of the land was for agricultural purposes prior to residential development on the site and that the site is not within an area identified as potentially contaminated, the Local Planning Authority is satisfied that no further investigation would be required prior to the commencement of development. It is not considered necessary to condition further investigative works beyond those that would be required under the Building Control regime. The development complies with policy CS15 of the CSUCP and policy ENV54 of the UDP.

5.46 Land Stability

The application site falls within the defined Development High Risk Area and therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application. As a result, the applicant has submitted a Coal Mining Risk Assessment, which has been assessed by the Coal Authority.

5.47 The Coal Authority is satisfied with the broad conclusions of the report, informed by the site investigation works; that coal mining legacy issues are not significant within the application site and do not pose a risk to the proposed development. Accordingly, The Coal Authority does not object to the proposed application, however it is considered necessary to condition that site investigation works should be undertaken prior to the commencement of any works.

5.48 The proposed development is therefore considered to be in accordance with the NPPF and policy DC1 of the UDP.

5.49 PLAY AND OPEN SPACE

The NPPG (Paragraph: 031 Reference ID: 23b-031-20160519) is clear that tariff style contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm.

5.50 While it cannot be concluded that the proposed development would comply with saved Policies CFR20, CFR28, CFR29 and CFR30 of the UDP it is considered that it is not possible to require any contribution for either play or open space provision in this case, based on the above assessment.

5.51 COMMUNITY INFRASTRUCTURE LEVY (CIL)

On 1st January 2017 Gateshead Council became a CIL Charging Authority. This application has been assessed against the Council's CIL charging

schedule and the development is CIL chargeable development as it is housing related. The development is located within a Charging Zone with a levy of £30 per square metre for this type of development.

5.52 OTHER MATTERS

It is considered all material planning considerations raised by objectors have been addressed within the main body of the report.

6.0 CONCLUSION

6.1 The fundamental issue in determining this application is the principle of back land development in this location. Policy ENV25 clearly states that the character of the area is defined by long garden plots and that this character has been damaged by schemes approved prior to the adopted UDP or schemes where an extant permission existed prior to adoption.

6.2 All of the arguments forwarded by the applicant have been afforded appropriate weight but it is not considered that none of the reasons forwarded would outweigh the harm it would cause as a result of its inappropriate nature.

6.3 It is considered that the proposed development remains in conflict with the NPPF and saved policies ENV3 and ENV25. The proposal would therefore have a detrimental impact on the area of special character. The overriding issue is the fact that policy ENV25 of the UDP seeks to control and presumes against further backland development within the Whaggs Lane/Broom Lane Area of Special Character.

6.4 Further to the above, it is considered that the proposed development would have a significant impact on the occupiers of 47a Cornmoor Road as it would lead to overlooking and an oppressive outlook to existing occupiers. The development would fail to comply with the NPPF, saved policy DC2 of the Council's UDP and policy CS14 of the CSUCP.

7.0 Recommendation:

That permission be REFUSED for the following reason(s):

1

The proposed dormer bungalow would result in back land development and the subdivision of the existing plot. This would have a detrimental impact on the area of special character, the development would therefore fail to comply with aims and objectives of the NPPF, saved Policies ENV3 and ENV25 of the Unitary Development Plan and the Gateshead Placemaking SPD.

2

The proposed development would have an unacceptable adverse impact on the living conditions of neighbouring property (47a Cornmoor Road) by virtue of its overbearing/dominating nature

while also creating an unacceptable level of overlooking. The proposal would therefore fail to accord with the NPPF, Policy CS14 of the Core Strategy and Urban Core Plan, and DC2 of the Unitary Development Plan.

