

TITLE OF REPORT: Planning Appeals

REPORT OF: Paul Dowling, Strategic Director, Communities and Environment

Purpose of the Report

1. To advise the Committee of new appeals received and to report the decisions of the Secretary of State received during the report period.

New Appeals

2. There have been **two** new appeals lodged since the last committee:

DC/17/01358/OUT - Former Monkridge Gardens Residents Association And Lands At 21 And 23 And Land South Of 9-23 Monkridge Gardens, Dunston Hill, Gateshead NE11 9XE

Outline planning permission with all matters reserved for the clearance, lowering and levelling of site and the erection of up to 10 dwelling-houses, with new shared-surfaced vehicular and pedestrian access.

This application was a committee decision refused on 7 March 2018.

DC/18/00244/ADV - 592-596 Durham Road, Gateshead NE9 6HX

Display of 1 x 48 sheet LED advertisement with changeable content on gable elevation.

This application was a delegated decision refused on 19 April 2018.

Appeal Decisions

3. There have been **two** new appeal decisions received since the last Committee:

DC/17/00562/HHA - Glen View, Stannerford Road, Clara Vale, Ryton

Two side extensions, rear extension and replacement of roof. Demolition of existing garage to create driveway.

This application was a delegated decision refused on 29 March 2018.

Appeal dismissed 18 September 2018.

DC/17/01087/FUL – Woodlands, Birtley Lane, Birtley DH3 2LR

The felling of 5 Tree Preservation Order (TPO) trees and the replacement with 7 new trees and the erection of a Use Class C3 detached dwelling-house, with three bedrooms and two floors (one within pitched roof void) on existing rear garden lands, with associated new access, hardstandings and car parking spaces (as resubmission and re-siting of DC/16/1289/FUL).

This application was a delegated decision refused on 1 February 2018.

Appeal dismissed 6 September 2018.

Details of the decisions can be found in **Appendix 2**

Appeal Costs

4. There have been **no** appeal cost decisions.

Outstanding Appeals

5. Details of outstanding appeals can be found in **Appendix 3**.

Recommendation

6. It is recommended that the Committee note the report

Contact: Emma Lucas Ext: 3747

APPENDIX 1

FINANCIAL IMPLICATIONS

Nil

RISK MANAGEMENT IMPLICATIONS

Nil

HUMAN RESOURCES IMPLICATIONS

Nil

EQUALITY AND DIVERSITY IMPLICATIONS

Nil

CRIME AND DISORDER IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

HUMAN RIGHTS IMPLICATIONS

The subject matter of the report touches upon two human rights issues:

The right of an individual to a fair trial; and
The right to peaceful enjoyment of property

As far as the first issue is concerned the planning appeal regime is outside of the Council's control being administered by the First Secretary of State. The Committee will have addressed the second issue as part of the development control process.

WARD IMPLICATIONS

Various wards have decisions affecting them in Appendix 3.

BACKGROUND INFORMATION

Start letters and decision letters from the Planning Inspectorate



Appeal Decision

Site visit made on 28th August 2018

by **Alison Roland BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 September 2018

Appeal Ref: APP/H4505/D/18/3204922

Glen View, Stannerford Road, Clara Vale, Ryton, NE40 3SN.

- 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 Wayne Stewart against the decision of Gateshead Metropolitan Borough Council.
 - The application Ref: DC/17/00562/HHA, dated 16 May 1982, was refused by notice dated 29 March 2018.
 - The development proposed is reconfiguration of existing dwelling, including an extension to both sides and small extension to rear. New roof to height of existing and demolition of existing garage to create driveway.
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Procedural Matters

1. The date of the application cited in the header above is derived from the planning application forms and is clearly an error. I note the appeal form gives the date of the application as 5 September 2017 and the Decision Notice gives it as 22 May 2017. However, this matter is not of importance since the appeal is dismissed.
2. The works to which this appeal relates have been completed. I shall therefore deal with this appeal as an application for retrospective planning permission.

Decision

3. The appeal is dismissed.

Main Issues

4. The main issues in this appeal are (1) whether the proposal amounts to inappropriate development in the Green Belt (GB) and if so, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development and (2) the implications of the proposal for the character and appearance of the area.

Reasons

5. The National Planning Policy Framework (the Framework) states at paragraph 145 that the extension or alteration of a building is not inappropriate development in the GB provided that it does not result in disproportionate additions over and above the size of the original building.
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6. The Council say that the original dwelling was 85.3sqm and the proposals have increased this to 449.2sqm. The appellant cites a volume of 468.8m³ for the "existing dwelling" (presumably the dwelling prior to implementation of the proposals) compared against 546.9 m³ for the "new dwelling" (presumably the current dwelling). However, the former figure appears to include outbuildings and the previous extension to the property carried out in the 1980's. The volume given for the original property alone is 191.2m³.
7. Annex 2 of the Framework defines 'original building' as a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally. Clearly, the 1980's extension cannot be included in the definition of the original building. Neither do I consider the term can reasonably extend to the garage and dog shelter, as the evidence suggests these were detached outbuildings. By any measure, whether one relies on the calculations of the Council or appellant, the original property has been very substantially enlarged as a result of the proposals.
8. This is particularly evident when a comparison is made between its present size and massing and its original condition as can be discerned in the aerial photograph submitted with the appeal. The resultant increase in scale and massing leave me in no doubt that the proposals would amount to a disproportionate addition to the original dwelling. It follows that they would amount to inappropriate development in the GB. Paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances.
9. Added to the harm by reason of inappropriateness would be a moderate loss of openness to the GB as a result of the increased scale and massing of the dwelling. The modest proportions of the original L-shaped bungalow have been substantially increased in width and depth. This harm would be localized, but paragraph 144 of the Framework states that the decision maker should ensure that substantial weight is given to any harm to the GB.
10. In relation to the second main issue, the Council say that the original dwelling has been engulfed in extensions and it is very hard to distinguish in the mass of built form. Whilst that is certainly true, the appearance of the resultant dwelling harmonises perfectly well with others along this stretch of road and it is of unremarkable appearance. It appears the property has been completely remodelled, but the result is a cohesive design which, whilst slightly more contemporary than many others in the street, by no means draws the eye. Whilst the white painted render finish is somewhat brighter than the brickwork of surrounding properties, I note that the previous building had a white painted finish. I thus find on the second main issue that the proposal would integrate comfortably with the prevailing character and appearance of the area.

Other Considerations raised by the appellant

11. The appellant raises a number of considerations in favour of the appeal. It is claimed that the work was undertaken following advice from a Planning Officer about the extent of permitted development rights which could potentially be exercised, which were depicted on a plan. It is further asserted that the appellant implemented a scheme which did not utilise those rights to the full.
12. It is difficult to come to a view on what the plan purports to show as it is a very basic floor plan and not three dimensional. I also understand a more recent

Planning Officer has questioned its accuracy. If indeed the appellant believes that what has been implemented is lawful, it is open to him to have the matter determined under Section 191 or 192 of the Town and Country Planning Act 1990. However, this is not a matter for me to determine in the context of an appeal made under Section 78 of the Act and it has no bearing on the planning merits. The appellant further argues that the exercise of permitted development rights could have resulted in a larger building. However, no specific scheme in three dimensional form has been put before me to demonstrate this.

13. The appellant says that alternative plans were submitted to the Council which had previously been agreed with them in 2014 and these have been supplied with the appeal. The position of the Council on these plans at that time is unclear from the email correspondence supplied and the appellant implies that they have since revised their position. The comment from the Planning Officer that the scheme is "generally there" subject to the removal of permitted development rights is not synonymous with an outright approval. Furthermore, the calculations in the emails compare what was then the existing property, with the proposed scheme, rather than comparing the resultant volume against the *original building*, which is the correct approach as outlined in paragraph 7 above. On the available evidence, I am not persuaded therefore, that they represent a legitimate fallback position.
14. The appellant highlights that the Inspector in a previous planning appeal at the site (APP/H4505/D/14/2215596) acknowledged that some form of extension would be acceptable. Paragraph 10 of that decision states that there was the "potential for some extensions to be constructed" if that appeal were unsuccessful. However, this appears to have been simply an acknowledgement of the fact that alternative schemes could be devised using permitted development rights at that time and was not intended to give a steer on the scale of extensions likely to be acceptable. He also went on to say that such extensions would not be as harmful as the scheme that was then before him. I do not consider therefore that the Inspectors' comments fetter my discretion in this appeal.
15. Information submitted in relation to the immediately adjoining properties (Norbreck and Meadowvale) demonstrates that the appeal property is smaller in volume and floor area than both. The fact the property is sited in a row of dwellings, including some larger properties, does slightly mitigate the impact of the proposal on the openness of the GB. However, whether a proposal amounts to inappropriate development in the GB in the first instance is not contingent on the scale of nearby properties. I therefore attribute some, albeit limited weight to this point.
16. I understand the appellant is aggrieved with the way the Council dealt with the application the subject of this appeal and earlier correspondence prior to that. However, those are not matters I can take into account in assessing the planning merits.

Overall Balance and Conclusion

17. I have found on the first main issue that the proposal would amount to a disproportionate addition to the original property which would render it inappropriate development in the GB. Added to that harm would be a moderate loss of openness to the GB. This would bring it into conflict with Policy CS19 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne

2010-2030 (March 2015) (CS), which seeks to ensure that development in the GB complies with national policy, including the Framework. I attach substantial weight to these findings.

18. In relation to the second main issue, I have found that the proposal would integrate comfortably with the prevailing character and appearance of the area. I thus find no conflict with Policy CS15 of the CS, saved Policy ENV3 of the Gateshead Council Unitary Development Plan (2007), or the guidance in the Framework. These seek to secure high quality design that responds positively to local character and identity. It would not comply with the guidance in the *Householder Alterations and Extensions* Supplementary Planning Document (2012), which requires that extensions are in keeping with and do not dominate the original building. However, its appearance is not at all out of place in its context. Nonetheless, this amounts to a neutral or absence of harm factor, rather than a positive one in the overall GB balance.

19. For the appeal to succeed, the combined weight of the other considerations raised by the appellant must be sufficient to clearly outweigh the totality of harm identified. Overall, I conclude that the other considerations raised by the appellant, would not clearly outweigh the identified harm. It follows that the very special circumstances necessary to justify the development do not exist. The appeal therefore fails.

ALISON ROLAND

INSPECTOR



Appeal Decision

Site visit made on 13 August 2018

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2018

Appeal Ref: APP/H4505/W/18/3200117

Woodlands (former the Copse) and land adjoining, Birtley Lane, Birtley, Gateshead Borough DH3 2LR

- 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 and Mrs Oliver against the decision of Gateshead Council.
 - The application Ref DC/17/01087/FUL, dated 3 October 2017, was refused by notice dated 1 February 2018.
 - The development proposed is described as *'the felling of 5 Tree Preservation Order (TPO) trees and the replacement with 7 new trees and the erection of a Use Class C3 detached dwelling-house, with three bedrooms and two floors (one within pitched roof void) on existing rear garden lands, with associated new access, hardstandings and car parking spaces (as resubmission and re-siting of DC/16/1289/FUL)'*.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Notwithstanding the description of development as set out in the application, the appellant has clarified that the development proposed involves the felling of six protected trees, not five as originally indicated and I have dealt with the appeal accordingly.
3. The revised National Planning Policy Framework (the Framework) was published on 24 July 2018, replacing that published in March 2012. I wrote to the parties and invited their submissions in respect of the new Framework and any implications for their cases and have had regard to the comments received.

Main Issue

4. The main issue in this case is the effect of the proposed removal of protected trees, along with any long term effects on adjacent protected trees, on the character and appearance of the area.

Reasons

5. The appeal site forms part of the garden of Woodlands and includes a number of trees which are subject to a Tree Preservation Order (TPO). Woodlands is situated adjacent to Birtley Golf course which I saw at my site visit has a parkland appearance, laid out with lines and groups of trees between fairways. Visually, the protected trees at the appeal site form a continuation of the groups of trees at the golf course and contribute to the sylvan character of this

part of Birtley and the character and appearance of Birtley Lane, which otherwise has an urban appearance.

6. It is proposed that a detached chalet type dwelling of modest proportions is erected at the appeal site. To accommodate the proposed dwelling, six protected trees would be felled, with 7 trees planted, and the proposal is supported by arboricultural reports which I have taken into account.
7. The Council accepts that the removal and replacement of Ash trees, identified as T0461 and T0464 would be beneficial for the overall health of the TPO group. From my observations during my site visit, I agree that tree T0461 is a poor specimen which contributes little to the amenity of the group. Tree T0464 is an attractive tree with considerable amenity value, but given the Tree Bore Test and evidence of a large wound, I do not disagree with the parties in respect of this tree. The removal of trees T0458, T0460, T0462 and T0463 is disputed.
8. Tree T0458 is a beech tree which the arboricultural reports state is in a poor condition. However, whilst the bore tests indicate decay, its removal is not recommended on safety grounds. Although the tree is not good quality in terms of its form and shape, it does have amenity value as part of the group and whilst it should be monitored, from all that I have read and seen, I consider that the tree could continue to contribute to the amenity of the group for a reasonable period.
9. Beech tree T0460 is identified as a well-formed healthy mature tree without significant decay. I observed that the tree is of significant amenity value in its own right and as part of the group, and note from the arboricultural reports that it could continue to contribute to amenity for many years to come.
10. Tree T0462 is an ash tree situated towards the front of the site. Whilst the tree is not noted as experiencing decay, I concur with the appellant that it does not have good shape or form. It does however contribute positively to amenity of the area as part of the group of trees and has the potential to do so for a reasonable time into the future.
11. Tree T0463 is a large beech tree situated on the Birtley Lane frontage of the site. The parties agree that it is a prominent tree with a good form and at my site visit I noted that it has significant amenity value, especially to the streetscene. On the balance of evidence, I do not find the loss of this tree due to its condition, unavoidable and am not convinced that the tree requires to be felled for safety reasons in the absence of any detailed consideration of possible remedial works. Whilst there is some discussion in the evidence regarding potential remedial and mitigation measures, no details have been provided.
12. I find therefore that trees T0458, T0460, T0462 and T0463 together have significant amenity value as part of a group, with T0460 and T0463 having high individual amenity value. Whilst the trees have generally grown in close proximity and have uneven crowns and trunks, on the balance of evidence, I do not agree that trees T0458, T0460 and T0462 will need to be felled and replaced soon. Whilst tree T0463 has issue with decay, I am not convinced that its immediate loss is unavoidable in the absence of consideration of remedial works.

13. The proposed dwelling would be sited in close proximity to the retained protected trees and I note it would overlap the root protection area shown for tree T0459 which is a large dominant specimen beech with high amenity value, with an estimated remaining contribution of between 20 and 40 years.
14. I must have regard to the long term future of the retained protected trees and consider that with trees growing in such close proximity to the proposed dwelling, there might be future pressure to top, lop or fell the trees due to damage such as from root spread or on safety grounds. Whilst I have considered the appellants comments in this regard and that any such proposals for works to the protected trees would require consent, the erection of the proposed dwelling would nevertheless increase the prospect of such pressure and weighs against the proposal. Whilst the appellants state they wish to live in the dwelling, I must have regard to all future occupiers.
15. I have taken into account the appellants comments about the design of the modest sized dwelling, the design policies of the Framework and development plan cited, but consider that overall, the scheme would be harmful to the character and appearance of the area. I note that whilst the Councils Urban Design Unit did not object to the proposal, the Councils objections relate to arboricultural matters.
16. The appeal scheme includes the planting of 7 trees around the periphery of the appeal site. Whilst such planting would go some way to mitigating the proposed loss of protected trees, the new trees would take time to grow to maturity and the harmful effects of the loss of protected trees would be significant for many years. The appellants suggest that the proposal could be low impact in respect of the trees such as through the use of screw foundations. However, I have not been provided with sufficient details to consider. I also note that a number of the trees would benefit from works as identified, but have not been convinced that such works could only be achieved as a result of the appeal scheme.
17. The appeal scheme would, through the removal of protected trees and prospect of future pressure to top, lop or fell the retained trees, have an unacceptable effect of the character and appearance of the area. The proposal conflicts with Policies CS15 and CS18 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 which are concerned with place making and green infrastructure and the natural environment respectively. It also conflicts with saved policies ENV3 and ENV44 of the Gateshead Unitary Development Plan which are concerned with character and design and woodland, trees and hedgerows respectively.

Other matters

18. I have regard to the small contribution that the dwelling would make to housing supply and comments in respect of the new homes bonus. The appellants refer to the Written Ministerial Statement: Planning for Growth, but the revised Framework, in basis terms, is now the Government's statement of national planning policy. Whilst it may be possible to erect buildings on the site under permitted development rights, the trees are protected and therefore such permitted development should not have adverse effects on their amenity value.

Conclusion

19. For the above reasons and having had regard to all matters raised, I conclude that the appeal should fail.

Philip Lewis

INSPECTOR

APPENDIX 3

OUTSTANDING APPEALS

Planning Application No	Appeal Site (Ward)	Subject	Appeal Type	Appeal Status
DC/17/00473/HHA	17 Limetrees Gardens Low Fell Gateshead NE9 5BE	First floor extensions to side and rear	Written	Appeal in Progress
DC/17/00562/HHA	Glen View Stannerford Road Clara Vale Ryton NE40 3SN	Two side extensions, rear extension and replacement of roof. Demolition of existing garage to create driveway.	Written	Appeal Dismissed
DC/17/01087/FUL	Woodlands Birtley Lane Birtley DH3 2LR	The felling of 5 Tree Preservation Order (TPO) trees and the replacement with 7 new trees and the erection of a Use Class C3 detached dwelling-house, with three bedrooms and two floors (one within pitched roof void) on existing rear garden lands, with associated new access, hardstandings and car parking spaces (as resubmission and re-siting of DC/16/1289/FUL)	Written	Appeal Dismissed
DC/17/01358/OUT	Former Monkridge Gardens Residents Association And Lands At 21 And 23 And Land South Of 9-23 Monkridge Gardens, Gateshead Dunston Hill	Outline planning permission with all matters reserved for the clearance, lowering and levelling of site and the erection of up to 10 dwelling-houses, with new shared-surfaced vehicular and pedestrian access	Written	Appeal in Progress

	NE11 9XE			
DC/18/00105/FUL	Smileys Car Wash Nobles MOT Centre Sunderland Road Gateshead	VARIATION OF CONDITION 2 (Hours of Operation) of permission DC/12/00577/COU to allow opening Mon - Sat 08:00 -18:000 and Sunday 09:00 - 18:00 (currently limited to between 0900 and 1800 Monday to Saturday and between 0900 and 1600 on Sundays and Public Holidays)	Written	Appeal in Progress
DC/18/00244/ADV	592-596 Durham Road Gateshead NE9 6HX	Display of 1 x 48 sheet LED advertisement with changeable content on gable elevation.	Written	Appeal in Progress
DC/18/00390/GPDE	31 Calder Walk Sunniside Newcastle Upon Tyne NE16 5XS	Erection of a single storey rear extension, which would extend beyond the rear wall of the original house by 4.5m, with a maximum height of 3.9m, and eaves height of 2.8m.	Written	Appeal in Progress
DC/18/00440/TPO	9 Axwell Park Road Axwell Park Blaydon NE21 5NR	Felling of one Sycamore tree in garden of 9 Axwell Park Road.	Written	Appeal in Progress