
Appeal Decision

Site visit made on 21 July 2021

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 9 August 2021

Appeal Ref: APP/H4505/W/21/3270166

3 Hillcroft South, Station Road, Low Fell, Gateshead NE9 6HD

- 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 Eva Szewczyk against the decision of Gateshead Council.
 - The application Ref DC/20/00660/FUL, dated 27 July 2020, was refused by notice dated 5 February 2021.
 - The development proposed is Detached contemporary residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. No response was received from the parties following my request for comments, however I have referred to the relevant paragraphs from the revised Framework where necessary in my decision.

Main Issues

3. The main issues are:
 - The effects of the proposed development on the character and appearance of Saltwell Conservation Area with particular reference to subdivision of grounds and loss of trees; and
 - The effects of the proposed development on the living conditions of the occupiers of neighbouring properties.

Reasons

Character and Appearance of the Conservation Area

4. The appeal site lies within the Saltwell Conservation Area (CA). I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
5. Saltwell CA gains its significance from its large nineteenth century villas which were historically set in spacious landscaped grounds. The appeal site is situated towards the southern edge of the CA, which marks the limit of the Victorian/Edwardian development in the area. A variety of infilling has taken place within the CA in the grounds of the large houses. This includes the pairs

of semi-detached villas at Hillcroft North and South and Westfield Lodge which are situated to both sides of the appeal site. Both pairs of villas have since been altered and converted into apartments. The historic maps contained at appendix 2 of the Council's evidence indicate that they were both set in extensive grounds, sloping down towards Breckenbeds Road. It is clear from the historic maps that the appeal site was part of the grounds of Hillcroft North and South and remained so for a significant period of time.

6. The appeal site is of verdant appearance containing a number of mature trees and overgrown vegetation. It does not have any specific current use. I noted on my site visit that there is no physical separation from Hillcroft South (such as walls or fencing), and it is accessible via a narrow path from the shared parking area. There are a range of windows within the side elevation of Hillcroft South, including glass doors, which directly face onto the appeal site. The visual association between Hillcroft South and the appeal site is a strong one, which coupled with its clear historic association shown on the historic maps, suggests to me the appeal site, whilst not currently a useable 'garden', could be defined as 'grounds' of the building. This is notwithstanding the current severance of ownership.
7. This historic and visual association with Hillcroft South, and the spacing the appeal site offers between the pairs of villas (together with the adjacent grounds of Glenside Court), make a positive contribution to both the character and appearance of the Saltwell CA. This is notwithstanding its lack of public views and access.
8. The principal elevations of the two pairs of villas face west, towards Breckenbends Road, and it is evident that their grounds originally extended downhill towards the narrow lane. The historic maps suggest housebuilding took place within their grounds from the mid-20th Century. Most recently, and in close proximity to the appeal site, 104 Saltwell Road/ 42 Station Road was granted planning permission in March 1990, prior to the designation of the CA in July 1990.
9. Consequently, there has already been alteration to and separation of the original grounds and the setting of both pairs of villas has been irrevocably altered. Nonetheless, the boundary of the CA responds to this historic development, wrapping around the remaining areas of open space between the villas and excluding the mid-20th Century residential development to the rear.
10. The character statement for Saltwell CA (IPA17¹) includes a character description for the Saltwell Road area, and specifically notes that '*There has been more recent development in the gardens of houses which has reached a critical stage if the character of the area is to survive*'. The development policy guidelines in IPA17 indicate a general presumption against change involving the further sub-division of gardens and grounds, which would contribute to an increased density in the CA.
11. Part 3 of Policy MSCP25 of the recently adopted Making Spaces for Growing Places (MSGP) Local Plan Document: Site Allocations and Development Management Policies (February 2021) specifically refers to development which results in the sub-division of gardens and grounds within CAs. Development is permitted in a number of instances, including where a) there is historic

¹ Interim Policy Advice note 17: Conservation Area Character Statements, Strategies and Policy Guidelines

- evidence to demonstrate that the garden or ground was previously sub-divided into physically separate plots.
12. As I have noted, the appeal site is not physically separate from Hillcroft South and its association with the villas is a strong one, both visually and historically. The appellant indicates an imprecise time period in which the land was legally separated off, and suggests it has not been in use as gardens for some time. However this is not backed up by any persuasive evidence including any lawful use. The separation of ownership and lack of usage as a garden has little bearing on my findings. As such, the submitted High Court judgement² bears very little relevance to my conclusions.
 13. The presence of more modern development at 104 Saltwell Road South/ 42 Station Road, approved prior to designation of the CA, does not provide convincing justification or precedent for building in the grounds of the villas. The historic maps indicate that there were buildings previously located at the site of the modern building, and not landscaped gardens.
 14. The site contains a number of tall mature trees, of which the canopies are visible from numerous public viewpoints. Trees strongly contribute to the significance of the CA as a whole, and IPA17 specifies a general presumption against their loss. The lack of mention of trees in the IPA17 character description for the specific Saltwell Road South area does not diminish the contribution of trees to its significance.
 15. There are conflicting statements within the evidence about the number of trees to be removed to facilitate the proposed development, some of which lie outside of the appeal site. Even if it were possible to retain some of the trees (and construction techniques agreed by condition), the proximity of them to the proposed dwelling is such that further tree felling is highly likely. The gradient of the site and its surroundings are such that excavation would be required to level the site. Furthermore, the main living areas of the proposed dwelling would face the large trees immediately beyond the site boundary near the substation. Other windows are mainly small in size and/ or opaque glazed and this elevation would form the principal view for the future residents. Pressure to remove the trees in the future would therefore be considerable.
 16. I acknowledge the Council's Arboricultural Officer's comments that no single tree has particularly high value, and that some of the trees are in poor condition and would probably need to be removed regardless. However the Officer also sets out concerns that there would be extreme pressure on neighbouring trees for future removal, and that there are no realistic viable opportunities to retain trees on the site nor to provide replacement planting.
 17. MSGP Policy 36 permits loss of trees where it can be clearly demonstrated that harm can be reduced to acceptable levels through the implementation of positive mitigation and enhancement measures either on site or elsewhere. It is proposed to plant two new trees within the site. Whilst this may be physically possible, there would be very little space available that is not occupied by the dwelling or hardstanding for cars, therefore such trees would be likely to be of a type and size which would make a very limited contribution to the character and appearance of the CA. Whilst the green roof has some merit, the highly

² Hampshire County Council v SoS, Blackbushe Airport Ltd, the Open Spaces Society, Mr Peter Tipton, Mr David Simpson & Adrian Collett [2020] EWHC 959 (Admin)

restricted amount of garden space available for new planting would not satisfy part 3 of Policy MSGP 36. Furthermore, whilst I note that the appellant has offered to contribute to off-site tree planting/habitat creation elsewhere in the area, no Section 106 Agreement or other mechanism has been put to me to secure such provision.

18. The Council has stated that it does not find the contemporary design of the proposed dwelling objectionable and I find no reason to disagree with this. Rather, it is the erosion of space between historic buildings, loss of trees (and lack of viable mitigating landscape scheme), layout and density of the development which results in harm to both the character and appearance of the area. This highly constrained development would erode one of the few remaining parts of the original grounds of the villas. Together with the highly likely removal of the majority of the trees within and around the appeal site, the proposed development would result in unacceptable harm to both the character and appearance of the CA. Such harm would be less than substantial, given the limited public views of the site. I consider public benefits in accordance with paragraph 202 of the Framework later in this decision.
19. Accordingly, the proposed development fails to fully meet the design quality criteria of Policy MSGP 24, together with Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2015 (CS) which requires development to (amongst other criteria) respond positively to local distinctiveness and character, respect and enhance the setting of heritage assets and respond to local conservation guidance. It would neither preserve or enhance the character or appearance of the Blackburn Park CA as a whole and is in clear conflict with MSGP Policy 25. In particular: (1c) its lack of conservation and enhancement of spaces between and around buildings, (2) its harm to the significance of a heritage asset and (3) harmful sub-division of grounds. It also fails to comply with MSGP Policy 36 in terms of tree loss as previously set out.
20. Furthermore, I am mindful of the revision to the NPPF at paragraph 131 which sets out the important contribution trees make to the character and quality of urban environments and in helping to mitigate and adapt to climate change, stating that existing trees should be retained where possible.

Living Conditions

21. I have already found that the proposed development would result in harm to its surroundings by virtue of the erosion of an area of open space between buildings and loss of trees. This has consequent effects for the neighbouring properties which bound the site.
22. The evidence indicates that the majority of the windows to the side of Hillcroft South serve habitable rooms. There is also a set of glass French doors which would open directly out onto the vehicular access and parking area. The windows currently enable views over mature trees and vegetation, towards the similar pair of villas at Westfield Lodge. I acknowledge the appellant's evidence that the residents have no legal access to the site as a garden and that the trees currently provide a degree of shadowing and enclosure. I also note that efforts have been made to reduce overlooking by the use of opaque glass and siting of non-habitable rooms to this particular elevation. The building would also be relatively low in height compared to Hillcroft South. Nonetheless, the appeal site forms an important part of the neighbours' outlook and the close

- proximity of the proposed dwelling to their windows (less than 10 metres), would result in an unacceptable dominance and overbearing effects and harm to their living conditions.
23. Furthermore, two parking spaces and an area of hardstanding turning space would be situated directly next to the ground floor windows of Hillcroft South. The erection of fencing could be secured by condition and might assist in reducing the visual effects and any effects from headlights and exhausts. However, any such boundary feature would need to be located in very close proximity to the ground floor windows of Hillcroft South having visual and overshadowing effects in itself.
24. 104 Saltwell Road / 42 Station Road has a number of windows serving habitable rooms which look directly over the appeal site, including box bay windows. It has limited areas of garden space including a small raised area which forms the boundary of the appeal site. There are a number of trees on its boundary which are included in the AIA.
25. The effects on this property would be similar to those outlined above for Hillcroft South, however in this case the proposed dwelling would be situated even closer; less than 5 metres from its windows, and around 1 metre from its garden boundary. The lower level of the proposed dwelling in relation to the existing building would assist in reducing overshadowing to a degree, nonetheless the oppressive effects on their outlook and outdoor garden space would be significant.
26. A range of side windows at Westfield Lodge villas directly face the windows serving three bedrooms and an office to the proposed dwelling. Whilst the villas are separated by the grounds of Glenside Court, the removal of trees would considerably open up views of the proposed development. Whilst I acknowledge that overbearing effects would be minimal, there is still potential for overlooking between Westfield Lodge and the new dwelling. As for Glenside Court, their windows would not be directly affected, however their communal garden space would be overlooked to an unacceptable degree.
27. The Council's SPD 'Household Alterations and Extensions' sets out recommended separation distances between windows. I acknowledge that it is a guidance document only and is aimed at existing dwellings that are being altered and extended. Nonetheless, the separation distances referred to are reasonable and commonly used in a range of proposals to assist in the preservation of neighbouring living conditions. The proposed development would be in conflict with such guidance.
28. Overall, the proposed development would result in unacceptable harm to the living conditions of the three aforementioned properties (which each contain more than one dwelling unit). This is exacerbated by the lack of space around the proposed dwelling and felling of trees which currently provide a degree of screening. It fails to comply with Policy CS14 of the CS which seeks to prevent negative impacts on residential amenity (amongst other matters), and Policy MSGP 17 which supports development where it would not have an unacceptable impact on amenity or character of an area, would not cause unacceptable disturbance, would safeguard the enjoyment of light, outlook and privacy and ensure a high quality of design and amenity. In turn there would also be conflict with paragraph 130 f) of the Framework which seeks to create places with a high standard of amenity for existing and future users.

Other Matters

29. The Council's statement indicates that they are currently unable to demonstrate a five year supply of deliverable housing sites. No further evidence has been provided on this matter, however I have already found that the proposed development results in harm to a designated heritage asset and this provides a clear reason for refusing the development proposed. Therefore the 'tilted balance' is not engaged by virtue of footnote 7 to paragraph 11(d) of the Framework, and I make no further deliberations on this matter.
30. I am satisfied that the appeal site is situated in an accessible location in an urban area, and local services can be reached by modes other than the private car. The private access to Station Road would be shared with a number of properties and the drawings indicate that an average-sized car would be able to turn within the site. Nonetheless, this is at the expense of garden space for the proposed dwelling. The provision of an electric car charging point would not satisfy my concerns regarding the effects of the car parking and turning area on the living conditions of Hillcroft South, and the use of electric vehicles only is unlikely to meet the requisite tests set out in paragraph 57 of the Framework. Such matters have very limited bearing on my decision given the harm I have already outlined.
31. Acceptable ecological surveys have been carried out, including for bats, and I consider that appropriately worded conditions can require any necessary updated surveys and on-site mitigation. However there is limited space within the site and no mechanism has been put to me to secure any off-site mitigation or contribution. This adds to my overall concerns regarding the erosion of historic grounds and loss of trees and vegetation.
32. I have had regard to other matters raised by neighbours, including, but not limited to, a number of non-planning matters. As I am dismissing the appeal on the main issues for the reasons given above, I have not addressed these matters further.

Heritage Balance

33. I find the degree of harm to the significance of the designated heritage asset to be less than substantial. Paragraph 202 of the Framework requires this harm to be weighed against the public benefits of the proposal. The proposal would result in the addition of a family-sized dwelling to the overall housing stock in the area. There would also be some economic benefits arising from its construction and increased local spending. Whilst I acknowledge that small sites can make an important contribution to local housing supply there are no public benefits which would outweigh the unacceptable harm to both the character and appearance of the CA that I have identified.

Conclusion

34. For the reasons given above I conclude that the appeal should be dismissed.

Susan Hunt

INSPECTOR