



## Appeal Decision

Site visit made on 18 January 2022

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 08 February 2022**

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**Appeal Ref: APP/H4505/W/21/3284738**

**Lands At & To The Rear: 21 & 23 Monkridge Gardens with disused pavilion and hardstanding, off Monkridge Gardens, Dunston Hill, Gateshead NE11 9XE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Anthony Lang against the decision of Gateshead Metropolitan Borough Council.
  - The application Ref DC/21/00732/FUL, dated 4 June 2021, was approved on 7 October 2021 and planning permission was granted subject to conditions.
  - The development permitted is proposed deletion of Conditions 5 and 6 (to remove footpath provision); and proposed variation of Condition 1 (approved plan suite); and Conditions 3 & 4 (materials); and Condition 9 (cycle storage); and Conditions 16 & 17 (bird & bat boxes) of extant application GMBC Ref: DC/20/01183/FUL approved: 9 April 2021 for "full planning permission for the erection of 9 dwellinghouses with front and back gardens and driveway parking; new shared-surface, vehicular and pedestrian access between Numbers 21 & 23 (both retained), visitor parking area and landscaped areas (as amended 08/03/21)." (Amended 25/08/21).
  - The conditions in dispute are Nos 18, 19 and 20 which state that:
  - *Condition 18*  
*Notwithstanding the submitted details, no dwellinghouse hereby approved shall be occupied until a scheme for the 'blocking up' of the ground floor openings (doors and windows) within the side elevations of both 21 and 23 Monkridge Gardens has been submitted to and approved in writing by the Local Planning Authority.*
  - *Condition 19*  
*The scheme for 'blocking up', approved under condition 18, shall be completed in full prior to the occupation of any dwellinghouse hereby approved and shall be retained as such, unless otherwise approved in writing by the Local Planning Authority.*
  - *Condition 20*  
*Notwithstanding the provisions of Article 3, Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification), the permitted development rights of Plots 5-9 (enlargement, improvement or other alteration of a dwellinghouse) are hereby removed*
  - The reasons given for the conditions are:
  - *Condition 18*  
*In the interests of residential amenity and in order to accord with NPPF and policies CS14 and MSGP17 of the Local Plan for Gateshead.*
  - *Condition 19*  
*In the interests of residential amenity and in order to accord with NPPF and policies CS14 and MSGP17 of the Local Plan for Gateshead.*
  - *Condition 20*  
*In the interests of residential amenity and in order to accord with NPPF and policies CS14 and MSGP17 of the Local Plan for Gateshead.*
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## Decision

1. The appeal is allowed and the planning permission Ref DC/21/00732/FUL for deletion of Conditions 5 and 6 (to remove footpath provision); and proposed variation of Condition 1 (approved plan suite); and Conditions 3 & 4 (materials); and Condition 9 (cycle storage); and Conditions 16 & 17 (bird & bat boxes) of extant application GMBC Ref: DC/20/01183/FUL approved: 9 April 2021 for "full planning permission for the erection of 9 dwellinghouses with front and back gardens and driveway parking; new shared-surface, vehicular and pedestrian access between Numbers 21 & 23 (both retained), visitor parking area and landscaped areas (as amended 08/03/21)." (Amended 25/08/21) at Lands At & To The Rear: 21 & 23 Monkridge Gardens with disused pavilion & hardstanding, Gateshead NE11 9XE granted on 7 October 2021 by Gateshead Metropolitan Borough Council, is varied by deleting conditions 18 and 19.

## Applications for costs

2. An application for an award of costs was made by Dr Anton Lang against Gateshead Metropolitan Borough Council. This application is the subject of a separate decision.

## Preliminary Matters

3. Planning permission was granted by the Council in April 2021 (the first permission) for the erection of nine dwellings on land at / to the rear of 21 and 23 Monkridge Gardens<sup>1</sup>, subject to a number of planning conditions. The application from which this appeal derives<sup>2</sup> sought the removal of some, and the variation of other, conditions imposed upon that permission. The application (the second permission) was approved but did not address some of the conditions that the appellant sought to remove.
4. The appellant has helpfully cross-referenced the condition numbers from the first permission with those set out on the second permission. In the interests of consistency, I have referred to the condition numbers as set out within the second permission in my consideration of this application. As such, it is conditions 18, 19 and 20 of the second permission to which my consideration relates.

## Background and Main Issue

5. Access to the development granted planning permission by the second permission would be taken via a new shared-surface access road running between 21 and 23 Monkridge Gardens. The shared-surface access road would narrow in width for that part of it which will run between the two existing houses. These houses have a number of openings on their side elevations, including kitchen doors and larder windows at ground floor and landing and bathroom windows at first floor.
6. The Council, concerned that the proximity of the access road to these properties would cause noise and disturbance to the occupiers thereof, imposed conditions 18 and 19 to mitigate the effects of the proposed development. These conditions required the submission of a scheme showing the blocking up

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<sup>1</sup> LPA Ref No: DC/20/01183/FUL

<sup>2</sup> LPA Ref No: DC/21/00732/FUL

of the existing openings, and then its subsequent implementation and retention.

7. With regard to condition 20, this sought to remove Class A permitted development rights<sup>3</sup> for the future extension of the houses at plots 5 to 9. The Council considered the approved layout to be satisfactory in terms of ensuring acceptable living conditions for future occupiers of those plots, and for occupiers of existing properties on Knightside Gardens but were concerned that future permitted development proposals could compromise the living conditions of occupiers of those properties.
8. Having regard to the above, the main issue in the consideration of this appeal is whether or not the disputed conditions are necessary and reasonable in the interests of living conditions, in particular:
  - Conditions 18 and 19 and the living conditions of occupiers of 21 and 23 Monkridge Gardens with particular regard to noise and disturbance and privacy; and
  - Condition 20 and the living conditions of occupiers of existing properties on Knightside Gardens which would back on to plots 5 to 9, and future occupiers of plots 5 to 9, all with particular regard to privacy.

## **Reasons**

### *Conditions 18 and 19*

9. Although the appeal site occupies a large area of land to the rear of a greater number of properties on Monkridge Gardens than just Nos 21 and 23<sup>4</sup>, the sole access to the development would be between these two properties. Serving a total of nine new dwellings, the access would comprise a shared surface access road for its entire length. Directly adjacent to Nos 21 and 23 are what the appellant's Noise Assessment<sup>5</sup> (NA) refers to as 'buffer areas'. These create a 'pinch point' in the shared surface access road for a length between Nos 21 and 23. At the rear of both, a brick plinth wall with infill timber panels would step out to enclose the rear gardens and separate them from the access.
10. Nos 21 and 23 are essentially 'handed' versions of each other. On each property's side elevation at ground floor level are kitchen doors, larger windows and smaller storeroom doors. At first floor level are landing and bathroom windows. The front door, and windows to the habitable rooms are located on the front and rear facing elevations facing towards and over, respectively, the street and rear gardens.
11. Although the conclusions of the appellant's NA regarding noise and vibration arising from vehicle movements are not disputed, the Council nevertheless include the passing of vehicles in their concern that vehicles and pedestrians will generate intermittent noise. I have no compelling justification before me with regard to the inclusion of vehicles within this area of concern, or further or new areas of dispute in relation to the NA's conclusions.
12. With regard to passing pedestrians, it cannot be guaranteed that they would not be the sources of intermittent noise. However, in the context of a dense

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<sup>3</sup> Town and Country (General Permitted Development)(England) Order 2015 (as amended)

<sup>4</sup> It shares a boundary with Nos 9, 11 – 21 and 23 & 25 Monkridge Gardens

<sup>5</sup> Northburn Acoustics 'Noise Assessment' prepared for Cokain Developments Ltd Report number: 20-51-793

suburban area where houses are set back from roads and pavements behind only small front gardens, I am not persuaded that the resulting arrangements for Nos 21 and 23 would be materially different to elsewhere within the surrounding area. Nor, given the limited number of properties that the access road would serve and within further through-routes, the numbers of passers-by would be correspondingly limited. Any intermittent noises would thus be both limited and transient and therefore any potential disturbance to occupiers of Nos 21 or 23 would be correspondingly limited.

13. Whilst I accept that Nos 21 and 23 both have existing doors at ground floor level and non-habitable room windows at first floor, facing towards the shared access, the reasonably generous buffer areas on either side of the carriageway would distance these from the likely paths of passers-by. Windows on the front elevations of both properties look over short front gardens towards the road and are not therefore entirely private whilst to the rear the proposed brick plinth and timber wall / fence would ensure mitigation of intervisibility between windows on the rear elevations and the access road.
14. None of the openings serve habitable rooms, whilst the larger glazed openings are at first floor level and so any intervisibility between ground level and window would be distanced by height. Moreover, any intervisibility would also be transient as passers-by, whether by vehicle or on foot, would proceed through the entrance to the development past Nos. 21 and 23. The brick wall / timber fence would provide an effective screen to mitigate any potential intervisibility between the private rear faces of Nos 21 and 23 and the access road and would satisfactorily protect the privacy and therefore living conditions of existing and future occupiers of these properties.
15. I am not therefore persuaded that the blocking up of the existing openings is necessary, relevant to the development permitted or reasonable in all other respects in the interests of privacy in terms of either noise and disturbance or privacy. Paragraph 55 of the National Planning Policy Framework (the Framework) states consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of conditions. The Framework goes on to reiterate the 'six tests' for the imposition of planning conditions.
16. For these reasons, I am also satisfied that the removal of conditions 18 and 19 would not cause conflict with the aims, provisions and requirements of either Core Strategy and Urban Core Plan (CSUCP) policy CS14 or Making Space for Growing Places (MSGP) policy MSGP17. Together, these policies seek to secure developments that provide high quality environment and a good standard of amenity for existing and future occupants of land and buildings. For the reasons I have set out, I am satisfied that the removal of these conditions would not result in conflict with these policies.

#### *Condition 20*

17. Framework paragraph 54 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (the Guidance) also states that conditions seeking to restrict the future exercise of permitted development rights may not pass the tests of reasonableness or necessity.

18. The disputed condition specifically cites plots 5 to 9 of the approved scheme as being those for which the application of permitted development rights should be restricted. The appellant describes these plots as being of a decent size with good sized gardens but does not dispute the separation distances cited by the Council between their rear elevations and those of Knightside Gardens.
19. Whilst the rear garden area of plot 9 is more generous than those associated with plots 5 to 8, the separation distance between the rear elevations of opposing properties would be generally consistent and not particularly generous. I have not been directed towards any guidance regarding minimum separation distances between properties, but the short rear garden plots of plots 5 to 9 married to the differences in ground levels here, lead me to share the Council's concerns regarding the potential for harm to living conditions of existing and future occupiers of the opposing properties.
20. Although the exercise of permitted development rights comes with some checks-and-balances, I am satisfied that the particular circumstances of plots 5 to 9 and the relationship of properties therein to those on Knightside Gardens justifies the approach taken by the Council. The retention of condition 20 would not be in conflict with the provisions of the Framework or the Guidance in respect of the use of conditions. Nor would it fail to the 'six tests' applicable to the use of conditions and it would serve a valid planning purpose.
21. I am satisfied that as a consequence, the living conditions of existing and future occupiers of Knightside Gardens and of plots 5 to 9 would be appropriately protected. The retention of this condition would also ensure that the proposal would be compliant with CSUCP policy CS14 and MSGP17, the joint purpose of which is to ensure high quality environments and good standards of amenity for existing and future occupants of land and buildings.

### **Conditions**

22. The scope of the application that led to this appeal was wide in terms of the conditions it sought to address. I have noted that there was considerable discussion between the appellant and the Council during the Council's consideration of the application and that the appellant adopted a pragmatic approach in amending the application such that the disputed conditions were limited to those considered above.

### **Conclusion**

23. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should succeed in respect of conditions 18 and 19 and fail in respect of condition 20. Thus, the permission granted by application reference DC/21/00732/FUL is varied by deleting conditions 18 and 19.

*G Robbie*

INSPECTOR