



Appeal Decision

Site visit made on 26 April 2022

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

an Inspector appointed by the Secretary of State

Decision date: 28 September 2022

Appeal Ref: APP/H4505/W/22/3294054

Site west of Worley Avenue / south of Earls Drive, Earls Drive (Opposite Numbers 42-62), Low Fell, Gateshead NE9 6AA

- 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 W Laskey and Mr & Mrs Neil & Cat Trueman against the decision of Gateshead Metropolitan Borough Council.
 - The application Ref DC/21/00879/FUL, dated 9 July 2021, was refused by notice dated 17 February 2022.
 - The development proposed was originally described as '*Erection of two dwelling-houses (Use Class C3) with associated accesses, with surrounding gardens, and curtilage areas across remaining parts of site with felling of 14 self-seeded sycamore trees (retaining 7 of same)*'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development proposed by the planning application from which this appeal derives was initially described in the terms set out above. It is common ground between the main parties that the application was amended, and the description revised, during the course of the Council's consideration of it, including reference to the felling of 5, rather than 14, trees. The decision notice refers to the proposal's amended description, which is repeated within the appellants' 'Planning Appeal Form'. I have determined the appeal accordingly.

Main Issues

3. The main issues are:
 - Whether or not the proposed development would preserve or enhance the character or appearance of the Low Fell Conservation Area; and
 - The living conditions of occupiers of existing properties, with particular regard to outlook and privacy of garden areas to the northeast and southeast of plot 2.

Reasons

Character and appearance

4. The appeal site lies within the Low Fell Conservation Area. The 'Conservation Area Character Statement, Strategies and Policy Guidelines'¹ (the CACA) document for the Low Fell Conservation Area (the CA) describes Low Fell as being predominantly residential in nature but diverse in character and

¹ IPA17: Conservation Area Character Statement, Strategies and Policy Guidelines: Low Fell Conservation Area

- appearance. The appellants, less charitably, describe it as being a 'rather sprawling and disparate designation'.
5. Nevertheless, the CACA's identification of distinct areas possessing homogenous building forms seems to me an apt description of the appeal site's surroundings; particularly so in the context of the sub-area west of Durham Road within which, more specifically, the appeal site lies. Here, the CACA notes the red-brick, stone-detailed and slate-roofed Victorian terraces of Earls Drive (along with Albert Drive) and Worley Avenue as being strongly influential to the character of the area. It also notes the contribution of the long, leafy gardens, bound by brick walls and privet hedges of properties along Earls Drive (opposite the appeal site) and Worley Avenue (to the east of the appeal site).
 6. In addition to the pleasantly leafy gardens of these properties, the area to the west of Worley Avenue between it and the rear gardens of properties on Glenbrooke Avenue is notable for an extensive area comprised of 'strip' gardens. It may be, as the appellants state, that some of these strip gardens are no longer in contiguous ownership with the immediately opposite terraced houses on Worley Avenue. Some of the areas are overgrown, whilst others are well-maintained and kept in a tidy and well-manicured condition. Collectively however, these gardens provide a softer, pleasant and more verdant counterpoint to the rhythm and uniformity of the terraces. Ownership, and whether or not they are associated with the Worley Avenue properties with which they oppose, does not diminish their value, or their appearance.
 7. The appeal site is comprised of the northern-most three garden strips but which have since been cleared of undergrowth and any vestiges of their original linear division. Two small indents at the site's north-eastern and south-eastern corners are excluded from the appeal site, albeit that the appellants advise that they are seeking ownership of the former through adverse possession.
 8. Nevertheless, the site has a long frontage to Earls Drive and, despite the clearance of undergrowth vegetation from the site's interior, the depth of trees within and around the site are significant and positive contributors to the area's character and its appearance. Individually, the trees may not be particularly note-worthy. However, as a group within the site and taken with other trees and vegetation on adjacent plots and Earls Drive more widely, the site makes a positive and important contribution to the character, appearance and setting of Earls Drive and Worley Avenue and are far from being detrimental to the area's appearance, as the appellants seek to argue.
 9. The proposal would formalise the merging of the three end strips and then subdivide them broadly east-west, as opposed to the prevailing broadly north-south splits. The result would be two plots lacking the strong linearity of the adjoining strips. Indeed, the width and depth of the two plots created would be distinctly and incongruously at odds with the prevailing plot pattern of surrounding streets and would, for these reasons I conclude, erode the distinct sense of character noted within the CACA for the sub-area of the CA to the west of Durham Road.
 10. The form and appearance of the two proposed detached dwellings would also appear at odds with the prevailing pattern of built form where longer terraced blocks predominate. Indeed, the linearity and rhythm of the terraced blocks of properties on both Worley Avenue and Earls Drive are strongly positive contributory features to the prevailing character of these two streets.

11. The two proposed detached dwellings would however instead appear incongruous by comparison. Whilst both would incorporate double gabled bays, perhaps faintly reflective of end-of-terraced properties set at right angles to intersecting roads nearby, the orientation of each property within its plot and relative to each other would result in a confused and mixed frontage at odds with the repetition typical of Earls Drive and Worley Avenue. Moreover, where the existing terrace of Worley Avenue meets Earls Drive, such gabled ends are not found, nor is it particularly common on surrounding streets.
12. I accept that the properties' design and use of materials would be clearly contemporary and avoid pastiche. Properly implemented this would be a positive matter weighing in favour of the proposal. Nor would the overall height of the buildings be particularly or harmful jarring with that of those around it. However, neither factor would elevate the proposal above the resulting harmful incongruity of the design and layout of the proposed dwellings, their relationship with the prevailing character, appearance and layout of the surrounding area's characteristic built form, or their impact in terms of the development of an area of greenspace. Together, these factors give the area a pleasingly cohesive and pleasant character and contribute to a wider sense of verdant tranquillity away from the hustle of the main road through Low Fell.
13. Replacement planting as part of a comprehensive landscaping scheme may provide some benefits, in time, in terms of variety in species and heights. It may also provide an opportunity, again over time, to manage the succession of planting and the replacement of trees which have been identified as being in lower retention categories than others. However, the development of dwellings within the site's interior would rob that additional planting of the sense of depth of vegetation currently evident across the site, and which is also evidence across adjacent plots. Nor am I persuaded that the site's current appearance is detrimental to the character or appearance of the surrounding area such that the compromised measures I have outlined above would tip the balance of the proposal to one of acceptability.
14. Thus, for the reasons set out, the proposal would fail to respond positively to local distinctiveness and character in terms of layout, siting and relationship with the built form around it. The buildings would therefore relate poorly to the buildings and spaces around them and would erode the open, leafy character and setting of Worley Avenue and Earls Drive. A landscaping scheme as part of the proposal would not be sufficient to address these failings or to overcome the incongruity and intrusion that two dwellings in this form would have upon the character and appearance of the surrounding area.
15. As such, the proposed development would be contrary to the aims and provisions of '*Making Spaces for Growing Places*' Local Plan Document policies MSGP24 and MSGP36, '*Core Strategy and Urban Core Plan for Gateshead and Newcastle*' (CSUCP) policy CS18 and Design Principles 1 of the Gateshead Placemaking Guide. The proposed development would therefore also fail to secure the high-quality design and good place-making sought by CSUCP policy CS15.
16. MSGP policy MSGP25 sets out the Council's approach to the conservation and enhancement of heritage assets. In stating that proposals will be supported where they sustain, conserve or, where appropriate, enhance the significance, appearance, character and setting of identified heritage assets in a manner

appropriate to their conservation, it also aligns with the Framework's approach to such matters.

17. The statutory test set out at set out at section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Any harm to the significance of a designated heritage asset should require clear and convincing justification, and where that harm would be less than substantial it should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
18. Although the proposal would result in harm to the significance, character and appearance of the Low Fell Conservation Area, that harm would be less than substantial. The proposal would deliver an additional two dwellings to the Council's housing supply which, in line with the stated aim within the Framework of seeking to significantly boost the supply of homes, provides support to the proposal. That support, and the weight that I give it is, however, limited, reflective of the modest scale and quantum of development.
19. I accept too, that there are other public benefits which would arise from the proposal, including the contribution in social and economic terms that two new households would make to the local community and economy. Again, as with the boost to housing supply, the weight such matters carry in support of the proposal is limited, commensurate with the scale of the proposal. The site is also well-located close to services, facilities and transport links within Low Fell and to Gateshead and Newcastle.
20. Setting aside the proposed dwelling's relationship with the areas of land immediately adjacent to it, the absence of wider harm to the living conditions of occupiers of surrounding properties on Worley Avenue and Earls Drive is a neutral factor and neither weighs in support of, nor against, the proposal. In any event, the awkward and dominant relationship of the dwelling at plot 2 would result in harm to living conditions which clearly weighs against the proposal, regardless of any neutral effect more widely.
21. Reference was also made by the appellants to 'optimum viable use' of the site, but no evidence has been presented regarding the site's (or the proposal's) viability, whilst its redevelopment was described as presenting an opportunity to tidy up the site. However, it did not strike me at the time of my visit as being unsightly or deleterious to the character or appearance of the area so as to provide justification for the proposal.
22. Thus, for the reasons set out, the public benefits sufficient to outweigh the less than substantial harm to the significance of the heritage asset do not exist. As this is a matter to which great weight should be given in accordance with the statutory test, the proposal is also contrary to the advice and guidance set out in the Framework and contrary to MSGP policy MSGP25.

Living conditions

23. The relationship between the proposed dwelling on plot 2 and the appeal site boundary would be awkward and somewhat unusual towards the site's northeast corner. Whilst I have noted that it is the appellants' on-going intention to seek adverse possession of this area of land it does not form part

of the appeal site, nor can I be certain that it would form part of the development area in the future.

24. Thus, although its current condition suggests limited recent use as a garden that is not to say that it may not or could not be used as such in the future. The proximity of the building to this area of land would, in itself, result in an imposing and over-bearing presence upon this small area of land, whilst the presence of entrance doors at ground floor and habitable room windows at first floor would be such that significant overlooking, with consequent privacy implications, would result. The same would be true, albeit to a lesser extent, with regard to the inset area of land to the southeast of plot 2, where the proposed dwelling would be sited close to, and with an upper floor bedroom window looking directly over, this area.
25. Without further certainty regarding the status of the former area of land, the relationship of the proposed dwelling on plot 2 with it and the area to the southeast would result in the development having an imposing, overbearing and dominant relationship over it. Not only would this be out of character with the prevailing built form, but it would also result in direct overlooking across a very short distance of these areas, thereby compromising privacy and the living conditions of (potential) users of these areas.
26. CS policy CS14 seeks, in broad terms, to prevent negative impacts on residential amenity arising from development. MSGP policy MSGP17 goes on to set out in more detail how development proposals will be expected to achieve this aim. To this end, it requires developments to provide a high-quality environment and a good standard of amenity for existing and future occupants of land and buildings, avoid conflict with other users and to safeguard light, outlook and privacy.
27. For the reasons I have set out, the proposed development, and in particular the siting and layout of the dwelling at plot 2 in relation to the land around it, would fail to provide a good standard of amenity, fail to avoid conflict with users of land at its north-eastern and south-eastern corners and result in an overbearing relationship with, and leading to the significant overlooking of, those areas of land. As a consequence, the proposed development would be in conflict with CS policy CS14 and MSGP policy MSGP17 and the guidance and design principles set out in the Gateshead Placemaking Guide Supplementary Planning Document (SPD).

Other Matters

28. The form and extent of the appeal site at its north-eastern corner and the siting and layout of the proposed dwelling at plot 2 would create some difficulties with access to parts of the resulting house. Whilst impractical should ownership of this small area of land remain undetermined, as I have concluded that the appeal should fail in respect of the main issues, access to particular doors is not a matter that I have considered further. Matters of ownership and access rights are private matters between the appellants and the relevant interested parties and are not therefore determinative in this instance.
29. The proposed development would result in two additional homes. These homes would be well-sited in relation to the services, facilities and transport links of Low Fell, with easy access to Gateshead and Newcastle. An additional two homes would also provide social and economic benefits arising from their

occupation and the integration of new residents into the local community, albeit that the benefits would be limited commensurate with the limited scale of the development.

30. Environmental benefits are also cited in respect of the proposal, the appellants arguing that as an overgrown area of 'inner urban vacant' land its residential redevelopment would enhance the local environment. However, as set out above in respect of character and appearance, the site's current appearance, nature and contribution that it makes to the wider area is not something that detracts from the area's character or appearance. Its redevelopment in the manner proposed by the appellants would not therefore result in the environmental benefits which it has been argued would occur.

Conclusion

31. Whilst the social and economic benefits outlined above weigh in support of the proposal, the weight that they carry is limited given the also limited scale of the proposed development. They are insufficient to overcome the harm that I have identified in respect of character and appearance, and also in terms of living conditions; that harm meaning that the proposed development would be in conflict with the CS and MSGP policies set out above. The proposal would also lead to less than substantial harm to the character, appearance and significance of the Low Fell Conservation Area for which there are insufficient public benefits to outweigh this harm. There are no other material considerations, to lead me to a decision other than in accordance with these development plan policies.
32. For the reasons set out therefore, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR