

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION No: DM/18/02961/FPA
FULL APPLICATION DESCRIPTION: Change of use of public open space to domestic garden
NAME OF APPLICANT:
ADDRESS: 41 Carrowmore Road
Chester-le-Street
DH2 3DY
ELECTORAL DIVISION: Chester-le-Street South
Nick Graham
CASE OFFICER: Planning Officer
Telephone: 03000 264960
nicholas.graham@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site

1.The application site lies to the south of, and directly adjacent to, 41 Carrowmore Road, a detached two-storey property located on the southern boundary of the settlement of Chester le Street. It is a small grassed area that forms part of a long amenity strip to the south of the residential street of Carrowmore Road. The East Coast Main Line railway runs to the east of the site and to the south lies the grounds of The Hermitage.

The Proposal

2.The application proposes the change of use of part of the larger area of grassed amenity land to the south of 41 Carrowmore Road to private garden. The area would be enclosed by a post and wire fence initially, until an evergreen hedge has grown and would be maintained thereafter. The application as submitted involved an area of land measuring approximately 400m². However, through the course of the application this area was reduced by 25% to approximately 300m² in area, in an attempt to address concerns that had been raised regarding the impact of the proposal.

3.This application is reported to Committee as the applicant is an employee of the Planning Development service and one or more objections have been received to the proposal.

PLANNING HISTORY

4.The following applications are of most relevance to the application:

- 5.2/91/00344/OUT – OUTLINE APPLICATION FOR 2 DETACHED HOUSES – Refused and dismissed on appeal
- 6.2/00/00239/COU – Change of use and enclosure of open grassed area to private garden – Approved
- 7.2/01/00143/COU – Change of use and enclosure of open grassed area to private garden – Refused and dismissed on appeal
- 8.2/12/00259/FUL – Proposed change of use from public open space to private garden use – Approved
- 9.2/13/00249/FUL – Erection of two-storey extension with front canopy at side of dwelling – Approved
- 10.DRC/14/00054 – Discharge of condition 3 (boundary treatment) of planning permission 2/12/00259/FUL for the change of use from public open space to private garden use - Approved

PLANNING POLICY

NATIONAL POLICY

- 11.The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.
- 12.The NPPF requires local planning authorities to guide development towards sustainable solutions whilst taking local circumstances into account, to reflect the character, needs and opportunities of each area.
- 13.In accordance with Paragraph 213 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.
- 14.The following elements of the NPPF are considered relevant to this proposal;
15. *NPPF Part 2 - Achieving sustainable development* - The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
- 16.*NPPF Part 4 - Decision-making* - Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and

permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

17. *NPPF Part 12 - Achieving well-designed places* - The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.

18. *NPPF Part 16 - Conserving and enhancing the historic environment*. Heritage assets range from sites and buildings of local historic value to those of the highest significance. These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.

NATIONAL PLANNING PRACTICE GUIDANCE:

19. The newly introduced National Planning Practice Guidance (NPPG) both supports the core government guidance set out in the NPPF, and represents detailed advice, both technical and procedural, having material weight in its own right. The advice is set out in a number of topic headings and is subject to change to reflect the up to date advice of Ministers and Government.

20. *Design - The importance of good design*. Good quality design is an integral part of sustainable development. The National Planning Policy Framework recognises that design quality matters and that planning should drive up standards across all forms of development. As a core planning principle, plan-makers and decision takers should always seek to secure high quality design, it enhancing the quality of buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on wellbeing.

LOCAL PLAN POLICY:

21. The following saved policies in the Chester-le-Street Local Plan 2003 are relevant to the consideration of this application.

22. *Policy HP16 – Enclosure of Open Land in Residential Areas* - relating to the enclosure of open land in residential areas states that applications are expected to have regard to the effect upon the residential amenity and character of the area; the use and location of the land in question; the effect upon highway safety; and the design and style of the means of enclosure.

23. *Policy NE6 – Development affecting the Visual Amenity of the Green Belt* – Development within or conspicuous from the Green Belt will not be granted where the proposal by virtue of its scale, siting, materials or design is detrimental to the visual amenity of such.

RELEVANT EMERGING POLICY:

24. Paragraph 48 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at

Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision making process at the present time.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.cartoplus.co.uk/durham/text/00cont.htm>.

CONSULTATION AND PUBLICITY RESPONSES

INTERNAL CONSULTEE RESPONSES:

25. *Tree Officer* – The proposed development will include trees which are part of Tree Preservation Order CLS-16. Providing these are retained within the proposed garden area I have no objection. The TPO will remain as CLS-16 Garden Farm 2 – G2. Works to trees under the order applies.
26. *Spatial Policy Officer* – The application site is located within the settlement boundary, adjacent to land identified as Green Belt. The site appears to contain some mature/semi-mature trees and to have been connected to the Hermitage Estate. Design and Conservation will be able to advise further in relation to the significance of this piece of land in relation to the significance of the Hermitage Park and Garden.
27. The site is also identified in the Open Space Needs Assessment 2018 (OSNA) as private space (parks and gardens). Given its relationship with Carrowmore Road the land also appears to provide a part of a larger area of amenity open space for residents on this side of the wider park and garden area. The OSNA identifies a shortfall of all types of open space within the North Durham Monitoring Area, and advises that development may be resisted where that land performs as community open space, which this site appears to do).
28. *Design and Conservation Officer* – There are no designated heritage assets within red line boundary plan and none adjacent to it. The plot of land does however form part of a non-designated heritage asset, The Hermitage Park and Garden of local interest.
29. The Hermitage, located approximately 400 metres to the south-west of the site, is a large stone house reputedly built around 1820 that is Grade II listed, in a 17th century style. The property was set in a designed parkland that continued the 17th century theme. This included private pleasure grounds, elaborate gardens, a kitchen garden, an ornamental lake and areas of woodland, along with a range of buildings such as glasshouses, summer house and ice-houses. It is the combination the parklands age and the above features that contribute to it being of local interest.
30. The loss of the plot of land in question would not be considered detrimental to the special interest of the park and garden. This is due to the wider original parkland being fragmented and lost to extensive modern housing development in the north from the 1970s onwards, meaning that the land which bounds the housing immediately on the north side of the access road to The Hermitage is no longer seen as an intrinsic part. It reads in the context of the modern housing estate and in being physically and visually divorced from the heritage asset. Loss of this plot of land would therefore not be considered to detract from the historic layout, design, character, appearance or setting of the park and garden and as such would not harm its significance as a non-designated heritage asset.

31. On the basis of the above, there is no heritage based objection to this application, the main issue would relate to the existing trees on the site (covered by a TPO) which is a consideration for colleagues in the landscape team. It would however be very important that the high hedgerow forming the south boundary to the plot is retained as this provides a natural buffer/screening between the housing area and the parkland.

PUBLIC RESPONSES:

32. Six letters of consultation were sent out to surrounding residents, and a site notice was posted close to the site. This has resulted in two letters of objection being received, with the concerns summarised as follows:

- The area of land applied for is much too large and would affect the present use of this recreational land.
- We would be looking out at an allotment.
- The proposal would be of no benefit to anyone other than the applicant.
- The site contains a number of mature trees.
- The applicant has already been successful twice in enlarging his garden.
- This area was always meant to be open space and has been for over 50 years.
- The applicant is a Planning Enforcement Officer with the Council and it is assumed processes are in place to safeguard the integrity of the application.
- No concerns raised with the previous applications, and the extension has been completed to a high standard.
- Concerned further creepage into the amenity land by the current or future owners would become an issue.
- If successful, future applications could be made for other uses.
- An application for any change of use would be more likely to succeed if the land was actually owned by the applicant. I would not want to see dwellings or buildings erected on this popular and well used area.

The above is not intended to list every point made and represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P7ACJGGDKOB00>

APPLICANTS STATEMENT

33. This application has been driven by the necessity to protect my property from what is an increasing incidence of Anti-Social Behaviour whereby unknown persons are using the cover of darkness, to throw items at my home from the land subject to this application. Recently those items thrown at my home have included eggs (2nd – 3rd November 2018) which have struck the house and also conkers discovered on 13th November 2018 and also 23rd November 2018. Although the eggs were cleared away as soon as they were discovered, you will be aware that they do leave a permanent stain on the brickwork, which is the case in two areas of my home.

34. In addition, it is a regular occurrence for youths to congregate within the area to the side of my home and, on several occasions, they have scaled the palisade fencing onto the rail line or the less secure fencing into The Hermitage Parkland. The fencing of the area described in the presented site plan amounts to an area of approximately 0.03 of a hectare, with the area as a whole being approximately 0.35 of a hectare which approximately 8% percentage of the land.

35. The area is unlit and does not benefit from any forms of either formal or natural surveillance, therefore they are emboldened by the lack of any observation which provided them with anonymity with which to carry out the attacks. In addition, the area is a popular place for dog walkers, with the vast majority understanding their responsibilities to remove their dogs waste, but the land attracts dog walkers that are failing to clear up after their animals leading, so much so that several dog walkers from the street are complaining about those that do not remove the waste produced by their dogs.
36. The whole area of the land has always been an attraction for anti-social behaviour which also prompted the management of The Hermitage development to install a solid boarded wooden fence, topped with barbed wire, to prevent access into their grounds. Under Section 17 (1) (a) of The Crime and disorder act 1998 each Statutory Partner has a duty to consider crime and disorder implications, without prejudice to any other obligation imposed on it, to do all that it reasonably can to prevent crime and disorder in its area, including anti-social and other behaviour adversely affecting the local environment.
37. There are several factors that can positively reduce the occurrence of the anti-social behaviour: by target removal, changing the environment or the removal of the offender. In these circumstances the primary option is to change the environment which is enabling the anti-social behaviour to take place by removing their anonymity and removing the place where they are the youths and the dog walkers are "comfortable" enough to offend.
38. The granting of planning permission to enclose this piece of land will reduce the opportunity for the offending to take place as the offenders will have to stand in a more open public area in which to offend. The area where they would be displaced to is lit with standard street lights and is also observed by users of the street and by other residents from their homes, thereby removing their anonymity and reducing their confidence to offend.
39. Amenity is defined as "The pleasantness or attractiveness of a place" (Oxford English dictionary) or "Something intended to make life more pleasant or comfortable for people" (Cambridge English dictionary). To address amenity in the use and open access to the land, it has been shown that by reducing the total land area by 8% the area as a whole would benefit from a reduced level of anti-social behaviour.
40. In response to the openness of the area it must also be noted that the same development has, in the past, been undertaken at the opposite end of the open space, adjacent to number 50 Carrowmore Road. This resultant hedging, although now mature, compliments the street scene and does not affect the amenity or visual amenity of the public open space.
41. The means of enclosure for the requested area of land would be a mixed evergreen hedge maintained to a height of approximately 1.8 meters. Initially there would be a 1-1.2-meter-high post and wire fence to delineate the area and to assist in supporting the hedging as it becomes established. Once the hedging was established the post and wire fencing would be removed.
42. The hedging itself would not be detrimental to the amenity of the area and would actually improve the visual amenity providing an evergreen leafy hedgerow to obliterate the views of the industrial palisade track side fencing which delineates the east boundary of the land and also of the parked blue HGV horse box located at the stables to the rear of the fencing. Although located outside of the redline boundary

of this application, the stables and parked HGV horse box they are on land designated as Greenbelt, both of which, and especially the HGV horse box, are a blight on amenity of the area.

43. The growth of the leafy hedge row over time would mirror the hedge row at the top of the grassed area, providing a balance to the area and would successfully obscure the industrial palisade fencing, the stable block and the unsightly HGV horsebox located on the Greenbelt land thereby improving the character and visual amenity of the area as a whole.

PLANNING CONSIDERATIONS AND ASSESSMENT

The Principle of the Development

56. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to the principle of development, and residential amenity and character of the area.

The Development Plan

57. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The NPPF was updated in July 2018. The overriding message remains that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant.

58. In accordance with Paragraph 213 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight. The relevance of this issue is discussed, where appropriate, in the assessment section of the report below.

The Principle Issues

Engagement of paragraph 11 of the NPPF

59. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise):

- approving development proposals that accord with the development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
 - i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

- ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

60. Policy HP16 of the Chester-le-Street Local Plan permits the change of use or enclosure of public open spaces, landscaping and amenity strips of land for private residential purposes, subject to criteria. This policy is considered to be consistent with Paragraph 127(e) of the NPPF which promotes the optimisation of sites to accommodate and sustain an appropriate amount and mix of development, including green and other public spaces.

61. In this regard, it is considered the most important policy is consistent with the NPPF and is not out of date. Therefore Paragraph 11 of the NPPF is not engaged.

Residential Amenity

62. Chester-le-Street Local Plan Policy HP16(i) and (ii) requires proposals to have regard to the effect upon the residential amenity and character of the area. The Policy supporting text goes further, noting the contribution smaller areas of incidental open space, landscaping strips and verges, make within residential areas. Means of enclosure can also erode the visual amenity of a site.

63. There are two previous applications which are of particular relevance and significance in the consideration of the application. Planning permission was refused at this site, and dismissed at appeal, relating to the erection of two detached dwellings (ref. 2/91/00344/OUT) The Council considered in that application that the loss of the amount of open space would be seriously detrimental to the amenities enjoyed by local residents, with the Inspector re-affirming this view and specifically noting the development would erode the character and diminish the value of an amenity which local residents have enjoyed for so long should be resisted.

64. In 2001, an application for the change of use of a smaller area in a similar location to this proposal (ref. 2/01/00143/COU) was also refused and dismissed at appeal. Again, the Council considered the proposal would be detrimental to the character of the street scene and the amenities of local residents and would establish an undesirable precedent which could be repeated elsewhere on the Garden Farm Estate. The Inspector added that due to the open plan nature of the estate this corner site is prominent in the street scene and important in providing an attractive setting for the surrounding houses. Its enclosure would be a small but significant visual encroachment, unacceptably affecting the character and appearance of this part of the estate.

65. More recently, an application was approved in 2012 for a small enclosure of land immediately to the south of 41 Carrowmore Road measuring approximately 4.6 metres in width (ref. 2/12/00259/FUL). This was approved under delegated powers and the Officer considered the proposal would not have detrimentally impacted on the character and appearance of the estate as the open space would be retained along the length of the southern part of Carrowmore Road. This area has partly been built upon to accommodate a two storey side extension approved as part of a later application (ref. 2/13/00249/FUL). The Officer did also note in their report at the time that any future encroachment into this space would be deemed to seriously erode the amenity value provided by the overall stretch of land and would need to be resisted.

66. Given all of the above, it is considered that the proposal would constitute a significant visual encroachment that diminishes the attractiveness of the open space. Additionally, the Spatial Policy Officer has noted the site falls within an area designated as private open space, and there is a deficiency within the Chester-le-Street area. This proposal would further reduce the open space provision within the locality, and the means of enclosure erode the visual amenity of the site. Two objections have also been received to the proposal in this regard, with concerns regarding the loss of existing open space, and demonstrating the amenity value of the site.

67. In terms of the use and location of the land, the layout of the proposed area and the site history indicates such a proposal would have an unacceptable impact. Therefore, the proposal would have an adverse effect upon the visual amenity and character of the area, with the use and location of the land in question unacceptable for private residential purposes, and is considered contrary to Policy HP16 (i) of the Chester-le-Street District Local Plan.

Green Belt

68. The site is located immediately adjacent to the North Durham Green Belt where by virtue of Policy NE6 of the Chester-le-Street District Local Plan, conspicuous development, that would be detrimental to the visual amenity of the Green Belt would not be permitted. Given the nature of the proposal, it is not considered to be detrimental to the visual amenity of the Green Belt and would accord with Policy NE6 of the Chester-le-Street District Local Plan.

Trees

56. Concerns have been raised regarding the mature trees located at the site, and the Tree Officer has noted these are protected by virtue of a Tree Preservation Order. However, no objections have been raised to the proposal in this regard as the trees are proposed to be unaffected, and any works to the trees would require consent. Incorporating protected trees within private gardens does however potentially give rise to additional pressure to carry out trees works to reduce the overshadowing of lawns and outdoor seating areas.

Historic Parks and Gardens

69. The Spatial Policy Officer has noted the site forms part of the former Hermitage Estate as part of a Park and Garden, however the Design and Conservation Team have noted the historic heritage link to the estate has been lost following the construction of the Garden Farm Estate. It is also noted the Park and Garden is on a Local List and does not form part of any national designation and therefore there is no harm in this regard and the proposal is not in conflict with Policy BE9 of the Chester-le-Street District Local Plan.

Other issues

70. Concerns have been raised regarding precedent elsewhere on the estate if this application is approved. Each application is considered on its own merits.

CONCLUSION

There would be no significant impacts in terms of highway safety, trees or impacting on the setting of the Green Belt. However, the change of use of this land to domestic garden and

the enclosure of the site would have an adverse effect upon the character and visual amenity of the area. The proposal is therefore unacceptable and contrary to Policy HP16 (i) of the Chester-le-Street District Local Plan.

RECOMMENDATION

That the application be **REFUSED**, for the following reason:

1. The proposed change of use of land to domestic garden and its enclosure would have an unacceptable effect upon an important landscape feature which by virtue of its open nature and appearance significantly contributes to the character and visual amenity of the area contrary to Part (i) of Policy HP16 of the Chester-le-Street District Local Plan.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at the decision to refuse the application has tried to secure a positive outcome in accordance with the NPPF however the proposal is considered to be unacceptable in principle.

BACKGROUND PAPERS

The National Planning Policy Framework (2018)
National Planning Practice Guidance Notes
Chester-le-Street Local Plan 2003 (saved policies)
Statutory, internal and public consultation responses
Submitted forms, plans and supporting documents



Planning Services

Change of use of public open space to domestic curtilage

Application Number DM/18/02961/FPA

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding. Durham County Council Licence No. 100022202 2005

Comments

Date 21.12.2018

Scale NTS