



Appeal Decision

Site visit made on 20 June 2017

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23rd August 2017

Appeal Ref: APP/X1355/W/17/3171109

Garage block, Armstrong Close, Newton Aycliffe, DL5 4BJ

- 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 Andrew Kitchen of Livin against the decision of Durham County Council.
 - The application Ref: DM/17/00080/FPA, dated 9 January 2017, was refused by notice dated 17 February 2017.
 - The development proposed is demolition of garages and construction of five dwellings.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Since the appeal was lodged, the Great Aycliffe Neighbourhood Plan (GANP) has been subject to a referendum and was made by the Durham County Council on 19 July 2017. The GANP now forms part of the development plan for the area. The views of the parties were sought with regard to any implications that this had for the appeal proposal and I have had regard to the responses received. Although the appellant suggests that the appeal should be determined on the basis of the status of the policies in the GANP at the time that application was submitted to the Council, Section 38(6) of the Planning and Compulsory purchase Act 2004 means that the appeal should be determined in the light of the development plan policy operative at the time of this decision¹.

Application for costs

3. An application for costs was made by Mr Andrew Kitchen of Livin against Durham County Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area; and
 - The effect of the development on the living conditions of the occupiers of nearby residential properties, with particular regard to on-street car parking.

¹ Jefferson v National Assembly for Wales & Anor [2007] EWHC 3351 (Admin)

Reasons

Character and appearance

5. The appeal site comprises approximately 0.1 hectares of land. Part of the site is occupied by two blocks of flat roofed, brick built, garages and the remainder is laid to grass. It is located in a predominantly residential area. Newton Aycliffe is a planned new town with large tracts of housing built around the same time, and with particular design principles being followed, including houses grouped around greens. Armstrong Close comprises terraced housing, part of which is linked to a similar terrace at St Oswald's Walk. To the east there are newer detached and semi-detached dwellings in St Oswald's Court.
6. The wider surrounding area consists of primarily terraced housing of a similar age, arranged around a series of culs-de-sac leading from a distributor road, and incorporating garage courts and frequent areas of incidental open space similar to the appeal site. There are smaller numbers of detached and semi-detached houses interspersed through the area. An extensive network of footways runs through the housing area and ties it together as a series of linked spaces. Although fairly densely developed, the layout of the housing and the frequent areas of open space give the area an open and green character, reflecting its new town origins.
7. The appeal proposal comprises two pairs of semi-detached houses and a detached house with an attached garage. The external appearance is not consistent with the design of the houses in Armstrong close but would be similar to the newer houses in St Oswald's Court immediately to the east of the site. Whilst the area as a whole has a range of architectural styles and house types, it primarily derives its character from the layout of the housing and the linked series of spaces rather than from the external appearance of the buildings.
8. Saved policy L5 of the Sedgefield Borough Local Plan 1996 seeks to protect areas of open space from development except in particular circumstances. The appeal site does not fall within the categories listed in the supporting text to the policy of sports grounds, school playing fields, public parks, village greens, commons or allotments. However, the supporting text also goes on to state that the function of open space also includes enhancement of the setting of a town or village by way of areas of woodland, major landscaping and amenity areas. The appellant suggests that the appeal proposal complies with Paragraph b) of Policy L5. As the appeal proposal would result in the development of the whole of that particular open space area, and the garage block, whilst it could benefit from some maintenance, is not unsightly or derelict, I do not find this to be a compelling argument.
9. The proposal does not meet any of the exceptions in Policy L5. Although this Policy is now of some age, it is still relatively consistent with the advice in sections 7 and 8 of the National Planning Policy Framework relating to promoting good design and healthy communities. It can, therefore, still be accorded significant weight.
10. Local Plan Policy L5 also has to be read in conjunction with Policies CH1 and CH3 of the GANP which has only very recently been made. Policy CH1 seeks to ensure that new development respects the landscape character of the area and requires new development to meet certain requirements in respect of

landscape features, where appropriate. Due to the small scale of the appeal proposal, criteria 1 and 2 of the policy are not especially relevant. Whilst the supporting text to the Policy sets out that it seeks to protect, enhance or achieve the 'vision' of Lord Beveridge to have a town where houses are grouped around greens, the wording of criterion 3 within the overall context of the policy requires open space to be provided within new development sites where appropriate. The wording of the Policy does not confer protection on existing areas of open space. Again, due to the limited size of the appeal proposal, it would not be practical to provide open space within the development. Consequently, the proposed development would not conflict with the requirements of this policy.

11. GANP Policy CH3, on the other hand, does specifically seek to protect areas of amenity open space, such as the appeal site, which are not identified as Accessible Local Green Space by Policy CH2. The Policy sets out that such areas of open space should not be built on unless certain circumstances are met and that, in all cases, the development undertaken must preserve and not detract from the character, heritage and appearance of the area and its surroundings.
12. It is not suggested that the appeal proposal meets criteria 2, 3 or 4 of Policy CH3. With regard to criterion 1, whilst neither party has submitted detailed evidence in respect of the quantity of amenity open space, or any standards that open space provision has to meet, it is common ground that the County Durham Open Space, Sport and Recreation Needs Assessment concludes that there is a surplus of amenity open space in the area.
13. Whilst this may be the case, and there are other areas of open space including a large park nearby, the reason for refusal is not predicated on the proposal resulting in a quantitative shortfall in open space. Rather, it relates to the final paragraph of GANP Policy CH3 in relation to the preservation of the character, heritage and appearance of the area. The total loss of one of the areas of open space that were planned into the original layout of this part of the town would significantly erode its character and would be harmful to the character and appearance of the housing area.
14. Whilst part of the site contains buildings and the Framework encourages the reuse of previously developed land, the greater part of it is open and there is no evidence that would suggest that this has been previously developed or that the appeal proposal would be effectively re-using this part of the site.
15. I also note that appellant's point that the site could be enclosed by a fence using permitted development rights. Whilst this may be the case, and would prevent access to it, it would not remove the openness within the built up area that the undeveloped nature of the appeal site creates and would have significantly less effect on the character and appearance of the area.
16. Neither of these points, either singly or collectively, would outweigh the harm to the character and appearance of the area that would result from the loss of the open space area.
17. I therefore conclude that the proposed development would cause harm to the character and appearance of the area. It would be contrary to the relevant requirements of Policy L5 of the Local Plan and Policy CH3 of the GANP which

seek to retain open space areas that contribute to the character and appearance of an area.

Living conditions of neighbouring residents

18. It is not suggested that the proposed development will cause any loss of privacy, loss of daylight or sunlight to, or loss of outlook from, existing houses. From the submitted drawings and my site visit, I have no reason to reach a different conclusion.
19. When read together, Policies H17 and D3 of the Local Plan seek to ensure that new development has adequate parking provision, does not prejudice highway safety and does not cause harm to the living conditions of the occupiers of existing residential properties.
20. Policy T1 of the Great Aycliffe Neighbourhood Plan seeks to ensure that new developments within existing built up areas do not result in additional on-street parking that would impact on the safety of road users or have an unacceptable adverse impact on the character of the area.
21. The proposed new dwellings would have either a driveway capable of accommodating two cars or a driveway and a garage, which would meet the Council's car parking standards.
22. Whilst the proposal would result in the loss of fourteen garages that currently occupy the site, it is common ground that only seven of these are occupied. Although it is suggested that these may not currently be used to house vehicles, there is no substantive evidence that they are not being used for this purpose and there is consequently potential for vehicles to be displaced onto the highway.
23. Armstrong Close is a lightly trafficked residential cul-de-sac, and I saw when I visited the site that whilst some of the houses benefit from off street parking, slightly more than half do not. There are a number of parking bays within the cul-de-sac that allow vehicles to be parked clear of the main carriageway. At the time of my visit, in the late morning, approximately half of these were in use, although I recognise that at other times of the day demand for parking is likely to be higher. There were also a number of vehicles parked on the highway.
24. I note that the appellant has stated that it is their intention to offer alternative garage provision to displaced tenants or, where feasible, offer to provide in-curtilage parking. Due to the configuration of the street and the relationship of the existing parking bays to the houses, this latter option would be impractical for a number of the houses and result in some of the existing parking becoming unavailable to provide access to in-curtilage parking for others.
25. The carriageway of Armstrong Close is approximately 4.5 to 5 metres wide and whilst vehicles parked on the highway would reduce its effective width they would not prevent other vehicles from using it. There is no substantive evidence from either party in respect of parking demand in the street or the number of vehicles that may be displaced if the garages were to be demolished. The proposed new dwellings have off street parking and I note that the Highway Authority have not objected to the proposal. I also note that

the appellant has the ability to terminate the leases on the garages and not make alternative provision.

26. Due to the relatively small number of dwellings in the street, whilst there may be some additional vehicle movements and manoeuvres as a result of the proposed development, there is no evidence that would indicate that this would generate significantly more noise than currently arises from vehicle movements on the highway, or that any cumulative impacts of the development on the highway would be severe.
27. Within this context, on the basis of the evidence before me, and from what I saw when I visited the site, whilst the proposed development may result in some additional demand for on street parking, I am satisfied that there is capacity in the street to accommodate this without prejudicing either highway safety or the living conditions of the occupiers of existing houses.
28. I therefore find that the proposed development would not cause harm to the living conditions of the occupiers of nearby residential properties, with particular regard to on-street car parking. It would comply with the relevant requirements of Policies H17 and D3 of the Local Plan and Policy T1 of the GANP which seek to ensure that new development provides appropriate level of car parking and does not cause harm to the living conditions of existing occupiers.

Conclusion

29. Section 38(6) of the Planning and Compulsory purchase Act 2004 requires that any determination to be made under the planning Acts the determination must be made in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration, but it also makes it clear that it does not change the statutory status of the development plan and that development which accords with an up to date development plan should be approved, whilst proposed development that conflicts should be refused. I have found that the appeal proposal would conflict with Policy L5 of the Local Plan, which can still be given significant weight, and with Policy CH3 of the GANP.
30. Paragraph 49 of the Framework requires that applications for housing should be considered in the context of the presumption in favour of sustainable development that is set out in Paragraph 14. It is not in dispute between the parties that the Council cannot demonstrate a deliverable five year supply of housing land. No precise figures in respect of housing land supply or future delivery of housing has been provided by either party, although I note that the Council state that the level of shortfall is not great.
31. The fourth bullet point of Paragraph 14 of the Framework operates when the development plan is absent, silent or relevant policies are out of date. Although it is old, Local Plan Policy L5 still carries significant weight and the GANP is very much an up to date part of the development plan. In the light of the recent Supreme Court judgement² adopting a narrower definition of relevant policies for the supply of housing, Local Plan Policy L5 and Policy CH3 of the GANP would not be considered to be such policies.

² Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37

32. Paragraph 198 of the Framework states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.
33. There would be some small scale economic benefits arising from the proposal through investment in its construction and a small social benefit from the provision of additional housing. However, the development would cause environmental harm as a result of its effect on the character and appearance of the area that would be permanent and lasting. This is to my mind an important matter such that the proposed development should be regarded as being in conflict with the development plan as a whole, notwithstanding compliance with other policies as set out above.
34. Whilst there would be some modest benefits arising from the provision of a small number of additional houses, these would not, of themselves, warrant making a decision other than in accordance with the development plan. For this reason the appeal must fail.
35. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR