

Appeal Decision

Site visit made on 13 September 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 11th October 2016

Appeal Ref: APP/X1355/W/16/3152376

Land next to 170 York Crescent, Newton Hall, Durham DH1 5QS

- 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 Mrs Lucy Ferguson against the decision of Durham County Council.
 - The application Ref DM/16/00987/FPA, dated 24 March 2016, was refused by notice dated 11 May 2016.
 - The development proposed is change of use of small section of a piece of waste land next to 170 York Crescent into garden curtilage.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of open space to private garden area at 170 York Crescent, Newton Hall, Durham DH1 5QS in accordance with the terms of the application, Ref DM/16/00987/FPA, dated 24 March 2016, subject to the following conditions:
 - 1) Within 3 months of the date of this decision, the hereby permitted means of enclosure shall be painted in a colour to be first agreed in writing by the local planning authority.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, whilst Part E of the appeal form indicates that the description of development has not changed, a different wording has been entered. This wording mirrors that of the Council's decision notice, which I consider a more accurate reflection of the proposal. I have, therefore, determined the appeal on that basis.
3. It was evident from my site visit that the change of use of the land has already occurred. I have therefore determined the appeal on that basis.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of neighbouring residents and users of the surrounding public footpath network.
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Reasons

Character and Appearance

5. The appeal site forms part of an area of open space which is intersected by a public footpath. It lies adjacent to 170 York Crescent and is one of several such areas found throughout the wider estate. These areas form an established network of open space and footpaths which contributes towards the open and verdant suburban character of the area.
6. The proposal seeks to change the use of the land to form part of the garden area of No 170. The land projects the full depth of the original garden of No 170, extending around 3.4m beyond the original side boundary. The land has been enclosed by a fence which is around 1.8m high.
7. I note that the proposal will reduce the width of this particular part of the open space network. However, it occupies only a relatively small amount of the overall open space in this location. Moreover, the fence line is set back some distance and a generous amount of open space will be retained between the garden and the public footpath. There are several examples of side gardens adjoining open space throughout the area and the level of open space that is retained varies considerably. The proposal will not, therefore, deviate from any established pattern.
8. Furthermore, the land is somewhat irregular in shape, constrained in size and secluded to a degree by trees and vegetation. Moreover, it has a particularly pronounced slope. As a result, the land is not particularly conducive to recreational use. On that basis, I am satisfied that the proposal will not unacceptably reduce the level of open space in the area.
9. I note concerns regarding the visual impact of the fence which has been erected. However, I consider the design and appearance of the fence is in keeping with the simple, timber enclosures that are common throughout the area. Nevertheless, I agree that the existing colour of the fence increases its prominence and that a condition to ensure it is darkened is necessary in this instance. I do consider the wording of the suggested condition is, however, insufficiently precise and I have therefore amended the suggested condition to require the colour of the fence to be agreed.
10. I conclude, therefore, that the proposal will not have a detrimental effect on the character and appearance of the area. Consequently, the proposal will not be in conflict with saved Policies H13, E5a and Q9 of the City of Durham Local Plan 2004 (LP) which state that planning permission will not be granted for development which has a significant adverse effect on the character and appearance of residential areas, that proposals which detract from open spaces which possess important functional, visual or environmental attributes will not be permitted and that development must be sympathetic to character of the area.

Living Conditions

11. Concerns have been raised that the proposal will have a harmful effect on the living conditions of neighbouring residents and users of the public footpath. The fence will be visible in the outlook of the windows in the side of 22 York Crescent and will also be visible in oblique views from other neighbouring properties. However, it will remain a considerable distance from the

surrounding properties. Moreover, the fence is around 1.8m in height which is similar to other enclosures in the area. As a result, it will not appear unduly dominant or intrusive within the outlook neighbouring occupiers.

12. I also note that the proposal will reduce the width of the open space at this point. However, I am satisfied that sufficient space will be retained to the side of the footpath. Furthermore, the fence is set back a good distance and is not unduly high. Indeed, I note the comments of the Council's Rights of Way Team that sufficient space will be retained to side to allow users to bypass the footpath if it was unusable during periods of inclement weather. I have also noted the comments of Durham Constabulary that the proposal will be an improvement in terms of designing out crime. Consequently, I am satisfied that the proposal will not result in an undue sense of enclosure for users of the public footpath.
13. I conclude, therefore, that the proposal will not have a harmful effect on the living conditions of neighbouring residents or upon users of the surrounding footpath network. Subsequently, the proposal will not be in conflict with saved Policies H13, Q1 and Q9 of the LP which state that planning permission will not be granted for development which has a significant adverse effect on the amenities of residents in residential areas, that all new development will take into account personal safety, crime prevention and the access needs of all, and that proposals should respect the neighbouring amenity.

Other Matters

14. I note the concern that the proposal will result in other residents seeking to extend their gardens and the subsequent effect that would have upon the character of the area. However, there are no such proposals before me and any such proposals would be subject to a separate planning application process. In any event, I have considered this appeal on its own merits.

Conclusion

15. For the reasons given above, and having considered all matters raised, I conclude that the appeal should be allowed.

Jason Whitfield

INSPECTOR