
Appeal Decision

Site visit made on 21 November 2016

by Helen Cassini BSc(Hons) DipTP MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/H4505/W/16/3148711

The Vicarage, Birtley Lane, Birtley, Tyne & Wear DH3 1AS

- 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 Tony Whelan against the decision of Gateshead Council.
 - The application Ref DC/15/01157/FUL, dated 1 December 2015, was refused by notice dated 24 February 2016.
 - The development proposed is the erection of 1.no 5 bedroom detached dwelling house of approximately 205m² to rear of existing former vicarage house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Two of the original application plans were replaced by amended plans after the determination of the application¹. Although the refusal was based on the original plans the Council have confirmed that due to the relatively minor alterations made, the amended plans do not have an impact on their decision to refuse planning permission. I have therefore determined the appeal on the basis of the amended plans.

Main Issues

3. The main issues of the appeal are:
 - (i) whether or not the proposed development would preserve or enhance the character and appearance of the Birtley Conservation Area;
 - (ii) the effect of the proposed development upon the living conditions of future occupants, with particular regard to overshadowing, and the effect on the neighbouring occupants at The Vicarage and future occupants in respect of overlooking; and
 - (iii) whether or not sufficient information has been provided to justify the loss of trees on the proposed site and to demonstrate that the remaining trees could be safely retained.

¹ Document reference 09b and drawing references P-031/13/G and P-031/15/G

Reasons

Conservation Area

4. The appeal site is a lawned garden area, located at the rear of The Vicarage, within the Birtley Conservation Area (the CA).
5. Given the location of the appeal site within a conservation area, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In this respect, national policy on heritage assets, which includes conservation areas, is set out in the National Planning Policy Framework (the Framework). At paragraph 131, the Framework details matters which should be taken into account including sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness.
6. I note that the Council confirms that the proposal would comply with Policy CS11 of the Gateshead Council and Newcastle City Council Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (the CSUCP) in terms of the delivery of new family housing. However, Policy ENV10 of the Gateshead Unitary Development Plan 2010 (the UDP) states that planning permission will not be granted for development, especially that which involves sub-division, in gardens and grounds that make a contribution to the character of the CA. Furthermore, when taken together Policies ENV3 and ENV7 of the UDP and Policy CS15 of the CSUCP, amongst other things, seek to ensure that development is of a high quality design and preserves or enhances conservation areas.
7. I acknowledge that the saved UDP policies referred to in the Council's decision notice pre-date the Framework. Nonetheless their content, as far as it goes, is broadly consistent the Framework. Consequently it is appropriate to continue to give weight to the saved UDP policies.
8. The CA is characterised by a mixture of individual buildings often in extensive grounds, single older terraces and some modern infill schemes. The development of the Birtley Lane area appears to have been piecemeal, which has resulted in a number of the old plot sizes and shapes, some of which include the extensive grounds of large houses, being kept. In addition, groups of mature trees feature within the boundaries of a number of dwellings and throughout the CA.
9. The Vicarage is a prominent dwelling on Birtley Lane and has a substantial rear garden. The appeal site has not undergone any previous development and provides a visual interlude between the higher density developments located to either side. The Vicarage is constructed from coal measure sandstone and the double pitch slate roofs have geometric chimney pots. The boundaries to The Vicarage are characterised by stone and brick walls and are also bounded by a mix of mature trees and shrubs which provide a high level of visual amenity value. Due to their location within the CA the trees also have a protected status.
10. Although The Vicarage is not listed, both the dwelling and the associated grounds have been assessed as having heritage significance and are therefore

considered by the Council to be a non-designated heritage asset. Taking the above factors into consideration, I find that the quality and character of The Vicarage, the scale of the rear garden and the mature landscaping results in the appeal site contributing positively to the overall character of the CA.

11. The appellant contends that the adjacent former tennis court site constituted part of the grounds of The Vicarage and as such, a precedent in relation to sub-division exists. I accept that this land appears to have originally formed part of the grounds. However in their submitted evidence the Council has confirmed that this land was sub-divided from The Vicarage in 1898 and the tennis court development was not constructed until the 1930's. In this instance, I find that tennis court site has been separate from the appeal site for a considerable length of time. As such, I do not consider a precedent justifying further sub-division exists.
12. I accept that both The Vicarage and the existing landscaping offer some screening in terms of views of the appeal site from the surrounding streets and residential dwellings. Nonetheless, from observations made on my site visit significant views across the site exist from Orchard Park. Moreover, following the proposed removal of trees and the construction of the new access, I consider that views from Birtley Lane would be increased.
13. I acknowledge that the CA includes some modern infill developments and that the proposal has been designed to be an executive style dwelling. The proposed chimneys and roof pitches are similar in style to that of The Vicarage. The proposal would also include the use of demolished stone from the existing garage for detailing.
14. However, the proportions of the fenestration, and in particular the use of Juliet balconies, would appear out of keeping with the fenestration of The Vicarage. Moreover, although the external materials would mirror those of the adjacent tennis court development, they would contrast with those of The Vicarage itself. As a result the proposed development would appear as an incongruous addition rather than a complementary addition to The Vicarage. Its design would fail to respond to the quality and character of The Vicarage, which I have shown makes a positive contribution to the overall character of the CA.
15. Paragraph 134 of the Framework confirms that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. I recognise that the proposal would be located within easy access to services, facilities and public transport, as environmental benefits. There would be economic and social benefits as the development would make a contribution to housing supply in an area where there is an accepted shortage of supply. There would also be benefits arising from the potential employment opportunities for a local firm of building contractors. However, I consider that these are modest benefits which are not of a sufficient scale that would outweigh the identified harmful effects.
16. In addition, paragraph 135 of the Framework states that the effect on the significance of non-designated heritage assets should be taken into account in determining an application, and that a balanced judgement will be required having regard to the scale of any harm and the significance of the asset. For

the above reasons, I have identified that harm would also occur in terms of the significance of The Vicarage.

17. Accordingly, for the reasons set out, I consider that the proposal would diminish the positive contribution that the appeal site makes to the CA and as a consequence, it would fail to preserve or enhance the CA's character or appearance. As a consequence, the proposal is therefore contrary to the Framework, Policies ENV3, ENV7 and ENV10 of the UDP, and Policy CS15 of the CSUCP.

Living Conditions

18. The ground level of the appeal site is approximately 3.5 metres lower than the ground level of The Vicarage. In addition, I note that a 1.5 metre close boarded fence is proposed, although specific details have not been provided in relation to the fencing. I accept that proposed fencing would assist in reducing some potential for overlooking. However, from my observations on site and from the evidence before me, the reduced ground height would result in the first floor of the proposal being at a similar level to that of the ground floor of The Vicarage.
19. The separation distance between the two dwellings would be approximately 19.9 metres between the substantial glass conservatory situated on the ground floor of The Vicarage and the first floor eastern elevation of the proposal. As such, I find that harmful overlooking from the conservatory to the first floor windows of the proposal, and vice-versa, would result despite the proposed fencing. This in turn would lead to a subsequent reduction in privacy for both sets of occupiers of the dwellings. The proposal also fails to achieve the minimum separation distance of 21 metres required by the Gateshead Council Household Alterations and Extensions Supplementary Planning Document 2011 (the SPD).
20. In relation to potential overshadowing, the boundaries on the northern, southern and western elevations would be defined by trees with dense canopies. There is no doubt in my mind that the trees provide an attractive feature on the site and would provide a 'woodland feel' as noted by the appellant.
21. Notwithstanding the above, and in the absence of a daylight/sunlight assessment, I consider that due to the proximity of the proposed dwelling to the canopies of the trees, overshadowing of the proposed windows on the northern and southern elevations of the dwelling and to a lesser extent, the rear garden would result. In my judgement, this would feel oppressive and would have an unacceptable effect on the living conditions of future occupiers.
22. Overall, I find that the development would cause harm to the living conditions of occupants at The Vicarage and future occupants of the proposed development with particular regard to overlooking and for future occupants of the proposed development in respect of overshadowing. The proposal would therefore be contrary to Policy DC2 of the UDP, Policy CS14 of the CSUCP and the SPD which when taken together seek that, amongst other things, development should prevent negative impacts on residential amenity. The proposals would also conflict with the core aims of the Framework, as set out in Paragraph 17, which seeks to secure a good standard of amenity for existing occupants of buildings.

Trees

23. I note that a previous application for a similar scheme² was submitted to the Council and subsequently withdrawn in March 2015 due to consultation responses in relation to the potential impact on trees. The subsequent application, which is the subject of this appeal, was re-designed with the aim of addressing these issues.
24. In the Council's decision notice, reference was made to a lack of justification for the loss of protected trees. As part of the appellant's evidence an Individual Tree Assessment (ITA)³ of the Willow tree (T1) was submitted. I acknowledge the high level of visual amenity provided by the Willow tree given its prominent location. However, the ITA concludes that the level of existing decay extends beyond a safe limit and as such, the tree should be removed to avoid any damage to nearby structures. In addition, trees T10 (sycamore), T18 (Ash), T42 (Horse Chestnut) and T43 (Ash) have also been identified as having significant decay and should be removed in the interests of safety. Accordingly, in relation to the proposed removal of trees T1, T10, T18, T42 and T43 I consider that a thorough justification for the losses has been provided.
25. It is also proposed to remove trees T2 (Ash) and T3 (Sycamore) in order to accommodate the new garage and access. The two trees have been graded in the appellant's survey as 'Category C' and therefore they should not necessarily be seen as a constraint to development. Although both trees are sited in a prominent location adjacent to Birtley Road, I do not consider that they make a significant contribution to the character and appearance of the CA. Moreover, the two adjacent Sycamore trees (T5 and T6) will offer a significant level of cover. I therefore find that there is also a justification for the removal of trees T2 and T3 and that the loss of the trees would not be substantially detrimental to the character and appearance of the CA.
26. The Council's objection also relates to concerns regarding the level of detail provided demonstrating that the remaining trees on site could be safely retained and not harmed by the proposal. I accept the submission of engineering drawings illustrating how the proposal could be constructed would have been of use. Furthermore, it would also have been useful for the Council to have been invited to view the inspection trenches used. However, these were dug under the supervision and guidance of a qualified arboriculturist in order to assess root morphology and I have no reason to doubt the proposed tree protection measures. From the evidence before me I therefore consider that an adequate level of information has been supplied in relation to proposed tree protection measures to protect retained trees both during and post construction. In addition, I am satisfied that it would be possible to impose a pre-commencement condition regarding a tree protection scheme.
27. I have found that due to the proximity of the proposed dwelling in relation to the canopies of the trees overshadowing of the proposed windows on the northern and southern elevations of the dwellings and to a lesser extent, the rear garden, would occur. I therefore consider it likely that any future occupiers would be likely to request substantial pruning or felling of the trees in order to try to improve the level of light received into the property. I accept that the Council has a long history of defending against the removal of trees

² Council reference DC/14/01360/FUL

³ Individual Tree Assessment – The Old Vicarage, Birtley DH3 1AS August 2016

under similar circumstances. However, as I have found that the proposal would be detrimental to the living conditions of future occupiers, in this instance I consider that it would be difficult for the Council to resist any requests for significant pruning or felling.

28. I have found that sufficient justification relating to the removal of trees and the retaining of trees on the appeal site has been provided. However, as the proposal may result in the felling or substantial pruning of remaining trees on site by future occupiers, which the Council may not be able to resist, the proposal conflicts with Policies ENV7 and ENV 44 of the UDP, Policy CS18 of the CSUCP and the Framework which when taken together, amongst other things, seek to protect trees which enhance the character and appearance of a conservation area.

Other Matters

29. Within the appellant's statement, reference was made to a photomontage and I requested a copy during the determination of the appeal. I have subsequently been made aware that the photomontage did not form part of the original application. As such, the Council have not had an opportunity to comment on it. However, as I am dismissing the appeal I have not found it necessary to invite the Council's opinion on the photomontage.

Conclusions

30. I have found that the proposal would fail to preserve or enhance the appearance of the CA. I have also identified significant harm to living conditions of the occupants of The Vicarage and future occupants of the proposed dwelling. Sufficient justification relating to the removal of trees and the retaining of trees on the appeal site has been provided. However, due to the effect on living conditions of future occupiers in relation to overshadowing the Council it is likely that they would be unable to resist the felling or pruning of trees to the detriment of the CA. As such, I consider that the proposal therefore conflicts with Policies DC2, ENV3, ENV7, ENV10, ENV44 of the UDP, Policies CS14, CS15 and CS18 of the CSUCP and guidance contained within the SPD.
31. Moreover, in accordance with paragraph 14 of the Framework, specific policies relating to heritage assets indicate that the development should be restricted and the proposals cannot therefore benefit from the presumption in favour of sustainable development.
32. For the reasons above, taking into account all other matters raised, the appeal is dismissed.

Helen Cassini
INSPECTOR