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## Appeal Decision

Site visits made on 27 August and 3 September 2019

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 September 2019**

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**Appeal Ref: APP/W4515/W/19/3230526**

**Land adjacent to 87 Sunholme Drive, Wallsend, Tyne & Wear NE28 9YW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Shenstone Properties Ltd against the decision of North Tyneside Metropolitan Borough Council.
  - The application Ref 18/01555/OUT, dated 1 November 2018, was refused by notice dated 19 December 2018.
  - The development proposed is single detached 3 bed house with garage and onsite parking.
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### Decision

1. The appeal is allowed and outline planning permission is granted for single detached 3 bed house with garage and onsite parking at land adjacent to 87 Sunholme Drive, Wallsend, Tyne & Wear NE28 9YW in accordance with the terms of the application, Ref 18/01555/OUT, dated 1 November 2018, subject to the conditions set out in the Schedule at the end of this decision.

### Preliminary Matters

2. The application has been submitted in outline with all matters reserved for future consideration. I have dealt with the appeal on that basis, treating the details as shown on a site plan as being indicative.
3. In a comment made locally, it was requested that I view the appeal site from 87 Sunholme Drive and I was able to do so at my site visit on 3 September 2019.

### Main Issues

4. The main issues in this appeal are:
  - Whether the proposal would represent an overdevelopment of the site;
  - The effect of the proposal on a play area and open space;
  - The effect of the proposal on the character and appearance of the area; and
  - The effect of the proposal on the living conditions of nearby residents with regards to outlook, light, privacy and access.

## **Reasons**

### *Overdevelopment*

5. The appeal site is an open area within an established housing estate. The area of the site is comparable to some of the larger plots within the estate.
6. The Council contends that the appellant has not demonstrated that the site can provide the required car parking for a 3-bedroom house. However, the indicative site plan shows that there is space for a garage and a driveway, and I consider that the site is capable of providing further parking should this be required. Moreover, the matter of parking can be addressed as part of subsequent reserved matters applications. I therefore conclude that the proposal would enable provision of suitable on-site parking provision
7. My attention has been drawn to levels of on-street parking in the area. I saw that cars were parked within the carriageway opposite the site although this was not in a manner which would conflict with vehicles of future residents accessing the appeal site. I am mindful that I visited the site during the day whereas the peak demand for parking in this residential area would be during the evening and at weekends. Nevertheless, I have concluded that suitable provision for car parking can be made within the site and based on what I have seen and read the proposal would not exacerbate existing issues in respect of on-street parking.
8. The Council also refers to cycle storage and bin storage, but the indicative plan shows that there would be ample space for such provision. Similarly, the Council has not demonstrated that the site is incapable of providing a dwelling which would meet the relevant space standards. These are issues which can also be addressed at the reserved matters stage.
9. Reference is also made to a potential landscape buffer along the eastern boundary of the site to mitigate the effects on a nearby country park and biodiversity interests. The Council considers that this buffer would reduce the outdoor amenity space for the dwelling. However, the existing hard surfacing within the site extends to the eastern site boundary and I saw that nearby properties do not include a landscape buffer similar to that referred to by the Council. Within that context, I consider that it would be inappropriate to require such a buffer for this specific site. On that basis, the site would be of a suitable size to provide for outdoor amenity space for future residents of the proposal, subject to approval of reserved matters.
10. I therefore conclude that the proposal would not represent an overdevelopment of the site. The proposal would therefore not conflict with the design aims of Policy DM6.1 of the North Tyneside Local Plan 2017 (LP).

### *Play Area and Open Space*

11. The site is an open area containing grassed areas and an extent of hard surfacing. The site is not formally designated as open space although I am mindful that informal areas of public open space can make a valuable contribution to the play and recreation needs of residents. A number of comments raised locally also refer to children using the site for play including cycle riding. However, the Council Officers report states that the land is privately owned. Whilst residents may have accessed the site there is no evidence that they have a right or permission to do so.

12. I also saw that there were other areas of open space nearby within the wider estate which provide opportunities for informal play as well as good pedestrian access to a nearby country park via a footpath link further to the south. I acknowledge that the extent of hard surfacing within the site may have some benefits not provided by grassed areas e.g. for riding cycles and at times of wet weather. However, within the context of the site ownership and the lack of a formal planning designation, I do not consider that the loss of the open space including the hard surfacing would warrant the refusal of planning permission.
13. I am particularly mindful of issues of childhood obesity and the need to provide for healthy communities. But this does not lead me to a different conclusion on this main issue due to the status of the site as well as the availability of open space and other opportunities for play and recreation in the area.
14. I therefore conclude that the proposal would not lead to an unacceptable loss of a play area and open space. The proposal would therefore not conflict with the design and community aims of Policies DM4.5 and DM6.1 of the LP.

#### *Character and Appearance*

15. The appeal site is in a prominent position within this part of the estate. Whilst the appeal site contains an area of grass, the extent of hard surfacing and lack of landscaping features give it a relatively stark appearance.
16. Nevertheless, I am mindful that incidental areas of open space such as the appeal site can make a positive contribution to the landscape setting of residential areas. I saw that the open plan front gardens and incidental open space associated with properties in the vicinity contribute to the pleasant suburban character of the area. That said, there is no reason why a suitable scheme at the reserved matters stage could not respond to this setting to maintain the character of the area. Whilst the proposal would lead to a loss of some openness within the estate, I do not consider that this would be of a degree to warrant the refusal of planning permission due to the nature of the open space and the potential for future consideration of layout and landscaping in mitigation.
17. There is some variety of the design of dwellings on this established estate. Within this context, a detached dwelling on the site would not appear as obtrusive or incongruous, subject to appropriate consideration of reserved matters applications.
18. I therefore conclude that the proposal would not harm the character and appearance of the area. The proposal would therefore not conflict with Policy 6.1 of the LP with regards to the design of development.

#### *Living Conditions*

19. The indicative plan provided by the appellant shows that an appropriate separation distance can be achieved between the building and nearby properties and which reflects the building lines of the wider estate. The evidence therefore suggests that the proposal would not lead to material harm in respect of outlook, privacy or loss of light.
20. With regards to access, there is a footpath to the south of the site which serves 85 and 87 Sunholme Drive. However, compared to a previous proposal, the appeal site boundary is set back some distance from the footpath. Due to this

arrangement, I saw that a suitable width of access would be retained for Nos 85 and 87, enabling wheelchair access and the transfer of refuse bins amongst other things. Also, because of this set back and subject to the future consideration of reserved matters, the proposal would not lead to a darkened or enclosed route to the adjacent properties so as to be detrimental to residents' living conditions and safety.

21. I conclude that the proposal would not have an unacceptable impact upon the living conditions of residents in the area. The proposal would therefore not conflict with Policy DM6.1 of the LP which seeks to provide a safe environment and a good standard of amenity for existing residents, amongst other things.

### **Other Matters**

22. I have had regard to the comments raised locally in respect of the proposal. In relation to noise, disturbance and dust during the construction of the dwelling, even allowing for other ongoing development in the wider area, the effects of the construction of the appeal proposal would be for a limited temporary period and the impacts can be appropriately controlled through conditions. Whilst delivery and other construction vehicles may pass through the residential estate, due to the limited scale of the proposal matters of vehicle access, parking and the storage of materials can also be appropriately controlled through conditions.
23. With regard to precedent, I have assessed this proposal on the basis of the characteristics of this specific site and the surrounding area. Due to the particular characteristics of the appeal site, this should not establish a precedent for the consideration of other proposals in the wider area which in any event should be determined on their individual merits.
24. Concern has been raised in relation to the impact on property values. However, it is a long established principle that the planning system does not exist to protect private interests such as the value of land and property.
25. In respect of wildlife and biodiversity, there is no substantive evidence of protected species and habitats within the site, and due to the limited scale of the development I do not consider it would lead to harm to sensitive areas in the vicinity, subject to controls to protect the nearby watercourse as well as trees and shrubs.
26. Reference has been made to the effect on views of the landscape beyond the appeal site. However, this primarily relates to private views which are not in themselves a planning matter, and this does not lead me to a different conclusion in respect of character and appearance considered previously.
27. The Council refers to its five year housing land supply and contends that it is not necessary to develop the site for housing. However, whilst the Council may have a healthy five year housing land supply, this does not preclude the development of additional housing that is otherwise acceptable in planning terms.
28. The potential for a further pedestrian access and bridge across the watercourse has been identified. However I consider that this would not be a reasonable requirement in respect of this proposal as it would be disproportionate to the scale of the development and would not be necessary to make the scheme acceptable in planning terms.

29. With regard to flooding, although the site is near to a watercourse the Local Lead Flood Authority has not objected to the proposal subject to conditions relating to surface water drainage and mitigation measures. On the basis of the evidence before me, I conclude that issues of flood risk can be addressed through appropriate conditions.

### **Conditions**

30. The Council has suggested a significant number of conditions. However, I am mindful that the National Planning Policy Framework (the Framework) states that planning conditions should be kept to a minimum. I have also considered the suggested conditions against the advice in the Planning Practice Guidance. Where I consider that the conditions are necessary, I have altered some of them in the interests of clarity and precision to better reflect the Guidance.
31. I have attached conditions relating to the submission of reserved matters and the associated time limits. I have also included a condition specifying the relevant site plan in the interests of certainty.
32. A condition in respect of hours of construction and deliveries is necessary in the interests of the living conditions of nearby residents. Conditions in respect of contamination and gas emissions are necessary in the interests of public safety. The submission of a construction method statement is necessary in the interests of living conditions, highway safety, the sustainable disposal of waste and pollution control. Details of surface and foul water drainage are required to ensure satisfactory drainage of the site and to reduce the risk of flooding.
33. However, a significant number of the suggested conditions are not necessary as these are more appropriately addressed through reserved matters applications. This includes suggested conditions relating to access, refuse storage, parking, cycle storage, site levels, boundary treatment, surfacing materials, the height of the building, dormer windows, landscaping, street lighting, street furniture, signage and housing standards. A condition specifying the number of dwellings is not necessary as this can also be addressed at the reserved matters stage and in any event is specified in the description of the appeal proposal.
34. Conditions in respect of encroachment on an adjacent footpath as well as land to the east are not necessary as these areas are not within the appeal site and would be subject to other controls.
35. Conditions with regards to the protection of trees on the site are not necessary as I saw that there are no mature trees within the site boundary. The protection of trees and shrubs adjacent to the site can be addressed as part of construction management as well as future reserved matters applications including matters of landscaping, scale and layout.
36. The Council has suggested the removal of permitted development rights. However, the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Based on what I have seen and read, there is no substantive evidence to justify such a condition, including whether such a restriction applies to other houses in the area. The site is not so sensitive or the circumstances so exceptional as to justify removing permitted development rights and a

condition to this effect is therefore not justified to make the development acceptable in planning terms.

## **Conclusion**

37. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be allowed.

*David Cross*

INSPECTOR

## **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: UK Planning Maps site plan scale 1:1250 produced on 31 July 2018.
- 5) Construction works and associated deliveries shall take place only between 0800-1800 on Monday to Friday and 0800-1400 on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 6) No development shall commence until:
  - a) A detailed site investigation has been carried out to establish:
    - i) If the site is contaminated;
    - ii) To assess the degree and nature of the contamination present, and whether significant risk is likely to arise to the residents and public use of land;
    - iii) To determine the potential for the pollution of the water environment by contaminants and;
    - iv) The implication for residential development of the site and the quality of the residential environment for future occupiers.

Such detailed site investigation to accord with a statement of method and extent which shall previously have been agreed in writing by the Local Planning Authority and

b) The results and conclusions of the detailed site investigations referred to in (a) above have been submitted to and the conclusions approved in writing by the Local Planning Authority. The Phase 2 Report should be written using the current government guidelines.

c) If remediation is required following the assessment of the chemical results under current guidelines, then a method statement should be provided for comment. This should provide details of exactly how the remediation works are to be carried out, detailed site location plan of where material is to be deposited and details including drawings of any gas protection scheme should be included.

d) If remediation is carried out on the site then a validation report will be required. This should provide evidence of what remediation has been carried out over the site. This report should confirm exactly what remediation has been carried out and that the objectives of the remediation statement have been met. This report should include verification of the type, source, depth, location and suitability (to include any test certificates for material to be imported on site to ensure it is not contaminated) of the imported materials for their use on site. This should include cross sectional diagrams for the site and detailed plans of the site. This report should be submitted before the contaminated land condition can be discharged in respect of this planning permission.

e) If any unexpected contamination or hotspots are encountered during the investigation and construction phases it will be necessary to inform the Local Planning Authority then cease development and carry out additional investigative works and subsequent remediation if any unexpected contamination or underground storage tanks are discovered during the development. Work should be ceased until any risk is assessed through chemical testing and analysis of the affected soils or waters.

Thereafter the development shall not be implemented otherwise than in accordance with the scheme referred to in c) above.

- 7) The development hereby permitted shall not be constructed above damp proof course level until the details of a scheme of site investigation and assessment to test for the presence and likelihood of gas emissions from underground workings, historic landfill, unknown filled ground or made ground has been submitted to and agreed in writing by the Local Planning Authority.

Upon approval of the method statement:

a) A detailed site investigation should be carried out to establish the degree and nature of the gas regime, and whether there is a risk likely to arise to the occupants of the development. The results and conclusions of the detailed site investigations should be submitted to and the conclusions approved in writing by the Local Planning Authority. The Ground Gas Assessment Report should be written using the current government guidelines.

b) In the event that remediation is required following the assessment of the ground gas regime using current guidelines, then a method statement must be submitted to and approved in writing by the Local Planning Authority.

The detailed design and construction of the development shall take account of the results of the site investigation and the assessment should give regard to results showing depleted oxygen levels or flooded monitoring wells. The method of construction shall also incorporate all the measures shown in the approved assessment.

This should provide details of exactly what remediation is required and how the remediation will be implemented on site; details including drawings of any gas protection scheme should be included.

c) Where remediation is carried out on the site then a validation report will be required. This report should confirm exactly what remediation has been carried out and that the objectives of the remediation statement have been met.

The validation report should include cross sectional diagrams of the foundations and how any gas protection measures proposed in the remediation method statement are incorporated. In the event that integrity testing of membranes is required then any test certificates produced should also be included.

A verification report shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied.

d) In the event that there is a significant change to the ground conditions due to the development, for example grouting or significant areas of hard standing; then additional gas monitoring should be carried out to assess whether the gas regime has been affected by the works carried out. In the event that the gas regime has been altered then a reassessment of remediation options shall be submitted to the Local Planning Authority to be agreed in writing before the development is occupied.

Thereafter the development shall not be implemented otherwise than in accordance with the scheme referred to in c) above.

- 8) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- a) the parking of vehicles of site operatives and visitors;
  - b) loading and unloading of plant and materials;
  - c) storage of plant and materials used in constructing the development;
  - d) the erection and maintenance of security hoarding;
  - e) wheel washing facilities;
  - f) measures to control the emission of dust and dirt during construction;
  - g) a methodology for pollution control to protect the adjacent watercourse during the construction period;
  - h) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - i) a turning area within the site for delivery vehicles;
  - j) indicating the route for heavy construction vehicles to and from the site; and
  - k) that all construction works and tree protection is to conform with BS5837: 2012 Trees in Relation to Construction in relation to protection of existing boundary trees and shrubs. No utilities or drainage should be located within the root protection areas of retained trees, unless otherwise agreed in writing by the local planning authority.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 9) No development shall commence until a scheme for surface water and foul water management shall be submitted to and approved in writing by the Local Planning Authority. This scheme shall include details of mitigation measures to

reduce the risk of fluvial flooding. Thereafter, this scheme shall be implemented in accordance with the approved details before the development is occupied.

**End of Schedule**