
Appeal Decision

Site visit made on 3 December 2019

by Peter Mark Sturgess BSs (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th December 2019

Appeal Ref: APP/V2635/W/19/3238794

6 and 7 Burdock Close, Downham Market PE38 9AZ

- 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 S Endresz and Mr T Travers against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 19/01053/CU, dated 11 June 2019, was refused by notice dated 2 September 2019.
 - The development proposed is retrospective change of use from open plan garden(s) to enclosed residential garden land.
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Decision

1. The appeal is allowed, and planning permission granted for change of use of land from amenity land to residential garden land to the rear of No6 and No7 Burdock Close, Downham Market PE38 9AZ, local planning authority reference 19/01053/CU, dated 11 June 2019, as shown on the (not numbered) location plans submitted with that application.

Procedural Issues

2. There is disagreement between the appellant and the council about the description of development. The appellant claims that the land is open plan garden land and the council claims that the land is 'amenity land'. From my reading of the documents and from my site visit I consider the land to be 'amenity land' as described by the council. I have therefore treated this case as if it is an appeal against the refusal of planning permission for a change of use from 'amenity land' to 'residential garden land'.
3. Reference has been made in the documents to a footpath across the land. Whether the footpath should be a public right of way (PROW) is not before me and is subject to a separate procedure. I have therefore made this decision based on no PROW across the land.
4. There is agreement between the parties that the land which is the subject of this appeal is privately owned.

Main Issue

5. The effect of the development on the character and appearance of the area

Reasons

Character and Appearance of the Area

6. The site lies on the edge of a residential area, on the southern edge of Downham Market.
7. Adjacent to the appeal site, immediately to the north, lie the gardens of No6 and No7 Burdock Close and the dwelling houses themselves.
8. To the south of the site lies a bank, covered in vegetation (including some trees), which rises to the A1122.
9. To the east of the appeal site is land to the rear of No5 Burdock Close. It is bounded by a post and rail fence on its south and east side. It is separated from the garden of No5 by a close boarded fence approximately 1.8m high. To the west is the 1.8m high fence that encloses the appeal site. Land to the rear of No5 is not accessible to the public, albeit not completely surrounded by a close boarded fence.
10. To the west of the site lies more 'amenity land' which appears to be well trodden. This area continues for approximately one mile to the west and is used by the public as a path.
11. When viewed from the A1122 the area gives the impression of being thickly vegetated with occasional glimpses of houses and fences behind.
12. The site is enclosed on three sides by a close boarded fence approximately 1.8m in height. This fence stands approximately 5m proud of the existing fences that separate the gardens to the north from the 'amenity land' to the south. The fence is similar in height and appearance to the other fences in the area.
13. An objective of the council is to protect public access to open space, set out in Policy DM 22 of the Site Allocations and Development Management Policies Plan (SADMPP) (September 2016), by retaining the unofficial route across the land. The council accepts that the land is privately owned and there is no PROW across it. The owners could legally prevent public access to the land. This approach appears to be reinforced by the council's Open Space Officer, who has raised no objection to the proposal.
14. The appeal site represents a small proportion of the open 'amenity land' between the houses and the A1122. It is lower than the A1122 and a substantial bank, with trees, lies between it and the road. Its overall visibility in the area is low. It makes an insignificant contribution to the buffer between the houses and the A1122 and to the quality of the open space and the landscape in Downham Market. Policy DM22 of SADMPP sets out a general presumption against the loss of locally important areas of open space. Given the proximity of the appeal site to an extensive area of 'amenity land' to the west, its low overall visibility and its significance in landscape terms, I do not consider the appeal site to be a locally important area of open space to which this presumption should apply. Furthermore, the proposal would not result in the loss or restriction of access to locally important areas of open space.

15. The council has stated that the fence erected around the appeal site requires planning permission as it is 'intrinsically linked' to the change of use. The fence is approximately 5m closer to the A1122 than other fences in the area. Due to the local topography, its similarity in height and appearance to the other close boarded fences in the area, and the views from which it could be seen, it would not harm the quality of the open space or landscape in the area. In this respect the fence is not in conflict with policies CS04 and CS08 of the core strategy.
16. I have considered the view of the fence from the 'amenity land' to the west which does create the appearance of a dead end. However, it is clear, that a route exists through an open gate to the south on to the highway land to the junction of the A1122 with London Road. This does not change my view on the contribution the site makes to the open space and landscape around the town outlined above.
17. For the reasons set out above I conclude that the proposal would not harm the function of the land as a buffer between the dwellings and the A1122, nor would it detract from the quality of open space and landscape character in Downham Market. I also conclude that as no PROW crosses the land there is nothing to stop the owner from preventing public access. Accordingly, I find no conflict with policies CS04 and CS08 of the core strategy or Policy DM22 of the SADMPP, that seek to protect open space and the landscape quality of the town. I also find no conflict with the principles set out in paragraph 97 and 98 of the National Planning Policy Framework that seeks to protect open space.

Conclusion

18. I find that having regard to all matters before me, including the provisions of the development plan, when taken as a whole, that the appeal should be allowed.
19. I note the council have not suggested any conditions to be attached to any permission should the appeal be allowed. The development which is the subject of this appeal has already taken place and I have referenced the plan which applies to this proposal in the decision paragraph at the head of this letter. I do not consider, in these circumstances, that conditions are necessary.

Peter Mark Sturgess

Inspector