
Appeal Decision

Site visit made on 17 December 2019

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Appeal Ref: APP/J4525/W/19/3239025

Vacant land adjacent Lorne House, Heworth Road, Washington NE37 2PY

- 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 Mark Edward Francis against the decision of Sunderland City Council.
 - The application Ref 19/00594/FUL, dated 28 February 2019, was refused by notice dated 22 August 2019.
 - The development proposed is erection of new garage to be used as lock up, retrospective gravel chippings, palisade fencing and previous change of use from allotments.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is described on the application form as new domestic garage, however, the appellant and the Council, have agreed that the description as per the banner heading accurately reflects the proposed development. I have determined the appeal based on the agreed description of development. I noted at my site visit that the palisade fence and gravel chippings are already in place.
3. The appellant questions whether the erection of the proposed garage, the laying of gravel chippings and the palisade fencing would result in the change of the use of the land. It is open to the appellant to apply to have the matter determined under sections 191 and 192 of the Town and Country Planning Act 1990. Any such application would be unaffected by my determination of this appeal.

Main Issue

4. The main issue is the effect of the proposed development upon the Council's strategic approach to the provision of allotment land.

Reasons

5. The appeal site is located to the east of Heworth Road. Access to the land is via a single width access located to the rear of the shops facing Heworth Road. To the east of the site is a predominantly residential area. An NHS facility and associated car park sits immediately adjacent to the appeal site's southern boundary with existing allotment gardens located to the north.

6. There is no dispute between the parties that the site, together with the adjoining land is identified as allotment land under saved Policy WA16(i) of the City of Sunderland Unitary Development Plan 1998 (UDP).
7. As set out in paragraph 45 of the National Planning Policy Framework (the Framework) the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise¹.
8. Policy L9 of the UDP states that land used for allotments will be retained for this purpose except where: alternative provision is made in the locality; the site is allocated for another purpose elsewhere in the plan; the site is identified by the council as surplus to requirements; a site has become disused or significantly underused through lack of local demand; (In this case the Council will give prior consideration to the need for public open space or other recreational uses of the site). The policy states that use of allotments for business/industrial purposes will be resisted. Despite the age of this policy it remains consistent with the aims of the Framework in respect of promoting healthy communities and as such I accord it significant weight.
9. The emerging Sunderland City Council Core Strategy Development Plan 2015-2033 Publication Draft (incorporating proposed modifications September 2019) has been through examination and is expected to be adopted early in 2020 (emerging plan). Policy N4 of the emerging plan seeks to protect green space where there is a deficiency in accordance with the Sunderland Greenspace Audit and Report December 2018 (SGAR). The wording in Policy N4 is similar in its effect to that in Policy LP9 of the UDP. The policy accords with the framework and, given the advanced stage of the plan, I accord significant weight to it.
10. The SGAR constitutes a robust appraisal of allotment provision in the Council area and has been used to inform the policies in the emerging plan, therefore, it attracts significant weight in my decision. The SGAR confirms that there is a shortfall in the provision of allotment sites within Washington.
11. Annex 2 of the Framework defines open space as all open space of public value which offer important opportunities for sport and recreation and can act as a visual amenity. Allotment land and Green Space fall within the annex 2 definition of open space. Paragraph 97 of the Framework confirms that existing open space should not be built on unless an assessment has been undertaken which has clearly shown the open space to be surplus to requirements or the loss would be replaced by equivalent or better provision.
12. The evidence submitted with the appellant's statement shows that until the recent resurfacing and fencing a large proportion of the land had the appearance of an allotment plot. The boundaries had good levels of vegetation and the scale and siting of buildings were commensurate with a domestic or allotment use. Indeed, the supporting statements and petitions acknowledge that work has recently been undertaken at the site and that prior to the appellant buying the land the area was used for parking and allotments. The Council point out that the unavailability of the site for allotment use is only due to the site having been cleared and resurfaced.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

13. When these considerations are taken together, I find that the site would constitute allotment land. Further, I can see no compelling reason to differentiate between the function of private and public allotments. In practice there is no reason why an allotment cannot be let out on an individual basis, indeed it appears this was how the appeal site was occupied until the appellant bought the site.
14. The proposal, as a result of the clearance and surfacing works already undertaken and the erection of the proposed garage, would result in the loss of allotment land. Hence, it's loss would exacerbate the identified shortfall of allotment land in Washington. There is no proposed alternative allotment provision as part of the appeal scheme, and I have no evidence to show that there is a lack of demand for allotments.
15. I note that the appellant is seeking to resolve a parking issue outside his property in the interest of the residential amenity of his neighbours and requires the parking to facilitate his business. Whilst I attach some weight to these issues in reaching my decision, I find that these matters do not outweigh the harm I have found in respect of the loss of allotment land.
16. The Council do not object to the details of the siting and design of the garage, gravel chippings or palisade fencing, and I see no reason to conclude otherwise subject to appropriate conditions in relation to the scheme details.
17. Nevertheless, for the reasons set out above I find that the development would have a harmful effect on the Council's strategic approach to the provision of allotment land. As such it would be contrary to the aims of Policy L9 of the UDP, Policy N4 of the emerging plan and the aims and objectives of the Framework.

Other Matters

18. I note the reference to the NHS car park immediately adjacent to the site which is also part of the allotment allocation within the UDP. The Council advise that it is likely that the car park pre-dates the adoption of the UDP. This does not resolve the issue as to why that land was allocated for allotments. However, I have based my decision on the evidence before me in relation to the appeal site.
19. The letters of support for the proposed development have been taken into account but they do not outweigh the planning considerations that have led to my conclusion.

Conclusion

20. For the reasons given above the appeal is dismissed.

Diane Cragg

INSPECTOR