
Appeal Decision

Site visit made on 7 February 2020

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/H4505/W/19/3238230

**15 Glendale Avenue, Whickham, Newcastle upon Tyne, Tyne and Wear
NE16 5JA**

- 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 Louise Osborne against the decision of Gateshead Council.
 - The application Ref DC/19/00750/COU, dated 1 August 2019, was refused by notice dated 20 September 2019.
 - The development proposed is change of use of land between 15 and 17 Glendale Avenue to private garden.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. As part of the appeal, a letter of change has been submitted which states that there would be no objection to withdrawing the proposed enclosure of the land with a 1.5m high fence, were I minded to allow the appeal. The Council's position is that I should disregard the suggested amendment as it was not the proposal on which the Council reached its decision. The Procedural Guide¹ is clear that where an appellant considers that an amendment to the proposal may overcome the local planning authority's reasons for refusal, normally a revised planning application should be submitted. However, if an amendment is suggested as part of the appeal consideration should be given to whether the nature of the amendment is such that those with an interest in the development should be afforded the opportunity to comment – known as the Wheatcroft principles².
3. In this case, the nature of the amendment is straightforward, and the Council state that were the appeal to be allowed it would wish me to attach a planning condition which would provide control over the height and positioning of any boundary treatment. I therefore deal with the matter on the basis that were I to decide that the appeal should be allowed the parties would not object to a condition that would enable the type of boundary fence to be subject to further approval.

¹ Procedural Guide Planning Appeals - England February 2020

² Bernard Wheatcroft Ltd v SSE [JPL,1982, p 37]

Main Issue

4. These are:

- the effect of the proposed change of the use on the character and appearance of the area; and
- whether the proposal would lead to a loss of open space that is of value to local residents.

Reasons

Character and appearance

5. The proposal is that an area of open space situated between nos 15 and 17 Glendale Avenue would be taken into private garden. Although the appeal is made by the owner of no 15 it is intended that the land would be divided between her property and that at no 17 following purchase from the landowner.
6. The open space is located at a point where Glendale Avenue take a right hand turn, ending in a cul-de-sac. There is a paved footpath along one side of the open area, which provides access to the rear gate of no 17. To the other side there is timber fence to the side garden of no 15. The rear boundary of the site is demarcated by a green metal palisade type fence, and to the front the grassed area abuts the footpath on Glendale Avenue. At the time of my visit there was a metal trampoline frame on the land belonging to the appellant.
7. The area of land is grassed and provides something of a break in the pattern of development. The effect is accentuated by the view through towards other open space at West Thorn Walk. There is also a large tree in the adjoining area of open space which contributes to the visual quality of the area. Therefore, the open space contributes positively to the character and appearance of the area. Were it to be enclosed as private garden, the sense of there being some visual linkage with the other open space to the other side of the palisade fence would be diminished, even if only a low height boundary treatment were to be used. In addition, there would be no reason why a hedge could not be planted to enclose the land.
8. The appellant draws attention to other examples nearby where high boundary enclosures have been erected. In one case, no 10 Glendale Avenue, there is a high, stained timber fence running alongside the head of the cul-de-sac, and some incidental buildings within the curtilage of that property. I have no information on the circumstances of that case and in any event the existence of other examples which may, arguably, have a negative impact on the character and appearance of the area is not a good reason for me to allow a proposal which would harm the character and appearance of the area.
9. The appellant states that she has kept the land in good condition for around the last 15 years, prior to which it was poorly maintained by the Council. The Council does not refute the point. Whilst I am sympathetic to the appellant's position, it is a matter to which I can give only limited weight in my decision.

10. I therefore conclude that the proposal would cause harm to the character and appearance of the area, contrary to Policy CS15 of the of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030³ (the Core Strategy) and Policy ENV3 of the Gateshead Unitary Development Plan (2007) (the UDP) which require, amongst other things, that development should respond positively to local character, and the aims of the Framework⁴ to ensure that development is sympathetic to local character and the surrounding environment.

Loss of open space

11. The evidence that the site performs a function as valued open space is varied. A number of residents responded to the Council to say that the site provides an area for informal play by younger children. However, a slightly higher number of residents responded to say that the land was only used by the appellant⁵. In response to the appeal, I have received a number of letters supporting the argument that the site performs a useful function in recreational terms. Whilst I also give some weight to those submitted at the application stage which take the contrary view, the site is valued as open space by some members of the local community.
12. The site is not in an area where there is a shortfall of open space when assessed against the standard of 1ha per 1000 population in Policy CFR20 of the UDP. There is a substantial area of open space which can be safely accessed by walking approximately 300m from the site via Glendale Avenue, Elsdon Road, and Elsdon Court, and other open space areas exist in the area, for example playing fields at Whickham Sports Club and Chase Park.
13. Policy CFR23 of the UDP states that the loss of open space will be permitted where the level of provision will still meet the standards in CFR20. The Council is not suggesting that the loss of the site would result in those standards being infringed. However, the policy requires that even where the standards are comfortably exceeded, proposals resulting in the loss of open space will only be allowed exceptionally, and the open space in question should be the lowest quality of public open space in the neighbourhood in which it is located, in terms of recreational value, accessibility, visual quality and biodiversity.
14. The policy itself qualifies the point on the assessment of whether there is no lower quality open space in the local area with the caveat 'as far as possible'. Although in terms of recreation and biodiversity, the site is of limited value due to its small size and open grassed nature, it is easily accessible from the immediate area of Glendale Avenue, and as I have already found has some value in visual and open space terms. I must therefore find there to be some conflict with Policy CFR23, despite the presence of other open space in the area.
15. Policies CS14 and CS18 of the Core Strategy seek, amongst other things, to promote health and wellbeing and maintain an interconnected network of green infrastructure. Given the small size of the site, and its poor relationship to other open space given the presence of the palisade fence, I find these policies to be of limited weight in terms of this main issue.

³ Adopted March 2015

⁴ National Planning Policy Framework February 2019

⁵ One of those letters was from the occupier of no 17

16. The Framework defines open space to be all open space of value, where it offers important opportunities for sport and can act as a visual amenity. It is clear that the site does not offer any real opportunity for sport due to its small size and location close to housing. Therefore, paragraph 97 of the Framework is not engaged despite the value of the site in terms of visual amenity.
17. The appellant's case is in essence that the site would be better maintained if used as private garden, no detriment to the local provision of recreation space would occur, and that visual amenity should be a matter of limited weight given other fences and walls which have been erected in the area. However, these matters do not overcome the conflict with the development plan, the foremost consideration in my decision.
18. I therefore conclude that the proposal would lead to a loss of open space that is of value to local residents and would therefore be in conflict with Policy CFR23 of the UDP.

Other matters

19. There has been a previous appeal decision relating to the change of use of the site from open space to garden⁶. The Council tells me that the appeal was dismissed due to the loss of public open space which would detract from the appearance of the area and provision of space for play. I have not been provided with a copy of this decision, dating from 1982, and therefore I attach very limited weight to this matter.

Conclusion

20. The Framework is clear that proposals must be determined in accordance with the development plan unless material considerations otherwise. In this case there is conflict with policies in both the Core Strategy and UDP. There is also conflict with the Framework.
21. For the reasons given, the appeal is dismissed.

Tim Wheeler

INSPECTOR

⁶ T/APP/5099/A/82/6521/G9. Dismissed 22 October 1982