
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: 28 April 2020

Appeal Ref: APP/H4505/W/19/3237603

Former Monkridge Residents Association and Lands, 21 and 23 and land south of 9-23 Monkridge Gardens, Dunston Hill, Gateshead NE11 9XE

- 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 Mr Alan Kain on behalf of Co-Kain Developments against the decision of Gateshead Council.
 - The application Ref DC/19/00634/OUT, dated 22 June 2019, was refused by notice dated 4 September 2019.
 - The development proposed is: Outline planning permission with all matters reserved for the clearance, lowering & levelling of site and the erection of up to 10 dwelling-houses, with new shared-surface, new vehicular & pedestrian access, and the demolition of Number 23 & formation of new blank supporting gable wall to Number 25.
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Decision

1. The appeal is allowed and outline planning permission is granted for the clearance, lowering and levelling of site and the erection of up to 10 dwelling-houses, with new shared-surface, new vehicular & pedestrian access, and the demolition of Number 23 and formation of new blank supporting gable wall to Number 25 at Former Monkridge Residents Association and Lands, 21 and 23 and land south of 9 -23 Monkridge Gardens, Dunston Hill, Gateshead NE11 9XE in accordance with the terms of the application, Ref DC/19/00634/OUT, dated 22 June 2019, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Alan Kain against Gateshead Council. This application is the subject of a separate Decision.

Procedural Matter

3. The application to which the appeal relates was made in outline, with all matters reserved. I have dealt with the plans showing the layout and design as being for illustrative purposes only. However, as there is no existing access to the site, I have given substantial weight to the information submitted by the appellant which shows how an access could be created. The only reason for refusal relates to the visual impact of the proposed development in respect of the necessity to create a vehicular access to the site. I have therefore dealt with the appeal on this basis.

Main Issue

4. The main issue is the effect of the development upon the character and appearance of the area.

Reasons

5. The site, formerly used as recreation grounds, is surrounded on all sides by existing houses. It is proposed that a new vehicular access would be created by demolishing the semi-detached property at no 23. The exposed gable of the remaining half of the semi, no 25, would be made good and faced in brick.
6. Although the removal of no 23 is shown on the submitted plans, demolition could proceed under permitted development rights¹ under the prior notification scheme. Although such a notice has not been served by the appellant in relation to no 23, it would be open to him to do so.
7. For the permitted development right to amount to a 'fallback position' that forms a material consideration in the appeal, there must be more than a theoretical prospect that the appellant would proceed with the demolition in the absence of outline planning permission for development². The appellant does not confirm that this would be his intention, however he points out that he is the owner of no 23 and that its demolition is possible as permitted development. Under these circumstances I conclude that the fallback position being implemented is more than a theoretical possibility.
8. Following demolition of no 23, the gable end to no 25 would be plainly visible from the street and it would be apparent that one half of the semi had been demolished to permit the construction of the access. However, with the use of matching brickwork to make good the gable of no 25, the overall visual effect would not cause any significantly adverse effects on the quality of the street scene. The photomontage which has been supplied by the Council in support of its case in fact suggests that the visual effect on the street scene would not be harmful to the character and appearance of the area.
9. I therefore conclude that the proposal would not cause harm to the character and appearance of the area, and would conform to Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010 - 2010-2030 and Policy ENV3 of the Saved Unitary Development Plan for Gateshead (2007) and the Framework which aim to achieve high quality buildings and spaces through the development process, and make effective use of land.

Other Matters

10. It has been suggested by interested parties that the proposal would lead to additional traffic and competition for parking spaces within Monkridge Gardens, both during the construction phase of development and following occupation of the houses. However, any effects on traffic and parking during construction would be temporary. The exact amount of parking to serve the needs of the proposed housing development remains to be agreed once reserved matters are submitted. However the illustrative plans suggest that 2 parking spaces per

¹ Granted under the Town and Country Planning (General Permitted Development) (England) Order 2015. Schedule 2 Part 11 Class B

² Zurich Assurance Ltd v North Lincolnshire Council [2012] EWHC 3708 (ADMIN)

dwelling would be provided, which would not be an unusual level of provision for such development and the Council has no objection to the scheme in terms of highway safety.

11. There is also concern over previous issues in relation to surface water runoff collecting in gardens. The Inspector dealing with the previous appeal had concerns that the flood risk and drainage assessment had not proved that the development of the site would not cause an unacceptable risk of flooding. The appellant has submitted a summary statement on the drainage issues which refers to discussions between the appellant's flooding and drainage consultant and the Council. These discussions have confirmed that as part of the development of the site, existing land drainage problems can be addressed. Copies of the email correspondence which verify the statement have been provided by the appellant.
12. It has been suggested that given previous problems of subsidence in the area the development could lead to detrimental impacts. The appellant states that a site assessment submitted with the previous application did not find evidence that the problems in terms of either the legacy of coal mining or land contamination were likely to be encountered. However, the carrying out of further assessments in relation to both matters could be made the subject of conditions.
13. It is also suggested that the demolition of no 23 would cause stress and concern to the occupier of no 25. The concern is understandable given the nature of the works that would be necessary to demolish no 23 and make good the gable of the property and boundary fencing. However, a condition can be attached to make sure these matters are addressed and any problems minimised as much as possible.

Conditions

14. I attach the normal planning conditions specifying the reserved matters to be approved and limiting the period within which those reserved matters must be submitted to the Council for consent to 3 years from the date of this permission. The normal condition is attached requiring that the development must commence within 2 years from the date of approval of the last reserved matter.
15. To provide certainty I attach a condition to reference the approved site location plan, existing site plan, the proposed site plan which shows the point of access, and the existing elevations plan which includes proposals for the treatment of the side elevation of no 23.
16. The Council have suggested planning conditions relating to the approval of details of boundary treatments and cycle parking. With the exception of the boundary to no 25, these matters can be addressed at the reserved matters stage and therefore are excluded.
17. It is important that restoration works are completed to the gable elevation of no 25 prior to further development in the interest of the living conditions of the householder and the character and appearance of the area. I therefore attach a condition relating to this, including the requirement that a sample of the brick to be used, and the boundary treatment, are to be approved by the Local

Planning Authority prior to the work. For the same reason a condition is attached to control delivery times during construction.

18. The site has been subject to a preliminary risk assessment that suggest that intrusive investigations are required which may then lead to remediation works. A condition is attached to require this work to be undertaken, together with the undertaking of those works, and verification, if required. The site is also located within a high risk area for mining subsidence and investigation works are required therefore a condition is attached to require this work to be undertaken.
19. A condition is attached requiring drainage details to be submitted and approved due to issues of localised flooding. There is also potential for some protected species to be affected during the construction works and a biodiversity method statement should be agreed and implemented to ensure that there are net gains. A condition is attached to secure this.

Conclusion

20. For the above reasons, the appeal is allowed.

Tim Wheeler

INSPECTOR

Schedule of Conditions

1. Details of the appearance, means of access, 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 three years from the date of this permission.
3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. Except as otherwise approved under condition 1 the development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan Scale 1:1250
 - Existing site plan – AD-17-4RESUB SHT1
 - Proposed Site Plan – AD-17-48RESUB SHT2
 - Existing elevations – AD-17-48-RESUB SHT3
5. No development beyond demolition and site clearance shall take place until the works to the gable elevation of 25 Monkridge Gardens as shown on submitted plan AD-17-48-RESUB SHT3 – Proposed Front, Side and Rear Elevations (at 23 Monkridge Gardens) have been completed in full. Details of the boundary treatment for no 25 and a sample of the relevant brick to be used shall be submitted to and approved in writing by the Local Planning Authority prior to any demolition and the boundary and gable shall be made good in accordance with the approved details.
6. All construction works and ancillary operations in connection with the construction of the development, including deliveries to the site, shall be carried out only between 0800 hours and 1700 hours on Mondays to Saturdays and at no time on Sundays, Bank Holidays or Public Holidays.
7. No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i. a survey of the extent, scale and nature of contamination;
 - ii. the potential risks to:
 1. human health;
 2. property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 3. adjoining land;
 4. ground waters and surface waters;

5. ecological systems; and
 6. archaeological sites and ancient monuments.
8. No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
 9. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
 10. Upon completion of the remediation works detailed in the approved Remediation statement and prior to the occupation of any dwellinghouse permitted following approval of reserved matters, a detailed Remediation Verification report shall be submitted to the Local Planning Authority for approval. The report should provide verification that the required works regarding contamination have been carried out in full accordance with the approved Remediation Strategy Statement, and should provide a summary of remedial works carried out together with relevant documentary evidence and post remediation test result to demonstrate that the required remediation has been fully met.
 11. Prior to the commencement of the development hereby approved intrusive site investigation works shall be undertaken in order to establish coal mining legacy issues on site. The findings of the intrusive site investigations works in relation to coal mining legacy issues along with details of any remedial works (and timescales) required shall be submitted and approved by the LPA prior to the commencement of the development hereby approved. Any remedial works identified shall be implemented in accordance with the timescale set out in the approved findings.

12.No development other than demolition and site clearance shall commence until a detailed scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the Local Planning Authority.

The scheme shall include:

- an assessment of the potential for disposing of surface water by means of a sustainable drainage system
- information about the design storm period and intensity
- the method employed to delay and control the surface water discharged from the site
- the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- a timetable for its implementation; and
- a management and maintenance plan for the lifetime of the development, which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime

The approved drainage scheme shall be implemented in accordance with the approved timetable and managed and maintained in accordance with the approved details thereafter.

13.No development shall take place until a Biodiversity Method Statement has been submitted to and approved in writing by the Local Planning Authority. The content of the method statement shall include the following:

- An assessment of the habitats/features within and immediately adjacent the site and their potential to support statutorily protected and/or priority/notable species. All survey work and reporting must be undertaken by a suitably qualified, experienced and, where appropriate, licenced ecologist in accordance with current good practice guidelines.
- Full details of all avoidance, mitigation and/or compensation measures to be implemented to address the direct and secondary impacts of the development on statutorily protected and/or priority/notable species; and to ensure the development delivers measurable net-gains for biodiversity.

The development shall be undertaken in full accordance with the approved biodiversity method statement.

ENDS