



Appeal Decision

Site visit made on 4 June 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/X1355/W/19/3243119

Site of Former Magistrates Court, Ashdale Road, Consett, Durham DH8 6LY

- 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 Tom Winter of Believe Housing against the decision of Durham County Council.
 - The application Ref DM/19/02141/FPA, dated 3 July 2019, was refused by notice dated 3 December 2019.
 - The development proposed is 20no. new build residential units - 2 and 3 bedroomed with associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since its original decision, the Council has adopted the County Durham Plan Residential Amenity Standards Supplementary Planning Document (SPD).

Main Issues

3. The main issues are the effect of the proposed development on 1) the character and appearance of the area having particular regard to density, design and landscape features 2) crime and personal safety and 3) the living conditions of the future occupants of the development having particular regard to outdoor amenity space provision.

Reasons

Character and appearance

4. The appeal site is located within a predominantly residential area that is largely made up of terraced and semi-detached properties. The site sits between an area of open space incorporating a war memorial and the large car park of the Consett Academy which sits to the rear of the site. There are tennis courts opposite the appeal site including a pleasant line of trees on the raised bank. The former Magistrates Court buildings have been demolished and the site is vacant.
5. The density of the development and its impact on the character and appearance of the area is in dispute. The density of the proposed development, in simple number terms, is given at 38 dwellings per hectare. In isolation, such a number would not be uncommon in an urban area such as the appeal site,

- and it would appear comparable to some of the housing areas surrounding the appeal site.
6. Considering the development as a whole however, this includes the provision of a SUDS pond, the internal highway, shared drives and numerous parking spaces. The implications of which appear to have driven the resulting design of the development insofar as it relates to dwellings, their siting and their amenity space.
 7. Due to the dominance of car parking, the provision of other hard surfaces and the garden sizes of some of the properties, the overall design of the development would be particularly poor. Therefore, whilst the absolute number of dwellings itself would not appear excessive or of any greater density than the dwellings in the surrounding area, the specifics of the proposal create a development that would be dominated by parking spaces, highways, and shared driveways.
 8. There are 24 trees on the site proposed to be removed. Of these trees, one has been identified as Category U – being in such a condition that any existing value would be lost within 10 years and which should, in the current context, be removed for reasons of sound arboricultural management. Thirteen have been identified as Category C - trees that are considered to be of low quality and value, but of an adequate condition to remain in the short-term. Trees with a stem diameter of less than 150mm (measured at 1.5m above ground level) are classified as Category C; these trees should also be retained where possible but where they form a significant constraint to development their removal should be permitted. Ten have been identified as Category B - trees of moderate quality and value, and of a condition that they make a substantial contribution to the site; the retention of Category B trees should be considered during the design phase.
 9. For the purposes of good landscape management and maintenance, I find no harm would be caused by the removal of the Category U tree. I consider that collectively, the cumulative impact of the removal of 13 Category C trees would have a harmful impact on the character and appearance of the area, particularly in the absence of any significant proposed mitigation. I find the removal of the 10 Category B trees, particularly those on the site frontage and the prominent Sycamore's (tree no's 1, 2 and 3) would have a harmful impact on the character and appearance of the area despite the retention of trees elsewhere on the site.
 10. Many of the trees proposed for removal are prominently located either on the site frontage or in an elevated, more central position. The site frontage, and elsewhere on Ashdale Road is characterised as having tree-lined features that positively contribute to the character and appearance of the area. Centrally within the site, there are three prominent Sycamore trees that sit in an elevated position and are visible from wide ranging views of the site. They also positively contribute to the site and the surrounding area. Collectively, these trees are in such a condition as to make a significant contribution for many years to come.
 11. Although the trees are not covered by a Tree Preservation Order (TPO) and could be removed without the consent of the Local Planning Authority, this does not automatically lead to the assumption that they do not positively contribute to the character and appearance of the area. I acknowledge the

fallback that exists; however, I have also considered the matter in relation to the existing situation which I found on my site visit.

12. Significant mitigation is absent, with the latest version of the landscape plan showing no tree replacement planting, instead noting 'detailed planting schedule to be produced'. There is an extract of a landscaping scheme in the appeal statement, however I do not have a copy of the plan before me to give it significant weight. In any event, from what I can decipher this plan concentrates on shrub planting. Even with replacement tree planting however, I remain sceptical that it would make the same contribution to the character and appearance of the area, particularly in relation to providing a pleasant tree lined frontage. Such planting would also take a significant amount of time to become established. Thus, in the lack of any meaningful replacement planting before me, I must conclude that harm would be caused.
13. The proposed development would therefore cause significant harm to the character and appearance of the area in relation to its design and the loss of trees. It would be contrary to Saved Policies GDP1 and EN11 of the Derwentside Local Plan (1997) which require, amongst other things, that proposals incorporate a high standard of design, the protection of existing landscape features and that existing trees should be retained and incorporated in new developments where possible.
14. The proposal would also be contrary to guidance contained in the National Planning Policy Framework (the Framework) (2019) which outlines, amongst other things, that decisions should ensure that developments will function well and add to the overall quality of the area, and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; and are sympathetic to local character including landscape setting. The Framework also outlines that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Crime and personal safety

15. In relation to the effect of the proposed development on crime and personal safety, the dispute focuses on the provision of shared driveways and rear access paths.
16. In relation to shared driveways, I consider that when such features are managed appropriately neighbour conflict in relation to parking can be avoided. I accept that parking matters can cause neighbour disputes, however there is no evidence before me attributable to the proposed development that demonstrates it would give rise to an increase in anti-social behaviour or crime in the area. The proposed development includes private parking provision to the extent that the likelihood of parking disputes occurring is significantly reduced.
17. In relation to the rear access paths, specific reference is made to Plot 11, a mid-terrace property, whereby access to the rear garden is achieved by a path that runs along the side and rear of the rear garden to Plot 10. I am aware that such an arrangement is commonplace on residential developments where terrace housing is proposed, in order to provide access to the rear garden. I have however considered the matter on its own individual merits as it relates to the appeal proposal and the evidence before me.

18. As with the provision of shared drives, there is no evidence before me attributable to the proposed development that demonstrates the proposed access path would give rise to an increase in anti-social behaviour or crime in the area. There is a reasonable amount of natural surveillance from the rear of the properties. The incorporation of measures such as security lighting and locks, which could be secured by condition were the appeal to be allowed, would be sufficient to ensure that the properties and their occupants are not vulnerable or put at any unacceptable risk from a crime and personal safety point of view.
19. The proposed development would not cause crime and personal safety concerns. It would comply with Saved Policy GDP1 of the Derwentside Local Plan (1997) which requires, amongst other things, that proposals are designed and located to deter crime and increase personal safety.
20. The proposal would also comply with guidance contained in the Framework which outlines, amongst other things, that planning decisions should aim to achieve healthy, inclusive and safe places which are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.

Living conditions

21. Since the original decision, the Council has adopted the County Durham Plan Residential Amenity Standards SPD. This document sets out, amongst other things, that the length of gardens will generally be dictated by the minimum distancing standards but should be no less than 9 metres unless site specific circumstances allow for a reduction in size.
22. In the appeal proposal, the length of rear gardens does not appear to have been dictated by the minimum distance standards. Both parties agree that a number of plots fall below the 9 metres minimum distance as outlined in the SPD. I consider that the garden sizes on a number of plots, for example nos. 1, 2, 3, 6 and 7, would not provide sufficient amenity space for the dwellings which they are intended to serve. These three-bedroom dwellings are likely to be aimed at families for whom a garden of sufficient size would be of greatest need and requirement for outdoor play, recreation and socialising. I do not find that there are any site-specific circumstances, such as the provision of communal garden, or appropriately sized open space, that would allow for a reduction in garden size.
23. The appellant has referred to the fallback position in relation to permitted development rights for extensions to dwellings. I have no substantive evidence to indicate that there is a significant probability that the fallback would be constructed. This limits the weight that I can attach to it as a fallback position. In any event I do not consider that the possibility of extensions that may be constructed under permitted development rights is sufficient to allow for sub-standard sized private amenity space.
24. The proposal would therefore have a significantly harmful effect on the living conditions of the future occupants of the development having regard to outdoor amenity space provision. It would be contrary to Saved Policy GDP1 of the Derwentside Local Plan (1997) which requires, amongst other things, that proposals incorporate a high standard of design, including having regard to

layout. It would also be contrary to guidance contained in the County Durham Plan Residential Amenity Standards SPD (2020).

25. The proposal would also be contrary to guidance contained in the Framework which outlines, amongst other things, that decisions should ensure that developments create places that promote health and well-being, with a high standard of amenity for future users.

Other Matters

26. I am aware that the Council have granted outline planning permission for a scheme of up to 20 dwellings on the appeal site. I have not however been referred to any approved matters of this consent, such as layout or landscaping, in order to give it significant weight in the context of the main issues relevant to the appeal. I have, in any event, determined the appeal case on its own merits, whilst having regard to the evidence submitted.
27. I appreciate that Council officers recommended approval of the application to the planning committee. However, it was within the committee's gift to make a decision on the application contrary to the officer recommendation, thus this consideration has had no bearing on my decision.

Planning Balance

28. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
29. The Council outline that the housing related policies in the Development plan are those most important for dealing with the application and are out of date. Paragraph 11(d)ii of the Framework outlines that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. In the context of the development plan I have found that the proposed development would be contrary to Saved Policies GDP1 and EN11 of the Derwentside Local Plan (1997). For this appeal, I have found these policies to be generally consistent with the relevant aims of the Framework and have I attached substantial weight to them. The proposal would not accord with the development plan when considered as a whole.
31. The appeal proposal would result in the delivery of affordable housing in a highly sustainable location on previously developed land. Such factors weigh heavily in favour of the appeal. More moderate weight is also given to the benefits of the development in terms of employment creation, council tax revenues and the supporting of local services by future occupants. I have also taken into account the education and healthcare contributions proposed in the draft S106 Agreement which I have given moderate weight.
32. However, the adverse impacts of the proposal in terms of the harm to the character and appearance of the area and the living conditions of future occupants would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, which include

a requirement for good design, effective landscaping and a high standard of amenity for future users.

Conclusion

33. For the reasons set out above I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR