
Appeal Decision

Site visit made on 9 June 2020

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2020

Appeal Ref: APP/J4525/W/20/3245222

53 Okehampton Drive, Houghton-le-Spring DH4 4YB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mrs Gaynor Cuthbertson against the decision of Sunderland City Council.
 - The application Ref 19/01857/FUL, dated 4 November 2019, was refused by notice dated 23 December 2019.
 - The development proposed is the change of land from public to garden use.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land from public open space to private garden at 53 Okehampton Drive, Houghton-le-Spring, Sunderland DH4 4YB in accordance with the terms of the application Ref 19/01857/FUL, dated 4 November 2019, subject to the Schedule of Conditions attached to this decision.

Preliminary Matter

2. Since determination of the application on the 23 December 2019 the City of Sunderland Core Strategy and Development Plan (CS) has been adopted by the Council. Consequently, Policies B2, B3 and EN10 of the Unitary Development Plan 1998, which were cited in the Council's refusal of planning permission, are no longer applicable and are replaced by Policies BH1 and NE4.

Main Issues

3. The main issues are the effect of the proposed development upon:
 - the appearance, openness and the usability of the area of public open space to the rear of Okehampton Drive, Sparkwell Close, Green Avenue, St Matthews Terrace and Wetherby Close; and
 - the openness of access for pedestrians entering the public open space from the end of St Mathews Terrace.

Reasons

Appearance, Openness and Usability of the Public Open Space

4. The appeal site is a rectangular area of grass measuring around 10 metres by 12 metres which forms part of a larger, broadly triangular public open space.

- The site is located immediately to the rear of the 53 Okehampton Drive which is a modern, detached 2-storey dwelling within an estate.
5. The triangular shaped area of public open space measures around 100 metres in length and is bounded by a row of allotments to the rear of Okehampton Drive and the rear aspects of residential properties on Sparkwell Close, Green Avenue, St Matthews Terrace and Wetherby Close. Access and egress to and from the area of public open space is via one of about 4 pedestrian alleyways and openings.
 6. The appeal site forms an appendage to the tip of the triangle. It is bounded by shrubs and a wooden fence at the rear of 53 Okehampton Drive, by a high sided solid wooden fence to the rear of 3 and 4 Wetherby Close and by a green, steel fence bounding the end allotment. A pedestrian footpath from the end of St Matthews Terrace enters the area of public open space opposite the appeal site.
 7. It is proposed to incorporate this site into the existing back garden of No 53 which appeared to be around the same size. This would be achieved by securing the open side of the site by a 2-metre high solid wooden fence.
 8. The officer's report states that the appeal site is relatively well maintained. According to the Appellant the site has been a source of much anti-social behaviour including the dumping of rubbish, the launching of objects into neighbours' gardens and the use of the area as a turning circle for quad bikes. I noted discarded rubbish close to the hedge separating the site from No 53 and wide tyre tracks. As a result, the whole of the appeal site presented an unsightly spectacle which appears to be a source of anti-social behaviour. This is in sharp contrast to the rest of the open space area which is well maintained and appeared to be in very good order.
 9. Use of the appeal site for a private garden would not significantly affect the appearance of the public open space given my findings in regard to the current state of the former. Furthermore, because it forms only a small, awkward corner of the overall area it would not significantly affect the openness and usability of the remaining public open space. Indeed, if the public open space became less attractive to those engaged in anti-social behaviour this would constitute a planning benefit.
 10. I was referred to another parcel of land at the rear of 2 Sparkwell Close and adjacent to the allotments where planning permission had been granted in 2013 for change of use from public open space to private garden. The area is very similar in size and shape to the current appeal proposal.
 11. Although this development at the rear of Sparkwell Close shares many similarities it does not constitute a binding precedent in the determination of the appeal proposal. Nevertheless, because of the garden's modest size, I do not consider that it has detracted from the appearance, openness or usability of the wider public open space.
 12. Following on from the above points I conclude that the development proposal would not harm the appearance, openness or the usability of the public open space. It would therefore accord with Policies BH1 and NE4 of the CS which seek to encourage development that maintains a high level of visual and user enjoyment for current and future users.

Openness of Access for Pedestrians Entering the Public Open Space from St Matthews Terrace

13. One of the access points into the area of public open space is via an alleyway from the end of St Matthews Terrace located opposite the appeal site. The pavement appears from between the tall fence marking the boundary with Wetherby Close and a more recently erected tall fence enclosing the back garden of the end dwelling on St Matthews Terrace. The installation of a tall fence at the end of the appeal site would foreclose the view from the alleyway over this small area of land towards shrubs and the wooden fence bordering No 53. The new fence would be about 2-3 metres away from where the access appears with the path turning to the left across the public open space.
14. However, the degree of enclosure would only be a little more than is found at the access points to the public open space at either end of Green Avenue where access in each case is through a relatively narrow alleyway. Moreover, there is a streetlight at the point where the access from St Matthews Terrace opens out providing illumination during hours of darkness. Finally, since I have concluded that the appeal site is a place that attracts various forms of anti-social behaviour it seems likely that the development proposal would help to increase public safety rather than reduce it.
15. Given my findings on this issue I conclude that the proposed development would not be an oppressive feature for pedestrians entering the public open space during the day or night from St Matthews Terrace. Consequently, the proposal accords with Policies BH1(6) and NE4 of the CS which seek to encourage development that distinguishes between public and private spaces and that protects the welfare of the users of green spaces. Finally, it accords with Paragraph 127f) of the National Planning Policy Framework which encourages development proposals that create safe, inclusive and accessible places where crime, disorder, and the fear of crime do not undermine the quality of life for members of the public.

Conditions and Conclusion

16. In addition to the standard 3-year condition, for the purposes of certainty and good planning I have attached a condition requiring that the proposed fence be implemented in accordance with the approved 1:500 scale plan (showing the site boundary and the alignment of the proposal) and with the description of the structure given in the statement. Finally, in the interests of protecting the character and appearance of the area I have attached a condition requiring that the fence be stained dark brown and maintained accordingly.
17. For the reasons set out above the appeal is allowed.

William Walton

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development must be begun within not later than 3 years beginning with the date of this Decision Letter.
2. The approved solid wooden fence must be no more than 2 metres in height and must be located as shown on the approved 1:500 plan accompanying the planning application.
3. The fence once erected must be stained dark brown and maintained as such at all times thereafter.

END