



Appeal Decision

Site visit made on 22 November 2021

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 December 2021

Appeal Ref: APP/W0734/W/21/3283685

21 Thurlestone, Marton-in-Cleveland, Middlesbrough TS8 9TA

- 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 Anthony Rock against the decision of Middlesbrough Borough Council.
 - The application Ref 21/0196/FUL, dated 19 March 2021, was refused by notice dated 6 July 2021.
 - The development proposed is extend garden by 6m to change use of waste land to residential curtilage, with erection of wall to side along footpath and wooden fence to rear.
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Decision

1. The appeal is allowed and planning permission is granted for 'extend garden by 6m to change use of waste land to residential curtilage, with erection of wall to side along footpath and wooden fence' to rear at 21 Thurlestone, Marton-in-Cleveland, Middlesbrough TS8 9TA in accordance with the terms of the application, Ref 21/0196/FUL, dated 19 March 2021 and the plans entitled Location Plan and Boundary Plan.

Procedural Matter

2. The application sought permission for a change of use on land which is shown as open space by virtue of saved Policy E7 of the Middlesbrough Local Plan (Local Plan). However, the appeal site has been incorporated into the garden of number 21 Thurlestone (No 21). I have, therefore, determined the appeal on the basis that it is a retrospective application.

Main Issue

3. The main issue is the loss of allocated public open space and whether or not the proposal would accord with the Middlesbrough Local Plan (1999); policies MW1 and MW3 of the Marton West Neighbourhood Plan (MWNP) (2021) and the National Planning Policy Framework (the Framework).

Reasons

4. The appeal property is a two-storey detached dwelling with enclosed garden to the rear situated within the Marton West Area of Middlesbrough. Open land is situated to the rear of the property with a footpath and cycleway beyond. A footpath also runs directly to the side of the property.

5. The garden of the property has been extended by around 6m. The 2m high existing wall has been extended by 6m to the side and the 2m high boundary fence moved out to enclose the additional land. Prior to enclosure, the appeal site formed part of an area of open space which runs alongside the public footpath and cycleway with hedgerow immediately adjacent to the rear boundary fences of properties.
6. The site is situated on land allocated as primary open space on the adopted Policies Map (Housing Local Plan 2014) by virtue of Saved Policy E7 of the Middlesbrough Local Plan (Local Plan). Policy E7 requires that such land will be safeguarded from development. Exceptions will only be made for development which complements its function or is of over-riding benefit to the community as a whole.
7. The site is also situated within the MWNP area which was adopted ('made') on 20 October 2021. Policy MW1 of the MWNP seeks to avoid the loss of green space, veteran, notable and mature trees and landscaping which make a positive contribution to the area. Policy MW2 acknowledges that in Marton West, housing development will also be carried out on small unallocated windfall sites. Policy MW3 goes on to set criteria for development on such sites including the scale, density and design and seeks to ensure that development does not result in the loss of existing open amenity space. The MWNP Policies Map shows the areas of open space to which Policy MW1 applies annotated in green. The land either side of the footpath/cycleway to the rear of the appeal property is not shown as allocated open space. Consequently, there is conflict between the Local Plan and the MWNP.
8. Section 38 (5) of the Planning and Compulsory Purchase Act 2004 (as updated) states that "if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan". The MWNP has been made and so forms part of the development plan. As it was adopted more recently than the Local Plan, the conflict must be resolved in favour of the MWNP.
9. Saved Policy E7 is consistent with Paragraph 99 of the National Planning Policy Framework (the Framework) which states that open space should not be built on. The policy is not, therefore, automatically out of date in the context of paragraph 219 of the Framework. However, in the particular circumstances of this case, due to the conflict with the MWNP, the appeal must be determined on the basis of the most up-to-date Plan. As the appeal site is not allocated as open space under Policy MW1 of the MWNP no conflict arises with this policy or MW3.
10. The Council has not refused the development on grounds relating to character and appearance. The planning officer's report notes that the extended wall matches the existing wall, and the fence is similar to those in the vicinity. Also, it considers that the shrubs to the north east of the extended garden help to screen the step in the boundary line and the shrubs planted by the appellant will soften the appearance of the fence line. From everything which I have seen in submissions and on my site visit, I have no reason to disagree.
11. Furthermore, I noted on my site visit that there is more than sufficient land remaining to provide an effective buffer between the rear boundary fence of the appeal property and the footpath/cycleway.

12. Reference is made to a number of cases in the area where extensions to garden land have also occurred. However, none of these cases appear directly comparable to the appeal proposal and in any event, I have determined the appeal on its own merits.
13. For the reasons stated, whilst the development conflicts with saved Policy E7, no conflict would arise with Policies MW1 and MW3 of the MWNP. The decision must be decided in accordance with the latter document. The development does not, therefore, conflict with the development plan as a whole. Neither does conflict arise with paragraph 99 of the Framework.

Conditions

14. The Council has suggested that a condition be applied setting out the details of the plans upon which the application is based. However, as the application is retrospective, I have included reference to the plans in the decision paragraph (1) above in the interests of clarity.

Other matters

15. Interested parties are concerned that the new section of wall which has been constructed is causing water to stand on the adjacent public footpath, restricting access and causing a danger in winter when frozen. However, the Council's Lead Flood Authority Engineer visited the site and advised that the flooding is caused by poor drainage to the west of the site rather than the extended wall which lies to the east of the area that floods. The Council is considering ways to alleviate the retention of surface water in this area. The matter is not, therefore, within the remit of this appeal.
16. Concerns have also been raised that the development has resulted in the loss of natural habitat due to the removal of hedging. However, the appeal site is not designated for its nature conservation value and there is no record of species in this area. Furthermore, the appellant has planted new hedging to replace that which has been removed which will mitigate the loss of the habitat.

Conclusion

17. For the reasons stated and taking all other considerations into account, the appeal should be allowed.

Caroline Mulloy

Inspector