



Appeal Decision

Site visit made on 26 May 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2022

Appeal Ref: APP/W4515/W/21/3271499

42 Kings Vale, Wallsend NE28 7JS

- 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 Jon Anderson against the decision of North Tyneside Council.
 - The application Ref 20/00424/FUL, dated 7 October 2020, was refused by notice dated 11 December 2020.
 - The development proposed is change of use of land to rear of property to extend residential garden onto open space. Demolition of existing conservatory to be replaced with single storey rear extension.
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Decision

1. The appeal is dismissed insofar as it relates to the change of use of land to rear of property to extend residential garden onto open space. The appeal is allowed insofar as it relates to the demolition of existing conservatory to be replaced with single storey rear extension. Planning permission is granted for the demolition of existing conservatory to be replaced with single storey rear extension at 42 Kings Vale, Wallsend NE28 7JS in accordance with the terms of the application, Ref 20/00424/FUL, dated 7 October 2020, in so far as relevant to that part of the development hereby permitted, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Existing & Proposed Floor Plans, Elevations, 3D Views & Site Plans PL-001 02/03/20, in so far as relevant to that part of the development hereby permitted.

Preliminary Matters

2. The change of use of the land to residential garden has taken place and this area has been enclosed by timber fencing. From the Council's submissions, it is only the change of use of land to residential garden that is of concern, and my decision is accordingly focussed on this element.

Main Issue

3. The main issue is the effect of the development on the green corridor including its biodiversity value and role as a landscape buffer.

Reasons

4. The site where the change of use from open space to residential garden has taken place relates to an area of land to the rear of the back garden of the host dwelling. It forms part of a green corridor between the rear of the dwellings on Kings Vale and the A1058 road. The green corridor contains trees, grassland and dense native scrub. The green corridor, including the site, forms part of a designated open space and a wildlife corridor as defined in the North Tyneside Local Plan, adopted 2017 (the Local Plan). The Council's Green Space Strategy 2015 defines the open space as being of medium to high value and medium to high quality.
5. There is no evidence before me, in terms of an ecological appraisal or similar assessment, to demonstrate what biodiversity interests are present. Nevertheless, the site is part of a designated wildlife corridor that links to a nearby Local Wildlife Site. The planting has been in place for a reasonably long period of time. There will clearly be a biodiversity value in such an open area of contiguous woodland with an understorey of native species of plants like brambles and nettles that provides a linear link to a nearby designated Local Wildlife Site.
6. Such an area is likely to offer significantly greater value to biodiversity than an enclosed residential garden which tends to have a more manicured character. Although forming only a part of the designated open space and wildlife corridor, the loss of this area of habitat to a residential garden would therefore harmfully diminish the biodiversity value of these designated areas and the green corridor's function as a landscape buffer between the residential properties and the A1058. This is despite its location between a dual carriageway and housing, as land does not need to be located in an area of attractive open countryside for it to play an important biodiversity role. The installation of bird boxes as suggested by the appellant would not adequately mitigate this.
7. I note that the appellant owns the site and states that it could be fenced off without planning permission. Whilst this may be the case, the site would remain part of the designated open space and wildlife corridor and would continue to contribute positively to their functioning.
8. The appellant contends that the existing planting could be removed without the need for planning permission. However, based on the evidence before me, part of the reason for the landscape buffer around the housing site, including where the site is located, was to provide mitigation for the loss of biodiversity arising from the housing development, and to provide a visual screen from the A1058. The Council has submitted the section 106 legal agreement completed as part of the approval of the reserved matters application¹ with respect to landscaping for the Kings Vale housing development. This indicates that the landscape buffer around the housing development is required to be maintained in perpetuity, which would restrict the ability to remove existing planting.
9. In addition, Policy DM5.2 of the Local Plan only allows for the loss of any part of the green infrastructure network in exceptional circumstances and where alternative suitable provision can be provided. The site retains a functional value, it is part of a designated wildlife corridor that provides important

¹ Application reference 02/02752/REM

biodiversity value as a linear link to a designated Local Wildlife Site. There is no evidence before me that it is not required to meet a shortfall in the provision of green space and the change of use is not ancillary to use of the green infrastructure. In addition, there is little before me to demonstrate that the loss would be compensated through alternative suitable provision.

10. The Council is concerned that the change of use of the land would set a precedent for similar schemes coming forward. I note that the garden at no. 49 has been extended, which the Council highlights has been done without planning permission. There is therefore some evidence of similar garden extensions into the open space and wildlife corridor. Moreover, there are no exceptional circumstances or any compelling justification which apply to no. 42 only. Therefore, and notwithstanding that each scheme must be considered on its individual merits, I find that there is a reasonable prospect of similar development coming forward elsewhere within the open space and wildlife corridor. If similar areas of land were subsumed into gardens, there would be a cumulative impact of the type I have described in response to the main issue of this case.
11. I conclude that the change of use to residential garden would cause significant harm to the green corridor including its biodiversity value and value as a landscape buffer between the residential properties and the A1058. The change of use therefore conflicts with Policies DM5.2 of the Local Plan which has been summarised above. It also conflicts with the green space and biodiversity requirements of Policies DM5.3 and DM5.7 of the Local Plan.
12. The proposal also includes the demolition of the conservatory and its replacement with a single storey rear extension. The Council has not raised concern regarding this element. Due to its scale, design, materials, distance from the property's boundaries and location to the rear, the proposed single storey rear extension would not harm the living conditions of neighbouring residents, would be in keeping with the host dwelling and would not harm the character and appearance of the area. From the submitted evidence and my observations, it would not harm the green corridor to the rear of the host dwelling.
13. I therefore conclude that the proposed demolition of the conservatory and its replacement with a single storey rear extension would accord with the residential amenity requirements and design objectives of Policies S1.4, DM6.1 and DM6.2 of the Local Plan, chapter 12 of the National Planning Policy Framework and the Council's Design Quality Supplementary Planning Document relating to extensions. There would also be no conflict with Local Plan Policies DM5.2, DM5.3 and DM5.7.
14. The demolition of the conservatory and its replacement with a single storey rear extension is clearly severable both physically and functionally from the change of use of land to the rear of the property to extend the residential garden onto open space. This would be clearly defined with reference to the submitted plans. It would therefore be appropriate to issue a split decision in this respect.

Conditions

15. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework, and have amended the wording of certain conditions in that light (without altering their fundamental aims).
16. As well as the standard time condition, and for certainty, one is required to ensure that the development is carried out in accordance with the approved plans in so far as they relate to the demolition of the conservatory and its replacement with a single storey rear extension.
17. The two other conditions suggested by the Council would only be applicable to the change of use of land to the rear of the property to extend the residential garden onto open space. Given my conclusions on the acceptability of this element of the development, these conditions are not necessary.

Conclusion

18. For the reasons given above, the change of use of land to the rear of the property to extend the residential garden onto open space conflicts with the development plan taken as a whole. There are no material considerations worthy of sufficient weight that indicate a decision otherwise than in accordance with it.
19. Having considered the development plan as a whole along with all other relevant material considerations, I find that the demolition of the conservatory and its replacement with a single storey rear extension would be acceptable.
20. Therefore, while the appeal fails in relation to the change of use of land to the rear of the property to extend the residential garden onto open space, it succeeds in relation to the demolition of the conservatory and its replacement with a single storey rear extension.

F Wilkinson

INSPECTOR