



Appeal Decision

Site visit made on 7 June 2022

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/X1355/W/22/3296969

Land to the south of 76 to 80 Newholme Estate, Station Town TS28 5EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Stephenson against the decision of Durham County Council.
 - The application Ref DM/21/01671/VOC, dated 8 May 2021, was allowed by notice dated 2 February 2022, but with condition 5 retained as per the original application.
 - The application sought planning permission for change of use of building to residential property without complying with conditions attached to planning permission Ref DM/20/02300/FPA, dated 28 October 2020.
 - The condition in dispute is No 5 which states that: Within the first available planting season following the date of this planning permission a 5 metre wide landscape buffer shall be planted adjacent to the southern boundary of the site. The buffer shall comprise a mix of extra heavy standard, heavy standard, feathered whip and transplant size native tree species at the following ratios: 20% Oak – *Quercus robur*; 10% Field Maple – *Acer campestre*; 10% Birch – *Betula Pendula*; 5% Crab Apple – *Malus sylvestris*; 40% Hawthorn – *Crataegus monogyna*; 5% Blackthorn – *Prunus spinosa*; 10% Hazel – *Corylus avellana*. Trees should be supported with stakes and ties. Whips and transplants should be protected with rabbit guards and trees should be watered as required during establishment. Trees, hedges and shrubs shall not be removed without agreement within five years. Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species. Replacements will be subject to the same conditions.
 - The reasons given for the condition is: To protect the landscape and visual amenity in accordance with the aims of policies 6 and 41 of the County Durham Plan.
-

Decision

The appeal is dismissed.

Application for costs

1. An application for costs was made by Mr Stephenson against Durham County Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The appeal building was approved at a previous appeal¹ after an enforcement notice issued by the Council was quashed and permission was granted to retain the built form (Appeal A and B). A further appeal² (Appeal C) considered alongside Appeals A and B to use the building as a dwelling was dismissed on the basis that the proposal did not make adequate provision for external amenity space.

¹ Appeal references: APP/X1355/C/19/3240887 (Appeal A) & APP/X1355/C/19/3240888 (Appeal B)

² Appeal reference: APP/X1355/W/19/3240785 (Appeal C)

3. The Council subsequently refused a planning application for the use of the building as a domestic garage; however, this was allowed on appeal³ (Appeal D). Following this, the Council granted permission⁴ for the change of use of the building to residential subject to a number of conditions.
4. The appellant submitted an application to vary condition 7 (sight visibility splays) and 6 (hedgerow replacement) and to remove condition 5 (landscaping) attached to this permission; however, this was subsequently amended to relate to the removal of condition 6 and the amendment of condition 7, in addition to the removal of condition 5. The Council agreed to the former; however, it opposed the removal of condition 5. Consequently, it issued a new planning permission⁵ without condition 6 and with an amended condition 7. Condition 5, the subject of this appeal, is retained in its original form. The Council's delegated report states that the removal of condition 5 would create an urban edge of the settlement that would result in unacceptable harm to the visual amenity and landscape character of the locale, contrary to policies 6 and 39 of the County Durham Plan.
5. The appeal building appeared to be occupied as a dwelling, and the alterations to the curtilage and the repositioning of the access road had taken place at the time of my site visit.

Main Issue

6. Taking the above into account, the main issue is whether condition 5 is reasonable and necessary in order to protect the character and appearance of the area.

Reasons

7. The appeal site relates to a detached single storey dwelling situated to the south and rear of a linear arrangement of semi-detached houses at Newholme Estate. The site is bound by built development to the north, east and west and by an open paddock to the south beyond the vehicular access to the site which then gives way to agricultural land beyond.
8. The appeal building is situated on an area of hardstanding to the rear of the Estate which includes a number of buildings including Sapphire Cottage to the east and Lily Cottage to the west. The paddock to the south of the appeal site creates a sense of openness and provides a transition to the open countryside beyond.
9. The single-storey building is viewed to a degree against the backdrop of the two-storey development on Newholme Estate which helps to assimilate it into the area. Nonetheless, to address the concerns of the Inspector who considered Appeal C, the curtilage of the property has been extended to incorporate private amenity space with associated boundary walls and has resulted in the access road encroaching further south.
10. The walled boundary, together with the existing building and the access road creates additional urban form and a hard urban edge to the settlement. The development results in physical and visual encroachment into the paddock to the south. Furthermore, the creation of private amenity space could result in domestic paraphernalia which would create visual clutter. The wall, road and domestic paraphernalia would be visible from the access road and the rear windows of properties on Newholme Estate. Glimpsed views may also be available when travelling from the south on the B1280, particularly in winter months when the

³ Appeal reference: APP/X/1355/W/20/3249982 (Appeal D)

⁴ Council's planning application reference: DM/20/02300/FPA

⁵ Council's planning application reference: DM/21/01671/VOC

roadside hedge is sparse. Whilst I acknowledge that cars could be parked in front of a garage, due to the size of the building, it would be unlikely to result in a significant number of cars and the garage did not have the extended curtilage.

11. The appellant has suggested a condition to provide a 1m landscaping strip behind the boundary wall within the curtilage of the property, similar to the plan approved for the adjacent plot. However, this would not mitigate the harm arising from the boundary wall and access road. Taking the above into account, I consider that the 5m landscaping strip is necessary to soften the urban edge and protect the landscape character and appearance of the area.
12. Attention is drawn to previous appeals (Appeal A, B, C and D) referred to above in which the Inspectors did not refer to the need for landscaping on the southern boundary in their reasoning or in the case of Appeal D impose a landscaping condition. However, those inspectors were not determining the use of the building for residential, and the appeal proposal involves the creation of a domestic curtilage and the movement of the access road further south. These cases are not, therefore, directly comparable which limits the weight which I can attach to them in my decision.
13. The appellant refers to a planning permission granted by the Council for a proposed dwelling situated between the appeal site and Sapphire Cottage in which the Council did not impose a condition for a 5m landscaping strip. Whilst the application utilises part of the same access road the appeal property is situated to the west of this site, further from the point of access. Consequently, the access road would be required to serve the appeal property regardless of the adjacent proposed dwelling. Indeed, the repositioning of the access road further south has arisen from the need to provide amenity space at the appeal property. The necessity for the condition, therefore, arises from the appeal property. Furthermore, the application post-dated the application for the appeal site. Given that the appeal building was already built, and an application had been submitted for a change of use to residential, there was a reasonable prospect that the appeal proposal would be implemented.
14. I noted the presence of domestic play facilities opposite the curtilage of Sapphire Cottage. However, the Council has confirmed that there is no record of planning permission to change the use of the paddock land to residential garden and, therefore, limited weight can be given to their presence in my appeal decision.
15. Accordingly, I conclude that condition 5 is reasonable and necessary to protect the character and appearance of the area. The removal of the condition would conflict with Policies 6 and 39 of the County Durham Plan (CDP) 2021 which together seek to ensure that development is appropriate to the character, function, form and setting of the settlement and that development does not cause unacceptable harm to the character, quality or distinctiveness of the landscape. Reference is made to Policy 41 of the CDP; however, there is no evidence before me in relation to biodiversity and geodiversity.

Conclusion

16. For the reasons stated and taking all other considerations into the account I conclude that the appeal should be dismissed, and the condition retained in its present form.

Caroline Mulloy

Inspector