



Appeal Decision

Site visit made on 5 September 2023

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/H4505/W/23/3324733

Site west of Worley Avenue / south of Earls Drive (opposite Numbers 50-60), Low Fell, Gateshead NE9 6AA

- 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 Wayne Laskey and Mrs Michelle Laskey against the decision of Gateshead Metropolitan Borough Council.
 - The application Ref DC/23/00157/FUL, dated 21 February 2023, was refused by notice dated 19 May 2023.
 - The development proposed is use as residential amenity and garden land with construction of a driveway and a single residential outbuilding / garage for the storage of vehicles and residential paraphernalia, with the felling of 8 trees, the replacement planting of 8 trees and new boundary hedgerow.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A previous planning application (ref DC/21/00879/FUL) for erection of two dwellinghouses (Use Class C3) with associated accesses, with surrounding gardens, and curtilage areas across remaining parts of site with felling of 5 trees was refused in February 2022 and it was dismissed on appeal (ref APP/H4505/W/22/3294054).
3. Tree Preservation Order TPO (No 213) 2023 relating to land at Allotment Gardens – adjacent to 41 to 46 Worley Avenue Low Fell was made on 17 May 2023. It relates to trees spread across the 3 former strip gardens that include the appeal site and it specifies 2 individual sycamore trees and a tree group comprising 17 trees including sycamore, yew and holly.
4. At the time of my visit, I observed that tall timber fencing has been erected around the appeal site and a large quantity of hardcore has been spread including in the location of the proposed garage and the driveway. However, the application form indicates that the work has not already started. Therefore, while I have taken into account what I saw, I have determined the appeal on the basis of the submitted plans.

Main Issues

5. The main issues are:
 - i) Whether the proposal would preserve or enhance the character or appearance of the Low Fell Conservation Area;
 - ii) Whether the proposal would result in biodiversity net gain; and

- iii) The effects of the proposal on highway safety, with particular regard to visibility splays.

Reasons

Character and appearance

6. The appeal site is a rectangular parcel of land adjacent to Earls Drive and to the rear of the first 3 terraced properties on Glenbrooke Terrace. The site occupies part of 3 historic strip gardens that extend between Glenbrooke Terrace and Worley Avenue. It is in the Low Fell Conservation Area (the CA), which includes buildings and land on the slopes of Gateshead Fell. Low Fell was originally a separate village and, although now a densely developed and predominantly residential suburb of Gateshead, it retains its distinctive areas of homogeneous building form and layout.
7. The Conservation Area Character Statement¹ (the CACS) notes that the area west of Durham Road is strongly influenced by the Victorian terraces of Albert Drive, Earls Drive and Worley Avenue. These are characteristically red brick with stone dressings and slate roofs. Earls Drive and Worley Avenue are also noted for their long narrow leafy gardens bounded by brick walls or privet hedges. The strip gardens, of which the appeal site forms part, run the entire length of Worley Avenue, orientated in the same direction as the long front gardens of those properties and separated from them by a pedestrian access. At the time of my visit, I observed that the mature strip gardens function somewhat as a green oasis where urban sounds recede and are replaced by quietude and bird song.
8. The CACS highlights the important contribution that the mature trees and well established gardens make to the area's special character. In recognition of their positive contribution, there is a presumption against the subdivision of gardens and grounds and against development that would directly or indirectly lead to the loss of trees, hedgerows and shrubs which contribute, now or in the future, to the character of the CA. In this case, the gardens collectively constitute a significant area of green space and their cohesive historic form and visual amenity make a positive contribution to the significance of the CA.
9. The appeal site has been formed by the merging, subdivision and fencing out of the first 3 strip gardens closest to Earls Drive. The internal boundaries separating the gardens have been removed, the ground and understorey have been cleared of vegetation, and hardcore and road planings have been spread across the site. The former roadside boundary hedge has been replaced with a close-boarded fence with gates. Notwithstanding, and as found by the previous Inspector, the tree group within the site, together with vegetation and trees on adjacent plots and elsewhere within the area, make a strong positive contribution to the character and appearance of the area.
10. As with the earlier appeal, the proposal would formalise the merging of the end 3 strip gardens and their broadly east-west bisection, which would be out of character with the length, depth, size and layout of adjacent gardens. The previous Inspector found that the 2 plots in that case would be distinctly and incongruously at odds with the prevailing plot pattern of surrounding streets. While the appeal relates to only 1 of the 2 plots subject of the earlier appeal,

¹ Ref IPA17: Conservation Area Character Statements, Strategies and Policy Guidelines. June 2020.

the proposal would nevertheless be similarly incongruous and it would disrupt the strong established linear form of the strip gardens and the neighbouring terraces. Consequently, the proposal would be a discordant feature that would erode local distinctiveness and sense of place.

11. In contrast to the repeating and uniform appearance of nearby terraced dwellings in their narrow linear plots, the garage would be a substantial detached 1.5 storey building set in a wide and deep rectangular plot. Notwithstanding the external materials, the overly large garage set in its own large garden would be an incongruous feature that would be out of character and poorly related to the surrounding historic environment. The tall roadside boundary fence would be visually obtrusive and out of character in the context of mature hedgerows and walls along Earls Drive. The proposal would disrupt the harmonious character and appearance of the area. It would not be integrated into its surroundings by the adjacent domestic garages that sit behind Glenbrooke Drive, rather it would increase the prominence of the discordant modern utilitarian building group to the detriment of visual amenity.
12. While some of the strip gardens appear to include structures ancillary to residential garden use, the garage and plot would be overly large, out of scale and out of character with the neighbouring strip gardens. The garage would be orientated towards Earls Drive with conspicuous access from that road, and it would be visually and functionally separated from Worley Avenue by the adjacent plot formed from the other half of the merged strip gardens. As a result, the proposal would not have the appearance of an outbuilding in a strip garden ancillary to Worley Terrace.
13. Of the 13 trees scattered through the appeal site, 8 would be felled to facilitate the proposal. The Arboricultural Impact Assessment (the AIA) notes that these are semi- to early- mature sycamore, in fair condition. While they may not have been planted and none of them is individually significant, the trees collectively have a landscape and visual amenity value. By virtue of their height and spread, the trees are an imposing presence in the townscape, not only viewed along Earls Drive but also from elsewhere in the area. The loss of so many large trees would open up the site and diminish its positive contribution to the townscape. In this regard, the Framework emphasizes that trees make an important contribution to the character and quality of urban environments, and can help mitigate climate change.
14. The trees are proposed to be replaced on a 1 to 1 basis by trees in the rear boundary hedge. The replacement trees would be closely spaced along the hedgerow, 3 would be in very close proximity to the rear of the garage and several would be overly close to trees on neighbouring land. The resulting constrained growth forms and regimented linear arrangement to the rear of the site would not have the appearance of a natural tree group. Even at maturity, the proposed more modest tree species would not make the same visual contribution to the visual amenity of the townscape as the existing trees. The proposed hedgerow to the rear of the site would be similarly distant from the road such that it would make little positive contribution to the street scene.
15. While the AIA recommends protection measures during construction, the evidence indicates that the health of the retained trees may already have been compromised. This is because the clearing of vegetation and spreading of unwashed hardcore and planings is likely to have resulted in soil compaction,

root damage and the leaching of pollutants and contaminants. The Council considers that as a result of the unsympathetic works to date, the remaining trees would be vulnerable to further disturbance within their rooting zones.

16. There is very little detail about the proposed garden or its use, except that it would apparently include an area of lowland meadow. However, the AIA does not appear to comprehensively consider tree and root protection during reinstatement of the garden or the likely pressure on retained and replacement trees from future or neighbouring occupiers. Irrespective, the retained trees, proposed hedge and line of smaller trees to the rear of the site would not mitigate the adverse visual impact arising from the incongruous plot size and shape, loss of trees, and the discordant built form and unsympathetic roadside boundary treatment.
17. By virtue of its prominent location, the proposal would be readily visible in public views such that the visual harm would be capable of harming the wider character and appearance of the CA. However, while it would fail to preserve the significance of the CA, taking into account the scale of the proposal I find the harm to be less than substantial but nevertheless of considerable importance and weight, in accordance with the National Planning Policy Framework (the Framework).
18. Paragraph 202 of the Framework advises that the harm should be weighed against the public benefits. In this case, the benefits are stated to include off street car parking and residential storage space and the optimum viable use of vacant and unused land. The garage and storage space would be a private benefit. Given the scale of the proposal, there would be minimal economic benefits during construction. There is little evidence that the proposal would represent the optimum viable use of the residential garden land, taking into account its amenity value and that the CA is an area-based asset.
19. In the absence of any substantiated public benefit, I conclude that on balance the proposal would fail to preserve the character or appearance of Low Fell Conservation Area. This would fail to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 197 of the Framework and it would conflict with the development plan in relation to the conservation of heritage assets, namely policy MSG25 of Making Spaces for Growing Places Local Plan Document for Gateshead adopted February 2021 (the LP) and policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne adopted March 2015 (the CS).
20. In addition, I conclude that the harm to the character and appearance of the area would conflict with LP Policies MSG24 and MSG36 and CS Policy CS18. These require, among other things, that proposals are compatible with local character, including relationship to townscape, and include high quality landscaping and boundaries, and that they protect and enhance trees, woodland and open spaces. There would also be conflict with the aims and principles of the Gateshead Placemaking Supplementary Planning Document adopted March 2012 (the SPD) and the National Design Guide in relation to well designed places that are well related and integrated into their surroundings and responsive to local history, culture and heritage.

Biodiversity

21. The aerial photographs illustrate that the Worley Avenue strip gardens constitute a large area of well vegetated green space. The gardens meet wider green space to the south and which extends westwards and then northwards adjacent to Deneside Avenue and Earls Drive. The well-connected and contiguous gardens and land will provide habitat for a range of species including breeding birds, foraging bats, invertebrates, amphibians and small mammals such as hedgehogs.
22. The Planning Practice Guidance (the PPG) advises that the information needed to populate the biodiversity net gain (BNG) metric is taken from habitat surveys of the site before development and any related habitat clearance or management. The PPG states that, in assessing the existing biodiversity value of a development site, it may be relevant to consider whether deliberate harm to biodiversity has taken place in the recent past and if so whether there are grounds for this to be discounted in assessing the underlying value of the site (and so whether a proposal would achieve a genuine gain).
23. In this case, except for the sycamore trees, the appeal site had been cleared of vegetation prior to the earlier appeal. At the time of the ecological assessment², the ground was bare earth. The site was subsequently spread with hardcore and road planings, although ground flora is beginning to re-establish. However, prior to their clearance, the strip gardens of which the appeal site forms part had been continuously vegetated. There is little evidence that, in the absence of development proposals, the gardens would have been cleared or spread with hardcore. Therefore, I find that the starting point for the assessment of impacts on biodiversity should be the vegetated gardens, with trees, hedgerows, scrub and bushes, as they existed prior to clearance.
24. The proposal would result in the loss of 8 large trees and the permanent loss of perhaps a third of the area beneath the garage and the driveway. The remaining area is indicated as garden, with a species rich hedgerow incorporating 8 trees to the rear of the site. The replacement trees would be closely spaced to each other, to neighbouring land and trees and to the proposed garage. Consequently, their growth would be constrained and the proposed 1 to 1 replacement planting with smaller tree species would not demonstrably compensate for the loss of mature trees.
25. Details of the garden are sparse, except that the ecological assessment recommends the creation of an area of lowland meadow. However, taking into account the location and the constraints of the site and the management interventions required to successfully establish and then maintain a functioning lowland meadow, I am not persuaded that it would be desirable or even feasible to create this type of habitat. While the species-rich hedgerow might go some way towards offsetting the loss of hedgerows, it is not clear that it would compensate in terms of quantity or quality. Moreover, unless the habitat creation was secured by a planning obligation, there would be little guarantee that the created habitats including the hedgerow to the rear of the site would be appropriately maintained and retained in the longer-term.

² Site at Earl's Drive, Low Fell, Gateshead. Ecological Impact Assessment Report and Biodiversity Net Gain Statement. April 2023.

26. I accept that a planning condition could be imposed requiring details of landscape planting and implementation. However, the proposal fails to demonstrate that the biodiversity value of the site would be maintained, let alone enhanced, as part of the proposal and, for reasons above, I am not satisfied that a condition would be the appropriate mechanism to secure biodiversity mitigation and compensation.
27. Therefore, I conclude that the proposal would not result in BNG. Irrespective that there may be no legislative requirement to deliver BNG, the proposal would conflict with CS Policy CS18 and LP Policies MSG36 and MSG37. These require, among other things, that proposals maintain and enhance green infrastructure assets, in accordance with the mitigation hierarchy and that proposals should provide net gains in biodiversity. It would also conflict with the aims of the Framework in relation to providing net gains for biodiversity.

Highway safety

28. There is currently a close-boarded timber fence, with pedestrian and vehicular gates, along the highway boundary. The submitted plans show a new timber fence to the highway boundary but its height is not indicated and it is not illustrated on the elevation plans. However, the fence would be flush with the rear of the footway and the plans do not illustrate an adequate pedestrian visibility splay to ensure acceptable levels of intervisibility between vehicles leaving the site and vulnerable road users on the footway. While the appellant considers it obvious that a car can enter and exit the site safely as it sits alongside a straight road, the proposal fails to demonstrate that it would minimise the scope for conflict between pedestrians, cyclists and vehicles.
29. I note the suggestion that this could be addressed by the imposition of a planning condition requiring submission of a plan showing the height of the boundary treatment and the visibility splays. The suggested condition wording could be amended to specify the dimensions of the visibility splay and the height of the fence, in order that it was sufficiently precise. However, it has not been demonstrated that an adequate visibility splay could be provided, taking into account the proximity of trees and buildings. In the absence of illustrative plans, it is not possible to fully assess the impact of the proposal on the character and appearance of the CA or trees. Consequently, this is not a matter that could be satisfactorily addressed by condition.
30. Therefore, I conclude that the proposal would not provide adequate visibility splays and it would harm highway safety, with particular regard to users of the footway. It would conflict with CS Policy CS13 and LP Policy MSG15. These require, among other things, that proposals provide safe access and avoid unacceptable impacts on the safe operation of the highway. It would also conflict with the highway safety aims of the Framework.

Other Matters

31. I understand that the strip gardens are not necessarily in the same ownership as the Worley Avenue properties they originally served. In this case, the appellants are not residents of Worley Avenue and the strip gardens forming the appeal site are no longer ancillary to Worley Avenue. However, neither that nor the fact that the strip gardens may already have been divided in terms of land ownership weigh in favour of the proposal.

32. While the appeal site may have been neglected and used for fly tipping and littering in the past there is little evidence that the fencing and clearance of the gardens, which comprised scrub, bushes and foliage, has improved its appearance. Indeed, the appellants state that in its current empty state the appeal site just looks 'odd'. Neither the former or current condition of the site, the latter a result of unsympathetic treatment with little respect for surrounding and historic context, weigh in favour of the scheme.
33. Some of the trees in the appeal site are close to the highway boundary and their roots have, in the past, lifted parts of the footway. I note the suggestion that some tree felling is essential due to their proximity to the footway, to one another and their condition. However, at the time of my visit, the footway was not uneven or unsafe and in any case none of the trees are recommended for felling for any reason other than to facilitate development.
34. The Framework definition of previously developed land, also known as brownfield land, specifically excludes land in built-up areas such as residential gardens and allotments. Policies that promote the use of brownfield land in settlements do not appear directly relevant. The Framework does support the development of under-utilised land, but it recognises that some such land can perform many functions including for wildlife, flood risk mitigation and cooling/shading. It also directs decisions about the efficient use of land to take into account factors such as the desirability of maintaining an area's prevailing character and setting (including residential gardens) and the importance of securing well-designed and attractive places. There are relevant development plan policies and the policies that are most important for determining the application are not out of date. The presumption in favour of sustainable development in paragraph 11 d) of the Framework does not apply. Policies in the Framework do not provide a justification for the proposal.
35. The Council has a rolling programme to prepare Conservation Area Character Appraisals (CACA) and Management Strategies. While these may not be available for Low Fell, nevertheless I am satisfied that the evidence in relation to the CA, including the CACS and the previous Inspector's decision, is sufficiently clear. The absence of a recent CACA for Low Fell does not weigh in favour of the proposal.

Conclusion

36. For the reasons set out above, the proposal would harm the character and appearance of the area, with particular reference to the CA designated heritage asset. The proposal would also fail to maintain and enhance biodiversity and there would be harm to highway safety. As a result, I conclude that the proposal would conflict with the development plan, and there are no material considerations that would outweigh that conflict.
37. Therefore, I conclude that the appeal should be dismissed.

Sarah Manchester

INSPECTOR