



Appeal Decision

Site visit made on 12 February 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Appeal Ref: APP/X1355/W/23/3332880

Land east of playground, Bluebell Drive, Spennymoor DL16 7YF

- 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 Brian and Pam Sneath against the decision of Durham County Council.
 - The application Ref DM/23/01376/FPA, dated 16 May 2023, was refused by notice dated 5 September 2023.
 - The development proposed is change of use of land from public open space to domestic garden and enclosure with 1.8 m high brick wall and timber fence.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Brian and Pam Sneath against Durham County Council. This application is the subject of a separate Decision.

Procedural Matters

3. In the banner heading above, I have taken the site address and description of development from the Council's refusal notice and not from the planning application form. This is because the Council's refusal notice has a more precise site address and description of development.
4. The National Planning Policy Framework was amended on 19 December 2023 (the Framework). However, it has not been necessary for me to seek comments from the main parties about the implications of the updated Framework. This is because there are no material changes in respect of the main issues below.

Main Issues

5. The main issues are i) whether the loss of public open space is justified in development plan policy terms and ii) the effect of the proposal on the character and appearance of the area.

Reasons

Loss of public open space

6. The appeal site forms part of a designated play area. The play area was formed as part of the construction of the surrounding housing estate. It is proposed to

create two garden areas associated with 50 and 52 Bluebell Drive and enclosed from the remainder of the play area with a 1.8 metre high wall/fence. It is noteworthy that pre-application advice was sought from the local planning authority (LPA) prior to the land being acquired by the occupiers of 50 and 52 Bluebell Drive. The evidence is that the LPA indicated that planning permission would unlikely be approved for the proposed development.

7. Policy 26 of the County Durham Plan 2020 (CDP) states that development proposals that would result in the loss of open space or harm to green infrastructure assets will not be permitted '*unless the benefits of the development clearly outweigh that loss or harm and an assessment has been undertaken which has clearly shown that the open space land to be surplus to requirements.*'
8. No detailed assessment is before me to demonstrate that part of the designated play area is surplus to requirements. I acknowledge that the formation of two domestic gardens on land currently designated as a play area would not in itself result in the loss of land used for the positioning of children's play equipment. While in parts the appeal site is overgrown, and could do with some maintenance, it is clear from historic photographs that it was originally mainly open and grassed and that it was regularly maintained.
9. While ball games are not permitted on the appeal site, it nevertheless has the potential to be used for public exercise purposes and the evidence indicates that it has sometimes been used by those who exercise their dogs. The evidence indicates that the appeal site has both a functional and a visual open space value in association with its formal use as a children's play equipment area.
10. I do not doubt the appellants' comments about the land being prone to attracting litter, vermin, and some anti-social behaviour over the years. Furthermore, the submitted photographs indicate that some of the vegetation has become overgrown in recent years despite the efforts of the community to keep it cut back and in a neat and tidy condition.
11. Nonetheless, I do not find that these matters provide sufficient justification for allowing the proposal. Indeed, the evidence is that the land is now owned by the appellants and the occupiers of another dwellinghouse. Consequently, these adjacent landowners now have ultimate control in terms of keeping the land in a neat and tidy condition and keeping the vegetation cut back. In my judgement, this would avoid some of the problems associated with the appeal site and, in particular, from irregular maintenance from the previous landowners.
12. While it is suggested that there have been some problems with dog fouling in the past, I did not notice any issues as part of my site visit. Even if this were to become a problem in the future, there is nothing before me to suggest that it would not be possible to consider exploring the potential to provide a bin on or close to the site. There is potential for dog fouling to be an issue on many open space sites, and I do not find that this provides justification for the loss of the open space site.
13. While I do not doubt that the occupiers of the two dwellinghouses would benefit from having larger private outside amenity spaces, neither this nor the other benefits claimed by the appellants are sufficient to outweigh the loss of open

space. Furthermore, no detailed assessment is before me to demonstrate that the land is surplus to requirements from an open space point of view. I therefore conclude that the proposal does not accord with the open space requirements of Policy 26 of the CDP.

Character and appearance

14. While the appeal site would benefit from some maintenance and upkeep, it nevertheless provides some welcome green and undeveloped relief between buildings on this modern housing estate. It also provides a soft and landscaped backdrop to the more formalised part of the play area. For these reasons, I find that it adds positively and distinctively to the character and appearance of the area. I find that the recent change in the ownership of the land offers an opportunity to now keep it regularly maintained. In other words, there is nothing to suggest that the land would not be capable of contributing positively as an area of open space to the character and appearance of the locality.
15. I agree with the appellants that a 1.8 metre high brick wall/fence as a form of boundary treatment would not in itself be unacceptable within this housing estate. Indeed, this type of boundary treatment is noticeable in the immediate area. However, enclosing the land with a fence/wall in this way would have the effect of unacceptably detracting from the site's pleasing undeveloped and landscaped character which provides a soft edge to the children's play equipment area and a green buffer between dwellinghouses. I agree with the LPA that enclosing the land in this way would cause material harm to the way that the children's play area is appreciated in the street-scene. Indeed, it would appear cramped within its environment and dominated by a close and imposing wall/fence.
16. I acknowledge that the development includes some new tree planting in the proposed gardens. However, this planting would be behind the proposed boundary fence/wall. Therefore, in relative terms the landscaping would not be experienced in the same positive way by passers-by or users of the play area.
17. The appellants have stated that, if necessary, they would accept some 'external' landscaping in respect of the appeal proposal. I assume that this means some additional landscaping outside of the red edged planning application site, but still within the open space area. The evidence is that the appellants do not have control or ownership of this land. I cannot therefore be certain whether additional planting would be permitted by those that control or own the land. Moreover, I cannot determine what impact the provision of additional landscaping would have on the functional use of the open space site. I do not therefore find that the imposition of any form of landscaping condition would overcome my identified concerns.
18. For the above reasons, I conclude that the proposal would cause significant harm to the character and appearance of the area. It would not therefore accord with the design, character and appearance requirements of policies 6 and 29 of the CDP and chapter 12 of Framework.

Other Matters

19. I acknowledge the supportive comments made by residents. However, many of the comments made relate to issues associated with the upkeep and maintenance of the site. Given the recent change in the ownership of the site,

there is nothing to indicate that the concerns raised by residents could not now be suitably addressed by the new landowners and without open space land being lost. In this context, the supportive comments made by residents do not justify allowing the appeal.

20. I accept that the appeal site is now owned by the occupiers of adjacent dwellinghouses. I do not know if the landowners will permit public access in the future. Even if this were not permitted, public open space can have both a functional and a visual value. For the reasons outlined above, I have found that the land does have at least some visual value. The provision of a substantial fence/wall as part of the creation of domestic gardens would result in the loss of public open space and noticeable vegetation which has positive visual value and hence would cause significant harm to the character and appearance of the area.
21. None of the other matters raised alter or outweigh my conclusions on the main issues.

Conclusion

22. For the reasons given above, I conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR