



Appeal Decision

Site visit made on 21 November 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 2 January 2025

Appeal Ref: APP/A2335/W/24/3344827

11 Fulmar Crescent, Derwent Park, Heysham, Morecambe LA3 2TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Gordon Preston against the decision of Lancaster City Council.
 - The application Ref is 23/00975/FUL.
 - The development proposed is change of use from building wasteland to domestic garden.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposed garden land has been purchased by the appellant. However, the land extends beyond the existing fencing and the proposal is in part retrospective.

Main Issues

3. The main issues are:
 - whether it would be a suitable location for a domestic garden with regards to the policy on designated open space;
 - the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on biodiversity.

Reasons

Designated open space

4. The proposed site of the garden is within land designated as open space. Whilst I have not been provided with a map showing the extent of the designation in this area, it appears to lie between the railway line and the estate in which the appeal property is located.
5. Policy DM27 of the Lancaster Local Plan, 2020, (LP) does not permit the loss of designated open space unless it satisfies several criteria. These include an assessment as to whether it is surplus to requirements; whether it no longer has an economic, environmental or community value; and, whether the loss would be replaced by equivalent or better provision in a suitable location. The Council refer to an Open Space Study that identifies the land as natural and

semi-natural greenspaces, with the primary purpose being for wildlife conservation, biodiversity and environmental education and awareness.

6. I observed that the land beyond the area that has already been fenced off, was covered with immature trees, brambles and undergrowth. An informal footpath runs to the rear of Fulmar Crescent and apparently connects to designated public rights of way to the north and south.
7. The land, including the area fenced off behind No 11, was 'left over' after the construction of the housing. Following the dissolution of the company¹ that built the houses, any land which had failed to sell by auction, was vested with the Duchy of Lancaster. This land has been confirmed as 'bona vacantia', and as such, the Duchy seek to sell wherever possible, as they have no liabilities for the land, do not insure it, or maintain it. Therefore, the land purchased by the appellants is no longer required by the vested owner.
8. The supporting statement to LP Policy DM27 states that not all open space is important for recreational, environmental and community uses. In this case, despite its designation, there is no formal management of the land, and it has no recognised community use or provides any economic benefit. In fact, the appellant refers to fly tipping and the dumping of garden rubbish, and some motorbikes on the land.
9. However, the policy requires an assessment, including consultation with key stakeholders and the local community as to whether the loss of open space is acceptable. This has not been undertaken, although I acknowledge that it would not be simple for an individual to carry out such a consultation. Moreover, the proposal does not include any works which would be harmful to the surrounding area, as the appellant intends to keep the trees on the site, and to use the land in a way that would increase biodiversity.
10. Criterion iii of the policy requires that the loss of any open space would be replaced by other land in a suitable location. The proposed garden land covers some 160m², and no other land has been provided. Consequently, because of this and the lack of consultation, the proposal would not satisfy all the criteria set out in Policy DM27.
11. I therefore conclude that the proposed site would not be a suitable location for domestic garden land with regards to the policy on designated open space. It would not accord with LP Policy DM27 as set out above.

Character and appearance

12. The appeal site is a modern, detached house, on a residential estate. It has a rear garden that has been landscaped and is surrounded by a wooden, close boarded, vertical fence. A gate in the fence provides access to the appeal site. This is an area of land which has been fenced off with post and wire fencing on two sides, with close boarded fencing to the north. Another gate provides access to the open space and informal path to the rear.
13. This fenced area, which is smaller than that proposed in the application, is grass covered with three small trees located in it, as well as some tree saplings in bags, small raised beds, a garden bench, pots and garden

¹ MAC Construction Limited, 2013

materials. I observed that Nos 15 and 17 Fulmar Crescent were similarly extended with wooden post and wire fencing.

14. I saw that the vertical fencing, on a similar alignment along the rear boundary of Fulmar Crescent, clearly defines the edge of the housing on the estate. This strongly contrasts with the land to the rear where the designated open space is located.
15. The fenced off areas created to the rear of No 11, as well as to Nos 15 and 17, provides a transition zone between the housing and the scrubby area beyond the path. This is because of the style of fencing that is more akin to that found in the countryside, and the level of visibility that is retained. However, as some of the undergrowth at the rear of the estate would be invasive, and there is no ongoing management, it is likely that most occupiers would, as suggested by the appellant, cut vegetation back to prevent it entering their gardens. It is also common for locals to cut back undergrowth where it impedes access onto the non-designated footpath. Therefore, it is likely that there is some form of informal gardening at the rear of many of the properties that back onto the open space.
16. However, the proposed domestic garden would extend some distance further than what has already been fenced off, requiring the diversion of the informal footpath. Surrounded by two-metre-high vertical timber fencing, which is domestic in character, would result in an incongruous addition, extending out into the open space. This would appear intrusive and would undermine the current wilder character of the overgrown area to the rear. Whilst the appellant would be open to explore alternative fencing, or a native hedge which would be more appropriate to the appearance of the area, it would not mitigate against the harm of such a large garden extension, different in character to that found on those houses surrounding it.
17. Therefore, I conclude that the proposed development would harm the character and appearance of the area. It would not accord with LP Policy DM29, which amongst other things, requires development to contribute positively to the character of the area.

Biodiversity

18. There is no substantive evidence of the extended garden area prior to it being fenced off, although, part of it is still overgrown with saplings and shrubs. The area is designated as a natural or semi-natural greenspace with wildlife conservation and biodiversity being a primary purpose.
19. Whilst the area is under grass, the appellant's intention is to enhance the biodiversity of the site by growing trees, fruit and vegetables, plants that would provide food and habitats for birds, insects and pollinators, and potentially add a water feature. None of the trees on the site would be removed and no hardstanding or hard landscaping, lighting, decking or re-profiling of the land would take place.
20. Whilst there is no detailed report before me, the proposal does seek to conserve and enhance the biodiversity of the proposed site. Therefore, a suitably worded condition for an ecological plan for the extended garden, would enable the biodiversity of the site to be enhanced.

21. I therefore conclude that the proposal would accord with LP Policy DM44 which, amongst other things, supports proposals that conserve or enhance biodiversity.

Other Matters

22. The appellant has lived in the property for 23 years and has stated that he has seen very few people on the land to the rear, other than for the cutting of scrub. Although deer and foxes have been seen locally, the appellant's CCTV has only detected squirrels, cats and a pony. However, subject to appropriate management of the extended garden, it would still enable wildlife to use the area. Moreover, it would provide biodiversity enhancement in contrast to those homeowners who the appellant has noted undertake work in their gardens which does not provide suitable habitats for nature.
23. The appellant has drawn my attention to 12 Mallard Close where the occupiers bought land from the builders and were granted planning permission² for the change of use of land to residential curtilage, on which a double garage has been built. Evidence of other sites on the estate where land has been fenced off for private use without being purchased, or planning permission being granted, including along Swift Gardens and Kingfisher Drive, has been provided. However, I do not know the full circumstances of these cases and have determined the appeal on its own merits, based on the evidence before me.

Conclusion

24. The proposal conflicts with the development plan when considered as a whole. Whilst there are material considerations in favour of the development, these do not outweigh the proposal's conflict with the development plan.
25. For the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR

² Ref 12/00056/CU