

Item No.4

Appeals Received Hetton Houghton and Washington

Between 01/12/06 and 31/12/06

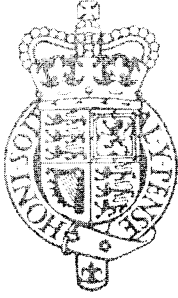
Team	Ref No	Address	Description	Date Appeal Lodged
W	06/00096/REF	38 Wansbeck □ Rickleton □ Washington □ NE38 9EF □	Change of use from open space to private garden. (Retrospective)	27/12/2006
	06/00097/REF	Land At □ Sedling Road □ Wear □ Washington □	Erection of a 22.5m mini macro column to accommodate 3 No. 3G antenna with ground based equipment cabinets. (cell i.d 34862)	27/12/2006

24 January 2007

Appeals Determined Hetton Houghton and Washington

Between 01/12/06 and 31/12/06

Team	Ref No	Address	Description	Appeal Decision	Date of Decision
HO					
	06/00051/REF	Land West Of Grange View Newbottle Houghton-Le-Spring DH4 4HU	Erection of six detached dwellings and garages and upgrades to open space. (As amended)	DISMIS	04/12/2006
W					
	06/00050/REF	Land To Rear Of 44 Witton Court Oxclose Washington NE38 0JH	Change of use of open space to private garden and erection of 1.7m high boundary enclosure.	ALLOW	04/12/2006



Appeal Decision

Site visit made on 20 November 2006

by **Christopher John Checkley BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Date: 4 December 2006

Appeal Ref: APP/J4525/A/06/2019695

Land off Coaley Lane, Newbottle, Houghton-le-Spring

- 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 L Fannon against the decision of the City of Sunderland Council.
- The application (ref. 05/00656/SUB), dated 8 March 2005, was refused by notice dated 18 May 2006.
- The development proposed is described in the application as the erection of 7 no. dwellings.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. A number of revisions were made to the site layout and detailed house plans. After amendment, the detailed application was determined by the Council under the description "erection of 6 detached dwellings and garages and upgrades to open space (as amended)". I am determining the appeal on this revised basis. For the avoidance of doubt I am making my decision on the basis of the plans in the appellant's list of refused drawings submitted with the agent's letter of 20 November 2006. These show 5 houses (Plots 1-5) adjoining the Coaley Lane/Westleigh Road frontage, one 3-storey dwelling adjoining No.9 Grange View and the landscaping of the remainder of the open space.

Main Issue

2. The main issue in the appeal is the effect of the proposed housing and landscaping scheme upon the appearance, character and amenity value of the area, having regard to the allocation of the appeal site as "existing open space" in the City of Sunderland Unitary Development Plan (UDP).

Planning Policy

3. The relevant development plan includes the UDP which was adopted in 1998. Policy B3 indicates that public and private open space will be protected from development which would have a serious adverse effect on its amenity, recreational or nature conservation value; with proposals being considered in the light of their contribution to urban regeneration and to the importance of such space to the established character of the area. Policy L1 seeks to enhance the quality of life for residents and visitors by providing a range of high standard recreational, sporting, cultural and community facilities and achieving defined standards of open space provision. Policy L7 indicates that land allocated for open space will be retained in its existing use. Permission for other uses will only be granted if (i) alternative provision is made, or (ii) the development is for educational purposes, and (iii) there would be no significant effect on the amenity, recreational and wildlife habitat
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value of the site. The justification (paragraph 8.62) indicates that section 106 planning obligations will be used to achieve implementation of this policy. Adopted Development Control Guidelines form supplementary planning guidance (SPG) to the UDP.

4. PPG17: *Planning for Open Space, Sport and Recreation* indicates that the recreational quality of open space can be eroded by insensitive development or incremental loss of the site, whilst any benefits being offered to the community should be weighed against the loss of open space that will occur (paragraph 16). Authorities should seek opportunities to improve the value of existing facilities and planning obligations may be used where improvements are required to meet identified needs (paragraph 18). PPG3: *Housing* is also relevant.

Reasons

5. The appeal site is an open undeveloped area of naturally-vegetated land in private ownership on mainly the middle slopes of a west-facing hillside within the village of Newbottle. The recent housing at Grange View forms a skyline feature above the open space, with a modern housing estate extending across the less steep slopes below it. The open space forms a gap in the more established housing leading up the slope to the east, either side of Coaley Lane. The central area of the village is a designated conservation area which extends to include the north-eastern extremity of the appeal site
6. The appeal site has been left to grow in its natural state and is covered with long grass and areas of brambles, scrub vegetation and weeds including Japanese knotweed, with some small trees on lower slopes. I saw very limited evidence of dumping on the site. The many representations indicate mixed views about the value of the area. Although some consider it a neglected and unkempt area, a greater number appreciate it for its undeveloped open character and its informal appearance of natural greenery which some claim is a habitat for pheasants and other birds and wildlife.
7. I am informed that there was an obligation to stabilise the appeal site, lay it out and landscape it under the terms of a planning permission and an associated section 106 legal agreement regarding the adjacent housing that was developed in the early 1990s. However, the developer went into liquidation before undertaking the landscaping. An enforcement notice was apparently issued but not progressed. I have not been given copies of the detailed planning permission for that scheme or the linked section 106 planning obligation or the enforcement notice. There is little explanation available to me of why enforcement was not pursued under the terms of either the planning permission or the legal obligation against the subsequent site owner(s), bearing in mind that such obligations normally pass with the land ownership.
8. The whole site is allocated as an “existing open space” in the UDP. I find its defining characteristic is its visible openness which is apparent over a wide surrounding arc. I consider that the site also has the potential for its amenity and recreational value to be improved by shrub and tree planting, footpaths and public access and site maintenance. The extent of the visible open area would be significantly reduced by the new housing proposed. The series of 5 large houses adjoining the entry to the village along Coaley Lane from the west would remove its value as open space at this prominent location and the large house on Grange View would form a prominent built incursion into the open space. The Council estimate that some 48% of the 1.1 ha (approx.) open space area would be lost to the housing development.

9. There are some unsatisfactory detailed aspects to the scheme. A notable feature of the Coaley Lane entry to the village is the setting back of houses behind grass verges and front gardens, which contributes to the sense of openness. However, the large new houses on Plots 1 and 2 in particular would have their boundary enclosures rising directly above the back of pavement, the houses coming well forward on their elevated sites very close to the road. This element of the scheme would be intrusive in the Coaley Lane street scene. The retaining walls would be of considerable extent with great care being required in the detailed design to ensure they were not visually dominating or intrusive. Stone-filled gabions would not be appropriate in appearance.
10. The housing scheme would be contrary to the first part of Policy L7 in that it would remove a significant part of the existing open space. However, exceptions are permitted under the policy in 2 specific circumstances. The scheme is not for educational purposes, so exception (ii) does not apply. Having regard to exception (i), a significant element of the appellant's case is that granting permission for housing on some of the allocated open space would enable a landscaping scheme to be implemented on the remainder, with an overall benefit to the amenity and recreational value of the area in net terms. This is a valid argument in principle. However, the long-term benefits must be shown to clearly outweigh the loss of the existing open space and any other harm involved.
11. The intention to landscape the site and lay an informal footpath across it, in effect creating a park, forms an important material consideration. However, it is also important to know how the scheme would be maintained in the long-term so that it would continue to provide the benefit claimed rather than becoming overgrown and neglected, and how public access would be ensured. This is particularly important where landscaped private land is not being transferred to the local authority for adoption as public open space. In his letter of 13 June 2005 the appellant states that "the local authority will not be adopting the park and it will be maintained by the developer until other arrangements have been completed". This was clearly of concern to the Council officers, who wrote on 29 June 2005 that "consideration of how the maintenance of the footpath and landscaped areas will be achieved in the long-term is required".
12. However, there is nothing before me to indicate that a satisfactory mechanism for long-term maintenance of the park area and rights of public access to it has been agreed. For example, there is no section 106 planning obligation or other legal agreement. Planning conditions on any permission would be unable to secure these important matters. Therefore, in the absence of such mechanisms, I am able to give only very limited weight to the appellant's claims that compensatory benefits would result from the creation of a public open space of greater amenity and recreational value which would be more accessible and useable for the community.
13. I conclude that the scheme before me would include unsatisfactory elements in the detailed appearance of the housing development and would have a clear adverse effect on the open character and amenity value of the appeal site, without firm evidence that adequate compensatory long-term amenity and recreational benefits to the remaining open space would be achieved. These proposals would therefore be contrary to the provisions of the development plan and the national guidance cited above.

Other Matters

14. The evening overshadowing and slightly reduced daylight to the west-facing conservatory of neighbouring "Greenbanks" resulting from the new dwelling on Plot 1 would not be such as to be unacceptable in themselves. Also, there would be no harmful overlooking of these residents from the new sun lounge windows, given their lower relative position. However, having regard to the SPG guidelines, the east-facing blank gables on Plot 1 would stand rather too close to the neighbouring conservatory with an unduly overbearing effect, adding weight to the other objections. However, there would be no harm to the living conditions of the residents of Nos 5 and 6 Tavistock Court under the amended scheme which moves the nearest dwelling further from these properties.
15. There is no evidence that dangerous conditions would result for highway users from the low levels of additional traffic or parking generated by the scheme, so long as pedestrian and vehicular access from Coaley Lane were to be prevented. I consider that 6 additional dwellings would not be out of proportion to the size of the village. No suggestion has been made that there would be harm to the conservation area itself, and I find that there would be no failure to preserve its appearance or character. Appropriate conditions could be applied to any permission to deal satisfactorily with such matters as a wildlife survey and mitigation measures, contamination remediation and land stabilisation measures, and full detailing of the landscaping scheme and management plan.
16. I have also taken account of the appellant's reference to the need for new housing including executive dwellings and the regeneration benefits that would follow from implementation of the scheme. However, neither these nor any other matters raised by any party have been sufficient to outweigh the considerations above which have led to my conclusion.

Conclusion

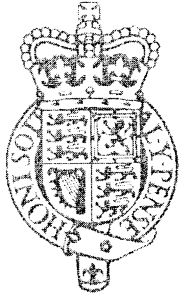
17. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Formal Decision

18. I dismiss the appeal.

C J Checkley

INSPECTOR



Appeal Decision

Site visit made on 30 October 2006

by **Malcolm Rivett BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date: 4 December 2006

Appeal Ref: APP/J4525/A/06/2020390

Land to Rear of 44 Witton Court, Oxclose, Washington, Tyne and Wear, NE38 0JH

- 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 Mrs Denise L Ball against the decision of the Council of the City of Sunderland.
- The application Ref 06/00765/FUL, dated 6 January 2006, was refused by notice dated 2 May 2006.
- The development proposed is described as change of use from open space to private garden.

Procedural Matter

1. I note that the description of the development on the application form omits reference to the erection of a boundary enclosure, which I consider to be an important element of the proposal. At the time of my visit the change of use had been effected by the erection of a fence. I have therefore considered this as an application for retrospective planning permission for the change of use of the land and the erection of a boundary fence as carried out.

Decision

2. I allow the appeal and grant planning permission for change of use from open space to private garden and erection of 1.7m high boundary fence at land to the rear of 44 Witton Court, Oxclose, Washington, Tyne and Wear, NE38 0JH in accordance with the terms of the application, Ref 06/00765/FUL, dated 6 January 2006, and the plans submitted therewith, subject to the following condition:
 - 1) Details of the colour to be used in the external finish of the fence shall be submitted, for approval, to the Local Planning Authority within 3 months of the date of this decision. The development shall be carried out in accordance with the approved details.

Main Issues

3. The main issues are the effect of the proposal on the availability of public open space and on the character and appearance of the area.

Reasons

4. Witton Court is part of a relatively modern residential estate in Washington. Between the rear of properties in Witton Court and the adjacent Norham Court, there is a grassed/landscaped area of public open space, approximately 70m in length and mostly

around 15m wide. The appeal property is the end dwelling in Witton Court and the high, side wall of its rear garden extends part way across the entrance to the open space and is attached to a small, district heating building. Prior to the implementation of the proposal the area of open space, which is the subject of this appeal, would have been approximately 5m deep and wide, surrounded on 3 sides by high walls/fences and not visible from the adjacent highway. Therefore, in my view it would have had the appearance of a den.

5. I consider that the open space as a whole is an attractive element in the character and appearance of the area and has value in providing for informal play by young children. I also understand that the Council considers there to be limited open space provision in the locality. However, given its small size and den-like appearance, I do not judge that the small area of appeal land would have been crucial to the visual or functional value of the open space as a whole. Indeed, I consider that this corner would have the potential to undermine, rather than enhance, the value of the open space, given that, being enclosed on 3 sides and not overlooked, it would always be likely to be attractive as a gathering place for older children. I note that the appellant refers to specific incidences of anti-social behaviour by children attracted to this corner. Consequently, I do not consider that the proposal has an adverse effect on the availability of public open space or on the character and appearance of the area.
6. I find, therefore, that the proposal accords with policies B2 and B3 of the City of Sunderland Unitary Development Plan, which require that development respects and enhances the best qualities of the locality and does not have a serious adverse effect on the amenity or recreational value of open space. I do not consider that the proposal is contrary to paragraph 8.54 of policy L5 of the UDP which states that "pocket parks" of less than 2ha should be protected.
7. The Council argues that allowing the proposal would set a precedent for similar developments elsewhere. However, each case must be considered on its own merits and I do not consider a generalised fear of precedent justifies not allowing this change of use, given that I have identified that it causes no demonstrable harm.
8. The fence has been painted in a shade which contrasts strongly with the fence of the neighbouring property and the majority of others in the locality. Therefore, to ensure the satisfactory appearance of the proposal, I agree that it is necessary for it to be painted in a colour agreed by the Local Planning Authority. As the proposal has already been implemented in accordance with the submitted plans I find there is no need for the other conditions suggested by the Council.
9. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Malcolm Rivett

INSPECTOR