



Appeal Decision

Site visit made on 22 July 2025

by **Katie McDonald MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 July 2025

Appeal Ref: APP/H4505/W/25/3360230

Land off Eastern Avenue, Gateshead NE9 6EE

- 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 Gavin Hedley (AWH Homes Limited) against the decision of Gateshead Metropolitan Borough Council.
- The application Ref is DC/24/00200/FUL.
- The development proposed is the erection of 13 dwellings with associated infrastructure, landscaping and parking.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by the appellant. This is the subject of a separate decision.

Main Issues

3. The main issues are:
 - a) The effect of the proposal on the character and appearance of the area, with specific regard to the Saltwell Conservation Area.
 - b) Whether the proposal provides suitable provision for open space and play facilities.
 - c) Whether suitable provision has been made for biodiversity net gain and the effect of the proposal on biodiversity.
 - d) Whether the proposal would provide suitable future living conditions.
 - e) Whether the proposal would provide sustainable drainage without increasing flood risk elsewhere.

Reasons

Character and appearance

4. Located to the north of Eastern Avenue, the site is a former petrol filling station, car showroom and garage. The structures were cleared over 10 years ago and the site is now overgrown with vegetation. Adjacent to the west lies the East Coast Mainline railway, which is located at a lower land level, with Eastern Avenue continuing as a road bridge over. The contiguous eastern boundary of the site abuts a hardstand access serving several garages. The area to the north, south and east of the site is predominantly residential with dwellings set in relatively spacious plots with front and rear gardens. It has a suburban, verdant character with land levels rising from the site to the east. The railway line creates a hard boundary to the site with a trade

- estate beyond to the west, signifying a change in character from residential to commercial.
5. The proposal is for 13 dwellings comprising a mix of 5 bungalows and 8 split level dwellings. An access road would run north south through the site. Aside from Plot 13, they would all face the access road, with in-curtilage parking areas. Plot 13 would front towards Eastern Avenue.
 6. The dwellings would contain 3 or 4 bedrooms, with 2 or 3 of those being double bedrooms and one single. These could be occupied by up to 5-7 people respectively. They would occupy a large proportion of each plot, and correspondingly would have extremely short rear gardens. The garden sizes and their depth would be disproportionately incongruous with the footprint and scale of the dwellings proposed. It would also be out of keeping with the prevailing residential character, creating a high density development that would fail to contribute positively to the surrounding area. Despite the appellants' claims, I do not agree that the gardens should be small because the scheme is intended to accommodate older residents; and even if I did, the proposal before me is for market dwellings and there are no means to secure this proposal as older person's housing, nor any reasons why it would be necessary. Additionally, the Design and Access Statement (DAS) describes them as family homes.
 7. Furthermore, there is very little general amenity space, a large amount of hard landscaping, a lack of genuine street trees, and short front gardens; of which several are dominated by frontage car parking. There is also a noticeable lack of open amenity space for the residents, lack of on-site open space and provision for sustainable drainage methods, despite the rain gardens. The dwellings have considerable footprints, and the lack of space surrounding them results in a ill designed scheme that would result in an overly dense, cramped development. This is poor placemaking.
 8. Additionally, part of the site is in the Saltwell Conservation Area (SCA). The significance of the Conservation Area is derived from its Arcadian feel, being a nineteenth century 'leafy' suburb for the upper middle classes, with Saltwell Park a major focal point. Trees are a major contributor to the area's character, and even though other developments have taken place, villas set in mature grounds are a key feature at this south-western extent of the conservation area.
 9. Despite its previously developed nature, the site now contributes to the significance of the SCA by its open nature, and the part of the appeal site that is within the SCA contains trees and vegetation, and appears to have done so for some time¹. It is also located on or close to the rear garden space of Ferngale, a historic stone detached property subject to an Article 4 Direction. The direction covers a wide range of external works to the property and land, including treatment of the garden and its perimeter. The layout and dense design, along with tree removal, would not enhance or preserve the significance of the SCA. It also appears on plan to split the rear garden of Ferngale, which would be directly contrary to Policy MSGP25 of the Site Allocations and Development Management Policies (February 2021) (SADMP). The proposal would poorly reference the historic layout, and it would have a harmful effect.

¹ Appellant's SoC Figure 3

10. Consequently, the effect of the proposal on the character and appearance of the area, and SCA, would be unacceptable. This would conflict with Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (March 2015) (CS) and Policies MSGP17, MSGP24, MSGP25, MSGP36 and MSGP40 of the SADMP, which together seek good place making through high quality design and providing a good standard of amenity, the conservation and enhancement of heritage assets, protection of woodland, trees and hedgerows and the provision of onsite open space.
11. It would also fail to comply with the National Planning Policy Framework (the Framework) which sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

Public open space

12. Policy MSGP40 of the SADMP requires new major housing developments to provide at least the equivalent of 1.99 hectares of public open space per 1,000 residents on sites of at least 0.05 hectares, and to provide play facilities for children and young people to the equivalent of 0.07 hectares per 1,000 residents. The policy requires that the provision of public open space and play facilities should be provided on site, unless it can be demonstrated that it would not be reasonably feasible to do so.
13. Notwithstanding the appellant's suggestion that there are sufficient, more accessible and safer provisions nearby to provide adequate play areas, Low Fell ward, in which the site is located, currently has a deficit against the quality standard for public open space and play facilities for children. There are also no play facilities for children in a 500m straight-line distance of the site. Given the considerable deficits², it is even more important to provide public open space and play facilities either on site, or nearby.
14. The proposal would provide no on site public open space or play facilities. The physical constraints of the site nor maximising use of the site are not sufficient reasons why it would be *unfeasible* to provide the facilities on site. If the site can accommodate dwellings and street infrastructure, I see no reason why it cannot practicably accommodate open space and play facilities. Additionally, maximising the housing offer due to a shortage of housing does not negate the policy requirement for on site provision, where feasible.
15. Furthermore, the assertion of the intended occupiers being older residents does not negate the policy requirements, particularly when the dwellings contain 3 or 4 bedrooms and are manifestly family housing. Again, there is also no means to secure the dwellings as older persons' housing, nor have I been presented with any reasons why this would be necessary.
16. Additionally, notwithstanding my findings above, the contribution for off site facilities in the draft unilateral undertaking is not a finalised planning obligation. I also have no information about where this money would be spent, to ascertain if it would be directly related to the development; and fairly and reasonably related in scale and kind. Therefore, the scheme before me fails to provide for open space and play facilities, and this would be directly contrary to Policy MSGP40 of the SADMP.

² 0.026 ha. per 1000 residents in Low Fell ward, compared to the standard of 0.07 ha. per 1000 for play facilities.

Biodiversity

17. The site was cleared (and thus degraded of biodiversity value) prior to an ecologist being appointed by the appellant to inform the baseline ecological position and value of the calculation of biodiversity net gain (BNG). The appellant's ecologist identified that *"the site had two piles of organic debris mostly consisting of Bramble, there were also two small groups of tree stumps all small stature. Satellite imagery shows mostly silver birch and possibly ash and willow. Historic satellite imagery shows buildings present as recent as 2009 and a steady reclamation by ruderal species and self-seeded trees notable on satellite imagery from 2015"*. This is also detailed on plan in Appendix A of the Biodiversity Impact Assessment³ (BIA).
18. However, satellite imagery from the Council in 2022 and 2023 appears to show the habitats on site being predominantly woodland, scrub and grassland rather than the ruderal/ephemeral habitats. Whilst there is little definitive evidence before me, I agree with the Council's assessment. This is because the Planning Practice Guidance (PPG) details that if there has been degradation and there is insufficient evidence about the biodiversity value of the onsite habitat immediately before the degradation, the pre-development biodiversity value of the onsite habitat must be taken to be the highest biodiversity value of the habitat which is reasonably supported by any available evidence relating to it. This requirement must be applied to the calculation of pre-development biodiversity value in the metric tool, and the Biodiversity Gain Plan template asks for information regarding whether there has been prior habitat degradation.
19. Therefore, the baseline information that has been input into the BNG metric tool is incorrect, and thus the outcomes of the calculation are also inevitably incorrect. Moreover, the BIA details that the statutory 10% BNG could not be provided on site for habitats and that off site compensation would be necessary through a BNG provider. Despite the calculation being incorrect, there are also no means by which to secure the off site measures. Off site gains should ideally be secured either through a planning obligation or a Conservation Covenant (when they apply). This would properly secure BNG and require the external provider, Council and appellant to precisely agree to the delivery and location of the off site BNG.
20. Additionally, recalculation of the baseline position by way of a condition would be unsuitable, given there may be changes to the BNG requirements and I cannot be sure a condition would be capable of being discharged.
21. Therefore, as per the mitigation hierarchy, whilst avoidance would not be possible due to the development of the site, the mitigation and compensation is unknown and unsecured. Consequently, the development would not provide BNG.
22. The site is also partially designated as a wildlife corridor and there is little evidence before me to justify the appellant's statement that its purpose within the corridor is low. The designation is also notably not recognised in the BIA, despite being detailed in the DAS. Furthermore, despite the site being previously developed and not historically serving a designated wildlife purpose, it was left to become overgrown and inaccessible by people. This means that, because of its uncontrolled nature, its value for wildlife and biodiversity is now much higher, benefiting local biodiversity. I agree with the Council that the site offers an unlit and undisturbed refuge and resource for foraging and commuting bats, common

³ Report Ref: 2310a DR

amphibians, nesting birds, and priority species. This strengthens the ecological connectivity of the designated wildlife corridor.

23. The development of the site and its claimed introduction of high quality managed landscaping would do little for wildlife, particularly given the high amount of hard landscaping. No sufficient mitigation is proposed, and the proposal would have a harmful impact on biodiversity.
24. As such, the proposal would be contrary to Policy CS18 of the CS and Policy MSGP37 of the SADMP, which seek net gains in biodiversity, and to protect, enhance and manage biodiversity assets, including designated wildlife corridors. It would also be contrary to the Framework, which seeks to minimise impacts on and provide net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species.

Living conditions

25. As detailed above, the dwellings would be subjected to very small gardens. These would provide insufficient quality space for private outdoor amenity commensurate with the scale of the homes proposed. Additionally, given the location of the railway directly to the west of the development, future residents would be subjected to noise from passing trains both internally and in external amenity areas. The Noise Impact Assessment (NIA) details that even with a 2.5 m acoustic fence to the western boundary, most rear gardens would exceed the 55 dB upper guideline value. However, it also sets out that it is not possible to undertake an assessment with a reasonable degree of certainty. This is unhelpful, and despite the NIA claiming that exceedance of 55 dB LAeq is not a barrier to development, gardens subjected to these noise levels would be noisy.
26. It is suggested that the acoustic fencing could be the subject of a condition. In some instances, this could be appropriate. However, in this case, the lower level nature of the gardens in Plots 1-8, along with the short depth means that an acoustic fence of an unknown height or design could considerably worsen the effect of the small gardens, resulting in an even more gloomy, cramped and oppressive space. Given that a height of 2.5m is unlikely to reduce the noise levels below 55 dB, the future occupants would either be subject to a very tall fence, or noisy gardens, or a combination of both. This would not provide a good standard of amenity for future occupants. Furthermore, despite suggestions in the NIA, there is no actual mitigation proposed, leaving all the detail to be determined by a planning condition. This is not a suitable approach when it has not been proven that the mitigation would enable noise reduction to a level that would provide suitable future living conditions.
27. Additionally, there is a lack of assessment as to the vibration effects of the trains upon the future residents. Whilst the dwellings may be more than 10m away, and Network Rail raise no objections, they are not directly concerned with future living conditions, rather the operational safety of the railway line. Vibration from passing trains could cause harm to living conditions, particularly given the busy nature of this railway line, and in the absence of an assessment, I must apply the precautionary principle.
28. Consequently, the proposal does not demonstrate that it would provide acceptable living conditions for future occupiers. This would be contrary to Policy CS14 of the

CS and Policies MSGP17 and MSGP18 of the SADMP. Together these seek to prevent negative impact on residential amenity, provide a high quality environment and good standard of amenity, ensuring that noise sensitive development is compatible with existing land uses and activities. It would also fail to comply with the Framework, which seeks to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Drainage

29. The drainage scheme presented proposes infiltration via the sewer network. This should be the last resort in discharging surface water from a development site. The Flood Risk Assessment and Drainage Strategy⁴ details that infiltration and discharge to a watercourse is not possible.
30. Whilst this method of infiltration may be necessary, given the scale of built development, hard landscaping and infrastructure on the site, there is very little space left for any sustainable drainage systems (SuDs) to attenuate the surface water prior to it entering the sewer network.
31. Swales and ponds are discounted due to the topography of the site and the proximity to the railway. However, there are many other SuDS components that can provide sustainable drainage solutions, and the most effective surface water drainage systems use a series of different drainage features, operating as close to the source of runoff as practicable. It appears to me that maximising the number of dwellings on site, or the lack of accountability for maintenance, has resulted in these sustainable methods of drainage being discounted. Furthermore, whilst SuDS should be proportionate to the scale and risk level at the site, seven small rain gardens would be essentially superficial in comparison to the scale and extent of built development.
32. Therefore, there are few multifunctional benefits gained through the drainage system, as required by the Framework, such as facilitating improvements in water quality and biodiversity, as well as benefits for amenity. This reflects my earlier findings about the cramped nature of the proposal, the high amount of hard landscaping, the lack of onsite open space and the failure to provide BNG. Comparison with another scheme granted by the Council has different technical and siting details to this and is of little weight.
33. Therefore, the proposal would fail to provide suitable sustainable drainage, and this could increase flood risk elsewhere. This would conflict with Policy CS17 of the CS and Policy MSGP29 of the SADMP, which seek to prioritise the use of SuDS to manage flood risk, concurrent with the aims of the Framework and PPG.

Other Matters

34. Whilst the principle of residential development on the site is accepted, the previous scheme from 2007 has lapsed and is of little weight. The development plan and Framework have considerably changed since this time, and the emphasis on high quality placemaking, BNG, SuDS and a high standard of amenity is a key part of decision making.

⁴ Portland Consulting Engineers 2022077 Rev B August 2024

Planning balance

35. I ascribe weight on a rising scale from neutral, limited, moderate, significant to substantial. The proposal would conflict with the development plan as a whole.
36. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. The proposal would harm the significance of the Conservation Area, leading to 'less than substantial harm' as set out in the Framework, at the lower end of the scale. The homes are private market dwellings, and there would be very few public benefits arising from this proposal. Therefore, the harm to heritage assets would not be outweighed.
37. The Council sets out that the latest results of the Housing Delivery Test (HDT) show that 93% of homes required are being delivered in the Borough, although the appellant claims that the Council does not have a 5 year housing land supply. This is not refuted by the Council in its statement of case. Thus, for the purposes of this planning balance, and as there are no strong reasons for refusal⁵, I have applied paragraph 11 d) ii of the Framework.
38. The supply of market housing is of substantial weight in favour, and it would also utilise a brownfield site for homes, which is also of substantial weight. There would also be social and economic benefits, including construction jobs, reduced risk of fly tipping or anti-social behaviour on site, potential uptake of jobs nearby and increased spending for local services and facilities, which are of moderate weight.
39. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs. This proposal would not meet the needs of the future occupiers because it would fail to provide acceptable living conditions, a high standard of amenity, open space and play facilities. The effects could harm both health and well-being, and my overall conclusions are such that the benefit of the market housing is much reduced. It also indicates that the proposal is not sustainable development. Furthermore, the effect of the proposal on the character and appearance of the area and SCA would be unacceptable. There is also a failure to provide BNG and harm to biodiversity, and lack of suitable sustainable drainage. Collectively, these carry substantial weight against the proposal.
40. Consequently, the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion

41. For the reasons set out above, the appeal is dismissed.

Katie McDonald

INSPECTOR

⁵ Having regard to the application of policies in the Framework that protect areas or assets of particular importance - footnote 7