

LAND TO REAR OF SILVER BIRCH, BIRKS DRIVE, ASHLEY HEATH
MR & MRS J PERKINS

20/00089/FUL

The application is for full planning permission for the demolition of the existing detached garage and erection of a detached dormer dwelling.

The application site lies outside of Loggerheads village envelope as indicated on the Local Development Framework Proposals Map and the Loggerheads Neighbourhood Plan. The site contains a number of trees that are protected by Tree Preservation Order no. 9.

The application has been called to the Planning Committee for determination by two Councillors due to public concerns in respect of the following matters;

- Loss of a healthy tree from the adjoining property and impact on trees.
- Loss of privacy to adjoining residents.
- Impact on the nature and character of the area.
- Contrary to the Neighbourhood Plan.

The 8 week period for the determination of this application expires on 2nd April 2020.

RECOMMENDATION

PERMIT subject to conditions relating to the following: -

1. **Time limit**
2. **Approved plans**
3. **Approval of facing materials and materials of all hard surfaced areas**
4. **Windows to bedroom 1, in the side elevation, to be obscure glazed and retained as such.**
5. **No formation of a balcony, through the addition of a balustrade or similar, to bedroom 1.**
6. **Restriction on hours of construction.**
7. **Approval and implementation of design measures to secure appropriate noise levels.**
8. **Electric vehicle charging points.**
9. **Access, parking and turning areas to be provided prior to occupation**
10. **Retention of the carport for the parking of motor vehicles and cycles.**
11. **Submission, approval and implementation of a detailed, dimensioned tree protection plan, site specific method statement and arboricultural method statement, and arboricultural site monitoring schedule.**

Reason for Recommendation

Planning permission has in the past been granted for residential development here, the permission is extant, and as such there can be no objections with regard to the principle of the development or in respect of highway safety. In recognition of the appeal decision in respect of 19/00103/FUL it is considered that the size of the dwelling on this plot is acceptable having taken into consideration the character of the Ashley Heath area. In addition it has now been demonstrated that the dwelling can be constructed without the unacceptable loss of visually significant trees to the detriment of the character of the area. As such there is no basis upon which refusal of planning permission can now be justified

Statement as to how the Local Planning Authority has worked in a positive and proactive manner in dealing with the planning application

Following the submission of additional information in response to the comments of the Landscape Development Section this is now considered to be a sustainable form of development and complies with the provisions of the National Planning Policy Framework.

Key Issues

This application is for full planning permission for the erection of a detached dormer dwelling in the rear garden of the existing property, Silver Birch. It follows the refusal and subsequent dismissal at appeal of an application for a very similar dwelling, reference 19/00103/FUL. The reasons for refusal of the previous application are as follows:

1. The proposed scale of the proposed dwelling would result in it being disproportionate to the size of the plot which would be out of keeping and harmful to the character of the Ashley Heath area. The proposed development is therefore contrary to policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026, policies LNPP1 and LNPP2 of the Loggerheads Neighbourhood Plan, the guidance set out in the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document (2010) and the requirements and policies of the National Planning Policy Framework 2019.
2. The proposed development would result in the loss of visually significant trees which would be harmful to the character of the Ashley Heath area. The proposed development is therefore contrary to saved policies N12 and N13 of the Newcastle-under-Lyme Local Plan 2011, policies LNPP1 and LNPP2 of the Loggerheads Neighbourhood Plan, and the requirements and policies of the revised National Planning Policy Framework 2019.

The appeal decision in respect of 19/00103/FUL is a key material consideration in the determination of the current application.

In dismissing the appeal the Inspector agreed that the proposal would result in the loss of visually significant trees which would harm the character and appearance of the Ashley Heath area as set out in reason for refusal 2. Consideration is given, below, to whether the current proposal appropriately addresses such concerns.

The Inspector did not, however, agree with reason for refusal 1, that the scale of the proposed dwelling was disproportionate to the size of the plot and that it would be out of keeping and harmful to the character of the Ashley Heath area. Accordingly the Inspector concluded that the development would be consistent with policy CSP1 of the Core Spatial Strategy and policies LNPP1 and LNPP2 of the Loggerheads Neighbourhood Plan (LNP).

As the footprint of the dwelling, design and siting within the plot as proposed in this current application is fundamentally the same as the proposed dwelling that was considered at appeal, and as the site and policy context within which the Inspector considered the proposal has not changed since the appeal decision there is no basis upon which a different conclusion can now be reached. The concerns expressed by the Parish Council and within the representations received regarding harm to the character of the area and the proposal being contrary to the LNP are noted. However in light of the Inspector's conclusions on this particular issue, such a reason could not be substantiated in respect of the current application.

The Inspector didn't address the issue of principle within the appeal decision as such a reason was not advanced by the Council. In not raising principle as a reason for refusal the Local Planning Authority acknowledged that planning permission has been granted on this site for a detached bungalow, 15/00435/FUL, and a lawful material commencement of that permission has taken place. As such the permission remains extant. The existence of the extant permissions means that the development of this site for a single dwelling has been established and therefore it must be concluded that the principle of residential on this site is acceptable.

The proposed access is that already approved under 15/00435/FUL and the proposal does not involve a material intensification of the use of that access. In light of:

- the LPA not advancing highway safety as a reason for refusal;
- the Inspector considering that whilst during construction vehicles would temporarily increase local traffic, due to the size of the development this would be unlikely to cause significant prejudice to highway safety; and
- the Highway Authority not raising objections to the proposal;

it is considered that the current application does not raise highway safety concerns that would warrant refusal of planning permission.

The main issues in the consideration of the application are therefore:

- Would there be any adverse impact on residential amenity?
- Would there be any adverse impact on trees?

Would there be any adverse impact on residential amenity?

Supplementary Planning Guidance (SPG) Space about Dwellings provides advice on environmental considerations such as light, privacy and outlook.

Following amendments to the previous proposal it was concluded by the Council that the impact of the proposal on residential amenity would not be harmful. The Inspector reached the same conclusion when determining the appeal. In respect of the position of windows and balconies the current proposal is the same as previous proposal and as such the same conclusions must be reached in respect of the issue of privacy. Such conclusions were reached on the basis that a first floor balcony in close proximity to the boundary with the neighbouring property, the Shieling, had been removed and the windows obscure glazed as well as the repositioning of a dormer window so that it faced towards the front of the property. Such amendments have been retained in the current and subject to appropriately worded conditions on any planning permission issued the formation of a balcony at a later date could be prevented and the obscure glazing could be secured.

It therefore remains that with respect to the interrelationship of the proposed dwelling with the other neighbouring properties, sufficient distances are proposed between existing and proposed dwellings in compliance with the Council's SAD SPG.

In response to the issue regarding impact on trees there has been amendments to the proposed method of construction of the dwelling which has resulted in the formation level being adjusted and a small increase in the overall ridge height of the dwelling by 110mm. This will result in a marginal increase in the overall scale and massing of the dwelling but not to the extent that it will have a materially greater impact on the occupants of the closest dwelling, the Shieling. The conclusion therefore remains that the building would not have an unacceptable overbearing impact.

In conclusion, it is not considered that a refusal could be sustained on the grounds of impact on residential amenity.

Would there be any adverse impact on trees?

As indicated above, in dismissing the appeal in respect of the previous application the Inspector noted that further tree loss would be required to accommodate the proposed development and this would fail to complement or reinforce the local character and would cause unacceptable harm to it.

In response to the appeal decision the proposed dwelling has been amended to include a pile and ring beam construction, thereby creating air space under the floor, and 3D cellular confinement (designed for root protection) to address the roots beneath the building. An irrigation system is also proposed beneath the building. Notwithstanding this, the current proposal initially indicated that a further 3 category C trees (of low quality with an estimated remaining life expectancy of at least 10 years) were to be removed one of which is located in the garden of the adjoining property (and as such could not be removed without the consent of that property owner). The plans have, however, now been amended to show that the trees are to be retained with the indication given that the reference to their removal was an error. As such the proposal now shows no additional tree removal than that permitted under 15/00435/FUL.

The Landscape Development Section (LDS) still have some concerns that excavations for the dwelling to the rear of the garage will cause some harm by affecting smaller, feeder roots of trees and that it is apparent that the proposed irrigation system beneath that part of the building cannot properly be installed due to levels thereby creating dry areas. They have not, however, objected and are not stating that further trees will be need to be removed to carry out the construction of the dwellings. In this regard the reason for refusal 2 of the previous application 19/00103/FUL and the concerns of the Inspector have been addressed.

The LDS do, however, remain concerned that the proximity of the dwelling to retained trees could lead to post development resentment of the trees by the occupants of the dwelling which would be likely to

lead to subsequent pressure for felling or pruning. This issue was addressed within the report relating to 19/00103/FUL where it was stated that other residents of Ashley Heath already live in close proximity to trees, given the extent of tree cover in the area, and that it would be difficult to argue that the Council would have no choice but to succumb to any pressure for tree removal. Whilst the LDS indicate that applications are received for tree removal in the area which can be difficult to resist it is noted that subsequent loss of trees through tree resentment was not referred to in the reasons for refusal of the previous proposal and was not raised as a concern by the Inspector in the appeal decision. It is therefore considered that this issue does not in itself justify refusal of planning permission and given that no trees will be lost as a result of the construction of the dwelling the reason that the appeal was dismissed has been appropriately addressed.

Other matters

A response to a number of other matters raised in representations is provided as follows:

- There is no evidence that wildlife will be harmed as a result of this development and there is no requirement, due to the nature of the development, for the application to be supported by an Ecological Report. There is no basis, therefore, to withhold planning due to concerns about the development on local wildlife, including Bats.
- Whilst an electric vehicle charging point, as required by the Environmental Health Division, is not shown on the plans this can be secured through planning condition
- The impact of noise/disturbance arising from the construction phase of the development can be limited through the restrictions on the hours that construction can take place secured by condition of any planning permission. As set out in the Inspectors decision letter, impacts arising from the construction phase would be for a limited time only and would not prejudice the long-term living conditions of nearby residents.
- Fire measures are addressed through Building Regulations and are not material to the determination of the planning application.
- The application has been publicised by neighbour notification letters in accordance with the adopted Statement of Community Involvement.

APPENDIX

Policies and proposals in the approved development plan relevant to this decision:-

[Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy \(CSS\) 2006-2026](#)

Policy SP1:	Spatial Principles of Targeted Regeneration
Policy SP3:	Spatial Principles of Movement and Access
Policy ASP6:	Rural Area Spatial Policy
Policy CSP1:	Design Quality
Policy CSP3:	Sustainability and Climate Change
Policy CSP4:	Natural Assets
Policy CSP5:	Open Space/Sport/Recreation

[Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)

Policy H1:	Residential Development: Sustainable Location and Protection of the Countryside
Policy T16:	Development – General Parking Requirements
Policy N12:	Development and the Protection of Trees
Policy N13:	Felling and Pruning of Trees

[Loggerheads Neighbourhood Plan \(LNP\) 2013-2033](#)

Policy LNPG1:	New Housing Growth
Policy LNPP1:	Urban Design and Environment
Policy LNPP2:	Local Character & Heritage
Policy LNPT1:	Sustainable Transport

Other Material Considerations include:

[National Planning Policy Framework \(NPPF\) \(2019\)](#)

[Planning Practice Guidance \(PPG\) \(2014\)](#)

[Supplementary Planning Guidance/Documents](#)

[Space Around Dwellings SPG \(SAD\) \(July 2004\)](#)

[Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning Document \(2010\)](#)

Relevant Planning History

03/00097/OUT	Refuse	Erection of dwelling
03/00096/FUL	Refuse	New double garage with driveway, turning area and access point
04/00259/OUT	Refuse	Conversion of existing garage and extension to form a retirement bungalow. Subsequent appeal dismissed.
07/00397/FUL	Refuse	Single storey rear extension, porch and double garage
07/00852/FUL	Permit	Single storey rear extension and front entrance
15/00435/FUL	Permit	erection of a detached bungalow, associated access and car parking arrangements
19/00103/FUL	Refuse	Demolition of existing detached garage and erection of detached dormer dwelling. A subsequent appeal was dismissed.

Views of Consultees

The **Environmental Health Division** has no objections subject to conditions restricting construction hours, setting maximum noise levels, and requiring electric vehicle charging points.

The initial comments of the **Landscape Development Section (LDS)** are summarised as follows:

- The proposal shows the removal of category 'C' trees (trees of low quality with an estimated remaining life expectancy of at least 10 years) which are of no visual importance. The pine labelled T5 on the submitted plans, and the unlabelled conifer in the garden of the Shieling should not be removed. Three trees have already been removed as part of the original planning permission for a dwelling.
- There are no objections in principle to the proposed 3D cellular containment carpet and pile and ring beam foundation construction. However it appears that the encroachment of the 3D cellular confinement surfacing into the Root Protection Areas (RPAs) of two trees, although of no dig construction, is greater than 20% of the existing unsurfaced ground within the RPAs of a number of trees which would be unacceptable.
- Care has been taken to ensure that the RPA of tree T6 will not be encroached on by the proposed driveway but there are concerns that the area isn't sufficient for the size of the property and further information should be provided.
- It is unclear what is proposed in the footprint of the proposed dwelling to the rear of the existing garage. It would appear that it would be necessary to reduce the ground levels by at least 170mm within the RPAs of two trees which would not be acceptable.
- Some of the retained existing trees would be exceptionally close to the proposed dwelling and closer than the majority of properties in the locality. This could lead to post development resentment of the trees and subsequent pressure for felling and pruning of the trees.

Following receipt of additional information from the applicant the advice now received from the LDS is as follows:

- No objection the proposed wood chip and board ground protection within the footprint of the building but this should be removed when no longer required for construction works.
- The stem protection of two trees (T24 and T5) should be by box construction and not standard protective barrier.
- Some concerns remain about the proposed excavations for the dwelling to the rear of the existing garage and that some harm, although not major, is likely to the roots. The RPA is the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability. Although no larger roots were encountered in the trial pits it is likely that smaller, feeder roots are present. It is also now apparent that the proposed irrigation system beneath this part of the building cannot be properly installed due to the levels, and dry areas are likely to be created.
- The main concern remains with regard to the proximity of existing trees to the building leading to future post development resentment remains. The initial application proposed to clear trees to make space for the building and its garden, and the planning inspector stated in the appeal decision that it was unclear as to whether mitigation planting could be accommodated. The Council does receive applications from other properties in the area to remove trees that are close to dwellings that are difficult to resist, and trees have been lost, sometimes by appeal, for this reason. It is not uncommon for new residents to want to remove trees after they have moved in.
- If permission is given, submission of a detailed, dimensioned tree protection plan, site specific method statement and arboricultural method statement, and arboricultural site monitoring schedule should be conditioned.

The **Highway Authority** (following a site visit on 14th February) has no objections to the proposal subject to the imposition of conditions requiring the access, parking and turning areas to be provided prior to occupation, and the retention of the carport for the parking of motor vehicles and cycles.

Loggerheads Parish Council objects to the application as it does not criteria set out Loggerheads Neighbourhood Plan policy LNPG1 for housing developments namely it will cause significant harm to residential amenity and will lead to significant loss of garden space.

Representations

13 representations have been received objecting to the application. The main concerns expressed are summarised as follows:

- The proposed dwelling is too large for the size of the plot. It is not in keeping with the area and deviates from the originally approved bungalow on this plot.
- The proposal involves the felling and pruning of a significant number of trees protected through a Tree Preservation order. One of the trees shown to be removed is in the garden of the Shieling. The felling of more trees to facilitate further development would destroy part of the area's unique character.
- Removing trees to accommodate further unwanted development goes against the national strategy of tree planning for environmental reasons.
- Due to the height of the dwelling and its position close to the boundary with the Shieling it will dominate the garden of that property.
- The design incorporates first floor balconies one of which would directly overlook neighbouring properties resulting in loss of privacy. Permitting the development would be a breach of human rights
- The absence of an approved Development Plan for the area previously resulted in the granting of planning permission. This has changed with the introduction of the Neighbourhood Plan which seeks to minimise development in Ashley Heath. The proposal is contrary to that Plan.
- Birks Drive is an unadopted road and would not withstand the impact of heavy vehicles.
- The position of the garage does not adequately provide space for parking, loading or turning of large vehicles.
- It is likely that there are bats in the garage that is proposed for demolition.
- An electric vehicle charging point, as required by the Environmental Health Division, is not shown on the plans.
- Additional noise during building works will cause problems for shift workers and young children due to the close proximity of other properties.
- The reasons that application reference 19/00103/FUL was refused still apply as there has been no significant change to the plans since that decision was made.
- The proposed development will result in the increased likelihood of fire spread from building to building and/or trees.
- There has been a lack of publicity of the application by site notice.

One letter has been submitted in support of the application stating that the proposed dwelling is of a good design and smaller than most of the houses on Birks Drive and Tower Road. It is not too large for the plot and provides an addition to the housing stock on Birks Drive.

Applicant's/Agent's submission

All of the application documents can be viewed on the Council's website using the following link:

<http://publicaccess.newcastle-staffs.gov.uk/online-applications/plan/20/00089/FUL>

Background papers

Planning files referred to

Planning Documents referred to

Date report prepared

16th April 2020