
Appeal Decision

Site visit made on 10 April 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 4th May 2017

Appeal Ref: APP/F1040/W/16/3162554

Land adjacent to 166 Wragley Way, Stenson Fields, Derby DE24 3DZ

- 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 Mr Hardev Singh Rehal against the decision of South Derbyshire District Council.
 - The application Ref 9/2016/0860, dated 15 August 2016, was refused by notice dated 14 October 2016.
 - The development proposed is the material change of use of open space to residential garden land.
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Decision

1. The appeal is allowed and planning permission is granted for material change of use of open space to residential garden land at 166 Wragley Way, Stenson Fields, Derby DE24 3DZ in accordance with the terms of the application, Ref 9/2016/0860, dated 15 August 2016, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: plan of extend garden date-stamped by the Council on 15 August 2016.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement or extension of the dwelling to which this permission relates shall cover the residential garden land hereby allowed without the prior grant of planning permission on application made to the local planning authority.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

3. The appellant has fenced in an area of grassed public open space which abuts the side wall and side of the back garden to No 166. The application was seeking to regularise this, but the Council's decision was to refuse consent for the change of use to garden land sought. The appeal property is on the edge of a large estate of modern housing facing onto Wragley Way, which is a main through route and defines the current southern extent of residential development, beyond which there are fields.
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4. There is a surfaced footway running in a straight line through this area of open space leading to the end of a cul-de-sac within the estate. The largest part of this strip of open space had been between this footway and No 166 and more than half of this remains. It is not land adopted by the Council but appears to be maintained and formed part of the public open space allocated when the housing which included the appeal property was approved.
5. Whilst appreciating the Council's case that areas of public open space within this housing estate should be preserved, and taking account of the concerns of interested parties that if allowed this development might establish a precedent for further such space to be amalgamated into private gardens, in this case I find little harm arising from the development that has occurred. A smaller area of open space abuts the footpath into the estate further along Wragley Way to the east which is a similar situation.
6. The remaining grassed area to the west of No 166 would be sufficient to provide visual relief between the frontage housing along Wragley Way and provide views into the estate. This would preserve an open gap sufficient to make a valuable contribution to the appearance of this area and for the proposal to comply with saved Policy 8 of the South Derbyshire Local Plan of May 1998. As a consequence I find no material conflict with policies BNE 1 and BNE 4 of the Council's Part 1 Local Plan of 2016.

Conclusion

7. The Council has recommended a condition removing permitted development rights to extend the existing dwelling. I have instead imposed a condition to prevent the extension of the house over the additional garden land approved without prior planning permission from the Council. Exceptional circumstances would warrant such a condition, in the interests of character and appearance, to preserve an acceptable level of openness within the frontage of housing along the street. In the interest of certainty, a condition is necessary which specifies the plan to which this approval relates. Subject to these two conditions, and on the basis of the reasons given, I conclude that the appeal should be allowed.

Jonathan Price

INSPECTOR