
Appeal Decision

Site visit made on 8 January 2018

by A Jordan BA Hons MRTPI

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

Decision date: 17 January 2018

Appeal Ref: APP/R1038/W/17/3181453

Former Bull & Badger, Cherry Tree Drive, Killamarsh, Derbyshire, S21 1AR

- 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 Jeremy White of White Hire and Sales against the decision of North East Derbyshire District Council.
 - The application Ref 16/01273/FL, dated 21 November 2016, was refused by notice dated 8 February 2017.
 - The development proposed is construction of a 2 bed bungalow.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development on the submitted application form reads "proposed apartment building". The Council have altered this to "construction of a 2 bed bungalow". As this more accurately describes the development as shown on the submitted plans, I have determined the appeal on the basis of the description adopted by the Council.
3. Following the refusal of the proposal by the Council the appellant submitted revised plans, which show a strip of land set aside within the development as private garden (plan ref 16/11/02/002A). They also show obscure glazing and provision of a roof light on the front elevation (plan ref 16/11/02/004A). Although these plans were not before the Council, I note that the amendments proposed are aimed at responding the Council's concerns and so I have considered them alongside the original plans.

Main Issues

4. The main issues for the appeal are the effects of the proposal on both the living conditions of future occupiers of the proposed development and the living conditions of existing adjoining residential occupiers.

Reasons

Background

5. The parties are in agreement that a 5 year supply of housing land cannot be demonstrated in the district. As such, policies in the *North East Derbyshire Local Plan* (Local Plan), cannot be considered up to date. Paragraph 14 of the *National Planning Policy Framework* (the Framework) advises that where the development plan is out of date, the presumption in favour of sustainable

development indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.

6. Planning law also indicates that applications for planning permission must also be determined in accordance with the development plan, unless material considerations, which include the Framework, indicate otherwise. Therefore, although the plan is out of date, it does not follow that its policies no longer apply. The Council have referred to Saved Policies BE1, GS5 and H12. These all refer in varying ways to the layout of new development. Policy GS5 seeks to protect the amenities of neighbouring occupiers. Policy H12 also seeks to protect privacy and outlook. These aims reflect guidance in the Framework paragraph 17 which seeks to ensure a good standard of amenity for all existing and future occupiers of land and buildings as a core planning principle. I therefore find policies GS5 and H12 to be most relevant to this proposal and due to the level of consistency with guidance in the Framework, I attribute very significant weight to them.

Living Conditions

7. The proposal relates to the erection of a small 2 bedroom bungalow on land adjacent to the former Bull & Badger Public House, which has recently been converted to residential flats. The site comprises a small area of land adjacent to an electricity sub-station, which sits on elevated land, adjacent to, but around a metre higher than, the shared amenity space which surrounds the flats. The side elevation of the flats contains a number of windows would face directly onto the proposed development at a distance estimated by the Council to be around 6 Metres.
8. I noted on site that the layout of the site and the disparity in levels would mean that ground floor windows on the adjoining block would not be directly impacted but that first floor windows had an unimpeded line of sight into the development site. At least some of these windows appeared to relate to bedrooms. The proximity of the windows on both buildings, and their size and orientation would allow direct overlooking between the facing buildings, and this would reduce privacy and be harmful to living conditions for both existing and future occupiers.
9. In response to the Council's concerns the appellant has proposed to finish the front facing windows on the dwelling in obscure glazing. Whilst this would prevent overlooking in, it would not diminish the perception of overlooking which would occur as a result of the proximity and size of the windows on the proposed dwelling. As such, even if the scheme was amended it would still have a harmful effect upon the quality of living accommodation enjoyed by existing occupiers.
10. Furthermore, the windows which would be obscure glazed would be the proposed living room and the kitchen. I note that the kitchen would also have a window in the side elevation and in the case of the living room a side facing window and a rooflight would also be provided. Nevertheless, taking into account the size of the windows and the fact that they relate to rooms that are likely to be frequently used, the use of obscure glazing in an otherwise principle window would be an anomalous and overbearing feature, which would provide

less than acceptable standards of outlook and would diminish the quality of the living environment provided.

11. The appellant has indicated that private amenity space for the dwelling could be provided in the form of a narrow strip of land which sits adjacent to and above the adjoining shared rear yard for the flats. However, its size and configuration, and the extent to which it is overlooked by upper floor flats adjacent, mean that it would be neither an attractive or particularly usable space for recreation which would be unlikely to meet the needs of most future occupiers.
12. I note the appellant's comments in relation to the recently approved and constructed bungalow within the scheme, which I understand has very limited external space. I note that given the size of the accommodation provided the Council considered the scheme to, on balance, be acceptable. However, despite the similar size of development I do not consider the matter to be determinative in this case. The proposed development would fail to provide acceptable accommodation due to matters of privacy and potentially, if obscure glazing was used, also outlook. Therefore, whilst I consider that the deficiency in private amenity space is a serious shortcoming of the proposal the scheme would be unacceptable in any case, and so the matter is not one on which the appeal turns.
13. These factors lead me to the view that the proposal would fail to provide an acceptable standard of accommodation for future occupiers, and would impinge on the privacy and quality of living accommodation for existing occupiers. The proposal would thus be contrary to saved policies GS5 and H12 of the Local Plan and relevant guidance in the Framework outlined above.

Other Matters

14. The proposal would provide an additional dwelling which normally would be considered as a small contribution towards housing supply. However, as I have concluded that the quality of accommodation provided would be unacceptable, I attribute no weight to this matter in the planning balance. The proposal would bring brownfield land back into use and would also bring some economic benefits during the construction period and I attribute limited weight to these, commensurate with the scale of the proposal.

Conclusion

15. The proposal would harm the living conditions of existing occupiers, and would fail to provide acceptable living conditions for future occupiers of the development. This harm would significantly and demonstrably outweigh the limited economic benefits of the scheme. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan. Accordingly, having regard to all other matters raised, the appeal is dismissed.

Anne Jordan

INSPECTOR