



Appeal Decision

Site visit made on 26 November 2019

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2019

Appeal Ref: APP/P3040/W/18/3215560

Land South of Bruce Drive, West Bridgford, Nottinghamshire NG2 7RJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Paul Geary against the decision of Rushcliffe Borough Council.
 - The application Ref 18/00354/OUT, dated 8 February 2018, was refused by notice dated 16 May 2018.
 - The development proposed is described as outline application for 3 storey apartment block with 24 no. 2 bed retirement apartments, underground parking, bin store and cycle store (appearance reserved for future consideration).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the header, I have used the description of development as shown on the Council's decision notice and the appeal form. This is more consistent with the appeal plans than the application form description which refers to 25 rather than 24 apartments.
3. The application was submitted in outline with approval sought for details of access, landscaping, layout and scale. The appeal drawings show these details and I have dealt with the appeal on this basis.
4. Since the appeal was lodged, the appellant has submitted revised plans showing a proposal markedly different in terms of layout, form and positioning to that considered by the Council. The appeal process should not be used to evolve a scheme and it is important that what is assessed by the Inspector is essentially what was considered by the Council, and on which people's views were sought. Parties may be prejudiced or caused injustice by my consideration of these revised drawings and so I have not taken them into account in my assessment.
5. In addition, plans have been submitted since the appeal was lodged showing an amended red line application site boundary. If these revised plans were accepted it would mean that some of the properties adjoining the application site would not have been properly notified of the planning application. Consequently, parties would be prejudiced and injustice would be caused. As such, I have had no regard to these plans in my assessment of the appeal. For

clarity purposes, the drawings I have considered are those as listed at the end of the Council's report on the application¹.

6. Since the Council's decision the Rushcliffe Local Plan Part 2: Land and Planning Policies (LPP2) has been adopted. This replaces the Rushcliffe Non-Statutory Replacement Local Plan 2006 referred to in the Council's refusal reasons. I am required to determine this appeal on the basis of the development plan that is in force at the time of my decision, so I have carried out my assessment in relation to LPP2 policies. The appellant has had the opportunity to comment on the relevant policies since their adoption.

Background and Main Issue

7. I have received a copy of a completed planning agreement pursuant to section 106 of the Town and Country Planning Act 1990. This sets out planning obligations which, amongst other things, require 30% of the proposed apartments to be provided as affordable dwellings. The Council have indicated that the completion of the agreement would address refusal reason No 3.
8. I am satisfied the planning obligations are acceptable in terms of content and drafting and that they meet the tests in paragraph 56 of the National Planning Policy Framework (the Framework). They are necessary to accord with policy 8 of the Rushcliffe Local Plan Core Strategy 2014 (CS).
9. Furthermore, the main parties have agreed that refusal reason No 1, relating to restricted visibility at the Bruce Drive/Wilford Lane junction, could be addressed through the imposition of a planning condition requiring splay improvement works within the highway. This stance is supported by comments from Nottinghamshire County Council highway officers. I have no reason to dispute the main parties' position in this regard.
10. As such, the main issue is the effect on the living conditions of the occupiers of 14 to 20 Bruce Drive in respect of outlook and light.

Reasons

11. The appeal site is an open parcel of land that adjoins 14, 16, 18 and 20 Bruce Drive. The rear windows in these houses face over back gardens and a boundary fence towards the appeal site.
12. The proposed development would be clearly seen over the fence from the rear windows and back gardens of the adjoining properties. Whilst set at a lower level, the proposed 3 storey high building would be markedly taller than the adjacent houses. Also, the closest elevation would be a short distance away from the boundary and would stretch across the whole plot width of No 16 and most of the width of No 14.
13. By virtue of its proximity and height, the proposed development would appear intrusive to the occupiers of the adjoining properties. The impact on No 16 would be particularly significant as occupiers would be presented with a direct and full view of the closest elevation. No 14 would be less affected as conifer trees on the boundary already partially dominate its garden. However, if these were removed the proposed development would also have a marked overbearing effect on No 14. Being further away from the proposed building,

¹ Swish Architecture drawings numbered 509-000, 509-001 revision D, 509-002 revision D, 509-003 revision E and 509-004 revision E.

- the impact on Nos 18 and 20 would be less severe, but even so there would also be a degree of visual intrusion to these properties.
14. The upper storeys of the proposed building would be stepped back from the boundary and the closest elevation would be designed as a Green Living Wall. However, such features would not overcome the visually dominant intrusion caused by the scale and proximity of the development. Proposed tree planting would soften the impact but would not totally screen the building or fully address the harmful effects. Moreover, that a development would be screened is not a reason to allow a proposal which is inherently unacceptable.
 15. The appellant's submissions show the proposed development would meet the requirements of the Building Research Establishment's guide relating to planning for daylight and sunlight. As such, the proposal would not be harmful in terms of obstructing light to the adjoining properties. However, acceptability in this regard would not override the harm caused by visual intrusion.
 16. I have not been provided with details of the circumstances that led to planning permission being granted for other developments referred to by the appellant. As such, it is difficult for me to draw any comparisons with the appeal proposal. In any case, the existence of development elsewhere does not represent an appropriate reason to find in favour of a proposal that would cause harm. I am required to assess the appeal against current policies and the referred to permissions have no effect on my conclusion in respect of this main issue.
 17. Whilst the proposed development would be acceptable in respect of its effect on levels of light, for the reasons set out above I conclude that it would cause significant harm to the living conditions of the occupiers of 14 to 20 Bruce Drive in respect of loss of outlook. Therefore, and in this regard, the proposal would be contrary to policies 1 and 11 of the LPP2, as well as the Framework. These aim, amongst other things, to create places with a high standard of amenity for occupiers of property.

Other Matters

18. The Council initially accepted a five year housing land supply could not be demonstrated but has changed its position following the adoption of the LPP2. No substantive evidence has been provided that challenges this position and I am therefore satisfied that the Council can demonstrate more than a five year supply of deliverable housing sites. Given the recent adoption of LPP2, I find the development plan policies are not out-of-date and so the terms of paragraph 11d) of the Framework do not apply in this case.
19. The proposed development is in an appropriate location close to existing facilities and public transport links. Also, no objections have been raised by the Council that the proposal would exacerbate flood risk. However, acceptability in these regards is a neutral factor that does not weigh in support of the scheme.
20. If the appeal is allowed, a condition could be imposed that requires visibility improvements to the junction of Bruce Drive and Wilford Lane to the benefit of highway safety. However, there is no evidence before me that demonstrates the junction is particularly hazardous or that the level of usage causes a significant highway safety concern. Therefore, I attach only modest positive weight to this benefit.

21. The proposal would boost the supply of housing in the area, including the provision of affordable units. Also, there would be economic benefits, both through the creation of construction jobs and by future occupants supporting local services and businesses. In light of the housing land supply position, I attach moderate weight to these benefits in support of the appeal proposal.
22. I note the appellant's grievances in respect of the Council's actions relating to the completion of the legal agreement. However, concerns relating to the Council processes would have no effect on my assessment of the proposal.
23. I attribute significant weight to the harm that would be caused by the proposed development to the living conditions of occupiers of neighbouring properties. As such, I find that the overall benefits of the proposal fail to outweigh this harm and the conflict with development plan policies.

Conclusion

24. For the reasons given above, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR