



Appeal Decision

Site visit made on 18 February 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Appeal Ref: APP/M1005/W/19/3239493

28 Brook Lane, Ripley DE5 8JA

- 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 Ms V Hitchcock against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2018/0851, dated 15 August 2018, was refused by notice dated 26 September 2019.
 - The development proposed is dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline with approval sought for access and layout only, with matters of appearance, landscaping and scale reserved for future consideration. A site location plan and block plan 1/500 (existing and proposed) were submitted with the application. During the determination of the application a revised block plan 1/500 (existing and proposed) drawing ref: H.19.01 was submitted by the appellant. The Council has confirmed that neighbours were notified of the revised drawing and that it was used in the determination of the application. I have therefore determined the appeal on the basis of the revised drawing.
3. As part of the appeal the appellant has submitted an additional layout proposed 1/200 drawing ref: H.19.02 which was not submitted to the Council as part of the outline planning application. I am mindful that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the Council as local planning authority, and on which interested people's views were sought. However, as the intension of the revised drawing is to provide additional detail in relation to the proposal and does not change or evolve the proposed development in any way, I am willing to accept it for information purposes only. I am satisfied that no interested party has been prejudiced by this approach.
4. For the avoidance of doubt, I have regarded all elements of the drawings submitted as indicative apart from the details of the positioning of the development within the plot and the access.

Main Issues

5. The main issues are: i) The effect of the proposed development on the living conditions of the occupiers of No 28 Brook Lane (No 28), with regard to outlook and light; and, ii) The effect of the proposed development on highway safety and the safe and efficient movement of traffic on Brook Lane, with regard to the adequacy of parking provision.

Policy Background

6. Planning law¹ requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The adopted development plan for the administrative area of Amber Valley Borough Council is the Amber Valley Borough Local Plan 2006 (the AVBLP).
7. The Council states in its delegated report that Policy H3 of the AVBLP is considered to be out of date and so can only be afforded limited weight. Consequently, Paragraph 11d of the National Planning Policy Framework (the Framework) is engaged.
8. Other Policies within the AVBLP relevant in determining the application are LS3, H12, T1 and T6. Having regard to Paragraph 213 of the Framework, Policies LS3 and H12 are aligned with the provisions in the Framework which seek to achieve well-designed places with a high standard of amenity. In addition, Policies T1 and T6 are consistent with the provisions in the Framework which seek to resist developments that have an unacceptable impact on highway safety and that aim to create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. Accordingly, these policies can be afforded significant weight in the determination of the appeal.

Reasons

Living conditions of the occupiers of No 28

9. The appeal site comprises the parking area and raised side garden to No 28, a detached, linear, two storey house which sits at back of pavement on Brook Lane.
10. The indicative plans suggest that the proposed dwelling house could take the form of a detached, two storey house positioned within the modest gap between No 28 and No 32 Brook Lane (No 32). The new dwelling would be set well back from the pavement and the existing parking area to the front would be retained to provide parking spaces for the occupiers of both No 28 and the proposed house. The appellant has stated in the design and access statement which accompanied the application that all windows to habitable rooms within the new dwelling would be to the front and rear.
11. With reference to its Residential Development Supplementary Planning Document 2007 (the SPD), the Council considers the 'main aspect' of No 28 to be the elevation which faces onto the appeal site. Although this elevation contains a secondary window to a habitable room and windows to

¹ S38(6) of Planning and Compulsory Purchase Act 2004.

non-habitable rooms, as it possesses some windows to habitable rooms at ground and first floor levels, I agree with this assertion.

12. The SPD states that a minimum separation distance of 12.5 metres (m) is to be provided between a main aspect (habitable room) window and a secondary or side aspect. The indicative plan illustrates that there would be about 2.5m between the main aspect of No 28 and the side aspect of the proposed dwelling house. As such, the proposal would conspicuously fail to meet the minimum separation distance.
13. I note that the main windows that would be affected by the proposal would be a secondary window to the kitchen and a window to the dining room at ground floor along with a window to the bathroom at first floor, which face the blank side elevation of No 32, approximately 8m away. Nevertheless, the introduction of substantive built form into this space with a side elevation in such close proximity to the main aspect of No 28 would be unduly overbearing when viewed from the dining room and secondary kitchen window of No 28. This would result in an oppressive and uncomfortable sense of enclosure that would substantially diminish the outlook of the occupiers of No 28. Furthermore, the considerable lack of separation would also noticeably reduce the amount of light received into the affected windows and rooms at ground floor level, reducing the enjoyment of these spaces.
14. I appreciate that matters of appearance, landscaping and scale are reserved for consideration at a later stage. However, it has not been demonstrated at this outline stage that a dwelling could be developed on this site which would achieve acceptable levels of outlook and light for the occupiers of No 28.
15. Accordingly, I conclude that the proposal would have a significantly harmful effect on the living conditions of the occupiers of No 28, with regard to outlook and light. This would be contrary to saved Policies LS3 and H12 of the AVBLP and the Council's Residential Development SPD, which together and amongst other things, seek to take account of the relationship between development proposals and neighbouring buildings and protect the amenities of adjoining or adjacent properties, including through loss of light, overshadowing or overlooking. In addition, it would not accord with Paragraph 127 of the Framework insofar as it seeks to create places with a high standard of amenity for existing and future users. This is a significant concern which weighs against allowing the appeal.

Highway safety

16. Brook Lane is a relatively narrow road with footpaths on either side. It has a 30mph speed limit and, on my site visit, I could see no parking restrictions within the vicinity of the appeal site. At the time of my site visit (11.30am) I observed a few cars parked at the side of the road which, due to the width of the road, hindered the flow of traffic in both directions.
17. The parking area to the front of the appeal site, which is intended to be retained as part of the proposed development, is accessed direct from Brook Lane. This would provide two parking spaces for use by both the occupiers of No 28 and those of the proposed dwelling. It is asserted by the appellant that these are likely to meet the needs of both households and, whilst three spaces could be provided if required, any additional need for parking would be met through on-street parking.

18. Policy T6 of the AVBLP States that, in considering development proposals, the Borough Council will have regard to the maximum parking standards. For a two/three bed dwelling the maximum parking standard is stated as being two spaces per unit. Supporting text to the policy states that, 'Many of the older housing areas within Amber Valley have a high dependency on on-street parking, as a result of insufficient off-street provision, leading to problems of traffic congestion. There is a need to secure, wherever possible, the provision of additional off-street parking to resolve these existing problems.'
19. Taking into account the size of No 28 and the indicative plans for the proposed dwelling, it is likely that the parking standards would require the provision of a maximum of four spaces (two per unit). Derbyshire County Council, Highway Development Control has stated that there is an identified high demand for on-street parking on Brook Lane, particularly in the evening, and, as the proposal would provide a maximum of only three off-street parking spaces, has raised concerns that it would result in instances of indiscriminate on-street parking which could potentially lead to obstruction and be detrimental to highway safety for all users.
20. I recognise that Policy T6 expresses a maximum standard and not a minimum requirement of parking spaces per unit. However, it is clear that where there is an identified existing on-street parking problem, there is a need to secure the maximum standard of off-street parking spaces. The appellant has not disputed that there is a high demand for on-street parking spaces within the area at certain times of the day and has not provided any evidence to challenge the assertions of Derbyshire County Council, Highway Development Control.
21. Consequently, I am not satisfied that the proposed parking provision within the appeal site would be adequate. Any displaced on-street parking would result in the further obstruction of the highway and would be highly likely to create additional conflict between cars, other vehicles, cyclists and pedestrians. This would impede the safe and efficient movement of traffic on Brook Lane and have a detrimental impact on highway safety. Even though any displaced parking caused by the proposed development would be small, it would be critical within an area such as this where, it appears, there is little capacity, particularly in the evening, to absorb it.
22. To conclude on this issue, the proposed development would have a significantly harmful effect on highway safety and the safe and efficient movement of traffic on Brook Lane, with regard to the adequacy of parking provision. This would be contrary to saved Policies TP1 and TP6 of the AVBLP insofar as they aim to ensure that any additional traffic movements likely to be generated by the development can be satisfactorily accommodated on the transport network; and that development will have regard to the maximum parking standards. It would also not accord with Paragraphs 109 and 110 of the Framework insofar as they seek to resist development which would have an unacceptable impact on highway safety; and that aim to create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. This is an additional issue which weighs against allowing the appeal.

Other Considerations

23. The proposed development would provide one additional dwelling with some economic and social benefits derived from its construction and occupation.

There would also be some benefits in terms of any occupiers supporting local services and facilities. These benefits are reduced by the limited amount of development that is proposed but nevertheless, carry moderate weight in its favour.

24. I am aware that the Council raised no issues in relation to any impact on the living conditions of the occupiers of No 32, and I have no reason to take a different view. I also note that no objections to the proposed development were made by the Coal Authority and Derbyshire Wildlife Trust or by occupiers of adjacent dwellings. However, these are neutral considerations in the overall balance.

Other Matters

25. I note that the appellant owns No 28 and contends that none of the important windows in No 28 face directly towards the proposed dwelling. However, this is not, in itself, a reason to allow unacceptable development. I have considered this appeal proposal on its own planning merits and the context of the appeal site and found that it would cause harm.
26. My attention has been drawn to comments within correspondence from the Council which appear to contradict the first reason for refusal. However, this is not a matter to which I can attach any significant weight in the context of an appeal under Section 78 of the Act.

Planning Balance and Conclusion

27. I have found that the proposed development would have a significantly harmful effect on the living conditions of the occupiers of No 28, with regard to outlook and light, as well as on highway safety and the safe and efficient movement of traffic on Brook Lane, with regard to the adequacy of parking provision. In these regards the proposal would be in conflict with Policies LS3, H12, T1 and T6 of the AVBLP and the SPD guidance. I have found these policies and local guidance to be generally consistent with the relevant aims and requirements of the Framework and whilst they can restrict development, I attach significant weight to them and the harm that arises, in this case, from the conflict I have found with them.
28. As outlined above, the proposed development would provide some benefits which carry moderate weight in its favour. However, the identified adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Furthermore, there would be conflict with the identified development plan policies. Consequently, the proposal would not represent a sustainable form of development.
29. Accordingly, and for the reasons given above, I conclude that the appeal should be dismissed.

F Cullen

INSPECTOR