



Appeal Decision

Site visit made on 1 June 2020 by L Wilson BA (Hons) MA MRTPI

Decision by Beverley Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2020

Appeal Ref: APP/C1055/W/20/3245990

Garage Court, Marks Close, Derby DE23 1HB

- 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 and Mrs Barry Lane against the decision of Derby City Council.
 - The application Ref 18/01848/OUT, dated 7 December 2018, was refused by notice dated 1 August 2019.
 - The development proposed is existing garage block to be demolished and replaced with new purpose built brick garages with a single apartment on the top.
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Decision

1. The appeal is allowed and outline planning permission is granted for the existing garage block to be demolished and replaced with new purpose built brick garages with a single apartment on the top at Garage Court, Marks Close, Derby DE23 1HB in accordance with the terms of the application, Ref 18/01848/OUT, dated 7 December 2018, subject to the schedule of conditions set out at the end of this decision.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. For clarity, I have taken the site address from the Council's decision notice and the appeal form as it is more precise than that given on the application form.
4. The description of development in the heading above, and in the formal decision, has been taken from the planning application form which slightly differs from that on the Council's decision notice. In part E of the appeal form it is stated that the description of development has not changed and neither of the main parties have provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the application form.
5. This is an outline application with all matters reserved except for access. Appearance, landscaping, layout, and scale are reserved matters (RM) for future approval. I will proceed on the basis that details of appearance, landscaping, layout, and scale shown on drawing number 17-139-08-02 B, 17-139-08-10 B and 17-139-08-11 A are for illustrative purposes.

Background and Main Issues

6. The application subject of this appeal was submitted to the Council following the refusal of a previous planning application¹ to demolish the garage block and erect replacement garages with two apartments above. The previous planning application was refused because the Council considered that the scheme would result in an unacceptable level of massing and have an overbearing impact on surrounding residential properties.
7. The planning application, subject of this appeal, was recommended for approval but then deferred by members of the Planning Committee in order for a site visit to take place and for further information regarding manoeuvrability within the site for vehicles. The application was then subsequently refused.
8. The main issues, for this appeal, are the effect of the proposal upon:
 - i. Highway safety, having regard to vehicular access; and
 - ii. The living conditions of the occupants of surrounding properties, having regard to outlook and noise.

Reasons for the Recommendation

Highway Safety

9. The Council, and local residents are concerned that the development would result in a substandard form of vehicular access that would be injurious to highway safety. Paragraph 109 of the National Planning Policy Framework (the 'Framework') states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The Highway Authority's Officers did not object to the proposal, subject to a recommended condition relating to the driveway material.
10. The Council states that certain types of vehicles would not be able to safely enter and turn within the site, due to the access road not being wide enough. It is also concerned that the appeal site does not contain a footway and the development would result in an increase in use. I note that residents have also stated that parking is an issue within the area and Mark's Close is well used by pedestrians, including school children.
11. The appeal site is located to the rear of properties on Marks Close, Sundown Avenue and Stenson Road. The site is accessed by an existing access road from Mark's Close which currently provides the vehicle access to two blocks of garages and No. 358b Stenson Road. The appeal site comprises the eastern block of garages but does not include the garage block to the west. The proposed development would utilise the existing access which would not be altered. The indicative drawings indicate a new building with a footprint marginally wider than the existing garage block.
12. The Highway Authority's Officers indicate that, based on the indicative drawings, there would be sufficient space for vehicles to turn. Based on the available evidence I have no reason to reach a different conclusion. No substantive evidence has been submitted which demonstrates that the access arrangements would significantly alter and that vehicles would not be able to

¹ DER/11/17/01462

- enter and turn within the site. In any event, scale and layout would be dealt with under RM stage.
13. The Highway Authority also states that in highways terms, the proposal would be unlikely to lead to a significant increase in vehicular movements. Undoubtedly during the construction phase, there would be an increase in construction traffic. Nonetheless, the construction period would be for a temporary period only. In the longer term there would be an increase in traffic, however the increase would be minor because only one apartment is proposed.
 14. The access road currently does not include a footway. However, the footfall associated with the existing use of the site is limited given that the access road only serves the garages and No. 358b. One apartment would not result in a substantial increase in footfall. Therefore, the absence of a footway would not be a significant safety issue, having regard to the current arrangement.
 15. Scale and layout, including whether there would be a decrease in parking, would be assessed within a RM application. From the information before me, I am satisfied that there would not be an extensive increase in traffic accessing the site or parking demand. Accordingly, the development would not significantly reduce access to the adjacent garages, as alluded to by local residents.
 16. The access arrangement to No. 358b is unusual as the appeal site serves as the only means of access to the property. I understand that the occupier of this property owns a bouncy castle hire business and therefore require larger vehicles to gain access to their property. As stated above, details relating to layout and scale would be considered at RM stage. Nonetheless, I am satisfied that access to No. 358b would be satisfactory as the appeal scheme does not alter the current access arrangements.
 17. In terms of the proposals impact upon emergency services accessing the site and No. 358b Stenson Road, the proposed access is unaltered. The Committee Report indicates that in order to meet the requirements of Building Regulations a fire service vehicle would have to reverse part of the way up the highway, therefore the construction of the drive must be capable of accommodating a load of 12.5 tonnes and have a width greater than 3.7 metres. It also states that the width of the access is approximately 4 metres and suitable hard surfacing could be required under a condition.
 18. The Planning Practice Guidance states that conditions can enable development to proceed where it would otherwise have been necessary to refuse planning permission². Thus, I consider that the access would be acceptable because it is in excess of the 3.7m required to accommodate a fire service vehicle and can be required to be suitably surfaced by a condition. Furthermore, the access also already serves as the access for emergency vehicles to No. 358b. On that basis, there is nothing in the evidence before me to suggest that the access would not be suitable.
 19. Concerns have been raised that due to the nature of the site forming backland development, the access arrangements would not be wholly clear to visitors. However, backland development is not uncommon and visitors to No. 358b

² Paragraph: 001 Reference ID: 21a-001-20140306

would currently have similar issues. Therefore, I consider that the concerns in this regard are unfounded.

20. For the reasons above, the proposal would not have an unacceptable impact upon highway safety, having regard to vehicular access. Consequently, it would accord with Policies GD5 and H13 of the City of Derby Local Plan Review (2006) (LPR), along with Policies CP3, CP4 and CP23 of the Derby City Local Plan- Part 1: Core Strategy (2017) (CS) and the Framework. These Policies seek, amongst other matters, to promote good design and to ensure new development does not result in an unacceptable impact on highway safety.

Living Conditions

21. The Council states that the proposal would have an unacceptable level of massing and an overbearing impact on surrounding residential properties. It does not state which properties in particular it is referring to. Local residents are also concerned that the proposal would have a detrimental impact upon the living conditions of existing occupants.
22. The proposed development would result in a two-storey building, adjacent to the boundary shared with neighbouring properties. Nonetheless, the massing of the building along with its height, siting and the positioning of windows, would be considered at RM stage. In any event, the indicative drawings demonstrate that the proposal could be accommodated without having a detrimental impact upon the living conditions of surrounding properties. The indicative drawings show that windows could face into the site and roof lights could be utilised to avoid overlooking.
23. I note that residents have questioned whether restrictions could be implemented to prevent new windows. Conditions relating to the removal of permitted development rights, including new openings, are only used in exceptional circumstance and where there are clear reasons for imposing them. At RM stage, the Council would decide whether such a condition would be necessary.
24. In terms of whether the proposal would result in an increase in noise, during the construction phase it is likely that there would be an increase in noise and dust pollution. However, any effects from the construction period would be temporary. In the long term, the increase in noise would also not have an unacceptable effect on surrounding residents due to the scale of the development, and the fact that vehicles can already access the site.
25. For those reasons, the proposed development would not have an unacceptable impact upon the living conditions of the occupants of surrounding properties, having regard to outlook and noise. Accordingly, it would not conflict with Policies CP3 and CP4 of the CS, Policy GD5 of the LPR and the Framework. These Policies seek, amongst other matters, to ensure new development does not have an unacceptable impact on the amenities of neighbouring properties.

Other Matters

26. Local residents have raised a number of concerns regarding: the proposals impact upon the character and appearance of the area, refuse collection, asbestos, drainage, property values, land ownership, whether the flat would be freehold or leasehold and fear of crime. I note that the Council did not refuse the planning application on these matters. The objection comments are to

some extent anecdotal and have not been supported by any substantive evidence.

27. Matters such as the developments impact upon the character and appearance of the area and refuse collection would be assessed at RM stage. Nonetheless, even though the area is not characterised by apartments, the site is largely screened from the surrounding area and therefore the scheme would have limited visual impact upon the area. I note that the issue of setting a precedent for backland development has also been raised as a concern. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this regard.
28. I am also satisfied that there is sufficient space to store refuse bins within the appeal site and future occupiers could move them to Mark's Close on collection day.
29. The Council could impose conditions at RM stage in relation to asbestos and drainage for foul and surface water should they consider this to be necessary. I note that the Council has not suggested conditions relating to these matters at this stage.
30. Any effect of the development on property values is not a matter for me to consider as the planning system operates in the public interest and does not seek to protect private interests. Similarly, land ownership is not a planning matter and no substantive evidence has been submitted to demonstrate that the development would result in an increase in crime.

Conditions

31. Several conditions have been suggested by the Council. These have been assessed in light of guidance found in the Planning Practice Guidance and where necessary the wording has been amended for clarity and precision.
32. The conditions relating to the detailing of the RM and to accord with the approved plan are necessary for clarity. A condition is also necessary to ensure that the access is suitably surfaced so as to allow for access by emergency vehicles and in the interest of highway safety.
33. The Committee Report included a condition requiring the submission of a biodiversity scheme, but the Council has not included this within the list of suggested condition in the appeal statement. The Committee Report, and consultation response from Derbyshire Wildlife Trust (DLT) highlight that an ecology report was submitted with the planning application. The report found no evidence of bats or nesting birds, and the garage block is assessed as having negligible potential to support roosting bats. DLT found that sufficient survey work had been undertaken in support of the application. Therefore, based on the evidence presented, I am not satisfied that this condition would be necessary or reasonable.

Conclusion and Recommendation

34. For the reasons given above I recommend that the appeal should be allowed, subject to the imposition of all necessary conditions.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

35. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be allowed subject to the conditions attached.

Beverley Doward

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: 17-139-08-01.
- 5) No part of the development hereby permitted shall be brought into use until the access serving the site is surfaced in a hard-bound material in accordance with details to be submitted to and agreed by the Local Planning Authority. The surfaced drive shall then be maintained in such hard-bound material for the life of the development.