



Appeal Decision

Site visit made on 24 June 2020

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/M1005/W/20/3249150

Land adjacent to Thorpe Hill Drive, Heanor DE75 7DN

- 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 Futures Homescape Limited against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2019/0679, dated 24 June 2019, was refused by notice dated 15 November 2019.
 - The development proposed is erection of eight dwellings (affordable tenure).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the provision of open space in the area and on the character and appearance of the area.

Reasons

Loss of Open Space

3. The residential Thorpe Hill Drive is laid out as a square with dwellings around the perimeter and an axial road running through it, bisecting the square into two roughly equal areas of open space laid to grass.
4. This combined area of open space is not identified as a formal public open space in the Adopted Amber Valley Borough Local Plan 2006 (the Local Plan). However, Policy LC3 of the Local Plan indicates planning permission for development which would result in the loss of informal open space will only be granted if either a) it can be demonstrated that there is no demand for its continued use, either currently or in the foreseeable future, or that it will be replaced by alternative facilities, at least as accessible to current and potential new users, and at least equivalent in terms of size, usefulness, attractiveness and quality, or b) the proposals would not harm their individual character.
5. This is generally consistent with the National Planning Policy Framework (the Framework), which at Paragraph 97 states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless one of three criteria are met, including where an assessment has clearly shown the open space to be surplus to requirements. Accordingly, I afford Policy LC3 significant weight.
6. The proposed dwellings would replace the open space in its entirety. The appellant has provided an Open Space Assessment (OSA) which states that

there is a significant supply of open and recreational space within the immediate vicinity and accessible on foot from Thorpe Hill Drive, notably Shipley Country Park and Lockton Avenue Recreation Ground which mean the appeal site is surplus to requirements. I saw for myself that these are both accessible on foot from Thorpe Hill Drive and offer ample open space and other recreational facilities including pitches and children's play areas. However, the fact that there are other facilities nearby is not determinative evidence that there is no demand for the continued use of this specific open space, and in this regard I note that the Framework definition of open space is 'all open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.'¹

7. The appellant posits that there is little demand for use of the open space other than as a short cut to avoid walking around the perimeter of the square, and points to the lack of facilities or ecological benefits. However, whilst I note reference to a 'citizen's survey' being carried out as part of the OSA, the document contains no details of the results of this survey or its methodology. Against this, several interested parties attest to the longstanding presence of the open space since construction of Thorpe Hill Drive in the 1950s, and to its value as a safe, overlooked place for children to play and for the community to gather for social events. Representations also highlight the beneficial effects of an adjacent open space on mental health, particularly in light of the Covid-19 pandemic, and concerns that Shipley Country Park is too busy and unsafe at times. In these respects, I am mindful that the Framework places importance on achieving healthy, inclusive and safe places which promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other; which are safe and accessible; and which enable and support healthy lifestyles and local well-being needs.²
8. It is clear that the open space has been a constant feature of Thorpe Hill Drive for a long time, and from all I have seen and read, it is valued by those who live around it. Whilst I accept that it does not compare to the formal open spaces nearby in terms of space and facilities, it provides an immediately accessible and overlooked area for outdoor recreation, particularly for children, and community interaction. The benefit of this is enhanced by the sense of seclusion occupants enjoy due to the enclosed layout of the dwellings around the square, which would not be provided by nearby public open spaces. Moreover, the open space is a deliberate part of the layout of the square, providing a verdant focal point for all of the dwellings surrounding it and an open, bright and spacious outlook for residents which acts as a visual amenity and is likely to have indirect but nonetheless positive effects on well-being.
9. I am referred to an appeal decision in Somercotes³ from 2009 relating to land owned by the appellant where housing was permitted on an informal open space. However, I note in this case that various improvements to other areas of open space would be made to offset the loss of the appeal site. Moreover, plans of this site show it to differ in its size and position relative to surrounding development, and that there was a playground and allotment gardens abutting and directly opposite the appeal site. As such, I do not regard this example as

¹ Annex 2: Glossary

² Paragraph 91

³ APP/M1005/A/09/2106222

directly comparable and it is not determinative in respect of this appeal, which I have considered on its own merits and on the evidence before me.

10. Therefore, although it may not be in constant use, the evidence indicates that the open space still holds value for residents of Thorpe Hill Drive and it has not been demonstrated that there is no demand for its continued use or that it is surplus to requirements. The proposal would see the development of the open space for residential use which would not safeguard its future use or provide an alternative open space. The proposal would therefore result in the unjustified loss of open space which would have a significant adverse impact on the local community and amenity of the area, contrary to the requirements of saved Policy LC3 of the Local Plan and the Framework.

Character and Appearance

11. As I have set out, the open space forms a focal point of the square at the centre of Thorpe Hill Drive, onto which all of the dwellings face. This creates a unique arrangement which is both spacious when stood within the square and largely enclosed from the wider surroundings, factors which lend the square a tranquil, semi-private feel which contributes positively to its character. Moreover, despite some isolated alterations, the regular pattern of red brick semi-detached pairs has remained largely consistent in its appearance.
12. The proposed dwellings would be located to the centre of the square in two parallel rows fronting the axial road. Here, they would be inevitably prominent and would become the focal point for the surrounding dwellings, blocking the present vistas across the open space. As a result, the characteristic spaciousness of the square would be lost in its entirety, replaced by three parallel streets. The sense of openness would be further eroded by the inclusion of tall, solid fencing around the boundaries of the properties which would enclose the access roads in front of the existing dwellings.
13. Moreover, due to their shallower and wider footprints creating elongated pairs more akin in size to short terraces, along with shallower roof pitches and use of render to the upper storeys, the proposed dwellings would conflict strongly with the prevailing scale and form of surrounding semi-detached, red brick dwellings. The inclusion of deep windows to the upper storeys above small square windows would also result in an incongruous, top heavy appearance to the dwellings which would add to their discordant appearance when viewed against the largely consistent form of the immediate surroundings.
14. Therefore, due to the loss of established and distinctive open space, their discordant form and prominent siting, the proposed dwellings would significantly harm the character and appearance of the area. Consequently, the proposal would conflict with Policy LS3 of the Local Plan, which seeks to reflect the principles of good design, by conserving or enhancing the quality and local distinctiveness of the built environment; respecting the character of the locality in terms of the scale, layout and nature of development, and taking account of the relationship between the development proposals and neighbouring buildings, and the spaces between and around those buildings. There would also be conflict with Policy H12 which makes clear that the Council will resist the development of existing open land having amenity value, where the established use of the open land contributes to the visual character of the surrounding urban area, and where the provision of housing would be visually inappropriate.

Other Matters

Contamination/Prevention of Access

15. The appellant's ground investigation report indicated that concentrations of lead and zinc in the soil exceed criteria for public open space, and would need to be remediated whether or not the site is developed. The appellant states, however, that it would be unable to fund remediation in the absence of permission to develop the land and would have no option but to fence the site off and restrict access to protect the health of local residents. I note that the contaminants affect only a small part of the site and could be readily remediated through removal and replacement of the affected soil. However, the information before me does not indicate how much this would actually cost, whether, irrespective of the outcome of the appeal, the landowner would be required to remedy the situation under other legislation, or whether closure of the area would in fact be the only option in the absence of remediation.
16. However, even if access were to be restricted, and the appellant refers to erecting 1 metre high fencing under permitted development, the openness of the space and overall layout of the square, and its function as a visual amenity, would still be retained. As such, I am not persuaded on the evidence before me that this potential fallback scenario is materially worse than the appeal scheme itself and I afford it limited weight.

Affordable Housing

17. The proposed dwellings are promoted as affordable housing to address what the appellant terms a significant identified need, with reference made to a need for 2,200 affordable units between 2016 and 2028⁴ but to only 1,081 units having planning permission as of April 2019. However, this information is not sufficient to establish whether a shortfall in the supply of affordable housing exists. Moreover, beyond brief description of the dwellings being 'affordable rented tenure', it is unclear whether the dwellings would meet the definition of 'affordable housing' set out in the Framework, or how the dwellings would be secured as affordable housing. In the absence of a mechanism to secure this, namely a planning obligation, the dwellings would be capable of general occupation. Having regard to the Planning Practice Guidance⁵, the evidence before me does not indicate any exceptional circumstances which would justify use of negatively-worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into. Therefore, the lack of certainty as to the provision of affordable housing means I afford limited weight to it as a potential benefit in the planning balance.

Other Issues

18. The Council did not identify harm in respect of the effects on neighbours' living conditions, flooding and drainage, parking and highway safety or ecology. I have also had regard to concerns raised by interested parties in these and other matters not already addressed. Ultimately, the Council does not oppose the proposal on grounds other than those set out in the main issues, and taking account of the evidence before me, I have not identified other matters of such significance as to result in further benefits or harms to be factored into the planning balance.

⁴ Referencing the Derby HMA Strategic Housing Market Assessment: Amber Valley Addendum Update (Jan 2017)

⁵ Paragraph: 010 Reference ID: 21a-010-20190723

Planning Balance

19. The appellant does not dispute the Council's stated ability to demonstrate a five year supply of deliverable housing land. The appellant also accepts that policies most important to the determination of the application are in general conformity with the Framework, namely saved Local Plan Policies LS1 setting out the strategy for achieving sustainable development; H3 supporting housing within urban areas; and the aforementioned H12 and LC3. I agree that these policies are consistent with the principles of the Framework and despite their age, should still be afforded significant weight. Taking them together, I consider that the 'basket' of policies is not out-of-date for the purposes of Paragraph 11(d) of the Framework. Given this, the 'tilted balance' is not engaged in this case, and the proposal falls to be determined against the development plan, taking account of other material considerations.
20. The proposal would deliver the benefit of eight dwellings within a defined settlement where occupants would be able to access and contribute to local services and facilities by means other than the private car. This would make a contribution to achieving and maintaining the Council's overall housing supply, but as a five year supply of deliverable housing sites can be demonstrated, this benefit would attract moderate weight. As I have already set out, the absence of a mechanism to secure affordable housing means I afford only limited weight to this as an additional benefit.
21. There would be moderate economic benefits from the construction of the dwellings, though this would be a temporary benefit, and from subsequent use of local services by future residents. There would be minor environmental benefits from removal of contaminants, additional tree planting across the site and potential biodiversity improvements.
22. Set against these benefits, there would be significant social and environmental harm arising from the loss of the existing open space and the adverse effect of the proposal on the character and appearance of the area. Consequently, the proposal would not achieve the three objectives of sustainable development set out in the Framework.
23. In my judgement, the benefits of the proposal, taken together, would not amount to material considerations which would outweigh the identified conflicts with the development plan, to which I afford significant weight, and would not justify a decision being made other than in accordance with the development plan, taken as a whole.

Conclusion

24. Therefore, the appeal is dismissed.

K Savage

INSPECTOR