



Appeal Decision

Site visit made on 23 June 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/N1025/W/20/3246817

62-66 Wilsthorpe Road, Breaston, Derby DE72 3EB

- 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 Mr Ryan against the decision of Erewash Borough Council.
 - The application Ref ERE/1119/0008, dated 4 November 2019, was refused by notice dated 19 December 2019.
 - The development proposed is the erection of 3 detached bungalows with associated access and parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 3 detached bungalows with associated access and parking at 62-66 Wilsthorpe Road, Breaston, Derby DE72 3EB in accordance with the terms of the application, Ref ERE/1119/0008, dated 4 November 2019, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of the occupiers of the neighbouring properties at Nos 62 and 66 Wilsthorpe Road, with particular regard to noise disturbance and outlook.

Reasons

3. The proposal is to subdivide the long rear gardens of Nos 62 and 66 Wilsthorpe Road, both of which are large detached houses – there is not a No 64 – and to erect three 3-bedroom detached bungalows. The appeal site also takes in the strip of land between Nos 62 and 66 and part of their front gardens, which would be used to create a private driveway serving the proposed dwellings from Wilsthorpe Road. The driveway would be around 5.5m wide for most of its length, but would have a minimum width of approximately 4m between the flank walls of the two existing dwellings.
4. Given the proximity of Nos 62 and 66, and the layout of the site, the movements of vehicles entering and leaving the shared driveway would inevitably be heard by the occupiers of the existing dwellings. In terms of the number of vehicle movements which would arise, the appellant suggests that the proposed bungalows would be likely to be bought by older people looking to downsize, and who would therefore be less likely to need to drive to work or to drop off and pick up children than might be the case in other types of housing. Although this is a reasonable assumption it cannot be guaranteed, but

in any event I consider that the total number of vehicle trips arising from three modestly-sized bungalows is likely to be small. Furthermore, given the relatively narrow width of the drive, and the need to turn into or out of Wilsthorpe Road, drivers would be likely to be moving at low speeds, and this would lead to lower noise levels. As a result, in my view the noise disturbance arising from vehicle movements would be minor and would not cause serious harm to the living conditions of the occupiers of Nos 62 and 66.

5. It is proposed that the driveway would be separated from the retained front and rear garden spaces of Nos 62 and 66 by a close-boarded screen fence with concrete support posts, which would be around 2m high. This would be visible from the windows of the existing dwellings, and in particular would result in some loss of outlook from the nearest front-facing window and the rear conservatory of No 62. However, these both serve a large open-plan room, which would retain long open views both down the rear garden, and across the front garden towards the street, and the overall impact on outlook from that room would therefore not amount to serious harm. No 66 has a different arrangement of windows and internal living space, as well as a different relationship with the proposed fences because of the site's alignment. There would be a very limited impact on outlook from within that dwelling which in my view would not be harmful to the occupiers' living conditions. The Council's officer report also suggested that there would be a loss of outlook from the first floor rear bedrooms of Nos 62 and 66, but given their height above the proposed fence and their separation from the proposed bungalows I do not consider that the development would have any significant harmful effect on the outlook from those rooms.
6. In broad terms I am therefore satisfied that the installation of a boundary fence would not lead to a harmful loss of outlook for the occupiers of Nos 62 and 66. However, I am not persuaded that the fence at the front of the appeal site needs to be as high as the 2m proposed either to offer benefits in terms of noise mitigation or the protection of privacy for the existing occupiers, nor that a concrete post and timber panel fence of that height would necessarily be in keeping with the generally lower fences and walls used to separate front gardens in the surrounding area. I note that the appellant has indicated a willingness to consider alternative boundary treatments, and I agree that this is an issue which can be dealt with by condition.
7. My attention has been drawn to other cases in the wider area where infill developments accessed by driveways close between existing dwellings have been permitted, and at the time of my site visit I took the opportunity to see two examples close by on Belmont Avenue. Neither of those examples appears to have a driveway quite as narrow as that proposed in the case before me, although the differences in width are small. In neither case was there an unacceptable or harmful relationship between the driveways and the dwellings on either side, although given the apparent differences in site layout between those schemes and the proposal before me I consider that they provide only modest supporting weight. I have of course in any case considered the appeal proposal on its own merits.
8. I conclude that the proposed development would not be harmful to the living conditions of the occupiers of the neighbouring properties at Nos 62 and 66 Wilsthorpe Road, with particular regard to noise disturbance and outlook. It would therefore comply with the requirements of Policy 10 of the 2014 Erewash

Core Strategy and saved Policies DC1, H3 and H12 of the 2005 Erewash Local Plan (Amended 2014), which together seek to ensure that housing developments, including infill schemes, are well-designed, have satisfactory means of access, and do not adversely affect living conditions for occupiers of neighbouring properties. It would also comply with the requirements of the 2019 National Planning Policy Framework (the Framework), in particular Paragraphs 117, 118 and 122 in respect of making effective use of land, and Paragraphs 127 and 130 in respect of well-designed places.

Other Matters

9. The site is within the village envelope of Breaston, and the Council considers that the principle of the development is supported by the development plan. I see no reason to find otherwise. An interested party expressed concern about the effects of traffic arising from the proposal on highway safety on Wilsthorpe Road, but I note that the highway authority did not identify any adverse impacts upon highway safety or the surrounding highway network, and none of the evidence before me or what I observed at the time of my site visit leads me to a different conclusion. None of the other matters raised alters my overall conclusion.

Planning balance

10. The appellant has indicated that the local planning authority cannot demonstrate a deliverable five-year supply of housing sites. This is a matter which has not been addressed by the Council, and in the absence of evidence to the contrary I consider that the 'tilted balance' described in Paragraph 11(d) of the Framework is therefore engaged. This 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.
11. The proposed development would contribute to the supply of housing and there would be economic benefits arising in the short term from the construction of the dwellings, although the provision of only three dwellings means that both of these benefits would be limited. In the longer term, the future occupiers would be likely to use and support shops, businesses and other services in the local area, although again the scale of such benefits arising from three additional dwellings would be modest. Nonetheless, while the total benefits arising from the development would be small, I have not found that the development would have adverse impacts when assessed against the policies in the Framework taken as a whole. The requirements of Paragraph 11 of the Framework therefore indicate that planning permission should be granted.
12. Furthermore, as I have found that as the proposal would be acceptable in its effects on the living conditions of neighbouring occupiers, I have concluded that there is no conflict with the development plan. This adds weight to my overall conclusion that the appeal should be allowed.

Conditions

13. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance. Where necessary I have altered the ordering and proposed wording in the interests of clarity and effectiveness.

14. In addition to the standard time limit condition (1) I have specified the approved plans so as to provide certainty (2). Given the need to review the proposed fencing separating the proposed driveway from the existing dwellings' retained front gardens which I have described above, I have specifically excluded the concrete post and timber panel fencing at the front from the approved plans.
15. A condition requiring the new vehicular and pedestrian access to be created ahead of other elements of the scheme is necessary to ensure that the site can be safely accessed during the construction phase (3) The same condition requiring visibility to be retained, as well as others requiring redundant access ways to be removed (4), any gates or barriers to be installed in a location which would allow a waiting or parked vehicle to be clear of the highway (5), and residents' car parking areas to be completed ahead of occupation (9) are also necessary in the interests of highway safety. Conditions relating to the approval of materials (6), landscaping (7) and boundary treatments (8) are necessary to protect the character and appearance of the area.
16. I am mindful of the advice in paragraph 53 of the Framework that 'planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so'. Given the close relationship between the proposed dwellings and the surrounding neighbours' gardens, in order to protect privacy a restriction is necessary to prevent extensions involving roof alterations which could otherwise be carried out without planning permission. Restricting this specific permitted development right is clearly justified by the site and the circumstances of the case, and I have therefore imposed a condition accordingly (10). Other restrictions of permitted development rights were suggested by the Council but no clear justification was provided, and I have therefore not imposed wider restrictions.

Conclusion

17. For the reasons given above the appeal is allowed.

M Cryan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan at 1:1250, received by the local planning authority 04.11.2019;
 - Floor Plans and Elevations Plot 1 and 3, Type A, Drawing Number JR/PLG/BGS/01D, received by the local planning authority 04.11.2019;
 - Plans and Elevations Plot 2 Type B Bungalow, Drawing Number JR/PLG/BGS/02C, received by the local planning authority 04.11.2019;
 - Block Plan, Drawing Number JR/PLG/BGS/04, received by the local planning authority 04.11.2019;

except in respect of the 2m high concrete post and close-boarded screen fencing between the front elevations of Nos 62 and 66 Wilsthorpe Road and the site boundary with Wilsthorpe Road shown on the Block Plan (Drawing Number JR/PLG/BGS/04).

- 3) Prior to any other development commencing, a new vehicular and pedestrian access shall be created to Wilsthorpe Road in accordance with the application drawing JR/PLG/BGS/04, laid out, constructed and provided with visibility sightlines of 2.4metres x 43metres in both directions. The area within the sightlines shall be kept clear of any object greater than 1m in height (0.6m in the case of vegetation) above the nearside carriageway channel level.
- 4) Before any other operations are commenced (excluding creation of the new access, the subject of condition 3 above), the redundant part of the existing vehicular access to 62 Wilsthorpe Road shall be permanently closed with a physical barrier and the existing vehicle crossover reinstated as footway in accordance with details which have first have been agreed in writing with the local planning authority.
- 5) Notwithstanding the provisions of the Town and Country Planning Act (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order), any gates or other barriers to the vehicular access shall be set back a minimum distance of 5 metres from the highway boundary and shall be hung so as to open inwards only.
- 6) No construction above slab level shall commence until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No dwelling shall be occupied until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the

development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 8) No dwelling shall be occupied until a detailed scheme for the boundary treatment of the site, including position, design and materials (and to include all boundaries or divisions within the site) has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be completed before the first occupation of any dwelling hereby approved, or such other timetable as may first have been agreed in writing with the local planning authority.
- 9) No dwelling shall be occupied until space has been laid out within the site in accordance with the approved plans for the parking and manoeuvring of cars. That space shall thereafter be maintained as such and kept available at all times for those purposes.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order), no development of the type described in the following Class of Schedule 2 shall be undertaken without the express consent in writing of the local planning authority other than those expressly authorised by this permission: Part 1, Class B.

--End of schedule of conditions--