
Appeal Decision

Site visit made on 30 September 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/M1005/W/20/3255262

Land at 25-29 St Johns Road, Smalley, Ilkeston DE7 6EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by MAA Land Ltd against Amber Valley Borough Council.
 - The application Ref AVA/2020/0069, is dated 21 January 2020.
 - The development proposed is demolition of existing bungalow and erection of 10 dwellings with new access drive.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The Council have commented that had they determined the application they would have refused planning permission for the proposed development as they consider that it is a contrived and overbearing form of development with sub-standard garden depths which would result in loss of amenity, privacy and overlooking for the neighbouring properties, nos. 23 and 31 St Johns Road.
3. During the Council's consideration of the application, the proposed development was amended from 11 dwellings to 10 dwellings. I have considered the appeal as it relates to 10 dwellings and have amended the description of the proposed development accordingly.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of occupants of 23 and 31 St Johns Road with regard to outlook and possible loss of privacy.

Reasons

5. The appeal site is located to the rear of 25, 27 and 29 St Johns Road, on land that currently forms the rear gardens of these properties. It is located in a predominantly residential area where there is a mixture of property styles and sizes. The properties on this section of St Johns Road are made up of detached bungalows with notably large rear gardens with mature landscape features that have a slight slope in a down-slope direction away from the houses.

6. The proposed development involves the demolition of the existing bungalow, 29 St Johns Road, to allow for the creation of an access leading to the proposed dwellings.
7. I consider that the impact of the proposed development on 23 and 31 St Johns Road as it relates to plots 2 to 8 would not, due to the separation distances that would be maintained and scale of the development proposed, be unacceptable in relation to outlook and privacy. For these same reasons, these proposed dwellings would not have an overbearing impact.
8. Plots 9 and 10 are proposed two storey dwellings with roof space accommodation. The first-floor windows to the habitable rooms in the rear elevation would overlook the rear garden of 23 St Johns Road. It is not uncommon in residential areas for views into neighbouring gardens being permissible from the upper floors of properties. The Council's Supplementary Planning Document (SPD) for Residential Development outlines that garden depths of 10.5m should be provided. Although the garden lengths of plots 9 and 10 would fall slightly short of that required in the SPD, I consider that given the separation that would be maintained from the dwelling itself, combined with the landscape features within the rear garden, there would not be an unacceptable impact on the occupants of 23 St Johns Road with regard to outlook and privacy. Again, for these same reasons, these proposed dwellings would not have an overbearing impact.
9. In relation to Plot 1, this is a one and a half storey property. It is proposed to be sited almost right on the boundary with the rear garden of 31 St Johns Road. It would be significantly higher than the existing boundary hedge and the proposed boundary treatment. It would be clearly visible and highly prominent when viewed from 31 St Johns Road. Therefore, due to its size, scale and siting, I consider it would have an overbearing impact on the outlook from 31 St Johns Road. However, owing to the position of the habitable room windows in this property, I do not consider that there would be harm to the privacy of 31 St Johns Road.
10. I therefore conclude that the proposal, when considered as a whole, would have an unacceptable impact on the living conditions of 31 St Johns Road in relation to outlook. It would be contrary to Saved Policy H12 of the Amber Valley Borough Local Plan (2006) which requires, amongst other things, that housing developments do not unduly affect the amenity of adjacent properties.
11. The proposal would also be contrary to the requirement in Chapter 12 of the National Planning Policy Framework (2019) that development achieves a high standard of amenity for existing users.

Other Matters

12. The Council have outlined in their report that financial contributions would be required in accordance with the Developer Contributions Protocol (2020) to contribute towards education provision. The appellant considers that, as the development results in the net gain of 9 dwellings, such contributions are not required. I am not provided with any substantive evidence that would support the stance that, by reason of the amount of development proposed, it is excluded from the requirement for financial contributions.

13. The appellant considers that the requirement for such payments would challenge the viability of the scheme. There is no such viability assessment before me for me to concur with this viewpoint. The appellant also outlines how, when compared to other developments, they consider the requirement to be unjust and that the County Council lack any fixed guidance on establishing the level of contribution. I do not have full details to the background in relation to financial contributions on other schemes. Additionally, I do not find that the County Council lacks any fixed guidance in relation to developer contributions, although I accept that the published date of the Developer Contributions Protocol (18 September 2020) is after the date on which the appeal was made.
14. Nevertheless, the need for financial contributions, or otherwise, would not alter or outweigh the harm I have identified would be caused to living conditions, which is a matter of overriding concern.
15. The appellant has referred to other local housing developments which they consider to be similar to the appeal proposal. I do not have full details of all the cases, and whilst I acknowledge they demonstrate that developments of various densities, styles and sitings exist in the local area, I have determined the appeal on its own individual planning merits.
16. I accept that the proposal would make a valuable contribution to the District's housing supply without encroaching into open countryside. I consider that whilst this is a benefit of the proposal, the adverse impacts which I have identified, significantly and demonstrably outweigh this benefit.
17. The appellant has referred to difficulties they encountered with the pre-application process. I agree with the appellant that early engagement on development proposals is beneficial to all parties and accept that if this has not occurred for whatever reason, it would leave them feeling aggrieved. That said, it is not a ground on which I can allow the appeal.

Conclusion

18. For the reasons given above, and having had regard to all other matters raised, I therefore conclude that the appeal be dismissed and planning permission refused.

A M Nilsson

INSPECTOR