



Appeal Decision

Site Visit made on 16 November 2020

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

Appeal Ref: APP/R1038/W/20/3256734

127 Rotherham Road, South of The Angel Inn, Killamarsh, S21 2DR

- 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 J Cash against the decision of North East Derbyshire District Council.
 - The application Ref 20/00182, dated 21 February 2020, was refused by notice dated 17 April 2020.
 - The development proposed is a detached dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has cited policies in the emerging North East Derbyshire Local Plan 2014-2034 (the ELP) within its report and decision notice. While the ELP is at an advanced stage of preparation, I understand that it is subject to further consultation and thus possible amendment. I therefore afford those policies limited weight in this case. As a result, I have determined the appeal on the basis of the saved policies of the North East Derbyshire Local Plan, adopted November 2005, (the Local Plan) which forms part of the statutory development plan for the district.

Main Issue

3. The main issues in this appeal are:
 - The effect of the proposed development on the living conditions of the occupants of the neighbouring property at 127 Rotherham Road, with regard to their outlook; and,
 - Whether satisfactory living conditions would be provided for the future occupants of the proposed development, with regard to private amenity space.

Reasons

Living conditions of the occupants of 127 Rotherham Road

4. The appeal relates to the side garden of 127 Rotherham Road, a large two storey detached dwelling set back from the highway. Three north facing windows at No 127 look directly out over the appeal site where a two-storey detached dwelling is proposed. At first floor, two of the three windows serve two separate bedrooms. The third window is a large four pane patio door at

ground floor serving a living room. These windows provide the occupants with a good, uninterrupted outlook from these habitable rooms.

5. While the living room has a secondary outlook provided by a front facing bay window, due to their expanse, the glazed patio doors provide the principal outlook and main source of natural light to this room. The proposal would see a 2 metre high boundary fence located about 3 metres in front of the patio doors, with the proposed two-storey side elevation of the dwelling located approximately 4 metres in front of the patio doors.
6. Having considered the relationship between the glazed patio doors and the appeal proposal, it is apparent to me that the fence and side elevation of the proposed dwelling, in such close proximity, would harmfully dominate the outlook from these windows. This would result in an unacceptable loss of outlook from that room and in doing so would have a significant overbearing effect that would be harmful to the living conditions of these neighbouring occupiers.
7. The appellant argues that the function of the patio doors is to provide access to the garden and not to provide a view. It is a longstanding convention that the planning system does not protect private views. Nonetheless, 'outlook' is distinct from that of a private view as it provides relief from an otherwise oppressive sense of enclosure. Furthermore, while I acknowledge that the current occupants of No 127 do not object to the proposal, it is also important to have regard to the interests of future occupants.
8. With regard to the first floor bedroom windows, the north facing window serving the rear bedroom would not be affected by the proposal due to the positioning of the proposed dwelling, forward of the outlook from this window. The north facing window serving the front bedroom provides a secondary outlook to this room with its principal outlook provided by two front facing windows on the east elevation. As such, the east facing windows would maintain a suitable outlook for this room.
9. Taking these points together, I find that the proposed development would cause significant harm to the living conditions of the occupants of the neighbouring property at 127 Rotherham Road, with regard to their outlook. This would be contrary to Saved Policies GS5 and H12 of the Local Plan which together seek to protect the amenities of neighbouring occupiers and ensure adequate standards of privacy and outlook.

Living conditions of the future occupants of the proposed development

10. There is no dispute over the size of the proposed amenity space that would serve the new dwelling, but the Council is concerned that it would not be a private space. At my visit I was able to see that a north facing window that serves a first floor rear bedroom at No 127 looks out over the area where the outdoor amenity space is proposed for the new dwelling. This would afford direct views of the proposed amenity space and, given the close proximity of this window, future occupants of the proposal are likely to feel significantly overlooked. As a consequence, I find that the degree of overlooking would be overly intrusive and therefore this would result in a lack of privacy for future occupants.

11. Consequently, the proposed development would not provide satisfactory living conditions for the future occupants of the proposed development, with regard to private amenity space. In doing so, the proposal is contrary to Saved Policies GS5 and H12 of the Local Plan, the aims of which are set out above.

Other Matters

12. The appellant has suggested that in order to overcome the Council's concerns he would be willing to block up the north facing first floor bedroom windows at No 127, which is under his ownership. The appellant has indicated that they would accept the imposition of a 'Grampian' style condition to secure these changes to No 127. However, I do not have such a condition before me and therefore I cannot be satisfied that this would achieve the desired effect or indeed whether it would meet the tests set out in paragraph 55 of the National Planning Policy Framework. In any event, this would not overcome the harm I have found to the living conditions of the occupants of No 127, with regard to their outlook.
13. I acknowledge the appellant's assertions that the proposal would be in a sustainable location for housing and that it would not represent an unduly harmful addition to the streetscene. However, these matters do not outweigh the harm I have found in this case and therefore do not lead me away from my conclusion.

Conclusion

14. For the reasons given above, and taking all other matters into account, I conclude that the appeal should be dismissed.

Jeff Tweddle

INSPECTOR