



Appeal Decision

Site Visit made on 16 December 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2020

Appeal Ref: APP/C1055/W/20/3259798
34 Morley Road, Derby DE21 4QU

- 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 David Brooks against the decision of Derby City Council.
 - The application Ref 19/01492/FUL, dated 12 October 2019, was refused by notice dated 1 May 2020.
 - The development proposed is demolition of existing bungalow and erection of 4 No. dwellings with associated access roads.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on living conditions for the occupiers of No 36 Morley Road with particular regard to outlook, privacy and light; and
 - whether the proposal would be acceptable in terms of flood risk having regard to local and national policy.

Reasons

Living conditions for occupiers of No 36 Morley Road

3. The neighbouring bungalow at No 36 Morley Road has a bay window to its front elevation and glazed doors and windows to a ground floor rear projection, both of which sit in close proximity to the boundary with the appeal site. No 36 also has a rear garden of substantial depth which includes a patio area immediately to the rear of the dwelling on this neighbouring property.
4. The dwelling identified as '1' on the proposed plans would sit close to and would project significantly forward of the front elevation of No 36. The dwelling identified as '2' would sit in close proximity to the rear elevation and patio area serving this neighbouring dwelling. The overall mass and height of the dwellings including their sloped roofs, and extent to which they would project parallel with and in close proximity to the boundary with No 36, would be likely to be overbearing when appreciated from the nearest ground floor windows and patio area serving No 36.

5. Each of the proposed dwellings would incorporate rooms within the roof space including bedrooms, a bathroom and an en-suite. Means of outlook and light to these rooms would be provided by rooflight windows. From the evidence before me, I am not able to ascertain the precise height of these windows relative to the internal floor levels serving the respective rooms. Even if it could be demonstrated that the windows would be above eye level or that they could all be fixed shut or obscure glazed, the close proximity and proliferation of windows to the roof slopes facing No 36 would be likely to result in some perceived overlooking impact. This would compound the overbearing presence of the development relative to this neighbouring property.
6. The appellant suggests that if planning permission were to be granted, a condition could be attached requiring revised elevation drawings with a reduced number and size of windows. However, given the rooms within the roofspace include bedrooms, suitable means of outlook and light would need to be provided for future occupants. If windows to the bedrooms were to be provided to the gable ends instead for example, this would be a fundamental change to the design of the properties and would deprive those who should have been consulted from the opportunity to comment. I must therefore assess the scheme before me which, for the reasons set out, would result in material harm to neighbouring privacy.
7. The Council's reason for refusal also cites an overshadowing impact on No 36. I acknowledge the orientation of the development relative to the dwelling and curtilage of No 36 could have the potential to effect levels of sunlight in the afternoons. However, I have no substantive evidence before me, for example in the form of daylight and sunlight surveys, to persuade me that the development would have more than a marginal impact on levels of light for occupiers of No 36. Even so, this does not overcome the harm already identified.
8. I conclude that the development would have a significantly harmful effect on the living conditions of No 36 Morley Road with particular regard to outlook and privacy. In that particular regard, the development would conflict with the parts that seek to ensure that development does not cause unacceptable harm to the amenity of nearby areas including loss of privacy or overbearing effects in saved policies GD5 (Amenity) and H13 (Residential Development – General Criteria) of the City of Derby Local Plan Review (2006) and Policy CP3 (Placemaking Principles) of the Derby City Local Plan – Part 1: Core Strategy (2017) (CS).

Flood risk

9. Paragraph 155 of the National Planning Policy Framework (the Framework) states amongst other things that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Paragraph 158 of the Framework confirms amongst other things that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. It also confirms that the strategic flood risk assessment will provide the basis for applying the sequential test.
10. The appellant's Flood Risk Assessment (FRA) confirms that, according to the Environment Agency's Flood Map, the majority of the site is within Flood Zone

1. However, the FRA also confirms that an area to the south of the site is within Flood Zone 2 and that an area to the north of the site is within Flood Zone 3. The Council has also confirmed that the site is located within Flood Zones 2 and 3 of the Derby Strategic Flood Risk Assessment (SFRA). There is no evidence before me to dispute this and Paragraph 010 of the PPG confirms that SFRA's will be used to refine the information on the Environment Agency's Flood Map for Planning (Rivers and Seas).
11. Paragraph 067 under Table 3: Flood risk vulnerability and flood zone 'compatibility' of the Planning Practice Guidance (PPG) confirms that Table 3 does not show the application of the sequential test which should be applied first to guide development to Flood Zone 1, then Zone 2, and then Zone 3. The PPG also confirms that the sequential test can be skipped if a development site is wholly within Flood Zone 1. As set out above, the appellant's FRA confirms that the whole of the site does not fall within Flood Zone 1. Given that a sequential test has not been undertaken, it has therefore not been demonstrated that there are no reasonably available sites in the District that would be appropriate for the development in areas with a lower risk of flooding.
12. The application of the sequential approach to the whole of the site is particularly pertinent in this instance given the FRA confirms that some areas around the site entrance are at high risk of fluvial flooding and medium to high risk of pluvial flooding. Therefore, there is the potential that safe access and egress to the site would not be provided during a flood event. The proposals would increase levels of occupation on the site and therefore the number of people likely to be at risk. The appellant contends that measures could be incorporated to ensure that the development would be flood resilient and that changes to ground levels would ensure water could flow across the site without posing a risk to the development. However, the Framework and the PPG are clear that the exception test is only applied where it has been demonstrated that is not possible for a development to be located in zones with a lower risk of flooding.
13. The appellant has provided anecdotal evidence to suggest that the site, Morley Road and Lees Brook have never flooded in the time they have lived at the property. However, the modelled data which informs the Flood Zones in the Environment Agency's Flood Map and the SFRA provides the suitable evidence base on which decisions relating to future potential flood risk should be made.
14. I conclude that it has not been demonstrated that there are no available sites in areas at lower risk of flooding. In that regard the development would conflict with Policy CP2 (Responding to Climate Change) of the CS and the Framework.

Other Matters

15. The cost of renovating the existing dwelling is a personal matter for the landowner. The acceptability of the development in terms of other planning requirements including the efficient use of land, highway safety and ecology matters does not overcome the harm I have identified and the conflict with local and national policy under the main issues. Furthermore, even though the site is located within an existing residential area and close to services and facilities, development which results in the harm identified under the main issues does not represent sustainable development.

16. The appellant suggests that the development at Lees Bank, which shares a boundary with the appeal site, is in Flood Zone 3. I am not aware of the material considerations at the time that development was considered. I must have regard to the evidence before me, which for the reasons set out, would not accord with the requirements of national or local policy in respect of considering proposals within areas at higher risk of flooding.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

M Russell

INSPECTOR