



Appeal Decision

Site visit made on 16 March 2021

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Appeal Ref: APP/M1005/W/20/3259330

R/O 163 Derby Road, Ripley, Derbyshire DE5 8NQ

- 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 Andrew Ellis against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2020/0507, dated 3 June 2020, was refused by notice dated 6 August 2020.
 - The development proposed was originally described as 'Proposed addition of dormer windows to previously approved dormer bungalow. Reference – AVA/2020/0032'
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Decision

1. The appeal is allowed and planning permission is granted for construction of a dormer bungalow with dormer windows and associated parking, at R/O 163 Derby Road, Ripley, Derbyshire DE5 8NQ, in accordance with the terms of the application Ref AVA/2020/0507, dated 3 June 2020, and subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The address given on the application form, 'Land adjacent 1 Danesby Rise' differs from the 'R/O 163 Derby Road' address used on the appeal form and decision notice. I enquired with the parties who variously confirmed either address was acceptable to them. However, I note the Council's notifications on the application and appeal referred to 'R/O 163 Derby Road' and, for the sake of consistency, I have used this as the appeal site address.
3. Notwithstanding the description of development on the application form, it is clear from the appellant's submissions and plans, and the Council's approach to the application, that the proposal seeks permission for the whole dwelling including the dormer windows, and not only the windows themselves. I have dealt with the appeal on this basis and amended the description accordingly in the formal decision above, but have omitted the superfluous reference to a previous planning permission.

Main Issue

4. The main issue is the effect of the proposed dormer windows on the living conditions of neighbouring occupants, with respect to overlooking and privacy.

Reasons

5. The appeal site is a vacant plot formerly part of the rear garden of 163 Derby Road. Planning permission has been granted for the development of a dwelling

on the site, firstly in 2016¹ and most recently in 2020². The permitted scheme is a bungalow with first floor accommodation in the roof space, which would be served by rooflights and a window in the rear facing gable wall. This window would be obscurely glazed to prevent overlooking of the properties on Derby Road. The appeal scheme seeks to insert two dormer windows to the side roof slope instead of the rear facing window to serve a bedroom in a redesigned first floor layout.

6. The windows would face toward the rear of the garden of No 161 Derby Road at a distance of some 4 metres, and No 159 at a distance of some 10 metres. The Council refers to its Adopted Residential Development Supplementary Planning Document (SPD) (October 2007) which stipulates a separation distance of 10.5 metres from main windows to the boundary with adjacent properties' private space³. However, the Council refers in its delegated report and decision notice, seemingly in error, to a separation distance of 12 metres.
7. Both Nos 161 and 159 would be closer than the 10.5 metre separation distance. However, both gardens are long and rise up to the rear where they meet Danesby Rise. No 161 has a number of outbuildings which infill the rear section of the garden. From my observations, these appear to be ancillary structures typical of a domestic rear garden.
8. The dormer windows would permit views over these structures to the rear of the garden of No 161. However, these views would be of the solid roofs of the outbuildings and would not allow invasive views into them. The outbuildings extend for some distance down the garden of No 161 and, together with the tall boundary wall, they provide screening of the open parts of the garden that may be used for recreation by occupants of the dwelling. Views from the proposed windows toward this part of the garden would also be at an oblique angle and would not lead to a perception of being directly overlooked. In any event, the gardens are not wholly private as views are possible from the upper floors of adjacent dwellings on Derby Road. Any acute angle of view from the proposed dormer windows would be no more invasive than these existing views. Therefore, the windows would not lead to harmful overlooking of this neighbouring property.
9. No 159 has a large, flat roofed garage to the rear of the garden, and open parts of its garden are screened by the intervening structures in the garden of No 161. Therefore, I am satisfied that the proposed dormer windows would not lead to harmful overlooking of occupants of this property.
10. I acknowledge that there would be a technical breach of the Council's SPD guidelines. However, strict application of the standard would preclude all forms of windows to the side elevation of the proposed dwelling. The shortfall against the standard is minimal with respect to No 159 and whilst there is a greater shortfall in respect of No 161, this must be considered in the context of the particular proposal and site circumstances. For the reasons given, I find that the proposal would not create a significant overlooking or loss of privacy to occupants of the neighbouring properties of 161 or 159 Derby Road.

¹ AVA/2016/1347

² AVA/2020/0032

³ Section 12.1, third bullet point

11. Therefore, I find that the proposal would not cause unacceptable harm to the living conditions of neighbouring occupants. Consequently, there would be no conflict with saved Policy H12 of the Adopted Amber Valley Local Plan 2006, which requires housing development to not unduly affect the amenities or privacy of adjoining or adjacent properties, including through loss of light, overshadowing or overlooking. Neither would there be conflict with the National Planning Policy Framework, which at paragraph 127 states that development should ensure a high standard of amenity for existing and future users.

Other Matters

12. The Council did not refuse the proposal in respect of any other matter, including the principle of locating housing on the site and the dwelling's design. The recently approved permission remains extant and capable of implementation, and is otherwise the same as the scheme now before me. On this evidence, I have no reason to find harm in any other respect.

Conditions

13. The Council has provided a list of conditions, upon which the appellant has had the opportunity to comment. The appellant has also agreed in writing to those conditions which would be pre-commencement.
14. In addition to the time limit, a condition is required specifying the approved plans, to provide certainty.
15. Conditions requiring details of existing and proposed ground and finished floor levels, proposed external materials and finishes, proposed hard and soft landscaping and boundary treatments are all necessary to preserve the character and appearance of the area. The first of these is pre-commencement as it relates to the outset of works on site, and a later trigger for submission and implementation of details would render the condition ineffective.
16. In the interests of highway and pedestrian safety, it is necessary to impose conditions requiring alteration of the existing access onto Danesby Rise to provide adequate visibility splays, requiring the provision of the proposed off-street parking spaces and restricting the erection of gates or barrier to the driveway. The first of these is pre-commencement to ensure the safety of pedestrians during the construction phase.
17. Finally, the Council seeks restrictions on permitted development (PD) rights for extensions, roof alterations, porches and outbuildings. The Planning Practice Guidance states that conditions restricting the future use of PD rights may not pass the test of reasonableness or necessity and should be precisely defined. The reason given by the Council is to protect the character and visual amenities of the locality. Having regard to the particular arrangement of the site and the proximity of neighbouring properties, extensions and alterations under Classes A and B and curtilage buildings under Class E could lead to harm to the appearance of the buildings and/or the living conditions of adjoining occupants. I consider it necessary, therefore, to restrict these PD rights by condition.
18. However, Class C relates to the carrying out of relatively minor roof alterations, and Class D to the erection of small porches, with specific size and locational restrictions. I consider that development which could be carried out within the scope of these Classes would have a very limited effect on the character and

appearance of the area and the living conditions of nearby occupants.
Therefore, I have not restricted these particular PD rights.

Conclusion

19. Taking all matters into account, there are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, therefore, I conclude that the appeal should be allowed.

K Savage

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: AE1/11/15 Rev B (Site Location Plan, Block Plan and Proposed Ground Floor Plan); AE3/11/15 Rev A (Proposed First Floor Plan); AE12/11/15 Rev B (Proposed Elevations).
- 3) Notwithstanding the hereby approved plans, no development shall take place until such time as a scheme indicating proposed floor levels of all buildings, and the relationship of such to the existing dwellings has been submitted to and approved by the Local Planning Authority. The development shall thereafter be constructed in accordance with the agreed levels.
- 4) Before any other operations are commenced, the existing access to Danesby Rise shall be modified in accordance with details first to be submitted and agreed in writing by the Local Planning Authority; laid out, constructed and provided with visibility splays by 2.4m x maximum achievable over the entire site frontage in both directions, the area in advance of the sightlines being maintained clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.
- 5) No development shall take place to the external walls above slab level, or to the roof of the dwelling, until there has been submitted to and approved in writing by the Local Planning Authority details and/or samples of the materials and finishes to be used for the external elevations and roof of the dwelling. The development shall thereafter be carried out in accordance with the approved materials and finishes.
- 6) Prior to the occupation of the development hereby approved, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing indicated on the approved landscaping scheme 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 five 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, unless the Local Planning Authority gives written consent to any variation.
- 7) The dwelling hereby permitted shall not be occupied until full details of the proposed treatment of the boundaries of the site has been submitted to and approved by the Local Planning Authority. Any agreed scheme shall be implemented in full in accordance with a phasing scheme prior to the occupation of the development. A 2 metre high close boarded fence on the rear boundary of the site shall be included as part of any boundary treatment agreed. The approved boundary treatments shall thereafter be retained for the life of the development.

- 8) The dwelling hereby permitted shall not be occupied until space has been laid out within the site in accordance with drawing AE1/11/15 Rev B for vehicles to be parked. That space shall thereafter be kept available at all times for the parking of vehicles.
- 9) No gates or other barriers shall be erected at any time across the access/driveway.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) no development relating to Classes A, B or E of Part 1 of Schedule 2 (erection of extensions, curtilage buildings etc) shall be undertaken without the prior written approval of the Local Planning Authority.

End of Schedule