



Appeal Decision

Hearing Held on 27 April 2021

Site Visit made on 28 April 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 June 2021

Appeal Ref: APP/C1055/W/20/3265822

252-256 Normanton Road, Derby DE23 6WD

- 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 Maboob Ahmad (Construction Wise Limited) against the decision of Derby City Council.
 - The application Ref 20/00620/FUL, dated 4 June 2020, was refused by notice dated 10 July 2020.
 - The development proposed is Change of Use to D1 Dental Surgery forming extension from neighbouring property. Erection of 3 storey extension to rear of property.
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Decision

1. The appeal is allowed and planning permission is granted for Change of Use from retail and residential to Dental Surgery together with erection of 3 storey extension to rear of property at 252-256 Normanton Road, Derby DE23 6WD in accordance with the terms of the application, Ref 20/00620/FUL, dated 4 June 2020, and the plans numbered AR-C-0020, AR-EX-0001 Rev A and AR-AL-0004 Rev A, subject to the following conditions:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the premises shown on drawing reference AR-AL-0004 Rev A shall only be used as a Dental Surgery, as specified in the application and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended).
 - 2) The windows and doors situated within the south and west elevations of the extension hereby approved shall at all times hereafter be glazed in obscure glass (to a rating of 5 on the Pilkington Scale) and the windows shall be non-opening below a height of 1.7 metres measured from the internal finished floor level.

Procedural Matters

2. At the hearing the main parties agreed that the site address should include Nos 252-256 Normanton Road, as this more accurately reflects the location of the appeal building. I have therefore determined the appeal on this basis.
3. Despite the description of development set out in the banner heading, I consider that the description should reflect the details outlined in the Statement of Common Ground (SOCG). However, I have omitted the term 'retention' as the matter of the appeal scheme being retrospective is not itself

an act of development within the meaning of S55 of the 1990 Act¹. Moreover, the use of the building has already commenced and a three-storey extension has been constructed. I have also omitted the references to the specific use classes because there are unnecessary and I have considered the proposal as Dental Surgery. The development proposed is therefore for 'Change of Use from retail and residential to Dental Surgery together with erection of 3 storey extension to rear of property'. I have dealt with the appeal on the basis of this revised description and the development shown on the proposed plans and elevations referenced: AR-AL-0004 Revision A.

4. Following the refusal of permission, the Council identified in its Statement of Case that the windows were, at that time, not obscure glazed, but they have since been obscure glazed. Along with the other concerns identified on the Decision Notice, these matters were discussed at the hearing, particularly in respect of the effect on the living conditions of neighbouring occupiers.

Main Issues

5. The main issues are: -
 - the effect of the proposed development on the character and appearance of the existing building and surrounding area;
 - the effect of the proposed development on the living conditions of neighbouring occupiers in Lyndhurst Street, with particular regard to outlook and privacy; and
 - the benefits of the proposed development.

Reasons

Character and Appearance

6. The appeal concerns the three northernmost properties within a Victorian terrace to the western side of Normanton Road, containing shops and other commercial buildings. These incorporate a diverse and eclectic mix of signage, awnings, goods for sale, and sounds and smells, all of which creates a vibrant streetscape. The buildings in the locality are generally terraced and of two storeys with traditional pitched roofs, some of which have attic rooms, and there is a scattering of three storey buildings. Normanton Road is the principal street, with secondary streets to the east and west served from it, including Lyndhurst Street, which serves the terraced houses arranged perpendicular to the west of the site.
7. The rear façades of most terraces nearby feature numerous forms of projections. While these vary in appearance, they are generally utilitarian with traditional pitched roofs and consistently domestic in scale, being recessive to the principal buildings they serve. There is also some variance to the palette of materials utilised, including render and painted brickwork, but red brick and tiles are most commonplace.
8. The land immediately north of the site and the gardens of the houses in Lyndhurst Street is elevated above them and enclosed by a tall retaining wall. Above this is the flank elevation of large retail units clad in dark blue brick and light-coloured metal sheeting. Given their position, scale, utilitarian form and

¹ Town and Country Planning Act 1990.

- appearance, these units contribute negatively to the character and appearance of the area. From the evidence before me, it is clear that the pre-existing rear projections to the appeal building were comparable in scale to those to the south and would have been visible against the backdrop of the retail units.
9. There is limited public visibility of the appeal scheme from Lyndhurst Street but, due to its relationship with the houses in that street, it is visible from their gardens. While it does have a somewhat utilitarian appearance, its scale, roof form and materiality are in contrast to the characteristics of the neighbouring buildings and their smaller-scaled rear projections. Moreover, due to its scale, it appears cramped in comparison to the relatively small coverage of the site and the pre-existing buildings therein.
 10. Although there are some flat roofs in the locality, the height and scale of the extension and the extent of flat roof and its attachment to the original roof of the appeal building mean it is neither recessive nor complementary to it or the predominant characteristics of the principal roofs of buildings in the locality. It therefore dominates the rear of the appeal building, leaving it unrecognisable and providing no clear signposting of its evolution. The extent of render used in its construction also means that the extension appears more dominant and prominent than the corrugated metal sheeting of the retail units or the painted brickwork and render found on the other rear projections nearby.
 11. At the hearing, the main parties agreed that the proposal is not harmful to the Normanton Road frontage. Given the relatively narrow glimpsed view of the rear extension available from that road, I have no reason to come to a different view. I also acknowledge that neighbours of the site have not objected to the extension, but the lack of objections from neighbours and the absence of harm to the character and appearance of Normanton Road are not considerations that outweigh the harm I have identified above.
 12. In light of the above, I conclude that the proposed development fails to achieve high quality design and has an unacceptably harmful effect on the character and appearance of the existing building and the localised views available of the development from Lyndhurst Street and the gardens of the houses situated there. Hence, the proposal conflicts with the design aims of Policies CP3 and CP4 of the Derby City Local Plan - Part 1: Core Strategy (2017) (the CS) and paragraphs 124 and 130 of the National Planning Policy Framework (the Framework). Given the localised nature of the harm that I have identified, I afford this conflict with the development plan moderate weight.

Living Conditions

13. The extension partly conceals the retaining wall and flank elevation of the retail units to the north, but it has replaced a much smaller rear extension and projects above the eaves of the retail units, bringing development in Normanton Road closer to the houses in Lyndhurst Street. Moreover, despite the use of light-coloured materials, windowing and a staggered rear elevation, the extension has added considerably to the scale and mass of built forms that enclose the gardens of these houses.
14. I appreciate that the pre-existing outlook from the gardens would not have been of the highest quality, particularly Nos 1-7, which are also enclosed by the retaining wall and retail units, but many of the houses incorporate

extensions to the rear, which cover large areas of the garden. This means that the furthest extent of their gardens is more important.

15. The additional harm caused by the oppressive and imposing nature of the appeal scheme, also in close proximity of the gardens, could not therefore be justified, as the outlook from the gardens is far worse. Some occupiers will be more likely than others to use their gardens during the week, particularly if they work from home or want to sit out in the early evening summer sun, and they are unlikely to have a blinkered view directly north or south from their gardens to avoid views of the appeal scheme. The absence of objections from these occupiers would not equate to an absence of harm, which I have clearly identified. I do accept, though, that the effects of this relationship diminish with distance, particularly those houses with gardens beyond the retail units.
16. In terms of the outlook from the houses themselves, while the extension is likely to be visible from the rear of these houses, it is sufficiently separated that there would be very limited harm to the outlook from them. Similarly, the windows within the development are in an elevated position facing neighbouring houses and gardens in two directions, but the windows have all been fitted with obscure glazing to ensure that there is no visibility through them. While I note the Council's concerns regarding the perception of overlooking, given the specific circumstances of this case, a precautionary approach would be an unreasonable one given the opacity of the windows within the building.
17. I am mindful that the Pak Foods supermarket and its separate storage building are tall buildings sited in close proximity of neighbouring gardens and I also observed the presence of other tall buildings arranged to the rear and side of other properties in the locality. However, it appears that these are longstanding arrangements associated with the original layout of houses and commercial buildings. Some of these relationships undoubtedly have a harmful impact on neighbouring occupiers, but their existence would not provide justification for a further development that I consider would be harmful to the living conditions of neighbouring occupiers of the site.
18. For the reasons outlined above, I conclude that the proposed development would have an unacceptably harmful effect on the outlook from the gardens of neighbouring occupiers in Lyndhurst Street. Hence, the proposal conflicts with the aims in relation to living conditions expressed in saved Policy GD5 of the adopted City of Derby Local Plan Review (2006) and paragraph 127 of the Framework. Given the nature of the harm that I have identified, I afford this conflict with the development plan considerable weight.

Benefits of the Proposed Development

19. The appeal site is situated within Normanton, a densely populated and ethnically diverse part of Derby, the population of which is one of the most deprived in England in respect of education, employment, and health. Access to private healthcare, including for oral health, is inhibited by the low income of the majority of residents, particularly in respect of households with children.
20. The appellants explained at the hearing that the dental practice, and others in Normanton that offer NHS care, were at capacity prior to the construction of the appeal scheme. The additional accommodation provided through the appeal

scheme was therefore in response to this and has delivered new and improved facilities, predominantly in surgery space.

21. While these have undoubtedly improved the overall patient experience, it is the extent and nature of accommodation that is of greatest benefit to the oral health of the people of Normanton, particularly those most greatly affected by deprivation in this area, but also other persons using the practice that live further afield. The appellants confirmed that new scanning and milling/grinding equipment could not have been accommodated within the existing building, except at the expense of surgery space.
22. The surgery time gained through the reduction in waiting times and repeat visits, and the quality of service provision, represent significant social and economic benefits to the local community and people of Derby and Derbyshire.
23. At the hearing, the appellants confirmed that, with the exception of dentists, most staff at the dental practice are and would continue to be employed from the local area. Although there is no mechanism to ensure this, given that there is limited on-street parking available in the vicinity of the site, it is likely that the majority of staff would travel by public transport or other means from the local area or elsewhere within Derby. Nonetheless, given the extent of the increase in staff employed through the appeal scheme, this would only be a social and economic benefit of moderate weight.
24. I also appreciate that, in the face of a national shortage of dentists and dental nurses, the provision of high-quality facilities for staff, alongside the training and development previously offered, is likely to improve staff retention at the practice and ensure that valuable services are maintained for the local community. Furthermore, the training extends to dentists and nurses that could serve other practices in Derby and further afield, which is also an important facet of the improved facilities available. These would therefore amount to social and economic benefits of significant weight.
25. I note that policy MH1 of the CS sets out the basis for infrastructure and developer contributions and refers to health. While the Council suggested at the hearing that this could include contributions to dental services, consultations with health service providers only currently extend to General Practitioners. There do not therefore appear to be any procedures in place to secure investment in such infrastructure through developments, so there would be a reliance on the private sector to deliver this, through developments such as the appeal scheme. This adds further weight to the benefits outlined above.
26. The Council has suggested that the benefits of the scheme could also be achieved with a scheme that would not be harmful in other respects. While it may be possible to house the accommodation within the appeal scheme in another form and to a different design, it is my responsibility to consider the individual merits of the appeal scheme in relation to the relevant policies and evidence before me.

Planning Balance

27. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.

28. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the character and appearance of the existing building and surrounding area; and the living conditions of neighbouring residents in Lyndhurst Street, with particular regard to outlook. As I outlined above, I have afforded moderate and considerable weight to the conflict of these harms with the development plan.
29. The other considerations which I have outlined above, are primarily benefits of the appeal scheme, and taken together these amount to substantial public benefits in respect of the contribution they make towards promoting social inclusion and reducing deprivation, as required by Policy CP21 of the CS. I also note that the Council accepts that the appeal scheme meets local service needs and supports and strengthens the vitality, viability, and social function of the District Centre within which it is situated, as required by Policies CP12 and CP21 of the CS.
30. Despite the harm to character and appearance and living conditions, the extent and varied nature of the social and economic benefits associated with the proposal are cumulatively of such significance that they would outweigh the harms that I have identified, and would lead to an overall conclusion that the appeal scheme accords with the development plan when considered as a whole. This would therefore justify the grant of planning permission.

Conditions

31. The works have already been carried out and the main parties agreed at the hearing that the 'as built' development is as shown on the application drawings. Therefore, I have not included the standard time or plans conditions but, for clarity, I have referred to the approved plans in the effective part of the decision.
32. The dental practice has been established at the appeal site and serving the local community over an extensive period of time. While the appellants have indicated that there is no desire for them to move from the site, given my findings in relation to the importance of the additional accommodation that will be provided for dental care, it would be necessary to ensure that the premises remain in use as a dental surgery, as the proposal would be unacceptable otherwise. This can be controlled by a planning condition to restrict permitted changes to the other uses contained in the same Use Class, but this could not include the ground floor of No 256, which is in separate use as a shop. For the purposes of clarity, I have amended the condition set out in the SOCG to refer to the premises shown on the proposed plan.
33. All of the windows and doors within the extension have already been obscured to a rating of 5 on the Pilkington Scale of opacity. However, in the interests of the privacy of neighbouring occupiers, a planning condition is still reasonable and necessary to ensure that they remain obscure glazed to this standard for the lifetime of the development; and shall be non-opening below a height of 1.7 metres measured from the internal finished floor level. I have therefore altered the timing and wording of the condition agreed by the main parties in the SOCG to this effect and omitted the tail piece requiring alterations to be approved by the Council, as this would circumvent the statutory route to vary the condition, depriving third parties of the opportunity to comment.

34. At the hearing, the Council suggested the use of a planning condition controlling the hours of opening and when certain parts of the building could be utilised, in order to reduce the perception of people overlooking. However, for reasons outlined above, this would unnecessarily restrict the operation of the business and, in any event, it is unlikely that such a condition would be enforceable, as it would require regular inspection of the occupancy of certain rooms of the building. A general restriction on operating hours would also not be reasonable in the context of there being no concerns identified by the Council in respect of any noise and disturbance associated with operation of the business.

Conclusion

35. The proposal would accord with the development plan taken as a whole and there are no material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be allowed.

Paul Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Maboob Ahmad (Construction Wise Limited) Appellant

Mr Iain Orme (M & O Architects) Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Bate Senior Planning Officer, Derby City Council, BSc (Hons) RTPi and Recognised Practitioner in Urban Design.

DOCUMENTS SUBMITTED AT THE HEARING

DOC1 – Statistics on Patients treated prior to and during the Covid-19 outbreak

DOC2 – Existing Photographs

DOC3 – Policy MH1 of the Council's Core Strategy