
Appeal Decision

Site visit made on 27 July 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th August 2021

Appeal Ref: APP/N1025/W/21/3269549

31 Shaftesbury Avenue, Sawley NG10 3FG

- 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 Paul Murfin, P J Developments against the decision of Erewash Borough Council.
 - The application Ref: ERE/1220/0002, dated 30 November 2020, was refused by notice dated 4 February 2021.
 - The development proposed is the demolition of garage and outbuildings, erection of a single storey dwelling and the creation of a new access; reconfiguration of the existing access and drive to no.31 Shaftesbury Avenue; associated hard landscaping and infrastructure works.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Paul Murfin, P J Developments against Erewash Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The revised National Planning Policy Framework (Framework) has been published during the course of the appeal. In the interests of fairness, the appellant and the Council were given the opportunity to comment on this matter. I have considered the revised Framework in my decision.

Main Issues

4. The main issues are the effect of the proposal on (i) the character and appearance of the area; and (ii) the living conditions of the occupiers of 29 Shaftesbury Avenue (No 29) by way of light.

Reasons

Character and Appearance

5. 31 Shaftesbury Avenue (No 31) is a corner plot that is located where Shaftesbury Avenue and Northfield Avenue meet. Where the proposed single storey dwelling would be sited comprises part of the rear and side garden of this residential property, as well as an associated garage and outbuilding.

6. No 31 is untypical in its immediate surroundings in that it forms one of a prominent pair of semi-detached houses that are set at an angle to the corner of the two roads. The remaining properties are more typical in their arrangement in that they face more directly onto their frontages, in particular on Shaftesbury Avenue where the proposed single storey dwelling would form part of the streetscene. There are a wide mix of house types which are located in fairly close proximity to one another. There is also the occasional bungalow.
7. The unusual arrangement of the appeal site would result in the proposed single storey dwelling itself being set at an angle to the existing property at No 31. Such a jarring effect would be apparent in terms of where the existing and proposed dwellings would be viewed from the site frontage. Moreover, such an effect would also be evident as the site is approached from further along Shaftesbury Avenue because the proposed single storey dwelling would be seen against the larger backdrop of the existing house. It would be clear that the 2 properties would not be aligned.
8. As a consequence, the proposal would not sit comfortably in these surroundings and so it would appear cramped. When its single storey form is considered with its relationship to the existing dwelling at No 31, it would interrupt the established street pattern. This would be considerably more marked than the existing garage and outbuilding because they are appreciated differently as ancillary structures to No 31.
9. The appellant has drawn my attention to the other bungalows on Shaftesbury Avenue. These lie on more conventional infill plots between houses that are not noticeably angled to one another. Hence, they do not share the same site characteristics as the appeal site. Other examples of developments that I have been referred to that are not on Shaftesbury Avenue do not appreciably inform an appraisal of the proposal because they relate to different street scenes.
10. With regard to the scheme that was the subject of the previous appeal decision¹ on the site, this concerned a two storey, not a single storey, dwelling. Thus, the awkward relationship with the existing house that I have identified would not have been so plain with both properties being of a two storey height. Inferences that have been drawn from that appeal decision over whether or not the proposal would be a cramped form of development are not drawing a sufficient distinction, in my view, between the previous scheme and the proposal that is the subject of my decision.
11. That the proposal adheres to the existing building line compared to the previous scheme also does not address the harm to the local character that I have identified. The same applies concerning that the spacing and open aspect to the side of the property is not a defining characteristic of the immediate surroundings. In appraising the character and appearance issues which concern the proposal before me, the findings of the appeal decision do not change my conclusion.
12. The revised Framework has also placed a greater emphasis on well-designed development. That the site is not the subject of a protective designation and that there is no character appraisal or local design guidance does not substantively diminish from the emphasis that the revised Framework places on high quality buildings and places.

¹ Appeal ref: APP/N1025/W/20/3253703

13. I conclude that the proposal would have an unacceptable effect on the character and appearance of the area. As such, it would not comply in this regard with Policy 10 of the Erewash Core Strategy (2014) and with Saved Policy H12 of the Erewash Local Plan where they are concerned with that all new development should be designed to make a positive contribution to the public realm and sense of place, street patterns and the positioning of buildings, and housing developments that are in scale and character with their surroundings. It would also not accord with the revised Framework where it concerns character and appearance matters.

Living Conditions

14. The side elevation of No 29 faces towards the appeal site. This part of the boundary is well enclosed by fencing. There is a short distance from the side elevation to the shared boundary formed by an access path. There are two facing windows on the side elevation at ground and first floor levels. The ground floor window is the sole external opening for a tv/living room.
15. The appellant's Daylight and Sunlight Study concludes that the development would have a low impact on the light receivable by its neighbouring properties. This is on the basis that all neighbouring windows that have a requirement for daylight or sunlight would pass tests that are set out in Building Research Establishment (BRE) guidance². I have also been made aware that the layout of No 29 has changed from the information sources cited in the Daylight and Sunlight Study in that the tv/living room formed part of a larger room which also benefitted from a further window. An interested party has also referred to their own commissioned study, although limited technical details have been provided.
16. In any event, an assessment of the effect on light is not solely dependent on BRE guidance, as it is a matter of planning judgement. Light to the window is already compromised by the proximity of the fence in particular. The height of the side wall of the proposal nearest the ground floor window would not be significantly greater than the fencing itself at around a metre (m). The roof would then further angle away from the boundary. Even though the side wall of the proposal would itself be close to the boundary, this would not result in an oppressive effect due to its siting, depth and height. Nor would there be an undue effect on the first floor window with the single storey form of the proposed dwelling.
17. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of 29 by way of light. As a result, it would comply in this regard with Policy 10 and Saved Policy H12 where they are concerned with the effect on living conditions, including the impact on the amenity of nearby residents or occupiers. It would also accord with the revised Framework where it concerns a high standard of amenity for existing and future users.

Other Matters

18. The proposal would be in an accessible location as regards local services, contribute towards housing supply and stock, and there would be some economic gain in relation to construction and with the use of the services. As

² BRE, Site Layout Planning for Daylight and Sunlight: A guide to good practice, 2011

one additional dwelling would result, though, such benefits would be of a limited nature and would not outweigh the harm to the character and appearance of the area. With the nature of the harm, there would not be an environmental benefit.

19. The Environment Agency has referred to the need for the floor levels to be raised to 31.48 m Above Ordnance Datum, which the appellant has acknowledged would be a 0.68 m increase. Whilst I note the justification why such an increase should not be required, I am also mindful of the potential impact of flooding if the defences were to be breached or overtopped. However, as I am dismissing the appeal on other grounds, this matter does not affect my overall conclusion and so I have not considered it any further. The same applies in relation to a number of other concerns that interested parties have raised.
20. The appellant has also drawn my attention to the recommendation of the Planning Officer to the Council's Planning Committee. I have based my decision on the totality of the evidence and on the planning merits of the proposal.

Conclusion

21. The effect on the character and appearance of the area would be unacceptable and is decisive. Accordingly, I conclude that the proposal conflicts with the development plan when taken as a whole and there are no material considerations to outweigh this conflict. Therefore, the appeal should be dismissed.

Darren Hendley

INSPECTOR