



Appeal Decision

Site visit made on 6 December 2021

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2022

Appeal Ref: APP/M1005/W/21/3279110

Land at Fisher Lane, Fisher Lane, Duffield, Belper DE56 4ET

- 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 Kevin Freestone against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2020/1086, dated 17 November 2020, was refused by notice dated 12 April 2021.
 - The development proposed is a new residential dwelling on vacant previously developed (brownfield) land.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to privacy, outlook and light; and
 - b) whether satisfactory living conditions would be provided for future occupiers of the proposed development, with particular regard to garden provision.

Reasons

Living Conditions of Neighbouring Occupiers

3. The appeal site is a small parcel of overgrown land on Fisher Lane close to the junction with Tamworth Street. 6 Tamworth Street is sited opposite the appeal site across the narrow, single lane highway. A Juliette balcony would serve the living room of the proposed dwelling although, as it would be angled towards what appears to be a parking area for No 6, it raises no concerns in terms of overlooking. However, the further windows proposed to the living room and bedrooms would be sited within very close proximity to two first floor windows of No 6, which appear to serve a habitable room, and would not be positioned at an oblique enough angle so as to prevent future occupiers of the development from looking directly into the neighbouring room. Therefore, the proposal would result in an invasive loss of privacy for occupiers of No 6.
4. The proposed dwelling would also be sited within very close proximity to a first floor window on the side elevation of 8 Tamworth Street. The evidence before me is contradictory in terms of whether or not the affected room at No 8 is served by another window. Nevertheless, even if there is a secondary window providing an outlook, the limited space between the proposal, its overall

massing and considerable height of its side elevation would cause it to be an oppressive addition that would create an overbearing sense of enclosure and uninviting outlook for occupiers of No 8, and would also significantly reduce the amount of light reaching the affected room.

5. It has been suggested that the proposed relationship with No 8 has previously been established due to the presence of an earlier building on the appeal site. I do not know the full details of any previous built form thus cannot be certain it is directly comparable to the proposal before me. Moreover, I have determined this appeal on its own merits taking into consideration the existing context and circumstances.
6. Immediately to the north east of the appeal site, at a higher level due to the topography of the locality, is a small parcel of land which appears to be used as a shared garden for the adjacent terraced dwellings. At the time of my visit the garden appeared to be well maintained with a seating area, outbuildings and space to dry clothes. It has an open aspect across the highway and the appeal site. Although the proposed dwelling would be set back within the site and partially cut into the sloping site, the side elevation along the boundary with this garden space would nevertheless be within very close proximity and would be of a substantial height and length. It would therefore be overbearing and, despite its curved design, would result in significant overshadowing of the garden for a considerable part of the day. This would cause the small garden to feel exceptionally enclosed, resulting in an unpleasant space for residents to spend time in.
7. I acknowledge that the urban grain in the locality is dense, with properties sited close to one another. However, this arrangement of built form does not justify or overcome the harm I have identified above.
8. Accordingly, the proposed development would harm the living conditions of neighbouring occupiers in terms of adversely affecting their privacy, outlook and light. It would therefore conflict with Policy H12 of the Amber Valley Borough Local Plan (2006) (the LP) and the Supplementary Planning Document, Residential Development, October 2007 (the SPD) which collectively seek to ensure, amongst other things, that proposals do not unduly affect the amenities or privacy of adjacent properties.

Living Conditions of Future Occupiers

9. The proposed dwelling would fill much of the small plot thus the amount of garden space proposed is limited to a narrow strip adjacent to the undercroft parking area and a space along the front boundary with Fisher Lane. Neither would provide good quality garden space for future occupiers to enjoy and spend time in given their constrained shape and size, falling considerably short of the minimum depth of 10.5 metres recommended in the SPD, and lack of privacy. They would appear contrived and function more as an area of planting rather than adequate, useable space.
10. The proposed dwelling has been designed for specific requirements for the appellant's disabled son and The National Planning Policy Framework (the Framework) aims to address the needs of groups with specific housing requirements. However, the courts have established that planning permission runs with the land and the dwelling would remain long after the personal circumstances of this case have ceased to be material. Therefore, any future

occupiers of the proposed dwelling would suffer unreasonably from a lack of garden provision. I therefore afford only limited weight to this matter.

11. Consequently, the proposal would not provide satisfactory living conditions for future occupiers and it therefore conflicts with Policy H12 of the LP, the SPD and paragraph 130 of the Framework which seek to ensure that developments provide adequate amenity space for existing and future users.

Other Matters

12. I have carefully considered the assertion that the proposed development would create a home for the appellant's disabled son. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Protected characteristics include disability.
13. I acknowledge that the dwelling has been specifically designed to meet the personal needs of the appellant's son and I do not doubt that the proposal could provide independent living accommodation for them. However, I am not persuaded that there are no other suitable sites or alternative housing opportunities that could meet their specific mobility and accessibility requirements so as to allow them to live independently. It does not therefore follow from the PSED that the appeal should succeed and a refusal of planning permission is a proportionate and necessary response to the legitimate aim of ensuring that the living conditions of neighbouring occupiers and any future residents can be reasonably safeguarded.
14. The appeal site is located within the Duffield Conservation Area (the CA), whose significance, in as far as it relates to this appeal, appears to be derived from the close knit pattern of narrow streets that are predominantly lined with historic properties. The site is also within the setting of the adjacent Grade II listed building at Nos 8 and 10 Tamworth Road, whose special interest appears to lie in its age and decorative external detailing. The site is also within the buffer zone of the Derwent Valley Mills World Heritage Site (the WHS) whose Outstanding Universal Value (OUV) derives from its importance in the industrial revolution.
15. The Council consider that the proposed development would preserve the character and appearance of the CA, the setting of the listed building and the OUV of the WHS. From all I have seen and read, I have no reason to come to a different conclusion. These are neutral matters.
16. The appellant notes that the proposed dwelling is to be a self-build project, something to which the Government attaches importance. Although I have no reason to doubt this is the appellant's intention, given their input into the design particularly the accessibility requirements for their son, I have not been provided with any details as to how it would be secured as a self-build dwelling were the appeal to be allowed. I therefore attach limited weight to this matter.
17. I note the Council's concerns regarding the ash tree however there is no need for me to consider this matter further as I am dismissing the appeal for other reasons.

Planning Balance and Conclusion

18. The Council asserts that saved Policy H3 of the LP is out of date as the housing policies of the LP did not envisage housing growth beyond 2011 and on this basis Policy H3 should be given significantly reduced weight. The evidence before me indicates that the Council's latest housing position shows a supply of 5.15 years.
19. Duffield is listed as a settlement in which planning permission will be granted for housing development subject to a number of criteria. Whilst changes may have occurred to Duffield since the policy was adopted, there is nothing before me to indicate that the approach of the policy to direct development to established settlements is inconsistent with the Framework. However, even if I were to accept the Council's position on Policy H3, the benefits of the proposal in terms of investment and employment during construction and the benefits on subsequent occupation would be limited due to the small scale of the development and would not therefore outweigh the harm I have identified. Accordingly, the appeal should be dismissed.

H Ellison
INSPECTOR