



---

# Appeal Decision

Site visit made on 8 February 2022

**by J Williamson BSc (Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 March 2022**

---

**Appeal Ref: APP/C1055/W/21/3284651**

**66 Chestnut Avenue, Mickleover, Derby DE3 9FS**

- 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 Balaton House Developments Ltd against the decision of Derby City Council.
  - The application Ref 21/00686/FUL, dated 19 April 2021, was refused by notice dated 29 September 2021.
  - The development proposed is construction of a new detached bungalow to the land at the rear of No. 66 Chestnut Avenue.
- 

## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - whether the proposal would provide satisfactory living conditions for future occupiers, with particular regard to overlooking of private outdoor space, and
  - the effect of the proposal on the street scene and the character and appearance of the area, with particular regard to plot size, siting and design.

## Reasons

### *Living conditions – future occupiers*

3. The site comprises a section of the rear garden of number 66 Chestnut Avenue. The domestic garden has been sub-divided for development purposes. A two-storey/two-and-a-half storey dwelling (ie a two-storey property with accommodation in the roof space) has recently been erected to the southern side of No. 66, and the appeal site has been fenced off from the rear gardens of No. 66 Chestnut Avenue and the new dwelling.
4. The northern boundary of the site abuts part of the rear garden side boundary of No. 68 Chestnut Avenue. The eastern boundary abuts the rear boundaries of numbers 1 and 3 Bonsall Drive. East Avenue passes the site's southern boundary.
5. The site is located within a residential area that is characterised primarily by detached and semi-detached dwellings of varying heights, including two-storey/two-and-a-half storey, one-and-a-half storey, and single-storey

dwellings. The properties are of varying designs and constructed of a mixed pallet of materials.

6. The site is sandwiched between No. 66 Chestnut Avenue and the new dwelling and Nos 1 and 3 Bonsall Drive. The private outdoor space of the proposed bungalow would be located to the rear of the property. Given that Nos. 66 and 68 Chestnut Avenue have habitable room windows at first-floor level that would directly overlook the proposed outdoor space, located only around 9-10 m from the proposed rear garden boundary at its nearest point, I consider the main private outdoor space of the proposed dwelling would be overlooked from Nos. 66 and 68. Due to the short distance from the first-floor habitable room windows of Nos. 66 and 68 to the proposed rear garden outdoor space, I consider the proposed private outdoor space would not be sufficiently private. As such, I conclude that the proposed development would not provide satisfactory living conditions for future occupiers regarding private outdoor space.
7. The proposal therefore does not accord with saved policies GD5 and H13 of the City of Derby Local Plan Review, 2006, (LPR)<sup>1</sup>, or sub-paragraph 130 'f' of the National Planning Policy Framework (the Framework). Collectively, and among other things, these policies require new development to provide satisfactory living conditions (which includes privacy) for future occupiers.

#### *Character and appearance*

8. The proposed dwelling would be a low-level bungalow orientated such that the principal elevation would be positioned at 90 deg to the road, East Avenue. The orientation of the proposed dwelling would therefore contrast with the orientation of neighbouring properties, whose principal elevations front the roads on which they are located.
9. The size of the proposed plot would be considerably smaller than the plot sizes of the immediate surrounding properties to the west and east, on Chestnut Avenue and Bonsall Drive, and noticeably smaller than the plot sizes of the semi-detached bungalows located opposite the site on the southern side of East Avenue.
10. The space between the western and eastern facing elevations of the proposed bungalow to the side boundaries would be around 1 m and 3.8 m respectively. The proposed bungalow would be sited between a two-storey/two-and-a-half storey dwelling immediately to the west and a one-and-a-half storey dwelling to the east. Both immediate neighbouring properties have rear gardens around 9 m deep, positioned between their respective rear elevations and the side boundaries of the proposed plot. Hence, the limited space around the proposed bungalow would be highlighted due to the depth of the rear gardens of the immediate properties to the west and east.
11. Due to the orientation of the proposed dwelling, the small plot size, and the narrow gaps either side of it, the proposed dwelling would have the appearance of being squeezed into a plot that is insufficient in size.

---

<sup>1</sup> Although saved policies GD5 and H13 date back to 2006, they require new development to provide satisfactory living conditions for future occupiers. As such, the aims and objectives of these policies are consistent with the Framework in this regard.

12. For the reasons outlined, the proposed dwelling would create an incongruous feature in the street scene along the northern side of East Avenue. Consequently, the proposal would have a detrimental impact on the character and appearance of the area.
13. The proposal therefore does not accord with saved policy H13 of the LPR, policies CP3 and CP4 of the Derby City Local Plan-Part 1: Core Strategy, 2017, or paragraphs 126 and 130 of the Framework. Collectively, and among other things, these policies require new development to be of high-quality design, be sympathetic to and positively contribute to the character of the area and to create beautiful places.

*Other considerations*

14. Planning legislation requires applications for development to be determined in accordance with the development plan unless material considerations indicate otherwise.
15. The appellant has drawn my attention to other developments in the area to justify the proposal. I do not have the full details of each of the cases referred to, but I did view the sites on East Avenue, Hamilton Close, and Western Road during my site visit.
16. Although the appellant considers the plot size of the new dwelling opposite the site on East Avenue is not much bigger than the proposed site, the fact remains that it is larger. Additionally, the principal elevation of the dwelling fronts the road, and the space around the dwelling is proportionate with its immediate neighbouring properties. Although it may have more bedrooms than the proposed bungalow, the Council's concern has not been the extent of outdoor space, but the overlooking of it. For the reasons outlined, the new dwelling on East Avenue does not look out of keeping within the street scene. Although I was not able to assess the relationship of the outdoor space with regard to neighbouring dwellings and privacy, for the reasons outlined, the development is not directly comparable to the proposal before me.
17. The development of 4 dwellings at 139 Western Road is very different to the proposal before me. The area of land is much larger in total, the development is of 2 pairs of semi-detached dwellings with on-site parking at the front of the dwellings and narrow rear gardens to the rear. The siting of the properties that are close to the site on Western Road and the gaps between them also differ to the siting of the proposed bungalow and the relationship it would have with the neighbouring properties to the east and west. The principal elevation of the dwellings also front the Road. Again, I was not able to assess the relationship of the outdoor space with regard to neighbouring dwellings and privacy. However, for these reasons outlined, I consider this scheme is also not directly comparable to the appeal proposal.
18. The development of a pair of semi-detached dwellings at 200 Western Road also differs to the appeal proposal, in terms of the development proposed, the layout, the relationship with neighbouring properties and the street scene; and again, the dwellings front the road. I was not able to assess the relationship of the outdoor space with regard to neighbouring dwellings and privacy. However, due to the differences outlined, I consider this development is also not directly comparable to the proposal before me.

19. With respect to the new bungalow on Hamilton Close, there appears to be very limited private outdoor space. I do not know the full details of how this development came to be granted. At minimum, due to the very limited extent of private outdoor space, to my mind the living conditions for occupiers of the property would be unsatisfactory. For this reason alone, I consider this development is not of high quality, and therefore should not be relied upon as justification for other developments.
20. Hence, with regard to the developments referred to above, I attach little weight to them in support of the proposal.
21. It is contended that the proposal would provide a property suitable to people who wish to downsize or live independently, and that there is little provision for this sector in the area. The appellant refers to residential developments in the area totalling 1720 new dwellings where there is an almost complete lack of bungalows. Although this may be true, it does not substantiate the claim that there is little provision for such accommodation in the area. I observed bungalows in the area surrounding the site during my visit. I have not been provided with any substantive evidence of the demand for such properties. As such, I attach little weight to this matter.
22. The appellant asserts that the proposal would be an efficient use of land and that the site is close to a bus service and within walking distance of some services and facilities. Although these factors weigh in favour of the proposal, they are factors other planning policies require new development to adhere to; as such, they attract limited weight.
23. With regards to the other considerations outlined, I consider they do not outweigh the harms I have found with regard to living conditions of future occupiers and character and appearance of the area.

### **Conclusion**

24. I therefore consider that there are no other considerations that would lead me to conclude other than in accordance with the development plan. Consequently, for the reasons outlined, I conclude that the appeal is dismissed.

*J Williamson*

INSPECTOR