
Appeal Decision

Site visit made on 19 July 2022

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2022

Appeal Ref: APP/C1055/W/22/3295417
65 Finchley Avenue, Derby DE22 4EU

- 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 Ajit Singh against the decision of Derby City Council.
 - The application Ref 21/01664/FUL, dated 21 September 2021, was refused by notice dated 19 November 2021.
 - The development proposed is a 2 storey, 2 bed, detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are as follows:
 - The effect of the proposal on the living conditions of occupiers of No 2 Ladbroke Gardens.
 - The effect of the proposal on the character and appearance of the area.

Reasons

Living Conditions

3. The appeal site is located on the corner of Finchley Avenue and Ladbroke Gardens and comprises the side garden area of No 65. The rear elevation of the proposed dwelling would face the side elevation of No 2 Ladbroke Gardens and would evidently be two metres from the common boundary between the two properties.
4. Although the proposal would be of a slightly lower height than the host dwelling, this would introduce an overbearing and visually dominant feature adjacent to, and extending across, a large proportion of the side garden area of No 2 which would reduce the enjoyment of this space for its occupiers.
5. I note the appellant's argument that the proposal would not breach a 45-degree arc when viewed from the front windows of No 2 and that the side windows of that property are already obscured. This would not lead to a loss of light, I am informed. However, overlooking of the front windows and a loss of light do not appear to be in dispute as main issues and a lack of harm in these circumstances does not lessen the harm I have identified.

6. The Council has further concern with regard to overlooking of the side garden area of No 2 by future occupiers of the proposed dwelling from the first-floor rear windows. However, the submitted elevation plan demonstrates that these windows would be obscured. As such, given the lack of views possible through the proposed windows below a 1.7m height, this would be unlikely to cause unacceptable harm to occupiers of No 2.
7. Based on the foregoing, the proposal would harm the living conditions of No 2 Ladbroke Gardens due to a loss of outlook. This would be contrary to Policies CP3 and CP4 of the Derby City Local Plan Part 1 – Core Strategy (CS) (adopted January 2017) and Policies GD5 and H13 of the City of Derby Local Plan Review (LPR) (adopted January 2006). These seek, among other things, to ensure development provides good standards of privacy. The proposal would also be contrary to paragraph 130 of the National Planning Policy Framework (the Framework), which advises development should ensure a high standard of amenity for existing and future users.

Character and Appearance

8. The design of houses along both Finchley Avenue and Ladbroke Gardens shows some variety in terms of materials and roof forms, although they are predominantly semi-detached and display a generally consistent setback from the road. The appeal site is prominent in the local area given its corner location and although the size of the side garden of No 65 is somewhat unusual in the vicinity, this space does provide some visual relief in what is otherwise a densely developed area.
9. The front building line of the proposed dwelling would align with those of No's 65, 67 and 67a. It would therefore continue this pattern of development along Finchley Avenue. Although the corner location of the site is prominent, the proposed site plan shows that there would be an area of grass and planting to be retained to the side of the dwelling. This would offset some of the additional mass in the street scene. Moreover, the scale and massing of the property would be similar to that of No 67a, which is of much more recent construction than other dwellings in the area and is ostensibly similar in appearance to that proposed. As such, while a detached dwelling would be a deviation from the predominantly semi-detached properties that characterise the area, it is not unique.
10. Overall, the proposal would not harm the character and appearance of the area. This would accord with Policies CP3 and CP4 of the CS and H13 of the LPR, which seek to ensure development is suitable in relation to neighbouring buildings, including density, layout and urban grain, among other things. The proposal would also accord with paragraph 130 of the Framework, which seeks to ensure development is sympathetic to local character.

Other Matters

11. The Council includes reference to the resulting size of garden space for future occupiers of the proposal within its reasons for refusal and concern that this would not be large enough to provide suitable living conditions. However, there is nothing to substantiate this in the officer report and an appeal statement was not submitted. As such, due to a lack of information, and the fact that I have dismissed the appeal on other matters, I have not considered this further.

12. The appellant advises the location of the appeal site is suitable with regards to the Council's spatial development aspirations and with regards to access to services and facilities. Furthermore, that there would be no harm to highway safety or that the property would be at risk of flooding or increasing this risk elsewhere. Be that as it may, these matters are not in dispute and a lack of harm neither weighs in favour of or against the scheme.

Conclusion

13. The proposal would harm the living conditions of the occupiers of No 2 Ladbroke Gardens. Although I have found no harm with regards to overlooking of this property, or to the character and appearance of the area, this would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

C McDonagh

INSPECTOR