



Appeal Decision

Site visit made on 31 August 2022

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 15th September 2022

Appeal Ref: APP/C1055/W/22/3297638

26 Lime Avenue, Breadsall Hilltop, Derby DE21 4GD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr B Plummer against the decision of Derby City Council.
 - The application Ref 21/00912/OUT, dated 23 May 2021, was refused by notice dated 1 November 2021.
 - The development proposed is the erection of 1 detached dwelling on land to the side of 26 Lime Avenue.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 detached dwelling on land to the side of 26 Lime Avenue at 26 Lime Avenue, Breadsall Hilltop, Derby DE21 4GD in accordance with the terms of the application, Ref 21/00912/OUT, dated 23 May 2021, subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. The application was submitted in outline, with only access to be determined at this stage. I have dealt with the appeal on this basis and I have taken the indicative layout plan that has been submitted into account in relation to my consideration of the principle of the development on the appeal site.
3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.

Main Issue

4. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site is the side garden to the house at 26 Lime Avenue. As such, in accordance with the National Planning Policy Framework, it is not previously developed land. In relation to planning applications for residential development on windfall sites, such as the appeal site, saved policy H13 of the adopted City of Derby Local Plan Review ('Local Plan') gives priority to the use of previously

developed land. However, it does not prevent the development of garden land. As a result, subject to the planning considerations considered below, the principle of residential development of the site is acceptable.

Character and appearance

6. Lime Avenue is a narrow, tree lined cul-de-sac characterised by regularly spaced, semi-detached pairs of houses set back behind short front gardens. As a result, the Avenue has a pleasant, if somewhat enclosed, character.
7. The side garden which forms the appeal site occupies the majority of a wide gap between No 26 and the house on its southern side. Although the side garden introduces some openness to the street, the overriding impression is that its wide width, and that of the gap, is at odds with the regular modest gaps between houses along the Avenue.
8. The appellant submitted a layout plan with the application indicating how a dwelling could occupy the site. As the application is in outline the appellant is not tied to the detail shown on this plan. However, in the absence of details of any alternative layouts I have treated this as indicative of his intentions and I have assessed the proposal accordingly.
9. The layout shown on the proposed plan is of a dwelling with a modest footprint and a gap separating it from No 26 that continues the regular pattern of development along the Avenue. The proposed dwelling would be positioned slightly further forward of the house at No 26 and its neighbours to the north. However, the distance involved would be small enough for such a dwelling to still fit in with the rhythm of development that characterises the Avenue. Moreover, no material harm would be caused to the visual amenity value of the trees on the site or public highway. As a result, with the control that could be exerted at reserved matters stage, the site has the potential to accommodate a dwelling which would not be at odds with the pattern of houses along the street or visually intrusive.
10. The depth of the appeal site tapers away from the house at No 26 and the site slopes downwards in the same direction and to the rear. On the basis though of the submitted information, I am satisfied that a dwelling on the site could be designed that takes into account these factors to sit comfortably within its plot and complement the street scene.
11. For the reasons given above, I therefore conclude that the proposed development would be in keeping with the character and appearance of the area and comply with policies CP3 and CP4 of the Derby City Local Plan: Part 1 – Core Strategy and saved policy H13 of the Local Plan. These policies require the protection of the character and appearance of a locality through high quality design that respects local design features. Saved policy GD5 of the Local Plan was cited in the Council's reason for refusal. However, as it relates to amenity it is not relevant to the main issue.

Other Matters

12. The access to the proposed dwelling would use the existing vehicular access serving No 26 on to Lime Avenue located half way across the front of the side garden. Use of this access is considered to be acceptable by the council subject to conditions. Its assessment is that if permission was granted sufficient off-street

parking could be created to serve the existing house at No 26 which, together with the appeal site, is in the ownership of the appellant. Given the space that exists between the side of this house and the appeal site, I agree with the Council on these points. In relation to construction, the road would be wide enough to cater for deliveries and limited on road parking during this period.

13. In relation to outdoor amenity space for future occupiers of the proposed dwelling, although, as I have noted, the appeal site tapers and slopes it is sufficiently large to provide an adequate size of usable space.
14. The rear of the proposed dwelling would face the rear of houses to the west. However, this would not result in loss of daylight, nor would it result in overlooking that would be harmful to the privacy of neighbours. This is because of the significant separation distances involved, the screening effect of trees in the rear garden of No 40 and the ability of the Council to ensure good design at reserved matters stage
15. The appeal site is in an area of low flood risk. Subject to adequate surface water drainage, which is a matter that would be controlled by Building Regulations, the proposed development would not materially increase water run-off into neighbouring gardens. In relation to biodiversity, as the proposal would develop only part of the site, and there is no evidence before me that the side garden has significant biodiversity value, I find that biodiversity would not be materially harmed by the proposed scheme.

Conclusion

16. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be allowed.
17. For the avoidance of doubt, and in the interests of proper planning, development needs to be carried out in accordance with the approved plans. To safeguard nearby trees during construction, further details on tree protection measures are necessary. In the interests of highway safety, a dropped kerb to facilitate off road parking to the existing house at No 26 is necessary. For the same reason, the use of hard bound material to surface the driveway and parking area close to the highway and surface water drainage is necessary to prevent gravel or ice impairing grip on the highway. I have required these matters by condition, amending the wording of the conditions suggested by the Council where necessary to better reflect the advice in Planning Practice Guidance.
18. Condition 5 is a pre-commencement condition. However, as the application is submitted in outline the requirements under the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018, which require the written agreement of the appellant to the wording of such conditions, do not apply.

Ian Radcliffe

Inspector

Schedule

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the

local planning authority before any development takes place and the development shall be carried out as approved.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan, ref 3442-04-A2, but only in respect of those matters not reserved for later approval.
- 5) No development shall take place until an Arboricultural Method Statement and Arboricultural Impact Assessment in relation to the trees within the site and on the site boundaries, has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 6) No part of the development hereby permitted shall be brought into use until a dropped vehicular footway crossing is available for use for 26 Lime Avenue that has been constructed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The dropped vehicular footway crossing shall meet the Highway Authority specification and take into account the root protection area of 4.2m with regards to the lime tree (T7) as referred to in drawing TCP01 Rev. A and in the Tree Survey Schedule of the Tree Survey and Report.
- 7) No part of the development hereby permitted shall be brought into use until all drives and any parking or turning areas have been surfaced in a hard-bound material (not loose gravel) for a minimum of 5 metres behind the Highway boundary. The surfaced drives and any parking or turning areas shall then be maintained in such hard bound material for the life of the development.
- 8) No part of the development hereby permitted shall be brought into use until surface water drainage of the access driveway and parking area to prevent the discharge of surface water onto the public highway has been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The surface water drainage shall then be retained for the life of the development.

-----End of Conditions Schedule-----