



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: 28th September 2022

Appeal Ref: APP/C1055/W/22/3297558

298 Burton Road, Derby DE23 6AD

- 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 E Wilamowski (Deceased) against the decision of Derby City Council.
 - The application Ref 19/00792/FUL, dated 23 May 2019, was refused by notice dated 5 November 2021.
 - The development proposed is the erection of a two storey single dwelling house.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two storey single dwelling house at 298 Burton Road, Derby DE23 6AD in accordance with the terms of the application, Ref 19/00792/FUL, dated 23 May 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans received on 29 May 2019: 10025568 1:1250 scale, 10025568 1:500 scale, 18/05/2019/02
 - 3) Notwithstanding condition 2, no development shall take place until details of external materials to be used in the construction of the building hereby approved have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 - 4) No development shall commence until there has been submitted to and approved in writing by the Local Planning Authority a Tree Protection Plan and Arboricultural Method Statement (AMS). The AMS must include:
 - a) Installation of temporary ground protection;
 - b) Excavations and the requirement for specialized trenchless techniques;
 - c) Installation of new hard surfacing - materials, design constraints and implications for levels;
 - d) Installation of non-dig paths and surfacing including edging and treatment to original ground levels;
 - e) Preparatory works for new landscaping;
 - f) An auditable system of arboricultural site monitoring, including any

site events requiring input or supervision;

g) Contact details for the relevant parties.

The AMS as approved shall be implemented throughout the construction period of the development.

- 5) No development shall take place until a scheme of biodiversity enhancement has been submitted to and approved in writing by the Local Planning Authority. The enhancement scheme shall be implemented in accordance with the agreed details as construction proceeds and completed prior to the first occupation of the development.
- 6) The building hereby permitted shall not be occupied until the rear bedroom window has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

Preliminary matters

2. 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.
3. In June this year the Building Research Establishment (BRE) published a revised version of the guide 'Site layout planning for daylight and sunlight' which replaced the previous version published in 2011. Although the Council had not relied on the original guide in its assessment of the proposal it was invited, if it wished, to comment on the revised guide in relation to the appeal scheme. As it declined to do so, I have therefore dealt with the appeal on the basis that this guidance does not form part of the Council's case against the scheme.

Main Issues

4. The main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the area; and,
 - whether the proposed dwelling would provide acceptable living conditions for future occupiers with regard to daylight and sunlight.

Reasons

5. The appeal address is located within a mature residential urban area of Derby and has good access to local amenities and public transport. As a result, subject to the planning considerations considered below, residential development of the site is acceptable in principle.

Character and appearance

6. The proposed dwelling would be located within the long rear garden of 298 Burton Road which forms part of a woodland. Owing to the steep slope of the land down towards Warner Street the rear garden has been terraced. Hardstanding immediately to the rear of No 298 forms the upper level, the location of the proposed dwelling would be on the middle level and a lower level opens out onto Warner Street. Due to its slope the rear garden forms part of the street scene of Warner Street and cannot be seen from Burton Road.
7. The woodland is protected by a tree preservation order. It consists of tall, mature deciduous trees that form an attractive landscape feature at the western end of Warner Street in an otherwise densely developed urban part of Derby that is characterised by relatively few large trees. The woodland therefore has notable visual amenity value.
8. The proposed modest two storey dwelling would make use of an existing concrete retaining structure as a basis for the house and would be located close to the eastern edge of the area of woodland. No trees are shown as being removed as part of the proposal. On the approach from Warner Street from the east, the proposed house would not form a noticeable part of the street scene due to its setback from the street, its position located away from the side boundary of the garden and the screening presence of trees. In views from Warner Street directly outside the site the house would not be visible due to the presence of a two storey building set on the back edge of the pavement. The visual integrity of the woodland would therefore be preserved by the proposal.
9. There may be future pressure to reduce the shading effect of nearby trees on the dwelling. I am confident though that with the sun located to the rear of the proposed house such works would largely be limited to the few trees along the rear of the middle terrace where the proposed house would be located. These trees are not particularly prominent in public views of the woodland.
10. In terms of the design of the house, it is common ground that it would complement surrounding buildings. I agree with that assessment. Set in from the side boundaries of the garden it would also be comfortably set within its plot.
11. For the reasons given above, I therefore conclude that the proposal would successfully complement the character and appearance of the area and would have an acceptable contextual relationship with its built environment in compliance with policies CP3 and CP4 of the Derby City Local Plan – Part 1: Core Strategy ('Core Strategy') and saved policy H13 of the adopted City of Derby Local Plan Review ('Local Plan'). These policies require the protection of the character and appearance of a locality through high quality design that respects local design features and site context.

Living conditions

12. The proposed house would be enclosed by the slope of the site and overshadowed by the surrounding tall trees. However, in my judgement, even with the trees in full leaf, the levels of daylight in the vicinity of where the house would be located are adequate. Given the large size of windows that would serve the kitchen living room and bedroom, I therefore find that whilst the proposed house would not benefit from

direct sunlight, acceptable levels of natural light in the form of daylight would be experienced within it.

13. Taking all these matters into account, I therefore conclude that a high quality living environment would be provided for future occupiers of the proposed development in compliance with policies GD5 and H13 of the Local Plan which seek to prevent such harm.

Other Matters

14. The modest floor area of the proposed one bedroom house would be sufficiently large to provide acceptable living conditions for future occupiers. In terms of parking, no additional on-site provision is proposed above that already provided at No 298. The Council has not objected to the proposal on parking grounds. Given the good access to public transport and proximity to the services and facilities, I agree with that assessment.
15. The Council has less than a five year housing land supply. In such circumstances where a development proposal is contrary to the development plan the so called tilted balance in paragraph 11 d) of the National Planning Policy Framework applies. However, as this is not the case here, the proposal does not fall within the ambit of this paragraph and the tilted balance does not apply.

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 harmonise with development in the area, safeguard woodland trees during construction and enhance biodiversity, further details on materials, tree protection measures and biodiversity improvements are necessary. In order to safeguard privacy, as noted in the officer report, the rear bedroom window in the dwelling needs to be obscurely glazed. 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.

Ian Radcliffe

Inspector