



Appeal Decision

Site visit made on 25 October 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2022

Appeal Ref: APP/M1005/W/22/3298165

69 Laceyfields Road, Heanor, Derbyshire DE75 7HJ

- 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 & Mrs Josef Adam Smereka against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2022/0017, dated 9 January 2022, was refused by notice dated 8 April 2022.
 - The development proposed is described on the application form as the 'Construction of three detached residential bungalows'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal has been submitted in outline, including access, appearance, layout and scale, with landscaping reserved for subsequent approval. I have considered the appeal on that basis.
3. Reasons for refusal 1 and 2 refer to the 'increase in use of an existing access'. However, this is an error because an amended plan submitted during the Council's consideration of the planning application proposes that the appeal site would be served by a new access, with the existing access being retained to serve No. 67 only. The Council determined the application on the basis of the amended plan¹, and so shall I.
4. I note the appellants assertion that, given reference to the increased use of an existing access, reasons for refusal 1 and 2 should be treated as being irrelevant. However, based on what I have seen and read I do not consider that highway safety is a matter that can be disregarded, or treated lightly, and consequently I will address this issue, in my assessment of the proposal.

Main Issues

5. The main issues in this appeal are the effect of the proposal on:
 - highway safety; and
 - the living conditions of the occupiers of neighbouring properties, having particular regard to noise and disturbance.

¹ Drawing 2037-101A

Reasons

Highway safety

6. The appeal site is located within a predominantly residential area close to the junction of Laceyfields Road and Breach Road, which join at a staggered junction. Breach Road, together with Meadow Gardens, is the priority route through the residential area and has a speed limit of 30 mph. It has a noticeable gradient with Breach Road being at a higher level than Meadow Gardens.
7. The proposal would result in two access points rather than the one which currently exists. The existing access would be retained because the neighbour at No. 67 would still use it and as a result it cannot be closed off. The proposal would introduce a new access to serve No. 69 and the proposed development close to the junction of Laceyfields Road and Breach Road. The Highway Statement indicates that the proposal would result in two additional traffic movements an hour with vehicles being able to enter the public highway in a forward gear.
8. I have taken into account the comments received from the Local Highway Authority in response to this appeal. In this regard, it is clear from the chain of e-mails between highway consultant and the Local Highway Authority (LHA), that the LHA were aware of the amended drawing, referenced 2037-101A, albeit I have no evidence of a response to the email dated 23 March 2022. Moreover, the comments submitted by the LHA in response to the appeal refer to the increased use of the existing access and would appear to relate to the original access proposals. Therefore, I can only give them limited weight to the LHA comments in my consideration. That said, I have no evidence before me to indicate whether they did visit the site during their consideration of the proposal.
9. Notwithstanding the above, I find it is likely that there would be a reduction in the usage of the existing access onto Laceyfields Road, given the reduction in number of dwellings that it would serve. This in turn would reduce the potential for conflict and confusion between drivers emerging from No. 67 onto Laceyfields Road and other motorists.
10. The number of vehicles using the new access may be numerically small, however from what I have seen and read I consider that the introduction of a new access close to the junction of Laceyfields Road would be likely to increase danger to highway users. In particular, drivers travelling toward Breach Road from the east may be unaware of the new access and think that motorists were turning into Laceyfields Road. Consequently, they would leave their braking until later with the potential for rear end collisions. This would be aggravated by the bend in the road and its gradient.
11. Furthermore, the submitted drawing shows that the recommended visibility splays of 2.4m x 43m, as described in Manual for Streets for a 30-mph road, would be met in a northerly direction along Laceyfields Road, and forward visibility requirements can be met along Breach Road in a westerly direction. From what I have seen and read I agree that this would be the case. That said, visibility of only 31m would be achieved in an easterly direction along Laceyfields Road/Meadow Gardens. This would fall significantly below the recommended visibility requirements in the MfS and increase risk of collision.

Vehicles sitting on the driveway would further impede visibility for vehicles emerging from Laceyfields Road.

12. Due to speed restriction features along this length of road, speeds may be lower and therefore a reduction in visibility requirements could be deemed acceptable. However, substantive evidence is not before me, including speed surveys, to indicate what the actual speeds of vehicles are. As a result, I have taken a precautionary approach in finding that visibility to the east would be unacceptable. Therefore, I do not accept the appellants assumption that a reduction in visibility is justified in this instance.
13. The proposal would extend the overall width of the vehicle crossing that serve No.s 67 and 69 Laceyfields Road, and the proposed development. As a result, the potential for pedestrians to come into conflict with vehicles would increase. That said, I have seen nothing to suggest that the footpath is intensively used, and any increase in vehicular activity from 3 small dwellings would be limited. Moreover, the width of the proposed drive, and the availability of turning facilities within the appeal site, would allow vehicles to proceed in a forward gear when they approach the footway, which would further reduce risk to pedestrians. Consequently, I find that the proposal would not harm pedestrian safety.
14. The appellants have referred to other accesses in the locality which they consider to be similar to that proposed, or less than ideal. The examples referred to were primarily located on a modern housing estate that had been designed in a comprehensive manner. Therefore, whilst acknowledging the examples involved the use of private drives serving several dwellings, their position relative to junctions, and the amount of visibility provided, was not the same as the appeal proposal. With regards to the access for 3 dwellings opposite the appeal site, approved by the Council under reference AVA/2013/1064, I note that visibility in both directions appeared reasonable, albeit I have no evidence before me to confirm the precise dimensions available. Consequently, the examples referred to are not directly comparable with the appeal proposal, nor do they justify it.
15. I have found that there would not be a harmful risk to the safety of pedestrians. However, there would be a significant increase in risk to drivers using the road network, arising from the introduction of a new vehicular access very close to the junction of Laceyfields Road and Breach Road, with limited visibility. This would have a significant adverse impact on highway safety.
16. In light of the above, I conclude on this main issue that the proposal would conflict with saved Policy TP1 of the adopted Amber Valley Local Plan 2006 (AVLP) which requires development proposals to have satisfactory access to the transport network. This policy is consistent with paragraph 111 of the National Planning Policy Framework (the Framework) which, amongst other matters, requires development to be refused on highways grounds if there would be an unacceptable impact on highway safety. I have not applied the severity test as this only applies to residual cumulative impacts.

Living conditions

17. The proposal would result in the provision of a driveway along the common boundary of No. 67. The access would lie within approximately 2 metres of the side gable elevation of No. 67, which has three windows and a door at ground floor level and one window at first floor level. A number of the windows are obscure glazed and would appear to serve non habitable rooms, which indicates that they are rooms that are less intensively used, however two of the ground floor windows are clear glazed and appear to serve a kitchen.
18. Notwithstanding the fact that landscaping is reserved for subsequent approval I have taken into account the indication that a 1.8m high solid fence with climbing planting could be erected on the common boundary with No. 67. This would go some way towards mitigating any noise and disturbance arising from the use of the driveway. That said, no such provision is indicated on the common boundary with the host property. However, had the scheme been otherwise acceptable, this is a matter that could be addressed by a suitably worded condition.
19. Taking into account the number of dwellings proposed, and their limited size, I consider any noise or disturbance arising from the proposed development would be limited. It would be similar to impacts commonly experienced within residential areas. Given this situation, together with the provision of boundary fencing as proposed, I am satisfied that the living conditions of existing and future occupiers of neighbouring properties would be safeguarded.
20. I have also taken into account concerns expressed by local residents with respect to loss of privacy and daylight. In this regard I note that the Council are satisfied that the proposed development would not result in overlooking. Moreover, it would not breach the Council's guidance with regards to sunlight and daylight. From the evidence before me, and from what I saw on my site visit, I have no reason to disagree with their conclusions on these matters.
21. In light of the above, I conclude on this main issue that the proposal would provide satisfactory living conditions for occupiers of neighbouring properties having particular regard to noise and disturbance. Consequently, it would accord with Policy H12 of the AVLP which seeks developments that, amongst other matters, do not unduly affect the amenities or privacy of adjoining or adjacent properties. This policy is consistent with paragraph 130 of the Framework which, amongst other matters, seeks to promote health and well-being, with a high standard of amenity for existing and future users.

Planning Balance and Conclusion

22. The Council consider that, following the withdrawal of the Submission Local Plan in May 2019, there is currently no up to date development plan in place for the Borough. However, the saved policies which are most important for determining the application, including policy TP1 and H12 are consistent with the Framework and are not out of date for the purpose of the decision, when assessed against the policies in the Framework taken as a whole.
23. The Framework requires local planning authorities to identify a minimum of five years' worth of housing against their local housing need. In this regard the Council indicate that the housing land supply position as of 1st April 2021 showed a supply of 7.31 years. This is not disputed by the appellant.

24. There would be a small social benefit in providing three bungalows, which may be attractive to the older generation, in an area where there is an apparent shortage. The design would be in keeping with its surroundings, providing a secure environment for future occupiers and there would be some limited benefits for wildlife. The proposal would also result in more efficient use of land and the removal of a troublesome hedge. Economic benefits would also arise from their construction.
25. Notwithstanding the above, there would be a significant adverse impact on highway safety, and as a result, the environmental role of sustainable development would not be achieved against the policies in the Framework when taken as a whole. Even if I was satisfied the tilted balance should be applied the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development.
26. There are no other material considerations which lead me to determine the appeal otherwise than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

John Gunn

INSPECTOR