



Appeal Decision

Site visit made on 31 January 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal Ref: APP/C1055/W/22/3297952

1 Ash Close, Derby DE22 2JF

- 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 George Henshaw on behalf of Chevin Homes against the decision of Derby City Council.
 - The application Ref 21/02209/FUL, dated 22 December 2021, was refused by notice dated 8 March 2022.
 - The development proposed is the erection of a detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development upon character and appearance of the area,
 - whether the proposed development would provide sufficient living conditions for future occupiers, with particular regard to the provision of amenity space; and
 - the effect of the proposed development upon the living conditions of the occupiers of 1 Ash Close with particular regard to the provision of amenity space, outlook and overshadowing.

Reasons

Character and appearance

3. 1 Ash Close is a single storey dwelling that occupies a corner plot with the junction of Lockwood Road. Ash Close contains only single storey dwellings of similar style and appearance whereas Lockwood Road is predominantly two storey detached houses with some variety of style.
4. The appeal site is located to the rear of No.1 and faces onto Lockwood Road. I acknowledge that the land is now under separate ownership to No.1. However, it still maintains the appearance of being garden land despite the fencing that has been erected on the boundary.
5. Lockwood Road gradually rises past the appeal site and is bordered by a mixture of mature trees, hedges and low fencing which results in an open and leafy feel.

6. The majority of dwellings face onto the road and have small front gardens and driveways. Corner plots, particularly those located on the same side of the road as the appeal site tend to have large, rear gardens that are adjacent to the road which provides open gaps between dwellings and make a positive contribution to the open character of the area.
7. Whilst active frontages are a dominant feature within the wider locality, larger corner plots, with open gardens that face the road, are present immediately next to the appeal site and looking down towards Allestree Lane. This provides a break from the denser active frontages and helps to maintain the open character of this area.
8. The appeal proposal would introduce a dwelling within a plot that is considerably smaller than the plot sizes of the immediate surrounding dwellings. The proposal would fill the spacious gap between dwellings which would erode the open character of the area and result in an incongruous and cramped feature on the street scene. In coming to this view, I have taken into account that the proposal would provide an active frontage to Lockwood Road and a front gable in a similar form to the pattern of development in the locality. The area of soft landscaping at the front of the site and that open frontages are not the predominant street form in the locality do also not lead me to a different view.
9. I note the examples of applications that the Council have approved; however, based on the limited information provided, the merits and context of the proposals are different to those of this appeal. In particular, the dwellings at 26 Portreath Drive and 22 Farnway would be located on corner plots to the side of existing dwellings which differs from the orientation of the appeal proposal. In respect of 38 Farnway, the new dwelling is located to the side of the existing which mirrors the existing pattern of development on the street. I therefore attach little weight to them in support of the proposal in front of me.
10. I therefore conclude that the proposal would harm the character and appearance of the area. Accordingly, the proposal would be contrary to Policies CP3 and CP4 of the Derby City Local Plan – Part 1 Core Strategy January 2017 (Derby City Local Plan), Policy H13 of the City of Derby Local Plan Review January 2006, and Paragraph 130 of the Framework. Amongst other things, these require development to be of high-quality design and be sympathetic to and contribute positively to the character and appearance of the area. The proposal would also be contrary to the objectives of good design set out in the National Design Guide¹.

Living conditions of future occupiers

11. The proposed dwelling would take up much of the appeal site, leaving only a small area of private garden to the rear. Whilst the Council do not have a prescribed minimum garden size for new dwellings, it is reasonable to expect a space large enough for future occupiers to enjoy.
12. I acknowledge that the proposal might attract an older person or downsizer and that the dwelling would have high standards for mobility. However, in these circumstances, it is likely that such occupiers would be more reliant on a private garden and less likely to be able to travel easily to public open spaces.

¹ National Design Guide – Planning practise guidance for beautiful, enduring and successful places – Ministry of Housing, Communities and Local Government

13. The amenity space would be of a much smaller size than that of neighbouring dwellings. It would also be confined to a cramped area to the rear of the proposed dwelling and would therefore not provide sufficient space for future occupiers to have a reasonable use and enjoyment of the space.
14. I note that the Council has not published detailed standards of amenity and that other Councils have standards for garden space which the proposal might comply with; however, that in itself is not a reason to accept the size of the proposal in front of me. Accordingly, based on the context and merits of the proposal I have found the garden size to be inadequate. That the garden area might be of a manageable size relative to larger gardens and that the proposed folding doors would allow living spaces to, it is said, flow out into the external spaces, does not lead me to a different conclusion.
15. I have had regard to the development at Portreath Drive, and whilst limited information has been provided, I note that whilst a small side garden is provided there is additional amenity space to the rear. This differs to the proposal in front of me which is tightly squeezed into the plot.
16. I therefore conclude that the proposal would result in unacceptable living conditions for future occupiers with regard to the provision of outdoor amenity space. The proposal would therefore be contrary to Policies CP3 and CP4 of the Derby City Local Plan and Policies GD5 and H13 of the City of Derby Local Plan Review as well as Paragraph 130 of the Framework. Amongst other things, these require development to provide satisfactory living conditions for future occupiers.

Living conditions of the occupiers of 1 Ash Close

17. The proposed dwelling would be located behind No.1 and, whilst it is only a single storey dwelling, the land levels gradually rise. As such, it would be located in a prominent position.
18. The proposed new dwelling is at least 10 metres away from No.1, which is in line with the recommendations contained within the National Model Design Code². However, due to the prominent position of the proposed dwelling, as well as its proximity to the garden of No.1, it would result in an imposing structure that would overshadow and dominate the outlook from the property as well as rear garden resulting in a poor-quality space. I note that no windows are proposed on this elevation of the proposed dwelling and as a result there would unlikely be any overlooking, this does not however mitigate the poor outlook.
19. I note from my site visit that the garden space for No.1 has already been reduced; however, due to the property being on a corner plot, a sizeable garden space remains and therefore still provides occupiers with a reasonable use and enjoyment of the garden. Consequently, the amenity space provided for the occupiers of No.1 would provide suitable living conditions in this regard.
20. I therefore conclude that the proposal would result in unacceptable living conditions for the occupiers of No.1 with regard to outlook and overshadowing. The proposal would therefore be contrary to Policies CP3 and CP4 of the Derby City Local Plan and Policies GD5 and H13 of the City of Derby Local Plan Review as well as Paragraph 130 of the Framework. Amongst other things, these

² National Model Design Code – Part 1 the Coding Process – Ministry of Housing, Communities & Local Government

Policies require development to provide satisfactory living conditions for neighbouring occupiers.

Other Matters

21. I have no reason to conclude against the Council's assessment in relation to the principle of development, ecology, highways and that the proposal results in acceptable living conditions for the occupiers of 3 Ash Close. I also note that the site is in an accessible location, in the built-up area of Allestree and development could provide property for older people looking to downsize and help towards addressing the housing requirements of these groups. Furthermore, the appellant asserts that the windfall proposal would be an efficient use of land, in line with Policy CP6 of the Derby City Local Plan and the Framework; however, they do not outweigh the harm I have identified.

Planning balance

22. Paragraph 219 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. Paragraph 130 of the Framework seeks to ensure development maintains a strong sense of place and is visually attractive as a result of good layout whilst also providing a high standard of amenity for existing and future occupiers. I see no fundamental conflict between these aims of the Framework and those of Policies CP3 and CP4 of the Derby City Local Plan and Policies GD5 and H13 of the City of Derby Local Plan Review, as such the conflict between the proposal and these policies should, be given significant weight, despite the shortfall.
23. I have found that the proposal would harm the character and appearance of the area, would not provide sufficient living conditions for future occupiers and result in unacceptable living conditions for the occupiers of 1 Ash Close. In this regard, I have found that the proposal would conflict with Policies CP3 and CP4 of the Derby City Local Plan and Policies GD5 and H13 of the City of Derby Local Plan Review. Given the harm I have found, this attracts significant weight against the scheme.
24. The Council does not dispute the appellant's contention that it is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 74 of the Framework. As such, relevant policies for the supply of housing should not be considered up-to-date and paragraph 11d ii) applies.
25. Paragraph 60 of the Framework refers to significantly boosting the supply of housing; however, even though windfall housing can make a valuable contribution to housing land supply, the provision of just one additional unit would make little meaningful difference, but nevertheless carries modest weight in favour of the development.
26. Even if the shortfall is as the appellant suggests, when assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the presumption in favour of sustainable development does not apply. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

27. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

D Wilson

INSPECTOR