



Appeal Decision

Site visit made on 16 May 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 30th May 2023

Appeal Ref: APP/C1055/W/22/3313411

11 Radbourne Lane, Derby DE22 4LU

- 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 Miss Gaynor Hunt against the decision of Derby City Council.
 - The application Ref 22/01464/FUL, dated 15 September 2022, was refused by notice dated 11 November 2022.
 - The development proposed is part conversion of a dwellinghouse to form a bungalow (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address from the application form, removing the words 'Derby City' which is duplicated.

Main Issue

3. The main issue is whether the proposal would provide acceptable living conditions for future occupiers with regard to outdoor amenity space and privacy.

Reasons

4. The appeal site comprises a garage attached to the rear of the host dwelling, 11 Radbourne Lane. The garage is accessed from Aldersgate via the existing driveway. The proposed dwelling would be located in very close proximity to the rear and side boundaries of the proposed plot but would have some space retained to the front between the building and Aldersgate.
5. The proposal would include outdoor amenity space to the front and would also have a rear yard accessed through the entrance hall. I have not been referred to any quantitative standards for outdoor amenity space. Nevertheless, while appreciating that not everyone may desire a large garden, the provision of a satisfactorily sized area of useable private space is important to enable onsite recreational activity such as sitting out and/or gardening and for other outdoor requirements such as drying clothes.
6. The rear yard would provide a very small outdoor space which would be significantly limited in width which whilst more private, would not be reasonably described as a usable space.

7. The garden area to the front, whilst still limited, would provide a more useable space in terms of its size. However, it would not provide a private outdoor amenity space. Views into the garden space would be provided across the driveway. Even with the provision of a landscaped boundary treatment alongside Aldersgate, such as the one currently in place at the host dwelling and a boundary fence providing separation to the retained garden area of No 11, views of the proposed front garden space would be possible from the balcony accessed from the first floor door in the side elevation of the host dwelling. As such, the proposal would not provide future occupiers with a reasonable level of private outdoor amenity space.
8. I have considered whether a condition could be imposed to require sufficient screening to enable the proposed front garden space to be more private. However, given the overlooking from the first floor level any boundary treatment that could limit that overlooking would have to be substantial and could have a detrimental effect on the outlooks of the future occupants of the proposed dwelling as well as the character and appearance of the area.
9. I therefore find that the lack of an appropriate private outdoor amenity space means that the proposal would not provide acceptable living conditions for future occupiers. Accordingly, it would fail to accord with policies CP3 and CP4 of the Derby City Local Plan – Part 1 Core Strategy January 2017 (CS) and policies GD5 and H13 of the City of Derby Local Plan Review Adopted January 2006 (LPR). These policies seek, amongst other things, to provide good standards of privacy and ensure that proposals are suitable in relation to neighbouring buildings. It would also be contrary to the relevant paragraphs of the National Planning Policy Framework (the Framework).

Other Matters

10. I note that the proposed kitchen window would be in very close proximity to the proposed boundary fence in the rear yard and that this would restrict the outlook from it somewhat. Whilst the Council raised concerns in its officer report regarding this element of the appeal proposal, it did not include it as part of the reason for refusal. As I am dismissing the appeal based on my findings in relation to the main issue, I have not considered this matter further as it would not alter the outcome of the appeal.
11. I understand that the proposal would provide the appellant with a smaller dwelling which would enable them to downsize in the future, meeting the needs of their personal circumstances. I have had regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. Notwithstanding these personal circumstances, the benefits of the proposal do not outweigh the harm that I have found. In this case, I find that my decision to dismiss the appeal is a necessary and proportionate approach to the legitimate aim of ensuring a good standard of living conditions for future occupants. This outweighs the personal circumstances outlined above.
12. I note that the appeal proposal sought to resolve issues raised by the Council on a previous scheme for a similar proposal. Be that as it may, I must consider the appeal based on its individual merits.
13. I recognise that the proposal would result in the addition of a one bedroom dwelling which would contribute to the housing mix in the local area, providing a smaller property. I also note that there is support for the delivery of small

and medium sized sites in the Framework. However, this does not negate the requirements for new homes to be designed to provide appropriate living conditions.

14. The appellant asserts that the garden space retained for the host dwelling would be of sufficient size, that no overlooking would result from the proposed dwelling and that the internal space of the proposed dwelling would be in excess of the minimum standards set out in the Government's technical housing standards. They also state that highways raised no objection to the proposal. Even if I were to agree, a lack of harm in respect of these considerations, does not weigh in favour of the proposal.

Planning Balance

15. The proposal would conflict with policies CP3 and CP4 of the CS and policies GD5 and H13 of LPR resulting in unacceptable living conditions for future occupants. These policies align with the requirements of paragraph 130 of the Framework which amongst other things seek to promote a high standard of amenity for existing and future users. I give this conflict significant weight.
16. The scheme would result in the net delivery of one new unit of residential accommodation, providing a minor contribution towards the housing supply. There would be economic benefits associated with the conversion phase of the development and longer term social and economic benefits as a result of the provision of a new dwelling. Notwithstanding this, given the scale of the scheme, I give these matters limited weight.
17. Given the alignment of the relevant development plan policies with the requirements of paragraph 130 of the Framework the proposal would conflict with the development plan as a whole.
18. The Council has acknowledged that it cannot demonstrate a 5 year housing land supply, with 3.17 years identified in its officer report. The application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed, as outlined in paragraph 11 d) i of the Framework. Paragraph 11 d) ii of the Framework is therefore applicable in this case.
19. The proposal would provide an additional dwelling along with the social and economic benefits that this would bring. This would align with paragraph 60 of the Framework with regard to the contribution to the housing supply. However, given the scale of the scheme and the minor contribution it would make, this would attract limited weight.
20. Given the long lasting effects of the proposal, I give significant weight to the harm that would occur to the living conditions of future occupants, which would be contrary to paragraph 130 of the Framework which seeks, amongst other things, to ensure developments promote a high standard of amenity for existing and future users.
21. In considering the above factors, the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits when assessing against the policies in the Framework as a whole.
22. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be

determined in accordance with the development plan, unless material considerations indicate otherwise. The proposal conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm.

Conclusion

23. The proposal is contrary to the development plan as a whole, the approach in the Framework and all other relevant material considerations and the appeal is therefore dismissed.

G Dring

INSPECTOR