



Appeal Decision

Site visit made on 28 April 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2023

Appeal Ref: APP/C1055/W/22/3313156

39A West Avenue South, Derby DE73 5SH

- 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 Deepak Rana against the decision of Derby City Council.
 - The application Ref 22/01423/FUL, dated 16 June 2022, was refused by notice dated 4 November 2022.
 - The development proposed is 4 no. 3 bed dwellings at the rear of No.39A.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are i) the effect of the proposal on the living conditions of neighbouring occupants, and the standard of accommodation for future occupants, with regard to privacy, noise and disturbance and outlook; ii) whether the proposal would provide adequate access, parking and bin storage arrangements to ensure highway and pedestrian safety, and iii) the effect of the proposal on trees.

Reasons

Living Conditions – Privacy and Outlook

3. It is proposed to construct four dwellings in a linear pattern within what is presently the rear garden of No 39A. Due to the proposed layout, with short rear gardens of less than 6 metres depth, the rear windows of the proposed dwellings would face dwellings on Mariana Close at close range. Neighbouring occupants would be subject to clear views from the proposed dwellings of their windows and rear gardens. In particular, the rearmost dwelling proposed on the appeal site would have direct views over the presently private rear garden of 10 Mariana Close. There would also be clear views over the rear garden and conservatory of No 12 and the rear of No 14. These impacts would be exacerbated by the higher and sloping ground level of the appeal site which would result in dwellings stepping up in height towards the rear and increasing the scope of views over neighbouring properties.
4. The design of the rear elevations of the proposed dwellings, each with three windows to the first floor level, would also result in a broad span of windows across the rear aspect of the dwellings in Mariana Close, creating a constant perception of overlooking for neighbouring residents. Because of these factors, the proposal would seriously undermine neighbours' existing levels of privacy.

5. Moreover, the short distance between the dwellings means that future occupants of the appeal scheme would themselves suffer from overlooking from the dwellings in Mariana Close. This would result in a less than satisfactory standard of accommodation for occupants of the appeal scheme.
6. I also share the concern of the Council that the massing of the dwellings, their tight layout and their close range to dwellings in Mariana Close, would contribute to an undue sense of enclosure, particularly given the slightly higher land levels of the site and the stepped arrangement of the proposed dwellings. This would impinge the outlook for occupants of Mariana Close and exacerbate the harm arising to their living conditions. Similar effects would also occur to the existing dwelling at No 39A, the rear garden of which would be significantly shortened with occupants' outlook heavily curtailed by the massing of the nearest dwelling directly behind at short range and higher ground level.
7. For these reasons, I conclude that the proposal would cause significant harm to the living conditions of neighbouring occupants, by reason of loss of privacy and outlook, and would fail to provide a suitable standard of accommodation for future occupants due to overlooking from neighbouring properties.
8. This conflicts with Policies CP3 and CP4 of the Derby City Local Plan - Part 1 Core Strategy (January 2017) (the CS) and saved Policy GD5 of the City of Derby Local Plan Review (January 2006) (the DLPR), which together require high quality, well designed developments that, among other things, respond appropriately to their context; give particular scrutiny to backland development; provide a satisfactory level of amenity within the site itself and not cause unacceptable harm to the amenity of nearby areas, including through loss of privacy and overbearing effect.
9. These policies are consistent with the National Planning Policy Framework (the Framework) which sets out that developments should create places with a high standard of amenity for existing and future users.

Living Conditions – Noise and Disturbance

10. The concerns raised in these respects, from the Council and interested parties, relate mainly to increased comings and goings from the proposed dwellings via the existing access to the dwelling at No 39A. The site access spurs from the outer edge of a 90 degree bend in the road on West Avenue South. The access passes immediately in front of another dwelling, No 39B, that stands next to the site entrance. The proposals include the demolition of a side extension to No 39A to allow the access road to continue to the full depth of the site.
11. The proposed four dwellings each would have three bedrooms and be capable of family occupation. It is not unreasonable to think that each family may have two cars making daily trips to and from the site. This would be a significant increase compared to the level of activity that the existing single dwelling at No 39A generates. Due to the narrow width of the access, vehicles would pass very close to the front elevation of No 39B and the reconfigured side elevation of No 39A. Although the overall number of vehicle movements would not be substantial, and most movements would be concentrated within short periods in the morning and evening, they would nevertheless be a source of noise and vibration that would cause disturbance for neighbouring occupants. For both Nos 39A and 39B, I find that the proximity of the access lane would exacerbate

the impact that the passing vehicles would have on neighbouring occupants, particularly if occurring at unsociable hours.

12. Reference is also made to noise and disturbance for residents of Mariana Close from occupants of the proposed dwellings using their gardens. I accept that such use may be visible and audible, and possibly more so given the short depths of the gardens, but it would still normally amount to typical residential use which is characteristic of the area. As such, I do not find additional harm in this respect.
13. However, for the reasons set out, I conclude that the proposal would lead to harmful levels of noise and disturbance for neighbouring occupants, contrary to the aforementioned aims of Policies CP3 and CP4 of the CS, saved Policy GD5 of the DLPR and the Framework with respect to living conditions.

Highway Safety - Bin Storage

14. The local highway authority (LHA) raised concerns over elements of the proposed scheme, in particular that the internal road layout does not include a turning head and a lack of detail in respect of bin storage and collection. The access would be a private drive, meaning council refuse vehicles would not enter the site and provision would have to be made for bins to be available for collection within a distance of 15 metres from the highway, per the Council's guidance¹.
15. At my visit, I saw an area opposite No 39B already in use for storage of seven bins. Given the aforementioned requirements, this area would most likely have to accommodate these and several more bins on collection days. In the absence of details of a dedicated bin storage area, I am concerned that bins would be left haphazardly and potentially cause obstruction to access.
16. Moreover, there is no detail on the plans as to where bins would normally be stored on each property. There is room within rear gardens, but residents may be deterred from using this location due to the tight space to the sides of the dwellings when cars are parked there, restricting the ability to move the bins. Consequently, there is a risk of bins being stored indiscriminately around the fronts of the dwellings, on the access road or left permanently around the collection area at the site entrance. This would also exacerbate the harm suffered by occupants of No 39B, and No 41 on the other side, due to the increased risk this would present in terms of visible waste, odour and vermin.
17. Although details of bin storage are often resolved by condition, the space limitations at the site entrance and around the dwellings themselves mean I am not satisfied that a solution is readily identifiable such that it could be left to be addressed by condition.
18. Therefore, I conclude that the proposal would fail to provide adequate bin storage and so would increase the risk to highway safety and harm the living conditions of neighbouring occupants, in conflict with Policy CP23 of the CS and saved Policies GD5 and H13 of the DLPR, which together require that residential development maintains appropriate access for car users and the movement of goods; creates a satisfactory relationship to nearby properties and does not cause unacceptable harm in terms of smells, traffic generation,

¹ Delivering Streets and Places – Detailed Design Guidance – Servicing: Access to Frontage Development; Technical Criteria

access and parking. There would also be conflict with the design and amenity-related aims of the Framework.

Highway Safety - Access

19. The lack of a turning head within the site means that vehicles entering the site, reasonably identified by the LHA as including larger delivery vans, would be faced with a long reversing manoeuvre to exit the site. This would pose a particular hazard when emerging back onto West Avenue South where the driver may be unsighted by the angle of the lane, trees and parked cars. The narrow width of the site entrance would also preclude two vehicles passing each other, adding to the potential for vehicles having to wait in the highway for a vehicle to leave the site and increasing the risk of conflict between vehicles in the carriageway or between vehicles and pedestrians across the footway. While I accept such incidents may be infrequent, they nevertheless add to my concerns that the proposal falls short of the high standard of design expected by the policies of the development plan and the Framework, and as such is contrary to the aforementioned requirements of Policy CP23 of the CS and saved Policies GD5 and H13 of the DLPR in terms of maintaining appropriate access, considering the effects of backland development and not causing harm by reason of traffic generation, access and parking.

Effect on Trees

20. The Council refers to a tree within the driveway of the site, which is subject to a tree preservation order, along with other vegetation around the site perimeter, for which no assessment of potential impact has been made in the application. I saw on site that this tree stands immediately next to the driveway with indications that some of its exposed roots are driven over by cars accessing No 39A. There is an absence of detail within the application as to plans for this area, including whether it is to be resurfaced or otherwise altered to facilitate access to the development. Given the proximity of the protected tree, and the limited space available around the site access, I am concerned that works in this area could jeopardise the health of the tree. In the absence of further details in this respect, I cannot be satisfied that the proposal would not pose a risk to the health of the tree that may lead to its future loss and subsequent harm to the visual amenity of the area, which is characterised by mature street trees lining the highway. Therefore, I find conflict with Policies CP16 and CP19 of the CS, and similar provisions of the Framework, which require development to support improvements to the city's green infrastructure and avoid, minimise and mitigate the impacts on biodiversity.

Other Matters

21. The Council in its delegated report was critical of the proposal in terms of its design and layout, describing it as 'cramped and out of character with the surrounding context of large properties within large plots.' However, the Council's reasons for refusal ultimately refer only to the impact of the proposal on living conditions and do not cite harm to the character and appearance of the area. As such, it is not a matter which the Council is contesting or that the appellant has addressed at the appeal stage. Therefore, while acknowledging the comments of the Council and interested parties in this matter, it is not an issue on which the appeal turns and so I do not address it in further detail.

22. I have noted comments made by interested parties in respect of other matters not already addressed, including on-street parking, overdevelopment, construction management, flooding/drainage, habitat loss, air pollution, impacts on foundations and boundary walls, stress on local infrastructure and emergency access. I do not disregard these matters, but they have not been contested by the Council and on the limited evidence I have, I do not find there to be additional material harms arising that need to be factored into the planning balance.
23. I note the appellant's contention that matters were not brought to their attention by the Council during the application process. Such concerns are matters for local government accountability and do not have a bearing on my decision, which is limited to the planning merits of the proposal, having regard to the evidence before me.

Planning Balance and Conclusion

24. The Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites. Therefore, pursuant to paragraph 11(d) of the Framework, the presumption in favour of sustainable development is engaged.
25. The proposal would deliver benefits in terms of delivery of four dwellings in an accessible location at a time when the Council cannot demonstrate a sufficient supply of deliverable housing sites, a benefit weighing strongly in favour of the proposal in the circumstances. There would also be minor benefits in terms of the economic activity generated in the construction of the dwellings and subsequently by occupants in patronising local businesses.
26. Set against this, I have found that the proposal would cause demonstrable harm to the living conditions of existing and future occupants in a number of respects. The proposal also fails to demonstrate that it would provide safe access and egress from the site that would safeguard highway and pedestrian safety, or that protected trees would be safeguarded. This results in conflict with several policies of the development plan and the guidance of the Framework. I afford significant weight to these conflicts.
27. The benefits of the proposal, taken together, are considerable. However, in providing new housing, the development would simultaneously introduce increased risk to highway safety and harm to neighbours' living conditions. Overall, in the context of paragraph 11, the adverse impacts associated with granting planning permission would significantly and demonstrably outweigh the benefits, when considered against the policies of the Framework, taken as a whole.
28. Consequently, the Framework, as a material consideration, does not indicate that permission should be forthcoming, and there are no other material considerations that would justify a decision being made other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

K Savage

INSPECTOR