



Appeal Decision

Site visit made on 18 April 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Appeal Ref: APP/C1055/W/22/3311803

3 Troon Close, Derby DE23 4UA

- 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 Fontenay Ltd against the decision of Derby City Council.
 - The application Ref 22/00641/OUT, dated 20 April 2022, was refused by notice dated 25 May 2022.
 - The development proposed is outline consent for up to two dwelling houses (C3) and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application, subject to this appeal, is made in outline with appearance, landscaping, layout and scale being the reserved matters. I have therefore treated these details shown on the appeal plans, as indicative only.

Main Issues

3. The main issues of the appeal are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposal would satisfactorily address the potential loss of biodiversity.
 - the effect of the proposed development on the living conditions of residents of 2, 3 and 4 Troon Close, with regard to noise and disturbance; and

Reasons

Character and appearance

4. Troon Close is a private road with a small number of properties accessed via long driveways which adjoin the cul-de-sac in proximity to one another. The properties are set back and down from the road but sited close to the side boundaries. All of the properties on Troon Close benefit from substantial rear gardens.
5. Whilst the proposed layout is a reserved matter, given the size and orientation of the appeal site the proposed properties are likely to front the access track and adjoin rear gardens of neighbouring properties which would lead to a linear pattern of development. A linear pattern of development would be at odds with the prevailing pattern of development within Troon Close.

6. Due to the size of the site, the two proposed properties would be sited within relatively modest sized plots when compared to neighbouring properties on Troon Close. The significant difference in plot sizes would make the proposed development appear cramped and incongruous when viewed alongside neighbouring development.
7. The pattern of development along Pastures Hill includes sporadic back land development which contributes to the character and appearance of the wider area. However, the proposed development would be seen almost exclusively alongside existing development on Troon Close and therefore should primarily respond to its prevailing character and appearance.
8. Nos. 82a and 84b Pastures Hill is back land development which reflects the pattern of development in its immediate surrounding. The proposed development would be materially different as it would appear at odds with the immediate neighbouring development.
9. Likewise, the development on Coppicewood Drive is materially different to Troon Close as it is a small housing estate, accommodating a much denser pattern of development. Whilst some of the rear and side elevations of properties on Coppicewood Drive can be seen from the appeal site due to the surrounding topography, these properties have little effect on the character and appearance of the immediate surrounding area, given the distance to the appeal site.
10. The aforementioned developments are materially different to the proposed development, as such they do not alter my assessment on the acceptability of the appeal proposal. Likewise, the potential for future development on neighbouring land to assimilate with the proposed development does not weigh in favour or against the proposed development, as it is assessed on its own merit and based on the plans that were before the Council during the determination of the application.
11. Neither Policy CP4 of the Derby City Council, Derby City Local Plan – Part 1, Core Strategy (CS), January 2017 or saved Policy H13 of the City of Derby, Local Plan Review (LPR), January 2006 preclude back land or tandem development. However, these policies indicate that the Council will give particular scrutiny to development of that nature and require the proposed development to be of a satisfactory form. For the reasons given above, the proposed development is not of a satisfactory form as it does not reflect the character and appearance of the immediate area.
12. The proposed development would have a harmful effect on the character and appearance of the area and would therefore be contrary to CS policies CP3 and CP4 and LPR Policy H13. These policies indicate that proposals should respond positively to the existing landscape features, existing buildings and site orientation; proposals that do not appropriately respond to their context will be resisted; and, planning permission will be granted subject to meeting a number of objectives including creating a satisfactory form of development. It would also be contrary to paragraph 130 of the National Planning Policy Framework (the Framework) which advises that planning decisions should ensure that developments are sympathetic to the local character.

Biodiversity

13. Circular 06/2005¹ identifies that it is essential that the presence, or otherwise, of protected species, and the extent that they may be affected by the proposed development is established before planning permission is granted. Further to this, Circular 06/2005 caveats that developers should not be expected to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the decision.
14. Whilst the appeal site is within a residential curtilage, there are a number of features present on the site which may provide habitat for protected species including trees, hedgerows, long grass and a pond. I have not been provided with any surveys identifying the presence of protected species, or otherwise, and any necessary mitigation. The retention of vegetation around the boundary may preserve some habitats. However, I cannot conclude that protected species would not be affected by the proposed development through the loss of alternative habitat elsewhere on site. In making my decision I am mindful of the precautionary principle which requires that where it is unclear whether an effect would be significant, it must be assumed that such an effect would be, unless there is objective evidence to the contrary.
15. CS Policy CP16 concerns Green Infrastructure (GI), paragraph 5.16.1 identifies different elements of GI which includes individual trees, woodland and hedgerows and other landscape features, outdoor sport facilities and the ecological network linking all of the identified elements, amongst other examples. In this instance, the vegetation within the appeal site can be considered as GI as it includes hedgerows, individual trees and links to the neighbouring golf course.
16. I conclude that the appeal proposal would not satisfactorily address the potential loss of biodiversity. The appeal proposal would therefore not comply with CS policies CP16 and CP19 as the Council would not be able to ensure that the proposed development does not have an adverse impact on a recognised important element of GI and that the proposed development will protect, enhance and restore the biodiversity and geodiversity value of the land. The appeal proposal would also fail to comply with paragraph 174 of the Framework which indicates that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on biodiversity.

Living conditions

17. The proposed access track would be of a limited width between 2 and 3 Troon Close. Whilst it is acknowledged windows from Nos. 2 and 3 would front onto the proposed access, based on the evidence before me these windows either serve non-habitable rooms or are secondary windows. The appellant has identified that vehicle movements associated with the two dwellings would be modest and this has not been disputed by the Council. The increase in vehicle movements would also be partially offset by restricting existing vehicle movements from residents of No. 3, who can currently park their cars to the rear of their property. Given the limited increase in proposed vehicle movements and the internal layout of Nos. 2 and 3, the proposed access

¹ Government Circular: Biodiversity and Geological Conservation – statutory obligations and their impact within the planning system, Office of the Deputy Prime Minister, August 2005

arrangement would not have an unacceptable effect on the living conditions of residents of Nos. 2 and 3.

18. The area to the rear of 2-4 Troon Close is tranquil due to the size of the rear gardens and the distance from traffic on Pastures Hill, which is one of the most dominant noise sources in the area. The proposed development would lead to an increase in residential activity to the rear of these properties. Nevertheless, the increase in activity would be relatively limited given the modest scale of development, and this would not result in an unacceptable increase in noise and disturbance. Furthermore, the effect of the proposed development, including during the construction phase, could have been partially mitigated through the installation of measures detailed at the reserved matters stage or required by condition, if I had been minded to allow the appeal.
19. The proposed development would not have a harmful effect on the living conditions of residents of Nos. 2, 3 and 4, with regard to noise and disturbance. The proposed development would be in accordance with LPR Policy GD5 which indicates that planning permission will only be granted for development where it provides a satisfactory level of amenity and provided it would not cause unacceptable harm to the amenity of nearby areas. The appeal scheme would also comply with Paragraph 130 of the Framework which suggests that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Planning Balance

20. Benefits associated with the scheme include the appeal site being an accessible location for residential development, the efficient use of land, and the provision of two houses on previously developed land. The weight ascribed to benefits is a matter of judgement for the decision maker. In this instance given the relatively modest scale of development, I ascribe moderate weight to the benefits.
21. The appeal site being located in an area where the principle of residential is considered acceptable; a lack of overlooking of neighbouring properties; the provision of sufficient parking and an acceptable vehicular access; alongside a lack of an objection from the local highway authority are all neutral factors.
22. There are no policies in the development plan that positively favour development which is harmful to the character and appearance of the area and potentially harmful to protected species. As the appeal scheme is contrary to the policies listed above, there would be a conflict with the development plan when considered as a whole.
23. It is acknowledged by both parties that the Council cannot demonstrate a five year housing land supply of deliverable housing sites. Accordingly, the presumption in favour of sustainable development identified at paragraph 11 of the Framework is engaged.
24. Paragraph 69 of the Framework indicates that small and medium sites can make an important contribution to meeting the housing requirement of an area. There would also be economic benefits associated with the construction of the development and an increase in population to support the vitality of services, as supported by paragraph 86 of the Framework. Paragraph 130 of the Framework requires planning decisions to ensure that developments create

places that are accessible, the appeal site is in a location which is easily accessible by public transport and by walking or cycling. Nevertheless, these benefits can only be afforded moderate weight given the modest scale of development.

25. Paragraph 126 of the Framework states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Furthermore, paragraph 130 requires planning decisions to ensure that proposals are sympathetic to the local character.
26. Paragraph 174 of the Framework indicates that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on biodiversity.
27. The proposal would be contrary to paragraphs 126 and 130 of the Framework and without further evidence I cannot conclude that it would comply with paragraph 174. Given the harm caused to the character and appearance of the area and the importance the Framework places on achieving beautiful places and following the precautionary principle in relation to the potential effect on biodiversity, I ascribe significant weight to the harm caused by the proposed development.
28. Paragraph 11 of the Framework advises that decisions should apply a presumption in favour of sustainable development; for decision-taking this means where the policies which are most important for determining the application are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.
29. In this instance the harm that would be caused would significantly and demonstrably outweigh the benefits of the appeal scheme. Therefore, the presumption in favour of sustainable development does not apply.

Conclusion

30. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations including the provisions of Paragraph 11 of the Framework, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
31. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR