



Appeal Decision

Site visit made on 24 May 2023

by J D Clark BA (Hons) DpTRP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/M1005/W/23/3315622

2 Loscoe Road, Heanor, Derbyshire DE75 7FF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Shaek Miah against Amber Valley Borough Council.
 - The application Ref AVA/2022/0567, is dated 17 June 2022.
 - The development proposed is demolition of the existing outbuildings, the erection of 2 no. semi-detached 3 bedroom dwellings, change of use to provide a 2 bedroom maisonette and the change of use of the existing retail unit to provide a 2 bedroom self-contained flat at Loscoe Convenience Stores 2 Loscoe Road Heanor.
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Decision

1. The appeal is dismissed and planning permission for demolition of the existing outbuildings, the erection of 2 no. semi-detached 3 bedroom dwellings, change of use to provide a 2 bedroom maisonette and the change of use of the existing retail unit to provide a 2 bedroom self-contained flat at Loscoe Convenience Stores 2 Loscoe Road Heanor is refused.

Applications for costs

2. An application for an award of costs was made by Mr Shaek Miah against Amber Valley Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The appeal is against the Council's failure to determine the planning application within the prescribed time period. In its evidence, the Council states that had it been able to issue a decision it would have refused planning permission on grounds relating to living conditions.
4. The Council's concerns relate to the proposed semi-detached dwellings rather than the change of use of the existing premises. On the basis of the evidence, I see no reason to disagree.

Main Issue

5. The main issue is the effect of the proposal on the living conditions of the occupiers of the neighbouring property, 4 Loscoe Road by reason of overlooking and loss of privacy.

Reasons

6. The appeal site is a three-storey building and land associated with it on the corner of Loscoe Road and Midland Road. No 4 Loscoe Road is an end terrace two-storey house adjacent to No 2. The appeal site wraps around the corner and is adjacent to 1 Midland Road, a semi-detached two-storey house. The proposed semi-detached dwellings would front Midland Road and therefore be at right angles to 4 Loscoe Road and its garden.
7. From the upper floors of the proposed semi-detached dwellings, the bedroom windows would look over No 4's garden and towards the rear of the house. Due to the relatively short distance between the windows and the shared boundary with No 4, there would be close overlooking especially of the garden. The resulting loss of privacy would be significantly detrimental to the neighbouring occupiers in both their property and their private outdoor space.
8. Therefore, I conclude that the proposal would harm the living conditions of the occupiers of the neighbouring property, 4 Loscoe Road, with particular regard to overlooking and loss of privacy. It would conflict with Local Plan¹ Policies LS3 and H12 which, among other things, require new development to take into account the relationship between development proposals and neighbouring buildings and not to unduly affect the privacy of adjoining or adjacent properties through overlooking. Furthermore, the proposal would conflict with the Council's SPD² in relation to separation and overlooking.

Other Matters

9. The appellant considers there has been a failure in communication with the Council. While I appreciate that this would have been frustrating, it does not weigh in favour of the scheme.
10. The proposal is a slightly modified version of a previously approved application³ which has now expired. However, the plans submitted with the appeal were apparently superseded and they are not the approved plans. On the basis that the lapsed permission did not include first floor windows in the rear elevation, it does not appear directly comparable to the proposal and it does not provide a justification for it.
11. The appeal site is a brownfield site in an accessible residential area a short distance from Heanor Town Centre such that its regeneration would benefit the area. There would be no impacts on the historic environment. Any risk from past coal mining activity including mine gas could be addressed by a planning condition. The proposal also offers an opportunity to enhance the local swift population through the installation of swift bricks which could also be addressed by a condition. The proposal would not harm highway safety or parking. Furthermore, there would be short term economic benefits during construction and future occupiers would contribute to the local economy through support for local services and facilities.
12. However, notwithstanding the modest benefits of the proposal, these do not outweigh the harm that would be caused to the living condition of the occupiers of the neighbouring property.

¹ Amber Valley Borough Council – Amber Valley Borough Local Plan Adopted 2006.

² Amber Valley Borough Council Supplementary Planning Document Residential Development October 2007 (SPD).

³ Planning Application Ref: AVA/2018/0155.

13. There is no dispute that the Council can demonstrate a five-year supply of deliverable housing sites. However, its development plan policies with regard to housing provision are out of date, in particular Local Plan Policy H3 which does not envisage growth beyond 2011. Nevertheless, the most important policies for determining this appeal are Local Plan policies LS3 and H12 and these are consistent with the residential amenity aims of the National Planning Policy Framework⁴. Consequently, as the Council can demonstrate a 5 year supply of deliverable housing sites, and the most important policies are not out of date, the 'tilted balance' set out in Paragraph 11(d) of the Framework is not engaged.

Conclusion

14. For the reasons given above, I conclude that the proposal would conflict with the development plan as a whole and there are no considerations that would outweigh that conflict. Therefore, I conclude that the appeal should be dismissed.

J D Clark

INSPECTOR

⁴ Ministry of Housing, Communities and Local Government National Planning Policy Framework (the Framework).