



Appeal Decision

Site visit made on 19 July 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal Ref: APP/A1015/W/23/3316347

66 South Street North, New Whittington, Derbyshire S43 2AB

- 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 outline planning permission
- The appeal is made by Mr Rawson of Rawson Residential Renovations Ltd against Chesterfield Borough Council.
- The application Ref CHE/22/00592/OUT, is dated 15 August 2022.
- The development proposed is described as the residential development of two dwellings.

Decision

1. The appeal is allowed and outline planning permission is granted for the residential development of two dwellings at 66 South Street North, New Whittington, Derbyshire, S43 2AB, in accordance with the terms of the application, Ref CHE/22/00592/OUT, dated 15 August 2022, subject to the conditions set out in the Schedule at the end of this decision.

Preliminary Matters

2. This is an appeal against non-determination of a planning application. The Council's statement clarifies that the application would have been refused if a decision had been made, and provides the reasons.
3. The proposal is in outline for all matters, and I have therefore treated the submitted plans as indicative.

Main Issues

4. The main issues are the effect of the proposed development:
 - on the living conditions for occupiers of neighbouring properties and potential future occupiers, with specific regard to privacy, internal floorspace, and garden size; and
 - on the character and appearance of the area.

Reasons

Living Conditions

5. The site is to the rear of No. 66 South Street North, with access only from a track at the end of Cross Wellington Street. It comprises part of the former garden of No. 66, which has been divided into 2 dwellings. The proposal is for 2 dwellings, which the indicative plans identify as a semi-detached 2-storey houses with rear gardens.

6. The Successful Places Supplementary Planning Document (SPD) (2013) identifies minimum recommended separation distances between windows of adjacent properties, to ensure a satisfactory level of privacy. It notes that these should be relaxed or increased having regard to the particular site conditions and context. Examples of such specific circumstances include the character of the area, topography, and appropriate screening.
7. On the basis of the indicative plans, the Council identifies a 1.0m shortfall in this separation distance between the rear windows of the proposed dwellings and those of Nos. 66 and 68 South Street North. For the angled relationship with the windows of Nos. 52 and 54 South Street North, there would be a 1.00-1.5m shortfall. In conjunction with the slight slope down to the appeal site, whereby that I find that separation distances slightly longer than the minimums would be required, this would therefore create harm due to a lack of privacy.
8. Furthermore, the Local Highway Authority identifies that the dwellings would need to be set further back within the site in order to provide suitable parking spaces. This would further reduce these separation distances. It would not be acceptable to plan for cars to be part accommodated outside of the site.
9. While the appellant identifies that the obscure glazed bathroom windows at rear first floor would only allow for minimal overlooking, this does not take account that the existing dwellings have first floor windows. There would thus be a direct relationship between the different dwellings' windows. The SPD does not differentiate minimum distances based on a distinction between upper and ground floor windows. Based on the plans provided, harm would therefore be caused due to a lack of privacy for occupiers of neighbouring properties and potential future occupiers, giving rise to unacceptable living conditions.
10. However, the proposal is in outline with all matters reserved. In particular, the description of the development does not specify the height, size, or layout of the proposed dwellings. I therefore find that the site is of a sufficient size that there is potential for the aspects leading to the lack of privacy to be altered through a different layout and/or a smaller design of dwelling. This would thus not result in any harm to living conditions.
11. With relation to internal floorspace, the indicative plans show the proposed dwellings to meet the requirements set by the Nationally Described Space Standard (NDSS), apart from the width of the larger bedroom. Again, this is a matter to be addressed at reserved matters stage. As the NDSS sets a 37sqm minimum gross internal floor area for a dwelling, the site is of a sufficient size overall that it is reasonable to expect that 2 dwellings would fit within it.
12. The Council also considers that the splitting of the site has resulted in the existing gardens serving Nos. 66 and 68 now being below the 50sqm required by the SPD. The appellant specifies that these gardens have a combined area of 126 sqm. Based on the block plan and in the absence of detailed evidence to the contrary, I find that they are reasonably sized gardens.
13. Any overshadowing to neighbouring properties would only affect a parking area, and therefore would not cause harm to living conditions.
14. In conclusion therefore, the proposed development would result in acceptable living conditions for occupiers of neighbouring properties and potential future

occupiers, with specific regard to privacy, internal floorspace, and garden size. It would comply with Policies CLP 14 and CLP 20 of the Chesterfield Borough Local Plan ('the LP') (2020), and the Successful Places SPD, which together require development to have an acceptable impact on the amenity of neighbours and users, taking into account, amongst other things, overlooking, and that acceptable living conditions should always be provided for new and existing occupants. The proposal would also comply with the National Planning Policy Framework ('the Framework') (2021) paragraph 130, regarding the need to ensure that developments function well, and to create places which have a high standard of amenity for existing and future users.

Character and appearance

15. The main pattern of development in the surrounding streets is generally consistent, comprising a grid of traditional terraced and semi-detached dwellings. The properties include relatively long rear gardens and rear access lanes in between. This gives a strong urban character to the front streetscapes and a relatively open and leafy character to the rear. However, the part of Cross Wellington Street leading into the appeal site's access point has a row of dwellings crosswise to this main pattern. There is also a new building to the site's north in a similar alignment with that proposed. Together these give this small part of the rear area of the properties a distinctly different character and cluster of urban grain compared to the gardens to its south.
16. Based on the indicative plans, 2-storey dwellings would have such significant massing in comparison to the lower level dwellings on Cross Wellington Street and the open gardens to the site's south, that they would have too great an impact and be incongruous with the character of the transition to the openness of the rear gardens. This would be compounded by the size of the suggested footprint and the parking spaces such that it would also be an over-intensive development within the site itself.
17. However, all detailed matters relating to scale and layout are reserved for future consideration. As outlined above, the height of the dwellings is thus not yet confirmed. The introduction of some scale of built form on the site would not be so incongruous as to draw undue attention or detract from the overall character of this area. Therefore, all forms of achieving 2 dwellings on the site are not precluded in principle.
18. In conclusion, the development would not harmfully affect the character and appearance of the area, and so would comply with the LP Policy CLP20 and the Successful Places SPD. These require development to identify and respond positively to the character of the site and surroundings, and respect the local distinctiveness of its context, form, and setting by responding to prevailing characteristics in terms of street patterns, density, layout, built form, materials, and details. It would also comply with the need to achieve well-designed places under part 12 of the Framework.

Other Matters

19. While the Council references the potential for setting a precedent for adjacent redevelopment, I have assessed the appeal on its own merits. Furthermore, the arrangement of the built form further along the access track does not have the same surrounding layout and character as that at the appeal site.

20. Third party concerns regarding rights of access and maintenance of the private track are a civil matter, and a loss of a view is not a material planning consideration. Objections relating to highways and access and waste disposal relate to the reserved matters stage. While objections were made on the grounds of drainage, the site is at low risk of flooding, and Yorkshire Water provided no comments. Matters regarding surface water drainage and water efficiency would partly be controlled by conditions at this outline stage, and partly would be addressed at reserved matters stage in relation to levels and hard surfacing. The Derbyshire Wildlife Trust were consulted with relation to biodiversity and raised no concerns regarding impacts on protected species, with increasing the site's biodiversity also required through a condition.

Conditions

21. I have attached the statutory conditions relating to the submission of reserved matters and the time limits associated with this, and one to specify the approved plan, to provide clarity for the terms of the permission.
22. I have imposed several of the Council's suggested conditions, subject to amendment to reflect paragraph 56 of the Framework and the Planning Practice Guidance. A Construction Method Statement to include control over matters including the hours of construction, site storage, and parking, is required to minimise disturbance to neighbours and for highway safety. A scheme to demonstrate a net measurable gain in biodiversity is required to increase biodiversity and to accord with paragraph 174 of the Framework. Conditions relating to water consumption and drainage are required to protect the water environment and to provide satisfactory drainage.
23. I have not set conditions to require plans to accompany the reserved matters stage for swept path analysis, separation distances, land levels, lighting, or landscaping and tree planting. These relate to specific reserved matters and so are unnecessary in relation to the outline proposal before me.
24. The Council has provided informatives to the appellant relating to the future Community Infrastructure Levy liability, that mud or other extraneous or loose material is not carried out of the site and deposited on the public highway, that connections to the public sewerage system and the drainage system require further consents, and that if any signs of protected species are seen then work should cease and contact made with a professional ecologist for further advice.

Conclusion

25. The scheme accords with the development plan as a whole. With no other material considerations indicating otherwise, for the reasons given above, I conclude that the appeal is allowed.

L Hughes

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan dated 22 November 2019.
- 5) No development other than site clearance and demolition works shall take place until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall include details of construction working hours, the parking of site operative and visitor vehicles, accommodation for site operatives, loading and unloading of plant and materials, and storage of plant and materials. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) As part of the reserved matters, a scheme to demonstrate a net measurable gain in biodiversity through the development, including a programme of implementation and maintenance, shall be submitted to and approved in writing by the Local Planning Authority. Measures to enhance biodiversity on site shall include:
 - planting of native shrubs and trees and/or fruit trees;
 - the incorporation of integrated swift bird boxes, sparrow terraces, and/or bat boxes into the new dwellings; and
 - hedgehog highways linking to other sites.

The agreed net measurable gains shall be implemented in accordance with these approved details and retained as such thereafter.
- 7) As part of the reserved matters, a scheme to demonstrate details of the proposed means of disposal of surface water drainage, including any balancing works and off-site works, and separate systems of drainage for foul and surface water on and off site, shall be submitted to and approved in writing by the Local Planning Authority.
- 8) The development hereby permitted shall not be occupied until a signed statement of confirmation from a suitably qualified drainage engineer of implementation of the drainage works approved under condition 7 has been submitted to and approved in writing by the Local Planning Authority. The implemented drainage works shall be retained as such thereafter.
- 9) No individual dwelling hereby approved shall be occupied until the optional requirement for water consumption (110 litres use per person per day) in Part G of the Building Regulations has been complied with for that dwelling.

END OF SCHEDULE