



Appeal Decision

Site visit made on 19 December 2023

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2024

Appeal Ref: APP/C1055/W/23/3324471

41 Marylebone Crescent, Derby DE22 4JY

- 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 Mrs Deborah Fern against Derby City Council.
 - The application Ref 23/00469/FUL, is dated 3 April 2023.
 - The development proposed is erection of two-storey dwelling.
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Decision

1. The appeal is dismissed and planning permission for erection of two-storey dwelling is refused.

Preliminary Matters

2. The applicant was described on the application form as 'C/O Agent'. Confirmation has been received that the applicant and appellant is Mrs Deborah Fern.
3. The appeal is against the Council's failure to give notice of its decision within the prescribed period. The Council have provided an appeal statement, and I have taken the main issue from the putative reasons for refusal which were detailed in their appeal statement.
4. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) accompanied by a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS. Having considered the parties' respective cases and the nature of the revisions, in light of the principles of natural justice, and in view of the Council having acknowledged a significant housing land supply shortfall, I have not considered it necessary to invite any submissions from the parties on the revised Framework.

Main Issues

5. The main issues are the effect of the proposed development on:
 - a) the living conditions of the occupiers of 39a and 39b Marylebone Crescent with particular regard to privacy, outlook and loss of light; and
 - b) the living conditions of future occupiers with particular regard to noise and disturbance; and
 - c) the character and appearance of the area.

Reasons

Living conditions of the occupiers of Nos 39a and 39b

6. The appeal proposal is for a detached two-storey dwelling on part of a side garden of a two-storey end of terrace property. To the rear of the appeal site are a semi-detached pair of dormer bungalows, numbers 39a and 39b Marylebone Crescent (No 39a and No 39b).
7. No 39b would be located directly to the rear of the proposed dwelling. The front elevation of No 39b would be approximately 17m from the rear elevation of the proposed development. The proposed dwelling would have 2 windows at the first-floor level rear elevation, which would serve a bedroom and a bathroom. The bungalows have roof lights, but their front elevations also have windows to habitable rooms. The occupants of the bungalows would be subject to clear views of their front windows from the proposed dwelling's first floor rear windows. This would create a perception of overlooking for the occupants of the bungalows, undermining their existing levels of privacy.
8. Furthermore, the outlook, particularly from No 39b, would be dominated by the proposed dwelling. This would be exacerbated by the height of the proposal in relation to the bungalows, which, whilst not fairly anticipated to lead to any unacceptable loss of light, would result in a looming and overbearing presence due to its location directly to the bungalows' frontage.
9. I acknowledge that the National Model Design Code (2021) provides guidance that privacy distances should normally be set between 15-20 metres where properties are back to back, and that there would not normally be a privacy distance at the front of the property. However, this is guidance rather than policy, and individual sites must be assessed on their relative merits. In this instance I consider that due to the particular circumstances of the proposal relating to properties of differing heights, the separation distance between the proposed dwelling and Nos 39a and No 39b is inadequate to allow an acceptable degree of privacy from the first-floor rear windows of the proposed dwelling.
10. The appellant has indicated that there is only 10m between the two-storey terraced property at 39 Marylebone Crescent and the bungalows. However, this property is offset from the bungalows. Its rear elevation does not directly face the front windows of the bungalows and therefore the privacy and outlook of the bungalows' occupants is not impacted to such an extent than would result from the proposed development.
11. I conclude that the proposed development would not provide adequate living conditions for the occupiers of No 39a and No 39b with regard to privacy and outlook. The proposal would therefore not be in accordance with saved Policies H13 and GD5 of the City of Derby Local Plan Review (2006) (LP) which, amongst other things, seek to ensure that development provides a satisfactory level of amenity in relation to loss of privacy and overbearing effect, and that residential properties should have a satisfactory relationship to nearby properties. It would also conflict with Policies CP3 and CP4 of the Derby City Local Plan- Part 1:Core Strategy (2017) (CS) which seek to ensure that development is well designed, well sited and well integrated in its setting.

Living conditions of future occupiers

12. The proposed development would be located in close proximity to the vehicular access, parking and circulation areas for the two bungalows. The access would run to the side of the proposed dwelling, and the parking and circulation areas would be to its rear.
13. However, I consider that the number of vehicular movements likely to be caused by the two bungalows would be modest, and would not result in significant noise and disturbance over and above what is to be expected in a built-up residential area. The side elevation of the proposed dwelling that would abut the bungalows' access would have no doors or windows, which would help to mitigate any impacts from vehicle headlights or noise.
14. Consequently, I do not consider that the proposed development would unacceptably affect the living conditions of future occupiers with regard to noise and disturbance. As such, the proposal would be in accordance with saved Policy GD5 of the LP in so far as it seeks to ensure that development provides a satisfactory level of amenity in relation to noise.

Character and appearance

15. The appeal site is situated at the end of a row of two-storey terraced properties. The local area is characterised by modest two-storey dwellings with small curtilages. The surrounding properties are generally semi-detached or terraces, and are similar in style and design.
16. The proposed dwelling would replicate the elevations, materials and roofscape of the surrounding properties, and be similar in size and scale. Although it would be a detached dwelling, I do not consider that this would look strongly out of place in the street scene, due to the similarities in size and design to the neighbouring dwellings. Whilst the majority of surrounding dwellings are semi-detached or terraced, there are a pair of bungalows to the rear of the proposal, which breaks up the uniformity and the prevailing pattern of development.
17. Marylebone Crescent is on a slight incline, with the appeal site being elevated in relation to the bordering terrace. The proposed dwelling would therefore be situated at a higher level than this terrace. However, the topography of the road rises, along with subsequent roof heights, and the proposal would follow this gentle increase in levels and continue the regular rhythm of rising roof heights. As such, I consider that the difference in levels would not lead to the proposal being unduly incongruous or result in the proposed dwelling being overly prominent in the street scene.
18. The footprint of the proposed development would be closer to the highway frontage than neighbouring properties. However, this would enable the proposal to follow the building line of the adjoining terrace, and continue the established built form. I consider that this would not look inappropriate or be harmful to the character of the area.
19. I therefore consider that the proposed development would not harm the character and appearance of the area. As such, the proposal would accord with Policies CP3 and CP4 of the CS in so far as they seek to ensure that development makes a positive contribution to the character of the

neighbourhood and responds appropriately to its context. In the context of this main issue of the appeal, the proposal would also be in accordance with saved Policies H13 and GD5 of the LP in so far as these policies stress that residential proposals should have a satisfactory relationship to nearby properties and not cause unacceptable harm to the amenity of neighbouring areas.

Other Matters

20. I note that there are no highway, parking or flood risk concerns. However, a lack of harm means that these are neutral matters that do not affect the planning balance.

Planning Balance

21. The council cannot demonstrate a 5 year supply of deliverable housing land. Indeed, it is my understanding that the latest published figure indicates a 3.17 year supply, which represents a significant shortfall. In this scenario, Paragraph 11 d) ii) of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. I have identified conflict with Policies H13 and GD5 of the LP, and with Policies CP3 and CP4 of the CS. Each is consistent with the Framework in so far as it promotes that planning decisions create places which promote health and well-being, with a high standard of amenity for existing and future users. As such, I apportion significant weight to these identified policy conflicts and to the associated harm that would be caused to the living conditions of neighbouring occupiers at No 39a and No 39b with respect to privacy and outlook.
23. Turning to the scheme's benefits, the Government is seeking to significantly boost the supply of housing. The Framework also encourages and supports the effective and efficient use of land and recognises that small sites can make an important contribution to the council's housing supply. Although the proposed development is for just one house, this would contribute positively to the council's housing land supply, providing a much-needed dwelling in the context of a significant housing supply shortfall.
24. Indeed, the proposed development would provide social benefits in terms of a new house with adequate living and amenity space in a sustainable and accessible location where the principle of new residential development is supported. Furthermore, the development would generate economic activity during the construction of the house and provide a home to residents who would contribute to the local economy. The development would be near facilities and public transport links which may encourage future occupants to use sustainable modes of transport, thus minimising effects upon the environment. There would therefore be economic, social and environmental benefits to the scheme. As the proposal is for only one dwelling, I give these benefits moderate weight.
25. In my judgement, the adverse impacts of granting planning permission would, in this particular case, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development outlined at Framework paragraph 11 does not, therefore, apply.

Conclusion

26. I have found that the proposal would provide adequate living conditions for future occupiers and would not harm the character or appearance of the area. However, I conclude that the proposal would not provide adequate living conditions for the occupiers of No 39a and No 39b with regard to privacy and outlook and thus cause harm. This harm is the overriding consideration in this case.
27. The proposal conflicts with the development plan when taken as a whole. There are no material considerations, including the Framework, which would indicate a decision other than in accordance with the development plan.
28. For the reasons given above the appeal is dismissed.

L C Hughes

INSPECTOR