



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: 11 January 2024

Appeal Ref: APP/C1055/W/23/3325466

56 Field Rise, Littleover, Derby DE23 1DW

- 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 Jonathan Bill against the decision of Derby City Council.
 - The application Ref 23/00658/FUL, dated 10 May 2023, was refused by notice dated 6 July 2023.
 - The development proposed is new dwelling (Class C3) with associated parking in rear garden of 56 Field Rise, with access off Rowley Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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

3. The main issues are the effect of the proposed development on:
 - a) the living conditions of the occupiers of 56 Field Rise (No 56) with regard to privacy, and the occupiers of 58 Field Rise (No 58) with regard to privacy and outlook; and
 - b) the character and appearance of the area.

Reasons

Living conditions

4. The proposed development would be located within the rear garden of No 56, a large detached dwelling within a residential area. Due to a difference in land levels, the proposed dwelling would be elevated slightly above Field Rise and Nos 56 and 58. The proposed development would be at the rear of No 56, would back on to No 58, and would be to the side of 34 Rowley Lane.

5. No 56 would retain a garden area approximately 5.3m deep. The proposed dwelling would have an approximately 5.5m deep garden area between itself and the boundary of No 56. There would therefore only be approximately 11m between the proposed dwelling and No 56, and approximately 5.5m between the proposal and the boundary with No 56.
6. The rear of No 56 would face the side elevation of the proposed dwelling, which would have velux windows facing No 56. Whilst the velux windows may be of a height that enables them to allow light into the proposed dwelling, rather than to enable outlook on a horizontal axis, I consider that the presence of the number of roof windows intended at close proximity and directly facing the rear windows and garden of No 56 would give rise to the perception of overlooking and lead to the occupiers of No 56 experiencing a loss of privacy.
7. The rear elevation of the proposed dwelling would be situated less than 1m from the boundary with No 58. The first-floor rear windows of the proposal would be high level and the ground floor windows would have obscure glazing. However, although the windows of the proposal would therefore not lead to direct overlooking, the presence of the windows, most particularly at first floor and so close to the boundary with No 58, would be oppressive and lead to a perception of overlooking and a loss of privacy for the occupiers of No 58.
8. The appellant has suggested that the Council could have attached an appropriate condition requiring the first-floor windows/ roof windows to be obscurely glazed. Whilst a condition could be attached to ensure that the windows are obscurely glazed, owing to the number and cumulative size of the windows intended to both the rear and side of the newly proposed property, I do not consider that such an approach would satisfactorily safeguard against the perception of overlooking. Further, it has been suggested that windows could have been removed through negotiation. However, for the avoidance of doubt and in the interests of ensuring that no one with a potential interest in the outcome of the appeal is prejudiced, I am unable to consider the merits of potential scheme amendments at appeal stage.
9. Furthermore, the outlook from No 58 would be affected by the proposed dwelling, the height of which would result in a looming and overbearing presence due to its proximity to the boundary. The proposed dwelling would be constantly apparent to the occupants of No 58 when in their rear garden. The proposed development would therefore not provide adequate living conditions for the occupiers of No 58 in relation to outlook.
10. Whilst the boundary between the proposed development and No 58 is currently bounded by conifer hedges, which would soften the impact of the proposed development, the conifers have no statutory protection. As such there is no certainty that they will not be removed at some stage. The current screening is therefore not a determining factor when considering the permanent effect that the proposal would have on the living conditions of the occupants of No 58.
11. I acknowledge that the appellant owns No 56 and that the occupants of No 58 have not raised an objection to the proposed development. However, the absence of an objection does not change my conclusions on the appeal scheme. Further, I am mindful that any harm identified would be permanent and would impact future occupiers of the neighbouring properties.

12. I conclude that the proposed development would not provide adequate living conditions for the occupiers of No 56 with regard to privacy, and the occupiers of No 58 with regard to privacy and outlook. The proposal would therefore not be in accordance with saved Policy GD5 of the City of Derby Local Plan Review (2006) (LP) which, amongst other things, seeks to ensure that development provides a satisfactory level of amenity in relation to loss of privacy and overbearing effects. It would also conflict with the Framework, which seeks to ensure that developments provide a high standard of amenity for future and existing users.

Character and appearance

13. The appeal site is within an attractive residential area characterised by dwellings of a variety of sizes, styles and designs. The proposed dwelling would therefore not be out of keeping with a particular house style, or disrupt a uniform rhythm of development. It would be two-storey and built in similar materials to surrounding properties. Although it would have an asymmetric roof design and a relatively large amount of glazing on the front elevation, I consider that the design of the proposed house itself would not be particularly incongruous in an area with a mix of housing designs.
14. However, in accordance with concerns raised by various interested parties in the context of the plot and the size of the property intended, the proposed dwelling would appear cramped within the plot, and as such would not relate well to the scale and character of the surrounding properties. The dwellings nearest to the proposed development all have rear gardens, and are generally well positioned within relatively large plots. The proposed development would be situated right up to the boundaries of 34 Rowley Lane and 58 Field Rise, which would leave no room for a rear garden, and notwithstanding the adequate amount of outdoor amenity space to be provided, would give the impression of being squeezed in. This would be discordant and untypical for the locality, and would be out of keeping with the spacious pattern and character of development which contributes positively to the area's sense of place.
15. My attention has been drawn to new dwellings in the surrounding streets that have been granted planning permission. Whilst undertaking my site visit, I also went to view these developments. I noted that they were not directly comparable, as they were in streets with a different character and appearance to the appeal proposal, and each had a different relationship with their respective street scenes and neighbouring properties when compared to the proposed dwelling. I am not aware of the considerations that applied in each case, and I have determined this appeal on its individual planning merits. The examples of other new dwellings in the locality do not lead me to find that the proposal would be acceptable.
16. I conclude that the proposed development would harm the character and appearance of the local area. As such, it would not conform 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 integrated in its setting, makes a positive contribution to the character of the neighbourhood and responds appropriately to its context. It would also be contrary to saved Policy H13 of the LP which stresses that residential proposals should have a satisfactory form of development and relationship to nearby properties. Additionally, it would

conflict with the Framework which highlights that development should be sympathetic to local character.

Other Matters

17. I have noted the concerns raised by interested parties with respect to matters including access and highway and pedestrian safety. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore these matters further.
18. I note that the appellant is aggrieved with the Council's lack of communication with regard to their application, which they consider has denied them the opportunity to modify their design. However, this is a matter between the parties that does not fall within the remit of this appeal.

Planning Balance

19. The Council cannot demonstrate a 5 year supply of deliverable housing land. Moreover, it has confirmed that a 3.17 year supply can currently be demonstrated, 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.
20. I have identified conflict with saved 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 developments are sympathetic to local character and/or 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 each of the associated harms that would be caused to the character and appearance of the area and to the living conditions of neighbouring occupiers at No 56 and No 58.
21. 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.
22. Indeed, the proposed development would provide social benefits in terms of a new house with adequate amenity space in a sustainable and accessible location, where the principle of new residential development is supportable. 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. I also acknowledge the intention to utilise modern and sustainable construction methods. 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.

23. However, 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 apply, therefore.

Conclusion

26. I have found that the proposal would not provide adequate living conditions for the occupiers of No 56 and No 58 and additionally, would cause harm to the character and appearance of the area. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, including the Framework, which would indicate a decision other than in accordance with the development plan.

27. For the reasons given above the appeal is dismissed.

L C Hughes

INSPECTOR