



Appeal Decision

Site visit made on 24 January 2024

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/W3710/W/23/3327327

Site 49b003 The Circle, Nuneaton, Warwickshire CV10 8BB

- 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 Michael Cunningham against the decision of Nuneaton and Bedworth Borough Council.
 - The application Ref 039473, dated 19 February 2023, was refused by notice dated 7 July 2023.
 - The development proposed was originally described as "Currently scrubland bordering The Circle. A previous planning application was passed for flats in 2007, the current owner wants to make a small development of 6 small homes. The properties offer a garden area to the front and rear elevation, with off road parking."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development above is taken from the application form. However, the proposal was amended during its determination to reduce the number of dwellings from 6 to 4. The description on the Council's refusal notice describes the proposed development more succinctly and reflects the amendments made to the scheme. The Council dealt with the proposal on this basis and so shall I, notwithstanding the description above.
3. During the course of the appeal a revised Framework was published on 19 December 2023. However, as any policies in the Framework that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version in reaching my decision.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area,
 - Whether the proposal would provide acceptable living conditions for future residents with regard to privacy and outlook, and
 - The effect of the proposed development on highway safety, with regard to the access.

Reasons

Character and appearance

5. The appeal site is overgrown scrub land, fenced off from the road. It is located along The Circle, an established residential area with distinctive curved roads. Two storey semi-detached dwellings face the road, but are set back from it behind front gardens and low boundary fences/walls. The block of flats at The Lodge, adjacent to the site, follows a similar building line to the properties and garden fences along this part of The Circle. As a result, there is a strong rhythm and building line and a general uniformity of design. There are also a number of three storey blocks of flats opposite and in the vicinity of the site, which are set in open grassed surroundings. With the prevailing pattern of dwellings and the more open setting of the flats opposite, the area has a spacious character and appearance, that also prevails around The Circle as a whole. The site currently creates space in the street scene, but its currently untidy nature is visually detrimental.
6. The proposal would involve erecting two pairs of semi-detached dwellings that would be orientated side-on to the road. The row of houses would also be built close to the back edge of the pavement as well as present a blank elevation. The property closest to the road would be about 1m away, whereas properties either side are set back about 4.7m and 5.3m. As a result, the proposed dwellings would sit forward of the prominent building line and be an unduly dominant feature in the street scene that would disrupt the prevailing pattern of built development along The Circle.
7. There would also be a need for a substantial length of boundary treatment to enclose the garden of the property closest to the road and provide meaningful privacy to future occupiers. The plans and 3-D images indicate that this would be a tall timber fence that would run very close to the back edge of the pavement. The proximity and length of any boundary treatment in this location would be unduly visible and contrary to the prevailing arrangement of boundary treatments. The presentation of a both a blank elevation and a long tall imposing garden boundary in such close proximity to the road would also reduce the sense of openness.
8. Drawing all the above points together, the proposed development would result in a form of development that would be unsympathetic to the prevailing pattern of development and to the character and appearance of the area. The redevelopment of the site may well remove the untidy area of scrub in the street scene, but it would be replaced by development that would harm the character and appearance of the area, and not enhance it.
9. Accordingly, the proposal would be contrary to Policies BE3 and DS3 of the Borough Local Plan (the Local Plan). Collectively these seek, amongst other things, to ensure development is of a high quality, has a positive impact on the amenity of the area and respects and considers patterns of development and plot size and arrangements. It would also be contrary to the Council's Sustainable Design and Construction Supplementary Planning Document (the Design SPD) which expects development to have regard to the urban characteristics of the locality and for infill development, which is a continuation of the street, to follow the existing pattern of development - where it deviates applicants should demonstrate how the design enhances the overall street

scene. It would also conflict with the Framework that states that good design is a key aspect of sustainable development to create better places.

Living conditions

10. The Council's Design SPD provides guidance on how to protect amenity for future and existing occupiers taking into account how buildings relate and are orientated to each other, which will vary depending on site circumstances. In the interest of protecting privacy, there should be a minimum 20 metres separation distance between facing windows of habitable rooms.
11. The Lodge is a two storey block of flats to the rear of the proposed dwellings. Windows to its habitable rooms would face towards habitable rooms of the proposed dwellings. I am advised that these facing windows would be about 16.9 metres apart, which is less than the recommended 20 metres distance and would give rise to overlooking.
12. However, The Lodge is on higher ground than the appeal site making it more than two storeys. This would give rise to an even greater potential for overlooking of habitable rooms, as well as the rear gardens. The SPD suggests a 30 metre separation distance for three storeys to preserve privacy and to ensure development does not cause an overbearing outlook for occupiers.
13. Even if The Lodge is not fully 3 storeys and even when taking account of the intervening access drive to The Lodge that would run along the rear garden boundaries of the proposed dwellings, the proposed separation distance would still fall short of the minimum 20 metres. Hence the proximity of The Lodge together with its elevated position would also create an overbearing and somewhat oppressive outlook for future occupiers, in addition to overlooking.
14. To conclude on this main issue, the relationship and proximity of the proposed dwellings and their rear gardens to The Lodge would result in an unacceptable degree of overlooking, a perception of being overlooked and a poor outlook for future occupiers that would create poor living conditions. Accordingly, the proposal would be contrary to Local Plan Policy BE3 that seeks, amongst other things, to ensure that new development takes account of residential amenity. It would also be contrary to the guidance in the Council's Design SPD and conflict with the Framework that states that development should have a high standard of amenity for existing and future users.

Highways

15. The dwellings would be accessed via an existing access and drive that currently serves a terrace of 3 dwellings to the south of the site. The proposal would provide on-site driveway parking and the plans show an area alongside the access for additional parking. The access road would be widened to allow vehicles to pass and an area for bin collection, at the request of the Highway Authority.
16. The proposal would see the use of the access and drive intensified with 4 additional dwellings. Council guidance requires sites that serve 6 or more dwellings to be served by a bellmouth access. However, only the dropped kerb crossover is proposed. With the location of the access on to The Circle and its proximity to the junction with Wood Street, the Council considers a bellmouth cannot be accommodated.

17. Furthermore the proximity to the Wood Street junction would likely cause confusion for highway users with people unsure whether vehicles are turning into the site or Wood Street. Also vehicles exiting the site and turning right would cross give-way lines at the Wood Street junction. Whilst this situation already exists with the 3 existing dwellings, an additional 4 dwellings would intensify the use. Furthermore, the Highway Authority requested the provision of a turning area to allow larger vehicles, such as delivery vehicles, space to manoeuvre and leave the access in a forward gear, together with a swept path analysis.
18. To address these various concerns and impacts on highway safety, the Highway Authority requested a Stage 1 Road Safety Audit. This has not been submitted. In the absence of a Stage 1 Road Safety Audit and limited evidence to the contrary, it has not been satisfactorily demonstrated that the intensified use of the access and drive would not have a harmful effect on highway safety.
19. Accordingly the proposal would be contrary to paragraph 115 (formerly 111) of the Framework, which provides for refusing development on highway grounds if there would be an unacceptable impact on highway safety.

Other Matters

20. Planning permission was granted for a block of 11 flats. From the submitted plans the flats were shown set back from the road, on a building line similar to The Lodge and the dwellings the other side. There were also no habitable rooms facing The Lodge.
21. I acknowledge the appellant's concerns with the Council's handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.

Conclusion

22. The proposal would see an untidy site brought back into use and offer an efficient use of the land. The dwellings would have adequate parking, private garden space and meet the nationally described internal space standards. The proposal would also attract modest social and economic benefits through the provision of 4 dwellings along with the contribution of future residents to the local economy.
23. However, the proposed development would cause lasting harm to the character and appearance of the area, and to the living conditions of future occupiers. Furthermore, it has not been demonstrated that the proposal would not have an adverse impact on highway safety. The proposal would not accord with the development plan as a whole and there are no material considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

K Stephens
INSPECTOR