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# Appeal Decision

Site visit made on 20 February 2024

**by Elaine Moulton BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 March 2024**

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**Appeal Ref: APP/F1040/W/23/3327429**

**77 Egginton Road, Hilton, Derby DE65 5FG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Mark Amritt against the decision of South Derbyshire District Council.
  - The application Ref is DMPA/2023/0351.
  - The development proposed is change of use of part of the amenity land at Egginton Road to allow for an access driveway and dropped kerb to houses 77, 79 and 81 Egginton Road to facilitate vehicle parking at 77 Egginton Road, Hilton, Derby, DE65 5FG.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since the determination of the planning application, the Government has published a revised National Planning Policy Framework (the Framework). Where reference is made in this decision to paragraph numbers, they are taken from the latest version.

## Main Issues

3. The main issues are the effect of the proposal on:
  - Local Green Space (LGS) with reference to the impact on the character and appearance of the area; and
  - highway safety, with particular regard to the adequacy of visibility from the access and communal parking provision.

## Reasons

### *Local Green Space*

4. The appeal site is an area of grassed open land next to Egginton Road, adjoined by dwellings on three sides. It is designated as LGS in the Hilton, Marston on Dove and Hoon Neighbourhood Development Plan (NDP) and the South Derbyshire Local Green Spaces Plan (LGSP).
5. Based on the evidence before me, the appeal site is used as a general play area for younger children and by dog walkers and, as such, for recreational rather than sporting purposes. Furthermore, by providing a green and natural break in the frontage, the appeal site gives visual relief from its more built-up surroundings and thereby contributes to the character of the area in a positive

way. For these reasons, and notwithstanding the LGS is small, sloping and uneven, and is regularly overgrown, it is demonstrably special and of value to the wider local community. The LGS designation therefore accords with the requirements set out in paragraph 106 of the Framework.

6. Although a relatively small proportion would be affected by the proposal, the extent of the grassed area, within what is currently a very modest LGS, would be reduced by the formation of the proposed access driveway. The proposed development would therefore erode its green character. Even if the access were left unsurfaced, the green character would still be eroded due to vehicles continually driving over it, thereby resulting in the compaction of the ground and the loss of grass.
7. Consequently, the essential quality of the LGS as a recreational resource, and the visual relief it affords to its built-up surroundings, would be unacceptably and harmfully diminished. This would amount to a loss of part of the LGS which would be harmful to the character and appearance of the area. That the LGS would remain in the ownership of the Council does not alter my findings in this regard.
8. The proposal does not involve any compensation for the loss of LGS through equivalent or better provision, or the provision of alternative facilities. Furthermore, there is no compelling evidence before me that such loss is acceptable because existing open space and facilities in the locality exceed the required provision. Accordingly, the exceptional circumstances that are specified in Policy INF9 of the South Derbyshire Local Plan Part 1 (LP1), which is relevant to all open space irrespective of its size, are not met by the appeal proposal. The loss of open space arising from the proposed development is therefore contrary to this policy.
9. The provision of a driveway would improve access to 77, 79 and 81 Egginton Road and would enable the formation of parking spaces served by electric vehicle charging points. This would support the provision of a sustainable mode of transport and thereby promote climate change adaption and offer environmental benefits that would accord with the aims of the Framework. However, there is no guarantee that any of the spaces would in fact be used by electric vehicles. As such this does not, for the purposes of Policy BNE8 of the South Derbyshire Local Plan Part 2 (LP2), amount to very special circumstances that justify development that I have found to be harmful to the LGS.
10. Furthermore, the proposed development on the LGS is not one of the limited types that LP1 Policy BNE8 identifies as being acceptable. Accordingly, whilst the proposal would preserve the openness of the LGS, it is contrary to LP2 Policy BNE8. It therefore follows that the proposal is also contrary to NDP Policy E1 which states that development of LGSs will not be permitted unless deemed strictly necessary under LP2 Policy BNE8.
11. Whilst the proposal would improve vehicular access to several properties, it would not serve or improve the ease of access to the LGS to the benefit of its recreational users. Accordingly, the proposed development does not constitute an enhancement of the LGS and does not gain support from the LGSP.
12. Therefore, the proposal would result in the harmful loss of LGS contrary to LP1 Policy INF9, LP2 Policy BNE8 and NDP Policy E1, thereby unacceptably

diminishing it as a recreational resource and harming the character and appearance of the area.

### *Highway safety*

13. The visibility splays, shown on the submitted Visibility Splay Block Plan, cross the frontages of the dwellings to either side of the LGS. As a result of the height of the boundary treatments to the front and side of those properties, the visibility on exit from the access would be impeded. Any driver exiting from the proposed access would, therefore, have limited forewarning of other vehicles travelling along Egginton Road. My observation on site suggests that there are a steady number of vehicles that pass the appeal site, and such vehicles are travelling at moderate speeds. Given such conditions, it is probable that vehicles exiting the proposed access driveway would encounter other highway users of Egginton Road and that, on occasion, there would not be sufficient time to anticipate each other's movements and stop as appropriate. Accordingly, the impediment to visibility for vehicles exiting the site is likely to result in conflict with users of Egginton Road to the detriment of highway safety.
14. I acknowledge the appellant's intention was for the Visibility Splay Block Plan to show that a space within the lay-by, over which vehicles using the proposed access would cross, would be required to be left free of obstruction. Nonetheless, there is no compelling evidence that suggests that the visibility splays, which are clearly impeded, have been incorrectly drawn.
15. The appellant suggests that reversing out of the existing parking spaces within the lay-by is unsafe. However, the proposal would not result in a cessation of such reversing manoeuvres. In the absence of any robust evidence that suggests otherwise, it has not been demonstrated that a reduction in parking spaces and reversing manoeuvres would maintain or improve highway safety to justify an access that I have found to be unsafe.
16. Vehicles would drive across the LGS as part of the proposal, which would be an unsafe arrangement as it could lead to conflict with the users of the LGS, particularly children. However, this could be addressed by the erection of a barrier to segregate the access from the remaining LGS. Such a barrier could be secured through a planning condition.
17. There is no agreement between the parties as to the precise number of spaces that would be lost from the lay-by because of the proposal. I am, however, satisfied that the number of parking spaces lost would be exceeded by the number of vehicles that would be taken off the highway through on-plot provision. I therefore find, in the absence of any compelling evidence to the contrary, that the proposal would not exacerbate any existing highway safety issues arising from an insufficiency of on street parking spaces in the locality.
18. I have not agreed with the Council that there would be an unacceptable loss of communal parking and have found that any conflict between users of the space and vehicular traffic arising from the development could be appropriately addressed. Nonetheless, it remains that the proposed access driveway would be unsafe due to inadequate visibility.
19. I therefore conclude that the proposed development would be harmful to highway safety due to inadequate visibility. Consequently, it would be contrary

to LP1 Policy INF2 which requires, amongst other things, that appropriate provision is made for a safe access.

### **Other Matters**

20. Whether or not the cost of the proposed development should be met by the Council, and any difficulties that there may be in the funding of the future maintenance of the proposed access driveway, are matters that fall outside of the remit of this decision.
21. Whilst no objections have been raised by interested parties this is a neutral factor that does not weigh in favour of the scheme. In addition, the public support for the proposal does not justify the harm identified.
22. I acknowledge the appellant's comments that the proposal would improve access for emergency vehicles to the properties adjoining the LGS. However, no compelling case has been presented that indicates emergency vehicle access is currently problematic or that the proposal would materially improve such access.

### **Planning Balance**

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
24. I have concluded that the proposal would result in the loss of LGS that would unacceptably diminish it as a recreational resource and would harm the character and appearance of the area. I have also found harm regarding highway safety. Consequently, the proposal conflicts with the development plan and such a conflict carries substantial weight in the decision.
25. The proposal would enable the formation of parking spaces served by electric vehicle charging points and therefore facilitate the provision of a sustainable mode of transport. However, I have found that there is no guarantee that the spaces would in fact be used by electric vehicles. As such, this benefit is only afforded limited weight in the planning balance.
26. Accordingly, in this instance, I consider that the benefits of the proposal do not present a material consideration that is sufficient to outweigh the identified conflict with the development plan.

### **Conclusion**

27. The development conflicts with the development plan when considered as a whole and there are no other considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
28. Therefore, for the reason given above, I conclude that the appeal should be dismissed.

*Elaine Moulton*

INSPECTOR