



Appeal Decision

Site visit made on 12 March 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2024

Appeal Ref: APP/C1055/W/23/3329009

Land at the Rear of 1 Ash Close, Derby DE22 2JF

- 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 Urban Plan Consultants against the decision of Derby City Council.
 - The application Ref is 23/00866/FUL.
 - The development proposed is described as the "erection of a dwelling house (ground and loft) consisting of one dining/kitchen and drawing room, two washrooms, and three bedrooms respectively. It includes a garden at the rear end and a driveway for vehicular parking".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework ('Framework') has been published. This has not raised any new matters which are determinative to the outcome of this appeal. However, I have referenced the revised paragraph numbers, where necessary.

Main Issues

3. The main issues are the effect of the proposed development on:
 - a) the living conditions of future occupiers, with particular reference to the size of the garden;
 - b) the character and appearance of the surrounding area; and
 - c) the living conditions of the occupiers of neighbouring properties, with particular reference to outlook, privacy and sunlight.

Reasons

Living Conditions – Future Occupiers

4. A private garden area would be provided to the rear of the proposed dwelling. I have not been directed to a policy or supplementary planning guidance that specifies a minimum size for private outdoor amenity space for dwellings by the Council. The proposed rear garden would be smaller than those within the immediate surrounding area. However, it would be of a sufficient size to allow for normal domestic use such as children playing, the drying of clothes and the siting of a table and chairs.

5. Consequently, in reference to the first main issue, the proposed development would not harm the living conditions of future occupiers, with particular reference to the size of the garden. It would therefore comply with Policies CP3 and CP4 of the Derby City Local Plan – Part 1: Core Strategy, adopted 2017 ('CS') and saved Policies GD5 and H13 of the City of Derby Local Plan Review, adopted 2006 ('LP'), the Framework and the National Design Guide that, amongst other things, require development to provide satisfactory living conditions for future occupiers.

Character and Appearance

6. The appeal site is on the northern side of Lockwood Road, between the rear gardens of 1 Ash Close and 1 Thorn Close. It previously formed part of the rear garden of 1 Ash Close but has since been separated from it by a close boarded fence. The surrounding area is predominantly residential with a mix of dwellings typically set within rectangular shaped plots with large rear gardens. The dwellings along the northern side of Lockwood Road, between Allestree Lane and Thorn Close, have their side elevations and rear gardens adjacent to Lockwood Road, creating open and verdant gaps that make a positive contribution to the character of the area.
7. The proposed dwelling's plot would be significantly smaller than those within the surrounding area with a considerably smaller sized rear garden. It would directly front onto the northern side of Lockwood Road and infill a spacious gap between the rear gardens of two dwellings. Consequently, the proposal would fail to respond to its immediate context and would appear as an incongruous and cramped form of development that would detract from the open and verdant character of the northern side of Lockwood Road.
8. I have taken into consideration the proposal's height and how it would relate to the dwellings on either side. I have also considered the differing character of the southern side of Lockwood Road whereby dwellings front onto the road with limited spacing in between. However, neither of these matters would lead me to a different view.
9. In reference to the second main issue, the proposed development would adversely harm the character and appearance of the surrounding area. It would conflict with CS Policies CP3 and CP4 and LP saved Policy H13 which, amongst other things, seek to ensure that development makes a positive contribution towards the character, distinctiveness and identity of neighbourhoods, and to resist proposals that do not appropriately respond to their context. It would also conflict with the Framework and the National Design Guide, both of which seek to achieve well-designed and beautiful places.

Living Conditions – Neighbouring Properties

10. The proposed dwelling would be constructed along the boundary shared with 1 Thorn Close. However, the roof design along this boundary would reduce the overall scale and massing of the proposed dwelling. Furthermore, the rear garden of 1 Thorn Close has a sizeable depth and the proposed dwelling would be sited on a lower ground level and would have a lower height than the neighbouring property. A first-floor landing window would overlook the rear garden/rear elevation of 1 Thorn Close, which would be infrequently used and could be conditioned to be obscure glazed and non-opening. Consequently, I do

not find that the proposal would significantly affect the living conditions of the occupiers of 1 Thorn Close in respect of outlook or privacy.

11. The ground floor windows within the side elevation of the proposed dwelling facing towards 1 Ash Close would be largely obscured by the boundary fence, while the first-floor windows would be high-level windows that would prevent overlooking. Therefore, I do not find that the proposal would adversely affect the living conditions of the occupiers of 1 Ash Close from a loss of privacy. The proposed dwelling would extend approximately halfway along 1 Ash Close's rear boundary and would be sited in proximity to its boundary fence. The dwelling would be two-storeys in height along this boundary and would be sited on a higher ground level than 1 Ash Close, intensifying its dominance. 1 Ash Close comprises a bungalow with a shallow rear garden whose rear windows would directly face the proposed dwelling. Consequently, the proposed dwelling would result in a significant loss of outlook and an overbearing effect on the living conditions of the occupiers of this property.
12. The appeal site is bounded by the rear garden of 3 Ash Close. The proposal would not adversely affect the outlook of the occupiers of 3 Ash Close as the proposed dwelling would be sited at an oblique angle from the neighbouring dwelling. A first-floor bedroom window would be positioned in the northern elevation of the proposed dwelling and would be in proximity to, and directly overlook, No 3's rear garden. Consequently, the siting and proximity of the first-floor bedroom window would significantly affect the privacy of the occupiers of No 3.
13. The appellant asserts that overlooking and a sense of privacy could be overcome by the planting of hedgerows or trees, or by obscure glazing. However, obscure glazing to the first-floor rear bedroom window would result in a substandard living environment for future occupiers due to a lack of outlook. Insufficient information has been provided to demonstrate there would be sufficient space within the limited plot to enable planting to be incorporated into the scheme. Even if it could be demonstrated, planting would take a significant time to grow to a height and density to effectively screen the proposed dwelling, and in any event, landscaping should not be used to screen an otherwise unacceptable form of development.
14. A sunlight assessment has been submitted by the appellant to demonstrate that the proposal would not adversely affect the living conditions of the surrounding dwellings from a loss of sunlight. However, the rear extensions to 1 and 3 Ash Close are not depicted on the models and it is unclear whether gradients have been taken into account. Furthermore, some of the shadows shown on the images are not clear and I am uncertain what the "% of area" refers to within the submitted tables. Consequently, I am unable to determine from the information before me, whether the proposal would adversely affect the living conditions of the occupiers of neighbouring properties from overshadowing.
15. In reference to the third main issue, the proposed development would harm the living conditions of the occupiers of neighbouring properties, with particular reference to outlook, privacy and sunlight. It would conflict with CS Policies CP3 and CP4 and LP saved Policies GD5 and H13 which, amongst other things, seek to ensure that proposals provide good standards of privacy, a satisfactory relationship to nearby properties, and do not cause unacceptable harm to the

amenity of nearby areas. It would also conflict with the Framework and the National Design Guide which seek to promote high standards of residential amenity.

Other Matters

16. The appellant asserts that the proposal would be an efficient use of land and would support the development of under-utilised land, in compliance with both the development plan and paragraphs 123 and 124 of the Framework. However, I do not consider that these matters would outweigh the harm I have identified, and I am not persuaded that a less harmful use of the land could not be found. The appellant also asserts that the proposal is required to ensure the plot does not remain vacant and attract anti-social behaviour. However, I have not been provided with evidence to suggest that anti-social behaviour is prevalent within the surrounding area, or that there have been any previous anti-social issues associated with the land.

Planning Balance

17. The Council has indicated that they are unable to demonstrate a five-year supply of deliverable housing sites, with their current position stated as 3.17 years. Accordingly, paragraph 11(d) of the Framework is relevant to the appeal proposal.
18. The provision of one additional dwelling weighs in favour of the proposal and would make a contribution, albeit small, to the Government's objective of significantly boosting the supply of new homes and the Council's housing supply. The proposal would also provide a limited amount of short-term employment through the construction of the dwelling and would result in some additional support to the local community and its services from future occupiers. The proposed dwelling would exceed the minimum gross internal floor area contained within the Technical Housing Standards – Nationally Described Space Standards, published 2015. These benefits carry moderate weight in favour of the scheme.
19. While the use of sustainable design techniques within the construction of the proposed dwelling is welcomed. It is unclear from the information before me whether the proposal would go beyond the requirements of either Building Regulations or the development plan. The appeal site is a small plot and therefore the value of the proposed dwelling could be lower. However, this has not been substantiated with evidence. Furthermore, it would not meet the definition of 'affordable housing' contained within the Framework. I therefore afford these matters limited weight.
20. Against the benefits is the harm that would be caused to the character and appearance of the area and the living conditions of the occupiers of neighbouring dwellings, which would be contrary to the design and amenity objectives of the Framework, matters which I give substantial weight. Consequently, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would therefore not represent a sustainable form of development.

Conclusion

21. For the reasons set out above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR