



Appeal Decision

Site visit made on 27 March 2024 by Darren Ellis MPlan MRTPI

Decision by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/M1005/W/23/3333021

1 Mundy's Drive, Marlpool, Heanor, Derbyshire DE75 7BR

- 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 Ethel Oldfield against the decision of Amber Valley Borough Council.
 - The application Ref is AVA/2023/0292.
 - The development proposed is the construction of single detached dwelling on land to the rear of 1 Mundy's Drive.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matter and Main Issue

3. There are some discrepancies between the officer report and the decision notice with regards the alleged affects of the proposals on the living conditions of both existing and future occupiers. Specifically, Nos 1 and 3 Mundy's Drive and the proposed dwelling. Taken as a whole, it seems sufficiently clear that the Council have expressed substantive concerns over the effect of the proposed development on the living conditions of the occupiers of Nos 1 and 3 Mundy's Drive as well as the future occupiers of the proposed dwelling, with particular regard to both outlook and privacy. These have formed the main issue of the appeal.

Reasons for the Recommendation

4. The Council's Residential Development Supplementary Planning Document 2007 (SPD) sets out, amongst other things, that a minimum of 10.5 metres is required between main windows and the boundary with adjacent properties' private space. The proposal would include a 1.8 metre boundary fence approximately 5 metres from the existing ground-floor rear windows at No 1. This would fall considerably short of the requirements of the SPD. Moreover, and at such close proximity, the fence would significantly restrict the outlook from these windows which would result in a harmful enclosing and overbearing effect and poor quality experience of the rooms served thereby.
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5. The distance between the proposed ground-floor rear windows and the rear boundary would be slightly under 10.5 metres. However, the width of the plot together with the lack of any significant built form directly behind the proposed dwelling would ensure an adequate outlook therefrom.
6. The SPD also requires a distance of 21 metres between the backs of properties facing one another and between facing main aspects (habitable windows) for a two-storey building. However, the back of the proposed dwelling would not directly face the dwellings at Nos 1 or 3, nor would there be any habitable windows that face each other. Whilst it would be less than 21 metres, the distance between the new dwelling and the rear garden of No 3 together with the orientation of the properties would prevent the new dwelling from causing any significant loss of outlook from No 3.
7. The proposed rear bedroom window would provide views predominantly of the rear garden of the new dwelling as well as the rear part of the garden at No 3. The proposed dwelling would be angled very slightly away from the dwellings at Nos 1 and 3, and the resultant oblique angle between the proposed bedroom window and the garden area closest to the dwelling at No 3 would prevent any significant loss of privacy.
8. The oblique angle from the proposed bedroom window would also prevent any significant loss of privacy to the remaining rear garden at No 1 or the existing rear windows at Nos 1 and 3. Furthermore, the windows that would serve the proposed bathroom and landing would be obscurely glazed, which would avoid any overlooking therefrom.
9. While the proposal would not result in any significant loss of privacy, it would cause harm to the living conditions of occupiers of No 1 by way of an unacceptable loss of outlook. Consequently, it would conflict with saved Policy H12 of the Amber Valley Borough Local Plan 2006 which, amongst other things, requires development to not unduly affect the amenities of adjoining or adjacent properties. The proposal would also fail to comply with the guidance in the SPD and paragraph 135 (formerly 130) of the National Policy Planning Framework 2023, which seeks for developments to provide a high standard of amenity for existing and future users.

Other Matters

10. The Council has not objected with regard to the effect of the proposal on the character and appearance of the area or other development/site specific matters. I have no reason to conclude otherwise, but this would be a lack of harm and thus a neutral consideration in each respect which would not weigh in favour of the appeal scheme.

Conclusion and Recommendation

11. The Council states that the housing policies of the Local Plan are out-of-date. In this situation, paragraph 11(d)(ii) the Framework states 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.
12. There would be harm to the living conditions of the occupiers of 1 Mundy's Drive. This would conflict with the Framework, specifically where it is concerned with the amenity of existing and future users. I give these matters substantial

weight. The provision of one additional unit would only make a small meaningful difference to the existing supply. Economic advantages would also arise from the construction and occupation of a new house, although these would be limited again by the scale of the scheme, and some of these advantages would be temporary. I therefore ascribe moderate weight to these matters. Nevertheless, it is sufficiently clear that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. The presumption in favour of sustainable development does not therefore apply in this particular case.

13. The proposal would be contrary to the development plan and there are no material considerations, including the approach of the Framework and worthy of sufficient weight, that would indicate a decision other than in accordance therewith. I therefore recommend the appeal be dismissed.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all the submitted evidence and my representative's recommendation and on that basis the appeal is dismissed.

John Morrison

INSPECTOR