



Appeal Decision

Site visit made on 2 July 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2024

Appeal Ref: APP/C1055/W/23/3332363

Site adjacent to 13 Allestree Street, Alvaston, Derby DE24 8TS

- 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 Christopher Rudzki of Darley Developments Ltd against the decision of Derby City Council.
 - The application Ref is 23/00692/FUL.
 - The development proposed is 3-storey detached property – ground floor commercial unit (Class A1) with a 2-bed apartment on the upper storeys.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues relevant to this appeal are:
 - the effect of the proposal upon the character and appearance of the area; and
 - the effect of the proposal upon the living conditions of the occupiers of 114 and 116 Brighton Road with particular regards to privacy.

Reasons

Character and Appearance

3. The appeal site is located at the end of a group of two storey terrace buildings and the dwellings on the opposite side of Allestree Street are similarly designed. On the site there is a single storey brick-built garage. Aside from the garages opposite, there is a consistent design, scale, and form of the development along Allestree Street. This means that the buildings have a degree of symmetry which is mirrored by the houses on the other side of the road. This makes a positive contribution towards the character and appearance of the area.
4. Allestree Street is accessed via Brighton Road and along this road the buildings vary in both scale and design with a mix of two and three storey properties. Furthermore, there is a mix of commercial and residential uses.
5. The proposed building would be located very close to the terrace development on Allestree Street and because it is located behind the gardens to the rear of the buildings along Brighton Road, this scheme would appear as part of Allestree Street rather than Brighton Road.

6. The proposed building is a three-storey property with residential accommodation in the roof. As a result, the building would be taller than the neighbouring terrace dwellings on Allestree Street. The detailed architectural design of the building, insofar as it relates to the materials proposed and the windows and doors would appear consistent with the terrace development around it. However, part of what makes the terrace development attractive is the consistent scale and form of the development with the continuous consistent roof form of particular importance to this.
7. Whilst the building would be separated from this terrace development by a small alleyway, there would be a sudden change in height and gap in the uniformity of the buildings and roof form would detract from this positive feature of the street scene. The failure of the building to relate to other surrounding built form would lead to it appearing isolated and fail to integrate with Allestree Street.
8. Given that the proposed smaller addition to the proposed building would be set back from the front elevation and set down from the roof and would replicate the roof form of the host dwelling, it would appear as a subordinate addition to it. The use of similar materials across both parts of the building would contribute towards this.
9. The appellant has identified several three storey properties nearby. However, these buildings were generally located on Brighton Road where there is a mix of development and not such a uniformity to the character and appearance of the buildings along it. Whilst 114 Brighton Road (No 114) does extend along Allestree Street the main elevation of this building faces Brighton Road and overall, this building is viewed alongside the Brighton Road, street scene. Additionally, unlike the appeal site, there is a substantially sized gap between this building and the terrace development along Allestree Street which physically and visually separates the building from the uniform terrace development.
10. At the time of my site visit the development on the corner of Chambers Street and Brighton Road was made up of two storey buildings. Furthermore, I have not been provided with a decision or the plans which identified the purported new development in this location. If the site was located on the corner of Chambers Street with Brighton Road, then the same conclusions I came to regarding No 114 would be relevant to this development.
11. The neighbouring properties to 59 Hall Street (No 59) have front dormer windows built into the roof as well as taller roof profiles than the other buildings in the street. As such, the roof form of the development at that end of the road had already been broken up and No 59 does not appear significantly taller than them.
12. Each case must be assessed on their own merits and there are substantive differences between the appeal site and the identified developments which has led me to come to a different conclusion on this matter.
13. Given my concerns with the design principles of the scheme, I am not satisfied that appropriately worded planning conditions would overcome them.
14. Therefore, the proposed development would unacceptably harm the character and appearance of the area and would conflict with Policies C3 and C4 of the

Derby City Local Plan, Part 1 – Core Strategy (CS) and saved Policies GD5 and H13 of the City of Derby Local Plan Review (LPR). These policies state, amongst other matters, that all proposals for new development will be expected to make a positive contribution towards the character, distinctiveness and identity of our neighbourhoods including building form, scale, height, and massing. The proposal would also conflict with paragraph 135c) of the National Planning Policy Framework (the Framework) insofar as it expects development to be sympathetic to local character and history, including the surrounding built environment.

Living Conditions

15. The rear elevations of 114 and 116 Brighton Road (Nos 114 and 116) face towards the flank wall of the proposed building and on this flank elevation several windows are proposed. The rear garden area of No 116 is covered by built form with limited outdoor space other than near to the building. This building also has a commercial use on the ground floor. However, No 114 appears to be a residential building and the rear garden area is undeveloped land that could be used for socialising and other typical residential uses. This is bound by a wall along Allestree Street and is relatively well enclosed, apart from the gated entrance to it. There are also windows on the rear elevation of the properties, although other than the window on the ground floor of No 114 these are located within the main element of those buildings, further away from the appeal site.
16. It is proposed that the windows on the flank wall facing Nos 114 and 116 would be obscurely glazed. However, it has not been demonstrated that a condition can be imposed to ensure that the windows would have limited openings whilst complying with other legislation.
17. While these windows could be obscurely glazed, they would overlook the private outdoor space for No 114 and much of this space is generally well enclosed. If the windows were openable, even by a limited degree, the occupiers of the proposed development would be able to overlook this area. Additionally, given that these windows would be within the shared living space and bedroom, the occupiers would likely use these rooms for long periods of time. As such, there would be views of people using these rooms as well as noises that may be audible in the garden, given the limited distance between it and these windows. This would lead to an increased perception of overlooking for the occupants of No 114, negatively impacting their enjoyment of their private rear garden.
18. Given the substantially sized gap between the windows within the rear of Nos 114 and 116 and the proposed building, the perception of overlooking and noise generated by those within the building would occur far enough away to not create a harmful perception of overlooking. A similar conclusion can be drawn regarding the garden area located close to the rear of No 116.
19. Given my concerns with the design of the scheme and its impact on neighbouring occupiers living conditions, I am not satisfied that appropriately worded planning conditions would overcome them.
20. Therefore, whilst the proposal would not harm the living conditions of the occupiers of No 116 it would unacceptably harm the living conditions of the occupiers of No 114 Brighton Road. Consequently, the proposal would conflict

with Policies C3 and C4 of the CS and saved Policies GD5 and H13 of the LPR. These expect development to provide good standards of privacy, safety, and security to create a pleasant, safe, and secure environment. It would also not accord with paragraph 135f) of the Framework insofar as it states that development should create places with a high standard of amenity for existing and future users.

Other Matter

21. Concerns regarding the manner in which the planning application was considered fall outside of the scope of this decision.

Planning Balance

22. The Council states that it cannot demonstrate a 5-year housing land supply. Therefore, paragraph 11d) of the Framework is engaged. 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.
23. The scheme would redevelop a brownfield site, and this is supported by paragraph 124d) of the Framework which states that decisions should support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing. Whilst the scale of the scheme is limited, I attribute moderate weight in favour of the scheme to this benefit.
24. The proposal would introduce a commercial use on the ground floor which would provide long term economic benefits to the area, as well as short term economic benefits during the construction of the building. There would also be long term economic benefits from spending by the future occupiers of the apartment. This scheme would also deliver social benefits through the contribution the future residents would make towards the local community as well as from the proposed commercial unit. Whilst the scheme would deliver long term benefits, in light of the limited scale of the proposal I attribute modest weight to this in favour of it.
25. The commercial use of the ground floor of the building would be appropriate in this location given that the site is located in a Neighbourhood Centre where Policy CP12 of the CS supports proposals that meet local shopping and service needs. Furthermore, the proposed reuse of this site for residential development would be appropriate given that it is located at the end of a group of dwellings in a mixed residential and commercial area. The site is also located within Derby and services and facilities are located within walking distance from the site, as well as from bus services nearby. The location of the proposed uses would accord with policies in the development plan; however, this would be expected of any development and as such, I give limited weight to this in favour of the proposal.
26. While subject to appropriately worded planning conditions the development could be made acceptable with regard to matters not in dispute between the parties, such as highway safety, the lack of harm weighs neither for nor against the scheme.

27. The proposal would harm the character and appearance of the area and the living conditions of the occupiers of No 114 and thus conflict with the relevant policies in the development plan for the reasons given above.
28. Policies C3 and C4 of the CS as well as LPR Policies GD5 and H13 state that proposals for new development will be expected to make a positive contribution towards the character, distinctiveness and identity of our neighbourhoods including building form, scale, height, and massing, amongst other matters. This is consistent with paragraph 135c) of the Framework which states that development should be sympathetic to local character and history, including the surrounding built environment.
29. Policies C3 and C4 of the CS as well as LPR Policies GD5 and H13 also expect development to provide good standards of privacy, safety, and security to create a pleasant, safe, and secure environment. This is consistent with paragraph 135f) of the Framework insofar as it states that development should create places with a high standard of amenity for existing and future users.
30. The policies within the Framework seek to deliver a sufficient supply of homes and use under-utilised buildings in sustainable locations as well as support economic growth. However, the creation of high-quality places is fundamental to what the planning and development process should achieve. For the reasons given above, this would not be the case in this instance.
31. Relative certainty should be expected to flow from a plan led approach to decision making and I attribute significant weight to the conflict that would arise with the development plan as a whole and the other identified harms.
32. Therefore, the adverse impacts of the proposal upon the character and appearance of the area and the living conditions of the occupiers of No 114 would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

33. For the reasons given above, the proposal would be contrary to the development plan as a whole and the material considerations do not indicate that a decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR