



Appeal Decision

Site visit made on 2 July 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th October 2024

Appeal Ref: APP/F1040/W/24/3337672

7a Pinfold Lane, Repton, Derby, Derbyshire DE65 6GH

- 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 D Sandhu of Repton Development Company against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2023/0559.
 - The development proposed is erection of 4no. bungalows and the demolition of no.53 Pinfold Close to facilitate access.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwellings, and the erection of 4no. bungalows at 7a Pinfold Lane, Repton, Derby, Derbyshire DE65 6GH in accordance with the terms of the application, Ref DMPA/2023/0559, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of the development proposed on the application form was 'erection of 4no. bungalows and the demolition of no.53 Pinfold Close to facilitate access.' However, the main parties agreed to a change to the description of the development proposed to 'the demolition of the existing dwelling, and the erection of 4no. bungalows'. Whilst this was agreed between the parties it is evident, based on the Report to Committee and the evidence before me, that the development would also include the demolition of 7a Pinfold Lane which is a bungalow on the appeal site. As such, I have revised the description of the development proposed to refer to the demolition of the existing dwellings in the interest of clarity. I have left the description of the development proposed in the banner heading unchanged.
3. The proposal also includes the demolition of a bungalow that is on the site, but this was not included in the description of the development proposed. However, it is evident that this is proposed as part of the development based on the evidence submitted.
4. The site lies within the boundary for the Repton Conservation Area (CA), apart from part of the proposed access route. As such, I have had regard to my duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires me to have special regard to the desirability of preserving or enhancing the character or appearance of the CA.

Main Issues

5. The main issues are:

- the effect of the proposal upon the character and appearance of the area;
- whether the proposal would preserve or enhance the character or appearance of the Repton Conservation Area; and
- the effect of the proposal upon the living conditions of the occupiers of 51 and 55 Pinfold Close with regard to noise and disturbance.

Reasons

Character and Appearance

6. The appeal site is a parcel of land located between development on Pinfold Lane, Pinfold Close and High Street. The site is covered by brambles and other low-level vegetation as well as sporadically sited trees. The site is also bound on all sides by trees. There are two Tree Preservation Orders that cover parts of the appeal site¹. There is also a Public Right of Way (PRoW) that passes along the western boundary of the site and next to this is Repton Brook and to the north-west is open land. Other than No 53 Pinfold Close (No 53), there is a single dwelling on the site that is in a poor condition.
7. The Parish of Repton Neighbourhood Development Plan 2016 – 2028 (NP), made in 2020, identifies the neighbouring open land to the north-west as well as the area around the PRoW that passes through the appeal site as Local Green Space which supports the importance of those areas, even though the area around the PRoW is overgrown.
8. The dwellings along Pinfold Close are relatively modern buildings in a mix of styles that are generally brick built with tiled roofs. The dwellings are mostly detached properties with garages built to the side of them. This typically creates spacious gaps between the properties at first floor level, and this combined with the modestly sized front gardens creates a spacious character to the area. Along Pinfold Close there are several small cul-de-sacs and it is not uncommon for the access roads to be located between dwellings. The siting of these cul-de-sacs and the winding design of Pinfold Close means that the road does not have a consistent, strong building line. As such, the siting of an access road between 51 and 55 Pinfold Close (Nos 51 and 55) would not appear out of character in this context.
9. The proposed dwellings would be brick built with tiled roofs and these materials would be similar to those used in the surrounding development. The effective replacement of the existing bungalow on the site, that is in a poor state of repair, with a dwelling using these materials would also positively contribute towards the appearance of the area. Furthermore, given that there are several cul-de-sacs located to the rear of houses, the siting of the proposed development to the rear of Nos 51 and 55 and the neighbouring houses would also be in keeping. Additionally, the gap that would be created between Nos 51 and 55 would be similar to other gaps between houses in the area and thus it

¹ Tree Preservation Order No.82 (1989) and No. 128 (1995)

would also not appear out of character. Consequently, the access and siting of the proposed development behind existing dwellings would be consistent with other development along Pinfold Close.

10. The trees within and around the site positively contribute towards maintaining a green finger of land through the area which is a positive characteristic of the local landscape character. The trees around the brook, within the Local Green Space would generally be retained and enhanced with additional landscaping and the trees around the edge of the appeal site would also mostly be retained. Even with the removal of the trees within the central section of the site, the siting of the development away from the PRoW and the retained and enhanced landscaping around the site would make a positive contribution towards this positive characteristic of the local landscape character. Overall, the retained trees, alongside the proposed landscaping would maintain the green finger of land through the area and thus the loss of the trees would not have an unacceptable effect on the local landscape character.
11. Therefore, for the reasons given above the proposed development would not harm the character or appearance of the area. Consequently, it would comply with Policies BNE1 and BNE4 of the South Derbyshire Local Plan Part 1, 2016, (LP1) and Policies H2, H4 and OS3 of the NP. These expect development, amongst other matters, to retain key valued landscape components such as mature trees within development sites unless it can be demonstrated that the loss of features will not give rise to unacceptable effects on local landscape character. Furthermore, the proposal would accord with the Framework insofar as it states that development should be sympathetic to local character and history, including the surrounding built environment and landscape setting.

Repton Conservation Area

Significance

12. The Repton Conservation Area Character Statement dated 2013 (Character Statement) identifies that the medieval core of the village has a settlement pattern that is long and linear. A strong feature of this area is its largely unbroken building frontage. The appeal site is located outside of this medieval core. It also notes that the design and materials used in the construction of the buildings varies throughout the CA although recessed windows are a relatively common feature.
13. The open fields to the north-west of the appeal site are identified in the Character Statement as an unexpected green finger of land that has great amenity value arising from its openness, the footpaths threading through it, and the trees. It also preserves a sense of the historic setting of the village and effectively separates the strong linear historic settlement from the suburban modern development to the north-east. It is thus important to the historic identity of the village, enhanced by the continued agricultural use of part of it. These areas of land were also part of the Local Green Space allocation in the NP. The Character Statement also identifies that the PRoW that passes through the appeal site is part of a medieval network of footpaths.
14. Therefore, the unbroken building line, recessed windows, green finger of land and PRoW all form part of the significance of the CA.

Assessment

15. The central part of the appeal site is mostly overgrown with low level vegetation and trees. These make a very limited contribution towards separating the two sections of the village as well as the character and appearance of this part of the CA given their sporadic siting. Most of the appeal site is not allocated as Local Green Space in the NP and most of it is not identified in the Character Statement as necessary to this function of separating the historic village from the suburban modern development. However, the site is bound by a significant number of trees and the screening provided by these trees positively contribute towards the CA and the contribution the green finger of land makes towards separating the historic core of the village and the more modern development.
16. The dwellings are proposed to be single storey buildings and the built form of the development would be located outside of the Local Green Space. Whilst some of the trees within the site would be removed, the trees around the edges of it would be mostly retained and thus the positive contribution these make towards the setting of the Local Green Space and the immediate area would be retained. The Arboricultural Impact Assessment identified that the trees to be removed generally had a U or C value and as such were generally of low amenity and quality. In addition, the trees retained around the PRow would partly screen the development from the historic medieval core of the village. Therefore, the Local Green Space would retain its openness and it would continue to act as an unexpected green finger of land through the CA and separate the historic core of the village from the suburban modern development.
17. The use of recessed windows would also be similar to other development in the CA. Furthermore, the effective replacement of the existing bungalow on site with a dwelling that incorporates this feature, alongside the other dwellings, would contribute to ensuring the dwellings would reflect this characteristic of other buildings nearby.
18. The residential development is proposed to take its access via Pinfold Close requiring the demolition of No 53 which would locate this access outside of the CA. As a result, the proposed access would not break up any unbroken building frontage within the CA and thus not effect this strong built form that forms part of the significance of the CA. There would be the removal of trees for the access road but given the significant number of trees that would be retained this would not cause significant harm.
19. The proposal includes works to enhance the land around the PRow with additional landscaping which could be secured by a condition. This would retain the openness of this area around the PRow and the scheme would enhance the appearance of the area around the PRow and its contribution to the Local Green Space.

Overall

20. Consequently, the proposed development would preserve and enhance the character and appearance of the CA. It therefore, complies with Policies BNE2 and BNE10 of LP1 and Policy H4 of the NP. These expect development, amongst other matters, to protect, conserve and enhance heritage assets.

Furthermore, the proposal would accord with the National Planning Policy Framework (the Framework) insofar as it states proposals that preserve those elements that make a positive contribution to the heritage asset should be treated favourably.

Living Conditions

21. The proposed access road to the development would be taken via Pinfold Close and would involve the demolition of No 53. Either side of this dwelling are Nos 51 and 55. No 51 is built in line with the front elevation of No 53 whilst the front elevation of No 55 is built forward of it. Between No 53 and 55 are two garages and the garage connected to No 53 would also be demolished to make space for the access road.
22. Vehicles and other road users passing along the flank walls of these two properties and the associated noise would be uncommon because the shared driveway only serves the two garages for the relevant properties. The proposal would introduce additional noise and disturbance because four dwellings would now be accessed along this route. However, given the limited scale of the proposal it would only generate a limited number of additional trips and any noise and disturbance would only occur sporadically.
23. The dwellings on Pinfold Close are built at a higher ground level than the appeal site and the gradient of the land lowers towards it. Consequently, vehicles leaving the proposed development would have to drive up a modest incline to reach the junction with Pinfold Close. However, No 53 is built at a similar ground level as the road on Pinfold Close and the submitted plans show the first five metres of the access road to be regraded to a 1:15 slope. As such, cars would generally be level with the road when stationary at the junction and thus drivers would not have to rev the engines significantly more than would typically be expected when exiting a junction.
24. The proposed dwellings and the associated parking and turning areas would be located a considerable distance from Nos 51 and 55. The trees that are proposed to be retained around the boundary of the site would contribute towards screening the occupiers of Nos 51 and 55 from some of this noise and disturbance.
25. Therefore, for the reasons given above, the proposal would not significantly harm the occupiers of Nos 51 and 55's living conditions. Consequently, the development would accord with LP1 Policy BNE1 and Policy H2 of the NP. These seek, amongst other matters, to ensure new development should not have undue adverse effect on the privacy and amenity of existing nearby occupiers. It would also accord with the Framework insofar as it states that development should create places with a high standard of amenity for existing and future users.

Other Matters

26. Comments were received from interested parties related to a number of different matters and these have been considered below.
27. The appeal site is located partly within Flood Zone 2, but the proposed dwellings would be within the part of the site that is within Flood Zone 1. A Flood Risk Assessment (FRA) was submitted with the application. Mitigation

measures, including locating the dwellings above 46.0 AOD and that finished flood levels are above the 100 year + 30% water level, are recommended in the FRA and could be secured by condition. Subject to those mitigation measures, the FRA concludes that fluvial flooding would not present a significant risk to the proposed development, and I agree.

28. The proposed drainage strategy which could be secured by a condition, would ensure that the proposed development would not increase the flood risk elsewhere from all sources of flooding. Furthermore, the Environment Agency were consulted on the scheme and did not object to it. I am therefore satisfied that the proposal would be acceptable with regard to drainage issues.
29. Comments were received stating that the site was cleared of vegetation prior to surveys being undertaken. However, I have limited substantive evidence of this, and the Council did not object to the veracity of the ecological work undertaken or the conclusions of it. Based on the evidence before me I see no reason to come to a different conclusion.
30. The submitted Updated Preliminary Ecological Appraisal assessed the ecological value of the site and identified mitigation measures that were required for bats, birds, and badgers, amongst other matters. Subject to the implementation of planning conditions securing these, the development would not lead to harm to protected and non-protected species. Whilst there would be some loss of habitat, the Updated Preliminary Ecological Appraisal identifies that most of it is of limited value and the proposed mitigation measures would lead to an enhancement in other regards. In light of the evidence before me I see no reason to come to a different conclusion.
31. The mandatory condition requiring biodiversity net gain of at least 10% will be imposed on permissions granted pursuant of a planning application made on or after 12 February 2024 or 2 April 2024 for small developments such as this. Given that the application was made before 2 April 2024, this mandatory requirement does not apply.
32. A larger residential development was refused on this site in 2007² and dismissed at appeal in 2008³ due to its harmful effect on the CA. The scheme before me is for a smaller development and the houses more loosely sited than that dismissed. Additionally, the LP and the NP have been adopted, and the Character Statement provides a detailed assessment of the land around the site which was not available when the previous appeal decision was made. For the reasons given earlier in this decision, this supporting documentation, as well as the reduced scale of the proposal, has led me to come to a different conclusion on this matter.
33. Given the limited scale of the proposal there would be a limited increase in the number of vehicles that would need to access Pinfold Close. However, the proposed dwellings would each have driveways with space to park several vehicles as well as integrated garages large enough to accommodate cars, as recommended by NP Policy H5. This would contribute towards ensuring that there would not be a substantial increase in vehicles using or parking on Pinfold Close related to this development and it would thus not have an unacceptable

² 9/2006/1325

³ APP/F1040/A/07/2036733

impact on highway safety. The Highway Authority did not object to the application on highway safety grounds, subject to suitably worded conditions, and based on the information before me I see no reason to come to a different conclusion.

34. Noise and disruption during construction as well as deliveries would be managed through the Highway Construction Management Statement/Plan which could be secured by a condition. Furthermore, any disruption would also only be for a limited time.
35. The Public Rights of Way Officer identified that the definitive line for Footpath No. 26 appears to crop the corner of proposed Plot 3. Prior to development taking place an application to divert the path under S257 of the Town and Country Planning Act 1990 (the Act) would need to be made. This is dealt with under a separate section of the Act and is not determinative in this appeal.
36. Whilst the proposal would result in the demolition of No 53 and the other dwelling on the site, it would also deliver two additional dwellings thus making a positive contribution towards the Council's supply of homes.
37. There is no substantive evidence before me that local services and facilities cannot accommodate the occupiers of the proposed development.
38. If damage is caused to property during construction this would be a matter that would be dealt with separately and is not a matter for me in the determination of this appeal. The planning system does not exist to protect private interests such as the value of land and property. Thus, I have given this negligible weight in coming to my decision.
39. The appeal was submitted within the 6-months following the issuing of the Council's decision and was found to be validly made.

Conditions

40. I have considered the planning conditions suggested by the Council having regard to the tests set out in the Framework. Where appropriate, I have amended the wording to ensure they are reasonable given the scale of the development and site context and to ensure that they meet all other Framework tests for conditions.
41. Further to the statutory commencement condition [1] it is necessary in the interest of certainty that the development is carried out in accordance with the approved drawings [2].
42. A condition requiring the submission of a Highway Construction Management Statement/Plan is necessary in the interest of protecting the living conditions of neighbouring occupiers [3]. It is necessary for Condition 3 to be pre-commencement to ensure a plan is agreed before construction works which may affect the living conditions of the neighbouring occupiers begins.
43. Condition 4 is necessary in the interest of protecting protected species in light of the evidence of them identified in the Updated Preliminary Ecological Appraisal. The information required by conditions can only be approved by the local planning authority and as a result it would not be reasonable to require those applying to agree works with the Derbyshire Wildlife Trust and the South

- Derbyshire Badger Group. It is necessary for this condition to be pre-commencement to ensure works which may affect a protected species are not undertaken before the surveys, strategies and licences are in place.
44. Conditions 5, 8, 10 and 11 are necessary in the interest of highway safety. It is necessary for Condition 5 to be pre commencement to ensure a safe and suitable access is provided prior to construction works starting and that works that could affect its delivery are not undertaken.
45. Conditions 6, 7 and 12 are necessary in the interest of the character and appearance of the area as well as ensuring the development would preserve the character and appearance of the CA. However, there is no substantive evidence that the use of stub cills would be so harmful so as to warrant restricting their use via a condition.
46. Condition 9 is necessary in the interest of the character and appearance of the area as well as local ecology. For similar reasons, as well as in the interest of protecting trees, it is necessary for a condition requiring the scheme is carried out in accordance with the recommendations in the Arboricultural Impact Assessment [14]. I have revised Condition 9 to include hard landscaping as it is proposed on the submitted plans and the details of this would need to be secured via condition in the interest of the character and appearance of the area, including the CA.
47. Policy SD3 of LP1 requires that water consumption is no more than 110 litres per person per day in the interest of supporting activities by the Water Companies to reduce demand for water and in turn suppress sewerage discharge effluent volumes. Consequently, Condition 13 is necessary for these reasons.
48. It is necessary in the interest of ensuring the development shall not increase flood risk elsewhere that it is carried out in accordance with the Flood Risk Assessment and the Drainage Strategy [15 and 16].
49. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The dwellings are located within Flood Zone 1, but the hydrological assessment shows that parts of the gardens for Plots 1, 2 and 3 would be within Flood Zone 2. Given that the Flood Risk Assessment identifies the need for the finished floor levels to be a specific level in the event of a 1:100 year plus climate change event, if the dwellings were extended without the appropriate floor level, or buildings erected, they could increase flood risk elsewhere as well as for the dwellings themselves which are a more vulnerable use as identified in the Framework. As such, this provides clear justification to restrict permitted development rights to enlarge, extend, or alter the dwellings or to erect buildings [17].
50. However, given the limited size of what could be built using the dwellings permitted development rights, with regard to gates, walls, fences, or other means of enclosure these would not substantially inhibit surface water drainage. Consequently, it is not necessary to restrict permitted development rights to erect them in this instance. Similarly, it is not necessary to restrict permitted development rights to ensure the associated parking spaces for each dwelling are maintained throughout the life of the development free of any

impediment to its designated use. Condition 8 as worded is sufficient to ensure this.

51. For the reasons given above, the scheme would preserve the character and appearance of the CA and not harm the character or appearance of the area. Consequently, a second footpath through the site is not necessary to secure this. As such, it would not pass the test of necessity to require the appellant to enter into a creation agreement to dedicate a second footpath or bridleway via a condition within the Local Green Space.

Conclusion

52. The development complies with 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, for the reasons given above, I conclude that the appeal should be allowed.

G Sibley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 15 (Location and Block Plan); 9B (Proposed Site and Block Plan); 10 (Plot 1 Plans and Elevations); 11 (Plot 2 Plans and Elevations); 12 (Plot 3 Plans and Elevations); 13 (Plot 4 Plans and Elevations); 14B (Streetscene, Proposed Gates and Visibility Splays); and JO-PL-TTP Tree Protection Plan.
- 3) No development shall take place until a Highway Construction Management Statement/Plan has been submitted to and approved in writing by the local planning authority. The Statement/Plan shall include details specifically relating to:
 - a) parking for vehicles of site personnel, operatives, and visitors;
 - b) site accommodation;
 - c) storage of plant and materials;
 - d) wheel washing facilities;
 - e) provision of roadside boundary hoarding behind any visibility zones; and
 - f) any proposed temporary traffic management.

The approved details shall be implemented and maintained throughout the construction period.

- 4) The development shall be carried out in accordance with the enhancement recommendations detailed in Section 4 of the Updated Preliminary Ecological Appraisal prepared by MLEcology Surveys and Solutions and dated 20 March 2023. Prior to their installation, the location and type of bird boxes and bat boxes/bricks shall be submitted to and approved in writing by the local planning authority. Monitoring surveys and a mitigation strategy for badgers shall be submitted to and agreed in writing by the local planning authority and shall be provided prior to any development taking place, including demolition, as well as evidence of a Badger Licence being secured from Natural England which shall be submitted to and agreed in writing by the local planning authority. The ecological enhancement measures shall be retained and maintained as such thereafter.
- 5) No development, including preparatory works, except with regard to the demolition of No 53 Pinfold Close, shall commence until the new vehicular and pedestrian access to Pinfold Close has been constructed. The junction shall be laid out in accordance with the approved plans with visibility sightlines of 26 metres(m) to the east and 22m to the west, both measured to a point 1m in from the nearside edge of the carriageway, as measured from a point located centrally and 2.4m back into the access. The area within the sightlines shall thereafter be kept clear of any object greater than 0.6m in height above the nearside carriageway channel level.

- 6) Notwithstanding the details provided, prior to their incorporation into the buildings hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be constructed using the approved facing materials.
- 7) Prior to their incorporation into the buildings hereby approved, details of the external appearance of eaves, verges, cills and headers shall be submitted to and approved in writing by the local planning authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, cills and headers shall be constructed in accordance with the approved drawings.
- 8) Prior to first occupation of each dwelling, space shall be provided for the parking of vehicles associated with that dwelling in accordance with the approved plans and such space shall be maintained throughout the life of the development free of any impediment to its designated use.
- 9) Notwithstanding the information provided, prior to the occupation of the dwellings hereby approved a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall evidence compliance with British Standard (BS) 3936: 'Part 1 – Specification for trees and shrubs', BS3969 – 'Recommendations for turf for general purposes' and BS4428 – 'Code of practice for general landscape operations (excluding hard surfaces)' (or equivalent documents which may update or supersede these Standards). All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the dwellings hereby approved or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period.
- 10) Pedestrian visibility splays of 2m x 2m shall be provided prior to the occupation of the dwellings and permanently maintained on both sides of the proposed access. There shall be no obstruction to visibility between 0.6m and 2.0m above carriageway level.
- 11) The entrance gates shall be erected prior to the occupation of the dwellings and shall be set back a minimum of 5m from the highway boundary (back of footway) and maintained at that distance for the life of the development.
- 12) Notwithstanding the plans hereby approved, prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials including details of any requirements for 'nature highways' of such boundary treatments to allow movement between plots shall be submitted to and approved in writing by the local planning authority. The boundary treatments shall be completed in accordance with the approved details before the respective dwellings to which they serve are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the local planning authority.

- 13) The dwellings shall not be occupied until the Optional Standard for water efficiency of 110 litre per person per day, as set out in G2 of Part G of the Building Regulations (2015) (or equivalent documents which may update or supersede these Regulations) shall have been complied with.
- 14) The development shall be carried out in accordance with the recommendations at sections 3, 4 and 5 of the Tree Survey and Arboricultural Impact Assessment, prepared by Jonathan Oakes and dated 9 June 2021.
- 15) The development shall be carried out in accordance with the flood mitigation measures set out in Section 4 of the Flood Risk Assessment, prepared by Julia Williams and dated March 2023.
- 16) The development shall be carried out in accordance with the Drainage Strategy prepared by SA Consulting and dated March 2023. Once implemented the drainage measures shall be retained and maintained thereafter.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwellings hereby permitted shall not be enlarged, extended, or altered and no buildings erected (except those authorised by this permission or allowed by any condition attached thereto), without prior grant of planning permission pursuant to an application made to the local planning authority in that regard.

End of Schedule