



Appeal Decision

Site visit made on 15 October 2024

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/W3005/W/24/3343067

Land at King Street, Huthwaite, Nottinghamshire, NG17 2PA

- 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 Paul Cairns (Cairns Heritage Homes) against the decision of Ashfield District Council.
 - The application Ref is V/2024/0049.
 - The development proposed is construction of one detached house and two semi-detached houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. My attention has been drawn to the emerging Ashfield District local plan (ELP). The National Planning Policy Framework (the Framework) sets out that weight may be given to policies in emerging plans according to its stage of preparation and subject to the extent of unresolved objections and degree of consistency with the Framework. There is no substantive evidence before me which allows me to make this judgement. Thus, I give the ELP limited weight as a material consideration.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of the occupiers of 34 Ashfield Road with particular regard to outlook.

Reasons

4. The appeal site comprises a parcel of land on the east side of King Street. The land slopes steeply downhill towards the north. The proposal relates to the erection of 3 dwellings and follows the grant of planning permission¹ for a scheme which showed dwellings of a similar form and layout but did not include details of proposed site levels. It is stated that, in order to provide the necessary drainage, it is necessary to raise land levels.
5. The proposed dwellings would be of a similar height to other properties in King Street and would not appear out of character with properties in the area. The proposal would not result in opportunities for overlooking of the properties on King Street. The rear balconies would be enclosed by a privacy screen which would prevent the overlooking of properties to the north.

¹ Application reference V/2022/0199

6. There would be a separation of approximately 26.5 metres between the rear elevation of 34 Ashfield Road and unit 2. This would exceed the recommended separation distances set out in the Residential Design Guide Supplementary Planning Document (SPD) (2014) and thus the proposal would not result in the overlooking of this property. Nonetheless, the proposed changes in site levels would result in dwellings which would be sited on ground approximately 2.25 metres higher than the ground at 34 Ashfield Road. Given the elevated siting of Units 1 and 2, the scale of the proposed dwellings and their proximity to the site boundary, the proposal would appear dominant and overbearing in views from the windows in the rear elevation of 34 Ashfield Road. Whilst the rear garden to 34 Ashfield Road is large, sloping and northwest facing, based on my observations on site there is no indication that this space is not actively used as private garden space and the proposed dwellings would also appear overbearing in views from this garden. The proposal would make the rooms which these windows serve and the rear garden an unpleasant space in which to spend time, which would significantly compromise the living conditions of the occupants of this dwelling.
7. I have given due consideration to the weight to be afforded to the extant permission, as advocated by caselaw². However, it would appear that that scheme cannot be implemented for drainage reasons. There is no indication that that permission included comparable changes in site levels and thus, even if it were capable of implementation, it would have less of an overbearing impact. These factors limit the weight to be afforded to the extant permission.
8. The proposal would harm the living conditions of the occupants of 34 Ashfield Road through a loss of outlook. Therefore, the proposal conflicts with those aims of Policies ST1 and HG5 of the Ashfield local Plan Review (2002) (LP) which state that development will be permitted where the amenity of neighbouring properties is protected. I also find conflict with Chapter 12 of the Framework, which states that decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Other Matters

9. The scheme would provide 3 residential units which would boost the supply of housing in the area. This benefit weighs in favour of the scheme. However, this does not outweigh my findings in respect of the main issue.
10. The Council raised no objections to the proposal on grounds of the standard of accommodation. Based on the information before me I see no reason to take a different view. However, compliance with the relevant development plan policies on this matter would be required in any case. Thus, this matter weighs neutrally, rather than in favour of the proposal.

Conclusion

11. For the reasons given above the appeal should be dismissed.

N Robinson INSPECTOR

² Bates, R (On the Application Of) v Maldon District Council [2019] EWCA Civ 1272 (23 July 2019) and Regina (Mansell) v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314