



Appeal Decision

Site visit made on 9 December 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2025

Appeal Ref: APP/F1040/W/24/3349974

Plot 46 Station Road, (4 Boardman Close), Melbourne, Derbyshire, DE73 8JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Alexander Bruce Estates Ltd against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2024/0010, dated 22 December 2023, was refused by notice dated 27 February 2024.
 - The application sought planning permission for the erection of 5 Dwellings (amendments to planning permission ref: DMPA/2020/0592) without complying with a condition attached to planning permission Ref DMPA/2021/1114, dated 14 April 2022.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans/details:
 - Proposed Site Plan – 3047-82 Rev. H
 - Proposed Refuse Plan – 3047-90 Rev. B
 - Site Plan – Open Space 3047-92 Rev. A
 - Proposed Bin Collection Point – 3047-93 Rev. C
 - Proposed Plot 42 – 3047-83 Rev. A
 - Proposed Plot 43 – 3047-84
 - Proposed Plot 44 – 3047-91
 - Proposed Plot 45 – 3047-85 Rev. A
 - Proposed Plot 46 – 3047-94 Rev. A
 - Proposed Garages – 3047-87 Rev. B
 - The reason given for the condition is: For the avoidance of doubt.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was issued on 12 December 2024. Whilst some paragraph numbers have changed, the relevant paragraphs and parts of paragraphs identified as directly affecting this case have not been amended. Therefore, in this case it has not been necessary to consult the parties on the revised Framework.

Background and Main Issues

3. Planning permission was granted for the erection of 46 dwellings at the appeal site¹ (the original scheme). A small parcel within this scheme was subject to a

¹ DMPA/2020/0592.

further application for 5 dwellings which was approved as a minor material amendment to the original scheme (the second scheme²).

4. Condition 2 of the Decision Notice of the second scheme requires the development to be carried out in accordance with the approved plans/ details. This includes "Site Plan - Open Space 3047-92 Rev A" (the Open Space Plan) which identifies the hatched green areas on the plan as "Open Space – area to be maintained by a management company". It also includes "Site Plan – 3047-82 Rev H" (the Site Plan) which is consistent with the Open Space Plan.
5. The appellant seeks to vary condition 2 to allow retention of the re-positioned garden boundary of Plot 46 into the open space to increase the garden area of the plot. The boundary consists of a 1.1-metre-high timber post and rail fence.
6. The Council contends that the re-positioned boundary fence encroaches into the land allocated as public open space (POS), which is tied to the Section 106 agreement for the original scheme.
7. The proposal also seeks to erect a 1.1-metre-high timber post and rail fence with 1.8 metre wide gate to the west side of the garage of Plot 46.
8. Based on the above, the main issue is whether or not the alterations to the garden area of Plot 46 effect the amount and useability of POS.

Reasons

9. Plot 46, also known as 5 Boardman Close, is a two-storey detached house with a detached single storey garage to the west side of the house. The rear garden of Plot 46 backs onto land designated as open space. The open space runs alongside a tree lined ditch which extends the entire length of the north-east boundary of the site of the original scheme and connects to the Carr Brook.
10. Open space can take different forms and linear open space for walking or cycling is not uncommon along natural linear features such as watercourses and hedgerows. Therefore, the narrow form of the open space does not preclude it from being recreationally useable. It is also clear from the approved plans that the land in question forms part of a network of open space across the original scheme.
11. The appellant contends that there is a distinction between the publicly accessible open space along the Carr Brook which includes a Local Equipment Area for Play (LEAP) and the landscape buffer along the north-east boundary of the site which was designed as a maintenance strip only. However, the landscape buffer is clearly indicated in the approved plans as open space. Furthermore, the Section 106 agreement defines "Open Space Land" as the areas of informal public open space to be provided within the site and the LEAP. In addition, the Officer Report indicates that the design ethos for the POS and play area reflects the site's location close to the countryside. There is no substantive evidence before me to indicate that the land in question was erroneously categorised as public open space through the Section 106 process. From the evidence before me, it is clear that the landscape buffer to the rear of Plot 46 forms part of the POS for the site. The POS on the eastern periphery of the original scheme, including the land in question, forms linear open space linking to other parts of POS on the housing estate. The expansion of the

² DMPA/2021/1114.

private garden of Plot 46 has encroached into POS that people may want to walk on because it provides a link to other parts of POS. The observed absence of users of the POS by the occupiers of Plot 46 does not confirm that no-one has used or will use the POS in the future.

12. The appellant suggests that the landscape buffer is unnecessarily wide for maintenance purposes and would become a maintenance liability. However, the landscape buffer is designated as POS and does not only serve a maintenance purpose. The smaller amount of land allegedly required for maintenance purposes does not provide sufficient justification for the loss or reduction of the POS.
13. The fact that the Section 106 agreement was not updated to reflect the second scheme does not imply that the land in question lacks importance in terms of POS. There is no substantive evidence before me to suggest that the Council regards the POS to the rear of Plot 46 as being of less importance than other parts of POS within the site. The absence of updates to the Section 106 agreement does not sufficiently justify the loss of the POS to private garden space.
14. While the Officer Report relating to the original scheme refers to an excess amount of POS that would be provided, and the land in question represents only a very small part of the overall POS, no substantive evidence has been submitted to demonstrate that the POS in question is surplus to site requirements. Moreover, as the land in question links to other parts of POS on the housing estate, it is important POS.
15. Extending the private garden area of Plot 46 into the POS has reduced its width significantly, creating a narrow slither of POS alongside the ditch. The useability of the POS has therefore been impaired, and its overall quality has been diminished as result of its reduced width.
16. The private benefit of a larger garden area to Plot 46 would not provide sufficient justification for the loss of POS.
17. For the reasons given, I conclude that the alterations to the garden area of Plot 46 reduces the amount and useability of POS. Hence, it conflicts with Policy BNE1 and Policy INF9 of the South Derbyshire Local Plan insofar as they require development to provide public open space and prevent the loss of open space. The development also conflicts with the Framework which promotes the importance of open space for the health and well-being of communities.
18. The Council has referred to the Policy S2 of the LP. However, this relates to the presumption in favour of sustainable development so is not determinative on this matter.

Other Matters

19. The appellant has offered to introduce planting along the boundary fence of Plot 46 which is argued would improve the landscape and provide biodiversity net gain. However, this would not mitigate for the loss of and reduction in the useability of the POS. Even if I found differently in relation to this matter, nothing has been provided or proposed to ensure that the use of the land as garden would materially improve its value in landscape or biodiversity terms.

20. Insufficient evidence has been submitted to demonstrate that use of the POS would cause privacy and security issues for the occupiers of Plot 46.
21. The effective use of land referred to in section 11 of the Framework is set within the context of meeting the need for homes and other uses. The private benefit of a larger garden area to Plot 46 would not provide sufficient justification for the loss of POS. The Framework prioritises protecting, enhancing and ensuring access to open space.
22. A signed Deed of Variation to the Section 106 agreement has been submitted to the appeal. However, this does not change my finding that alterations to the garden of area of Plot 46 reduces the amount and useability of POS.

Conclusion

23. The proposal conflicts with the development plan and material considerations do not indicate that the appeal should be decided other than in accordance with the development plan. For the reasons given above, the appeal should therefore be dismissed.

U P Han

INSPECTOR