



Appeal Decision

Site visit made on 26 February 2025

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 March 2025

Appeal Ref: APP/C1055/W/24/3353001

Land adjacent to 169 Ashbourne Road, Derby, DE22 3AJ

- 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 M Rogers against the decision of Derby City Council.
 - The application Ref is 24/00296/FUL.
 - The development proposed is Construction of new apartment building.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the living conditions of the occupiers of 31 and 32 Windmill Hill Lane with specific regard to any overbearing impacts and loss of privacy, and the effect of the loss of the on-site trees on the character of the area.

Reasons

Living conditions

3. 31 and 32 Windmill Hill Lane (Nos 31 and 32) to the immediate rear of the appeal site are a semi-detached pair of dwellings sat somewhat back from Windmill Hill Lane, with relatively short rear gardens adjoining the appeal site. At present, the trees and billboards on the site sit close to and rise above the rear of the dwellings and their gardens. The proposal would be of a similar height and scale to adjoining buildings on Ashbourne Road. However, those buildings do not have the same short and close relationship as between the proposal and Nos 31 and 32. As a result, the proposal would, despite being in keeping with the established scale and character of Ashbourne Road, have an overbearing effect as a result of that scale, mass and close relationship to Nos 31 and 32. My conclusion on this point is not affected by the relationship of the rear outrigger of 169 Ashbourne Road to No 32, as that is substantially offset from No 32 and therefore has a very different relationship and effect to the proposal.
4. Although the rear of Nos 31 and 32 are north facing and may already suffer some overbearing effect from the existing trees and billboards, the effect is lesser than would arise from a building as proposed. The proposal would develop almost the whole of the appeal site, in stark contrast to the relatively open (although overgrown) nature of much of the site at present. The building would be more solid, substantial, and the overbearing effect would be permanent and year-round, unlike current effects which vary throughout the year owing to the seasonal condition of the trees.

5. Turning to privacy, I accept that the windows facing towards Nos 31 and 32 are proposed to be obscurely-glazed and could be retained as such by condition. However, the perception of overlooking, particularly between two closely-related rear elevations as in this case, is, to my mind as harmful as actual overlooking, and I find that it would be unacceptable, particularly given the current relatively private and unobserved nature of the rear of Nos 31 and 32.
6. I note the offer to remove these windows, but such a large, unrelieved wall in such close proximity to the rear of Nos 31 and 32 would, to my mind, increase the harm to their living conditions by way of an overbearing impact. This increased harm by would far outweigh any reduction in overlooking, perceived or otherwise.
7. Whilst I note the lack of natural surfacing to the rear of Nos 31 and 32, as well as the potential for leaf-fall in the gardens, I do not consider that to be a negative factor which weighs strongly in favour of the proposal, particularly given the importance of green in infrastructure to the city, and the overarching need for development to result in a satisfactory form of development.
8. No third-party objections have been received, notably not from the occupiers of Nos 31 and 32. However, this does not outweigh my concerns and conclusions on the living condition effects of the proposal or otherwise reduce the weight I give those conclusions.
9. The mass and scale of the proposal, combined with its relationship to Nos 31 and 32, as well as the added perceived overlooking would significantly and unacceptably harm the living conditions of the occupiers of Nos 31 and 32. The proposal would therefore conflict with saved Policies GD5 and H13 of the City of Derby Local Plan Review, adopted in January 2006.

Trees

10. The trees, whilst set back from the road frontage and being sited between advertising hoardings and houses to the rear, are nevertheless visible in long views along Ashbourne Road. Whilst such views are obtained in the context of other larger, more established and more numerous trees on the opposite side of the road, the on-site trees still have a positive role to play in the character of the area. Indeed, the relative lack of trees on the southern side of the road increases their value and their contribution to the character of the area, as they provide a degree of relief to the otherwise continuous and largely unbroken built form and un-vegetated character of the southern side of the road seen on my site visit.
11. Whilst the trees on the site may be young and in fair condition, with a moderate quality and value rather than mature as described by the Council, they still make a positive contribution to the character of the area. This persists even though the trees are located behind billboards. It may be that in time, the trees would require management, given their location and relationship to their surroundings, but such proposals are not before me to consider, only their total removal and replacement with more built form.
12. That the Council has drafted a Tree Preservation Order lends further weight to my findings on the value of the trees to the character of the area.

13. I find that this conclusion is consistent with the overall strategic approach to green infrastructure set out in Policy CP16 of the Derby City Local Plan – Part 1: Core Strategy, January 2017, and consider that the proposal conflicts with that policy.
14. As the proposal would offer no opportunity for any on-site planting to mitigate the loss of the existing trees, the appellant has suggested off-site planting could be secured through a planning obligation. However, no such obligation has been provided, so I give such an offer no weight in my decision, and it does not alter my conclusions.

Other Matters

15. I note the tree survey and the comments of the appellant around the effects of the trees on the living conditions of the occupiers of Nos 31 and 32. However, as the concern of the Council is principally with the effect of their loss on the character of the area, I do not consider that any potential improvements to living conditions arising from their removal would be of real benefit or would alter my conclusions on the proposal as a whole.
16. The appellant and the Council appear to agree that the provisions in paragraph 11d of the National Planning Policy Framework (the Framework) apply. There would be benefits from the proposal, notably the provision of six residential units in a sustainable location within an area of need, but also social, economic and environmental benefits as described by the appellant.
17. However, I have found significant harm arising from the proposal, in the form of harm to living conditions and harm to the character of the area. I find that these harms, coupled with the obvious development plan conflict represent adverse impacts which significantly and demonstrably outweigh the benefits of the proposal. In particular, the Framework requires particular regard to be had to key policies for securing well-designed places, which the proposal would not do. The proposal does not therefore benefit from the presumption in favour of sustainable development in the Framework.

Conclusion

18. The proposal would cause harm to living conditions and harm to the character of the area. It would therefore significantly conflict with the development plan. Whilst there are material considerations which weigh in favour of the proposal, they do not outweigh the harm I have found such that a decision should be taken other than in accordance with the development plan.
19. The appeal should therefore be dismissed.

S Dean

INSPECTOR