

## Appeal Decision

Site visit made on 24 February 2025

by **B Astley-Serougi BA(Hons) LLM MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

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**Appeal Ref: APP/C1055/W/24/3352847**

**145 Walbrook Road, Derby DE23 8SF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by DC Robinson Motor Engineers of DC Robinson Motor Engineers against the decision of Derby City Council.
  - The application Ref is 21/00880/OUT.
  - The development proposed is described as alterations and extensions to provide flats above existing garage building.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal scheme relates to an outline proposal with access, layout and scale to be considered at this stage, with all other matters reserved for future consideration. I have considered the appeal accordingly. Plans have been submitted as part of the appeal which indicates how the appeal scheme could be accommodated on the site. I have taken these plans into account for indicative purposes only insofar as they concern matters of landscaping and appearance.
3. The description of development was amended during the application process. I have therefore used the description of development from the Decision Notice in the banner heading above.
4. 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.

### Main Issues

5. The main issues are:
  - the effect of the proposal on the living conditions of future occupants with regard to noise and disturbance;
  - the effect of the proposal on the living conditions of neighbouring residents with regard to privacy; and

- the effect of the proposal on the living conditions of neighbouring residents with regard to daylight.

## Reasons

### *Noise and disturbance*

6. The appeal site is currently a motor repair garage. Adjacent to the site are both residential and commercial properties. It is located on the south side of Walbrook Road and is identified as being within the Cavendish District Centre.
7. The appeal scheme would comprise of a garage on the ground floor and provide residential accommodation above. The appellant intends to use the garage exclusively as an MOT testing centre rather than the existing motor repair garage. Consequently, it would not service cars which were not undergoing testing. The appellant highlights that MOT testing is mainly electronic sensor operated and therefore produces minimal noise levels.
8. The appellant has submitted two noise impact assessments as part of their application. The most recent noise impact assessment is dated February 2023 (the NIA). The NIA recommends that the proposed shutter door of the garage should remain closed during all noisy internal activities and that future employees within the garage should be made aware of the proximity of residential dwellings and consequently that noise emissions should be effectively controlled where practicable. Furthermore, it identifies that windows cannot be used for the primary means of ventilation for the appeal scheme due to the noise levels emitted from the garage. Therefore, a mechanical extract ventilation system would be required. Additionally, the appellant has indicated that the garage workshop would have air conditioning fitted.
9. The appellant refers to a sensor on the roller shutter door which would help to keep it closed because it would be unable to be overridden. However, given all of the above, it is likely that there would be an unacceptable reliance upon not just the roller shutter door being closed but also the work practices of future employees to ensure that the living conditions of future occupants of the residential element of the appeal scheme would not be harmed by unacceptable levels of noise and disturbance from the garage.
10. Moreover, the noise survey submitted by the appellant has limited information regarding the proposed mechanical extract ventilation system and the air conditioning system. Consequently, it has not been adequately demonstrated that the proposed mechanical extract ventilation system and the air conditioning system would not result in an unreasonable level of noise and disturbance for future occupants. Consequently, there is limited evidence before me to adequately demonstrate that the proposed mitigation measures would result in acceptable noise levels for any future occupants of the appeal scheme.
11. Whilst the appellant indicates that a condition could be used to ensure the appeal scheme is constructed to meet full details of sound insulation standards which would be agreed with the Council, it remains that the full extent of the sound from the proposed scheme is still not clear due to the limited details regarding the ventilation and air conditioning systems. Consequently, I am not satisfied that a condition would result in an appeal scheme of an appropriate

standard regarding the living conditions of future occupants given the aforementioned limited information before me.

12. Although the existing garage has limited noise mitigation measures to limit noise and disturbance for adjacent residents, this does not provide justification for a scheme which has not been adequately demonstrated to not result in harm to the living conditions of future occupants regarding noise and disturbance.
13. Given the above, it has not been demonstrated that harm would not occur because of the appeal scheme in relation to the living conditions of future occupants with regard to noise and disturbance. Thus, it would conflict with Policy CP3 of the Derby City Local Plan – Part 1 Core Strategy 2017 (the CS) and the Saved Policies GD5 and H13 of the City of Derby Local Plan Review 2006 (the DLPR) insofar as they seek to ensure developments are designed to provide high quality living environments with a satisfactory level of amenity regarding noise and disturbance.

#### *Privacy*

14. Given that the appeal site is a motor repair garage, the introduction of residential development in conjunction with the significantly greater height of the appeal scheme when compared to neighbouring dwellings would materially change the relationship of the appeal site and the nearby dwellings with regard to privacy. This would be further exacerbated by the relatively compact layout of the dwellings close to the appeal site.
15. Whilst I acknowledge that the Council in its Officer report states that it is unclear whether the harm to residential amenity of neighbouring plots when taken in isolation from other matters would constitute unacceptable harm, it still indicates that there would be a level of harm to the living conditions of neighbouring occupants as a result of the appeal scheme by virtue of its massing and consequent overlooking of other residential dwellings.
16. The appeal scheme would be significantly greater in terms of its massing and scale when compared to the neighbouring dwellings. Consequently, I am not satisfied that a suitable layout could be achieved to ensure it would not result in harm to the privacy of neighbouring residents, given the existing relationship between the appeal site and the surrounding built form.
17. In conclusion, I consider that the appeal scheme would result in unacceptable harm to the living conditions of neighbouring residents with regard to privacy. Thus, it would conflict with Policy CP3 of the CS and Saved Policies GD5 and H13 of the DLPR insofar as they seek to ensure developments are designed to provide high quality living environments with a satisfactory level of amenity regarding privacy.

#### *Daylight*

18. The appeal scheme would result in three additional storeys above the motor repair garage. The rear elevation of the appeal scheme would be stepped back and therefore the 45-degree line from neighbouring habitable windows would not be significantly effected by the proposed development with regard to daylight.

19. Accordingly, for the reasons given above, I do not consider the appeal scheme to result in unacceptable harm to the living conditions of neighbouring residents with regards to daylight.
20. Therefore, it would comply with Policy CP3 of the CS and Saved Policies GD5 and H13 of the DLPR insofar as they seek to ensure developments are designed to provide high quality living environments with a satisfactory level of amenity regarding daylight.

### **Other Matters**

21. The Council has stated that they are able to demonstrate a housing land supply of 3.85 years according to a revised calculation undertaken as a consequence of the revised Framework. This is below the housing land supply the Council is expected to deliver in line with the Framework. Whilst the proposal would deliver nine units, this would nonetheless be valuable in boosting the housing stock in circumstances where there is a shortfall.

### **Planning Balance**

22. As set out above, whilst there would be no significant harm to the living conditions of neighbouring residents with regard to daylight, it remains that the appeal scheme would result in harm to the living conditions of neighbouring residents with regard to privacy. Additionally, it has not been demonstrated that harm would not occur as a result of the appeal scheme in relation to the living conditions of future occupants with regard to noise and disturbance. Thus, there would be conflict with Development Plan policies. However, due to the Council's housing land supply position, paragraph 11 d) of the Framework is engaged.
23. The appeal scheme would result in nine open market dwellings in an area that is falling below the level of housing supply required by national policy. They would make a modest but important contribution as indicated by paragraph 73 of the Framework.
24. The appellant states that a benefit of the appeal scheme would be the safeguard of existing jobs in the garage and the potential creation of new jobs. It would also provide modest economic benefits for the Council such as the New Homes Bonus and Council tax, as well as from construction jobs and associated industries. Additionally, it would result in a modest increase in the use of local services and facilities by future occupants. Furthermore, the appellant states that the appeal scheme would also protect the vitality and viability of the district centre by creating homes in an accessible and sustainable location.
25. Whilst the appellant refers to the appeal scheme being 'attractive', appearance is a reserved matter and therefore is not within the scope of this appeal. Accordingly, given the appeal scheme is for nine units the associated benefits would be modest, I give the appellant's claimed benefits limited weight.
26. Nevertheless, the adverse impacts I have identified as a consequence of the appeal scheme would significantly and demonstrably outweigh the benefits of the proposal when assessed against the Framework policies as a whole.
27. There are no material considerations of such weight or significance to justify a decision otherwise than in accordance with the development plan.

## **Conclusion**

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

*B Astley-Serougi*

INSPECTOR