



DERBY CITY COUNCIL

PLANNING CONTROL COMMITTEE

29 JULY 2010

Report of the Director of Planning and Transportation

ITEM 8

Appeal Decisions

RECOMMENDATION

1. Committee is asked to note the decisions on appeals taken in the last month.

SUPPORTING INFORMATION

- 2.1 The attached appendix 2 gives details of decisions taken.
- 2.2 The intention is that a report will be taken to a Committee meeting each month.

For more information contact:
Background papers:
List of appendices:

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See application files
Response to appeal decision

IMPLICATIONS

Financial

1. None.

Legal

2. None.

Personnel

3. None.

Corporate objectives and priorities for change

4. None.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/02/10/00183/PRI	Extension to dwelling house (garage, utility room, kitchen and lounge) and formation of rooms in enlarged roof space (2 bedrooms)	21 Scarsdale Avenue, Allestree, Derby	Dismissed

Comments:

This appeal follows the delegated refusal of a proposal to add a significant 'wrap around' extension to a modestly proportioned bungalow. The side extension had no set back or lowering in roofline. It was considered that the design of the extension was detrimental to the character of the dwelling and that it would be highly visible in the street scene. As such the proposal was considered to be contrary to policies H16 and E23 of the adopted City of Derby Local Plan Review.

The Inspector agreed that the issues in this appeal were the impact of the proposal on the character and appearance of the building and the street scene.

She commented upon the symmetrical design of the original property and those around it and noted that the uniformity of design contributed to the street scene's character. The proposed extension would result in the loss of symmetry and established character, therefore the Inspector concluded it would be harmful to both the property and the street scene as a whole.

Noting another extension already carried out and suggested by the appellant in support of the proposal the Inspector concluded that rather than mitigate for the proposed design it served to demonstrate how the proposal would be harmful to both the character of the host dwelling and the wider street scene.

Accordingly the Inspector agreed with the decision of the Local Planning Authority and dismissed the appeal.

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Variation/Waive of condition(s)

Application No.	Proposal	Location	Appeal Decision
DER/04/09/00395/PRI	Retention of living accommodation in former detached games room in rear garden (Variation of condition 1 of planning permission code no DER/06/05/00961)	218A Stenson Road, Derby	Dismissed

Comments:

This appeal follows the delegated refusal of planning permission to retain unauthorised living accommodation converted from a detached games room within the rear garden of 218A Stenson Road. This outbuilding has some history having been built without the benefit of planning permission in the first instance. An application was subsequently made in 2005 to retain the 'games room'. The application was granted with the following condition – *The games room shall be used only for that purpose and other purposes incidental to the enjoyment of the dwelling house and shall not be used as a separate dwelling or in connection with any trade or business.* The condition was imposed because the building was considered unsuitable for occupation as a separate dwelling house and to protect the residential amenities of the occupiers of Nos. 22 and 24 Chesterton Avenue.

A complaint was made to the Development Control Enforcement Team in 2009. Following their investigation the breach of condition was uncovered as the out building was clearly being used as a separate residential unit. The application which was the subject of this appeal subsequently followed.

The application was refused on two grounds. Firstly, because of the Local Planning Authority's concerns regarding the detrimental impact of the proposal upon the residential amenities of nearby dwellings and secondly because this form of backland development was considered wholly out of character with the established pattern of development in the area and if replicated would lead to the erosion of the established character of the area.

The Inspector considered that there were two main issues in the appeal – Whether the condition previously imposed and described above was necessary to safeguard the living conditions of the occupiers of the Chesterton Avenue properties and whether the variation or removal of that condition would have implications for the character and appearance of the surrounding area.

The Inspector firstly noted that only by a variation of condition could the out building be used as residential accommodation by persons not connected with the occupiers of 218A Stenson Road. He also disputed the appellant's assertion that the building did not constitute a separate dwelling, considering that it contained the 'wherewithal for independent day to day living' and because of its functional and physical separation.

In considering the impact of the development on the occupiers of No's 22 and 24 Chesterton avenue the Inspector concluded that it was likely to be a source of continued annoyance, beyond that which would be experienced if it was solely a 'games room' because of the intensive use of the existing residential plot.

Noting the appellant's assertion that the building did comply with Building Regulations, did not have windows overlooking the neighbouring properties, and had not been the subject of complaints from these residents, the Inspector was still not convinced that there would be no harm to residential amenity.

The Inspector commented upon the careful wording of the condition imposed and was content that it was enforceable and satisfied the tests set out the Department of the Environment circular of 1995 for the imposition of conditions. He concluded that any variation of this condition *could* lead to an adverse effect upon the amenity of the occupiers, either now or future, of No's 22 and 24 Chesterton Ave and this was precisely what it set out to protect. This would be contrary to Policies GD5 and H13 of the adopted City of Derby Local Plan Review. He concluded that the condition was therefore reasonable, necessary and serves a useful purpose.

Turning to the impact of the proposal on the character and appearance of the surroundings he noted the appellant's assertions that there were other outbuildings in the locality but these were not being used a residential accommodation in his opinion. He too concluded that the proposal constituted 'backland development' which was untypical of the area's established urban grain. He considered that the proposal was contrary to Policies GD4, E23 and H13 and agreed with the Local Planning Authority that the proposal did not preserve or enhance local distinctiveness, did not have a high standard of design and was an unsatisfactory form of backland development.

The inspector was not convinced by the appellant's argument that the curtilage of the property would not be divided in the long term and considered that the removal of the condition may actually make this easier. Neither did the ample parking provision at the front of the property or the need for affordable housing in the area convince him that the harm to nearby residents or the character of the area would be outweighed by the removal of the disputed condition or the granting of planning permission for this proposal. Accordingly he dismissed the appeal.

This is a very satisfactory decision for the Local Planning Authority as it reaffirms the weight given to the protection of residential amenity from inappropriate development, the use of precise conditions and it endorses the careful investigations of the small Development Control Enforcement Team whose efforts brought this breach to light in the first instance. This team will now be pursuing Enforcement action to ensure that the unauthorised use ceases.

Recommendation: To note the report.



Appeal Decision

Site visit made on 6 July 2010

by **Jane Miles BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
12 July 2010

Appeal Ref: APP/C1055/D/10/2128120

21 Scarsdale Avenue, Allestree, Derby DE22 2LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Tom O'Conner against the decision of Derby City Council.
- The application ref: DER/02/10/00183/PRI, dated 10 February 2010, was refused by notice dated 29 April 2010.
- The development proposed is an extension.

Decision

1. I dismiss the appeal.

Reasons

2. The main issue in this case is the proposal's effect on the character and appearance of the host building and the street scene. Although not all the buildings in this cul-de-sac are the same, many of them have front elevations similar to that of no. 21 in scale, design and form. A key feature of these single storey dwellings is the symmetrical arrangement of front door with a bay window to each side. This distinctive feature, together with their scale and form, creates a degree of uniformity which, to my mind, contributes significantly to the street scene's character.
3. The L-shaped addition to no. 21, wrapping around its side and rear, would include a continuous sideways extension of the existing front wall and the roof. Thus the dwelling's original and distinctive form would no longer be apparent, and the symmetry and the proportions of its existing front elevation would be lost. I consider that this would harm the building's established character and that of the street scene as a whole.
4. I acknowledge that there is a similar extension at no. 15 for which, according to the appellant's statement, permission was granted in 2006, but I do not know the full circumstances of that case. In any event, to my mind, no. 15 as extended appears unduly prominent and bulky in the street scene, thus demonstrating the adverse visual impact that this appeal proposal would have. It contrasts unfavourably with other nearby dwellings where side extensions have been set back from the original front wall, with ridge heights below those of the original roof. Even where the set back and down is small, it is effective both in breaking up the larger building mass, and in creating a break between old and new, such that the distinctive form and symmetry of the original design remains as a distinguishable feature.

5. No other matters raised are sufficient to alter my conclusion that the proposal would unacceptably harm the character and appearance of the host building and the street scene, contrary to the objectives of Policies GD4, H16 and E23 of the City of Derby Local Plan Review. It follows that the appeal must fail.

Jane Miles

INSPECTOR



Appeal Decision

Site visit made on 24 May 2010

by **Ahsan U Ghafoor** BSc (Hons) MA
MRTPI

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for Communities and Local Government

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Decision date:
22 June 2010

Appeal Ref: APP/C1055/A/09/2110758
218A, Stenson Road, Derby DE23 1JL

- 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 without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr S Ram against the decision of Derby City Council.
- The application Ref DER/04/09/00395/PRI, dated 11 April 2009, was refused by notice dated 10 June 2009.
- The description in the application sought planning permission to 'retain lodging accommodation in former games room' without complying with a condition attached to planning permission Ref DER/06/05/00961/PRI, dated 4 August 2005.
- The condition in dispute is No.1 which states that: 'the games room shall be used only for that purpose and other purposes incidental to the enjoyment of the dwelling house and shall not be used as a separate dwelling or in connection with any trade or business'.
- The reason given for the condition is: 'in the interests of the amenities of nearby residents and because the building is not suitable for occupation as a separate dwelling with its own curtilage and in accordance with policy H27 of the adopted City of Derby Local Plan'.

Decision

1. I dismiss the appeal.

Procedural Matter

2. The proposal described in the planning application seeks to retain lodging accommodation in the former games room. The Council's decision notice describes the proposal as: '*retention of living accommodation in former detached games room in rear garden (variation of condition 1 of planning permission code no DER/06/05/00961)*'. On the basis of all of the written representations before me, it appears that a retrospective planning application was submitted to use the former games room, which I refer to as the 'building', for lodging purposes. I will determine the appeal on this basis.

Background Information

3. There is a suggestion that the building is used for 'ancillary' or 'incidental' purposes. The building was converted to residential accommodation in about 2008. It has two bedrooms, a combined lounge and kitchen area, a toilet and shower room. The appellant contends that it is occupied by the family but due to current economic conditions, the building is also occupied by lodgers. Effectively, the variation of condition 1 would permit the use of the building for residential

purposes by persons who are not relatives or dependants of the appellant, and so that use would not be incidental to the main dwelling.

4. It is contended by the appellant that the building does not constitute a separate dwelling. However, the building is detached from the main dwellinghouse because of its positioning and distance. It appears as a self-contained unit and can be accessed from no. 218A's rear garden, and it has a domestic external appearance because of its scale. There is a patio area immediately outside the building, which can be used by its occupiers. In my view, the building has the necessary wherewithal for independent day-to-day living; there are separate facilities for cooking and sleeping and it is used for primary residential purposes. As a matter of fact and degree, the building is capable of use as a dwelling because of its functional and physical separation.

Main issues

5. The appeal raises two main issues and these are as follows:
 - Firstly, whether the condition in dispute is reasonable and necessary in the interests of safeguarding the living conditions of occupiers of numbers 22 and 24 Chesterton Avenue;
 - Secondly, the implications of removing or varying the disputed condition on the character and appearance of the surrounding area.

Reasons

Neighbours' living conditions

6. Nos. 22 and 24 Chesterton Avenue are located to the rear of the appeal site, and the building is set about 4.8 metres from the adjoining boundary. Although the properties are set further away, their rear gardens are not as deep as no. 218A.
7. The appellant argues that the use of the games room for leisure would result in some degree of noise to nearby residents. However, in comparison the building's use as a separate dwelling is more likely to disturb occupiers of nos. 22 and 24, because of increased comings and goings associated with independent residential living. The design, size, shape and location of the building have not changed. Nonetheless, due to the type and nature of its residential use, the development is likely to be a source of continued annoyance to nearby residents.
8. I have noted correspondence from the occupier of no. 24, and despite the building's current use the appellant avers that no noise complaints have been received by the Council. However, in this location the permanent use of the building as a separate dwelling is likely to cause significant disturbance to nearby residents. Its use is likely to result in additional noise and general disturbance because of the intensive use of the existing residential plot.
9. I have noted all of the points raised by the appellant about the quality of the work and compliance with Building Regulations. Nevertheless, the development is detrimental to neighbours' amenities due to the proximity of the building to nearby gardens. In addition, although the building's use would not result in overlooking of nearby properties, the lodging accommodation significantly alters the character of the site because of the scale and level of residential operations.
10. The appellant refers to the lack of neighbour objections to the use of the building by lodgers, but condition 1 has been imposed to safeguard the amenities of

nearby residents and, taking into account the siting of the building, I consider it serves a useful planning purpose. In addition, the condition is precisely worded; it is enforceable and satisfies the tests set out in Circular 11/95¹. On the contrary and for the above reasons, variation of condition 1 to permit the use of the building by lodgers would have an adverse effect on the amenities of nearby residents. Therefore, the scheme conflicts with Policies GD5 and H13 of the City of Derby Local Plan Review 2006 (LP).

11. I conclude that condition 1 on planning permission ref: DER/06/05/00961/PRI, dated 4 August 2005, is reasonable and necessary in the interests of safeguarding the living conditions of occupiers of nos. 22 and 24.

Character and appearance

12. No. 218A is situated in a mainly residential area and the properties along Stenson Road have long narrow rear gardens. The building is located to the rear of the dwelling and it is about 11.67m by 6.28m, and its ridge height is around 3.9m.
13. My attention was drawn to other 'backland' development within the vicinity and the appellant contends that the building is already built and is an extension to the main house. However, the use of the building by lodgers as a self-contained unit of accommodation constitutes a new dwelling which is out of keeping with its immediate environs, because of its back-land positioning and location. In the wider locality there are outbuildings to the rear, but these appear ancillary. In comparison, a dwelling in this location is untypical of the area's established urban grain because of the development's layout and tandem form.
14. The appellant argues that outbuildings could be erected by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended. This is a reasonable fall-back position, but such structures would need to be for a purpose incidental to the enjoyment of the main house and not in themselves dwellinghouses.
15. Contrary to the appellant's arguments, the proposal breaches LP Policy GD4 because it results in development that would not preserve or enhance local distinctiveness. The scheme does not reflect high standards of design because of the dwelling's backland positioning, and is an unsatisfactory form of development and so conflicts with Policies E23 and H13.
16. For the above reasons, I conclude that removing or varying the disputed condition would have a harmful effect on the character and appearance of the surrounding area.

Other matters and conclusions

17. The appellant refers to the long-term use of the building for incidental purposes because it would be a secure and safe living space for his parents. I have also noted the appellant's view that the curtilage would not be divided. Paragraphs 98 and 99 of the Circular indicate that some extensions to dwellings, or separate buildings, intended for use as 'granny annexes' could subsequently be let or sold off separately from the main dwelling because they might provide independent

¹ Department of the Environment Circular 11/95: 'The Use of Conditions in Planning Permissions'.

living accommodation. I find that variation or removal of condition 1 to permit the building's use by lodgers would conflict with this advice.

18. Furthermore, the disputed condition suggests that the games room could be used for other purposes provided they are incidental to the enjoyment of the dwellinghouse. Under S55(2)(d) of the 1990 Act, as amended, the use of any building or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not amount to development.
19. I note that no. 218A's frontage has space to accommodate up to four cars and off-street vehicle parking is available for the occupiers of the building. In addition, it is contended by the appellant that affordable housing is needed within the area and I have noted arguments about residential density levels. Nonetheless, condition 1 on planning permission reference DER/06/05/00961/PRI serves a useful planning purpose because it safeguards the amenities of nearby residents and in my opinion satisfies Circular 11/95. Moreover, its removal, or variation, would have a detrimental impact on the character of the area.
20. I note concerns about the handling of the planning application but those matters are not for my determination. Having considered all other matters raised, I conclude that the appeal should fail.

Ahsan U Ghafoor

INSPECTOR