

Appeal Decisions

SUMMARY

- 1 A summary of the appeal decisions taken in the last month.

RECOMMENDATION

- 2 To note the decisions on appeals taken.

REASONS FOR RECOMMENDATION

3. This report is for information only.

SUPPORTING INFORMATION

- 4.1 Appendices 2 and 3 give details of decisions taken.
- 4.2 The intention is that a report will be taken to a Committee meeting each month.

OTHER OPTIONS CONSIDERED

- 5 None

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	08 October 2010
---	-----------------

For more information contact: Background papers: List of appendices:	Paul Clarke 01332 255942 e-mail paul.clarke@derby.gov.uk Planning application files Appendix 1 – Implications Appendix 2 – Summary of appeal decision(s) Appendix 3- Decision letter(s)
---	---

IMPLICATIONS

Financial

1 None

Legal

2 None

Personnel

3 None

Equalities Impact

4 None

Health and Safety

5. None

Carbon commitment

6. None

Value for money

7. None

Corporate objectives and priorities for change

8 None

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/02/10/00184/PRI	Extension to dwelling house (bedroom, lounge/kitchenette, w.c. and enlargement of lounge)	34 Mapleton Avenue, Chaddesden, Derby	Dismissed
<p>Comments: This appeal follows the refusal, under delegated powers, of a proposal to build a single storey annexe to this semi detached property. The proposal included a prominent forward projection, quite uncharacteristic of other properties in the street. Therefore it was refused because of its detrimental impact on the existing dwelling and the street scene. Concerns were also raised on the adequacy of the parking provision which was considered to be of an insufficient depth to allow a vehicle to park completely off the public highway.</p> <p>The Inspector considered that there were two main issues in this appeal, which accorded with the reasons for refusal of the original proposal.</p> <p>Noting that the proposal was to create a self contained annexe, the Inspector felt that the proposal would result in building that would be out of character with the prevailing appearance of the street scene and it would be a 'discordant and obtrusive feature' as it would stand well forward of the building line.</p> <p>On this issue he concluded that the proposal was contrary to the aims of policies GD4 and H16 of the City of Derby Local Plan Review which seek to encourage good urban design.</p> <p>Turning to vehicle parking the Inspector did not agree with the opinion of the City Council's Highways officer who had advised that there would not be the required five metres in depth for a parking space if the proposal was built. The Inspector concluded that with some modification this could be achieved and this matter alone could be resolved by a suitable condition.</p> <p>However the Inspector gave greater weight to the first reason for refusal and considered that on this matter alone the appeal should fail. Accordingly the appeal was dismissed on design grounds</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/03/10/00283/PRI	Change of use from cafe (Use Class A3) to hot food takeaway (Use Class A5)	63 High Street, Chellaston, Derby	Dismissed
<p>Comments: This proposal came to the attention of the City Council via the Planning Enforcement Team who were made aware that the premises had changed hands and was now operating as a hot food take-away.</p> <p>A retrospective application was submitted last year to regularise an unauthorised use as café. This was granted planning permission with a condition limiting opening hours. The current occupier extended these operating hours until 10.30pm on Monday-Thursday and 11.30pm on Friday and Saturday. (This post 11.00pm opening would require a late opening licence, which at the time the application was being determined had not been applied for.) The range of items sold was also extended to cover more hot food elements both take away and delivery.</p> <p>A second retrospective application, which is now the subject of this appeal, was refused planning permission because of the serious concerns raised about anti-social behaviour in the area, caused by people gathering outside these late opening premises. This has a detrimental effect upon the amenity of the nearby residents and is therefore contrary to policies S12 and GD5 of the adopted City of Derby Local Plan Review. Concerns were also raised about the adequacy of ventilation and extraction systems at the premises causing cooking fumes and odours which would also be detrimental to the amenity of nearby residents.</p> <p>The Inspector considered that the main issue in this appeal was the affect upon the living conditions of nearby occupiers and community safety in the area.</p> <p>The Inspector noted the character of the area, the mix of shops and residential units and commented upon the relevant Local Plan Policies and the comments of the Police Crime Prevention Officer which were submitted with the appeal documents by the City Council. He also noted that there was a significant problem of anti social behaviour in the area, which whilst it could not be directly attributed to the appeal premises, was an important material consideration.</p> <p>Beyond this isolated parade of shops, the Inspector concluded that this was quiet residential area, 'where the impact of noise and disturbance would be widely felt'. Noise from congregating customers would also be particularly intrusive for the occupiers of the maisonettes above the shops.</p> <p>The Inspector also believed that the provision of a further late opening take away unit would result in an overconcentration of such uses in this small parade of shops which would undermine Council Policy and the Police Services efforts to promote community safety and cohesion. He considered the imposition of restrictive conditions to overcome the general disturbance would be unreasonable.</p> <p>Giving weight to the comments of the Police Crime Prevention Advisor, the Inspector agreed with the decision of the Local Planning Authority that the proposal was harmful to the living conditions of nearby occupiers and therefore in conflict with the aims of policies S12 and GD5 of the adopted CDLPR. He therefore concluded that the appeal should be</p>			

dismissed.

The file will now be handed back to the Planning Enforcement Team to begin Enforcement proceeding and ensure that the unauthorised use ceases.

RECOMMENDATION: To note the report and to resolve that appropriate Enforcement action be taken.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/03/10/00355/PRI	Extension to dwelling (lounge, bedroom, en-suite and enlargement of kitchen and bathroom)	31 Ford Lane, Allestree, Derby	Allowed with conditions

Comments: This appeal follows the delegated refusal of a proposal to erect a substantial side and rear extension at this traditional semi-detached property situated on the corner of Ford Lane and Eaton Avenue. The proposal was refused as it was considered to be detrimental to the character of the dwelling house due to its size and design – at 3.5m in width it was more than half the width of the original dwelling, and, given its prominent position on the corner of two streets this bulk would be an intrusive feature in the street scene. It was therefore considered to be contrary to policies GD4, E23 and H16 of the Adopted City Of Derby Local Plan Review.

The Inspector considered that the main issue of the appeal was the affect upon the character and appearance of the area.

The inspector noted that there was a variety of size and design of dwellings in the area and whilst this proposal was large she did not feel that it was out of keeping with the area. She noted that there was screening from an established hedge along Eaton Avenue and considered this was sufficient to prevent domination of the street scene along this road. She also believed that the proposal would not represent an over development of the plot and its scale would not be harmful to the urban grain of the area.

Turning to the design of the proposal she noted that it was well proportioned and fenestration and roof details matched the existing dwelling. Coupled with a set-back at first floor level and a drop in ridge height she considered that the design of the proposal would not be harmful to or over dominate the existing dwelling house.

In this case the Inspector did not agree with the conclusions reached by the Local Planning Authority as she stated that in her opinion that the extension would not have any significant adverse affect upon the character or appearance of the dwelling or the street scene and was not therefore contrary to the previously mentioned Local Plan policies.

Therefore the appeal was allowed with the standard conditions for limit of time for the development to commence, reference to approved plans and approval of materials prior to commencement.

It is of comfort to note that the Inspector recognised and supported our stance and efforts to achieve first floor set back to ensure the design of the existing property remains prominent, with the extension subservient to the main.

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/04/10/00406/PRI	Extension to dwelling house (hall, shower room and bedroom)	48 Elms Avenue, Littleover, Derby	Dismissed
<p>Comments: This appeal follows the delegated refusal of a proposal to build a substantial addition on the principal elevation of this semi-detached property. This pair of properties, in common with others in the street scene, has a projecting front gable covering roughly half the principal elevation and a set back of some 2.4m for the remainder. The proposal sought to 'fill-in' this set back with a second gable.</p> <p>The Local Planning Authority considered that this proposal would upset the symmetry of the dwelling and unbalance the pair of semi-detached properties. It would also introduce a discordant feature in the street scene resulting in a negative impact on visual amenity. The proposal was there refused planning permission as it failed to satisfy the policies E23, H16 and GD4 of the adopted City of Derby Local Plan Review.</p> <p>The Inspector considered the main issue in the appeal was the effect upon the character and appearance of the property and the street scene.</p> <p>The Inspector believed that the proposal would be an incongruous addition and agreed with the Local Planning Authority that the result would be 'bulky, dominant and uncharacteristic effect' and that this would be harmful to the appearance of the dwelling, the pair of semi-detached and prominent in the street scene.</p> <p>At his site visit the Inspector noted that work had already begun on site on a single storey extension, which was regarded by the appellant as a 'fall-back position', however the Inspector commented that this smaller extension would be more sympathetic and in keeping with the immediate surroundings.</p> <p>In conclusion the Inspector stated that he believed the proposal was a 'disharmonious feature in the street scene' and was therefore contrary to policies H16 and E23 in the adopted CDLPR and accordingly he dismissed the appeal.</p> <p>This is a welcome decision as this proposal is a design solution often suggested by applicants when considering extending their property.</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/04/10/00430/PRI	Erection of 1.8m high boundary fence	14 Dennis Close, Littleover, Derby	Dismissed
<p>Comments: This appeal was lodged following the delegated refusal of a proposal to erect a 1.8m close boarded fence along the highway boundary of this detached property on the corner of Dennis Close and Matthew Way. The current boundary treatment is set back some two metres from the edge of footway. The proposal was considered to be visually intrusive and detrimental to the character and appearance of the street scene by virtue of its prominent position. Therefore the proposal was regarded as being contrary to policies GD4 and E23 of the adopted City of Derby Local Plan Review.</p> <p>The Inspector also considered that the main issue of the appeal was the affect of the proposal on the character of the street scene. He particularly noted the 'pleasant character' of the estate with its open frontages, lawns and neat hedges.</p> <p>In his opinion the proposed fence would introduce a discordant feature into the views along both streets, with no opportunity for screening with planting to soften the appearance, as with other nearby fences.</p> <p>The Inspector commented on the City Council's aspirations for high design standards, reflected in policy E23 of the CDLPR and noted that this was in accordance with national planning policy to secure higher design standards. He concluded that the Council was therefore justified in resisting this development which would be visually unacceptable. Also, and significantly, he noted that the granting of planning permission in this case could lead to other similar applications which if granted would lead to a significant change in the overall character of the area.</p> <p>Therefore the Inspector agreed with the Local Planning Authority, that the proposal was contrary to the aims of policy E23 of the CDLPR and dismissed the appeal.</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/05/10/00534/PRI	Extension to dwelling house (porch)	192 Derby Road, Spondon, Derby	Dismissed
<p>Comments: This appeal follows a second delegated refusal of planning permission for an extension to the principal elevation of this semi-detached property. A considerable amount of officer time and advice was given to the applicant before the resubmission of the proposal but this was not heeded and therefore a second refusal was inevitable.</p> <p>The resubmitted proposal was somewhat smaller than the original however it was still highly prominent in the street scene and was regarded as an 'incongruous feature'. Concerns were also raised that the grant of planning permission for this particular proposal may set an undesirable precedent for similar proposals in the area which would lead to a change in the character and appearance of the area to the detriment of residential amenity. The proposal was therefore considered contrary to policies E23 and H16 of the adopted City of Derby Local Plan Review.</p> <p>The inspector considered that the main issues of this appeal were the effect upon the character and appearance of the dwelling house and the wider street scene and the standard of the proposed design.</p> <p>In a very brief report the Inspector concluded that the proposed design of the glazed roof of the 'porch' would be alien to the design of the front elevation of the property and be an incongruous and discordant feature harmful to the appearance of the area.</p> <p>He therefore concluded that the proposal was contrary to the aims of the relevant Local Plan policies and agreed with the views of the Local Planning Authority and dismissed the appeal</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/06/10/00697/PRI	Extension to dwelling (bathroom, kitchen and lounge)	4 Sherwood Avenue, Chaddesden, Derby	Dismissed
<p>Comments: This appeal follows the delegated refusal of a proposal to add a substantial extension to the North elevation of this modest 1950's bungalow. Nine letters of objection were received from nearby residents with many concerns raised. The proposed extension would sit some 90cm from the boundary with No.2 Sherwood Avenue and extend a significant 9.15m from the rear of the original dwelling.</p> <p>The proposal was refused planning permission because its' cumulative size, mass and proximity, having an unacceptable impact upon the boundaries of nearby properties, plus an overbearing and intrusive appearance resulting in an unacceptable loss of amenity to nearby residents. The proposal was therefore judged to be contrary to policies GD5 and H16 of the adopted City of Derby Local Plan Review.</p> <p>The Inspector considered that the main issue of the appeal was the impact on the living conditions of the two nearby properties, 120 Reginald Road South and 3 Woodthorpe Avenue.</p> <p>The Inspector noted the intentions of the relevant Local Plan Policies and the substantial size of the proposed extensions and considered these two previously mentioned properties to be the most affected by the proposal. He noted that the extension would be clearly visible from the garden of 120 Reginald Road South and the present views would be obstructed by the side elevation resulting in an intrusive and overbearing impact, harmful to the living conditions of the occupiers. The impact on 3 Woodthorpe Avenue was less significant in the Inspector's opinion, although there would be a degree of overlooking by a closer window.</p> <p>The Inspector concluded that the living conditions for the occupiers of 120 Reginald Road would be unacceptably harmed and agreed with the assessment of the Local Planning Authority that the proposal was contrary to the relevant Local Plan policies and accordingly he dismissed the appeal.</p> <p>This is an interesting appeal decision that supports my view that even an extension to a bungalow can be harmful to neighbouring residents.</p>			

Recommendation: To note the report.

Appeal Decisions

Appeal against refusal of Full Planning Permission

Application No.	Proposal	Location	Appeal Decision
DER/08/09/00917/PRI	Change of Use from Residential (Use Class C3) to partial use of property in connection with Childminding business (Sui Generis Use)	72 Cornwall Road, Derby	Allowed with conditions

Comments: This appeal follows the delegated refusal of planning permission for a proposal to allow up to 10 children to be cared for by two childminders in this semi-detached suburban property between the hours of 8am and 6pm. The reason for refusal concerned the unacceptable level of noise and disturbance which may affect neighbouring properties. The proposal was therefore, considered to be contrary to policy GD5 of the adopted City of Derby Local Plan Review.

The Inspector firstly referred to Planning Policy Guidance Note 4 and noted that up to six children may be cared for by one childminder in a residential property with out the need for any 'change of use' application to be made as these numbers would be unlikely to result in the character of the house a residential dwelling being affected. Once the numbers grew above this a change of use is likely to have taken place and therefore, planning permission is required. Whilst PPG4 has now been superseded and Planning Policy Statement 4 makes no mention of childminding these principles still apply when determining this type of application.

The Inspector considered that the main issue of the appeal was the affect on neighbouring properties in terms of noise and disturbance, vehicle movements and the sound of children playing.

He concluded that the proposal could have a significant impact on the back gardens of Nos 70 and 74 Cornwall Road and over a ten hour period each day whilst children played in the garden. Parents' vehicles would also be coming and going over this period and given the number of children involved this could result in significant harm to the living conditions of the nearby residents.

As 'potentially detrimental' impacts from this proposal have been identified, but no objections received and insufficient evidence provided to be sure of the effects on nearby property the Inspector suggested a 'trial run' might be appropriate and sought the views of both parties on the granting of a temporary permission for one year so the impact of the proposal can be properly assessed.

This compromise was satisfactory to both parties therefore the Inspector granted permission for the proposal with three conditions, the use being limited to one year from the date of the decision, a restriction on operating times from 08.00 to 18.00 Monday to Friday and a limit of no more than ten children at any one time.

Recommendation: To note the report.



Appeal Decision

Site visit made on 26 July 2010

by Martyn Single DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
3 August 2010

Appeal Ref: APP/C1055/D/10/2131213
34 Mapleton Avenue, Chaddesden, Derby, DE21 4PT

- 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 Mrs Debbie Salmon against the decision of Derby City Council.
- The application ref. DER/02/10/00184/PRI, dated 10 February 2010, was refused by notice dated 12 April 2010.
- The development proposed is an extension to form an annexe.

Decision

1. I dismiss the appeal.

Main Issues

2. There are two main issues in this appeal, the first being the effect of the proposal on the appearance of the existing property and the street scene. The second is whether the proposal would be contrary to the interests of users of the highway, having regard to the level of provision capable of being made for the parking of vehicles clear of the highway.

Reasons

3. Mapleton Avenue comprises predominantly semi-detached dwellings of similar architectural appearance. A small number have been the subject of relatively modest alterations but there remains a consistency of design and character. The appeal site is on the inside of a bend in the road and stands slightly lower than its neighbour at no. 32. The proposed extension would project forward of the front of the existing property and would be fundamentally different to other properties in the road by virtue of its size, design and position.
4. Whilst I acknowledge that the purpose of the proposed accommodation would be to provide a self contained annexe I consider that it would be so out of character with the prevailing appearance of these properties and the overall street scene that it would be a discordant and obtrusive feature. Despite the difference in levels between nos. 32 and 34 it would, when viewed from the south, also stand well forward of the building line to properties along that side of the road.
5. Policies GD4, and E23 of the City of Derby Local Plan Review seek to encourage good urban design that complements the surrounding area, consistent with national planning policy to secure higher standards of design in development. Policy H16 indicates that planning permission will be granted for house extensions where defined criteria are met. These aim to safeguard the

appearance of individual properties and the character and appearance of the street scene. In my opinion the proposal whilst only single storey would be so out of character that it would be intrusive in the street scene contrary to the aims of these policies. I conclude that it would have a harmful effect on the appearance of the existing property and the street scene and would be unacceptable.

6. Turning to the second main issue parking is currently available for one vehicle on a raised concrete plinth clear of the highway. Being on a relatively narrow estate road and, in particular, on the inside of a bend it is desirable to ensure that parking takes place clear of the highway wherever possible. Policy T4 requires parking to be provided in accordance with standards set out in Appendix A of the Local Plan Review. I have not been provided with this Appendix but the submissions indicate that the Council would require 100% parking with a minimum length of 5 metres. It seems to me from these that the proposal would not lead to a requirement for additional parking, only the space would be insufficient in length. Whilst the Council submits that there would only be 4 metres depth the appellant, on the other hand, avers that the application shows that there would be two spaces with a length of 5 metres. The drawing submitted with the appeal does not actually show these spaces, and I was unable to verify the length available in front of the proposed extension on my unaccompanied site visit.
7. It is important to ensure that a vehicle could park on the site without overhanging the footway because of the potential danger and inconvenience to pedestrians that this may cause. However, I am satisfied that the front of the property would, with some modification, be of sufficient size to accommodate a parking space in a different position. If disposed to allow the appeal I am satisfied that this could be resolved by imposition of a suitable condition requiring a revised arrangement to be agreed between the main parties.
8. By conclusion I find no conflict with Policy T4 of the Local Plan Review and am satisfied that suitable arrangements could be made to ensure that adequate and satisfactory parking for vehicles would be provided clear of the highway. However, I give greater weight to my conclusion that the development would have a harmful effect on the appearance of the existing property and the street scene. In my opinion the appeal proposal would be visually unacceptable, contrary to Local Plan Review Policies GD4, E23 and H16.

Martyn Single

INSPECTOR



Appeal Decision

Site visit made on 7 September 2010

by J R Colburn MA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
23 September 2010

Appeal Ref: APP/C1055/A/10/2130754
63 High Street, Chellaston, Derby DE73 6TB

- 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 David Argyle against the decision of Derby City Council.
- The application Ref DER/03/10/00283/PRI dated 3 March 2010, was refused by notice dated 24 May 2010.
- The development proposed is the change of use from cafe (Use Class A3) to hot food takeaway (Use Class A5).

Preliminary matter

1. The change of use the subject of the appeal has already taken place.

Decision

2. I dismiss the appeal.

Main issue

3. The main issue in this appeal is the effect of the proposed development on the living conditions of occupiers of nearby property and community safety in the area.

Reasons

4. The appeal premises comprise a ground floor commercial unit in a 3-storey neighbourhood shopping parade of 8 units with maisonettes over, which is located in the centre of the village. Planning permission was granted in 2009 for the use of the premises as a cafe, the hours of use being limited by condition to 08.30 – 17.00 hrs Monday – Friday, 09.00 – 16.00 hrs Saturday with no operation on Sundays or Bank Holidays. The premises are presently being used as a mixed cafe and hot food take-away. The application seeks permission for the hours of operation to be extended to 08.30-22.30 Monday to Friday, 0.830-11.30 and 17.00-23.30 Saturday and 17.00-22.30 Sunday and Bank Holidays.
5. The parade of shops also contains a Chinese hot food take away unit and a general store and off license, both of which are open late into the evening. The Council and Derbyshire Constabulary are concerned that a concentration of shops selling take away food in the evening, in close proximity to housing, will result in unacceptable noise and disturbance to local residents and through the congregation of users outside the premises, an increase in the incidence of anti-social behaviour and an intimidating atmosphere harmful to community safety in the area.

6. The City of Derby Local Plan Review (LP) policy S12 generally supports the provision of food and drink uses including Class A5 uses within defined centres such as this, provided that it would not lead to a concentration of such uses, likely to undermine the vitality and viability of the centre, or where unacceptable harm to the amenity of nearby areas would result. LP policy GD5 aims to protect the amenity of nearby areas, in relation to, among other matters, noise, smells and fumes.
7. The Police Crime Prevention Design Advisor has identified excessive noise and disturbance in the area from groups of people gathering in front of the shops, and considers that the proximity of hot food take-aways and off license premises create "honey pots" for congregation and nuisance, resulting in an increased fear of crime and incidence of anti social behaviour (ASB). An increase in ASB has been recorded in the area, with the Neighbourhood Policing team receiving 15 calls for assistance in the location, all requiring action. Although none of these can be linked directly to the operation of the appeal premises, I take this as evidence of a significant problem of anti-social behaviour in the area, which is an important material consideration.
8. Other than this isolated parade of shops the appeal site is in a quiet residential area, where the impact of noise and disturbance would be widely felt. The maisonettes above the shops have windows to main rooms overlooking the forecourt to the shops. Noise from the congregation of customers would be particularly intrusive to occupiers of these properties, particularly late at night. Although the Council also consider that the means of ventilation of the premises is inadequate, and would result in cooking fumes and odours affecting nearby properties, I noted an existing external flue at the rear of the premises. I consider that it would be possible, by condition, to require the provision of an adequate modern ventilation system.
9. Having regard to the evidence of noise, disturbance and anti-social behaviour in front of the shops I conclude that the change of use, and extended hours of operation proposed would result in an increase in the congregation of customers in the evenings and at night time. This would give rise to an unacceptable increase in noise and disturbance harmful to the living conditions of nearby residential occupiers. I also consider that the provision of a further late night opening take-away unit in this small parade of shops would amount to an over concentration of such uses, which would be likely to undermine the efforts of the Council and Police service to promote community safety and cohesion in the area. It would be unreasonable to impose conditions to restrict the opening hours to the extent necessary to overcome the disturbance.
10. I note that the seating outside the premises is removed in the late afternoon, and the demand for the product in the area. Nevertheless this does not overcome or outweigh the harm to the living conditions of nearby occupiers which would result from the proposal. There is conflict with the purposes of LP policies S12 and GD5 and I see no reason in this case to determine the appeal otherwise than in accordance with the prevailing development plan policies. The appeal should therefore be dismissed.

J R Colburn

INSPECTOR



Appeal Decision

Site visit made on 10 August 2010

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

by **Julia Gregory BSc (Hons) BTP MRTPI**
MCMI

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

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
11 August 2010

Appeal Ref: APP/C1055/D/10/2131559
31 Ford Lane, Allestree, Derby DE22 2EX

- 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 Mrs P Grace against the decision of Derby City Council.
- The application Ref DER/03/10/00355/PRI, dated 16 March 2010, was refused by notice dated 17 May 2010.
- The development proposed is an extension.

Decision

1. I allow the appeal, and grant planning permission for an extension at 31 Ford Lane, Allestree, Derby DE22 2EX in accordance with the terms of the application, Ref DER/03/10/00355/PRI, dated 16 March 2010, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 775 FL 003 and 775 FL 001.
 - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Main issue

2. The main issue is the effect on the character and appearance of the area.

Reasons

3. City of Derby Local Plan Review (LP) policy GD4 promotes good design respecting the urban grain of the area. The extension would incorporate two storey elements and would be of a substantial size, but there is variety in the size and design of dwellings in the locality.
4. Although it would bring built development further towards the footway in Eaton Avenue than the existing side elevation, it would not be so close that it would be excessively dominant in the street scene and it would be separated from the footway by an established hedge. It would not result in overdevelopment of the plot. The scale of the development would not be harmful to the urban

grain, with its front elevation set in line with the front of the dwelling and with its first floor set back.

5. LP policy E23 expects a high standard of design, but it is LP policy H16 which sets specific criteria that extensions are expected to comply with. It is criterion B that the Council considers is offended.
6. The first floor of the two storey side extension would be set back from the front of the dwelling, the ridge height of the extension would be set down from the main ridge, and it would be set a little way from Eaton Avenue behind a hedge and set well back from Ford Lane. Also there are substantial hedgerows and trees to the front of this and the attached dwelling, which would screen significant views. For all these reasons I consider that it would not be overly prominent.
7. I consider that although large it would be well proportioned and its massing would not overly dominate the appearance of the dwelling. The fenestration and roof design would match that of the existing dwelling. The materials used in its construction could be controlled by condition to ensure a good match with the existing dwelling in the interests of the appearance of the area. I consider that the extension would not have any significant adverse effect on to the character and appearance of the dwelling or of the street scene. I conclude therefore that it would not be contrary to the LP policies already referred to.
8. Otherwise than as set out in this decision and conditions, it is necessary that development should be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.

Julia Gregory

INSPECTOR



Appeal Decision

Site visit made on 13 September 2010

by **Steve Taylor** BSc (Hons) MBA DMS
C Eng MICE

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
22 September 2010

Appeal Ref: APP/C1055/D/10/2133485
48 Elms Avenue, Littleover, Derby DE23 6FG

- 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 Ms N Elliott against the decision of Derby City Council.
- The application Ref DER/04/10/00406/PRI, dated 1 April 2010, was refused by notice dated 1 June 2010.
- The development proposed is a two storey front extension (hall, shower room with bedroom over).

Decision

1. I dismiss the appeal.

Procedural Matters

2. On my site visit I saw that the ground floor element of the proposal was in the process of being constructed under what the appellant considered to be permitted development rights.

Main issue

3. I consider the main issue to be the effect of the proposed development on the character and appearance of the existing property and the street scene.

Reasons

4. The appeal property is the left hand side of a pair of semi-detached dwellings in a street scene comprising of traditional symmetrically designed semi-detached properties with the occasional detached property. The properties are of a similar size and scale with slightly varying designs. One of the main characteristics of the front elevations is the bay windows at ground and first floor level, many of which are set beneath projecting gables. The proposal is to build a two storey extension in the recess between the front gable and the corner of the property.
5. The proposal would bring the current set back of around 2.4 m almost level with the front gable. It would incorporate a hipped roof adjacent to and of similar height to the gable. In my view the two storey nature of the proposal would be seen as a somewhat incongruous addition by virtue of its mass and form. Further, the inclusion of the smaller window to the first floor bedroom of the extension would contrast awkwardly with the appearance of those on the front of the main building.

6. Overall, I consider the proposal would have a bulky, dominant and uncharacteristic effect harmful to the appearance of the dwelling and causing an imbalance detrimental to the appearance of the pair of semi-detached houses. As such it would be seen as prominent and out of keeping with the character of the other properties in the street scene.
7. I note that in support of the application the appellant has made reference to the neighbouring property number 48a. This is a more recently built property that is different in character from the rest of the houses in the street scene, which have remained largely unaltered. I do not have any background information on this although it may well have been permitted prior to the recent emphasis placed on design. In any event I consider it to be readily distinguishable from the appeal proposal, which I have considered on its merits having regard to current planning policies and other material considerations.
8. Whilst I appreciate that the single storey extension represents a "fall-back" situation in my opinion this smaller extension would be seen as being more sympathetic to the dwelling and its immediate surroundings.
9. In conclusion, I consider the proposed extension would be detrimental to the character and appearance of the dwelling and the pair of semi-detached houses of which it forms part. As such it would appear as a disharmonious feature in the street scene. It would therefore be contrary to the objectives of Policies H16 and E23 of the City of Derby Local Plan Review 2006, which seek to ensure that house extensions achieve a high standard of design which relates well to the character and appearance of existing dwellings and the street scene.
10. Therefore, for the reasons given above and having regard to all the other matters raised, I conclude that the appeal should fail.

Steve Taylor

Inspector



Appeal Decision

Site visit made on 26 July 2010

by **Martyn Single DipTP MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
3 August 2010

Appeal Ref: APP/C1055/D/10/2130907
14 Dennis Close, Littleover, Derby, DE23 4BP

- 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 M Jordan against the decision of Derby City Council.
- The application ref. DER/04/10/00430/PRI, dated 8 April 2010, was refused by notice dated 17 May 2010.
- The development proposed is the erection of a boundary fence.

Decision

1. I dismiss the appeal.

Reasons

2. The main issue in this appeal is the effect of the proposal on the appearance of the street scene. The property is a detached dwelling on the corner of Dennis Close and Matthew Way, having a side boundary to the latter. Currently the existing boundary fence is set back behind a grass verge along this frontage. The dwelling on the opposite side of Matthew Way has a similar arrangement. The result is that Dennis Close has a spacious character, most of its dwellings being set back with generally open frontages and lawns. The two properties immediately to the south along Matthew Way are separated from the road by neat hedges and these too contribute to the pleasant character of the estate.
3. To replace the existing fence with a plain 1.8 metre high fence along the back edge of the footway would introduce a discordant feature into views along both of the adjoining streets. It would contrast severely with the attractive adjoining hedges and would appear as a particularly austere feature. On the opposite side of Matthew Way I noted an example of a fence somewhat closer to the footway but this is well screened by shrubs and other planting, integrating it satisfactorily into the street scene. The appeal proposal would provide no opportunity for landscaping to relieve or mitigate its bland appearance. In my opinion it would stand out to an unacceptable degree on the corner of the two roads.
4. I acknowledge that there are other examples of fences in similar positions, most notably diagonally opposite on the corner of Leslie Close. However, I believe that this example demonstrates, when it is national planning policy to secure higher standards of design in development, why the Council is justified in seeking to safeguard the appearance of the area by resisting such proposals as that before me in this appeal. In my view it would significantly detract from the character of the immediate area. This aspiration for a high standard of

development is reflected locally in the City of Derby Local Plan Review Policy E23 referred to in the Council's refusal of planning permission.

5. In my opinion the appeal proposal would be visually unacceptable. Furthermore, granting permission could place the Council in a potentially difficult position if applications of a similar nature were to be submitted elsewhere on the estate, replicating the precedent argument put before me in support of this appeal, leading to a significant change in its overall character.
6. I conclude that the proposal would conflict with Policy E23 and have an adverse effect on the appearance of the street scene.

Martyn Single

INSPECTOR



Appeal Decision

Site visit made on 28 September 2010

by Andrew S Freeman BSc(Hons) DipTP
DipEM FRTPI FCIHT MIEnvSc

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
30 September 2010

Appeal Ref: APP/C1055/D/10/2134929

192 Derby Road, Spondon, Derby, Derbyshire, DE21 7LU

- 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 Mrs S Hill against the decision of Derby City Council.
- The application Ref DER/05/10/00534/PRI, dated 4 May 2010, was refused by notice dated 30 June 2010.
- The development proposed is porch.

Decision

1. I dismiss the appeal.

Main issues

2. Local Plan Policy H16 indicates that, amongst other things, planning permission will be granted for extensions provided that there is no significant effect on the character and appearance of the dwelling or the street scene. In addition, and under Policy E23, the Council will expect proposals to be of a high standard of design. These are the issues upon which this appeal turns.

Reasons

3. I saw that the appeal property is one of a number of similar semi-detached houses at 176 to 194 Derby Road. Most have modest front projections in the form of bay windows, porches or garages generally below sloping concrete tile roofs or original flat leaded roofs. No 192 itself has an integral garage that projects in advance of the building line; also a bay window and porch.
4. It is proposed to replace the bay window and porch with a full-width extension that would line up with the front of the garage. There would be low walls to the front and side. However, in the main, the extension would be glazed and would feature a hipped glazed roof typical of conservatories.
5. I appreciate that the appellant would wish to have a glazed roof that would let in more light. However, this feature above all would be alien to the design of the front elevation of the appeal property and look out of place in the general street scene. It would be an incongruous and discordant feature that would be harmful to the character and appearance of the area contrary to the provisions of the Local Plan.

Andrew S Freeman

INSPECTOR



Appeal Decision

Site visit made on 28 September 2010

by **Andrew S Freeman BSc(Hons) DipTP**
DipEM FRTPI FCIHT MIEnvSc

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
30 September 2010

Appeal Ref: APP/C1055/D/10/2134377
4 Sherwood Avenue, Chaddesden, Derby, DE21 6NP

- 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 R Wain against the decision of Derby City Council.
- The application Ref DER/06/10/00697/PRI, dated 7 June 2010, was refused by notice dated 4 August 2010.
- The development proposed is extension to dwelling.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue is whether, in terms of the living conditions of the occupiers of 120 Reginald Road South and 3 Woodthorpe Avenue, the extension would be unduly intrusive or overbearing.

Reasons

3. Local Plan Policy H16 indicates that planning permission will be granted for extensions to residential properties provided that, amongst other things, there is no significant adverse effect on nearby properties in terms of height, mass, overshadowing, proximity or loss of privacy. A satisfactory level of amenity is also sought under Policy GD5. Considerations include loss of privacy, overbearing (massing) effect and loss of sunlight and daylight.
4. In the present case, I note that the extension would be of a considerable size. The bungalow would be widened at the side by an extension some 2.395m in width. This extension would then be continued rearwards in an addition with a projection of 9.148m and width of 5.821m.
5. The extension would be visible from a glazed porch / small conservatory at the side of 2 Sherwood Avenue as well as from the garden. However, the present outlook is mainly towards existing buildings. In my opinion, the occupiers likely to be most affected by the extension are at 120 Reginald Road South and 3 Woodthorpe Avenue. These have more open views towards what is at present the undeveloped rear garden of the appeal site.
6. No 120 Reginald Road South is set at a level slightly higher than the appeal site. There is a close boarded fence approximately 1.8m in height along the common boundary as well as some vegetation including a pear tree. The present outlook from widows to habitable rooms in the rear elevation would be over the largely open rear gardens of No 120 and the appeal site.

7. Because of the orientation of the properties, the extension would run away from the common boundary. The appellant states that the average distance from the boundary would be between 2.5 and 6m with the extension being some 19m from the rear elevation of No 120.
8. Notwithstanding the degree of separation, the extension would be clearly visible from the rear of No 120 and from the garden. The present views of open sky would be obstructed in part by the solid and largely unrelieved side elevation of the extension. In my opinion, and as a result of its excessive and disproportionate projection, the extension would be unduly dominant. It would be visually intrusive and overbearing, harming the living conditions of the occupiers.
9. The extension would also be clearly visible from the garden and rooms at the rear of 3 Woodthorpe Avenue. In addition, there would be windows in the rear elevation that would be closer than existing windows. I was able to observe, on my site visit, the juxtaposition of the properties including existing vegetation, a 1.5m high close boarded fence and the slightly lower level of No 3.
10. The appellant indicates that the extension would be separated from the garden and rear of 3 Woodthorpe Avenue by distances slightly greater than is the case at 120 Reginald Road South. Be that as it may, I saw that the outlook from the rear of No 3 is towards existing built development. I appreciate that, with closer windows, the occupier may feel more exposed to overlooking. However, I am satisfied that there would be a reasonable degree of separation between the extension and this nearby property. Bearing in mind the present outlook, and that views would be limited to the proposed gable end, the extension would not be unduly intrusive or overbearing.
11. In the circumstances that I have described, I consider that the living conditions of the occupiers of 120 Reginald Road South would be unacceptably harmed. The extension would be unduly intrusive and overbearing contrary to the objectives of the Local Plan.

Andrew S Freeman

INSPECTOR



Appeal Decision

Site visit made on 7 July 2010

by George Mapson DipTP DipLD MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
3 September 2010

Appeal Ref: APP/C1055/A/10/2122397
72 Cornwall Road, Derby, DE21 6DL

- 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 Mrs Esther Greenhill against the decision of Derby City Council.
- The application Ref. DER/08/09/00917/PRI, dated 14 August 2009, was refused by a notice dated 4 February 2010.
- The development proposed is described on the application form in the following terms: "For 2 childminders to work together in my home (I am one of the 2). Please see attached letter. There will be absolutely no physical changes to the property."

Summary of decision: The appeal is allowed and planning permission is granted for a limited period of one year, subject to conditions.

PROCEDURAL MATTERS

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 20 July 2010.

Description of the development proposed

1. Bullet point 4 in the heading to this Decision describes the proposed development in the terms that appear on the application form.
2. The Council's decision notice describes it as a "Change of use from Residential (Use Class C3) to partial use of the property in connection with Childminding business (Sui Generis Use)".
3. I consider that the development proposed is more appropriately described as "The material change of use from use as a single dwellinghouse to a mixed use comprising use as a single dwellinghouse and use for childminding". I propose to determine the appeal on that basis.

Childminding: Government advice on when planning permission is required

4. In 1992 the Government published a revised version of PPG4¹, which contained a reference to childminding (para. 32). It explained that planning permission is not normally required where the use of part of a dwellinghouse for business purposes does not change the overall character of the property's use as a single dwelling. For example, the use by a householder of a room as an office, or childminding² complying

¹ Planning Policy Guidance Note 4: *Industrial and Commercial Development and Small Firms* (1992)

² Ofsted defines a "childminder" as "a person who is registered to look after one or more children to whom they are not related in domestic premises for reward. A childminder works with no more than two other childminders or assistants" (2009).

with the Department of Health's standard recommended ratios³, would be unlikely to mean that the character of the house's use as a single dwelling had ceased and would not normally require planning permission.

5. Under the Regulations, childminders could look after up to six children at a time. One childminder operating within a dwelling would not require planning permission.
6. PPG4 went on to say (para. 33) that once the business or non-residential use of the property ceases to be ancillary to its use as a single dwelling because, for example, the business has grown and the use of the dwelling for activities related to the business has intensified, a material change of use for which planning permission is required is likely to have taken place. Such a material change of use may be indicated where the business or non-residential use generates visitors, traffic, noise or fumes over and above what might be expected if the property were in use as a single dwelling without any ancillary use.
7. In January 2010 PPG4 was superseded and cancelled by PPS4⁴, which makes no reference to childminding. The regulatory arrangements for childminding have also changed⁵ since PPG4 was published. Nevertheless, the same principles apply when assessing the materiality of a change of use in a case such as this.

The appeal proposal

8. No. 72 Cornwall Road is a semi-detached house within a housing estate. The appeal proposal entails two childminders operating from the premises, potentially looking after up to twelve children. In fact, the appellant has stated that a maximum of ten children would be 'minded' on site at any one time, including the childminders' own children. The hours of operation would be from 08.00am until 6.00pm, on weekdays only.
9. Planning permission is sought for a material change of use of the property because the childminding use would generate additional visitors to the premises, and could give rise to noise over and above what might be expected if the property were used as a single dwellinghouse without an ancillary business use.

Main issue

10. The main issue is whether the proposed use of the premises for childminding would significantly harm the living conditions of occupiers of neighbouring properties, in terms of noise and disturbance arising from the comings and goings of vehicles and the sound of children at play in the garden.

Reasons

The development plan

11. The starting point in my consideration of this appeal is the development plan. The Council draws attention to some policies contained in the adopted City of Derby Local Plan Review (2006) as relevant to this appeal. There are no policies that deal specifically with the use of premises for childminding, but Policy GD5 (Amenity) states that planning permission will be granted only where the development proposed would

³ The Children Act 1989 Guidance and Regulations, Volume 2 - Family Support, day care and educational provision for young children.

⁴ Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (2010)

⁵ The Department of Children, Schools and Families [DCSF] is now responsible for the Childcare Act 2006 and the regulations that underpin it. The Office for Standards in Education, Children's Services and Skills [Ofsted] now regulate and inspect childminders.

not cause unacceptable harm to the amenity of nearby areas. Among the criteria to be considered in assessing harm are noise and traffic generation.

The likely effect on the living conditions of occupiers of neighbouring properties

12. The back garden of No. 72 Cornwall Road runs alongside the houses and gardens of Nos. 70 and 74. The Council is right to be concerned about the noise generated by children at play in the garden, particularly during the summer months. Although any such noise would be only intermittent, it would occur on a daily basis, over a ten hour period. It therefore has the potential to significantly intrude upon the peace and quiet that the neighbours are reasonably entitled to expect in their homes and gardens. In particular, it could give rise to noise and disturbance being experienced in the attached house, No. 70. This might not trouble the present occupiers but the effect on future occupiers, who might take a different view, must also be considered.
13. Furthermore, the noise in the road – the comings and goings of parents' and carers' vehicles, the starting and stopping of engines and closing of car doors – could also be a source of disturbance or irritation to occupiers of other properties in the vicinity.
14. Given the number of children that could attend at any one time, and the number of visitor trips that could be generated, the proposed use of the premises for childminding has the potential to significantly harm the living conditions of occupiers of neighbouring properties.

Alternative to a refusal of planning permission; a 'limited period' permission

15. There is an alternative to a refusal of planning permission in a case such as this. Circular 11/95: *The use of conditions in planning permissions* (para. 111) suggests that where an application is made for permanent permission for a use which may be "potentially detrimental" to existing uses nearby, but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development.
16. It advises that a second temporary permission should not normally be granted once the first expires. So a trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether a permanent permission or a refusal is the right answer⁶.
17. The Council suggested a number of conditions that might be imposed were planning permission to be granted, but did not suggest a temporary permission for a trial run. I invited the parties' views on whether or not a trial run would be appropriate here as an alternative to a refusal of planning permission and, if so, for what period. They agreed that a trial run for a limited period of one year would be appropriate.

⁶ The term "temporary planning permission" is a misnomer, because the expiry of the temporary duration does not mean that the planning permission itself expires. It never "expires" as such; it remains on the planning register for all time, but the continuation of the use beyond the specified time limit becomes unlawful.

Where a use continues in breach of a time limit condition, until lawful through passage of time (ten years, if the breach is continuous), there is no reason why other conditions attached to it cannot be enforced.

If the use continues after the prescribed date, the Council has the power to serve a breach of condition notice [BCN] (under s.187A of the Act) against which there is no right of appeal.

However, under s.57(2) of the Act, where planning permission to develop (use) land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.

18. I shall therefore proceed on that basis and grant planning permission for a limited period of one year from the date of this decision.

Conditions

19. In addition to a 'limited period' condition, I shall impose two conditions that place limitations on the hours that the childminding service may operate and on the number of children that may attend for childminding at any one time. These conditions are reasonable and necessary in order to safeguard the living conditions of neighbouring occupiers.

Conclusions

20. For the reasons given above I conclude that the appeal should be allowed and that a limited period (temporary) planning permission should be granted.

Formal Decision

21. I allow the appeal, and grant planning permission for the material change of use from use as a single dwellinghouse to a mixed use comprising use as a single dwellinghouse and use for childminding at No. 72 Cornwall Road, Derby, DE21 6DL in accordance with the terms of the application, Ref. DER/08/09/00917/PRI, dated 14 August 2009, and the plans submitted with it, subject to the following conditions:

- 1) The use hereby permitted shall be for a limited period of one year from the date of this decision. At the end of this period the use hereby permitted shall cease. All materials and equipment brought onto the land in connection with the use of the premises for childminding shall be removed, and the land restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
- 2) The use of the premises for childminding shall not take place outside the following times: 08.00 to 18.00, Monday to Friday. It shall take not place at all on any Saturday, Sunday, or Bank or Public Holiday. ?
- 3) No more than ten children at any one time (including the childminder's own children) shall attend the premises for childminding.

George Mapson

INSPECTOR