



DERBY CITY COUNCIL

**PLANNING CONTROL COMMITTEE**

**4 FEBRUARY 2010**

Report of the Assistant Director - Regeneration

# ITEM 5

## 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

<b>IMPLICATIONS</b>
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**Financial**

1. None.

**Legal**

2. None.

**Personnel**

3. None.

**Corporate objectives and priorities for change**

4. None.

## Appeals Decisions

### Appeal against refusal of Planning Permission

Code No	Proposal	Location	Decision
DER/07/08/01059	Extension to dwelling house	10 Osterley Green, Derby	Allowed.
<p>Comments: This application sought retrospective permission for a conservatory at the rear of this semi-detached dwelling house. The proposal came to the attention of the City Council following a complaint made to the planning enforcement team. The proposal, which fills a large part of the modest garden, was refused due to its height and length harming the visual amenity of the adjacent dwelling.</p> <p>Plans submitted with the application were of a poor standard and this did lead to confusion during the life of the application and during the appeal process. The inspector asked for clarification of the dimensions at the site visit and these were provided allowing the appeal to be determined.</p> <p>The inspector considered that the main issue of the appeal was the impact of the proposal on the living conditions of the occupier of No.12 Osterley Green.</p> <p>He noted that permitted development rights would have allowed the appellant to build a two metre high boundary fence at the property. In his opinion, the impact of the conservatory would be little more than any fence, which could not be prevented, particularly as the hipped roof of the conservatory slopes away from the boundary.</p> <p>The inspector did not agree with the City Council that the conservatory had an overbearing effect on the neighbouring property and concluded therefore that it was in accordance with policy H16 of the City of Derby Local Plan Review (CDLPR).</p> <p>He also noted that whilst the remaining garden at No.10 was limited, it was sufficient to sit outside should the appellant choose to. Also many people do not desire large areas of private space. Therefore in his opinion the proposal was in accordance with policies GD5 and H16 of the CDLPR. For these reasons the appeal was allowed.</p>			

### Appeal against refusal of Planning Permission

Code No	Proposal	Location	Decision
DER/12/08/01786	Extension to Bed and Breakfast Accommodation	300 Burton Road, Derby	Dismissed
<p>Comments: This application sought permission for extensions to the bed and breakfast accommodation at the property and an increase in onsite parking provision. Extensive negotiations were undertaken with the applicant before and during the life of the application in an attempt to resolve the issues arising.</p> <p>The application was refused due to its unacceptable massing impact on the</p>			

## **D2 SPECIAL ITEMS (cont'd)**

### **1 APPEALS DECISIONS**

neighbouring property and the proposed car park would cause unreasonable noise and disturbance. Also the design of the extension would adversely affect the character and appearance of the property and the applicant had failed to provide adequate arboricultural information to demonstrate that the trees nearby, subject to a Tree Preservation Order, would not be damaged by the proposals.

The inspector considered that the two main issues of this appeal were the impact of the proposal on the character of the property and Burton Road and secondly, the effect of the development on the living conditions of the occupiers of the neighbouring property.

The inspector agreed with the formal advice given by the City Council regarding the design of the proposal being unacceptable as it was visually not subordinate to the existing dwelling house and it would disrupt the symmetry of the pair of semi detached properties. He considered that the relationship between the proposed access archway and the retained garage would be awkward and architecturally unresolved and bear no relationship to the existing properties in the area.

The inspector particularly noted the advice in PPS1 which makes clear that poor designs should not be accepted. The City Council also has policies in the City of Derby Local Plan Review (CDLPR) which require developments to be of a high standard and respect the urban grain of the surrounding area (E23 and GD4). In his opinion the proposal did not meet any of these tests and concluded that the extension would visually compete in scale and proportion with the existing gable, disrupting the symmetrical design of the pair of houses and giving an unbalanced appearance to the property resulting in an assertive, incongruous and visually jarring feature detracting from the appearance of the property.

Turning to the impact on the living conditions of the occupiers of No. 302 Burton Road the inspector agreed that the proposed extension would impact significantly on the outlook from the kitchen/dining room, the sole window for which faces the proposed extension. He did not consider, however that there would be an unacceptable increase in the noise and disturbance the occupiers experienced from the increased parking proposed. Despite this second point the inspector concluded that in his opinion the proposal conflicted with the objectives of GD5 in the CDLPR.

With regard to the impact of the proposal on trees on the site the inspector agreed with the City Council that a full arboricultural report should have been submitted and that planning permission should not be granted if the potential for any adverse impact is unclear.

For all the reasons stated above the appeal failed and was accordingly dismissed

#### Costs

An application for costs was submitted at the hearing.

The appellant considered that the initial advice given at pre-application differed from the opinions expressed later and in the formal determination. In his opinion this was

## **D2 SPECIAL ITEMS (cont'd)**

### **1 APPEALS DECISIONS**

unreasonable. The inspector commented that whilst it is preferable for these views to co-inside this cannot always be the case where matters of judgement are involved. Therefore it did not amount to unreasonable behaviour on the part of the Local Planning Authority as they were able to substantiate their reasons for refusal.

There was also disagreement as to when the application was determined, the appellant considering the application was determined before the second consultation period ended. The inspector noted this but concluded that there was no evidence to suggest the decision would have been different after the full consultation period.

The inspector therefore concluded that there was no evidence of unnecessary or wasted expense to the appellant and as a result the application for costs failed.

**Recommendation: To note the report.**





# Appeal Decision

Site visit made on 23 November 2009

by **M Middleton** BA(Econ) DipTP Dip Mgmt  
MRTPI

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

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Decision date:  
**15 December 2009**

**Appeal Ref: APP/C1055/A/09/2110178**  
**10 Osterley Green, Derby, DE22 4FZ**

- 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 Maurice Greer against the decision of Derby City Council.
- The application Ref DER/07/08/01059/PRI, dated 14 July 2008, was refused by notice dated 14 May 2009.
- The development proposed is a conservatory to the rear.

## Procedural matters

1. The conservatory had already been built when the planning application was submitted. I have therefore determined the appeal on the basis that it is to retain the conservatory as built.
2. The plans that accompanied the planning application did not accurately represent the built conservatory and neither did subsequent plans that accompanied the appeal. At the site visit, representatives of the Appellant and Council measured the dimensions of the conservatory and further revised plans were received by the Planning Inspectorate on 25 November 2009. The City Council subsequently confirmed that these plans reasonably reflect the measurements agreed on site and I agree.

## Decision

3. I allow the appeal, and grant planning permission for a conservatory to the rear at 10 Osterley Green, Derby, DE22 4FZ in accordance with the terms of the application, Ref DER/07/08/01059/PRI, dated 14 July 2008, and the plans submitted to the Planning Inspectorate on 25 November 2009.

## Main issues

4. The effect of the proposal on the living conditions at No 12 Osterley Green and at the appeal dwelling.

## Reasons

5. Using his permitted development rights, the Appellant could erect a two metre high fence along the common rear boundary with No. 12 Osterley Green. This would be higher than the fence that already separates the two properties. The eaves of the conservatory are over two metres high but they are off-set from these neighbours' boundary. Additionally the hipped roof slopes away from the neighbours' property. In my opinion, the conservatory does not result in any noticeable overshadowing beyond that which would occur if the Appellant exercised his permitted development rights.

6. Additionally, given the circumstances, I do not consider the conservatory to have an overbearing effect on these neighbours' living conditions. It is therefore in accordance with Saved Policy GD5: *Amenity* of the City of Derby *Local Plan Review* (LPR). Furthermore, as there is no significant adverse effect on No. 12 Osterley Green in terms of height, mass overshadowing, proximity, or loss of privacy, I also consider the proposal to be in accordance with Saved LPR Policy H16: *Housing Extensions*.
7. The proposal occupies a significant part of the rear garden at No. 10 but there remains a paved area to the south of the conservatory. Although the remaining private space is not large, it is sufficient for a family to sit out and did not appear cramped to me. The property additionally has a front/side garden that is much larger than is usual in this area. Not every household in modern society desires a large area of private space and in providing a smaller rear garden, the appeal property is adding to the choice and variety of property in this area. I therefore consider that the proposal creates a satisfactory level of amenity and living environment as required by Saved LPR Policies GD5 and H16.
8. I conclude that the proposal does not have an adverse impact on the living conditions at No. 12 Osterley Green and at the appeal dwelling. I also conclude for the reasons discussed above and having considered all of the other matters raised that the appeal should be allowed.

*Mel Middleton*

INSPECTOR





# Appeal Decision

Hearing and site visit held on 10  
November 2009

by **J R Colburn MA MRTPI**

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

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Decision date:  
**21 December 2009**

**Appeal Ref: APP/C1055/A/09/2110527**  
**300 Burton Road Derby DE23 6AD**

- 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 K Wilamowski against the decision of Derby City Council.
- The application Ref DER/12/08/01786/PRI, dated 20 November 2008, was refused by notice dated 26 February 2009.
- The development proposed is extension to bed and breakfast accommodation (4 bedrooms) and creation of additional on-site parking spaces.

## Application for costs

1. At the Hearing an application for costs was made by Mrs K Wilamowski against Derby City Council. This application is the subject of a separate Decision.

## Decision

2. I dismiss the appeal.

## Preliminary matters

3. At the hearing it was confirmed that prior to the determination of the planning application the name of the applicant had been changed to that of Mrs K Wilamowski. Submitted plans, drawings 01 and 03 were superseded by plans 01 Rev A and 03 Rev A before the application was determined by the Council. Similarly plan drawing 04 was replaced, although the revised plan drawing 04 bore no revision number. I have determined the appeal on the basis of the revised plans, and following the fuller description of the development proposed in the Council's decision notice.

## Main issues

4. The main issues in this appeal are; a) The impact of the proposed development on the character and appearance of the property and the street scene of Burton Road, and b) the effect of the proposed development on the living conditions of adjoining occupiers, having regard to matters of size and massing, overlooking and noise and disturbance.

## Reasons

5. The appeal property is a large semi-detached house now converted into a bed and breakfast guest house. (Woodlands Guest House). The attached adjoining house (No 298) is occupied by the appellant's family as a residence. Burton Road in the vicinity of the site is part of a mixed commercial and residential area close to Derby City Centre. It comprises for the most part large late

Victorian houses, a number of which have been converted and extended to use as hotels and guest houses.

6. The properties in the area are a mixture of detached, semi-detached and short terraced blocks of regular 2 and 3 storey scale displaying continuity of appearance, through common use of materials with ornate detailing to the brickwork and timber bargeboards around gabled frontages to the second floors. Set regularly at a higher level than the road, behind short well-vegetated front gardens, they create an attractive and mature street scene, marred to some extent by the poor design and excessive scale of a number of extensions to the larger hotels.
7. The appeal property is set on a large rectangular sloping plot, with falling levels to the north and east. The property is one of a pair of houses symmetrically designed around forward projecting ground floor bays at each end with distinctive gables at 2<sup>nd</sup> floor level above them. A single width tandem garage is located at a lower level along the south-western boundary of the property with no 302. The proposed extension would be constructed partially over the garage at first and second floor level, and over an open vehicular access way between the house and garage. The main side wall of the extension would be set in from the side plot boundary by about 1.5m and be about 8m from the side wall of the adjoining house No.302, which is set at a higher level. As a result of its elevated position the extension would be particularly prominent from Burton Road.

*Impact on the character and appearance of the property and the street scene*

8. Whilst I appreciate that the initial advice given by the Council indicated otherwise, I nevertheless agree with the Council's formal position that the marginally lower roof ridge line of the proposed extension and a set-back from the building frontage of 1 brick depth, would be insufficient to visually separate the extension from the existing building. As a result the proposed extension would appear as a building of equivalent scale and bulk to the existing front gable, and seem to be built on the same front elevation plane. It would therefore not appear as a subordinate volume, but would visually compete in scale and proportion with the existing gable, disrupting the symmetrical design of the pair of houses and giving an unbalanced appearance to the property.
9. I also consider that the relationship between the retained garage and proposed access archway and extension above would appear awkward and architecturally unresolved, particularly the partial change of level and the mono-pitch roof over part of the retained garage. It would bear no relationship to features of existing properties in the area and would give an ungainly and discordant appearance to the extension. Together with the harmful effect of the scale and proportions of the extension referred to above, the proposal would therefore appear as an assertive, incongruous and visually jarring feature detracting from the appearance of the existing building.
10. Government Planning Policy in PPS1 *Delivering Sustainable Development* makes it clear that poor designs, which fail to take the opportunities available for improving the quality and character of an area should not be accepted. Policies E23 and GD4 of the City of Derby Local Plan Review (LPR) require

development to be of a high standard of design and make a positive contribution to good urban design, preserve or enhance local distinctiveness and respect the urban grain of the surrounding area in terms, among other things, of scale, height, massing and architectural style. The proposal would not meet these tests. It would result in a visually prominent building of mediocre and contrived appearance harmful to the distinctive and attractive character and appearance of the area and the street scene of Burton Road.

*Effect on living conditions*

11. The adjoining property No.302 is arranged with its principal entrance and sole window to a large kitchen/dining room on the side elevation of the house, facing the proposed extension. The outlook from this window is presently dominated by the side wall of the appeal property. As a result of the fall in levels along the road, the extension would appear as a two-storey building from this position. Nevertheless the effect of the scale and mass of the extension and its proximity to the side boundary would significantly impact on the outlook from the side-facing window.
12. The extended building would occupy a greater proportion of the framed aspect from the window removing the open view to sky above and to the rear of the appeal property that presently exists. Whilst there would be no loss of direct sunlight due to the orientation of the house, I do not doubt that the extension would make the room seem gloomy for much of the day, it would significantly restrict the field of view, dominating the outlook from the window and therefore appear oppressive and overbearing to occupiers.
13. It is proposed that the small, secondary side facing windows to the bedrooms in the extension would be obscure glazed and fixed shut. I therefore do not consider that there would be any overlooking or loss of privacy resulting from the extension. The Council and neighbours are additionally concerned that there would be unacceptable noise and disturbance arising from the use of the two additional car parking spaces proposed at the rear. A double garage to the adjacent house (No.298) is already accessed from the rear of the appeal site. I accept that the principal parking area serving the guest house would be at the front of the building, and that use of the parking area at the rear by guests would be occasional. As the noise resulting from the limited number of additional traffic movements would be screened by the extension and existing fences, I do not consider that any adverse impact would be seriously harmful to the living conditions experienced in the adjoining house or garden.
14. Despite my findings on overlooking and traffic noise impact I have nevertheless concluded that the scale and mass of the extension and its proximity to the side boundary would prove visually overbearing and oppressive to residents of the adjoining house (No. 302), and thereby unacceptably harmful to the living conditions of occupiers of that property. The proposal would therefore conflict with the objectives of LPR policy GD5.

**Other Matters**

15. An ash tree in the rear garden, protected as part of a group Tree Preservation Order, is located about 9m. from the rear of the proposed extension, the crown

spread of the tree extends as far as the rear of the garage. The proposed extension would project no further to the rear than the garage, which is set on a substantial concrete base. Whilst it may be unlikely that the proposal would have any adverse effect on the root system of the tree, subject to satisfactory construction methods, I nevertheless agree with the Council's position that the protected status of the tree should require the submission of a full arboricultural report and appraisal as part of the planning application, and that planning permission should not be granted if the potential for any adverse impact is unclear.

**Conclusions**

16. I have therefore concluded that the proposal would have a seriously adverse impact on the character and appearance of the property and the street scene of Burton Road and on the living conditions of occupiers of adjoining property. The proposed development would therefore conflict with the purposes of Government policy for sustainable development in PPS1 and with policies E23, GD4 and GD5 of the City of Derby Local Plan Review. The appeal should therefore be dismissed.

J R Colburn

INSPECTOR