

Appendix B

Appeal by Mr Lyne

Outline for single dwelling on former garden land to rear 92

Foljambe Avenue, Walton, Chesterfield.

CHE/21/00079/OUT

1. Planning permission was refused on 20<sup>th</sup> April 2021 for outline permission for a single dwelling on former garden land to rear 92 Foljambe Avenue with access off Errington Road. The 4 reasons for refusal were:

“1. Insufficient information has been provided to properly assess any potential risk posed by unrecorded coal mining legacy at the development site and therefore the proposed development does not accord with the requirements of the paragraph 178 of the National Planning Policy Framework and the provisions of policy CLP14 of the Chesterfield Borough Local Plan 2018-2035.”

“2. The erection of a two storey dwelling on the application site would significantly erode this established pattern of development in the area on Foljambe Avenue. The limited size and shape of the application site, in combination with half of the site frontage overlapping the front boundary of no. 29 Errington Road, would render the proposal a cramped and incongruous form of development to the detriment of the character and appearance of the area. Accordingly, this application is considered to conflict with the design objectives of Policy CLP20 of the Chesterfield Borough Local Plan and the advice contained within the Council's SPD 'Successful Places' (2013) and the NPPF, in particular Chapter 12”.

“3. The siting of a proposed dwelling close to the eastern boundary with Errington Road would lead to an unacceptable impact on the residential amenity of no. 29 Errington Road through loss of sunlight and a massing effect. In addition, a two storey dwelling on the narrow site would result in a significant massing and overshadowing effect on the rear garden of no. 90 Foljambe Avenue and a loss of privacy to adjoining properties no's 90, 92 and 94 Foljambe Avenue through the first floor window arrangement. Accordingly, the proposal is contrary to the

requirements of Policies CLP14 and CLP20 of the Core Strategy (2013) and the advice contained within the Council's 'Successful Places' SPD (2013) and the National Planning Policy Framework (2019)".

"4. The approach to the site from Errington Road would be at an unconventional angle across the footpath that surrounds the cul-de-sac and close to the end of a footpath that links Errington Road with Foljambe Avenue. The Local Planning Authority considers that this results in unacceptable risks to pedestrian safety which is exacerbated as the site is too constrained to provide space within the site to exit in a forward gear. As there is no turning facility provided at the end of Errington Road a vehicle leaving the property will have to complete an excessively long reversing manoeuvre into either Gilbert Avenue or the site. This is considered inappropriate bearing in mind the relatively high level of pedestrian activity in the vicinity owing to the location of a public footpath between nos. 92 and 94 Foljambe Avenue. Accordingly, the proposal is considered contrary to the requirements of Policy CLP20 of the Chesterfield Borough Local Plan to the detriment of pedestrian and highway safety."

2. An appeal against the decision has been determined by the written representation appeal method and has been dismissed.

#### Procedural Issue

3. Through the course of the appeal a Coal Mining Risk Assessment was subsequently submitted by the appellant and which adequately addressed the first reason for refusal on its decision notice. The inspectors decision did not therefore address this reason for refusal.
4. The main issues are the effects of the proposed development on:
  - the character and appearance of the area;
  - living conditions of neighbouring residents with regard to outlook, privacy and light; and
  - pedestrian and highway safety.

5. The appeal site formed part of the rear garden of 92 Foljambe Avenue, a two storey semi-detached dwelling located in a residential area. A fence has been erected between the rear of the site and the remainder of the rear garden of no. 92. The proposed development would comprise a single dwelling with provision for two parking spaces. The application form and supporting statement indicates that the dwelling would have two bedrooms. The plans illustrate a two storey dwelling with a single storey section to the rear. Access would be off Errington Road to the east.

#### *Character and Appearance*

6. There is some variety in the age, design and scale of the properties on Foljambe Avenue. However, a consistent urban grain is apparent, in particular the positioning of the properties within their plots, the long rear gardens for the majority of the properties, and the relationship with the dwellings to the east on Gilbert Avenue. There is some boundary treatment such as fencing and hedges between the rear gardens, a number of ancillary outbuildings such as garages and sheds, and a small number of properties that have a similar plot size to that proposed. Nevertheless, there is an open aspect between the gardens that gives a distinctly spacious quality to this area.
7. The proposed dwelling would be visible from certain vantage points along Foljambe Avenue and from the footpath along its southern boundary, as well as properties within the vicinity. The introduction of a new dwelling into what is, in effect, a garden location, would be markedly uncharacteristic of the established pattern of development in this area. Furthermore, it would introduce a multitiered pattern of development that would be at odds with the spacious quality experienced in the vicinity.
8. Although matters of layout and scale are reserved for future consideration, given the size of the plot and the guidance on separation distances and outdoor amenity space requirements in the Council's Successful Places Supplementary Planning Document, 2013 (the SPD), there would be limited options in terms of where the dwelling could be sited. The illustrative plans show a location for the proposed dwelling within the site that would not sit comfortably within the street scene of the area to the east, notwithstanding that the pattern of

development in this area is different to that of Foljambe Avenue, with the dwellings generally being on smaller plots, although still larger than the site.

9. The size of plot, its location at the end of Errington Road with the resulting overlapping frontage with no. 29, would result in a development that would appear visually cramped. As a result, the proposed development would appear as an incongruous feature within the street scene and would unacceptably diminish the character and appearance of this area.
10. There are examples of properties with overlapping front boundaries in the vicinity including 14/16 Gilbert Avenue and 10/12 and 9/11 Lancelot Close. However, these properties are located at the heads of cul de sacs which have a wide hammerhead. Consequently, the area appears relatively spacious, despite the overlapping front boundaries of a number of the dwellings. This would not be the case with the proposed development, which would be located at the end of Errington Road where there is no spacious hammerhead. As such, the examples cited by the appellant are not readily comparable to the appeal scheme and the inspector could not draw any direct comparisons that would weigh in its favour.
11. Two proposals granted permission were drawn to the inspectors attention as examples of where schemes have been found to be acceptable on what the appellant considers to be similarly proportioned plots. The inspector did not have details of these cases and so could not be sure that the locational context or the circumstances that led to their approval are the same or very similar to the proposed development for him to draw any direct comparison. He therefore gave these examples limited weight. In any case, the inspector determined the appeal on its own merits.
12. The proposed development would significantly harm the character and appearance of the area. Consequently, it would conflict with Policy CLP20 of the Chesterfield Borough Local Plan, adopted 2020 (the Local Plan) which requires development to respond positively to the character of the site and surroundings and respect local distinctiveness amongst

other matters. It would also be contrary to the design guidance in the SPD and chapter 12 of the National Planning Policy Framework (the Framework) which require regard to be had to local character.

Living Conditions

13. Given the likely height and lack of separation distance, the proposed dwelling would create a dominant feature that would have an overbearing effect on the outlook from the front habitable room windows of 29 Errington Road. The appellant has undertaken a calculation following the guidance in the BRE report<sup>1</sup> to establish whether no. 29 would still receive enough daylight. This shows that it would be possible to design a dwelling that would be unlikely to have a substantial effect on daylight to this property. However, as the proposed dwelling would be located to the south west of no. 29, it would cast a shadow towards the front of this dwelling in the afternoon, and this would exacerbate the harmful loss of outlook for residents of this property.
14. The illustrative plans show that the gable end of the proposed dwelling would sit immediately adjacent to the boundary with 90 Foljambe Avenue. Although siting is a reserved matter, given the width of the plot, it is likely that the dwelling would have to sit very close to the boundary. Given the lack of separation distance, the proposed development would increase the degree of enclosure to the rear garden and would create a dominant feature that would have an overbearing effect on the outlook from the rear garden of no. 90.
15. The proposed dwelling would be sited to the south of the rear garden of 90 Foljambe Avenue. It would therefore cause some overshadowing to parts of the rear garden at certain times of day. The BRE report advises that for a garden to appear adequately sunlit through the year at least half the area should receive at least two hours of sunlight on the 21st March. Given the size of the rear garden, it is likely that the proposed development would not conflict with this guidance.
16. A dwelling could be sited on the plot that would maintain an adequate separation distance between it and the existing dwellings at 90, 92 and 94 Foljambe Avenue such that there would be no unacceptable loss of privacy to habitable rooms

to the rear of these dwellings. However, there would be the potential for some overlooking of the rear gardens of these properties from first floor level windows.

17. Given the likely angle of view, the proposed development would not result in an unacceptable degree of overlooking of the rear garden of no. 90. There would be a reasonable separation distance between the proposed dwelling and rear garden of no. 92 such that there would not be an unacceptable loss of privacy. Given the likely orientation of the proposed dwelling, the most direct views would be towards the rear garden of no. 94. However, this would not be materially different from the current situation in terms of potential for overlooking between gardens. In addition, the appellant has indicated potential design options for the rear first floor windows that would further reduce the potential for overlooking.
18. Pulling these points on living conditions together, the inspector did not find unacceptable harm to the living conditions of residents of 90, 92 and 94 Foljambe Avenue with regards to a loss of privacy. I find that residents of 92 Foljambe Avenue and 29 Errington Road would not experience an unacceptable loss of light, but there would be harm to the living conditions of residents of these properties with regard to outlook.
19. Accordingly, the proposed development would conflict with Policies CLP14 and CLP20 of the Local Plan which require development to have an acceptable impact on the amenity of neighbours amongst other matters. It would also be contrary to the advice in the SPD regarding amenity, and the requirements of the Framework which seek to ensure a high standard of amenity for existing users amongst other considerations.

*Pedestrian and Highway Safety*

20. Given the location of the site in relation to 29 Errington Road, and the likely layout of the parking areas, given that they would be limited in where they could be located given the plot constraints, access into and out of the site would in all likelihood be across the pavement and the end of the footpath that links Foljambe Avenue with Errington Road.

21. It would be difficult, if reversing out of the site, to have a full view of the pavement or footpath. Furthermore, the proposed development would result in an increase in the likelihood of vehicles manoeuvring within Errington Road, including reversing to Gilbert Avenue or trying to turn within the road. Although the properties on Errington Road have off-street parking provision, the information submitted indicates that on-street parking does occur, including outside no. 29 which is adjacent to the site. This tallies with what the inspector observed, acknowledging that his site visit was only a snapshot in time. The parking of vehicles, in particular in proximity to no. 29, would further increase the manoeuvring required to access and exit the site.
22. The access to the site would result in manoeuvring difficulties for users of the parking spaces within the site, including across pedestrian access areas. This would present an unacceptable risk to the safety of road users and pedestrians.
23. The Highway Authority does not object to the proposed development subject to conditions including provision of adequate visibility, the provision of two parking spaces and an acceptable gradient of drive. However, from the information submitted, it appears that highways officers did not visit the site due to COVID restrictions in place.
24. The appellant highlights examples which he considers are comparable to the access arrangements for the appeal scheme. The appellant has undertaken a survey of usage of the footpath to support the contention that it is not well used, which is contrary to the views expressed by a number of local residents. Whilst there may be comparable examples, and even if the usage of the footpath is not as high as local residents contend, neither point provides sufficient justification to allow a development that would give rise to the pedestrian and highway safety concerns identified above.
25. The appellant states that the footpath is part owned by him and another party, although a number of interested parties dispute this. The plans submitted with the application do not indicate that the footpath is in the ownership of the appellant. Therefore, the inspector could not consider that it falls within land under the control of the appellant and so cannot be sure

that the pedestrian safety mitigation measures identified for the footpath itself could be delivered.

26. The proposed development would have an unacceptable impact on pedestrian and highway safety. It would therefore conflict with Policy CLP20 of the Local Plan, which requires development to provide adequate and safe vehicle access and parking and a safe, convenient and attractive environment for pedestrians and cyclists.
27. The proposed development would conflict with the development plan taken as a whole, as well as the Framework. There are no material considerations worthy of sufficient weight that indicate the decision should be made other than in accordance with it.