
Appeal Decision

Site visit made on 7 February 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 02 March 2017

Appeal Ref: APP/P3610/W/16/3163531

The Roveries, 59-63 Cox Lane, West Ewell KT19 9NR

- 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 Peter Wislocki, Hedgehog Development (Epsom) Limited, against the decision of Epsom & Ewell Borough Council.
 - The application Ref 16/00296/FUL, dated 23 May 2016, was refused by notice dated 14 October 2016.
 - The development proposed is the demolition of derelict dwelling house and erection of ten flats (four studio, four 2-bed and two 3-bed) in a three-storey building with seven parking spaces.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of derelict dwelling house and erection of ten flats (four studio, four 2-bed and two 3-bed) in a three-storey building with seven parking spaces, at the Roveries, 59-63 Cox Lane, West Ewell KT19 9NR, in accordance with the terms of the application, Ref 16/00296/FUL, dated 23 May 2016, and the plans submitted with it, subject to the conditions on the attached schedule.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the living conditions of the occupiers of 27 to 37 Pemberley Chase, having particular regard to privacy
 - whether the proposed development makes adequate provision for off-street parking, and the effect of any lack of provision
 - whether the proposed development would contain an appropriate mix of dwelling sizes
 - whether the proposed development should provide a financial contribution to affordable housing.

Reasons

Living conditions of the occupiers of 27 to 37 Pemberley Chase

3. The Council has already found the relationship between the first floor windows of the building and the houses in Pemberley Chase, at a distance of around
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28m, acceptable under a permission for a similar but lower development on this site.

4. While this proposal would have three floors, it would be set further back from the houses in Pemberley Chase than the existing 2-storey building which has first floor openings facing Pemberley Chase. The openings at second floor would be set back behind a solid parapet wall around 900mm above the floor level and at a distance of 30m from the back elevations of the houses in Pemberley Chase. This would limit the amount of overlooking possible to Pemberley Chase from within the flat on the second floor.
5. I note that the flats facing Pemberley Chase include two balconies at first floor and a terrace at second floor. However their depths are limited and relate more to the interior spaces than amenity spaces where people might gather or undertake activities which could disturb surrounding occupiers. In addition, the boundary between the proposal and the gardens of the houses in Pemberley Chase is partially screened by evergreen and deciduous trees, which would lessen the risk of overlooking.
6. I appreciate that there would be more openings facing Pemberley Chase in the proposed building than in the existing, however, their size and arrangement would not be dissimilar to other buildings in the area. Taking all these factors into account, and in circumstances common in suburban locations like this where a degree of mutual overlooking is generally accepted, I find that the degree of overlooking from the proposal towards the houses in Pemberley Chase would not be harmful. The proposal would be sufficiently to the north-east of the houses in Pemberley Chase not to adversely affect the diffuse light, sunlight, and outlook enjoyed by their occupiers.
7. I conclude on this issue that the proposed development would not have a harmful impact on the living conditions of the occupiers of 27 to 37 Pemberley Chase, having particular regard to privacy. There would be no conflict with Policy DM10 of the Council's Development Management Policies 2015 (DMP) which requires development to have regard to the amenities of neighbours including in terms of privacy, outlook, sunlight, daylight, noise, and disturbance.

Parking

8. The Council considers that while the proposal would provide off-street parking in accordance with the development plan, the studios could be converted to one-bedroom flats which would result in a greater demand for off-street parking than the scheme provides.
9. However, there is no evidence to substantiate this claim, and the floor areas of the studios suggest that their use as 1-bedroom flats would be unlikely. Accordingly, the parking provision would comply with the Council's Parking Standards for Residential Development Supplementary Planning Document 2015, which does not require parking for studios.
10. Notwithstanding this, at the time of my site visit, which was on a weekday morning, I saw very few restrictions on parking on the highway in the vicinity of the site, and the occupancy of the street parking was significantly less than 50% of the spaces available. I appreciate that demand is likely to be higher at the end of the working day and at weekends. However, the amount of space

available does not indicate a high degree of parking stress or overload in the locality. Moreover, the site is in a relatively sustainable location, close to bus routes serving Epsom and Tolworth, and close to the community centre, surgery, shops, schools, and open space. Therefore, even if there were additional parking generated, there is no evidence that it would have an unacceptable impact on street parking and traffic.

11. Moreover the National Planning Policy Framework (the Framework), which has a core principle of making the fullest possible use of public transport, walking and cycling, advises that parking standards should take account of the type of the development and its accessibility. I also note the Written Ministerial Statement to Parliament of 25 March 2015 which states that local planning authorities should impose local parking standards only where there is clear and compelling justification that it is necessary to manage their local road network.
12. I therefore conclude on this issue that there would be no conflict with DMP Policy DM37 which requires developments to demonstrate an appropriate level of off-street parking to avoid an unacceptable impact on on-street parking and local traffic conditions.

Dwelling sizes

13. DMP Policy DM22 requires development of four or more units to provide at least a quarter of the new units as 3-bedroom, or greater units. Its Strategic Housing Market Assessment 2008 showed that there was a significant shortfall in 3-bedroom units. As the scheme is for a total of 10 flats, compliance with the Policy would require at least 2.5 flats having 3 bedrooms or more, whereas the scheme provides only 2 such flats.
14. I disagree that the area is unattractive to families – I noted ample green spaces and local facilities which may suit families. However, I note that the 3-bedroom flats in the proposal are on the roof deck where there is greater amenity than the lower floors. I also take into account the limited garden space around the proposed building and that a 3-bedroom flat is likely to be occupied by more children than a 2-bedroom flat or a studio. In these circumstances, and where the shortfall relates to a part of a flat rather than a whole unit, and while I appreciate that the Policy relates to a minimum not a maximum, I do not see any harmful conflict with DMP Policy DM22.

The provision of affordable housing

15. Policy CS9 of the Council's Core Strategy 2007 (CS) requires the provision of affordable housing and aims to meet a target of 35% of new homes being affordable, delivering a minimum of 950 affordable homes in the period 2007 to 2022. In the case of residential developments proposing 5 - 14 dwellings, it requires at least 20% of them to be affordable, and its Revised Developer Contributions Supplementary Planning Document 2014 sets out how a financial contribution may be made in lieu of on-site provision.
16. While the appellant submitted a financial appraisal of the viability of the scheme, the Council's scrutiny of it concluded that while the proposal would be unable to meet the full affordable housing requirements of the Policy, a contribution of £44,000 to affordable housing would not threaten its viability. The appellant has reluctantly agreed this and has submitted a unilateral undertaking in this regard.

17. Notwithstanding this, a material consideration of considerable importance and weight is the Court of Appeal judgment¹ of 11 May 2016 in respect of a challenge to the Written Ministerial Statement² of 28 November 2014 (WMS). The intention of the WMS was to ensure that financial contributions should not become a disproportionate burden to small developers and thereby frustrate housing supply; it stated that *'for sites of 10 units or less....affordable housing and tariff style contributions should not be sought'*. The Court upheld that this should be considered as national planning policy defining the specific circumstances where contributions for affordable housing planning obligations should not be sought from small scale development. It is a material consideration to which I attach great weight.
18. There is nothing to suggest that CS Policy CS9 is inconsistent with the Framework which it predates, or that it should be accorded less weight. Indeed, the Framework sets out that where local planning authorities have identified that affordable housing is needed, they should set policies for meeting this need (paragraph 50, bullet 3), which is what the Council has done. Its representation describes how the Borough falls within the highest 10% of unaffordable housing areas, and where there is a low turnover in its stock of affordable housing. Given the evidence on affordability, I accept that there is significant need in the Borough for affordable housing. I also note its research which shows that a significant proportion of residential land transactions within Epsom and Ewell are for sites capable of accommodating up to 14 dwellings.
19. However, it is unclear exactly to what extent sites of 10 or fewer dwellings have been contributing to the affordable housing target. There is no evidence to show to what extent these sites are needed to achieve the target, and whether since the WMS was issued, there has been a significant impact on their contribution to the target. I note the Council's efforts to reduce the burden under the Policy taking into account viability. However, this does not outweigh the burden of CS Policy CS9 when considered against the benefit of the increased housing supply intended under the WMS.
20. While I accord significant weight to the objective of CS Policies CS9 and CS12 in the light of the affordable housing need in its area, on the evidence before me, it does not outweigh Government policy. Accordingly, a planning obligation in this respect is not necessary to make the development acceptable in planning terms. Having regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework, I am therefore unable to take account of this obligation.

Other Matters

21. While I note the report of a juvenile bat seen in the general area of the site, the appellant's bat emergence survey found no roosts in the building on-site and concluded that there are no bat-related constraints in regards to the programme for demolition. The report does not alter my overall conclusion against the main issues.

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

² House of Commons: Written Statement (HCWS50) 28 November 2014

Conditions

22. The Council has suggested a number of conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of the Planning Practice Guidance (PPG); for clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
23. Given the size of the scheme, it would be necessary in order to provide certainty, to impose a condition requiring the development be carried out in accordance with the approved plans. In such proximity to the surrounding dwellings and their back gardens, and given the size of the proposed building, conditions to secure finishing materials, the details of key construction elements, a scheme of hard and soft landscaping, as well as the protection of trees during construction and the replacement of trees to be removed, would be necessary to safeguard the character and appearance of the area and to make the development acceptable.
24. Details of replacement tree planting and landscaping may reasonably be provided at pre-occupation stage, however, the details of key construction elements, because of their position in the construction programme and the lead-in times for materials, would need to be submitted and approved before commencement of development.
25. Given the length of the access lane, the number of dwellings served by it, and the distance from the proposal to the road, a pre-occupation condition to provide and retain on-plot parking and turning would also be necessary. Treatment of the first floor windows and second floor screens in the flank elevations would be necessary to prevent overlooking to the neighbours, and in the interests of sustainable development, a condition requiring space for bicycle parking is also necessary and reasonable.
26. I note that the development plan seeks the higher, optional requirement for water consumption and have no evidence this would affect viability, and consider it necessary and reasonable. However, I am not convinced that conditions regarding the efficiency of the development in terms of energy and materials are necessary or reasonable to make the development acceptable in planning terms when there are provisions under other legislation in this respect. Similarly, as the proposal would not have a materially adverse impact on protected species and would provide green walls and replacement tree planting, I do not find the provision of bat and bird boxes meets the test of necessity.
27. A Construction Transport Management Plan to be submitted and approved before commencement would be necessary to protect the living conditions of surrounding occupiers and in the interests of road safety during the demolition and construction phases. I have included in the condition details of loading, programme, routing and hours, as well as measures to prevent the deposit of materials on the highway. However, given the availability of parking in the surrounding streets, the size of the scheme, as well as the likely volume of construction traffic, I do not consider it would be reasonable or necessary to include in the condition, requirements for the parking of site operatives' and visitors' vehicles, hoardings and highway condition surveys or repair commitments.

Conclusion

28. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be allowed.

Patrick Whelan

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun within three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Site Plan; Ground Floor; First Floor; Second Floor; North Elevation rev A; South Elevation rev A; East Elevation rev A; West Elevation rev A.
- 3) All the trees shown on the TREE PROTECTION PLAN of 7 September 2015 by Andrew Day shown as to be retained shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority. In this condition a "retained" tree means an existing tree which is to be retained in accordance with the approved plans and particulars.
- 4) No development shall take place, including any works of demolition, until a Construction Transport Management Plan has been submitted to, and approved in writing by the local planning authority. The Construction Transport Management Plan shall provide details of:
 - a) hours of operation of the site
 - b) loading and unloading of plant and materials
 - c) a programme of works
 - d) the arrival and departure times of heavy goods vehicles
 - e) vehicle routing, and
 - f) measures to prevent the deposit of materials on the highway.The approved Construction Transport Management Plan shall be adhered to throughout the demolition and construction period for the development.
- 5) No development shall take place until details of the following elements have been submitted to and approved by the local planning authority in writing.
 - a) 1:50 scale typical front and flank elevations
 - b) 1:20 scale vertical section through the front and flank elevations including details of heads, cills and reveals to openings
 - c) balcony balustrades
 - d) rainwater goods
 - e) the green walls indicated on the east and west elevations

- f) a schedule of maintenance of the green walls for a period of 5 years which shall include details of the arrangements for its implementation

The relevant works shall be carried out in accordance with the approved details before any part of the development is first occupied, with the exception of the planting of the green walls, which shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner. Maintenance of the green walls shall be carried out in accordance with the approved schedule.

- 6) No dwelling shall be occupied until details of both hard and soft landscape works and a schedule of landscape maintenance for a period of 5 years which shall include details of the arrangements for its implementation shall have been submitted to and approved in writing by the local planning authority. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied, with the exception of planting, seeding or turfing which shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner. Maintenance shall be carried out in accordance with the approved schedule.
- 7) No dwelling shall be occupied until the bicycle parking, vehicle parking and turning space have been provided and surfaced in accordance with the approved drawings. The bicycle and vehicle parking and the turning space shall be kept available for the parking of bicycles and motor vehicles and turning at all times. They shall be used solely for the benefit of the occupants of the dwellings of which they form part and their visitors and for no other purpose and permanently retained as such thereafter.
- 8) No dwelling shall be occupied until a full specification of replacement tree planting for those trees on site to be lost through the development has been submitted to and approved in writing by the local planning authority. The specification shall include the quantity, size, species, and positions or density of all trees to be planted, how they will be planted and protected and the proposed time of planting. The tree planting shall be carried out in accordance with the approved specification.
- 9) The external surfaces of the development hereby permitted shall be constructed in the materials described in the planning application form.
- 10) The following windows and screens in the development hereby permitted shall be glazed in obscure glass with an obscurity rating level of 3 and shall thereafter be retained:
 - a) the windows in the flank elevations at first floor level, and
 - b) the screens along the flank elevations at second floor level.
- 11) No dwelling shall be occupied until the Building Regulations optional requirement in paragraph (2)(b) of section G2 regarding water efficiency to a standard of 110 litres per person per day has been complied with.

End of Schedule of Conditions