
Appeal Decision

Hearing held on 28 March 2017

Site visit made on 28 March 2017

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 23 May 2017

Appeal Ref: APP/M3645/W/16/3162899
38 Court Farm Road, Warlingham CR6 9BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr James Caldwell, Turnbull Land Ltd against the decision of Tandridge District Council.
 - The application Ref TA/2016/575, dated 6 April 2016, was refused by notice dated 1 August 2016.
 - The development proposed is demolition of 38 Court Farm Road and the erection of two, five bedroom houses and three, four bedroom houses, with associated access and parking via Court Farm Road.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The application was submitted in outline, with matters relating to appearance, landscaping and scale reserved. I have dealt with the appeal on that basis, treating all plans as illustrative, except where they deal with matters of access and layout.

Main Issues

3. These are:
 - (i) the effect of the proposal on the living conditions of the occupiers of No 49 Court Farm Road, with particular regard to outlook, privacy and noise and disturbance;
 - (ii) the effect of the proposal on protected species, and;
 - (iii) the effect of the proposal on the character and appearance of the area.

Reasons

Living conditions

4. Two houses, plots 2 and 3, are proposed on ground higher than and overlooking the neighbouring property and garden of No 49 Court Farm Road. Although some distance away, the new houses would be clearly visible from the garden of No 49. Together with being on ground higher, the houses would
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have a presence that would be overbearing on the occupiers of No 49 when in their garden. It was apparent from my observations on site that there are several areas of the garden where the occupiers can sit out; the oppressiveness created by the new dwellings would therefore have a material effect on the occupier's enjoyment of their garden.

5. Although the indicative floor plans do not show windows, it is highly likely that the houses on plots 2 and 3 would have windows overlooking the garden to No 49 which would be harmful to the privacy of the occupiers when in their garden. I recognise that currently views between the gardens of No 38 and No 49 are possible. However, views from the new houses would be at a higher vantage point and more consistent which would exacerbate the degree of harm from overlooking. Overlooking would also occur between properties; between the first floor internal living spaces of the houses on plots 2 and 3 and the rear internal living spaces of No 49. However, the oblique angle of these views would limit any harm caused by overlooking.
6. Overlooking currently occurs between the windows in the side elevation of No 38 and No 49 and its garden. Any windows in the replacement dwelling fronting the street would replicate this relationship, albeit with the windows further from No 49 than currently exists. This increased distance would therefore reduce the potential for overlooking, particularly if windows within the side elevation of No 39 were omitted.
7. Immediately adjoining the shared boundary between No 38 and No 49 is an area of garden with tables and chairs that the occupiers of No 49 use to sit out. The access road would run parallel to this, with vehicles to four of the new dwellings moving along it. The noise and disturbance from these vehicles would be harmful to the occupier's enjoyment of their garden.
8. Although the outline planning application has landscaping details reserved, the appellant suggests that soft landscaping between the new access road and the boundary with No 49 would mitigate any harm to their living conditions. Planting would have little impact on reducing the noise and disturbance created by passing vehicles given the proximity of the access road to the garden area. Trees planted to the suggested height of 3-4 metres would reduce the degree of overlooking and overbearingness, however, the degree to which the planting would overcome the harm identified is dependent on the species of trees and them growing to a sufficient height and remaining such, throughout the lifetime of the development. No assurances have been given to the planting that could be implemented. Furthermore, any planting would be south of No 49 which in turn has the potential to overshadow the garden. I can therefore give little weight to landscaping mitigating the harmful impacts of the development.
9. In all, therefore, the development would be harmful to the living conditions of No 49 Court Farm Road, with particular regard to outlook, privacy and noise and disturbance. This would be contrary to policy DP7 of the Local Plan¹ which seeks development that does not significantly harm the amenity of neighbouring properties, including their private amenity space, by reason of general disturbance, privacy, overlooking or overbearing effects.

¹ Tandridge Local Plan, Part 2: Detailed Policies (2014 – 2029) Adopted Version July 2014.

Protected species

10. The evidence before me points to the eastern end of the appeal site in particular being a suitable habitat for reptiles; an area which offers good hibernation and foraging opportunities. One common newt was found which enjoys the same habitat as reptiles. In the absence of a presence/absence survey to suggest otherwise, I find that there is a reasonable likelihood that reptiles are present on the site.
11. The development proposes two houses at the eastern end of the site. Reptiles could therefore be adversely affected by the proposal; not least because construction works would damage the habitat which in turn would result in the loss of reptiles.
12. Circular 06/2005 indicates that a survey should be carried out before planning permission is granted where there is reasonable likelihood of a protected species being present and affected. It also advises that surveys should only be required by condition in exceptional circumstances. I have found that there is a reasonable likelihood of a protected species being present and with nothing within the evidence before me to suggest that I should consider the development an exceptional circumstance, a presence/absence survey is required before planning permission can be considered. In the absence of this and the harmful effect of the development on protected species, the development would be contrary to policy DP19 of the Local Plan.

Character and appearance

13. Court Farm Road is dominated by houses that are within plots that have limited space either side which creates a compact form of development. However, this compactness diminishes into the cul-de-sac where houses No 36, No 38 and No 49 in particular, because they encircle the cul-de-sac, are more generously spaced. Whilst the width of the main dwelling on plot 1 would be the same as that which it replaces, it would sit within a narrower plot. The new dwelling would therefore appear less spacious within its plot than the surrounding properties and as a result would appear cramped and incongruous within the street. This would conflict with criteria A(4) of policy DP8 of the Local Plan which requires development to present a frontage that is in keeping with the street scene.
14. The cul-de-sac creates some uniformity to the existing pattern of development. However, the change in ground level between No 38 and No 49 creates a notable separation between houses and a visual gap in the street which disrupts this uniformity. The new access road would occupy this gap and extend naturally from the end of Court Farm Road and therefore be in-keeping with its surroundings.
15. Behind plot 1, plots 2 and 3 in particular would be much smaller than existing plots. However, these houses, together with those on plots 4 and 5 would have no obvious relationship to the street given their separation from it. Consequently they would not impact on the character and appearance of the street to cause harm.
16. Being an application for outline planning consent, details of the structural engineering works required to accommodate the change in levels between No 38 and No 49 have been earmarked for the reserved matters stage of planning.

Nevertheless, it was apparent from my observations on site that the change in levels between these two plots is substantial. Given the proximity of the proposed access road to the drop in ground level, together with the number of vehicles that the road would support, I have no doubt that there would be the need for a sizeable retaining wall and a safety barrier which in turn would impact on the immediate character of the area. However, the degree of harm and therefore the weight that I can attach to this concern is limited given the restricted details at this outline stage of planning.

17. Policy CSP18 of the Core Strategy² seeks to protect the wooded hillsides in the built up areas. The appeal site sits on the southern slope of a wooded valley which is also characterised by linear residential development. The lines of houses are visible on the hillside; during the summer months when the leaves are on the trees the houses sit within a verdant setting; the trees soften the impact of built development within views from the north across the valley. In the winter months the houses are more obvious as the trees provide less of a screen.
18. The development would result in the loss of trees; the existing fruit trees within the garden of No 38 contribute little to the wooded hillside character and therefore their loss would have little visual impact. However, further into the appeal site to the east are more mature trees with larger canopies that are protected by a Tree Preservation Order. The loss of trees here would create an opening in the wooded hillside and the new dwellings on plots 4 and 5 in particular would be visible in views towards the site, from the north. However, the removal of the trees identified would not eradicate the wooded hillside character altogether; within long distance views from across the valley the houses would still be appreciated amongst trees above and below the site. As well as being seen as a continuation of the line of houses in Court Farm Road and between the houses off Hillbury Road and Oakley Road, the development would not be out of keeping with the existing arrangement of houses within a verdant setting to have a discernible effect on the character and appearance of the area.
19. The indicative site plan before me³ shows where new trees could be planted. The position of these trees would do little to screen the houses on plots 4 and 5. Furthermore, without the certainty of further details regarding tree protection, I doubt their chances of survival given the proximity of some of the trees to hard landscaping and the damage this can cause to root systems. However, notwithstanding this, I have found that the development would not have a marked effect on the wooded hillside character for replacement planting to weigh heavily in the balance of considerations.
20. I note concerns raised that the development could set a precedent for further development beyond plots 4 and 5. Whilst I accept that an incursion into the land behind No 38 opens up the potential for further development, the position of the houses on plots 4 and 5 prevent further development in this direction. Further development south, from the access road could be possible subject to matters of land ownership. Nevertheless each development must be considered on its own merits and in the absence of any evidence to suggest that further development could occur, I attach little weight to the concerns regarding precedent in this case.

² Tandridge District Core Strategy, Adopted 15 October 2008

³ Drawing ref: 6537-PA05 Rev L

21. In all, therefore, I have found that development would be harmful to the character and appearance of the area by virtue of the cramped nature of plot 1 and therefore the development would be contrary to policy CSP18 and DP7 of the Core Strategy and the Local Plan respectively, which require development to integrate effectively with its surroundings and respect the character, setting and local context of an area. The proposal would also be contrary to policy DP8 of the Local Plan, in particular criteria A(4) as indicated. The lack of harm found in other areas of the development's design and layout does not outweigh the harm and conflict with the policies identified.

Other matters

22. The Council's Statement of Five Year Housing Land Supply⁴ confirms that the Council can demonstrate a supply of housing land when assessed against the Core Strategy requirement. The appellant considers the housing requirement in the Core Strategy to be out of date in that it is pre 2008 and that the housing land supply should be assessed against the Objectively Assessed Housing Need (OAN) within the Strategic Housing Market Assessment⁵. When using the figures of the OAN, the appellant suggests that the Council cannot demonstrate a five year supply of housing land. A recent appeal decision⁶ suggests that the Council do have a 5 year supply.
23. In the context of paragraph 14 of the National Planning Policy Framework (the Framework), I find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Therefore, even if I were to conclude that there is a shortfall in 5 year supply of the scale suggested by the appellant, and that relevant policies for the supply of housing should not be considered up-to-date, the adverse impacts of the development necessitate a dismissal of the appeal.

Conclusion

24. For the reasons given, the proposed development would be contrary to the development plan and none of the material considerations indicate that the decision should be made, other than in accordance with the plan. The appeal is, therefore, dismissed.

R Walmsley

INSPECTOR

⁴ The Tandridge District: Statement of Five Year Housing Land Supply (1 April 2016)

⁵ Tandridge District Strategic Housing Market Assessment (2015)

⁶ APP/M3645/W/16/3163326

APPEARANCES

FOR THE APPELLANT:

David Allen	Allen Scott Ltd
James Caldwell	Turnbull Land Ltd
Christopher Hough	Sigma Planning Services
Rob Turner	Turnbull Land Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Robin Evans	Tandridge District Council
Chris Hall	Tandridge District Council
Steve Hearn	Tandridge District Council

DOCUMENTS SUBMITTED DURING THE HEARING:

Document 1 – Draft Statement of Common Ground (November 2016)

Document 2 – Council's response to Inspector's pre-hearing note (27 March 2017)

Document 3 – Tandridge District Council webpage news article, *Local Plan Strategy which aims to protect Green Belt agreed* (released on 17 March 2017)