
Appeal Decision

Site visit made on 16 July 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Appeal Ref: APP/M3645/W/19/3227629

Commerce House, 4 High Street, Nutfield, Surrey

- 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 Martin Murray against the decision of Tandridge District Council.
 - The application Ref TA/2018/796, dated 26 March 2018, was refused by notice dated 28 November 2018.
 - The development proposed is erection of 2 x 1 bedroom dwellings with associated parking and access.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 2 x 1 bedroom dwellings with associated parking and access at Commerce House, 4 High Street, Nutfield, Surrey in accordance with the terms of the application, Ref TA/2018/796, dated 26 March 2018, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are
 - (a) whether the proposal would constitute inappropriate development in the Green Belt,
 - (b) the impact of the proposal on the living conditions of adjoining occupiers in relation to its location and scale,
 - (c) the adequacy of the living conditions for future occupiers in respect of noise and
 - (d) if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

3. Commerce House is a two storey building with a hipped pitched roof located at the junction of High Street and Church Hill. It is occupied by a flooring company and has an open parking area to its eastern side where the proposed development would be erected. To the east of this is a former garage now used

as a hand car wash. To the rear of the site is the garden to the house at No.1 Church Hill. There is a mixture of residential and business uses nearby. The site is within the village of Nutfield which is washed over by the Green Belt.

4. Paragraph 145 of National Planning Policy Framework (the Framework) states that the construction of new buildings should be regarded as inappropriate in the Green Belt unless it complies with a stated exception. The appellant claims that the proposal complies with exception (e) "*limited infilling of villages*". Policies DP10 and DP13 of the Tandridge Local Plan Part 2: Detailed Policies (2014) (TLP) are broadly consistent with the Framework in relation to resisting inappropriate development. However, exception (C.) to Policy DP13 refers to "*limited infilling within Defined Villages*" as an exception to inappropriate development.
5. The Council has not commented on whether Nutfield is a "*defined*" village but has referred to it as a village in the officer report. The Framework does not include a requirement for the village to be "*defined*" in a development plan. From my site visit it was evident that Nutfield as a settlement is of a size and extent commensurate with being considered a village and that the site is centrally located within it. The proposal would involve infilling of an open parking area between two buildings, Commerce House and the former garage. Whilst the new building would fill the width of the appeal site, it would occupy a smaller area than either adjacent building. Its height and profile would also be similar to that of adjacent and neighbouring buildings. It is my judgement that the proposal would amount to "limited infilling" within the village of Nutfield and would therefore satisfy exception (e) to Paragraph 145 of the Framework.
6. The Council has considered the proposal against exception (g) relating to the limited infilling or the partial or complete redevelopment of previously developed land. This is subject to the condition that the proposal would not have a greater impact on the openness of the Green Belt than the existing development. The site has a concrete surface that is currently used for parking. It is therefore "*previously developed land*". As the site presently has an open appearance, being devoid of buildings, the erection of the proposed two storey building would have a greater impact on the openness of this part of the Green Belt than the existing development. The proposal would not therefore satisfy exception (g).
7. Exception (e) however, is not subject to the same express test in relation to openness. Moreover, the impact on openness needs to be understood in relation to the purposes of the Green Belt set out at Paragraph 134 of the Framework. As the site is centrally located within Nutfield, the proposal would not result in conflict with stated purposes relating to the unrestricted sprawl of a large built up area, the merging of neighbouring towns or encroachment of the countryside. There would be no conflict with the purpose to preserve the setting and special character of an historic town. The proposal would help in a small way with the final purpose to assist in urban regeneration by encouraging the recycling of derelict and other urban land. In this context, harm in respect to openness would be limited.
8. Notwithstanding the impact on openness, my findings are that the proposal would satisfy exception (e) relating to "*limited infilling of villages*". It would not therefore amount to inappropriate development, and consequently, there would not be conflict with Policies DP10 and DP13 of the TLP.

Living conditions

9. The proposal would result in construction of a wall about 5.8m high to eaves level along the rear boundary to the site. This would abut the back garden to the semi-detached house at 1 Church Hill, and as the wall would be to the south, it would cast a shadow over the garden. The house itself is directly behind Commerce House but has a single storey projection for part of its width that extends almost halfway down the garden adjacent to the appeal site.
10. The appellant has submitted a Daylight and Sunlight Amenity Study following guidance set by the Building Research Establishment (BRE). This confirms that all neighbouring windows pass the BRE diffuse daylight and direct sunlight tests. However, the development does not satisfy the BRE overshadowing to gardens and open spaces requirements in relation to the garden at 1 Church Hill. The BRE guide explains that the numerical guidelines should be interpreted flexibly, since natural lighting is only one of many factors in site layout design. Furthermore, Paragraph 123 (c) of the Frameworks states *"when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making effective use of a site (as long as the resulting scheme would provide acceptable living standards)"*.
11. The proposal would not result in loss of natural light to the house at 1 Church Hill. It is the rearmost part of the back garden beyond the single storey rear extension that would be most affected by the proposal rather than the more sensitive part of the garden nearest to the house. Given the limited depth to the appeal site it would not be practicable to set the development substantially back from the boundary to mitigate this impact and yet still develop the site. My findings on this issue are that there would be some harm to the living conditions of occupiers of 1 Church Hill, but that this would not be significant harm. The proposal would not therefore conflict with Policies CSP19 of the Tandridge District Core Strategy (2008) (CS) or with Policy DP7 of the TLP which both seek to safeguard the amenity of occupiers of neighbouring properties from significant harm in relation to factors including overshadowing and an overbearing effect.

Noise

12. Due to the constraints of the site, all windows to habitable rooms would be on the front elevation facing High Street. This is the A.25 and carries through traffic. Policy DP22 of the TLP states that proposals involving new residential development, sited close to transport derived noise sources, will be considered against categories outlined in a Noise Exposure Categories table.
13. The appellant has submitted a Noise Report prepared by KC Environmental Ltd based upon the calculation of road traffic noise from known traffic data. This estimates that the daytime and night-time noise levels at the front of the building would both be within Noise Exposure Category C. Policy DP22 states for Category C that permission will not normally be granted for residential development unless there are very special circumstances demonstrating that the benefit of the development will outweigh the harm by way of noise. The Noise Report however concludes that satisfactory internal noise levels could readily be achieved through a variety of different configurations of double glazing, but as windows would need to remain shut to maintain satisfactory noise levels, alternative ventilation would be required.

14. Whilst the proposal would fall within a noise exposure category in which the Council would not normally support residential development, noise impacts could be mitigated by an appropriately worded planning condition to secure appropriate glazing and ventilation details. Moreover, Policy DP22 (D) in relation to noise also states that proposals should be considered in relation to other material considerations where necessary. It is therefore appropriate to weigh any harm arising in relation to noise against other considerations arising.

Other considerations

15. The appellant points out that the Council cannot currently demonstrate a five year housing land supply. The Council has not disputed this. I note that the Housing Delivery Test results (2015-2018) show a delivery measurement of 65% for Tandridge. In these circumstances, Paragraph 11(d) of the Framework indicates that the Council's policies most important for determining an application should be regarded as out of date and that a tilted balance in favour of sustainable development should apply.
16. The proposal would result in the benefit of two small additional housing units in a sustainable location, close to public transport and other local facilities, that would contribute to meeting housing need in the area. It would also make an effective use of land within a built up area of Nutfield in accordance with the provisions of Chapter 11 of the Framework.

Planning balance

17. Footnote 6 to Paragraph 11 of the Framework cites Green Belt as one policy area where application of policies in the Framework may provide a clear reason for refusing development. However, as I have found that the proposal would not amount to inappropriate development in the Green Belt this exception does not apply. Nor therefore is it necessary to establish whether very special circumstances exist.
18. The proposal would result in limited harm in relation to openness, to the living conditions of an adjoining occupier in respect of overshadowing a garden and to future occupiers in respect to noise, although noise impacts could be mitigated through the use of an appropriately worded planning condition. However, the limited harm arising from the proposal would not significantly and demonstrably outweigh the benefits arising from the proposal when assessed against the policies of the Framework taken as a whole.

Conditions

19. In addition to the statutory condition limiting the time for commencement of work, a condition is necessary to list the plans in the interest of certainty and to enable submission of minor material amendments should this be expedient. The Council has suggested conditions to approve external materials for the development to ensure a satisfactory appearance and in relation to renewable energy to enable the development to actively contribute to reduction in carbon emissions. Whilst I consider both these conditions to be necessary, they do not need to be pre-commencement conditions; a trigger relating to above grounds works would suffice. A condition is needed to secure obscured glazing to the staircase window, as suggested in the Council's report. Finally, a condition is necessary to ensure approval and implementation of appropriate noise mitigation measures.

Conclusion

20. For the reasons given and having regard to all other matters raised the appeal is allowed subject to conditions.

Rory MacLeod

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans CH/18-OS, CH/18-01, CH/18-BP Rev A, CH/18-02 Rev A and CH/18-03 Rev A.
- 3) No development shall commence above ground level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall commence above ground level until details demonstrating how the development would satisfy the 10% reduction of carbon emissions through renewable resources have been submitted to and approved in writing by the local planning authority. The renewable energy provision shall thereafter be implemented and retained in accordance with the approved details.
- 5) The rear facing staircase window shall be fitted with obscured glazing, and no part of that window that is less than 1.7 metres above floor level shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.
- 6) Noise mitigation measures as set out in the Noise Report produced by KC Environmental Ltd dated 13 August 2018 shall be submitted to and approved in writing by the local planning authority; the approved measures shall be installed before the development hereby approved is occupied and this system shall thereafter be retained in accordance with the approved details.