



Appeal Decision

Site visit made on 28 May 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2019

Appeal Ref: APP/M3645/W/19/3221596

Rear of Clearway Court, 139-141 Croydon Road, Caterham CR3 6PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr D O'Connor against Tandridge District Council.
 - The application Ref TA/2018/1594, is dated 1 August 2018.
 - The development proposed is erection of new building containing 9 flats (4 x 2 bed, 5 x 1 bed) together with associated car parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal was lodged against the failure of the Council to determine the planning application within the statutory time period. The Council's submissions set out that it would have refused the application had it determined it. From this, the main issues are the effect of the proposed development on: (i) the living conditions of future residents having particular regard to outlook; and (ii) the character and appearance of the area.

Reasons

Background

3. The appeal site lies to the rear of Clearway Court, one of a number of substantial three and four storey properties on this part of Croydon Road. The land falls away markedly from this road towards the railway line. There are a variety of uses between properties on Croydon Road and the railway. The site, which is presently used for parking to serve Clearway Court, is bounded to its sides by residential and industrial development.
4. The proposal that forms the basis of this appeal was submitted following the dismissal of an earlier appeal¹ on the site for a block of flats.

Living Conditions

5. The Bedrooms numbered 2 in Flats A, C, D and F would have a dual aspect, and are proposed to be obscure glazed. The windows in Flats C and F would look to the east and south, whilst those in Flats A and D would look to the east and north. Those on the east elevation would look towards an existing office

¹ APP/M3645/W/18/3198304

block, Clearway Court, for which planning permission exists for its change of use to residential. Those on the south and north elevations would be positioned close to the site's side boundary. To the south of the site is Cypress Court, a flats development. To the north is a timber joinery works.

6. The Design and Access Statement ('DAS') that was submitted with the application provided the rationale behind this treatment of windows on the proposed east elevation. This is due to the site's proximity to Clearway Court, about 15m away, and sought to address the views of the Inspector in the earlier dismissed appeal. He opined that although there would be adequate separation between the properties, in terms of overlooking and privacy, the rooms facing the bulk of Clearway Court would lack adequate outlook. The DAS provides no explanation for the proposed use of obscure glazing in the side windows of these flats.
7. Whilst the Officer's report refers to bedrooms as "non-habitable" rooms, I do not agree with this. Although they have a less intensive use than, say, a living room, I consider them to be habitable, nonetheless. Their users would expect and require an appropriate outlook. The use of obscure glazing in both windows serving these rooms would fail to provide this outlook. This would be, to my mind, worse than what was proposed in the earlier appeal. In that case there was at least some outlook from rooms facing east. In this proposal, there would be none from bedrooms 2 in Flats A, C, D and F and this would result in very oppressive living conditions therein.
8. The report put to the Council's Planning Committee refers to the proposed use of obscure glazing on the east elevation. However, whilst it mentions windows on the proposal's side elevations, it does not refer to the proposed use of obscure glazing in them. It sets out that Cypress Court, to the south, is 24m away with what appear to be non-habitable rooms or circulation spaces on its north facing elevation. This, it states, would exceed the required separation distance and that property "would not be adversely overlooked by the proposed development". In respect of the land to the north, it states that the proposed building would "overlook a commercial/industrial use rather than a residential use and this would not be significantly harmful".
9. From this, I cannot agree that the Officer's report can be read as finding the use of clear glazing in the side windows to be acceptable. This was not shown in the drawings upon which it was based. Furthermore, I do not agree that the provision of clear glazing in the side windows to these rooms is a matter that could be controlled by condition, as suggested. This has also been suggested with regards to side-facing kitchen windows in these flats.
10. When parties that own or use the adjoining land had the opportunity to comment on the planning application, the drawings associated with it showed obscure glazed windows on the side elevations. I cannot be sure that they would not have objected had those windows been shown as being clear glazed. The alteration of their glazing by condition would deprive parties of the opportunity of consultation. The use of a condition would, therefore, fail the test of reasonableness set out in paragraph 55 of the National Planning Policy Framework.
11. For the above reasons, on this issue I find that the use of obscure glazing in the windows that would serve bedroom 2 in Flats A, C, D and F would have a

severely detrimental effect on the living conditions of their occupants through the resultant lack of outlook. This would be contrary to Policy DP7 of Tandridge Local Plan Part 2: Detailed Policies 2014-2029, adopted July 2014.

Character and Appearance

12. The height of the proposed building would be less than that proposed in the earlier appeal through a reduction in the number of units, minimal floor to ceiling heights in the proposed units and the accommodation at third floor level being set within the proposed building's roof space. Importantly, this reduction in height, allied to its far smaller mass, would ensure that it would appear subservient to Clearway Court with which it would be most readily seen. Although it would still be higher than Cypress Court and High Trees Court, given their distance from the building this relationship would not be harmful.
13. The proposed building would still cover the entire width of the site. However, given the reduction in height, the use of a more traditional hipped roof and the introduction of articulation onto the front and rear elevations, its mass and scale would be appropriate to its setting and it would not appear monolithic. Its overall design would not differ greatly from other flatted developments in the area.
14. The density of development is stated to be 225 dph in this scheme, as opposed to the 300 dph in the earlier appeal scheme. I agree with the view of the Inspector there, that "such numerical analysis needs to be treated with caution on relatively small sites". Given the site's context, I find that the number of flats proposed would be appropriate and would not represent an overly-dense form of development.
15. I note the proximity of the development to other developments and have referred to the harm that would arise from the configuration of certain windows, above. However, this would not be harmful to the character and appearance of the area. In the circumstances, I do not find that the proposal before me would represent the overdevelopment of the site.
16. In conclusion on this issue I find that the proposed building would not have a harmful effect on the character and appearance of the area and would, therefore, accord with the terms of Policy CSP18 of the Tandridge District Core Strategy DPD 2008 and LP Policy DP7 that require development proposals to reflect and respect the character, setting and context of their site. However, this does not lead me to find that the scheme would be acceptable for the reasoning given in respect of living conditions.

Other Matters

17. Although the submitted planning obligation would overcome potential problems relating to refuse collection, this does not amount to a positive consideration in support of the appeal.
18. I note that the site lies in a sustainable location, close to the centre of the town, that the building would be finished in an appropriate palette of materials, that the site would have suitable hard and soft landscaping and that each flat would be provided with appropriate external space. I also note that no objection has been raised in principle on flood grounds and the effect on ecology. However, none of these matters outweigh the harm that I have identified.

Conclusion

19. For the reasons given above, and having taken all other matters into account, I conclude that the appeal should be dismissed.

Roy Curnow

INSPECTOR