



Appeal Decision

Site visit made on 3 September 2019

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/T5720/W/19/3229684

1 Firtree Avenue, Mitcham CR4 2JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr G Keene and Ms C East against the decision of the Council of the London Borough of Merton.
 - The application Ref 18/P2644, dated 1 July 2018, was refused by notice dated 22 March 2019.
 - The development proposed is a new dwelling on land to the rear of 1 Firtree Avenue, Mitcham CR4 2JP.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues of the appeal are:
 - The effect of the development upon the living conditions of Nos 1 and 3 Firtree Avenue with particular reference to outlook.
 - Whether the proposal would comply with local planning policy which requires development to meet sustainable construction requirements.

Reasons

Living conditions

3. The appeal property (No 1 Firtree Avenue (No 1)) comprises an end of terrace dwelling that has a frontage facing Firtree Avenue, whilst its flank wall and rear amenity area faces on to Lock's Lane, a busy suburban road. The amenity area consists of a small patio area accessed via the rear kitchen door, and beyond this is a lawn area bisected by a central pathway leading to a single storey workshop with a shallow pitched roof. The rear of the workshop forms the boundary of the dwelling and faces onto a narrow rear service lane, beyond which are a line of tall mature trees that pertain to St Mark's Vicarage, that give occupiers of No 1 a verdant outlook. The adjoining dwelling, No 3 Firtree Avenue (No 3), is separated from the appeal property by a wooden fence and trees along the shared side boundary. This dwelling also has a rear garden and single storey outbuilding close to the rear boundary that faces the service lane.

4. The proposed dwelling would require the removal of the outbuilding to the rear of the appeal site and a significant reduction to the depth of the existing amenity area relating to No 1. The proposed dwelling would have its flank wall near to the proposed boundary of the plot and facing the garden area and rear elevation of No 1. The rear elevation of the proposed dwelling would be in close proximity to the garden area of No 3, whilst its occupiers would also have views of the proposed side and rear elevations from the existing rear conservatory and upper floor windows.
5. I note the appellant has referred to a separation distance of 15m between the proposal and No 1. The Council, having made its own checks, disputes this and considers that the distance is 8.6m. I have not taken measurements on site; however, I consider that the separation distance referred to by the appellant is a significant over estimation and I judged from my site visit and the plans before me that the distance would be more aligned to that stated by the Council.
6. The proposed dwelling's close proximity to the garden areas of Nos 1 and 3, coupled with its height and overall bulk would have an imposing physical impact when viewed from these neighbouring private spaces, and the effect of this would be substantial. Moreover, the proximity of rear habitable room windows would also mean that the loss of outlook would be felt from within the dwellings. Particularly the rear projecting conservatory relating to No 3 and kitchen windows of No 1, where the effect from the proposal would be equally stark.
7. The appellant has pointed to large boundary trees and tall buildings that would mitigate the impact of the proposed dwelling. However, I noted that the boundary trees were modest in height and would not fully screen the presence of the proposal which would rise above them. Furthermore, I saw none of the tall buildings, which the appellant refers to or any other structure on intervening land that would overcome the harm identified.
8. I therefore conclude that the proposed development would be detrimental to the outlook of occupiers of both Nos 1 and 3 Firtree Avenue. The appeal scheme would therefore run contrary to Policy DM D2 of the Merton Local Plan - Sites and Policies Plan and Policies Maps (2014) that amongst other considerations, expects development to protect existing development from visual intrusion, so that living conditions of existing occupiers are not unduly diminished.

Sustainable Construction

9. Policy CS15 of the London Borough of Merton Local Development Framework Core Planning Strategy (2011) (CPS) is the Council's policy relating to climate change. This requires housing developments to minimise water use and CO₂ emissions, in addition to achieving Code for Sustainable Homes Level 4 (Code Level 4). The Government's Written Ministerial Statement (WMS) dated 25 March 2015¹ advises against the use of the Code for Sustainable Homes unless it is supported by an existing development plan policy and that housing standards set do not exceed a requirement set by the outgoing Code level 4. On this basis I consider that the standard set by Policy CS15 is still relevant.

¹ Written Ministerial Statement from the Ministry of Housing and Local Government, 25 March 2015

10. The appellant's Renewable Energy Assessment, whilst outlining proposals for solar panels, energy efficient light bulbs and appliances and water saving measures, does not present any compelling evidence to show how these measures comply with standards which are equivalent to Code Level 4. Furthermore, there is no quantifiable assessment of how the development would meet the standards for water consumption laid out in the London Plan (Policy 5.15 of the London Plan (March 2016)). Without this information I cannot be certain that the proposed development would comply with the provisions of the policy, and given the degree of uncertainty, the use of conditions would not be reasonable in this case.
11. The absence of the relevant information means that the proposal would not meet the sustainable construction requirements of the Council's climate change policy. As such, it would be contrary to Policy CS15 of the CPS, which amongst other matters requires all new development comprising the creation of new dwellings to achieve Code for Sustainable Homes Level 4. The proposal would also be contrary to Policies 5.2 and 5.15 of the London Plan (March 2016) where it seeks developments to make the fullest contributions to minimising carbon emissions and minimise the use of water so that mains water consumption would meet a target of 105 litres or less per head per day.

Other Matters

12. In support of the appeal, my attention has been drawn to other dwellings in the area that have already been approved, and in the appellant's view, have similar characteristics to the appeal proposal. However, I do not know the full circumstances of those cases or the policies that applied at the time of their consideration. In any event, a number of the examples referred to differ to the appeal proposal in terms of separation distances and the extent of the impact upon the living conditions of neighbouring occupiers. Furthermore, some of the case examples relate to their effect on character and appearance of the area, which has not been raised as an objection by the Council in the case of this appeal. Accordingly, these did not represent a justified comparison with the appeal proposal.
13. I note the appellant's argument that the Framework supports the development of new housing on sites that are underutilised and derelict. However, the harmful impacts upon the living conditions of neighbours, failure to meet sustainable construction standards and the resultant conflict with local plan policy outweigh any potential benefit in making the effective use of land.
14. In respect of the current site being prone to crime, this has not been supported by evidence of any incidents, or how the proposed dwelling could reduce the risk of anti-social behaviour and crime in the area. Therefore, I have not attached any weight to the proposal in this regard.
15. Finally, I have not found that the proposal would overcome the current highway safety concerns highlighted by the appellant. The concerns relate to the indiscriminate parking currently taking place in a restricted area along the appeal site's Lock's Lane frontage. There would be no guarantee that unlawful parking would cease in the event that I was to allow the appeal.

Conclusion

16. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

R. E. Jones

INSPECTOR