



Appeal Decision

Site visit made on 17 September 2019

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 October 2019

Appeal Ref: APP/P3610/W/19/3229225

Land rear of 44-48 Stoneleigh Broadway, Stoneleigh KT17 2HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Patrick McCloskey of Castlefarms Estates Ltd against the decision of Epsom & Ewell Borough Council.
 - The application Ref 19/00178/REM, dated 5 March 2019, was refused by notice dated 1 May 2019.
 - The application sought planning permission for demolition of existing buildings and the erection of a part single/part three-storey building providing 230 sqm of commercial floorspace at ground floor and 2 three bedroom, 2 two bedroom and 2 one bedroom flat units at upper floor levels without complying with a condition attached to planning permission Ref 15/00336/FUL, dated 23 November 2015.
 - The condition in dispute is No 9 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: TBS/P15/04 REV A; TBS/P15/05 REV A; TBS/P15/06 REV A; TBS/P15/07 REV A; TBS/P15/08 REV B; TBS/P15/09 REV C; TBS/P15/11 REV A.*
 - The reason given for the condition is: *For the avoidance of doubt to ensure that the development is carried out in accordance with the approved plans.*
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. I carried out an unaccompanied site visit as the appellant was not present to provide access. However, I was able to view the site and its surroundings and I am satisfied that I was able to see enough to determine the appeal.

Background

3. The application subject to this appeal is made under Section 73 of the Town and Country Planning Act for minor material amendments. It seeks a revised layout and design for the building approved in 2015. The Council's first reason for refusal relates to its concern that the revised layout and patio doors serving the upper floor flats (Units 3 and 6) would be harmful to the living conditions of neighbouring occupiers.
4. The original permission was subject to a planning obligation to secure affordable housing. Where an application under Section 73 is granted, the effect is the issue of a new planning permission. The Council's second reason for refusal relates to the need for a new planning obligation in the same terms.

5. The appellant has provided an amended plan that was submitted to the Council, but was not taken into consideration by the Council in refusing the application. The amendment relates to the installation of a stainless steel louvred panel balcony screen at a height of 1.8 metres to prevent overlooking for apartments facing north.
6. The appeal process should not be used to evolve a scheme. I cannot be certain that interested parties were aware of the revised proposals when they were consulted on the appeal. Accordingly, the interests of these parties may be prejudiced, were the amended plans to be taken into account. I have therefore considered the appeal on the basis of the plans determined by the Council.
7. The site had been cleared of any buildings at the time of my site visit and had been fenced off. As I have seen no evidence to the contrary, I have determined the appeal on the basis that the original permission has been implemented.

Main Issues

8. The main issues are:

- The effect of the amendments on the living conditions of neighbouring occupiers at 44-50 Stoneleigh Broadway with regard to privacy, and;
- Whether or not the proposal should make provision for affordable housing.

Reasons

Living conditions

9. The appeal site is to the rear of Nos 44-48, which front onto Stoneleigh Broadway. The ground floor of Nos 44-50 is in commercial use, with flats on the upper floors. The flats have front doors and habitable room windows on the rear elevation of the building, and are accessed via an external staircase. The new building would be sited in close proximity.
10. The proposal would result in patio doors leading onto small balconies from the lounge/kitchen/diner to Units 3 and 6, on the first and second floors. The patio doors would look towards the rear elevation of the frontage building. These would be the only windows serving the main living area for each of the one bedroom flats, and would allow direct overlooking towards the rear windows of the upper floor flats. While the existing flats are already open to public view from the vehicular access alongside and to the rear of the building, the proposal would result in direct overlooking from an elevated position in close proximity. This would undermine the privacy of the existing occupiers, which would be harmful to their living conditions.
11. The proposal would therefore be harmful to the living conditions of the occupiers of 44-50 Stoneleigh Broadway with regard to privacy. Accordingly, it would conflict with Policy DM10 of the Epsom and Ewell Borough Council Development Management Policies Document 2015, insofar as it seeks to ensure that new development should have regard to the amenities of neighbours, including in terms of privacy.

Affordable Housing

13. The Council's second reason for refusal refers to the need for the provision of affordable housing contribution, in line with the requirements of Policy CS9 of

the Epsom and Ewell Core Strategy 2007 (CS), as reflected in a planning obligation associated with the original planning permission. Whilst I am not aware of the full background to the approach taken towards affordable housing in the original planning permission, the appellant does not provide any significant evidence to contest the need for this contribution.

14. As no planning obligation has been provided, the effect of allowing the appeal would be to grant planning permission for the development without any affordable housing. This would conflict with Policy CS9 of the CS, which requires that, amongst other things, on residential developments between five and fourteen dwellings, at least 20% of the dwellings should be affordable. In this respect the amended proposal would conflict with the development plan. The evidence before me does not demonstrate with certainty that the exceptions to affordable housing requirements, as set out in the National Planning Policy Framework, would apply in this case.

Other Matters

15. Concerns about the conduct of the Council in handling the application that led to this appeal have no bearing on my decision, which must be taken on the planning merits of the proposal.

Conclusion

16. Overall, the proposal conflicts with the development plan when considered as a whole, and there are no considerations that outweigh this finding. Accordingly, the appeal should be dismissed.

N Thomas

INSPECTOR