



Appeal Decision

Site visit made on 23 October 2019

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2019

Appeal Ref: APP/K3605/W/19/3234316

Land East of Nanhoran 25, Claremont Lane, Esher, KT10 9DP

- 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 Ms Ruth Farris against the decision of Elmbridge Borough Council.
 - The application Ref 2018/2506, dated 6 August 2018, was refused by notice dated 8 February 2019.
 - The development proposed is a new dwelling/house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. A completed Unilateral Undertaking (UU) has been submitted by the appellant to secure a contribution of £44,741.05 towards the provision of affordable housing. This satisfied the Council's requirements in this regard. However, the appellant has contested the legitimacy of this contribution and it is therefore a matter I will return to later.

Main Issues

3. The main issues are:
 - whether the proposed development would provide suitable living conditions for future occupiers of the new dwelling, with particular regard to daylight and enclosure;
 - the effect of the proposed development on the living conditions of the occupiers of No. 25 Claremont Lane, with particular regard to daylight and being overbearing;
 - the effect of the proposed development upon the character and appearance of the area; and,
 - whether or not the proposal should contribute towards the provision of affordable housing.

Reasons

Living conditions – new dwelling

4. The appeal site forms part of the communal amenity area associated with the apartment building of No. 25 Claremont Lane (Nanhoran). It lies between a line of trees in the grounds of No. 25, and No. 1 Fir Tree Close which is the first in a row of large detached houses on the northern side of this cul-de-sac.
5. Whilst the front elevation of the proposed dwelling would align with that of No. 1, its depth would be considerably shallower. Consequently, the flank wall of No. 1 would project significantly beyond the rear elevation of the proposed dwelling, close to the shared boundary for almost the full depth of the plot. The height and bulk of this flank wall would therefore give both the house and the north facing garden a significant sense of enclosure. It would also overshadow the eastern side of the house and garden during the morning. The north, east and western sides of the plot are enclosed by trees and other mature landscaping. This would increase the sense of enclosure.
6. Even though the kitchen, dining and living rooms would be served by large patio doors, their outlook would be significantly restricted. In addition, the amount of sunshine that could penetrate the garden would be severely limited by its north facing orientation and its enclosure by the wall of No. 1 and the mature vegetation. Consequently, the house and garden would feel significantly enclosed resulting in them being dark and gloomy places to be.
7. Whilst I note that there are some trees which would partially obscure the flank wall of No. 1, these would not diminish the harmful effects of the height and depth of the wall, I have identified. Even if it was beneficial, the retention of vegetation outside the appeal site could not be guaranteed, and it is therefore a matter of little weight in my assessment of the scheme. Further landscaping suggested by the appellant would not provide satisfactory living conditions, as screening the elevation of No. 1 would require tall landscaping along the eastern boundary that would be likely to further reduce daylight, exacerbating the gloomy and oppressive conditions.
8. For the reasons set out above, the proposal would fail to provide satisfactory living conditions for future occupiers arising from an unacceptable sense of enclosure and limited daylight. It would therefore be contrary to Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015) (the DMP) which requires that residential accommodation should offer residents an appropriate level of outlook and daylight. Policy DM10 of the DMP referred to in the Council's decision notice, only applies to sites of 0.3 hectares or more and is therefore not relevant to my assessment of the appeal scheme. The development would also be contrary to paragraph 127 of the National Planning Policy Framework (the Framework) which requires that planning decisions should create places with a high standard of amenity for existing and future users.

Living conditions – No. 25

9. The new dwelling would be approximately 13m from the rear facing habitable room windows of the apartments of No. 25. The two storey height with a pitched roof, the depth, the lack of relief and the proximity of the flank elevation of the new dwelling would result in a loss of outlook and it would

- appear overbearing from the rear windows of the ground floor of No. 25. The flank wall of the proposed dwelling is likely to be sufficiently separated from the rear windows of No. 25 to ensure that there would be no unacceptable loss of overall daylight within the apartments.
10. The substantial flank elevation of the new dwelling would introduce a considerable sense of enclosure to the communal amenity space of No. 25. The resulting sense of enclosure and adverse impact upon outlook, is such that it would result in significant harm to the living conditions to the occupiers of No. 25. There would be some modest additional overshadowing of the residual amenity space at certain times of the day. However, this area is already overshadowed by surrounding trees and No. 1 Fir Tree Close, so the impact of this would be limited such that there would not be significant harm in this regard.
 11. The proposal would result in a reduction in communal amenity space serving No. 25. However, in the absence of any adopted standards or requirements there is no substantive evidence before me to suggest that it would be inadequate in terms of its quantity. However, as set out above, its quality and enjoyability would be reduced due to the increased sense of enclosure.
 12. My attention has been drawn to two developments nearby which have been allowed. However, in both cases there were different separation distances involved and the topography in the vicinity of those sites appears to have affected how the proposals were assessed. Therefore, they are not directly comparable with the appeal proposal before me which I have determined on its individual merits.
 13. For the reasons set out above, there would be harm arising from loss of outlook (or appearing overbearing) from the ground floor windows of No. 25 and a significant increase in the sense of enclosure within the amenity space. Together these factors would result in harm to the living conditions of the occupiers of No. 25. This would be contrary to Policy DM2 of the DMP which states that development proposals should be designed to offer an appropriate outlook. In this regard the proposed development would also be contrary to paragraph 127 of the Framework, the relevant provisions of which I have referred to earlier in this decision letter.

Character and appearance

14. Fir Tree Close is characterised by large detached houses on well-proportioned plots. The existing dwellings are all set within wide frontages with generous front garden areas and deep plots, although the two nearest plots to the east of the appeal site are narrower than those further along Fir Tree Close. The new dwelling would be set in a roughly rectangular plot within which it would have a depth of front garden and driveway area similar to the two nearest properties to the east, although its width would be slightly narrower.
15. The gaps between the flank walls of dwellings on Fir Tree Close varies from building to building, but the closest three to the east of the appeal site are separated by gaps of approximately 2 – 3m. Therefore, the gap between No. 1 and the appeal site dwelling would appear consistent in this regard and not appear unduly cramped. The new dwelling and the plot would be markedly shallower than the two dwellings to the east. However, due to the location of the plot and the position of the dwelling, this would not be unduly apparent

from outside the appeal site and only be discernible from a small number of neighbouring apartments in No. 25. Consequently, I consider it would be acceptable in this respect. The proposed dwelling would be of a similar height to others in Fir Tree Close, and although slightly narrower, it would not appear out of place in this context.

16. The design of the dwelling would be sympathetic to the character of the area, incorporating a pitched roof and an 'arts and crafts' style similar to its neighbours. The use of bricks, clay roof tiles and metal windows would be acceptable materials in this context and would result in the new dwelling integrating with the neighbouring dwellings to the east.
17. The appeal site is bound and surrounded by a number of trees and shrubs of varying maturity and quality. The Arboricultural Impact Assessment & Method Statement stated that six trees of low or poor quality would be felled to facilitate the development. Others would be retained and, if the development was otherwise acceptable, could be protected during the construction period through the imposition of appropriate conditions. On this basis, I consider this aspect of the proposal to be acceptable.
18. Taking all these factors into consideration, I conclude that the proposal would not be harmful to the character and appearance of the area, having regard to Policies CS9 and CS17 of the Elmbridge Core Strategy (2011) (the ECS), Policy DM2 of the DMP and the paragraph 127 of the Framework. In combination and amongst other things, these expect new development to have regard to, and preserve and enhance the character of the local area. Although cited in the Council's decision notice I do not find the proposal to conflict with any specific guidance in the Design and Character Supplementary Planning Document (2012).

Affordable housing provision

19. Policy CS21 of the ECS seeks a financial contribution towards the provision of affordable housing, equivalent to the cost of 20% of the gross number of dwellings of affordable housing, in residential proposals comprising 1- 4 dwellings. The Unilateral Undertaking would provide a contribution of £44,741.05 and would comply with the requirements of Policy CS21 of the ECS and the Council's Developer Contributions Supplementary Planning Document (2012). However, paragraph 63 of the Framework states that affordable housing contributions should only be sought for residential developments that are for 10 or more dwellings, or a site area of 0.5 hectares or more.
20. However, the Council has provided a detailed justification for seeking a contribution in respect of the appeal proposal. This is based on the high price of houses in the borough, the proportion of new dwellings that are provided on small sites and the acute need for affordable dwellings. From this it is evident that contributions from smaller schemes has supported the provision of 68 new dwellings between 2011 and 2018. Furthermore, there is no evidence to suggest that the appeal proposal would be rendered unviable by providing the contribution in-line with Policy CS21. In these particular circumstances I consider that the advice of the Framework does not outweigh the policy requirements of the development plan.
21. I therefore conclude that the contribution towards affordable housing provision is justified. I am therefore content that the submitted obligation would satisfy

the 3 tests¹ in Regulation 122(2) of the Community Infrastructure Regulations 2010. The contribution is a benefit of the proposed development which weighs in its favour.

Other Matters

22. The Council also refused this scheme on the basis that it failed to be an effective and efficient use of land. However, density is not a measure of the design quality of a scheme and is therefore only one factor to be considered in relation to its acceptability.
23. I accept that at 22.2 dwellings/hectare the appeal proposal would be below the minimum density of 30 dwellings/hectare advocated by Policy CS17 of the ECS. By providing a 4-bedroom home it would also be at odds with Policy CS19 of the ECS which indicates a preference for smaller homes. A smaller home would be more valuable in addressing the housing needs identified in the most up to date Strategic Housing Market Assessment for Kingston and North Surrey (2016).
24. The appeal proposal is smaller than a previous scheme for two dwellings on the site Ref: 2017/0031, which the Council refused for similar reasons. Nevertheless, I have still found that the current proposal to be unacceptable. There must therefore be significant doubt over the ability of the site to accommodate more development in a manner that would also comply with the other requirements of the development plan. I therefore conclude that the limited conflict with Policies CS17 and CS19 is outweighed by other considerations in this case. Policy DM10 of the DMP, which has been referred to by the appellant, only applies to sites of 0.3 hectares or more and is therefore not relevant to my assessment of the appeal scheme.

Planning Balance

25. The Government is seeking to significantly boost the supply of housing and the Council accepts that it is currently unable to demonstrate a five-year supply of deliverable housing land. However, the contribution that a single 4-bedroom dwelling would make to housing supply would be minimal. Therefore, any social and economic benefits would be small, particularly as the borough's housing need is for smaller homes. There would be a modest contribution towards affordable housing, which is a factor in the scheme's favour. As I have found that the proposal would not be harmful to the character and appearance of the area, this is a neutral factor in the balance.
26. On the other hand, I have found that the proposal would result in unsatisfactory living conditions for future occupiers and there would be harm to neighbours arising from loss of outlook and increased enclosure. These are matters that attract significant weight, even though the development would represent an inefficient use of the land.
27. This leads me to conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The presumption in favour of sustainable development therefore does not apply in this case.

¹ Necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development

Conclusion

28. I conclude that the proposal would be contrary to the development plan and the Framework and there are no other considerations, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR