
Appeal Decision

Site visit made on 30 October 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2019

Appeal Ref: APP/P3610/W/19/3235797
29A Cox lane, Epsom KT19 9LZ

- 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 Michael McGlynn against the decision of Epsom & Ewell Borough Council.
 - The application Ref 19/00291/FUL, dated 22 March 2019, was refused by notice dated 7 June 2019.
 - The development proposed is demolition of existing garage and erection of 3 bedroom house.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) whether the proposal would result in an inappropriate form of backland development harmful to the character of the area;
 - (b) the impact of the proposal on the living conditions of the occupiers of 27 Cox Lane in respect of overlooking and privacy;
 - (c) the adequacy of amenity space provision for proposed and donor dwellings and
 - (d) the impact of the proposal on biodiversity.

Reasons

Character

3. No.29 Cox Lane is a bungalow forming part of a line of dwellings fronting Cox Lane. The appeal relates to a backland site to the rear of 29 Cox Lane. Access to the site is gained via a driveway to the side of no.29 adjacent to the boundary with 27 Cox Lane. The Council's report states that the site was formerly part of 29 Cox Lane, but that it has since been subdivided into a separate plot and used for storage purposes. A high timber fence separates the modest rear garden retained for no.29 from the appeal site. There is currently a large brick garage and a smaller attached timber building on the appeal site with a large hardstanding area alongside. The proposal is to replace existing buildings with a modern two storey house in a similar position but on lower ground and with associated parking.

4. Policy DM16 of the Epsom & Ewell Borough Council Development Management Policies Document (2015) (DMP) states that there will be a presumption against the loss of rear domestic gardens due to the need to maintain local character, amenity space, green infrastructure and biodiversity. However, in this case, most of the garden to 29 Cox Lane would appear to have already been lost. The proposal would not involve a further loss of garden land.
5. Policy DM16 goes on to list criteria by which modest redevelopment on backland sites may be considered acceptable. The Council consider the proposal acceptable in relation to some criteria, relating to vehicular access, parking and the mass and scale of development, but objects on other issues and to the impact of the loss of garden land on the character of the area. The immediately surrounding land includes back gardens to neighbouring dwellings and a line of garages to the rear of the site. Given the present condition and use of the site, the proposal would not result in the loss of garden land which contributes as part of a larger swathe of green infrastructure. The proposal would not adversely affect the character of this backland site.

Living conditions

6. The proposal would include first floor bedroom windows and a balcony that would face towards the rearmost part of the back garden to 27 Cox Lane at about 5m. The windows and balcony would also provide opportunity for more oblique views towards the bungalow at no.27 and the nearer part of its garden. The dwelling would be set some 1.5m below ground level and the presence of vegetation within the garden at no.27 would restrict overlooking to some degree. However, the proximity of the proposal to the boundary and the height of persons behind the window or on the balcony in relation to the boundary fence would nonetheless result in a degree of overlooking and loss of privacy that is not typical from the pattern of development in the surrounding area.
7. The proposal would thereby be contrary to Policy DM10 of the DMP which requires the design of development to have regard to the amenities of occupants and neighbours, including in terms of privacy. There would similarly be conflict with Policy DM16(2) in relation to the privacy impact on neighbours.

Amenity space

8. Policy DM12 of the DMP requires new dwellings to provide appropriate external private amenity space to meet the needs generated by the development. It states that amenity space should be "*of a sufficient size to meet the needs of the likely number of occupiers and provide for the needs of families with young children where the accommodation is likely to be occupied by such*". The submitted plans show a first floor comprising 3 large bedrooms and 2 bathrooms. The size of the dwelling would therefore be eminently suitable for family accommodation. There would be a sunken garden of about 30 square metres adjacent to the living room which would form a small patio garden, but the remainder of the curtilage would be predominantly hard surfaced for parking or access. The appellant has suggested that an area between two speed ramps on the site access could form a suitable children's play area. But this would be adjacent to the flank wall to 29 Cox Lane, remote from the new dwelling and not a particularly safe area for play. The presence of open countryside and school grounds in the vicinity of the site would not compensate for the paucity of amenity space on site.

9. The proposal would not provide external amenity space appropriate to the needs generated by a large family house and would thereby be contrary to the provisions of Policy DM12. There would also be conflict with Policy DM10 which requires proposals to incorporate appropriate layout and access arrangements and with Policy CS1 of the Epsom & Ewell Core Strategy (2007) (CS) which promotes high quality sustainable environments. The Council's third refusal reason also refers to the existing donor dwelling not having access to a sufficient level of external amenity space; but any deficiency here would not be as a result of the proposal.

Biodiversity

10. Policy DM4 of the DMP in relation to biodiversity and new development states that "*every opportunity should be taken to secure net benefit to the Borough's biodiversity*". The site at present is largely hard surfaced apart from land to the rear of the timber building which had been cleared of vegetation at the time of my site visit. Whilst the proposal would not result in a loss of biodiversity, it would do little to enhance it. The appellant has submitted a landscape plan with the appeal which show two small border planters for buddleia and a sedum roof to the new dwelling. But the plan confirms that virtually all the appeal site would be hard surfaced. Policy DM16(5) states in relation to backland development, "*Trees, shrubs and wildlife habitats – features important to character, appearance or wildlife must be retained or re-provided*". The proposal would make inadequate provision to satisfy the biodiversity requirements of Policies DM4 and DM16.

Planning balance

11. Paragraph 117 of the National Planning Policy Framework (the Framework) states that planning decisions "*should promote an effective use of land in meeting the need for homes and other uses*" whilst Paragraph 123 encourages developments to "*make optimal use of the potential of each site*". The proposal would result in the benefit of an additional housing unit, make more effective use of the land and provide a more optimal use for the site. The proposal would be a "*piecemeal*" development in that it would be for an isolated backland dwelling, but there is no substantive evidence before me on how the land could form part of a viable alternative larger site. The proposal needs to be considered on its individual planning merits.
12. The provision of an additional dwelling is an important benefit as the Council cannot currently demonstrate a five year housing land supply. In these circumstances, Paragraph 11 of the Framework specifies that there should be a presumption in favour of sustainable development. Whilst the site is in a sustainable location, it is my judgement that the harm arising from the deficiencies of the proposal in relation to overlooking of an adjacent property, provision of insufficient amenity space for a family dwelling and in respect of biodiversity interests would significantly and demonstrably outweigh the benefit of a single dwelling when assessed against the policies of the Framework taken as a whole. The tilted balance therefore does not apply.
13. Reference has been made to an outline permission for the erection of a dormer bungalow to the rear of 29 Cox Lane as a fallback opportunity. As this would appear to have determined only the access to the site and not any details of the dwelling, the fallback would not amount to a more harmful development than the current appeal proposal.

Conclusion

14. For the reasons given and having regard to all other matters raised the appeal is dismissed.

Rory MacLeod

INSPECTOR