
Appeal Decisions

Site visit made on 18 February 2020

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2020

Appeal A Ref: APP/P3610/W/19/3242054

91 Park Avenue East, Stoneleigh KT17 2PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Koper (Oakton Developments Limited) against the decision of Epsom & Ewell Borough Council.
 - The application Ref 19/00157/OUT, dated 28 February 2019, was refused by notice dated 12 June 2019.
 - The development proposed is demolition of existing buildings and the erection 8 No. dwellings (2 x 2 bed, 4 x 3 bed semi-detached and 2 x4 bed detached) and associated development including access road and external works.
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Appeal B Ref: APP/P3610/W/19/3242057

91 Park Avenue East, Stoneleigh KT17 2PA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Koper (Oakton Developments Limited) against the decision of Epsom & Ewell Borough Council.
 - The application Ref 19/00911/OUT, dated 18 July 2019, was refused by notice dated 8 October 2019.
 - The development proposed is the erection 8 No. dwellings (2 x 2 bed, 4 x 3 bed semi-detached, 1 x4 bed detached and 1 x4 bed detached) and associated development including access road and external works following the demolition of existing buildings
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These decisions are issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersede those issued on 25th March 2020.

Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Background and Procedural Matter

3. Both applications were submitted in outline form with only landscaping reserved for future consideration. I have dealt with both appeals on this basis. The main difference between the two appeals concerns the layout and house type of proposed plot No 7 which lies towards the rear of the appeal site.
 4. Both appeals are accompanied by an indicative landscaping drawing and a section plan showing the relationship of the proposed dwellings with a neighbouring property. The Council did not have the opportunity to consider these plans when they made their decision on the planning applications.
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However, as they do not materially alter either of the proposals, I have considered them as part of both appeals, noting that the landscaping drawings are indicative only.

5. In my decision I refer to 'appeal site'. For clarity, as both appeals occupy the same site, this means the appeal site relating to both Appeal A and Appeal B.

Main Issues

6. The main issues in both appeals are the effect of the proposals on:
 - The character and appearance of the area.
 - The living conditions of neighbouring occupiers with particular regard to outlook.

Reasons

Character and appearance

7. Both appeals seek the demolition of the existing bungalow and outbuildings at 91 Park Avenue East (No 91), to be replaced with two semi-detached dwellings. A new access would be created in between the semi's and No 89 providing access to 6 additional dwellings which would occupy part of the rear garden areas associated with No's 89 and 91.
8. 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. It goes on to say that in exceptional cases, modest redevelopment on backland sites may be acceptable subject to there being no adverse impacts on the contribution gardens make to green infrastructure, and the effect on trees, shrubs and habitats important to the character and appearance of the area.
9. Park Avenue East is fronted by an assortment of house types which are set behind small front gardens and/or hardstanding areas. The street retains a generally linear appearance which is 'greened' by the presence of trees and vegetation which occupy many of the plots. Properties on the street are generally made up of rear gardens with a spacious and verdant quality. The modest height of buildings set within a relatively wide and leafy street gives the area a pleasant suburban character.
10. Both proposals relating to Appeals A and B would occupy a large proportion of the existing garden spaces associated with No's 89 and 91, comprising a relatively dense arrangement of new dwellings and hardstanding areas, with associated gardens which would be much less spacious than those associated with nearby properties. Both proposals would represent a significant permanent encroachment into existing gardens which, owing to the spaciousness, verdure and position of them amidst the similarly large garden spaces associated with neighbouring properties, would diminish the contribution the appeal site makes to its garden setting and the wider swathe of green infrastructure within which it sits.
11. Paragraph 123 of the National Planning Policy Framework (the Framework) requires that developments are not built at low density where housing is in short supply. However, paragraph 122 of the Framework makes it clear that

development should maintain an area's prevailing character and setting, including residential gardens, and that would not be the case here. The overtly urban form of the housing proposals and their location behind the street facing building line would be out of kilter with the prevailing linear pattern of development in the area and the more spacious suburban composition of nearby garden spaces. I could see no other comparably dense and prominent housing proposals located amongst rear gardens close to the appeal site. As such, I find that the schemes would fail to respond appropriately to existing local character and identity.

12. I appreciate that views of both schemes from public vantage points would mainly be limited to the replacement dwellings which would face the street, and this element of the proposals are not objectionable in themselves. The remaining houses would be relatively secluded given their position away from the street and behind existing built form, reducing their outward visible impact. Be that as it may, the character of the area is defined by the aforementioned spatial and aesthetic qualities which distinguish the area, and both Appeals A and B would appear out of step with the area's prevailing character and appearance.
13. Whilst I have no reason to dispute the appellant's arboricultural assessment which indicates that the trees which would be removed would not be of the highest quality, and noting that Appeal B in particular would allow a greater number of trees and hedgerows to be retained and planted towards the rear of the site; the space available for planting within both proposals, regardless of what would be proposed at reserved matters stage, would not adequately compensate for the extensive and permanent form of urban encroachment proposed.
14. For the foregoing reasons I find that the development proposed by Appeal A and Appeal B would harm the character and appearance of the area, contrary to Policy DM16 of the DMP which states a presumption against the loss of rear domestic gardens due to the need to maintain local character, amenity space, green infrastructure and biodiversity. Moreover, the proposal would not be sympathetic to local character, contrary to paragraph 127 of the Framework.

Living conditions

15. There is no dispute between the main parties that neither proposal would result in the loss of privacy for neighbouring occupiers, and the main area of contention concerns proposed plot No 7 and its relationship with existing properties which lie beyond the appeal site boundary.
16. In respect of Appeal A, plot No 7 would be positioned particularly close to the rear boundaries of several properties on Rutherwyke Close. I was able to see on my site visit that the foliage close to this boundary occupied a large space towards the rear of the appeal site, forming a seemingly impenetrable buffer to the site boundary. In the absence of any specific details or methodology to support the submitted plans which show that this hedge would be 'thinned', it has not been demonstrated to my satisfaction that the hedge could be retained given its close proximity to the dwelling proposed at plot No 7, nor that any additional tree planting could reasonably be located in between the proposed dwelling and the appeal site boundary due to the limited space between them.

17. With this in mind, and having regard to the overall width and height of the detached dwelling proposed at plot no 7, it would appear dominant and oppressive from the garden of No's 54 and 56 Rutherwyke Close. Whilst I appreciate that the appellant's report suggests that overshadowing of these gardens would be minimal, the scale, mass and position of the proposed dwelling close to the boundary would be a jarring and overpowering intrusion into the outlook from the rear gardens of these properties, diminishing the enjoyment of the gardens spaces for the occupants of these properties.
18. However, the dwelling at plot No 7 proposed within Appeal B would be significantly further away from the boundary, thus allowing the existing hedge to be retained with sufficient space for additional planting. Therefore, whilst I appreciate that there may be times of the year when some of the rear gardens along Rutherwyke Close would be affected by shadows associated with the proposed dwelling, the retention of the existing hedge would reduce the prevalence of overshadowing, whilst also ensuring a substantial visual screen. Overall, this proposal would not adversely affect the living conditions of nearby occupants.
19. Therefore, I find that the proposal which is the subject of Appeal A would adversely affect the living conditions of neighbouring occupiers with regard to outlook, whereas the proposal relating to the Appeal B would ensure that the living conditions of neighbouring occupiers were not unacceptably harmed. Therefore, Appeal A would conflict with Policy DM10 of the DMP which requires that development proposals have regard to the amenities of occupants and neighbours, including in terms of privacy, outlook, sunlight/daylight, and noise and disturbance, whereas Appeal B would be in compliance with this Policy.

Planning Balance

20. Paragraph 11(d) of the Framework states where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date¹, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
21. The appellant's assertion that the Council are unable to demonstrate a five-year housing land supply, and that delivery over the past three years has been substantially below 75%, is not contested by the Council. As such, it is necessary to assess the proposals against the requirements of the presumption in favour of sustainable development set out in paragraph 11 of the Framework.
22. I have identified harm in relation to the character and appearance of the area, as the proposals would result in the substantial loss of existing garden space and would fail to maintain the area's prevailing character and setting, in conflict with development plan Policy DM16 of the DMP. The proposals would represent an inappropriate use of garden land. I give this conflict substantial weight against both appeals. Furthermore, in respect of Appeal A, I have identified conflict with Policy DM10 of the DMP in respect of its impact on the living conditions of nearby occupiers which also attracts significant weight against Appeal A. Notwithstanding the additional harm arising as a result of Appeal A,

¹ including housing, where the LPA cannot demonstrate a five year supply of deliverable housing sites or the Housing Deliver Test indicates that delivery was below 75% over the previous 3 years

neither proposal would accord with the development plan when considered as a whole.

23. The proposals would result in economic and social benefits. According to the evidence before me, the extent of the Council's housing land supply shortfall is unclear. Based on a worst case scenario assumption that the shortfall is substantial, the provision of 8 additional houses would make a modest yet meaningful contribution to addressing the shortfall and would benefit from New Homes Bonus and more Council Tax receipts which would provide a source of revenue funding in delivering new services. These are matters which carry significant weight in favour of the appeals. Furthermore, the proposals would occupy an accessible location and would comprise a mix of accommodation sizes, including family sized homes, which in turn would generate employment opportunities during construction, and through the employment of local services for the upkeep and maintenance of the dwellings when they were occupied, which weighs moderately in favour.
24. In terms of environmental benefits, both appeal proposals would facilitate additional landscaping and tree planting along with biodiversity improvements including bat and bird boxes, but this is partially offset by the loss of trees and vegetation on the appeal sites, so it is a matter to which I apply only limited weight in favour.
25. Taking all of the above into account, I conclude that the harm arising from Appeal A and Appeal B would significantly and demonstrably outweigh the benefits of the proposals when assessed against the policies in the Framework taken as a whole. The proposal accompanying Appeal A would be even more harmful given the additional impact on neighbouring living conditions. There are no relevant material considerations in this case of sufficient weight to indicate that my decision should be taken otherwise than in accordance with the development plan and therefore, the proposals do not benefit from a presumption in favour of sustainable development.
26. The proposals would conflict with the development plan as a whole and there are no other material considerations which outweigh this finding.

Other Matters

27. The appellant has provided me with a copy of an appeal decision and plans relating to another site within the local authority area which was allowed by the Inspector². That proposal also involved the development of rear garden space through the erection of four dwellings. Whilst I appreciate that the appeal was allowed, I do not know the detailed characteristics of the appeal site and note that the Inspector commented that 'some development within the rear garden environment of properties in the locality is a characteristic of the area' which, for the reasons I have outlined, is not comparable with the appeal site's character. In any event, the site relating to this appeal is on a different street which has its own individual visible and spatial qualities which distinguish it. I have assessed the appeals on their own merits and find they would unacceptably diminish the contribution the appeal site makes to the overall character and appearance of its surroundings. Consequently, I do not find the appeal site to be directly comparable with the referenced appeal decision, thus

² Appeal reference - APP/P3610/W/18/3215222

this consideration carries only limited weight, insufficient to outweigh the harm I have identified.

28. I am also aware that the proposals received no objections from the highway authority along with a range of other technical consultees. The proposed dwellings would comply with relevant internal spaces standards. Be that as it may, this does not negate the harm I have identified and the overall conflict with the development plan.

Conclusion

29. Therefore, for the reasons given, I conclude that Appeal A and Appeal B should be dismissed.

Matthew Woodward

INSPECTOR