



Appeal Decision

Site visit made on 7 October 2020

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th October 2020

Appeal Ref: APP/Z5630/W/20/3252509

84 Ewell Road, Surbiton, KT6 6EX

- 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 Stephen Donovan, Perpetuum Ltd against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 19/03177/FUL, dated 18 December 2019, was refused by notice dated 9 March 2020.
 - The development proposed is a two-bedroom dwelling, with a ground and first floor, plus a basement lit with rooflights at ground floor level.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has submitted an additional plan (drawing no. 1841/P/113) entitled 'Proposed Daylighting and Sun Lighting'. The Plan does not alter the nature of the proposal and so I am satisfied that the Council and interested parties would not be prejudiced by my accepting the plan.

Main Issues

3. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the area and the Oakhill Conservation Area;
 - The effect of the proposal on the living conditions of future occupiers with specific reference to outlook, access and servicing arrangements;
 - The effect of the proposal on the living conditions of the existing occupiers of Number 84 (No. 84) with specific reference to outlook and amenity space; and
 - The effect of the proposal on highway safety with specific reference to parking.

Reasons

Character and appearance

4. The appeal site comprises of a three-storey semi-detached Edwardian building, plus basement on the western side of Ewell Road. The property has been converted into flats with commercial use at ground floor level. The appeal site lies within the Oakhill Conservation Area (Conservation Area).

5. The Conservation Area comprises of mid-late nineteenth century linear development of large villas and smaller terraces and a number of early twentieth century public buildings along Ewell Road. Whilst there are a mix of styles, there is characteristic consistency in terms of the layout, form and detail of traditional properties. Traditional residential properties generally front the road set on a broadly consistent building line set behind low brick walls with driveways or gardens to the front and long gardens to the rear. The character of individual houses set in large plots make a significant contribution to the character and appearance of the Conservation Area in contrast to later flatted development such as Mellish Court to the north of the site and other larger scale development.
6. The host property is a three storey, plus basement property set back from the road behind a low stone wall with paving to the front and a garden to the rear, reflecting the traditional pattern of frontage development. The property has stone quoins, sliding sash windows and a range of decorative features representative of its era. The property, therefore, makes a significant contribution to the character and appearance of the Conservation Area.
7. It is proposed to erect a two-bedroom dwelling with a basement at the end of the garden which serves No. 84. The building would be set into the ground with a basement lit with rooflights at ground floor level. Whilst visually subservient to the host property, it would create a freestanding dwelling in a separate plot and would not, therefore, be subservient in form or function.
8. The proposal would be situated to the rear of the host property in a plot which is significantly smaller than those of surrounding properties and which would lack any street frontage in contrast with the traditional pattern of development along Ewell Road. It would occupy a high proportion of the plot with only a small garden and it would be in close proximity to the basement flat of No 84. It would, therefore, appear cramped and excessive in its plot compared to the larger plots of surrounding properties. Overall, in terms of orientation, layout and plot size the proposal would be at odds with the traditional pattern of frontage development of substantial dwellings set in large plots from which the significance of the Conservation Area derives.
9. I acknowledge the presence of some older and recently permitted back-land development in the area. However, from the very limited information provided, more recent residential back-land development appears to have been accommodated on significantly larger plots which are more reflective of those of surrounding properties enabling a more satisfactory relationship with nearby development.
10. Although the proposal would be situated to the rear of No 84, there would be some views from Ewell Road through the access road serving the adjacent property. Views would also be available from the car park serving the health centre and the proposal would be highly visible to occupiers of Mellish Court. The incongruous nature of the development and the visibility of the development in public views would fail to preserve the character and appearance of the Conservation Area. Whilst this harm would be less than substantial the benefits of the proposal in terms of the contribution to housing supply and also economic benefits during the construction phase and additional long-term local spend, would not outweigh the harm which I have identified.
11. For the reasons stated, the proposal would harm the character and appearance of the area and fail to preserve the character and appearance of the Oakhill

Conservation Area. It would, therefore, be contrary to Policies 7.4, 7.6 and 7.8 of the London Plan (2016) and Policies CS8, DM10 and DM12 of the Council's Core Strategy (2012) which collectively seek to ensure that new development respects local character, incorporates principles of good design and conserves the significance of heritage assets. Furthermore, conflict arises with paragraph 193 of the National Planning Policy Framework (the Framework) which requires great weight to be given to the heritage asset's conservation.

Living conditions-future occupiers

12. The proposed dwelling would be a single aspect building with east facing views onto the rear elevation of No 84. The main living space would be situated in the basement and whilst the area would be served by roof lights, there would be no outlook from this space. Furthermore, the first-floor bedroom window would be served by a partially obscure glazed window and the ground floor bedroom would directly face an approximately 1.5m high timber fence. Consequently, future occupiers would have a very poor outlook from the dwelling.
13. Future occupiers would have to walk across the communal outdoor area to access the flat and would be reliant on the existing refuse store/recycling facilities serving No. 84 which are situated some 35m away from the proposed dwelling. The appellant has clarified that a path would be provided across the communal garden; however, the route would still involve negotiating two flights of stairs with potentially heavy refuse bags in order to pass the flank elevation of the host property. This arrangement would, therefore, be very inconvenient for future occupiers.
14. Overall, for the reasons stated, I consider that the proposal would harm the living conditions of future occupiers with specific reference to outlook and access and servicing arrangements. The proposal would, therefore, be contrary to Policy 3.5 of the London Plan and criterion k of Policy DM10 of the Core Strategy which together seek to ensure a high standard of development which has regard to the amenities of occupants. Furthermore, the proposal would be contrary to paragraph 127 of the Framework which requires development to provide a high standard of amenity for existing and future users.

Living conditions-existing occupiers

15. The front elevation of the appeal proposal would face onto the rear elevation of the host property, No 84. The proposal would be situated around 13.6m away from the windows serving the rear basement flat of No 84. The bathroom window in the front elevation of the proposal would be obscured and the bedroom window would be partially obscure glazed. Hence the privacy of existing occupiers would be protected.
16. Nonetheless, existing occupiers of the basement flat currently have an outlook over and above the retaining wall and privacy screens to the garden/community space beyond. Due to the height and proximity of the proposed dwelling, occupiers of the basement flat would have to look out onto the solid façade of the proposed dwelling from both the rear elevation windows and their private amenity space. Consequently, the proposal would reduce the existing outlook of the occupiers of the basement flat from their windows and also the amenity space and have an overbearing effect.

17. The appellant has submitted a drawing showing that the proposal meets the '45° rule' and '25° rule' as set out at Policy Guidance 17 and 18 respectively of the Council's Residential Design Guide. However, these apply to the assessment of the effect of a proposal on the potential loss of light and over-shadowing on neighbouring properties; it does not apply to the assessment of outlook. In any event the 45° and 25° rule are only guides; the site-specific circumstances of each case must also be taken into account.
18. Policy Guidance 13 and 14 of the Council's Residential Design Supplementary Planning Document (SPD) (2013) sets the standards for the provision of private and communal amenity space respectively. The Council's calculations show that the remaining communal amenity space serving the occupiers of the flats of No 84 would be around 80m². This would fall short of the requirement for communal amenity space of 89m² based on standards set out in Policy Guidance 14 of the Council's Residential Design Guide Supplementary Planning Document.
19. The appellant calculates the amenity space at around 92.39m² based on the shaded green area on the proposed ground floor plan. However, this appears to include the staircase and part of the pathway adjacent to the flank wall of No. 84 which I do not consider to be useable amenity space. Notwithstanding the different calculations and although the amount of amenity space may not be significantly less than the requirement; amenity space also needs to be attractive for people to use. The coming and going of people across the communal space to reach the proposal would detract from the peace and quiet which would reasonably be expected of such a space. Furthermore, although the windows of the proposed dwelling would be obscured/partially obscured, there would be a perceived sense of overlooking of the amenity space which would also detract from its attractiveness.
20. For the reasons stated, I conclude that the proposal would have a harmful effect on the living conditions of existing occupiers of No 84 with specific reference to outlook and amenity space. It would, therefore, be contrary to Policy DM10 of the Core Strategy and Policy Guidance 13 and 14 of the SPD. Conflict also arises with paragraph 127 of the Framework.

Highway Safety

21. The appeal site lies within the Oak Hill Controlled Parking Zone where the Council advise that on-street parking for residents is heavily subscribed. I note this section of Ewell Road is very busy with parking restrictions in place during peak times. A single yellow line and bus lane is situated on the road outside the appeal site. No off-street parking is proposed as part of the development; however, the site is situated within a Public Transport Accessibility Level rating area of 3 (good) and in close proximity to a bus-stop. In light of the road conditions and restrictions, I consider that any additional parking on Ewell Road would result in an increase in demand for parking spaces, inconsiderate parking and congestion to the detriment of highway safety.
22. The appellant indicates that he is willing to enter into a legal agreement in order to ensure that the development would be car-free. No such agreement is before me; however, I would have gone back to parties on this matter, had I decided to allow the appeal.
23. In the absence of a legal agreement, I conclude that the proposal would have a harmful effect on highway safety with specific reference to parking. It would,

therefore, be contrary to Policies 6.13 of the London Plan, DM9 and DM10 of the Core Strategy which collectively, amongst other things, seek to ensure that new development does not contribute to congestion or compromise highway safety and restrict eligibility for on-street parking permit for residents of new development located in controlled parking zones.

Other matters

24. Attention is drawn to a number of examples of back land development in the area which the appellant considers supports his case. The health centre and school were built on the extensive site of a former hospital and are entirely different in terms and scale and nature to the proposed development. Mellish Court was granted planning permission a considerable time ago within a different planning policy context.
25. In the cases of number 70 Ewell Road and numbers 142-148 Ewell Road, the dwellings would be situated in significantly larger rear gardens and would retain an appropriate plot size relative to surrounding development. The larger plots would also enable a better relationship with surrounding properties. Furthermore, the case at 70 Ewell Road would have a frontage onto Fire Bell Alley. On the basis of the limited information provided, these cases are not directly comparable to the appeal proposal.
26. Reference is also made to older back land development in the area; however, no details are provided, and planning permission would have been granted some time ago within a different planning policy context. I cannot, therefore, be certain that these cases are directly comparable to the appeal proposal.
27. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites and that as a result paragraph 11d of the Framework is engaged. The proposal would make a contribution to housing provision in the area, albeit limited. The proposal would also bring modest economic benefits in the short-term during the construction phase and in the longer term due to increased local spend in the area.
28. However, I have concluded that the proposal would harm the character and appearance of the area; harm the living conditions of existing and future occupiers; and, in the absence of a legal agreement, result in harm to highway safety. I consider that these adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. Furthermore, the benefits of the proposal would not be sufficient to overcome the significant harm which I have identified or the statutory presumption in favour of the development plan.

Conclusion

30. For the reasons stated and taking all other considerations into account, the appeal is dismissed.

Caroline Mulloy

Inspector