



Appeal Decision

Site visit made on 15 March 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Appeal Ref: APP/P3610/W/20/3261815

42 The Avenue, Worcester Park KT4 7EY

- 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 Adel Hassany of Trevi Investments Limited against the decision of Epsom & Ewell Borough Council.
 - The application Ref 20/00572/FUL, dated 8 April 2020, was refused by notice dated 18 September 2020.
 - The development proposed is demolition of the existing dwelling house and redevelopment to construct a three storey, six-unit apartment building and eight off-street parking spaces, with associated amenity space, cycle and refuse storage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are: -
 - a) The effect of the proposed development on the character and appearance of the area;
 - b) The effect of the proposed development on existing lime trees;
 - c) The effect of the proposed development on the living conditions of the neighbouring occupiers at 40a The Avenue, having particular regard to overlooking and privacy; and
 - d) Whether satisfactory living conditions would be created.

Reasons

Character and appearance

3. There are large developments interspersed within the existing development close by and I saw that both front and rear building lines differ along The Avenue. However, those developments highlighted to me by the appellant are positioned between existing residential development and where the development is close to one another. The appeal site may have a similar plot width to that of other properties in the area and where large properties occupy those sites. However, in contrast to those sites the appeal site has a corner siting. There will therefore be different considerations pertinent to the overall footprint and size of development within such a site.

4. The apartment development would be substantially larger than the development that it would replace. It would be positioned closer to The Avenue and Suffolk Road, as well as the side boundaries of the site. The limited separation to the Suffolk Road side boundary would make the development appear particularly constrained within its plot. As a result, the appearance of the development would be one of an overly large development squeezed onto the site. For this reason, the development would be visually harmful. Given its corner siting and the openness of the site to public views from the adjoining highways, the visual harm arising from the proposed development would be readily apparent.
5. The existing property is not listed and the site does not fall within a conservation area. Furthermore, the proposal would host space to the front and rear of the plot. These matters however would not outweigh the harm to the character and appearance of the area that I have identified or justify the proposed development. Therefore, they hold little weight in favour of the proposal.
6. For these reasons, I conclude that the proposed development would have a harmful effect upon the character and appearance of the area. The proposal would, therefore, conflict with Policy CS5 of the LDF Core Strategy 2007, Policies DM9 and DM10 of the LDF Development Management Policies Document 2015 (the Policies Document) and the National Planning Policy Framework (the Framework). These policies seek, amongst other matters, development to make a positive contribution to the Borough's visual character and appearance.

Lime trees

7. There are two large lime trees at the front of the site, one of which has a Tree Preservation Order (TPO) in place. These trees are visually prominent within The Avenue street scene and make a significant contribution to the verdant character and appearance of the area.
8. The Arboricultural Report that supports the planning application notes that the footprint of the replacement building would be outside the root protection area of these trees. Nonetheless, a large portion of the front garden would be hard surfaced which the Council indicates would be within the root protection area of the trees. The vehicular crossover would also be close to these trees. The Council's Arboricultural Officer advises that lime trees are intolerant of major changes to the rooting environment and covering the site with hardsurfacing would be detrimental to root health.
9. The TPO that is in place affords one of these trees protection, no doubt in recognition of its specimen and amenity value. This makes it all the more important that this lime tree is protected from harm to ensure its longevity is not undermined. Indeed, I consider this to be the case for both lime trees. The premature loss of either of these trees would have a negative and significantly visual effect upon the street scene. The proposed development would be likely to cause harm to the root environment of these trees and their long-term protection would not be secured. This would be an erosion of the statutory protection placed by serving the TPO on one of the trees. As a consequence, the proposed development should be resisted.

10. Whilst the development could be carried out with care during excavation and construction, this does not mitigate the harm to the trees that covering the frontage of the site with hardsurfacing would have. No planning condition would obviate this harm as the hardsurfaced frontage forms part of the proposed development.
11. For these reasons, I conclude that the proposed development would have a harmful effect upon the existing lime trees. The proposal would, therefore, conflict with Policy DM5 of the Policies Document. This policy seeks, amongst other matters, development to protect and enhance landscape features within the Borough and to ensure that new development does not result in a significant loss of trees.

Overlooking and privacy

12. A first-floor living/dining room window and a second-floor kitchen window within the proposed development would face and create outlook toward the rear garden of 40a the Avenue. Although there would be separation between the proposed development and No 40a, these habitable living spaces would have an elevated siting in relation to the rear garden of No 40a. Overlooking and corresponding loss of privacy would take place. Loss of privacy as a result of overlooking would substantially diminish the enjoyment of the occupiers outdoor living space. This would be harmful to the living conditions of the existing occupiers of No 40a. Whilst I saw there is an existing tree within the rear garden of No 40a, it does not have a large canopy, therefore, this limits the screening such a tree could provide.
13. A degree of overlooking is expected in urban areas such as this. Some oblique overlooking of the rear garden would be experienced from the outlook of the immediate neighbour property which has a closer relationship to that of the proposed development. Nonetheless, the proposal would create new and direct outlook toward the rear garden of No 40a from habitable living spaces in which the future occupiers of the development will spend a significant part of their time and this would be harmful to the privacy the occupiers of No 40a should reasonably expect to enjoy.
14. For these reasons, I conclude that the proposed development would have a harmful effect upon the living conditions of the neighbouring occupiers at 40a The Avenue, having particular regard to overlooking and privacy. The proposal would, therefore, conflict with Policy DM10 of the Policies Document. This policy seeks, amongst other matters, development to safeguard residential amenities in regard of overlooking and privacy.

Living Conditions

15. Policy DM12 of the Policies Document states that all new development is required to comply with external and internal space standards. The Technical Housing Standards – Nationally Described Space Standards set out minimum space standards to ensure that development is not cramped internally and that room sizes would ensure convenient and efficient room layouts can be achieved.
16. From the Council's own calculation exercise, it advises that 4 of 6 of the units fall slightly short of the minimum Gross Internal Area (GIA) as set by the Nationally Described Space Standards. However, the appellant contends this

and points to drawing 2020/P/462/002 which annotates overall GIA and individual room areas for each flat. Whilst there is difference between the parties, I have no substantive reason to consider the appellant's calculations to be incorrect. Furthermore, even if the Council is correct, the Council acknowledges that four of the units would only be marginally below the prescribed standards. In respect of GIA, I consider that the proposed development would provide satisfactory living accommodation.

17. Policy DM12 of the Policies Document sets out that there should be private, useable and functional amenity space for all new dwellings. Such space should be easily accessible from living areas, take account of light and shade and be of sufficient size to meet the needs of the likely number of occupiers, including the needs of families with young children.
18. A rear communal garden is proposed for use by the future occupants. This would not represent a private outdoor living space for each new dwelling created at the site, therefore, adequate private outdoor space would not be provided. Furthermore, the two- and three-bedroom units would be family sized units. The lack of private outdoor space provision for each unit, would represent a poor standard of living environment for the future occupiers of the proposed development.
19. I am advised that options for private amenity space that could be provided for the units has been considered by the appellant and discussed with the Council. I have been provided with a side elevation the appears to show balconies at first floor level to the front and rear of the development. However, this drawing does not clearly illustrate how all the new dwellings might be provided with private outdoor living space. Therefore, this plan does not overcome my above concerns and holds little weight in the proposal's favour.
20. For these reasons, I conclude that the proposed development would not provide satisfactory living conditions for the occupiers of the development as the proposal would not provide private outdoor living space for each new dwelling created at the site. The proposal would, therefore, conflict with Policy DM12 of the Policies Document. As I have found that the GIA for each unit to be acceptable, the proposal would not materially conflict with Policy DM12 and the Technical Housing Standards – Nationally Described Space Standards 2015 with regard to internal space standards.

Other Matters

21. The Council cannot demonstrate a 5-year supply of land for the delivery of housing. I have not been given an indication of the level of current shortfall. The Government's objective is to significantly boost the supply of housing and an uplift in five dwellings at the site would contribute to the Borough's housing supply. The proposal would also make more efficient use of the site. Given the small scale of the proposal and the supply of deliverable sites in the Borough, the provision of the additional housing attracts modest weight.
22. Even if the housing supply shortfall were significant, this needs to be set against the harm arising from the proposed development. The adverse impacts of the development to the character and appearance of the area, trees and the living conditions of existing and future occupiers attract significant weight and outweigh the benefits associated with the proposed development.

23. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.

Conclusion

24. For those reasons outlined above, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR