



Appeal Decision

Site visit made on 9 April 2021

by Martin Andrews MA(Planning) Bsc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Appeal Ref: APP/M3645/W/20/3253128

38 Court Farm Road, Warlingham, Surrey CR6 9BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr J Owens, Silverleaf Group against Tandridge District Council.
 - The application, Ref. 2019/1988, is dated 6 November 2019.
 - The development proposed is the demolition of the existing dwelling and the erection of 3 dwellings and a block of 6 apartments.
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Application for Costs

1. An application for costs was made by Mr J Owens, Silverleaf Group, against Tandridge District Council. This is the subject of a separate Decision.

Decision

2. The appeal is dismissed and outline planning permission is refused for the demolition of the existing dwelling and the erection of 3 dwellings and a block of 6 apartments.

Procedural Matters

3. The application was submitted in outline form with approval sought for access, appearance, layout and scale. Landscaping is reserved for subsequent approval.
4. The application plans are not identified as being indicative or illustrative. I have therefore determined the appeal on the basis that the drawings represent the intended development.

Main Issues

5. Although the application was not determined, the Council has submitted a Statement of Case for this appeal. This indicates that it would have been the Council's intention to refuse outline permission and that this would have been on the basis of three main issues. These are (i) the effect of the development on the character and appearance of the area; (ii) the living conditions for nearby residents and for future occupiers of the proposed dwellings, and (iii) the effect on the ecological value and interest of the appeal site.
6. In addition, a substantial number of neighbours have made objections to the appeal scheme which I shall have regard to, whilst a previous appeal decision (Ref. APP/M3545/W/16/3162899) is a material consideration in this appeal.

Reasons

Background

7. The appeal site is garden land and a woodland area to the rear of 38 Court Farm Road, a detached house at the end of a lengthy cul-de-sac. The appeal scheme would involve the demolition of the host dwelling and the construction of an access road to serve three new houses and a building with 6 flats, a total of 9 dwellings and a net increase of 8 given the proposed demolition of No. 38.

Character and Appearance

8. The Council has explained that no 'in principle' objection is raised to the redevelopment of the site for residential use following the previous Inspector's acceptance that the development, including of the wooded area at the eastern end of the site, would be acceptable: *'As well as being seen as a continuation of the line of houses in Court Farm Road and between the houses off Hillbury Road and Oakley Road, the development would not be out of keeping with the existing arrangement of houses within a verdant setting to have a discernible effect on the character and appearance of the area'*. This view took into account that the then scheme would result in the loss a substantial number of mature trees with larger canopies and protected by a Tree Preservation Order.
9. Having regard to that acceptance of the principle of development and the details of the earlier proposal, the Inspector concluded that the harm to the character and appearance of the area would be limited to the cramped and incongruous nature of the then Plot 1 close to the entrance to the site from Court Farm Road. However, the development in this appeal is significantly different and therefore requires re-appraisal in terms of any impact on character and appearance as well as the other issues, whilst at the same time taking the findings of the earlier appeal decision into account.
10. I acknowledge that the scheme has had to respond to the constraints of the fairly modest width of No. 38's garden, the land levels both within the site and in relation to No. 49, and the need to have regard to the living conditions for the occupiers of that property. However, with that said, there are some consequences of concern for the form and scale of development as now proposed. These include the effect on the character and appearance of the area as assessed with reference to the Council's policies and Government policy in the National Planning Policy Framework 2019 ('the Framework').
11. The Plot 1 dwelling would be now set further into the site in a position where the dwelling would be directly to the rear of the site of the demolished No. 38 and more generally at the back of the existing houses of Nos. 36 and 49 to either side of the access road. This would reduce the cramped nature of Plot 1, albeit not entirely given the triangular shape of the plot and the fact that a front corner of the building would actually touch the access road.
12. However, of more importance is the skewed form of Units 1, 2 and 3 to prevent overlooking of No. 49 and / or maximise the views from the dwellings. This orientation would mean that the approach into the development would largely be one of extensive areas of blank wall, with the impact exacerbated by the design also needing to accommodate the rising land level through the provision of a continuous frontage retaining wall and roof pitches at a sufficiently steep angle to provide room for the second floor rooms. I am not persuaded by the

appellant's argument that in entering the site from Court Farm Road there would be sufficient openings to create 'animated frontages', although I acknowledge that in the opposite direction this problem would not occur.

13. Measures to mitigate noise, disturbance and overlooking, including an acoustic and safety fence and engineering works for the retaining wall, would represent a form of 'hard landscaping' which, as observed by the previous Inspector, would impact the immediate character of the area. These drawbacks applied to the previous proposal and continue to apply in the current scheme.
14. The proposed apartment block at the far end of the site would have a more extensive footprint than Plots 5 and 6 of the previous scheme and with its three storey height be an unduly large building with an excessive scale, bulk and dominance for a backland site in a low density neighbourhood and surrounded on three sides by the rear gardens of Oakley Road and Hillbury Road. The footprint would be skewed in the style of the other proposed buildings, which would increase its bulk and bring the building to almost touch the eastern end boundary of the appeal site. The perception of the building as being unduly large would be particularly great in public views of the south elevation.
15. The gabled design would to some extent alleviate the mass, but given the size constraints of the site and the sensitivity of its setting I remain of the view that the built form would be too large. And as this block would accommodate as many as six dwellings in addition to the three family houses, the intensity of use would be significant, including the coming and goings, headlights from the cars at night, the light from the habitable rooms, parking and domestic paraphernalia.
16. With all things considered, the development as a whole would, despite the use of timber cladding, have an urban character and appearance essentially unsuited to its location, with the latter correctly described by the Council as providing a '*transition between suburb and a more natural landscape*'. On issue (i), I therefore conclude that the appeal proposal would unacceptably harm the character and appearance of the area. This would be in conflict with the Council's policies, including Policies CSP18 & CSP21 of the Tandridge Core Strategy 2008 and Policies DP7 & DP8 of the Tandridge Local Plan: Part 2 – Detailed Policies 2014 ('the Local Plan'). There would also be conflict with Section 12 of the Framework: 'Achieving Well-Designed Places'. In particular, paragraph 127c) explains that whilst development with increased densities should not be prevented or discouraged, '*it should be sympathetic to local character including the surrounding built environment and landscape setting*'.

Living Conditions

17. On this issue, I consider that the two main areas of concern are firstly the effect on the living conditions for the existing occupiers of No. 49 and secondly the adequacy of the living conditions for future occupiers of the apartment block. As regards the former, the Inspector in the previous appeal found that the development of five detached houses would have a harmful effect as regards outlook, privacy and noise & disturbance from the access road, which would be substantially higher than No. 49's garden.
18. The appeal scheme has sought to address the matters raised. Compared to the previous application the altered positions of the houses and the greater space

between them would in my view be likely to reduce the harmful effect on the outlook from the garden of No. 49, albeit still at an unfavourable extent compared to the existing situation. In addition, the combination of greater distance and an altered dwelling orientation should prevent any overlooking from windows of the three houses, whilst the access road would be slightly further away from the shared boundary. This would still leave potential overlooking of No. 49 from the gardens of Plots 1 and 2 but in my view on its own not sufficiently harmful to refuse permission.

19. However, despite these improvements I share the Council's view that the proposed development would adversely affect the occupiers of No. 49 through the use of the access road to the houses and the flats. Vehicles using the road, which would stretch the full length of No. 49's flank boundary and beyond, would cause disturbance. The access would also result in the potential for pedestrians to overlook No. 49, whilst tree and hedge planting to prevent this could overshadow its garden. In either case it would be likely to affect the residents' enjoyment of their garden and the effect would be greater than in the previous scheme because of the increase in new dwellings from 5 to 9.
20. As regards the Noise Response Statement, I note its conclusion that the sound levels in the most exposed gardens would not exceed the BS:8233 criteria. From this it is concluded that no further mitigation would be required beyond the proposed installation of a 1.8m high acoustic fence necessitated by the use of the proposed access drive. Nevertheless, I consider that noise even at below a level considered to be technically acceptable, must be addressed as part and parcel of the overall impact of the intrusion of an access road into a former area of garden.
21. In this regard the Response Statement cannot confirm that residents sitting out in the area of garden close to the boundary would be unaware of engine noise; the movement of cars or delivery vans including slowing down when meeting an oncoming vehicle; associated noise of car or van radios and door slamming when parking and people talking. And whilst access drives in proximity to existing gardens are a common feature of backland development and should not necessarily be precluded, the difference in this case is the elevated position of the road relative to No. 49 and the fact that access to two of the proposed dwellings would be directly opposite the boundary fence.
22. Whilst most of the harmful impacts would bear on No. 49, it should be mentioned that No. 47 has a particularly small front garden at the lower level. And the construction of the access road in such close proximity would result in an increase in noise and disturbance from vehicles and overlooking from pedestrians. In addition, the outlook from the front of No. 47 would be affected by the crash barrier that would almost certainly be required because of the large fall in land level at the point where the proposed access drive would meet Court Farm Road.
23. Turning to the block of six flats, the building would effectively be a cleared area of more extensive woodland covered by a Tree Preservation Order ('TPO'). Although within the site the existing trees would be removed for the apartment block, there are also existing mature trees on the neighbouring residential plots. These TPO trees would be retained in the adjoining gardens of houses in the areas on three sides of this part of the larger appeal site and close to the

boundary. Their density and extent is clearly visible in a number of aerial photographs submitted by the parties to the appeal.

24. The site of the apartment block being just part of a much larger well treed area is the reason why the previous Inspector considered that there would not be significant impact on the character and appearance of the wooded hillside. However, the corollary of this is that the apartment building's requirements for a good standard of outlook, daylight and sunlight for the apartments and the use of the communal amenity space would be significantly constrained by the remaining trees outside the site's boundaries.
25. In these circumstances I consider that the Council is correct to assert that there is likely to be post-development pressure by residents of the flats and houses for trees to be pruned or removed to reduce shade and lessen the sense of apprehension as regards damage or injury due to the proximity of large trees. As observed by the Council's tree officer, this is particularly relevant in those cases where the combination of sloping land and tree height would mean that the tree crowns would be of a similar height to the ridges of the proposed buildings. Furthermore, such removal would be likely to be resisted by both the Council and the landowners because of the effect on visual amenity of the wider area and individual gardens respectively.
26. Whilst I have carefully considered the grounds of appeal in respect of the scheme's effect on the existing living conditions for No. 49 and future living conditions for occupiers of the development's dwellings, on this issue I conclude that the development would not safeguard the living conditions of existing residents nor secure living conditions of an adequate standard for some of the future occupiers. This would be contrary to the aforementioned Core Strategy Policy CSP18, Local Plan Policy DP7, and to paragraph 127f) of the Framework.

Ecology

27. As the appeal site is a large garden together with a previously undisturbed area of trees, in both cases with boundaries to other extensive gardens, it is axiomatic that the effect of the development on the ecology of the locality will need to be addressed. Core Strategy Policy CSP17, Local Plan Policy DP19 and paragraph 170 of the Framework all seek to ensure that, where relevant, development protects and enhances biodiversity. Whilst landscaping is a reserved matter in this appeal, the required approach is to ensure that the ecological interests are dealt with at the same time as the appraisal of the development proposal.
28. In support of the application, an Ecological Mitigation and Enhancement Strategy has been submitted along with the application of the DEFRA Biodiversity Metric to quantify whether the development would secure measurable net gains for biodiversity. The information has been assessed by the Surrey Wildlife Trust ('the SWT') who advise that the metric results indicate that there would be a net loss of almost 40% in biodiversity units as a result of the appeal scheme and that the suggested landscaping of the open areas of the site would in the long term fail to provide the appropriate compensatory ecological benefit in terms of both quality and quantity.
29. For the appellant it is contended the SWT'S calculations are technically flawed and that it is unfair to seek net gains in biodiversity in advance of national

policy. However, whilst I acknowledge the appellant's opinion on these points, bearing in mind that the undisturbed woodland area to be used for the construction of the apartment block is part of a large expanse of trees and within a network of green infrastructure, its replacement with a residential environment would be unlikely to result in the provision of varied habitats of viable size and connectivity. Undisturbed woodland means undisturbed habitats, whilst gardens and amenity areas are meant to be enjoyed by residents, including by sitting outside in good weather. This is the thrust of the SWT's and the Council's concern and I remain unconvinced on the available evidence that this concern has as yet been adequately addressed.

30. On this issue I therefore conclude that the information and evaluation so far provided in respect of the impact of the development on the ecological interest of the site has yet to establish that the appeal scheme would not be in harmful conflict with Core Strategy Policy CSP17, Local Plan Policy DP19, and paragraphs 170a) & d) of the Framework.

Other Matter

31. With reference to the appellant's assertion that the Council is unable to demonstrate a 5 year housing supply, the Council has not responded specifically in its evidence for this appeal. Be that as it may, I have had regard to Government policy in the Framework. An increase of eight dwellings in the District, although a numerically modest contribution, is clearly an advantage of the appeal scheme. However, with reference to paragraph 11 d) ii of the Framework, I find that the adverse effects of allowing the appeal and thereby granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole.

Conclusion

32. For the reasons explained and having had regard to all other matters raised, the appeal is dismissed.

Martin Andrews

INSPECTOR