
Appeal Decision

Site visit made on 29 June 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2021

Appeal Ref: APP/C3620/W/20/3265639

Fountain House, Cleeve Road, Leatherhead KT22 7LX

- 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 Westmede Properties Ltd against the decision of Mole Valley District Council.
 - The application Ref MO/2020/0971/PLA, dated 8 June 2020, was refused by notice dated 1 September 2020.
 - The development proposed is the erection of 3 new family dwellings with off-street car parking, private rear gardens and associated landscaping, bin and bicycle storage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - The character and appearance of the area;
 - The living conditions of residents at 17 Tudor Walk and Fountain House having regard to outlook and privacy;
 - Whether the proposal creates satisfactory living conditions for future occupants having regard to garden provision, and;
 - If harm arises, whether this is outweighed by other material considerations.

Reasons

Character and appearance

3. The appeal site lies in a transitional area which contains residential and business development at the Randalls Business Park. The established housing nearby in Tudor Walk and Falcon Wood is generally of a conventional suburban character. More recent residential development includes The Farthings, although this is further away from the appeal site, and the reuse of former commercial buildings. The latter includes Fountain House itself which has established approval for the conversion from an office to 31 flats¹. Overall, the area has a mixed character with some variety in built form evident. I observed

¹ Planning references MO/17/1768, MO/18/1052 and MO/19/0831

- that the softening presence of trees and other landscaping makes an important positive contribution towards the character and appearance of the area.
4. The appeal site forms part of the grounds to Fountain House. At the time of my visit the area was cordoned off with hoarding and was being used as a builder's compound. Nevertheless, I could discern that it mostly comprised hard surfaced car parking spaces and there was an area to the front with some vegetation. In addition, there was space along the side boundary that the evidence² provided shows contained tall leylandii trees until their fairly recent removal. The information before me indicates that replacement tree planting along this boundary was secured as part of the landscaping details associated with the redevelopment of Fountain House. Representations received state that these were planted in spring 2021, which is consistent with my observations of the tree planting in this area. Overall, the appeal site has a generally low key presence but retains qualities of spaciousness and greenery that enhance the wider area.
 5. The proposal would introduce a row of three terraced houses with small rear gardens, that would face towards Cleeve Road. The block plan provided illustrates that the built form would extend across the width of the site leaving little space either side to the boundary. The area to the front of the houses would accommodate three parking spaces, a bin store, bicycle parking and access path. Hence, it would largely comprise of hard surfacing or buildings. The amount of built form relative to the plots would result in very limited space for effective landscaping in the most prominent parts of the site. This is illustrated in both the Computer Generated Images provided, as well as the block plan³ whereby only a limited strip of planting adjacent to Unit 1's parking space is shown in the frontage.
 6. Taken in combination with the height of the houses and the remaining car park at Fountain House, the overriding impression of the development would be stark, as it would be dominated by the presence of frontage car parking and built form. This would harmfully contrast with the generally more green and spacious character elsewhere in the vicinity. The positioning of the ancillary bin storage enclosure and bicycle storage in such a prominent location directly in front of the principal elevations of Units 1 and 2 is an indication that the scale of development cannot be comfortably accommodated within the site. As such, it would appear cramped and adversely at odds with its surroundings. Given that this would affect the most public parts of the development visible from Cleeve Road, the degree of harm would be exacerbated.
 7. Policy ENV24 of the Mole Valley Local Plan, October 2000 (LP) is of particular relevance to new housing development. It stipulates that development will not be permitted where it would result in a cramped appearance having regard to the general space around buildings in the locality. Furthermore, Paragraph 127 b) of the National Planning Policy Framework (the Framework) states that planning decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping. Therefore, notwithstanding that the building type and materials in this instance would draw reasonable cues from the surrounding context, given my concerns regarding layout and effective landscaping, this would not be sufficient to result in a well-designed place.

² Arboricultural Survey prepared by Ecological Services Ltd, June 2019 – reference TG1

³ Drawing number FH-S-20-0G-02-01 Rev P5

8. My attention is drawn to residential development in the vicinity that contains on plot parking and hardstanding. However, I did not observe the established housing in Tudor Walk and Falcon Wood as having a similar concentration of parking and ancillary structures to the front of the principal elevations. Furthermore, areas of parking and hardstanding were generally relieved by more generous provision of landscaping which is evident in the photographs provided by the appellant⁴.
9. Reference is made to an example of a terraced dwelling recently permitted at The Farthings. However, I am not assured that the limited floorplan information provided fully shows the arrangements for car parking and landscaping approved in that instance, and the example is taken from a larger residential development than the appeal scheme. These factors prevent a direct comparison with the scheme before me. Hence, it is of limited weight. Similarly, I have had regard to the comparative study⁵ of plot widths, depths and height of housing in the vicinity. This illustrates some instances of existing housing where various dimensions coincide with those proposed. Even so, the analysis is generic in nature and therefore, provides limited insight into the specific merits of the proposal. Therefore, these factors would not lead me to a different view.
10. The appellant asserts that there would be some soft landscaping to the front forecourt area including a new tree to Unit 3 and box planters⁶. Whilst I have taken account of the narrow strip shown on the block plan, I am not assured that sufficient space would be available to accommodate a tree or box planters given that the space is required for car parking, pedestrian access, bin storage and bicycle storage. Similarly, I am doubtful that the suggested mature tree planting along the border with 17 Tudor Walk⁷ could be accommodated within the appeal site given the presence of the building and limited garden area for Unit 3. Whilst there may be some room for planting within the remaining car park to Fountain House (edged in blue on the site plan), it is likely this would be to the rear of the proposed development. Therefore, it would not address the harmful impression resulting from the most prominent parts of the proposal. On that basis, I am not persuaded that planning conditions to require further planting would make the development acceptable.
11. Accordingly, I find that the proposal would have a harmful impact on the character and appearance of the area contrary to policy CS14 of the Mole Valley Core Strategy, October 2009 (CS) and policies ENV22, ENV23 and ENV24 of the LP. In combination, and amongst other matters, these policies require development to respect and enhance the character of the area, with a scale, bulk and landscaping appropriate to the surrounding environment whilst avoiding a cramped appearance.

Living conditions

12. Policy ENV22 of the LP, amongst other matters, requires development not to significantly harm the amenities of the occupiers of neighbouring properties by reason of an overpowering effect. The side elevation of proposed Unit 3 would be close to the boundary with 17 Tudor Walk such that it would introduce

⁴ Photographs of Tudor Walk, Cleeve Road and Falcon Wood, pages 3-4, Appellant's Planning Appeal Statement

⁵ New Build Design, MCL Architects, June 2021

⁶ Paragraph 5.34 Appellant's Planning Appeal Statement

⁷ Paragraph 5.36 Appellant's Planning Appeal Statement

significant built form along approximately half the length of the rear garden boundary. Moreover, the Context Elevation provided in the Design and Access Statement⁸ shows that the land levels at the appeal site are elevated relative to No.17, which is consistent with my observations.

13. The combination of the relative land levels, massing and height of the structure in such proximity would have a notable enclosing effect upon the outlook from the ground floor windows in the rear elevation of No.17. Furthermore, its presence would be oppressive to residents seeking to enjoy their rear garden. The representations received confirm that the rear garden space is used by the occupants as the principal garden space, which is consistent with its more private nature. When I visited No.17, I noted the presence of garden furniture for sitting out. As such, the occupants are likely to seek to spend extended time in the space.
14. The appellant points out that the outlook from the house and garden would not be entirely obscured. Nevertheless, this is not necessarily a pre-requisite for it to amount to significant harm. The proximity of Unit 3 to the boundary would prevent meaningful planting that would soften the impact of the building, and planting along the boundary to the south east outside of the appeal site would be unlikely to mitigate the impact upon the outlook from the rear of No.17 or its rear garden.
15. Taking these factors together, the proposal would have an unacceptable overpowering effect upon the quality of the living conditions of the occupants of No.17. For similar reasons, the proposal would fail to achieve a high standard of amenity for existing users stipulated in paragraph 127 f) of the Framework.
16. The side elevation facing towards the rear garden of No.17 would contain a modest first floor bathroom window. In these circumstances, a condition requiring restricted opening and obscure glazing would be sufficient to prevent harm arising from overlooking to the garden. Moreover, the combination of the separation distance, configuration and orientation of windows would avoid significant harm to the privacy levels of the occupants of No.17.
17. Some flats in Fountain House would face towards the northern side elevation of Unit 1. However, they would be approximately 13.5m away which would leave a reasonable space. On that basis, other than the harm arising from the proposal already found in relation to the character and appearance of the area, the occupants of Fountain House would not suffer additional significant harm to their outlook.
18. I also accept that considering the proposed configuration and distances involved, the proposal would be unlikely to cause significant harm to the privacy of other nearby residents, nor undermine reasonable levels of daylight and sunlight enjoyed by those living close by. Nevertheless, this would not address nor outweigh the harm I have identified to the outlook to the occupants of No.17.
19. It is put to me that the proposal would benefit the residents of No.17 as it would result in less activity than the present car park, as well as act as a buffer to views of traffic from Cleeve Road and its associated noise. Nevertheless, there is no evidence to show that the present car park or traffic on Cleeve Road

⁸ Page 15, Design and Access Statement prepared by MCL Architecture

have been problematic to the occupants of No.17. Contrary to the appellant's assertion, the representation received from the present occupants refers to the back of the house comprising a haven of peace and quiet prior to the removal of the leylandii trees, with the lock-up garages and parking yard and fence providing a good sound buffer to Cleeve Road. Accordingly, this matter does not attract weight in favour of the proposal.

20. I have taken account of the arrangement of existing properties highlighted in Tudor Walk⁹ but none of these examples replicate the proposed arrangement between Unit 3 and No.17. Therefore, they are of limited relevance and attract a commensurate amount of weight.
21. Accordingly, I find that the proposal would result in unacceptable harm to the living conditions of the residents at No.17 as it would have an overpowering effect on their outlook. Consequently, the proposal would be contrary to the general development control criteria set out in policy ENV22 of the LP.

Garden provision

22. Each of the proposed three-bed, 5 person dwellings would have a small enclosed rear garden. The plans show that this would be on two levels with a patio area adjacent to each living space and elevated area where planting or grass could be accommodated. The space would allow for sitting out with a reasonable degree of privacy, the airing of washing and some limited capacity for gardening or play activity. However, their limited depth and overall size would generally inhibit more boisterous children's play or the planting of larger trees or shrubs.
23. Policy ENV22 of the LP sets out general criteria for development and includes a requirement that it should provide a satisfactory environment for occupiers of new development. The supporting text does not offer any guidance in relation to the provision of outdoor space and neither is there an adopted minimum standard in the LP specifying what would be satisfactory. On that basis, whilst the proposed outdoor space provision would not necessarily suit the needs of all families, they would cater satisfactorily for a reasonable proportion of them.
24. My attention is drawn to the proximity of the gardens proposed to the adjacent car park for Fountain House with 4 spaces directly adjacent to the rear boundary of the appeal site. However, subject to a suitable boundary fence being erected, the likely amount of activity and associated traffic arising from the private residential use would be unlikely to result in unreasonable disturbance to future occupiers of the gardens.
25. Reference is made to the Covid-19 pandemic which for many has highlighted the value of garden provision during periods of lockdown. I accept it is likely the pandemic will influence longer term behavioural changes. However, evidence is still emerging, which makes it difficult to quantify and justify specific spatial implications for an individual development. Accordingly, such complex matters are more appropriately addressed and balanced through policies that have been examined and evidenced as part of the development plan. In relation to individual proposals, this factor attracts limited weight. In any event, in this case each dwelling would provide some outside space.

⁹ Paragraphs 5.59 & 5.60, Appellant's Planning Appeal Statement

26. Accordingly, I find that the proposal would create satisfactory living conditions for future occupants having regard to garden provision. Consequently, I find no conflict with policy ENV22 of the LP in this regard.

Planning balance and conclusion

27. The Council is only able to demonstrate 2.74 years housing land supply¹⁰, which represents a sizeable shortfall. In these circumstances, footnote 7 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. There is nothing otherwise before me to show that the Framework policies in footnote 6 provide a clear reason for refusing the proposal. Consequently, the presumption in favour of sustainable development in the Framework states that 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.
28. The proposal would provide three, three-bedroom houses. This would assist in boosting the supply and mix of housing in an area where there is unmet need. In addition, it would make more efficient use of previously developed land and allow good access to a range of services and facilities in Leatherhead, meaning that occupants would have a genuine choice as to means of travel other than the car. Furthermore, there would be economic benefits associated with the construction, the activity of future occupants and the development would generate some revenue for the Council. Notwithstanding that the modest scale of the development would curtail the extent of these benefits, in view of the extent of the shortfall in housing provision, they attract considerable weight.
29. Balanced against this is the harm to the character and appearance of the area and the living conditions of existing residents. The Framework stipulates that good design is a key aspect of sustainable development¹¹ and that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Furthermore, paragraph 130 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Therefore, the conflict with design policies in the CS and LP are consistent with the Framework in this regard and attract significant weight.
30. Similarly, the proposal would fall short of the high standard of amenity for existing users required by the Framework. It follows that the conflict with policy ENV22 of the LP in this regard should also carry significant weight. Hence, significant weight is given to the harm arising from the conflict with the policies of the development plan taken as a whole.
31. Consequently, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. There are

¹⁰ Council's Statement dated 3.6.21

¹¹ Paragraph 124 NPPF

no other considerations, including the provisions of the Framework, which outweigh this finding.

32. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector