



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/21/3267782

Edenside House, Edenside Road, Bookham, Leatherhead KT23 3JA

- 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 Michael Kelly of Moorhurst Interiors against the decision of Mole Valley District Council.
 - The application Ref MO/2020/0977/PLAMAJ, dated 8 June 2020, was refused by notice dated 15 January 2021.
 - The development proposed is the demolition of existing building and erection of 20 No. new homes over 3 storeys, to include a mix of 1 and 2 bedroom shared ownership and open market apartments with on site parking and private and communal amenity space. Separate cycle and bin storage on site.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have taken the description of development from that given on the appeal form and decision notice rather than the planning application form, as it is more succinct.
3. A Proposed Site Plan, reference 201 Rev P1¹ has been submitted with the appeal which shows a re-sited cycle/bin store and additional tree and hedge planting along a section of the northern boundary. As these changes are of a minor character, I do not consider that they would significantly change the nature of the development. On that basis, I am satisfied that no parties would be prejudiced by my determining the appeal having reference to this plan.

Main Issues

4. The main issues are the effect of the proposal on:
 - The character and appearance of the area.
 - The living conditions of the residents at 39A Edenside Road having regard to privacy and whether the proposal creates satisfactory living conditions for future occupants.
 - If harm arises, whether this is outweighed by other material considerations.

¹ Appendix 7, Appellant's Appeal Statement

Reasons

Character and appearance

5. The appeal site lies within an established residential area comprising a mix of mostly 2 storey conventional houses and apartment blocks. The form and types of buildings appear relatively modern and of themselves, provide limited visual interest. Nevertheless, the arrangement of buildings allows for the presence of a notable quantity of grassed verges and mature tree coverage. These make an important contribution to the resulting spacious and verdant character and appearance of the area. This is reinforced by the Built Up Areas Character Appraisal, Bookham and Fetcham, Supplementary Planning Document, February 2010², which describes the area as possessing a spacious leafy character and identifies plentiful tree cover as a key characteristic.
6. There are existing buildings on the site, which although vacant, formerly provided retirement accommodation. Whilst originally probably a two storey house, there appear to have been many incremental additions and alterations including long single storey wings. The resultant building has little architectural merit but does generally retain a sense of space around the built form. In addition, to the west there is significant tree cover providing a canopy adjacent to Greathurst End which adds to the verdant qualities of the area and the outlook of the houses that face towards it. Furthermore, although somewhat poorly maintained, the established trees along the eastern boundary mean that the built form is well screened from Edenside Road. These aspects generally make a positive contribution towards the overall leafy character of the area.
7. The proposal would remove the existing built form and introduce a concentrated two storey residential block with accommodation in the roof and associated parking. By comparison to the existing building this would result in a more rational arrangement of built form. Nevertheless, there would be a noticeable increase in its volume and bulk and consequently, a reduction in spaciousness. In particular, as illustrated in the street scene³ provided, the eastern end of the building comprising two storey accommodation with a gable into the roof space would add considerably to the proportion of built form closer to Edenside Road. This would significantly encroach into space in the south-eastern quarter of the site.
8. In addition, the proximity of the building to the eastern boundary would leave only limited space for planting to provide screening. As a result, it would have a prominent presence in the street scene. The combination of the reduction in spaciousness and tree cover together with the increased prominence of the built form would adversely dilute key characteristics of the surrounding area.
9. Furthermore, the western portion of the site would accommodate hardstanding and car parking. This would necessitate the removal of the majority of established trees along the western boundary, most of which are visible from Greathurst End. The reduction in tree cover, presence of hardstanding and parked vehicles would dramatically and harmfully change the impression of the site when seen from Greathurst End.

² Paragraph 6.4.2 and page 9

³ Proposed East Street Scene, Drawing number 149 rev P1, Appendix 9, Appellant's Appeal Statement

10. The remaining space within the site not otherwise taken up by built form or hardstanding would be limited, which in turn would have consequences for the degree of planting and screening that could be successfully accommodated to soften the appearance of the development. As such, it would not attain tree cover equivalent to that presently at the site. Taking these factors together, relative to the surrounding context, the development would appear stark and cramped which would undermine the spacious verdant qualities of the area. On that basis, it would not be sympathetic to local character, including the surrounding built environment and landscape setting, so would fail to accord with paragraph 127c) of the National Planning Policy Framework (the Framework).
11. My attention is drawn to apartments at Douglas House nearby which was approved by the Council⁴. The appellant considers that the proposal is similar to that approved. Given the proximity and broadly similar nature of the proposals, I accept it has some relevance. Furthermore, it forms part of the context. Nevertheless, based on my observations and the limited details provided⁵, the development at Douglas House appears to be a larger site than the one before me, incorporating more external garden and courtyard space. The limited information before me does not indicate what the existing buildings at Douglas House replaced. On that basis, I am not assured that the volume and bulk of buildings increased, nor that existing trees were removed to the same extent as the appeal proposal. The combination of these differences and absence of information means that it is of limited weight in my decision. In any event, I have determined the proposal on its own merits.
12. I acknowledge the proposal would make more efficient use of previously developed land, which is generally encouraged by the Framework. However, this support is not unqualified, and paragraph 122 sets out other factors that should be taken into account, including the desirability of maintaining an area's prevailing character and setting and the importance of securing well-designed and attractive places. Although the appellant states that it would not be viable to reduce the number of units, no substantive evidence has been provided to demonstrate this, nor that the proposal constitutes the only viable configuration.
13. The trees at the site are not covered by a Tree Preservation Order, and in some instances do not appear to have been regularly maintained. Whilst the appellant acknowledges that the loss of landscaping is unfortunate, he points out that they could be reduced or removed without recourse to the Council. Be that as it may, my observations were that the degree of tree coverage generally makes a positive contribution to the overall character of the area. Moreover, the scale of the proposed development would inhibit equivalent replacement tree planting. As such, even though individual specimens are not protected, the overall dilution that would result to cumulative tree coverage would cause harm.
14. This is reinforced by the supporting text to policy BKEN1 of the Bookham Neighbourhood Development Plan 2015-2026, Made May 2017 (NP) which states that only a few trees are the subject of tree preservation orders, yet many make an important contribution to the character and attractiveness of the village.

⁴ Reference MO/2012/1259

⁵ Appendix 8, Appellant's Appeal Statement

15. 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), policies ENV22, ENV23, ENV24 and ENV25 of the Mole Valley Local Plan, October 2000 (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. In particular, policy ENV24 seeks to prevent development that would have a cramped appearance having regard to the general space around buildings in the locality.
16. Although not expressly cited on the decision notice, for similar reasons the proposal would also conflict with policies BKEN1 and BKEN2 of the NP. These policies, amongst other things encourage development proposals to ensure the retention of trees and hedgerows and respect the character and appearance of the surrounding area.

Living conditions

17. A pair of semi-detached houses lie to the north of the appeal site, the nearest of which is number 39A Edenside Road. At present the nearest part of the building to No.39A is approximately 3.8 metres from the boundary. Although this contains four windows that face towards the boundary, one is obscure glazed, and they are all at ground floor level. This limits the extent of overlooking to the rear garden of No.39A.
18. The proposed north facing elevation of the development would contain windows serving three floors of accommodation. Drawing number 141 Rev P5 illustrates that the section of the north elevation that would roughly face towards the rear garden of No.39A includes windows at first and second floor level serving the kitchen/living/dining room and bedrooms to plot 10, the living room to plot 11 and the kitchen/living/dining room and bedroom to plot 17. Consequently, although further away from the boundary, there would be significantly more windows serving principal rooms with many at a higher level. In addition, Plot 11 has a balcony which would allow the occupants to sit out. Taken together, these factors would significantly increase the degree of surveillance of the rear garden of No.39A by allowing intrusive views from several households.
19. The rear garden space for No.39A is relatively small which means that it is likely to be used more intensively, including for sitting out. As the entire area would be overlooked, this would be at odds with the degree of privacy the occupants of No.39A might reasonably anticipate when seeking to use the more private area of their grounds. The situation would be markedly worse than the existing configuration permitted under application MO/2012/1267.
20. The revised site plan⁶ is annotated with tree and hedge planting along the boundary adjacent to the rear garden of No.39A. This would assist in screening views from the ground floor windows of the proposal. However, it is not shown that it would achieve the necessary height or density to screen intrusive views from the upper floors. Indeed, trees of a notable height on the southern boundary of the small garden would be likely to have undesirable knock on effects by blocking sunlight.

⁶ Drawing No.201 Rev P1, Appendix 7, Appellant's Appeal Statement

21. As such the proposal would result in an unreasonable level of overlooking that would significantly and unacceptably harm the privacy of the occupants of No.39A. Reference is made to the absence of an objection to the proposal from the occupiers of No.39A. However, this does not amount to evidence that the relationship would be acceptable and therefore, would not lead me to find otherwise on this point.
22. In addition, the living conditions created by the development for future occupiers would be unsatisfactory in several respects. Firstly, external space for Plots 1 and 2 include sitting out areas directly adjacent to car parking. The section⁷ provided also shows that the parking would be elevated relative to the external space. Accordingly, this would provide a poor outlook from the living space, and occupants using the external area to sit out and relax would be very aware of the presence and movement of vehicles. Due to the proximity they would be likely to be disturbed by associated vehicle noise, lights and fumes.
23. Even if a physical or landscaping screen were employed to block vehicle lights as the appellant suggests, then in turn this would enclose the limited outdoor space with a high boundary making it feel uncomfortably confined. Moreover, it would not fully overcome problems of noise and fumes. By comparison, the layout approved at Douglas House to which I am referred, does not appear to contain elevated car parking in such proximity to sitting out areas and living room windows. As such, it is of limited weight.
24. Secondly, whilst it may be common for flats to look onto a public walkway, I have concerns regarding the degree of privacy for the limited outside space proposed for plot 5 given its proximity to the main pedestrian route into and out of the site, the communal outdoor space and access to the cycle and bin store. The relationship is such that users of the pedestrian route and communal space, due to their immediate presence and activity, would have an unacceptably intrusive impact on the intended residents of this apartment when using their amenity space.
25. Thirdly, plot 15 is described as a 2 bedroom, 4 person flat on the submitted plans. However, there is no balcony or private garden space provided for this unit. Similarly, the private outdoor space provided for other 3 or 4 person flats is limited. Future occupants of these units would have a range of outdoor needs and are likely to include children. Communal space is provided in the north eastern corner of the site. However, the revised site plan shows the cycle and bin stores in this location. When account is also taken of the gradient of land shown, then this would leave limited usable space for play and other outdoor activities.
26. It is brought to my attention that Bookham Common is relatively nearby and this would provide recreational opportunities for future occupants. Nevertheless, it, nor other local amenities shown on the aerial view⁸ of the site provided, would be so conveniently situated that they would realistically cater for the regular play needs of younger children.
27. Hence, overall, the proposal would fail to achieve a high standard of amenity for existing and future users as referred to in paragraph 127 f) of the

⁷ Drawing number 200

⁸ Page 12, Appellant's Appeal Statement

Framework. The appellant highlights that the proposed units would meet the requirements of the nationally prescribed internal space standards. Be that as it may, this would not fully address nor outweigh the concerns identified.

28. Accordingly, I find that the proposal would result in unacceptable harm to the living conditions of the residents at No. 39A Edenside Road due to the degree of overlooking to their rear garden. Furthermore, for the reasons outlined it would fail to create satisfactory living conditions for future occupants of the development. Consequently, the proposal would be contrary to the general development control criteria set out in policy ENV22 of the LP which includes requirements that the design and layout of the development does not significantly harm the amenities of the occupiers of neighbouring properties by reason of overlooking, and provides a satisfactory environment for occupiers of the new development.

Other Matters

29. Policy CS4 of the CS requires 40% of the housing on site to be affordable. However, once account is also taken of the vacant building credit calculation, there is no dispute between the parties that the overall requirement equates to 5 affordable homes. Although it is stated that a legal agreement under section 106 of the Town and Country Planning Act 1990 is being prepared, a completed obligation is not before me. It follows that in the absence of a legal agreement, it is not shown that affordable housing would be secured as a benefit of the proposal. I have undertaken my overall planning balance accordingly.
30. The appellant considers that the Council has been inconsistent in its decision making. Furthermore, they criticise the pre-application process operated by the Council whereby a different case officer to the one that gave pre-application advice dealt with the planning application. The quality of the Councils pre-application procedures lies outside the scope of my determination. However, I have determined the proposal on its planning merits. In doing so, I have taken account of other nearby developments that have been brought to my attention.

Planning balance and conclusion

31. There is no dispute that the Council is unable to demonstrate a five year supply of deliverable housing sites. The information provided refers to a 3.13 years supply⁹ which represents a sizeable shortfall, and I have not been provided with evidence to show otherwise. 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.
32. The proposal would provide 20 one and two bedroom apartments. This would assist in boosting the supply and mix of housing in an area where there is

⁹ Page 11, Appellant's Appeal Statement

unmet need. In addition, it would use previously developed land which is currently vacant and allow good access to a range of services and facilities meaning that occupants would have a genuine choice as to means of travel other than the car. These are important factors that weigh in favour of the proposal.

33. Furthermore, there would be economic benefits associated with the construction and activity of future occupants, and the development would generate some revenue for the Council. Even so, the extent of the economic benefits accruing from the development would be relatively modest. Whilst the development may go some way to alleviating pressure for other residential development in the Green Belt, this point is not quantified nor clearly shown to have a direct impact. Moreover, in the absence of a completed planning obligation to secure affordable housing, I have not attributed weight to this factor as a benefit. However, cumulatively, and in view of the shortfall in housing supply, I attribute considerable weight to the overall benefits of the proposal.
34. Balanced against this is the harm to the character and appearance of the area and the living conditions of existing and future residents. The Framework stipulates that good design is a key aspect of sustainable development and furthermore, the creation of high quality buildings and places is fundamental to what the planning and development process should achieve¹⁰. Therefore, the conflict with design policies referred to above in the CS, LP and NP which are consistent with the Framework in this regard, attracts significant weight.
35. Similarly, the Framework states that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users¹¹. The proposal falls short of this standard and in this regard also conflicts with policy ENV22 of the LP. Taking these factors together, significant weight is given to the harm arising from the conflict with the policies of the development plan taken as a whole.
36. I have had regard to paragraph 14 of the Framework which states that in situations where paragraph 11 d) applies, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits subject to specific criteria. One of these is that the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made. That is not the case in relation to the NP which was made in May 2017 and therefore, this has not affected the overall planning balance.
37. Nevertheless, I find that 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.
38. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹². There are no other considerations, including the provisions of the Framework, which outweigh this finding.

¹⁰ Paragraph 124 NPPF

¹¹ Paragraph 127 f) NPPF

¹² Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

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

Helen O'Connor

Inspector