



Appeal Decision

Site Visit made on 24 August 2021 and 29 September 2021

by Scott Britnell MSc FdA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2021

Appeal Ref: APP/Z5630/W/21/3266886

Charter Court, Linden Grove, New Malden KT3 3BL

- 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 Charter Court (New Malden) Limited against the decision of the Royal Borough of Kingston Upon Thames.
 - The application Ref 20/00810/FUL, dated 30 March 2020, was refused by notice dated 15 July 2020.
 - The development proposed is the demolition of 13no. existing garages and the construction of 4no. new houses, 4no. parking spaces and associated communal landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the submission of the appeal, the Government published the revised National Planning Policy Framework 2021 (the Framework). I sought comments from the main parties with regards to this matter but none have been received. The Mayor of London also published the London Plan 2021 (the London Plan). The Council provided an update on this matter within their appeal statement and the appellant has provided a response in their final comments. I have taken these comments into account in my decision.
3. The appellant submitted drawings and details with the appeal that were not before the Council when they determined the planning application. Appendix M of the Procedural Guide: Planning appeals – England (2021) states that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. While the Council have been provided with the drawings and details and given a chance to comment upon them, there is no evidence before me that other interested parties have had the same opportunity.
4. I have had regard in this matter to the principles established by the Courts in *Wheatcroft*¹. If I were to accept the additional drawings and details I would be depriving those who should be given an opportunity to comment on them the opportunity to do so. The appellant also submitted further additional drawings at final comments stage which neither the Council nor other interested parties have had the opportunity to comment upon. Therefore, I have assessed the proposal on the basis of the drawings and details that were refused by the Council at the application stage.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982].

Main Issues

5. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- whether the proposal would provide adequate living conditions for future occupants, with particular regard to private outdoor amenity space, outlook and daylight and sunlight;
- the effect of the proposal on parking and highway safety and whether it would provide adequate access for refuse and emergency vehicles; and,
- the effect of the proposal on the living conditions of the occupants of Nos.82–88 Charter Court, with particular regard to privacy.

Reasons

Character and appearance

6. The appeal site is located in the Charter Court development which is occupied by large distinctive four storey blocks of flats. To the south of the appeal site is a railway line, while the areas to the north, west and east comprise a mix of building types, form, design, and scale.
7. The proposal, by virtue of its siting in the corner of the Charter Court grounds and proximity to its boundaries would appear as a poorly located and cramped form of development. This would be exacerbated by the limited plot sizes that the proposed dwellings would occupy relative to their scale. Further, the proposed dwellings would appear incongruous and inharmonious with their surroundings given their size relative to the much larger blocks of flats. The proposal would, therefore, fail to relate well to surrounding development and would harm the character and appearance of the area.
8. The appeal site is not highly visible from the public realm with only glimpsed views available from the public footpath to the south. However, it would be highly visible from a number of flats within Charter Court and its grounds and from properties on Fairacre. Given the harm that I have identified above, the proposal would reduce the appreciation of the quality of the environment in which nearby occupiers live.
9. The existing garages are in a fairly poor state of repair and do not make a positive contribution to the character and appearance of the area. However, their current condition is essentially a maintenance matter. The appellant suggests that the proposed dwellings respect the scale and massing of properties within the adjacent road Fairacre. However, due to the location of the proposed dwellings and the boundary treatment between the appeal site and Fairacre, the proposal would be viewed in the context of the blocks of flats at Charter Court rather than those adjacent properties. Therefore, I afford these matters limited weight in my overall considerations.
10. I conclude that the proposal would cause harm to the character and appearance of the area. As such, there would be conflict with Policies CS8, DM10 and DM11 of the Local Development Framework Core Strategy Adopted April 2012 (CS). These require, among other matters, new development to relate well to its surroundings. There would also be conflict with London Plan

Policies D3 and D6 insofar as they require development proposals to be of high quality design and to respond to local character. The proposal would also conflict with the objectives of the Local Development Framework Residential Design Supplementary Planning Document Adopted July 2013, Amended November 2013 (RSPD) and the overarching aims of the Framework.

Living conditions for future occupants

11. Given each new dwelling would have two double bedrooms and one single bedroom, one could reasonably expect them to potentially accommodate a significant number of occupants. Policy Guidance 13 of the RSPD requires new houses to provide at least 50 square metres of private garden for family homes where the prevailing character of the area allows. The appellant suggests that plot 3 would provide 63 square metres of outdoor amenity space, while the other plots would provide 27, 42 and 43 square metres respectively. The Council's Officer Report suggests that there is a discrepancy between the drawings. As those discrepancies are not explained I have proceeded on the appellant's figures above.
12. Three of the proposed gardens fall below the minimum requirement set out by the RSPD with plot 1 falling short by a very significant margin. This indicates that they would fail to provide sufficient private amenity space for the size of the dwellings that they are to serve. In addition, the gardens to plots 2 and 3 would include narrow strips to the side of the dwellings which would reduce the amount of usable space. Further, the gardens to plots 3 and 4 would feel significantly enclosed given their proximity to the proposed dwellings at plots 1 and 2. Therefore, the outside amenity spaces for all proposed dwellings would be of poor quality.
13. The appellant suggests that the location of the appeal site and its context would make the provision of larger gardens disproportionate. The RSPD states that the minimum standards for private gardens should be achieved, and where possible exceeded for all new residential development, unless it can be demonstrated that this would be at odds with the prevailing physical context and local character of development. There is variation with regard to the size of gardens in the surrounding area. In addition, Charter Court is a flatted development with no individual private garden areas. Nevertheless, for the reasons I have set out above, the gardens to the proposed dwellings would be unacceptable.
14. Access to plots 1 and 2 would be along a path to the rear of plots 3 and 4. This would afford direct views into the living areas and basement bedrooms of the proposed dwellings at plots 3 and 4, as well as their gardens. Due to the proximity of these views those areas would feel significantly overlooked and unpleasant to use. The Council's Officer Report indicates that the occupants of the dwellings at plots 1 and 2 would also be able to access the gardens of plots 3 and 4, presumably via the accessible routes to those dwellings. However, I consider that it would be clear that these gardens are private spaces and it is reasonable to expect that future occupants would be aware of this.
15. The appellant has referred me to a number of public spaces that future occupants could use. There would also be a communal area immediately adjacent to the appeal site. However, access to these areas would not overcome the harm that I have identified. Moreover, public areas do not

necessarily provide suitable private amenity areas that future occupiers of family dwellings, such as proposed here, could enjoy.

16. The proposed dwellings at Plots 3 and 4 would look out onto the dwellings at plots 1 and 2. This close relationship would result in a poor outlook for the occupants of the dwellings at plots 3 and 4 and would make the internal areas of those dwellings unpleasant to use. Further, the living area for the proposed dwelling at plot 4 would look out onto a high wall which would exacerbate the poor and enclosed outlook afforded to future occupants. Each of the proposed dwellings would also have bedrooms at basement level that would look out onto enclosed courtyards. Although these rooms are unlikely to be in heavy use throughout the day, the outlook afforded to them would, nevertheless, be limited and would result in them being unpleasant to use.
17. A Daylight and Sunlight Assessment was submitted with the application and does not provide information to conclude that acceptable living conditions would be afforded to the future occupants of the proposed dwellings. Drawing 396/052 'Daylight Study' incorporates a number of lines drawn at 25 and 45 degrees. However, this information is insufficient for me to reach an informed decision as to whether the proposed dwellings would receive adequate levels of daylight and sunlight. In particular, I am mindful that the proposed dwellings would have rooms at basement level looking out onto enclosed courtyards and that they would sit close together. This would tend to suggest that these rooms are likely to be gloomy with poor levels of daylight and sunlight.
18. I conclude that the proposal would fail to provide adequate living conditions for future occupants with regard to private outdoor amenity space and outlook. There is insufficient evidence to demonstrate that the proposed dwellings would receive adequate daylight and sunlight. As such, there would be conflict with CS Policy DM10 which requires, among other matters, development proposals to ensure adequate private amenity space and to have regard to the amenities of occupants in terms of privacy, outlook and sunlight/daylight. There would also be conflict with London Plan Policies D3 and D6 insofar as they relate to living conditions. The proposal would also conflict with Policy Guidance 13 of the SPD that I have cited above and Paragraph 130f) of the Framework, the latter of which states that developments should create places with a high standard of amenity for future occupants.

Parking, Highway Safety and Access for Refuse and Emergency Vehicles

19. At the time of my visits, I observed high levels of parking at Charter Court and on adjacent roads. I also observed that Acacia Grove, from which Charter Court is accessed via Linden Grove, has a number of vehicle crossover points and double yellow lines. These features significantly reduce the availability of on-street parking along that road.
20. The proposed development would provide one parking space per dwelling. The Council consider that this would be an acceptable level of provision and I have no reason to reach a different conclusion. A Technical Note (TN) was submitted with the application, which includes a parking stress survey conducted on 3 and 10 December 2019. The survey was confined to the Charter Court site and excluded the garages thereon. I am also mindful that the survey was conducted almost two years ago.

21. Given the findings of the TN and my own observations, it is evident that there is considerable competition for parking spaces in the area. That competition would, in all likelihood, be exacerbated by the loss of the garages notwithstanding the Council's concerns over their size and even if they are not currently all used by occupants of Charter Court. Their loss would result in greater parking stress in the area with vehicles likely to be parked inconsiderately and causing an obstruction to other road users, so that the proposal would also result in harm to highway safety.
22. The appellant suggests that a further 47 parking spaces could be made available within the wider Charter Court development. A plan showing those changes is at Appendix 3 of the TN. However, that plan did not form part of the proposals applied for. In any event, there is no evidence before me that vehicles could manoeuvre into the additional spaces without prejudicing highway safety. The appellant also suggests that the existing garage provision at the Charter Court site could be used to accommodate parking. Again, no details of this provision is shown on the details submitted with the application and so this diminishes the weight that I can afford this suggestion.
23. The Council are concerned that the proposal does not demonstrate that refuse and emergency vehicles would be able to access and service the proposed dwellings. The route through Charter Court for such vehicles to reach the proposed dwellings includes sections where the roads narrow. There are also a number of garages and parking spaces along the route which could hamper manoeuvrability. The details submitted with the application do not show how, given the restraints of the wider site, refuse and emergency vehicles would be able to access and service the proposed dwellings.
24. The appellant states that they are willing to accept a condition restricting the ability of proposed residents to apply for parking permits. I consider that such a restriction could only be secured by way of a planning obligation and no such mechanism is before me. Moreover, as this would only relate to the occupants of the proposed development it would not negate the harm that I have identified.
25. I conclude that the proposal would cause harm to parking availability and highway safety and does not demonstrate that refuse and emergency service vehicles could access and serve the proposed dwellings. As such there would be conflict with CS policy DM10. This seeks to ensure, among other matters, that development proposals do not adversely affect local traffic conditions and highway safety. There would also be conflict with London Plan Policy T4f) which states that development proposals should not increase road danger. It would also conflict with London Plan Policy D11 insofar as it relates to proposed development minimising potential physical risks, including fire. The proposal would also conflict with Paragraph 111 of the Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

Living conditions for existing neighbouring occupants

26. Policy Guidance 16 of the RSPD states that a separation distance of no less than 21 metres shall normally be maintained between facing windows of habitable rooms. The ground floor window of the proposed dwelling of plot 4 would serve a kitchen/dining area. It would be located opposite the ground

floor windows of the flats at Nos.82–88 Charter Court. The parties suggest that this distance would be 13 or 14 metres.

27. The ground floor windows of Nos.82-88 Charter Court face onto a communal area that includes a footpath and a large area of hardstanding. Consequently, these windows are already likely to experience a degree of overlooking from these areas. There is also a nearby grassed area, which would be retained as a communal area under the proposal. I observed benches in this area which indicates that residents are likely to spend extended periods of time here. As such, the proposal would not result in significant additional overlooking and loss of privacy to the aforementioned dwellings over and above the existing situation.
28. I conclude that the proposal would not cause harm to the living conditions of the occupants of 82-88 Charter Court with regard to privacy. As such, there would be no conflict with CS Policy DM10 which requires development to have regard to the amenities of neighbours. There would also be no conflict with paragraph 130 f) of the Framework which requires developments to create places with a high standard of amenity for existing users. Although the proposal would not provide the separation distance required by Policy Guidance 16 of the RSPD, it would not result in harm for the reasons I have set out.

Other Matters

29. The appellant refers to the appeal site as being in a highly sustainable location and that it is located close to bus stops, a railway station and a number of shops and services. However, this does not alter the conclusions that I have reached with regard to the main issues.

Planning Balance and Conclusion

30. The proposal would not cause harm to the living conditions of the occupants of Nos.82–88 Charter Court. However, this is a neutral factor in my overall considerations. The proposal would result in harm to the character and appearance of the area and would not provide adequate living conditions for future occupants. It would also cause harm to parking availability and highway safety and does not demonstrate that refuse and emergency service vehicles could access and serve the proposed dwellings. I attribute significant weight to these matters.
31. The Council acknowledges that it is unable to demonstrate a five year supply of deliverable housing sites. In light of the shortfall in the five year housing land supply, the Framework makes it clear that the most important policies for determining the application are out of date in the terms set out in paragraph 11d) and footnote 8 of the Framework. Thus, planning permission should be granted, unless, amongst other matters, 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 contribute to housing supply, would provide family sized dwellings and would utilise previously developed land. It would also be likely to have economic benefits through the construction period and because future occupants would be likely to use local services and facilities. However, the proposal is for four dwellings and so would make a limited contribution to these matters. As such, the adverse impacts of granting planning permission would

significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Further, while the Framework indicates that the most important policies for determining the application are out of date, I afford them significant weight as they are consistent with the Framework.

33. I have been referred to a number of the London Plan policies by the main parties. These include Policy H1 which seeks to increase housing supply across London and Policy H2 which indicates the importance that small sites can play in delivering the housing that London needs. However, I do not consider that the support these policies express for new housing overcome the harm that I have identified.
34. For the above reasons, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Scott Britnell

INSPECTOR