
Appeal Decision

Site visit made on 6 December 2021

by Martin Chandler BSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal Ref: APP/P3610/W/21/3274710

C D Mitchell Ltd, 64 South Street, Epsom KT18 7PH

- 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 Dr David Mitchell against the decision of Epsom and Ewell Borough Council.
 - The application Ref 20/00041/FUL, dated 23 December 2019, was refused by notice dated 4 December 2020.
 - The development proposed is Change of use from B1 Business to C3 Residential, including demolition of existing builders yard buildings. Construction of 6 number 2 storey, 2 bedroom dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - i) existing employment land, having regard to the requirements of local policy;
 - ii) the living conditions for the occupants of neighbouring properties;
 - iii) controlled waters; and
 - iv) local ecology.

Reasons

Employment Land

3. Policy DM24 of the Development Management Policies Document (2015) (DMPD) relates to employment uses outside of existing employment policy areas. It states that outside of the existing identified employment locations and Epsom Town Centre, proposals resulting in the loss of employment floorspace will not be granted planning permission unless one of two criteria are demonstrated. Firstly, that the existing use has a significant adverse effect on residential amenity and there is no reasonable prospect that this effect can be alleviated while retaining the use. Or secondly, that there is genuine evidence, including that the site has been marketed without success, that the site, as it stands, is no longer suitable for its existing or other employment uses.
4. Based on the evidence before me, there is no suggestion that the existing use has a significant adverse effect on residential amenity. Accordingly, the appellant does not seek to comply with the first criterion. In addition, for

reasons that will be discussed later in this decision, the appellant has not presented marketing evidence to demonstrate that the site is no longer suitable for its existing or other employment uses. As a consequence, the proposal would be in direct conflict with the requirements of Policy DM24 of the DMPD.

5. I therefore conclude that the proposal would have a harmful effect on existing employment land. Accordingly, it would fail to comply with Policy DM24 of the DMPD, the requirements of which are set out above.

Living Conditions

6. The proposal would replace the existing buildings on the site with a two-storey terrace of six dwellings. The terrace would run diagonally across the site on a south-west/north-east axis and would be sited with amenity space backing onto South Street and vehicular access and parking accessed from St. Margaret Drive.
7. The proposed alignment would relate well to No 26 St. Margaret Drive. The gable end of the terrace would be located adjacent to this neighbouring property with a comparable depth. However, its relationship with the dwellings to the north east of the site would be less favourable and the proposal would bring the proposed building mass substantially closer to the shared boundary with No 62 South Street. This is an end of terrace property with a splayed side elevation, and a two-storey extension set on an angle away from the principal façade of the building. It also has a small courtyard garden to the rear.
8. The form of the appeal site is such that it forms both the side and rear boundary of this neighbouring courtyard garden. The proposed terrace of houses would come close to the shared boundaries, and at its nearest point, it would be separated primarily by a pedestrian pathway. Accordingly, the proposed gable end would loom over the shared boundaries, and due to its proximity to both the garden and rear facing windows, in my judgement, the proposal would dominate the outlook from No 62 in a manner that would be enclosing, oppressive, and overbearing.
9. The proposal has been supplemented by a sunlight study and a section drawing seeking to demonstrate compliance with daylight guidelines. The sunlight study illustrates loss of sunlight on March 21st at various times throughout the day. Due to the orientation of the appeal site and the neighbouring garden, the study demonstrates that the proposal would cause shadowing in the neighbouring garden throughout the afternoon and early evening. The proposal would be sited broadly to the west of No 62 and as a consequence, such an impact would be felt throughout the year, with greater or less severity throughout the seasons. However, what is apparent, is that the proposal would cause demonstrable loss of sunlight to the neighbouring garden due to its height and proximity to the adjacent property.
10. The daylight diagram shows a section drawing between No 62 and the proposed terrace of houses. Although this implies the impact would be very limited, the section is only taken from one location where the separation between the proposal and the neighbour would be at its greatest. Despite this, as identified above, No 62 has an extension which is located closer to the appeal site. Had the same analysis illustrated this relationship, due to the proximity and height of the proposal, the findings would be likely to be materially different.

11. Consequently, in my judgement, the proposal would create an overbearing and oppressive form of development that would cause material harm to outlook as well as sunlight and daylight received by No 62. Accordingly, I conclude that the proposal would harm the living conditions for the occupants of this property. It would therefore fail to comply with Policy DM10 of the DMPD which requires, amongst other things, development to have regard to the amenities of neighbours, including in terms of outlook, sunlight and daylight. This is a matter of fundamental concern to which I attach substantial weight.

Controlled Waters

12. Due to the commercial use of the site, the Environment Agency objected to the application due to insufficient information being provided to demonstrate that the risk of pollution to controlled water is acceptable. The risk being due to the potential for contaminated land.
13. In response, the appeal has been supplemented with a drainage strategy which demonstrates how the development would be drained. However, it does not refer to the potential for contamination and therefore, the preliminary risk assessment required by the EA remains unprovided. Accordingly, the risk to controlled waters remains unknown and due to the uncertainty, such a matter could not be resolved through the use of a planning condition. Consequently, in the absence of specific evidence on this point, I conclude that the proposal would risk causing harm to controlled waters. It would therefore fail to comply with Policy DM17 of the DMPD which relates to the risks associated with the development of contaminated land.

Ecology

14. The original application was accompanied by a Preliminary Ecological Assessment dated February 2020. The principal conclusion from the Council in response to this assessment, and a subsequent Bat Survey Report, was that more information was necessary regarding mitigation and enhancement proposals.
15. In support of the appeal, an additional response has been provided in relation to ecological considerations. This reiterates the recommendations for enhancement measures and refers to additional discussions with the Council's ecologist. The evidence implies that should planning permission be forthcoming, the necessary licence from Natural England would likely be obtained. Moreover, based on the evidence before me, I am satisfied that the ecological value of the site is suitably understood and that if the appeal were to prove successful, matters could be suitably controlled through the use of planning conditions.
16. On this basis, I conclude that the proposal would not cause harm to local ecology. It would therefore comply with Policy DM4 of the DMP which establishes the requirements for new development and biodiversity.

Other Matters

17. Based on the evidence before me, the Council accept that they cannot currently demonstrate a five-year supply of deliverable housing sites. Accordingly, the presumption in favour of sustainable development, as outlined within Paragraph 11 of the National Planning Policy Framework (the Framework) is engaged. This states that where the policies which are most important for

determining proposals are out-of-date, that planning 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.

18. Due to the Council's housing supply position, the appellant is of the view that the Council's approach to safeguarding employment land should not attract weight despite the direct conflict with local policy. The justification for the Policy refers to the Council's strong housing land supply position, however it is clear that this position is no longer valid. Accordingly, although the intention behind the policy has merit, in light of Paragraph 11, the policy is out-of-date. I therefore give the policy very limited weight, and accordingly, the conflict with the policy also attracts very limited weight against the appeal.
19. In terms of benefits, the proposal would make a modest but valuable contribution to local housing supply, and it would also provide employment opportunities throughout the construction phase. It would also result in additional local expenditure from incoming residents. Environmentally, the buildings would perform better in terms of energy consumption than the existing development on the site. These benefits weigh in favour of the proposal, however, due to the scale of the development, I only give them modest weight. My findings in relation to ecology weigh neutrally in my assessment.
20. Set against this, I find that the harm to the living conditions for the occupants of neighbouring properties is of fundamental concern. This is therefore a matter to which I give considerable weight. The effect of the proposal on controlled waters also weighs against the proposal. Due to the scale of concern regarding the living conditions, I am satisfied that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Accordingly, the proposal should not benefit from the presumption in favour of sustainable development, as identified in the Framework.

Conclusion

21. For the reasons identified above, the appeal should be dismissed.

Martin Chandler

INSPECTOR