



Appeal Decisions

Site visit made on 8 December 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal A Ref: APP/P3610/W/21/3273879

9 Cudas Close, Epsom, Surrey KT19 0QF

- 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 Oakton Developments Ltd. against the decision of Epsom and Ewell Borough Council.
 - The application Ref 21/00076/FUL, dated 18 January 2021, was refused by notice dated 17 March 2021.
 - The development proposed is erection of one 3-bedroom detached house including associated external works and parking.
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Appeal B Ref: APP/P3610/W/21/3279827

9 Cudas Close, Epsom, Surrey KT19 0QF

- 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 Oakton Developments Ltd. against Epsom and Ewell Borough Council.
 - The application Ref 21/00518/OUT is dated 26 March 2021.
 - The development proposed is erection of two 2-bedroom semi-detached houses including associated external works and parking.
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Decisions

Appeal A Ref: APP/P3610/W/21/3273879

1. The appeal is dismissed.

Appeal B Ref: APP/P3610/W/21/3279827

2. The appeal is dismissed.

Preliminary Matters

3. Appeal B is in outline form with access to and layout of the site and the scale and appearance of the buildings to be determined at this stage and landscaping of the site reserved for subsequent approval. The siting of the two houses in Appeal B would be similar to that of the single house in Appeal A albeit with a slightly larger footprint. The main issues arising therefore would be similar and I shall examine the proposals together.
4. The Council admits that it is currently unable to demonstrate a 5 year supply of land for the delivery of housing. As such, the presumption in favour of sustainable development at Paragraph 11(d) of the National Planning Policy Framework (The Framework) is engaged on the issue of under provision of housing.

Main Issues

5. Having regard to the Council's decision notice on Appeal A and to the representations received on both appeals, the main issues for both appeals are
 - (a) whether the proposed development is acceptable in relation to its backland siting,
 - (b) the impact of the proposal on the living conditions of occupiers of the host building in relation to retained amenity space provision and privacy,
 - (c) the effect of the proposal's scale and design on the character and appearance of the area, and
 - (d) the impacts on the living conditions of occupiers of adjoining dwellings.

Reasons

Siting

6. The appeals relate to land associated with a detached house at the eastern end to a cul-de-sac in a predominantly residential area. An oak tree in the front garden close to the boundary with no.8 Cudas Close is subject to a Tree Preservation Order. In both appeals, the proposal would be sited within the back garden which is larger than that for other dwellings in the road.
7. There is a uniform character of hipped roofed bungalows on a strong building line at the western end of Cudas Close and for much of its length. But this changes at the eastern end where there is a turning circle. Nos 8 and 9 are two storey detached houses with prominent gables over two storey bay windows. No.8 is set behind the line of the bungalow at no.7 whereas no.9 is set forward and turned by 90 degrees to face along the cul-de-sac. There is not an established building line at this end of the road. A new dwelling built on the established line elsewhere along the road would require removal of the protected tree and would be unduly close to no.9, compromising outlook from front windows.
8. The proposals in both appeals would be in the back garden to no.9 and would not directly front a highway, and so would constitute backland development. Policy DM16 of the Epsom & Ewell Borough Council Development Management Policies Document (2015) (DMPD) sets out a presumption against the loss of rear domestic gardens due to the need to maintain local character, amenity space, green infrastructure and biodiversity. In exceptional cases, modest redevelopment on backland sites may be considered acceptable, subject to proposals demonstrating that there will be no significant adverse impact in relation to stated criteria.
9. In both appeal proposals, the building would be sited partly alongside the flank wall to no.8 and partly beyond its rear wall. The siting of the buildings would not therefore be a radical departure from alignment of existing dwellings. Much of the existing back garden would remain on both appeals.
10. There is no evidence before me that the back garden contains trees, shrubs or wildlife habitats of particular importance. There would therefore only be limited conflict with criteria 1 and 5 relating to loss of garden land and on wildlife habitats. The other criteria relate to matters covered in the other main issues.

Amenity space and privacy for the host dwelling

11. The retained back garden for the host dwelling would be identical for both appeals. It would be small compared with other gardens for comparable sized dwellings in the local area and would not achieve the Council's preferred minimum depth of 10m for a domestic rear garden. But with an area of 85.5 square metres, according to the appellant's calculations, it would still exceed the minimum of 70 square metres to be provided for dwellings comprising 3 or more bedrooms required by Policy DM12 of the DMPD on housing standards. The host dwelling would also benefit from land to its southern side, where there is a garage, and from land adjacent to the western boundary on the opposite side of the access drive. Whilst these additional areas would be open to public view, the overall level of amenity space provision would be satisfactory.
12. The host dwelling has a large window to a ground floor living room facing towards the access that would lead to the proposed parking area. Pedestrian movement along the access would have some effect on privacy within the living room and there could be some disturbance from vehicle noise and headlamps. But the living room window is already in a semi-public domain like other front windows facing the road. There would only be occupiers from one or two households (in the case of Appeal B) that would pass the front window and future occupiers would be able to safeguard privacy to a desired degree through the use of curtains. Moreover, the living room is dual aspect with a large rear facing window on to the more private back garden.
13. In both appeals, the proposed building would be sited about 5m beyond the rear boundary to the host dwelling's retained back garden. In Appeal A, the first floor gable wall would be a prominent feature in outlook from the host dwelling. Front facing bedroom windows in the gable wall would be clearly visible over the boundary fence to the garden. An annotation to the plans indicates that these windows would be obscure glazed and non-openable below 1.7m from finished floor level. Whilst this measure would preclude direct overlooking of the rear facing living room windows and retained back garden for the host dwelling, the proximity of the windows would be an uncomfortable presence for future occupiers. Moreover, for future occupiers, the obscure glazing would also be an oppressive feature within both front bedrooms, which nonetheless would be of satisfactory size.
14. In Appeal B, the building would be slightly wider, but the gable wall would be replaced by a hipped pitched roof that would slope away from the host dwelling. There would be 4 front facing velux windows in the front roof slope, the only windows to serve the front bedroom to both proposed dwellings. As the lower cill to these windows would be a minimum of 1.7m above the first floor finished floor level, they would not require to be obscure glazed. There would not be a significant adverse effect for future occupiers of the host dwelling in relation to privacy.
15. In relation to criteria 2 and 3 for Policy DM16, the access would not be unnecessarily long and there would not be a significant adverse effect in respect to vehicle noise or light spillage. Neither would there be material harm relating to privacy arising from either the use of the access or from windows in either of the proposed buildings.

Scale and design

16. Criterion 4 to Policy DM16 requires development on backland sites to be more intimate in scale and lower than frontage properties to avoid any overbearing impact on existing dwellings and associated gardens. The buildings in both appeals would have two floors and so would be of greater height than the bungalows that predominate along Cudas Close. But as the upper floor would be contained largely within the roof area, they would be lower than the immediately adjacent dwellings, 8 and 9 Cudas Close, each comprising two storeys plus a pitched roof.
17. Nonetheless, the front gable wall to the building in Appeal A would have an overbearing impact in relation to outlook from the existing dwelling and on its retained associated garden. It would not fit comfortably with this criterion. The building in Appeal B would have a hipped pitched roof sloping away from the host dwelling and so would be less overbearing. But it would have a greater footprint, adding to its width and overall scale and the eaves level would be higher as the roof would be half-hipped enabling provision of a full first floor. As such, the building in Appeal B would nevertheless present a considerable mass close to the host dwelling which would be oppressive in relation to outlook for future occupiers.
18. Whilst neither proposed building would be prominent in the street scene, as they would be set behind the frontage to no.8, they would nonetheless affect the character and appearance of the area. The design of the building in both appeals would contrast with that of other buildings in Cudas Close. Neither the gable fronted approach in Appeal A nor the half-hipped design in Appeal B would reflect prevailing development typologies in Cudas Close. But both proposals would result in a building of a scale and massing that would appear excessive in respect to the context of the building's siting.
19. The proposals in both appeals would thereby conflict with Policy CS5 of the Epsom & Ewell Core Strategy (2007) and with Policies DM9, DM10 and DM16 of the DMPD; these require all development to have a high quality design that reinforces local distinctiveness and makes a positive contribution to local character, including in relation to scale, layout, height and form (including roof forms) whilst avoiding any overbearing impact on existing dwellings and associated gardens. There would also be conflict with Paragraph 130 of the Framework which requires developments to "*function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development*" and to be "*sympathetic to local character and history, including the surrounding built environment*".

Living conditions for adjoining occupiers

20. To the east of the site are the back gardens to dwellings in Cuddington Avenue. A bungalow at no.38 is set deeper within its plot than the house at no.40. The flank wall to the building in both appeals would be visible from these adjacent dwellings and the proposed parking area would be next to their gardens.
21. The building proposed in Appeal B would be marginally closer than that for Appeal A but would have a more compact profile. The long roof ridge between front and rear gable walls to the building in Appeal A would present a greater side profile massing. However, having regard to the overall separating distances in both schemes there would not be such an overbearing impact to

warrant refusal of permission on these grounds. In both schemes there would be one or more side window at first floor level facing the back gardens to nos. 38 and 40, but these would be for obscure glazed bathrooms and so would not result in a material loss of privacy. There would be some over-shadowing of the rearmost part of the back garden to no.38 but not a material loss of light.

22. A close-boarded fence 1.8m high has been specified to all boundaries. This would be sufficient to screen the proposed parking spaces and access from adjacent gardens. Any vehicle noise arising from a maximum of 3 parking spaces would not result in significant disturbance.
23. In both appeals the proposed building would project several metres beyond the rear wall of 8 Cudas Close. The building in Appeal B would be slightly closer but that for Appeal A would be marginally deeper and would present a larger profile with a ridged roof to the rear facing gable wall. There is not a consistent rear building line to no.8 and adjacent dwellings. Nonetheless the depth and overall massing of the building in both schemes, particularly above ground floor level, would result in a bulky development, uncharacteristic of the locality. The buildings would also be on the margins of acceptability in relation to the 45 degree line from an adjacent dwelling for two storey development, stipulated in the Council's Householder Applications SPG (2004), and referred to in its decision notice for Appeal A.
24. In both schemes, there would be first floor rear facing windows that would be able to overlook the rear part to the back garden to no.8. Whilst this would reduce privacy within the garden, such overlooking relationships are commonplace in built up areas. The side window in Appeal B facing towards no.8 would be obscure glazed and so would not result in overlooking.

Other Matters

25. Representations have been made on other issues. There would be 3 new parking spaces for the proposal in Appeal A and 2 for the two smaller units in Appeal B, plus the garage retained for the host dwelling. Cudas Close has a narrow carriageway unsuited to on-street parking. Representations indicate that inconsiderate parking in relation to drop off or pick up times at the adjacent school has caused nuisance. However, the on-site parking proposed in both appeals should be sufficient to meet the needs of future occupiers without overspill on-street parking.
26. Any disturbance during building operations would be temporary. A planning condition covering approval of a Construction Transport Management Plan prior to commencement of work as suggested by the County Highway Authority should enable impacts to be minimised.
27. In both appeals, the building would be sited outside of the root protection area for the protected oak tree. Planning conditions could be used safeguard the tree during building operations.

Planning Balance

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004, states where in making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.

29. The proposal in Appeal A would have the benefit of providing one additional home within a sustainable location, whilst there would be two additional homes resulting from Appeal B. Paragraph 60 of the Framework refers to the Government's objective to significantly boost the supply of homes. Paragraph 69 points out that small and medium sized sites, such as the appeal site, can make an important contribution to meeting the housing requirements of an area and can be built out relatively quickly.
30. The Council has a poor track record on housing delivery. Its Housing Delivery Test result for 2021 shows just 35% of its housing need target being met; this is a marginal improvement on 34% for the previous year but is indicative of a consistent and substantial under supply in relation to housing need. The Council has had to produce a Housing Delivery Action Plan to address this shortfall, published in February 2019, but to date this does not seem to have resulted in a significant turnaround in housing delivery. This increases the weight to be applied to housing supply at the appeal site. The tilted balance at Paragraph 11(d) of the Framework is engaged.
31. The appeal proposals would be in accordance with Paragraph 119 of the Framework which states that planning decisions should promote an effective use of land in meeting the need for homes and other uses. But the Paragraph balances this "*while safeguarding and improving the environment and ensuring safe and healthy living conditions*". I have identified harm and conflict with the development plan in relation to the scale and design of both appeal proposals.
32. In my judgement the benefit arising from housing provision, even for just one or two units, would outweigh any harm arising from the siting of the buildings in a backland location, from the resultant quantity of amenity space retained for the host dwelling and privacy levels for its future occupiers, and from any impact on the living conditions of the occupiers of neighbouring dwellings.
33. But in relation to the scale and design of the building in the context of the site for both appeal proposals, the adverse impacts from granting permission would significantly outweigh the benefits, when assessed against the policies of the Framework taken as a whole. The benefits would be just for one or two dwellings in relation to the Council's overall housing need whereas the harm arising in both appeals would have an unfortunate adverse impact on the character and appearance of the area for the lifetime of the development. This matter attracts significant weight and outweighs the benefits associated with both proposals.

Conclusion

34. Both appeal proposals would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. For the reasons outlined above, I conclude that both appeals should be dismissed.

Rory MacLeod

INSPECTOR