

Appeal Decision

Site visit made on 15 March 2022

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 April 2022

Appeal Ref: APP/P3610/W/21/3281027

Garages rear of 52 Curtis Road, Epsom, Surrey KT19 0LQ

- 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 Rosebery Housing Association against the decision of Epsom & Ewell Borough Council.
 - The application, Ref. 20/01883/FUL, dated 30 November 2020, was refused by notice dated 22 February 2021.
 - The development proposed is the erection of 4 x two-bedroom flats and 2 x one-bedroom flats.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: (i) whether the proposal is a suitable development for the site as regards its design, size, amenity space and impact on the living conditions for neighbours in terms of outlook and privacy; (ii) whether the proposed housing mix is appropriate, and (iii) the effect of the development on nearby trees.

Reasons

Issue (i): Suitability of the Development on the Site

3. The proposed development is on land to the rear (south west) of Nos. 44-52 Curtis Road, the site having formerly accommodated a block of eight single garages but at the time of my visit used as open parking by local residents. The appellant has confirmed that this is on an informal and tacitly permissive basis.
 4. Within the Council's objection to the proposal as regards issue (i) I consider that it is the design and size that are predominant, with the other matters essentially consequential. In terms of design, the existing character and appearance of the area is mixed and the appearance of the appeal building would be different again from any of the buildings already there. This would particularly be the case given its immediate setting at the rear of the two storey houses fronting this part of Curtis Road and the three storey flats to the east.
 5. Whilst the rearward position enables some flexibility in design because the building would not read as part of the street scene, there is a closed context in terms of an observable built form. This is limited to the Curtis Road houses and
-

the flats to the east, with these buildings being of essentially the same design and external materials. And with no deference at all to this context, the proposed block of flats would appear incongruous as a somewhat random design, noticeably out of keeping with its surroundings.

6. A further problem of the design is the orientation of the building, with its front elevation facing onto the rear gardens of Nos. 44-52 Curtis Road and with only a gap of 4m to the back garden fences. Whilst this elevation does have legibility 'per se', the absence of any meaningful space or readable setting to the 'front' of the building would add to the perception of incongruity.
7. I do not regard this as only as a professional judgement but a view likely to be shared by anybody when accessing the main entrance to the building, either via the footpath from Curtis Road or walking from the car park, in both cases passing the refuse store. A reasonable perception might be one of a building squeezed into too small a site, whilst this close proximity of the building's frontage to the site's north east boundary and its consequences for the design bring into focus the other predominant issue: the size of the building and the residential density.
8. In this regard the officer's report explains that Policy DM11 of the Epsom Development Management Policies Document 2015 ('the DMPD 2015') refers to 40 dwellings per hectare ('dph') as a general maximum, although exceptions can be made in appropriate locations. This location appears to me as a medium density suburban area of the town and the proposed building footprint would be noticeably close not only to the north east boundary (as referred to above) but also to the north west and south west boundaries. Whilst the Council's Optimising Housing Delivery Guidance of 2018 now envisages densities of more than 40dph, I am not persuaded that the relationship between the proposed scale and design of development on the one hand and the constraints of the site on the other to be such as to justify the proposed 75 dph as an acceptable exception to the policy.
9. This is all the more relevant because of the consequences in terms of direct overlooking from the first floor full height Juliet balcony windows of Flats 4 & 6 and the centre window of the communal landing over the rear gardens and towards the rear windows of Nos. 44-52 Curtis Road. In addition to the actual and perceived loss of privacy, the distance of only about 15m between the Curtis Road houses and the proposed building would result in an adverse effect on outlook for the existing residents. This would be manifested in the significant foreshortening of the existing aspect from the houses towards the trees on the south west boundary of the appeal site.
10. In addition, the officers' report advises that for the future occupiers of the development there would be no external outdoor amenity area of sufficient value to be regularly used, especially given the overshadowing by the trees. As regards individual allocations, only Flats 1, 2 and 3 would have an adequately sized amenity area in accordance with the Council's standards. Flat 6 would have a balcony 60% of the Council's minimum requirement for amenity space and Flats 4 and 5 none at all.
11. On the first issue I therefore conclude that the proposed development is unsuitable for the site as regards its design, size, amenity space and impact on

the living conditions for neighbours as regards outlook and privacy. As such, the scheme would be in harmful conflict with Policies DM10, DM11 & DM12 of the DMPD 2015 and Section 12: 'Achieving Well-Designed Places' of the National Planning Policy Framework 2021 ('the Framework').

Issue (ii): Housing Mix

12. On this issue, the Council cites Policy DM22 of the DMPD 2015 and argues that with its proposal for four 2-bedroom and two 1-bedroom flats the appeal scheme would fail to meet the identified need for family sized accommodation in the Borough and thereby also fail to achieve the optimum use of the site.
13. I acknowledge the appellant's view that there is inconsistency in the Council's approach with another of the appellant's schemes. This was supported on the issue of housing mix despite non-compliance with Policy DM22's requirement for proposals of four or more units to have 25% of its provision to be in the form of a 3 bed or more unit. The appellant also claims that the increase in the size of the flat would result in the scheme's overall loss of one unit.
14. However, each case must be considered on its individual merits and as I have already concluded in this appeal that the proposal as submitted would be an overdevelopment of the site, the housing mix assessment is inextricably linked to the main issue. The reduction of one unit would be a move towards resolution of that matter, albeit not necessarily sufficient. This would be for the Council to decide, bearing in mind that in any event a revised scheme would also require a significant re-design as well as a reduction in units.
15. In summary, and taking the application on the basis of the submitted plans, I am unable to support the appellant's justification of a precedent for a departure from the housing mix required under Policy DM22. Nor do I see anything in the Framework that would address the specifics of this proposal.

Issue (iii): Effect on Trees

16. On its south west boundary, the site adjoins Hogsmill Open Space which immediately on the other side of the palisade fence accommodates a line of trees with crowns and branches that overhang the boundary. These have been identified by a tree survey submitted with the application and there are initial submissions by arboricultural specialists on behalf of the appellant and the Council.
17. However, the appellant's detailed Arboricultural Implications Assessment has been submitted as an appeal document and given this timing the Council's tree officer has not reviewed the information. I have noted the analysis in respect of the development on the roots of the trees and whilst ostensibly this would appear to be reassuring, I am reluctant to reach a final view without the technical evidence from the Council's tree officer. Bearing in mind my findings on the other main issues there is little to be gained by delaying my Decision to request this.
18. On the other concern as regards the trees, this is referred in the Notice of Refusal as '*at threat of heavy pruning or felling because of the inharmonious layout*' and further explained in the officers' report by the comment '*There will be adverse living conditions in relation to seasonal nuisance (leaf and twig litter*

mainly) and the physical fear about the dominance of the trees swaying in the winds’.

19. This aspect of concern is less a technical matter and much more one of common sense and well documented problems of residential development sited in close proximity to significant trees. The south west elevation of the building would have 12 windows to 12 rooms, mainly bedrooms but including two living rooms. Eight of these rooms would be single aspect towards the trees.
20. The south west aspect of this side of the building would potentially be a significant source of daylight and sunlight, whilst there would also be aspirations for uninterrupted views over the public open space. I consider that because of the limited distance between the trees and the windows there would be significant pressure from residents and for pruning and felling. This would be increased by the very reasonable perception of a hazard and the inevitable nuisance of detritus.
21. I have noted the appellant’s rebuttal of harm and nuisance but I remain unconvinced that the relationship between the trees and the building would be either harmonious or sustainable. There would therefore be unacceptably harmful conflict with Policies DM5 and DM12.

Other Matters

22. In respect of housing provision in the Borough, the officer’s report concedes that the Council cannot demonstrate a 5 year supply. Accordingly, paragraph 11d)ii and footnote 8 of the Framework is engaged. As applied to this case, this means that permission for the development should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh its benefits when assessed against the policies of the Framework as a whole. I have had regard to this element of Government policy in my conclusions below.

Conclusions

23. In a situation where there is a substantial shortfall in housing supply in the Borough, the appeal scheme’s provision of six additional dwellings in a sustainable location is a benefit that weighs in favour of a grant of permission. However on the first main issue, whether the proposal is a suitable development for the site, I have concluded that the harm caused would be in clear and harmful conflict with the Council’s policies. My conclusions on the other issues are more balanced but generally do not support the appellant’s views.
24. Taking the appeal scheme as a whole, I conclude that the adverse effects of a permission would significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole. In these circumstances a permission cannot be justified.
25. The appeal is therefore dismissed.

Martin Andrews

INSPECTOR