
Appeal Decision

Site visit made on 22 June 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2022

Appeal Ref: APP/P3610/W/21/3280972

36, 38 and 40 Rowden Road, Epsom KT19 9PW

- 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 and Ewell Borough Council.
 - The application Ref 19/01617/FUL, dated 2 December 2019, was refused by notice dated 26 February 2021.
 - The development proposed is described as demolition of Nos 36, 38 and 40 Rowden Way, and garage block at Crane Court, and the erection of 12no new dwellings (including 8no 1 bedroom flats, 2no 2 bedroom flats, and 2no 3 bedroom houses), including associated landscaping, access and parking.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Rosebery Housing Association against Epsom and Ewell Borough Council. It is the subject of a separate Decision.

Preliminary Matters

3. The description of development in the banner header above, which is taken from the application form, refers to Rowden Way. The main parties agree that it should be Rowden Road.
4. Though not in the description of development, the flats would be in a single block and the proposal includes works for a new side elevation to the house at No 34 Rowden Road. The Council did not object to the proposed houses and nor do I. I have considered the appeal on this basis.

Main Issues

5. The main issues are the effect of the proposed block of flats on:
 - the character and appearance of the area; and
 - the living conditions of the existing occupiers of Nos 34 and 42 Rowden Road, having particular regard to outlook and privacy, and the existing occupiers of Nos 14 and 16 Bourne way, with particular regard to privacy.

Reasons

Character and appearance

6. The appeal site is in a residential suburb. It contains three, two-storey terraced houses with gardens and garage blocks in a forecourt behind. It is part of a

- pocket of similar houses arranged in a perimeter facing surrounding roads. These are representative of some of the earlier phases of residential development in this area and while they vary in age, detailed design and external materials, their broadly uniform form and layout is locally distinctive.
7. The block of flats would have a flat roof with a smaller inset second floor and different external materials in the lower and upper parts of the building. It would be slightly narrower on the site (than the houses to be demolished) and in siting would reflect the general building line in this part of Rowden Road.
 8. However, it would be three-storeys high and, as such, clearly protrude above the houses either side of it. The overall box-like design would result in a substantial scale and massing of built form facing Rowden Road, including the high vertical parapet elevations above first floor roof level. These parts of the building would have significantly greater bulk and visual presence than the receding, low pitched hipped roofs between the equivalent eave to ridge level. The contemporary design approach (including details such as external materials, fenestration and balconies) would be intrinsically high quality. Nevertheless, in this particular local context, there is little around it of a complementary vernacular nature. It would, therefore, be unsympathetic and manifestly at odds with the form and appearance of the houses to be demolished, thus other houses in Rowden Road and nearby.
 9. As a result, the block of flats would be unduly prominent and conspicuous in public views from Rowden Road and noticeably stand out as incongruous in the streetscene. In addition, the square floorplan of the building would step back significantly in-depth on the site. This would be at odds with the layout and narrow, long rectangular floorplans of the blocks of terraced houses.
 10. I have been referred to a three-storey block of flats and to 'The Edge' youth centre, both in Rowden Road. These flats are essentially the same as similar blocks of flats in and around Watersedge (road), thus have more in common with their form and layout than with the houses in Rowden Road. There is no compelling reason to erode the distinguishing features of two discrete residential areas by 'transitioning' one type of accommodation (three-storey flats) into the other (two-storey houses) and altering local distinctiveness. The Edge building has a large floorplan and some contemporary design features but the taller front part is two-storey in scale and massing. Nor is it a residential building or in residential use. Both buildings are an anomaly in Rowden Road.
 11. There are some trees in parts of Rowden Road, and nearby, and some landscaped front gardens. But it is not an overly verdant streetscene, or area, and front garden off-street parking on hardstandings is common. I am, therefore, satisfied that the proposal would have sufficient space at the front and rear of the site for suitable and appropriate landscaping. While No 34 Rowden Road would become a detached house, it would nonetheless not be viewed in isolation with the block of flats and so remain compatible in the wider Rowden Road streetscene.
 12. Considering the above, I find that the proposed block of flats would cause significant harm to the character and appearance of the area. Consequently, this part of the proposal would not comply with Policies DM9 and DM10 of the Epsom & Ewell Borough Council Development Management Policies Document 2015 (the DMPD). These policies aim to ensure that development respects, maintains or enhances essential elements that contribute to the local

distinctiveness of a street or area. This includes prevailing house types and size, scale, layout, height, form (including roof form), massing and design details and compatibility with existing townscape.

Living conditions

Nos 34 and 42 Rowden Road

13. The house and relatively small, irregular shaped rear garden at No 34 is already enclosed on one side by a terrace of houses in Bourne Way. No 42 has a more open aspect to nearby houses and a larger, regular shaped rear garden. The ground and first floor part of the block of flats would be stepped in and narrower across the site at the back, with the second floor inset further.
14. However, the main part of the building would be wider and both side elevations would be near the common plot boundaries with Nos 34 and 42, being closer and longer facing No 42. These parts of the building would rise abruptly to a horizontal parapet, taller than the ridge level of Nos 34 and 42. It would also significantly overlap beyond the rear elevation of No 34 and the first floor rear elevation of No 42.
15. The position, height, length and massing of this part of the building would, therefore, significantly restrict the extent of views towards and across the site in this direction — at No 34 from the nearest ground and first floor habitable room rear windows and the top of the rear garden; and at No 42 from the nearest first floor habitable room window and the top of the rear garden. While there would be views in other directions, and notwithstanding the variation in external materials, the sheer expanse of this built form in such close proximity would nonetheless be unduly overbearing.
16. In relation to No 42, this part of the building would be about level with a recently built ground floor rear extension, such that there would be no adverse effect on views from this habitable room through bi-fold doors. Views from an existing side facing habitable room window are already restricted by the proximity of the two-storey side elevation of No 40.
17. The first floor rear balconies would be stepped in from the main side elevations of the building. While they would face down the site, one would be in-line with the bottom of the rear garden at No 34 and the other with the top of the rear garden at No 42. A suitable side screen on the facing end of the balcony could prevent overlooking towards any window and all but the least private, very end of the rear garden at No 34. However, a side screen would not prevent overlooking of a majority of the longer rear garden at No 42. Moreover, people using this balcony (and activity distinctly different in nature to looking out of a window) would be observed from a significant part of this garden in an elevated position giving a tangible and unwelcome overbearing presence.

Nos 14 and 16 Bourne Way

18. The rear gardens of both of these houses are relatively short and face towards the site. Very acute angled views from the closest first floor rear balcony towards the rear garden of No 16 would also be largely restricted by the raised parapet side elevation of the block of flats. Despite a more perpendicular view towards the rear garden of No 14, a side screen would prevent unacceptable overlooking and, conversely, observation of people using the balcony. It would also eliminate any overlooking of the rear garden of No 16.

19. Taking all of the above into account, I find that the proposed block of flats would cause significant harm to the living conditions of the existing occupiers of Nos 34 and 42 Rowden Road with regard to outlook from habitable room windows and rear gardens, and additionally at No 42 with regard to rear garden privacy. Consequently, this part of the proposal would not comply with DMPD Policy DM10. This policy includes that development should incorporate principles of good design in respect of the outlook and amenities of occupants and neighbours.

Other Matters

Affordable housing

20. The appellant is a housing association and intends that the new homes would be added to its stock of affordable housing (AH). The main parties agree that there is a shortfall of AH in the Borough and I have no reason to find otherwise. However, the description of development does not refer to AH and there is no executed planning obligation before me to secure any AH in perpetuity. Nor has a planning condition been suggested by any main party to that effect. Either way, there is also no evidence that the main parties have agreed heads of terms or principal terms, such as to ensure that appropriate occupancy criteria are defined and can be enforced, and so that the homes remain affordable to first and subsequent occupiers. In these circumstances, there is no benefit in this appeal from the provision of AH.

Subsidence and disrepair

21. The appellant suggests that some or all of the dwellings to be demolished (which it owns) are affected by subsidence and uninhabitable, and that the garages are in a state of disrepair. However, there is no objective evidence before me in these regards, such as a structural engineers report or a schedule of repairs prepared by a suitably qualified professional.

Previously developed 'brownfield' land (PDL)

22. The appellant states that the appeal site is, or includes, PDL. However, the glossary in Annex 2 of the National Planning Policy Framework (the Framework) excludes from the definition of PDL 'land in built-up areas such as residential gardens'.

Other interested party comments

23. I have had due regard to the number and range of other interested party comments made at application and appeal stage. The effect of development on private views or alleged private rights, or on private insurances and on the value or structural integrity or security of private property, are not relevant to my decision. Other comments are not determinative, so would not affect the outcome of the appeal.

Planning Balance

24. The Council agrees that it cannot demonstrate a five year housing land supply, though the extent of shortfall is not in evidence before me. Nonetheless, as a consequence, and by virtue of footnote 8, paragraph 11 d) of the Framework is engaged.

25. In terms of benefits, the provision of 12 dwellings (net gain of 9), including a mix of different types and sizes, on a sustainably located site would make a notable contribution to housing supply. It would be consistent with objectives of the Framework to significantly boost the supply of homes and meet specific housing needs. The social, economic and environmental benefits associated with building and occupying the dwellings are, therefore, factors which I consider carry moderate weight in favour of the development.
26. The dwellings would not be at risk of flooding or affected by radon gas, would provide sufficient internal floorspace and external amenity space and be accessible to all users. Subject to planning conditions, car and cycle parking would be provided, as well as arrangements for drainage and refuse storage and collection. While a tree would be removed, there would be ecology enhancement and a net gain in biodiversity. The absence of harm, and compliance with the Council's development plan or the Framework in these regards, are therefore neutral factors in my decision.
27. However, while the Framework recognises that small windfall sites can help to meet identified needs for housing and that available sites could be used more efficiently and effectively, it also seeks to achieve well-designed, better places to live. In this respect, development should add to the overall quality of an area, be sympathetic to local character, including the surrounding built environment, maintain a strong sense of place, including building types, and distinctive places to live and promote well-being, with a high standard of amenity for existing users.
28. It would conflict with the Council's relevant development plan policies, which though adopted more than five years ago are consistent with aims of the Framework to balance meeting housing needs with these environmental and social objectives of sustainable development. Consequently, these are important factors against the proposal and, accordingly, I give substantial weight to them in my decision.
29. Notwithstanding that the benefits would be aligned with the Framework, the adverse impacts of the proposal would, therefore, significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. Accordingly, the presumption in favour of sustainable development does not apply in this case.

Conclusion

30. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
31. Consequently, for the reasons given above I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR