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# Appeal Decision

Site visit made on 4 July 2022

**by Robin Buchanan BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 September 2022**

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**Appeal Ref: APP/P3610/W/21/3279703**

**6 The Grove, Epsom KT17 4DQ**

- 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 20/01855/FUL, dated 16 December 2020, was refused by notice dated 12 July 2021.
  - The development proposed is the erection of 7 x two bedrooms flats and 2 x three bedrooms flats and associated external works following demolition of the existing building.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. At the written request of the occupant of No 7 The Grove, my site visit included an assessment of the proposal from the rear garden and some habitable rooms of this house.
3. The appeal application included a 'Street view montage position 2', as marked on drawing number TG12. This view is from private property. I was not able to observe it and I have not taken it into account in my decision.

## Main Issues

4. The main issues are:
  - the effect of the proposed development on the character and appearance of the Church Street Conservation Area;
  - whether it would provide suitable internal living conditions for the future occupants of flats 7, 8 and 9 with respect to natural light and outlook and, for all flats, suitable private external living conditions; and
  - its effect on the living conditions of the occupants of No 7 The Grove, with regard to privacy, outlook, natural light and noise and disturbance.

## Reasons

### *Conservation area*

5. The appeal property, No 6 The Grove, is a detached house in a large garden in the Church Street Conservation Area (CA). The significance of the CA includes the historic origins, siting and appearance of some of its residential buildings,

including No 6 which was included by the Council in the extended CA boundary as a 'property of merit'. In keeping with some other houses in The Grove, it dates to the 1920s or 1930s and these houses were established when part of the grounds of nearby Grove House were developed.

6. These houses are broadly similar in layout, scale and massing. Though different in detailed design, their overall appearance, external materials and architecture is in a Surrey suburban Arts and Crafts style, with carefully scaled detailed design and original features. Although No 6 is set back in the streetscene, at the top of The Grove cul-de-sac, it nonetheless adds to a sense of coherence formed by this group of houses in this part of the CA that is plain to see and can be readily appreciated. Albeit not in a defined 'Important View' and despite that it is cosmetically neglected, not a statutory or locally listed building or specifically identified by the Council as a 'Positive Building'<sup>1</sup>, it is nevertheless important in views and locally distinctive. I consider that it therefore makes a positive contribution to the significance of the CA that is worthy of protection.
7. The proposed plot ratio and site frontage would be less than, or comparable, to some other development in The Grove, and an appreciable degree of spaciousness and landscaped setting would be retained on the site. Hard surfacing and car parking in front gardens of buildings in The Grove and in the CA, such as that which is proposed, are a feature of existing development so not unusual or unexpected. There would be sufficient space for appropriate new landscaping, similar in these regards to existing development in The Grove.
8. However, No 6 would be demolished and its unique contribution to the significance of the CA lost forever. While the replacement building would maintain a similar building line and height to main roof ridge and eave levels, it would be significantly wider. This would result in an appreciably longer main roof ridge and noticeably wider spacing between the more steeply pitched, taller and individually wider, front projecting gables. It would also have a uniform two-storey high eave level around the entire building and stretch back significantly deeper on the site on one side. As well as altering the proportions of the existing building in these respects, there would be a substantial increase in the overall scale and massing of built form on the site. The dimensions and resulting L-shaped building footprint would also be at odds with the size and rectangular footprint of No 6 and most other buildings in The Grove, in the CA.
9. Some external materials and details, including the general proportions and placement of some doors and windows, would reflect No 6. In particular, timber framing and herringbone brickwork in the front elevation and (albeit not a feature of No 6) in one side elevation, which would include a projecting two-storey gable (also not a feature of No 6). However, concrete roof tiles and uPVC window frames would convey an overtly modern impression and details such as chimneys and corbelled gables with splayed brickwork at eave level would be absent. There would be no single storey parts to the building or, therefore, variation in scale and massing and roof form in this regard.
10. These considerations would significantly undermine the integrity of the proposed design and distinguish it from important features of No 6 and the other 1920s and 1930s houses. In addition, the rear elevation and one side elevation would be overly bland with, despite its indented L-shape, either a mostly blank south east elevation or an unduly regimented and repetitive

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<sup>1</sup> Church Street Conservation Area Character Appraisal & Management Proposals, December 2010

sequence of windows (north east elevation) or rooflights, even though they would be conservation style rooflights.

11. Overall, the design would not articulate the proposed building with sufficient conviction as of the 1920s or 1930s Arts and Crafts style. It would appear more akin to a modern block of flats, including in the most important and publicly visible front elevation. The building would, as a result, not only be out of keeping with the detailed appearance, proportions and design of No 6, but also with the prevailing pattern, sequence and appearance of the other 1920s and 1930s houses in The Grove in this part of the CA.
12. While the Council has previously approved development of greater depth and scale and massing on the site than that which exists<sup>2</sup>, it is nonetheless significantly less built form than in this appeal and would retain a rectangular building floorplan in keeping with No 6. In particular, and albeit that it would be extended and altered, No 6 would not be demolished but retained. That development can, therefore, be distinguished from the appeal proposal.
13. Some other buildings in The Grove are materially different in design or external appearance to No 6 and the other 1920s or 1930s houses but these are outside of the CA. They do not, therefore, directly inform the significance of the CA. They are, though, in The Grove streetscene and setting of the CA. Nonetheless, the proposed building would have more in common with some of these other buildings, particularly the modern blocks of flats. There is no compelling planning reason or justification to introduce this otherwise incompatible and unsympathetic form of development into the CA, no matter how proximate it is to the CA boundary. Such unwarranted encroachment would detract from important features of the CA and undermine its significance.
14. While The Grove is a private road and not a through road, it is nevertheless accessible to the public, including those who live in, or visit, properties in it. The absence of greater public visibility, including because of retained or proposed landscaping at the front of the site, or that part of the proposed building would not be seen in a public view, does not mean the absence of intrinsic harm to the CA.
15. I have been referred to previous comments about No 6 made by the Council's Design and Conservation Officer. However, these relate to the approved development at the site. The full context in which these comments were made is not apparent to me, nor indeed if it is the same design and conservation officer as was consulted on the current appeal proposal. I also appreciate that the appellant considers that the proposal has overcome the previous dismissed appeal decision<sup>3</sup> but that scheme was for a materially different proposal. I have determined the current appeal and proposal on its planning merits, including in light of my own assessment of No 6 and the CA.
16. Taking all of the above into account, I find that the proposed development would have a negative effect on the special architectural and historic interest of the CA and diminish the significance of this designated heritage asset. The impact would be localised and as a result would cause less than substantial harm. The proposal would not, therefore, preserve or enhance the character or

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<sup>2</sup> 18/00647/FUL

<sup>3</sup> APP/P3610/W/20/3256870

appearance of this part of the CA, or the CA overall<sup>4</sup>. Consequently, it would conflict with Policies CS1 and CS5 of the Council's Core Strategy 2007 (CS) and Policies DM8, DM9 and DM10 of its Development Management Policies Document 2015 (DMP). These policies include that high quality design should make a positive contribution to the character and appearance of its surroundings, including conservation areas. Development should also reinforce local distinctiveness and the visual appearance of the streetscene, be sympathetic in layout, height, scale, massing and form, have regard to important views and protect designated heritage assets.

17. The National Planning Policy Framework (Framework) sets out that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification (paragraph 200). Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (paragraph 196). I return to these considerations in my 'Planning Balance' below.

*Living conditions of the future occupants of the flats*

18. Despite their relatively small size, the number and position of rooflights would provide adequate natural light to the main habitable rooms in flat 8 and the bedrooms in flats 7 and 9. However, there would be a single rooflight to the open plan living and dining room in flat 7 and no rooflight over the living room in flat 9. This would unduly restrict natural light to these rooms, which would as a result be gloomy and overly rely on artificial lighting, especially at the beginning or end of the day due to their orientation.
19. There is no section plan to show that seated views out of any of the habitable room rooflights in flats 7, 8 and 9, including if dual-aspect, would be anything but upwards towards the sky. There would be no meaningful view horizontally or downwards towards physical features of visual interest or any range of immediate or longer distance views, even when standing. Albeit that some rooms would be bedrooms these would include main bedrooms.
20. No flat would have an outdoor private balcony or terrace, which is ordinarily desirable for some outdoor living activity, such as to enjoy a meal at a small table, sit with visitors, for relaxation or to dry clothes. No exceptional circumstances have been advanced to suggest that site conditions, or its context, would prevent any balconies or terraces, including necessary shelter or privacy screens or be set back within a façade. Nor has it been suggested that an equivalent or better quantum and arrangement of additional internal living space provides adequate mitigation or compensation.
21. The large external rear garden would be a private space for use by occupants of the flats. However, the plans do not show any part apportioned to any flat for exclusive private use. Moreover, there is no plan to show how this could be achieved in a satisfactory way and even the ground floor flats would have no individual direct means of access to this external space. Communal use of this space would not allow private activity of the sort described above.
22. Accordingly, the proposal would not provide a good quality internal or external living environment and have a negative effect on the well-being of future

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<sup>4</sup> Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990

occupants. I therefore find that the proposed development would not provide suitable internal living conditions for the future occupants of flats 7, 8 and 9 with respect to natural light or outlook and for all flats, suitable private external living conditions. Consequently, the proposal would not comply with DMP Policy DM12. This policy includes that development should provide adequate internal space and appropriate external private amenity space of sufficient size and useability to meet needs of occupiers, including families, in a functional way and be easily accessible from living areas.

*Living conditions of the occupants of No 7 The Grove*

23. Although sited slightly forward of No 6, the front of the proposed building would as a result be even more closely arranged in-line with the plane of the rear elevation of No 7. This would restrict the already very oblique, limited sideways or downwards angle of view from existing first floor windows in No 6 towards ground and first floor habitable room windows and an outside paved seating area at No 7. The boundary wall would prevent views from ground floor side and rear windows of the new building and the first floor side elevation windows would be obscured glazed. A planning condition could restrict these to top-opening fan lights. Views from the proposed first floor rear elevation windows would be towards only the rear end of the garden of No 7, at some distance and at an oblique angle. No views towards No 7 or its rear garden would be possible from any of the second floor rooflights. There would, therefore, be no unacceptable overlooking.
24. The increased depth of the closest side elevation would be progressively angled away from No 7, similar in alignment and footprint to the development already approved by the Council<sup>5</sup>. This part would not be substantially higher to eaves or main ridge level than No 6. While the front gable part would be taller to ridge level than what exists, be pitched at a steeper angle and extend further in-depth on the site, the facing hipped roof slope would recede away from No 7 and its rear garden. The rear wing would extend more in-depth on the site, including a small part beyond the building previously refused by the Council and dismissed at appeal<sup>6</sup>, but it would be stepped back a significant distance from the boundary. As a result, these parts of the proposed building would have materially less impact in these regards with respect to No 7 and its rear garden than this previously proposed development.
25. While the proposed building would have noticeably greater visual and spatial presence on the site than No 6, views from No 7 through ground floor and first floor habitable room windows, including glazed panels and doors, towards the new building would be from limited parts of these rooms and at an oblique angle to one side or upwards. Perpendicular views, and views in the other direction, which are extensive in nature, would be maintained. Moreover, the rear garden is wide, long and largely open, as would be a majority of the appeal site. Consequently the proposed building would not unduly erode a significant proportion of the available vista or panorama from No 7 or its rear garden. It would not, therefore, be overbearing, cause undue overshadowing or result in an over-intensive or unneighbourly form of development.
26. There is a vehicular access to No 6 and an integral garage. While it is overgrown now, the front garden was likely used to park some cars and could

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<sup>5</sup> 18/00647/FUL

<sup>6</sup> 20/00313/FUL and APP/P3610/W/20/3256870

still be used to park a number of cars. A majority of the proposed car parking spaces would be a significant distance from No 7 and its rear garden and all of the spaces would, anyway, be laid out roughly level with the blank side elevation of this house. The development already approved by the Council<sup>7</sup> is for five flats with requisite car parking at the site. While the appeal proposal would likely increase vehicle movements and parking at the front of the site, this activity would not, therefore, have an unacceptable adverse impact.

27. Considering the above, I find that the proposed development would not cause harm to the living conditions of the existing occupants of No 7 The Grove, with regard to privacy, outlook, natural light and noise and disturbance. Consequently, the proposal would comply with CS Policy CS1 and DMP Policy DM10. These policies include that development should protect quality of life and have regard to the amenities of occupants and neighbours, including in terms of privacy, outlook, sunlight/daylight and noise and disturbance.
28. In its reason for refusal 5 the Council cited CS Policy CS5 which relates to the protection of heritage assets. It is not relevant to this main issue.

## **Other Matters**

### *Listed building*

29. Grove House is a large, late 18<sup>th</sup> century Grade II listed building (LB). I am required to have special regard to the desirability of preserving the LB or its setting or any features of special architectural or historic interest which it possesses<sup>8</sup>. The significance of the LB mainly derives from its impressive, innate architectural appearance and historic provenance in this location. It is also informed by a relatively narrow landscaped curtilage to the front and rear, set back from the road, giving a somewhat unexpected and distinctive visual presence in this streetscene. Although the house and garden at No 7 and some rows of trees intervene, No 6 is in the setting of the LB.
30. Most of the extensive historic setting and gardens to the LB have been lost due to subdivision and later development. The original single large house has been converted into flats. The visual and spatial relationship of the LB to No 6 is, as a result, of more limited significance. The proposed development would have a neutral impact on the setting of the LB and not detract from the way in which the LB is experienced. It would, therefore, preserve the setting of the LB and these features of its special architectural and historic interest.

### *Other interested party comments*

31. The effect of development on private views, property values and land ownerships are not relevant to my decision. I have had due regard to the large number and range of other comments made by interested parties. However, these are not determinative, so would not affect the outcome of the appeal.

## **Planning Balance**

32. The Council agrees that it is unable to demonstrate a five year housing land supply (5YHLS) and does not meet the Government's Housing Delivery Test (HDT). It has prepared a housing delivery plan. Accordingly, by virtue of

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<sup>7</sup> 18/00647/FUL

<sup>8</sup> Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990



footnote 8, Framework paragraph 11(d) is engaged and planning permission should be granted unless the circumstances in paragraph 11(d)(i) or (ii) apply.

33. In terms of benefits, 8 new homes (net) in the form of two and three-bedroom flats would make a modest contribution to housing supply in the Borough. This would be consistent with objectives of the Framework to significantly boost the supply of homes and meet the needs of people with specific housing requirements. The social, economic and environmental benefits associated with building and occupying the homes, including a Community Infrastructure Levy payment, are, therefore, factors which carry notable weight in favour of the development.
34. The development would be accessible to all and there would be sufficient internal floor areas, compliant with the Nationally Described Space Standards. It would incorporate energy efficiency measures and provide satisfactory landscaped communal garden space without adverse impacts on ecology, including important retained trees. There would be an appropriate level of on-site car and cycle parking, considering the location of the site near Epsom town centre and public transport links. 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.
35. The Framework recognises that suitable, small windfall sites can make an important and relatively quick contribution to meeting housing requirements. Great weight should be given to the benefits of using suitable sites within existing settlements to help meet housing needs and available, under-utilised sites within built-up, urban areas could be used more efficiently and effectively.
36. However, it also seeks to conserve the historic environment so that it can be enjoyed for its contribution to the quality of life of existing and future generations and achieve well-designed better places to live. Development should add to the overall quality of an area, be visually attractive as a result of good architecture and layout, be sympathetic to local character and history, including the surrounding built environment, maintain a strong sense of place using building types and materials to create attractive and distinctive places to live and visit. It should also create places that promote well-being, with a high standard of amenity for future users. Development that is not well designed in these respects should be refused.
37. The Framework also states that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance (paragraph 189). When considering the impact of development on the significance of a designated heritage asset, such as a conservation area, great weight should be given to the asset's conservation, irrespective of the level of any harm to its significance (paragraph 199).
38. The significant harm to the historic environment and to the amenity of future occupants, would conflict with the Council's relevant development plan policies, which are consistent with aims of the Framework to balance meeting housing needs with these other social and environmental objectives of sustainable development. Consequently, these are important factors against the proposal and I give substantial weight to both considerations. There is, therefore, no public benefit that provides a clear and convincing justification to outweigh this harm.

39. Moreover, in this appeal, by virtue of Framework paragraph 11(d)(i) and footnote 7, the application of policies in the Framework that protect areas of particular importance (including designated heritage assets, such as a conservation area) provide a clear reason for refusing the proposed development. As such, the presumption in favour of sustainable development does not apply in this case.
40. Notwithstanding that the benefits would be aligned with the Framework, and that the Council is 'falling significantly short' of a 5YHLS and met 35% of its HDT, the adverse impacts of the development would, therefore, outweigh the benefits.

### **Conclusion**

41. 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.
42. For the reasons given above I conclude that the appeal should not succeed.

*Robin Buchanan*

INSPECTOR