



Appeal Decision

Site visit made on 14 November 2022

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH December 2022

Appeal Ref: APP/P3610/W/21/3286241

91 Park Avenue East, Stoneleigh KT17 2PA

- 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 planning permission.
 - The appeal is made by Mr Rob Turner of Turnbull Land against Epsom and Ewell Borough Council.
 - The application Ref 21/01428/FUL, is dated 26 August 2021.
 - The development proposed is demolition of the existing pool house at 89 and detached bungalow at 91, and the erection of four houses (comprising 4 x 4 bedroom detached chalet bungalows), with associated access and parking.
-

Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The appeal relates to a failure to determine the application within the prescribed period and the Council has highlighted what its reasons for refusal would have been, had it been determined. The Council's main concerns relate to backland development, trees, highway safety and biodiversity. The appellant has had the opportunity to comment and therefore would not be prejudiced by them forming the basis for the main issues.

Main Issues

3. The main issues are the effect of the proposal upon (i) the character and appearance of the area, (ii) highway safety; and (iii) biodiversity.

Reasons

Character and appearance

4. The appeal site and its surrounding area includes a range of house types where modest frontages meet a long, wide street that provides a strong and well-established building line. Trees and vegetation punctuate the street fronted properties and tend to form prominent elements of the generous rear garden plots, which is a prevailing characteristic that adds to the overall quality of this suburban area.
5. The massing and scale of the proposed properties is similar to the surrounding built form. Although the proposed density is low, the scheme would nevertheless introduce a busy and dense arrangement of properties with their associated hard standings and gardens in comparison to the surrounding area. In that context, despite the reduction in the number of units when compared

with previous appeal decisions at this site, and some retained hedges, the proposed layout would be at odds with the spacious plots and gardens within which they would sit and would be surrounded by. Furthermore, the proposal would erode the qualities of the existing garden arrangements and the larger swathe of green infrastructure, which would not maintain the area's prevailing character and setting.

6. Views towards the three proposed properties at the rear of the site would be limited by the introduction of the replacement street fronted property. However, the presence of the proposal properties set behind the strong building line would be incongruous with the linear pattern of development along Park Avenue East and would therefore harmfully erode the well-established and characterful pattern of housing frontage. Furthermore, the scheme would erode the prevailing pattern of spacious rear garden layouts.
7. The trees proposed for retention to the rear of the site are outside the root protection area of the proposed properties, and I have not been provided with substantive evidence to suggest they could not grow and develop as a result. They are identified within the submitted arboricultural report as having a good degree of life expectancy, and their canopies would be likely to cover larger parts of the proposed rear gardens if allowed to mature. Future occupiers would therefore be likely to remove these trees to create a less enclosed space. Even if future occupiers chose to retain those trees, this, together with proposed landscaping would not be sufficient to mitigate against the significant harm the proposal would cause by the extensive removal across the whole site of a substantial amount of natural vegetation and trees.
8. I therefore conclude that the proposal would significantly harm the character and appearance of the area. It would be contrary to Policies CS1 and CS5 of the Epsom and Ewell Core Strategy 2007 (CS) and Policies DM9, DM10 and DM16 of the Epsom and Ewell Development Management Policies Document 2015 (DMPD) which amongst other things seek to create compatible, attractive places, avoiding the loss of rear gardens due to the need to maintain local character, amenity space and green infrastructure. The proposal would also conflict with paragraphs 124 and 130 of the National Planning Policy Framework (the Framework) where there is a desirability of maintaining an area's prevailing character and setting and where decisions should ensure that developments add to the overall quality of the area.

Highway safety

9. The County Highway Authority raise no objection in principle to the proposal. Service and emergency vehicles would be able to access the site without their wheels encroaching onto designated pedestrian routes. However, the submitted tracking plan identifies an overhang of forward moving and reversing vehicles onto pedestrian routes. Those using such routes would not be expecting to have to share space with or avoid the oncoming or reversing service or emergency vehicles crossing onto the pavement. Additionally, drivers of these large vehicles would be required to carry out reversing manoeuvres within the site with limited visibility due to the constrained layout.
10. I therefore conclude on this main issue that the proposal would have an unacceptable effect on highway safety. As such the proposal would be in conflict with Policies CS6 and CS16 of the CS, and Annex 2 of the Revised

Sustainable Design Guide 2016, which amongst other things seek to provide appropriate layout with safe accesses for all.

Biodiversity

11. It is indicated that there was a previous Preliminary Ecological Appraisal that concluded the site was of very low ecological value, though this has not been provided. Despite this, both main parties are in agreement that it is out of date.
12. The Planning Practice Guidance indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate. Without any survey of the relevant features, it is simply not known whether protected species or other species are present and, if there are, whether mitigation measures would be appropriate. There is a further question concerning the implementation of any such measures. Given this degree of uncertainty, the use of conditions would not be reasonable in this case.
13. The absence of sufficient information means I cannot rule out potentially significant harm to biodiversity. As such, the proposed development would be contrary to Policy DM4 of the DMPD which seeks to promote biodiversity through an assessment of existing nature conservation assets on a site. It would also fail to accord with the Framework where it states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for then planning permission should be refused.

Other Matters

14. Although the appeal was allowed at 289 London Road, I am not aware of its detailed site-specific characteristics. Furthermore, the Inspector highlighted that the wider green network was interrupted by existing backland development and hemmed in on all sides by built development and busy residential roads. Consequently, these characteristics are materially different to those that I have identified above, where the green network is more prominent and less interrupted.
15. The main parties dispute the validity of the application. I have had regard to the Town and Country Planning (Development Management Procedure) (England) Order 2015, and the Planning Practice Guidance. However, in the absence of clear evidence relating to the extent of the public highway, and that the appeal is being dismissed, this matter has not been determinative to my findings on the main issues.
16. I have taken into consideration the two outline schemes that were previously dismissed on the site for 8 dwellings¹. These proposals were for a greater number of dwellings with an alternative layout which is materially different to the proposal before me; and while some matters were not raised in previous proposals, I have determined this appeal on its merits taking into account all the evidence before me and my own observations.

¹ APP/P3610/W/19/3242054, APP/P3610/W/19/3242057

17. I note the appellant's comments in relation to the processing of the application, however these have little bearing on my decision which is based on the merits of the development.

Planning Balance

18. In the context of the development plan, I have found that the proposal would be in conflict with Policies CS1, CS5, CS6, and CS16 of the CS and Policies DM4, DM9, DM10, and DM16 of the DMPD. In this respect, I have found these policies to be generally consistent with the relevant aims of the Framework, where it says decisions should ensure that developments will function well and add to the overall quality of the area and are sympathetic to local character. Therefore, I give the conflict to these policies substantial weight.
19. The proposed new properties would make a modest yet meaningful contribution towards a substantial shortfall in housing supply and this is not disputed by both parties. Additionally, there would be a benefit from New Homes Bonus and more Council Tax receipts which would provide a source of revenue funding in delivering new services. In this respect, I have attached moderate weight in favour of the proposal. The proposal would occupy an accessible location and would comprise a mix of accommodation sizes, including family sized homes, which in turn would generate employment opportunities during construction, and through the employment of local services for the upkeep and maintenance of the dwellings when they were occupied, which weighs moderately in favour.
20. Given the lack of information regarding the effects of the scheme on biodiversity and the amount of vegetation to be removed, the environmental benefits would be limited. For the above reasons, the proposal would not accord with the development plan when considered as a whole.
21. Paragraph 11 of the Framework states that where the development plan is out of date, 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, or there are specific policies in the Framework which indicate that development should be restricted.
22. The Council agrees that it cannot presently demonstrate a five-year housing supply and does not contest the appellant's claim that this is substantially below (less than 75%) the requirement over the past three years. In this case, from the evidence before me, there are no specific policies in the Framework which indicate that development should be restricted. Therefore, the presumption in favour of sustainable development set out within paragraph 11 of the Framework applies.
23. I have already found that there would be modest economic and social benefits through a contribution to a substantial shortfall in housing supply and the provision of family sized homes. However, there would be conflict with the Framework insofar as the proposal would not add to the overall quality of the area and would not be sympathetic to local character. Its effects on biodiversity have not been demonstrated, and consequently it would also fail to accord with the Framework where it states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for then planning permission should be refused.

24. Consequently, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.

Conclusion

25. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed and planning permission is refused.

J Hills

INSPECTOR