



Appeal Decision

Site visit made on 6 June 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2023

Appeal Ref: APP/P3610/W/22/3291215

140 & 142 Ruxley Lane, West Ewell KT19 9JS

- 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 David Mumford (Rushmon Homes Ltd) against Epsom and Ewell Borough Council.
 - The application Ref 21/01406/FUL, is dated 24 August 2021.
 - The development proposed is demolition of existing dwellings and erection of 20 flats within two blocks with associated car parking and landscaping.
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Decision

1. The appeal is dismissed and planning permission for the demolition of existing dwellings and the erection of 20 flats within 2 blocks with associated car parking and landscaping is refused.

Main Issues

2. The main issues are the effect of the proposed development on:
 - the character and appearance of the area;
 - the living conditions of the future occupiers of the proposed development, with particular regard to the provision of internal space and private amenity space; and
 - the living conditions of neighbouring occupiers, with particular regard to sunlight, daylight, privacy, and outlook.

Reasons

Character and appearance

3. The appeal site comprises No 140 Ruxley Lane, a 2-storey detached dwelling, and No 142 Ruxley Lane, a single-storey bungalow, which are both set-back behind Ruxley Lane and which benefit from generously-sized rear garden areas. The local area primarily consists of residential development, although a local supermarket with residential accommodation above (known as Willow Court) is present adjacent to the site, and a school is present opposite the site on Ruxley Lane.
4. The site lies at the end of a run of development stretching from Gatley Avenue which firstly comprises a small parade of retail units and then mainly consists of 2-storey dwellings and bungalows. Indeed, as the Inspector mentioned at paragraph 7 of appeal decision Ref APP/P3610/W/20/3263842, whilst Willow

Court is very much a focal point within the street scene, development to the south-west of Willow Court is far more domestic in scale.

5. Whilst the Epsom and Ewell Borough Council Environmental Character Study – Final Report (2008) does not take account of developments that have been built since its publication, I observed that its description of the area as predominantly consisting of 2-storey semi-detached properties with occasional blocks of flats, terraces, and detached properties, is still apt.
6. In this context, whilst the ridge height of the projection closest to No 144 Ruxley Lane (No 144) of the proposed front block of flats would match that at No 144 (a 2-storey property) and the closest side projection of Willow Court, and a visual gap would exist between the new block of flats and No 144, the remainder of this block of flats would have the appearance of a 4-storey building, given that residential accommodation with prominently-placed windows would be present on the 4th level of the building within a sizeable roof area.
7. It would also be a wide building overall and as such at the height and scale proposed it would both tower over No 144 and unduly contrast with the prevailing pattern of development in the vicinity which is, as indicated above, commonly low-rise along this part of Ruxley Lane and in the local area. The fact that it would not exceed the maximum height specified in Policy DM13 of the Development Management Policies Document (adopted 2015) (DMP) would not alter its failure to respect the character and context of the surrounding locality in these respects.
8. Moreover, a considerable proportion of the frontage of the site would consist of a parking area and an access way, with minimal areas within that part of the site provided for soft landscaping. This would not complement the often attractive front garden areas which are present at the plots leading up to the site along Ruxley Lane from Gatley Avenue.
9. At paragraph 8 of appeal decision Ref APP/P3610/W/20/3263842, the Inspector commented that, with respect to the scheme before them, the combination of the 2-storey block to the rear of the site and the intervening hard surfacing would result in the site appearing over-developed in its context.
10. With respect to the present scheme, although it has been stated that the amount of landscaped communal amenity space has been increased by approximately 14%, a considerable proportion of the site would still consist of either hardstanding or built form. This would be at odds with existing pattern of development in the area which generally consists of residential development at a fairly low density. As no plans have been provided relating to the recent development at 5 Cox Lane a meaningful comparison with the appeal proposal cannot be made. Accordingly, that example does not change my findings.
11. Furthermore, the front block of flats would exhibit an assortment of dormer window styles, roof forms, and balconies which would undermine the visual coherence of the building. This would exacerbate the harm caused to the character and appearance of the area, identified above. Due to the clear shortcomings of the proposal, identified above, the positive aspects of the proposal, including the use of appropriate materials, the planting of numerous new / replacement trees across the site, and a layout for the front block of flats

which would reflect the linear arrangement of buildings along Ruxley Lane would not overcome these harms.

12. I therefore find that the proposed development would have an unacceptable and harmful effect on the character and appearance of the area. The proposal would conflict with Policies CS1 and CS5 of the Core Strategy (adopted 2007) which collectively provide that, amongst other things, development should reinforce local distinctiveness and complement the attractive characteristics of the Borough. The proposal would conflict with Policies DM9 and DM10 of the DMP which collectively provide that, amongst other things, planning permission will be granted for proposals which make a positive contribution to the Borough's visual character and appearance.
13. The proposal would also conflict with paragraph 130 c) of the National Planning Policy Framework (the Framework) which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Living conditions: future occupiers

14. The Council have calculated that half of the proposed flats would fail to meet the requirements of the Technical housing standards – nationally described space standard (March 2015 (amended 19 May 2016)) (Technical housing standards). Based on the proposed internal area figures provided by the Council, the Council's analysis is correct. The appellant has stated that there are errors on the submitted drawings, with the 3-bedroom units proposed to accommodate 5 persons rather than 4, but the Technical housing standards require a higher minimum gross internal floor area for 5 persons as opposed to 4, meaning that the shortfall with respect to the 3-bedroom units would be even greater taking account of the 5 persons scenario.
15. It is clear, then, that a significant proportion of the proposed units of accommodation would fail to meet the requirements of the Technical housing standards. Although the shortfall for some of these units would not be excessive, the figures provided in the Technical housing standards are expressed as the minimum requirements. It follows that the units with a shortfall would likely offer cramped living conditions for the future occupiers of those individual units. Moreover, the bedroom for Flat 1 would only have 1 obscure-glazed window, and one of the bedrooms for Flat 10 and each bedroom for Flats 19 and 20 would be served by rooflights, which would result in poor levels of outlook for the future occupiers of those flats.
16. With respect to private amenity space, the Council have calculated that only 3 of the proposed units of accommodation would meet the requirements as set out in paragraph 3.36 of the DMP. Again, whilst the shortfalls identified for each unit are not excessive, the figures found at paragraph 3.36 of the DMP represent minimum requirements. These units would therefore likely not offer a good standard of private amenity space in terms of promoting the health and well-being of the future occupiers of the proposed units.
17. The proposal does incorporate a fair amount of communal amenity space, but as this is not private, it does not alleviate the shortfall identified, particularly as

it does not offer a private space for private domestic activities, which represent the legitimate needs of the future occupiers of the proposed development.

18. The report to the planning committee for planning application reference 20/00288/FUL does not explain how the communal facilities proposed for that scheme would meet private needs, and I note that the need to optimise the site was taken into account as a consideration, which in my view is not directly relevant to the impact of a proposal on the living conditions of future occupiers. As such, the conclusions of that report are not sufficiently persuasive so as to change my findings on this main issue.
19. I therefore find that the proposed development would have an unacceptable and harmful effect on the living conditions of the future occupiers of the proposed development, with particular regard to the provision of internal space and private amenity space. The proposal would conflict with Policy DM12 of the DMP which provides that, amongst other things, all new housing developments are required to comply with external and internal space standards.
20. The proposal would also conflict with paragraph 130 f) of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Living conditions: neighbouring occupiers

21. The proposed front block of flats would incorporate a terrace as part of the roof on the 4th level. This terrace would be situated in close proximity to the boundary of the site with No 144. This terrace would offer the potential for prolonged overlooking into the private amenity areas serving No 144.
22. However, in the event that the proposal were found to be acceptable overall, a planning condition could be imposed to require the erection of a 1.8 metre high obscure screening feature around the terrace. This would be sufficient to alleviate any potential loss of privacy with regards to the occupiers of No 144 resulting from the use of that terrace. Although the outlook from that terrace would be reduced in consequence, given the size of the terrace it would still offer a usable space which would be pleasant enough for sitting out. Similarly, a planning condition could require screening to the sides of the rear balconies of the front block of flats, thereby preventing any undue loss of privacy to the occupiers of No 144 arising by way of the use of those balconies.
23. The proposed rear block of flats would have a number of windows present at its 2nd and 3rd levels, facing towards Ruxley Lane. Whilst these windows would not directly face the rear garden area of No 144, given the amount of these windows, their elevated position, and the proposed siting of the rear block of flats not far from the boundary of the site with No 144, I consider that the presence of these windows would cause the occupiers of No 144 to suffer from a perceived loss of privacy whilst using their rear garden. Harm to their living conditions would thereby result.
24. The north-east facing windows on the 4th level of the proposed front block of flats would directly face the roof terrace on the 3rd level of Willow Court. Due to the close proximity of those windows to that outdoor space, an unacceptable loss of privacy to the occupiers of Willow Court would be caused. The quality of their living conditions would be harmed as a result.

25. The proposed front block of flats would comprise a tall mass of built form in close proximity to the kitchen window of Flat 4 at Willow Court. At the scale proposed, it would likely result in an undue loss of sunlight and daylight to that window, making the kitchen area unacceptably dark, and it would also compromise the outlook from that window. The window serving the bedroom of Flat 4 is offset, and the proposed front block of flats would comply with the 45-degree rule in relation to it, but due to the large mass of built form in close proximity to it, the amount of lost sunlight and daylight caused would make that habitable space much less pleasant to use. Harm to the living conditions of the occupiers of Flat 4 would thereby result, with particular regard to sunlight, daylight, and outlook.
26. I therefore find that the proposed development would have an unacceptable and harmful effect on the living conditions of the occupiers of No 144 and Willow Court, with particular regard to privacy, and the occupiers of Flat 4 at Willow Court, with particular regard to sunlight, daylight, and outlook. The proposal would conflict with Policy DM10 of the DMP which provides that, amongst other things, development proposals should have regard to the amenities of occupants and neighbours, including in terms of privacy, outlook, and sunlight/daylight.

Other Matters and Planning Balance

27. It is common ground between the main parties that, due to the Council not currently being able to demonstrate a 5-year supply of deliverable housing sites, paragraph 11 d) ii. of the Framework is engaged. As such, I would consider the most important policies out-of-date and apply the requirement that planning permission should be granted for the proposal 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.
28. The Council's Land Availability Assessment identifies the site as a 'Deliverable Site', with a potential yield of 20 dwellings. As such, the principle of increased residential density on this site is accepted. In this regard, the proposal would provide 20 units of residential accommodation in an accessible and established residential area, thereby supporting the Government's objective of significantly boosting the supply of homes, and providing accommodation which is evidently and urgently needed in the local area (as confirmed by the most recent Housing Delivery Test results).
29. The units of accommodation provided would also add to the choice and mix of accommodation options in the area, including potentially providing accommodation for people wishing to downsize, which could potentially include older people.
30. Additionally, the proposal aims to provide 2 units of affordable housing, in line with the requirements of paragraph 65 of the Framework. In this regard, paragraph 18.2.2.2 of the Procedural Guide: Planning appeals – England provides that, amongst other things, the appellant must ensure that an executed and certified copy of a planning obligation is provided during the appeal process.
31. However, although a Unilateral Undertaking document has been provided, it has not been signed, meaning that it has not been properly executed as a

deed. The Planning Practice Guidance¹ advises that a negatively worded condition limiting development that can take place until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases. No exceptional circumstances have been cited which might deem this to be an appropriate course of action. Consequently, there is no effective mechanism before me to secure the proposed affordable housing units. This greatly limits the weight which can be given to this matter in support of the proposal.

32. The intention to effectively use the site by maximising its potential to provide accommodation is recognised, but given my findings on the first main issue, this matter must be considered in light of paragraph 124 e) of the Framework which provides that, amongst other things, planning decisions should support development that makes efficient use of land, taking into account the importance of securing well-designed places.
33. The scheme incorporates energy efficiency, water resource management, and sustainable construction features and strategies, which would limit the environmental impact of the proposed development.
34. Overall, in light of the Council's housing land supply position and the total amount of residential accommodation proposed, I consider that the collective benefits of the proposal, as summarised above, attract significant weight in favour of the proposal.
35. Nevertheless, whilst I have taken account of the quotes provided from the report that was published following the Licensing & Planning Policy Committee meeting referred to by the appellant, the adverse impacts of the proposal, identified on all 3 main issues, represent a clear conflict with the fundamental aims of the planning and development process. This includes the proposal being directly at odds with the need for built form to be determined by good urban design principles as advocated by paragraph 66 of the National Design Guide, and the creation of places which promote health and well-being, as advocated by paragraph 130 f) of the Framework. As such, when considering these adverse impacts collectively, very substantial weight has been accorded to them.
36. Balancing the very substantial weight of these adverse impacts against the significant weight I have given to the benefits of the proposal, as a matter of planning judgement I find that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development, detailed at paragraph 11 of the Framework.
37. The Council made reference to an absence of an appropriate legal agreement to secure the provision of affordable housing in the first reason for refusal of their putative decision notice. However, whilst I have referred to the submitted Unilateral Undertaking document above, as I am dismissing the appeal for reasons not connected with that reason for refusal, with the overall outcome of the appeal having been determined, there is no need to consider this matter in any further detail.

¹ Paragraph 21a-010-20190723

Conclusion

38. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR