

Appeal Decision

Site visit made on 20 July 2023

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

an Inspector appointed by the Secretary of State

Decision date: 29th August 2023.

Appeal Ref: APP/P3610/W/22/3313773

Epsom Lodge Nursing Home, 1 Burgh Heath Road, Epsom KT17 4 LW

- 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 Mr Kevin Middleton against the decision of Epsom & Ewell Borough Council.
 - The application, Ref. 22/00431/FUL, dated 30 March 2022 was refused by notice dated 30 September 2022.
 - The development proposed is the change of use of a vacant care home (Use Class C2) and the creation of 6 flats (Use Class C3) including alterations and extensions.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether, taking into account its characteristics and location, the site is of a sufficient size to accommodate a change of use of the vacant Care Home and the proposed extension to provide 6 flats (5 x 2 bed and 1 x 1 bed) in the form proposed.

Reasons

3. The appeal site is in a residential area in a location within reasonable proximity of Epsom town centre. The Council has accepted through a previous application, albeit refused permission, that the principle of a change of use of the vacant Care Home is acceptable. And with Epsom Lodge identified as a 'Positive Building' within the Burgh Heath Road Conservation Area there are some advantages in following the change of use option (with a two-storey side extension including rooms in the roof) to achieve a housing development on the site, as opposed to a demolition and redevelopment scheme.
 4. Turning to the Council's reason for refusal, there are four matters which are individually considered sufficient to justify a refusal of permission. These are: (i) the absence of any private amenity space for proposed flats 4 and 5; (ii) the harmful effect on existing residents' living conditions from the proximity of the proposed flats to the boundaries of Nos. 6, 6a and 6b Rosebery Avenue and also No. 67 Church Road (in the case of the former a resultant loss of privacy and as regards the latter a significant loss of sunlight); (iii) an adverse effect on the future health and well-being of the pine tree, and (iv) insufficient on-site parking and the consequences for on-street parking. I have assessed these assertions on their individual merits and have had regard to the development plan in the form of the Council's Development Management Policies Document
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2015 ('the Local Plan') and Core Strategy 2007, together with Government policy in the National Planning Policy Framework 2021 ('the Framework'). I have also taken account of the objections from local residents.

5. There is no objection from the Council in respect of the design of the proposed alterations & additions in terms of their effect on the street scene and the appearance of the conservation area. I consider this judgement to be sound because as the 3D Visualisation illustrates, the extension achieves a more contemporary addition that would blend well with the host building and complement the street scene. Although acknowledging that the amount of building on the site would substantially increase and also noting neighbours' objections to this, I consider that on balance the proposed conversion and additions would not have an adverse effect on the character and appearance of the conservation area and thereby the significance of the heritage asset
6. However, in respect of the four reasons for refusal it is clear that there is a common denominator in terms of the size of the site and its capacity for development, which as indicated in paragraph 2 above I regard as the main issue in this appeal. Assuming temporarily for argument's sake that the Council is correct in its objections, these would have been resolved had there been a larger site / smaller development through (i) the provision of the requisite amenity space for flats 4 & 5; (ii) a greater distance from upper rear windows to the gardens of the houses in Rosebery Avenue and scope for the scheme's design to avoid the overshadowing of No. 67 Church Road; (iii) enabling more unused space for the pine tree to enhance its prospects of longer term survival and growth, and (iv) providing more on-site parking for the convenience of residents and visitors, thereby avoiding the potential for repercussions in the surrounding residential area in terms of both parking availability and the effect on the amenity of the street scene.
7. In the appellant's view none of the above would be necessary because the development as currently proposed would not have an unacceptable effect on the matters raised in the officer's report and refusal of permission. However, firstly in respect of parking for the six proposed flats, the Council's Parking for Residential Development SPD 2015 requires at least six spaces on the site. Instead, the proposed site plan indicates just five and of these two are near to the Pine Tree. These are considered to be unacceptable because of their likely effect on the tree and if correct this would leave just three workable or 'viable' spaces to serve residents and visitors.
8. Whilst I note the absence of an objection to the proposed parking provision from the Local Highway Authority, this would appear to be essentially based on the site being in a 'sustainable' location, with the town centre assuming significance in this regard. However, although I have noted the appellant's views, I remain unconvinced that this is a suitable site as regards both character and location for a 50% reduction in on-site provision from the Council's minimum standard if the two spaces adjacent to the pine tree are not counted. As the Council's appeal evidence points out, there are already extensive parking restrictions on the local road network and the increased demand from this development would be likely to materially increase the demand with harmful consequences for the availability of on-street spaces and the character and appearance of the street scenes of the affected roads. I consider that this would unacceptably conflict with Core Strategy Policy CS16;

Local Plan DM35 & DM37, and with Section 9: 'Promoting Sustainable Transport' of the Framework.

9. The shortfall in on-site spaces is in part linked to the scheme's inclusion of two spaces close to the pine tree. From my inspection of the site, I regard the Council's arboricultural statement as setting out a convincing case that the pine tree would come under an unacceptable level of threat were the development to proceed on the basis of including the two parking spaces shown on the submitted plans as being near the tree. The appellant's proposed surface treatment including a possible slight raise of levels is not in my view a viable or sustainable option for the long-term retention of this important tree, especially taking account of its positive contribution to the street scene and the conservation area. The scheme as proposed with the retention of the two spaces would therefore be contrary to Local Plan Policy DM5 and paragraph 131 of the Framework.
10. Turning to the potential for a loss of privacy to the gardens in Rosebery Road, with an average distance to the boundary of around 10m from the proposed first floor balcony and full height windows including a Juliet balcony, there would be significantly increased overlooking of these neighbouring rear gardens from the development. Accordingly, I am of the view that the design and scale of the rear elevation's fenestration would not adequately reflect the constraints imposed by the site's limited capacity for increases in the overall scale of the development and number of residents likely to take advantage of the aspect when compared to the recent use as a Care Home and original use as a single dwelling. This therefore contravenes Local Plan Policy DM10 and paragraph 130f) of the Framework. These policies also apply to the separate living conditions issue of the sunlight currently enjoyed by the occupiers of 67 Church Road. In this case the submitted Daylight and Sunlight Assessment is in my view sufficient evidence of an unacceptable effect, as confirmed by the occupiers of the dwelling in their objection, and I am not persuaded otherwise by the appellant's view to the contrary.
11. As regards the absence of private amenity space for proposed flats 4 and 5 insofar as there would be no land made available for this purpose, I share the Council's view that it is reasonably likely that some or all of the 2-bedroom flats would each be occupied by a family with a child. And whilst it is correct that this is partly a consideration for the prospective occupiers themselves to decide, it is also true that the affordability of both rented and purchased properties is such that in reality future occupiers have a very limited choice. I differ from the Inspector in the 29/31 Waterloo Road on this point, but having read the Council's evidence I do not regard the two sites and development schemes to be closely comparable. I am also of the view that as a general rule, communal open space in flatted schemes tends to be used far more as a visual amenity than for day-to-day recreation including as a play area for younger children or for residents sitting out. Accordingly, in its present form this aspect of the scheme would conflict with Local Plan DM12.
12. Overall, the consequences of a development of the scale and in the form proposed on a site constrained both by its limited size and its relationship to the existing pattern of development would be such as to result in a significant conflict with the aforementioned local and national policies.

Other Matter

13. The Council accepts that it is unable to demonstrate a 5-year supply of land for the delivery of housing and that paragraph 11d) of the Framework is thereby engaged. Under sub-section 11d)ii this means that there is a presumption in favour of permission being granted for the proposed development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies taken as a whole.

Planning Balance and Conclusion

14. The main benefit of the appeal scheme is that it would provide 6 additional homes at a time of housing shortage in the Borough. There would also be the advantage of making effective use of the former Care Home building with an extension that in visual terms would be in keeping with the character and appearance of the conservation area. However, some of this benefit would be offset by the potential long-term threat to the health and well-being of the pine tree which if lost would harm that character and appearance.
15. Moreover, I consider that the other reasons for refusal relating to the absence of any private amenity space for proposed flats 4 and 5; the overlooking and resultant loss of privacy to the gardens of dwellings in Rosebery Avenue; the loss of sunlight to the garden of No. 67 Church Road and insufficient on-site parking are such that in my view when taken together have a weight in the planning balance that would cause significant harm. I acknowledge that the appeal proposal is an improvement on the previous scheme as a result of it being reduced from 9 units and re-designed, but for the reasons explained it remains unacceptable.
16. In these circumstances and having had regard to all other matters raised I conclude that the benefits of the development do not significantly and demonstrably outweigh the adverse impacts of the proposal.
17. The appeal therefore fails.

Martin Andrews

INSPECTOR