



Appeal Decision

Site visit made on 9 April 2024

by P Terceiro BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2024

Appeal Ref: APP/P3610/W/23/3330665

Linden Cottage, 44 Christ Church Mount, Epsom, Surrey KT19 8NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 S Burgess against Epsom and Ewell Borough Council.
 - The application Ref is 23/00487/FUL.
 - The development proposed is the demolition of the existing dwelling and associated outbuildings and the erection of 3 No. of new dwelling units (3 x three bedroom houses) with associated access and soft and hard landscaping.
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Decision

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

Preliminary Matters

2. I have used the description of development provided in the application form in the banner heading above. However, I have removed the reference to the site address which is not in itself development.
3. There has recently been a revised National Planning Policy Framework (the Framework) published by Government. The parties have had the opportunity to comment on this as part of their appeal submissions. I have had regard to the revised Framework and to any comments received in this decision.
4. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council submitted putative reasons for refusal in its evidence, which I have used to formulate the main issues below.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the area, including trees;
 - ecology; and
 - the living conditions of the occupants of adjoining properties 40 and 42 Christ Church Mount and 12 Lower Hill Road with particular regard to privacy.

Reasons

Character and appearance

6. The appeal site, which extends to include an area of garden behind 40 and 42 Christ Church Mount (No 40 and No 42), accommodates a detached chalet style bungalow and some outbuildings within the rear garden. The plot is large and contains a substantial number of trees.
7. In the site's vicinity, Christ Church Mount is laid in a sweeping formation and has grass verges. Plots are generous and accommodate the dwellings facing the road with deep gardens to the rear. The dwellings vary in size, type and design and are normally set back from the road with frontages that typically accommodate parking and generous planting. The dwellings are usually wide, yet the gaps between built form allow for glimpses towards the trees within the rear gardens which form a green infrastructure corridor. As such, the road has a spacious and attractive leafy green feel.
8. Policy DM16 of the Development Management Policies Document 2015 (DMPD) states that, in exceptional cases, modest redevelopment on back-land sites may be considered acceptable, subject to the proposals demonstrating that there would be no significant impact on garden land, mass and scale of development, and trees, amongst others.
9. Plots 2 and 3 would be sited behind the residential properties facing Christ Church Mount, markedly at odds with the prevailing pattern of development in the area. Additionally, the dwellings within Plots 2 and 3 would be perceived through the gap between Plot 1 and No 42, which would exacerbate the presence of inappropriate back-land development in the street scene.
10. The proposed plots would be smaller than those surrounding and have modest rear gardens, a symptom that the proposed quantum of development would not be comfortably accommodated within the surrounding context. As a consequence, the proposal would appear cramped and considerably reduce the spaciousness within the site.
11. Plots 2 and 3 would be accessed via a long driveway which would run directly between Plot 1 and No 42. This contrived access arrangement would differ from the frontage style and activity in the surrounding plots which face the road. Furthermore, the width of the dwelling within Plot 1 would be constrained by the driveway, thereby resulting in a much narrower dwelling than those surrounding. This would further add to the cramped nature of the proposal, which would therefore appear incongruous and cause visual harm to the street scene.
12. The Arboricultural Appraisal and Impact Assessment Report (2023) advises that some individual trees, a hedgerow and a group of trees would be removed to accommodate the proposal. The proposed site plan shows indicative native tree and shrub planting throughout the scheme and the layout would provide sufficient space for new trees and shrubs to be planted. Details of the species, sizes and maintenance could be secured by planning condition were I minded allowing the appeal. Nonetheless, the new planting would take place within an inherently constricted site, and the continuous green corridor beyond the rows of housing would be broken.

13. The new dwellings would incorporate traditional materials and design elements that would reflect the local vernacular. However, this would not overcome the harm that I have identified above related to their scale, siting, back-land location, and the loss of existing greenery.
14. I understand that this proposal follows a previous planning application for five residential units that was refused by the Council. However, I find that the proposal would be harmful in its own terms.
15. While it may be that back-land development has been successfully accommodated within existing suburban areas within other similar Boroughs, I have not been directed to any specific examples. Moreover, I have considered this proposal on the specific characteristics of this street scene.
16. In conclusion, the proposal would have a harmful effect on the character and appearance of the area, including trees. It would be contrary to Policies CS1 and CS5 of the Core Strategy 2017 (CS) and with Policies DM9, DM10 and DM16 of the DMPD. These policies include that development should protect green infrastructure, reinforce the local distinctiveness of streets and areas including in layout, plot width and format, enhance townscape and make a positive contribution to visual character and appearance. It would also not be consistent with the Framework which seeks to ensure that development is sympathetic to local character.

Ecology

17. The planning application was supported by a Bat Roost Assessment, dated August 2022, which identified signs of bats, a protected species, in the chalet bungalow. Whilst the dusk emergence surveys did not record any bats emerging from the existing buildings on site, the assessment concludes that the existing chalet bungalow supports a day roost used either by a single or low number of brown long-eared bats on an occasional basis.
18. The report goes on to say that owing to the highly mobile nature of bats, and the inherent unpredictability of their roosting habits, the assessment would be valid until the commencement of the 2023 bat activity period (i.e., May 2023). Beyond this period, new bat roosts may have established within the suitable roosting features within the site. This contradicts the Ecologist Letter submitted with the appeal, which explains that it seems unlikely that the ecological conditions of the site would have significantly changed between now and then.
19. As such, I am unable to ascertain whether new bat roots have been established on the site since the previous assessment and what species / numbers of bats may be using any newly established roosts. Current advice¹ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant considerations may not have been addressed in making the decision.
20. As such, the evidence before me indicates that a protected species would likely be harmed by the development, and to an extent which may be greater than that initially established. Given my responsibilities to this protected species, the necessary confirmation of the accurate extent of bats on site and the formation

¹ Paragraph 99 of Circular 06/2005: Biodiversity and Geological Conservation and 9.2.4 BS 42020:2013 Biodiversity Code of Practice.

of potentially sufficient or proportionate mitigatory measures are matters that cannot be left to a condition.

21. Without any certainty in relation to these matters, I must conclude that the proposal would have an unacceptable effect on ecology. It would be contrary to Policies CS1 and CS3 of the CS, and Policy DM4 of the DMPD, insofar as these policies seek to protect the Borough's natural environment, conserve biodiversity and secure appropriate mitigation and compensatory measures to ensure no net loss of biodiversity. Moreover, the proposal would conflict with the Framework, where it seeks to protect and enhance biodiversity.

Living conditions

22. Plot 2 and Plot 3 would contain first floor bedroom windows facing No 42. Due to the short distance to the rear boundary of No 42, these windows would closely overlook the garden space of this neighbouring property, thereby resulting in an unacceptable harm to the occupants' enjoyment of that space.
23. Likewise, Plot 2 and Plot 3 would contain first floor bedroom windows facing No 40. Given the limited distance to the common boundary with No 40, the rear garden of this property would be overlooked by the proposed windows, thereby causing unacceptable loss of privacy to these neighbours while using their garden.
24. Equally, Plot 3 would contain first floor rear windows facing 12 Lower Hill Road (No 12) which would serve bedrooms. Given the limited distance between these windows and the common boundary with No 12, the proposed windows would provide direct views to No 12's rear garden, resulting in an unacceptable loss of privacy to the occupants of this property.
25. The appellant suggests that additional planting could be secured by planning condition to assist in protecting the privacy of the adjacent neighbours. However, given that the overlooking would arise from first floor windows, it is likely that the additional planting would take a long time to grow to such a height that would effectively mitigate for the overlooking caused by the proposal. Although it would be the far rear area of the neighbouring gardens that would be more affected by views from the proposed windows, there remains an expectation that new development does not harm current living conditions. In this instance, there is an established level of privacy behind the houses, which would be unacceptably affected.
26. In conclusion, the proposal would have a harmful effect on the living conditions of the occupants of the adjoining properties Nos 40, 42 and 12 with particular regard to privacy. The proposal would conflict with Policy DM10 of the DMPD, which requires development to have regard to the amenity of neighbours.

Other Matters

27. My attention is drawn to various appeal decisions at 49 Lower Hill Road. However, I have only very limited details in relation to these schemes, with no specific details of the circumstances and considerations that led the Inspectors to dismiss or allow the appeals. As such, I cannot make any robust and useful comparison between the proposal and these schemes.

Planning Balance and Conclusion

28. The appellant advises that the Council's emerging local plan is at Regulation 18 stage with Regulation 19 not expected until January 2025. While the status of the plan is unclear, the latest housing land supply of deliverable housing sites figure agreed between the parties is a low 1.56 years. As such, the Council cannot demonstrate a 5 year housing land supply of deliverable housing sites or even 4 years in line with paragraph 226 of the Framework. Therefore, the development plan policies most important for determining the application are deemed out of date and the provisions of footnote 8, paragraph 11d) ii. of the Framework should be applied.
29. The proposal would be acceptable in relation to other matters, including access and car parking. However, these are neutral factors that neither weight for or against the development.
30. The Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The Framework seeks to ensure that development is sympathetic to local character and conserves the natural environment. So, I give significant weight to the conflict between the proposal and CS Policies CS1, CS3 and CS5 and DMPD Policies DM4, DM9, DM10 and DM16 in this respect.
31. The Framework seeks to protect and enhance biodiversity and, accordingly, I attach significant weight to the conflict between the proposal and Policies CS1 and CS3 of the CS, and Policy DM4 of the DMPD in this regard.
32. The Framework seeks to ensure that development creates spaces with a high standard of amenity for existing and future users. In accordance, I attribute significant weight to the conflict between the proposal and Policy DM10 of the DMPD in this respect.
33. Set against the identified harm the proposal would contribute towards addressing the substantial shortfall in housing supply within the Borough and would support the Government's objective of significantly boosting the supply of homes. It would deliver two net additional dwellings within an urban area with good access to facilities and public transport. Additionally, the proposal would logically reduce the pressure for development in the Green Belt. The proposal would employ renewable energy sources and surpass the current building regulation requirements. There would be some social and economic benefits, including the temporary economic benefits accrued from the construction process.
34. Taken together, these benefits attract moderate weight in favour of the appeal proposal. As such, the adverse impacts on the character of the area, including trees, on ecology and living conditions would significantly and demonstrably outweigh the benefits associated with the proposal when assessed against the policies in the Framework when taken as a whole.
35. Overall, I conclude that the proposal would conflict with the development plan as a whole and there are no material considerations of sufficient weight to indicate that a decision should be made otherwise than in accordance with it. Therefore, the appeal is dismissed.

P Terceiro INSPECTOR