



Appeal Decision

Site visit made on 26 November 2024

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2024

Appeal Ref: APP/L3625/W/24/3348491

296, 298 and rear of 300 Fir Tree Road, Epsom Downs, Surrey, KT17 3NN.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Denton Homes Ltd. against the decision of Reigate and Banstead Borough Council.
 - The application Ref is 23/01945/F.
 - The development proposed is the erection of 4 detached dwellings and a pair of semi-detached ones following demolition of 296 and 298 Fir Tree Road, with new access road and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 detached dwellings and a pair of semi-detached ones following demolition of 296 and 298 Fir Tree Road with new access road and landscaping, at 296, 298 and Rear Of 300 Fir Tree Road, Epsom Downs, KT17 3NN, in accordance with the terms of the application, Ref 23/01945/F, and the plans submitted with it, as amended, subject to the conditions in the attached Schedule.

Preliminary Matters

2. The application forms describe the proposal as the erection of 6 detached houses, however I note that the submitted site plan shows four detached houses and a pair of 'semis'. Moreover, the semi-detached properties on plots 2 and 3 are also shown on the proposed street scene elevations (drawing 006-P7). I have therefore considered the proposal on this basis and amended the description accordingly.
3. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Main Issues

4. The main issues are:
 - The effect of the development on the character and appearance of the area; and
 - The effect on the living conditions of the occupiers of adjacent property from noise and disturbance from the use of the new access road.

Reasons

Background

5. The appeal site comprises the mainly rear gardens of detached houses which lie in a frontage of similar properties to the north of Fir Tree Road. The site also includes the bungalow of No. 298 which lies in a rearward position with a long driveway running between No's 300 and 304. The site slopes from west to east and there is also a cul-de-sac of residential properties to the east which front Rose Bushes. It is proposed to demolish No.s 296 and 298 and erect a new detached house on the frontage and form an access road to the rear to serve three detached houses and the pair of semis. The existing access to No.298 would be closed to vehicular traffic but it would remain as a footpath. By the time of my site visit No.296 had been demolished.
6. A similar outline scheme for 6 detached houses on a larger site incorporating part of the rear garden of No. 294 was dismissed on appeal in 2017 under ref. APP/L3625/W/16/3154295. The Inspector concluded that the scheme would have resulted in a cramped arrangement of built forms amounting to overdevelopment which would detract from the area's spaciousness. The appellant says the appeal scheme has been amended to address these factors. Nevertheless, that appeal decision predates the adoption of the Council's Development Management Plan in September 2019 and therefore a different policy regime applies now.

Effect on character and appearance

7. The site lies in a suburban part of Epsom Downs and it is clear that there is no policy objection in principle to residential redevelopment in the area. Moreover, in terms of backland development, as well as the rearward position of the existing dwelling (No.298) there are a number of other examples locally of small culs-de-sac development leading off Fir Tree Road as shown on the site location plan. The applicable policy test is that set out in the Council's Development Management Plan Policy DES2 which indicates that infilling and development of backland will be required to meet specified criteria designed to ensure that new development respects the existing character of the area and reinforces local distinctiveness.
8. In terms of plot sizes, while the ones proposed do not match the exceptionally long rear gardens of original frontage properties, taking account of the more recent redevelopment schemes, I am satisfied that the form of houses put forward and their individual plots are consistent with the general pattern of development in the wider locality. Moreover, what constitutes an acceptable density also has to take into account the guidance in the National Planning Policy Framework (the Framework) (2023) which indicates in section 11 that planning decisions should support development that makes effective use of land whilst recognising the desirability of maintaining an area's prevailing character and setting (including residential gardens). The general array of development put forward achieves this balance.
9. In relation to the details of the scheme, as the layout of the original houses at No's 290 -294 are sited at a slight angle to the street, it follows that the new plots 2 and 3, which follow the party boundary, will have a slightly irregular relationship with the other plots which follow a parallel alignment to No.300. However, this juxtaposition provides some interest to the layout and it would not be an intrusive feature to the visual quality of the space around the cul-de-sac head or when viewed at a distance from the public realm around Fir

Tree Road. I am also satisfied that the layout of this space around the cul-de-sac is now designed to be less dominated by hard surfacing.

10. The previous scheme proposed a dwelling on land to the rear of No.294 and it was this element that the inspector found to be 'squashed in to the corner' but this element has now been deleted. The pair of semis proposed on plots 2 and 3 would sit comfortably in this area of the site and there is scope to retain the adjoining hedgerows which helps maintain the screening to the neighbouring gardens.
11. The inspector was also concerned about the lack of space about the replacement house in the frontage and the proposed access road filling most of the space. This part of the layout has been redesigned with the replacement house on plot 1 being set back and orientated to follow the angled alignment of No.s 290-294. This arrangement would continue the rhythm of the street frontage and the access road would form the visual break to the parallel properties No.s 300 and 302.
12. The Council also raises concern about the additional access being close to Chestnut Close on the other side of Fir Tree Road and that this would puncture the rhythm of the street scene, an inappropriate element of design as mentioned in the explanatory text to Policy DES2. At the site visit I paid particular attention to the visual impact of these existing small access roads. They do not result in a material incursion into the rhythm of the street scene but in any event the one proposed at the appeal site would not result in a substantial gap and the rhythmic form of the individual houses would still prevail.
13. Overall on this issue I find that the form of layout now proposed and the access to the site would maintain the character and appearance of the area and would not be cramped or overbearing development. The details of the scheme meet the criteria for development on back garden land as set out in Policy DES2 and the more general Policy DES1 on design. Moreover the proposed scheme would make an effective use of land as generally supported by the Framework.

Effect on living conditions

14. The Council is concerned about the relationship of the proposed access road to the living environment of the occupiers of No.300. At the site visit I noted that this property has a blank elevation on the north facing side. There was also a mature hedge and various trees along the party boundary with the appeal site. Although the Council is concerned about the noise and disturbance that could stem from the use of the access road there is little evidence presented to quantify any problem. I am not convinced that the traffic generation arising from 5 new houses, (likely to be about 30 movements per day) would cause a material problem of noise and disturbance that would harm these living conditions bearing in mind the traffic already going to No. 298 would be relocated away from the existing side driveway.
15. I conclude on this issue that it has not been demonstrated that the proposal would harm the living conditions of the occupiers of No. 300 by causing undue noise and disturbance and there is no conflict with the general provisions of Policies DES1 or DES2.

Other matters

16. The occupier of No.294 also raises objection on the grounds that the new house at No. 298 would have an overbearing impact on the residential accommodation of that property. I considered this at the site visit and I noted the glazed conservatory which occupies some of the space between the flank wall of that house and the wall on the party boundary as well as a side facing window on a rear two storey extension.
17. At the time of my visit there was some sunlight on this side elevation but it appeared to me that this was as a result of No. 296 and its garage having been demolished. The proposed siting of the replacement dwelling is further back from the road frontage and while this would result in a different juxtaposition with No. 294, the main footprint of this dwelling would have a similar gap to the boundary. Its overall context would not be dissimilar to the general arrangement of houses along Fir Tree Road. I am satisfied that the proposal put forward would not have an overbearing impact on the living accommodation of that existing property and the living conditions enjoyed by the occupiers would be reasonably maintained.

Planning balance

18. This appeal needs to be considered in the context of the current development plan although the previous appeal decision is a material consideration. On the main issues I have found that the form and layout of the houses would maintain the character and appearance of the area and would not be a cramped or overbearing development. Moreover, the scheme would not adversely impact on the living conditions of the occupiers of neighbouring properties. As such the proposal meets the requirement of Policy DES2 for the development of rear garden land. Where still relevant the objections raised by the previous inspector have been addressed.
19. This policy accord has to be balanced with other considerations but none outweigh this conclusion. The development should therefore be permitted.

Conditions

20. The Council recommends that 22 conditions be imposed which I will consider under the same numbering. Some of the conditions recommended are 'pre-commencement' ones to which specific regulations apply. The appellant's agent has been notified of these but does not raise any objection to them. In considering the reasons for imposing the conditions, I note the various policy requirements in the Council's Development Plan.
21. In addition to the statutory condition on the commencement of the development (No.1) it is necessary to list the plans that are approved in the interests of certainty and the development should be undertaken in accordance with them (No.2). As the site slopes, further details and approval of existing and proposed floor levels are necessary (No.3). In the interests of maintaining the appearance of the area condition No.4 on external materials is necessary. In order to protect trees and landscaping and ensure that the development is well landscaped condition No's 5 and 6 are appropriate.
22. In order to ensure proper access and off-road parking in the interest of highway safety conditions No's 7 and 8 are reasonable along with No.9 in respect of the submission of Transport Management Plan to regulate the

development during the construction phase on highway safety grounds. In the interest of promoting sustainable transport and pedestrian movement conditions 10, 22 and 12 are reasonable and necessary.

23. In order to protect the living conditions of adjoining property conditions No.13 in respect of boundary treatment and No.15 regarding restrictions over side facing first-floor windows are necessary.
24. Condition No.14 is necessary in order to ensure the proper disposal of foul and surface water from the site so as to prevent flooding and pollution. Likewise condition No.22 is necessary to ensure the proper collection and disposal of household waste.
25. The Council recommends two conditions to remove specified 'permitted development' rights. These have to be considered in the context of national guidance in the Framework which states that such conditions should not be used unless there is clear justification to do so. Recommended condition No. 16 takes away rights to form other fenestration at first-floor level in the interest of maintaining the amenity of adjacent properties and restrict overlooking. Given the location of the site with other residential properties around it this is clear justification for the restriction and I will impose it. Condition No. 17 seeks to control further extensions in Classes A, B and C of Part 1, Schedule 2 of the GPDO. The reason suggested is to control extensions in the interests of the visual and residential amenities of the locality. However this is a very broad intention and does not provide clear justification for the use of this condition as an exception. I will therefore not impose it.
26. In order to support the sustainable use of resources and promote high quality communications, conditions No's 18 and 19 are reasonable and necessary. Finally, a Landscape and Ecological Management Plan is necessary along with the implementation of the submitted Appraisal to ensure a biodiversity net gain and I will impose conditions No's 20 and 21.

Conclusion

27. For the reasons given above the appeal should be allowed.

David Murray

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Plan Type	Reference	Version	Date Received
Street Scene	006	P7	02.04.2024
Proposed Plans	012	P2	02.04.2024
Proposed Plans	009	P6	02.04.2024
Proposed Plans	010	P6	02.04.2024
Section Plan	013	P3	02.04.2024
Proposed Plans	011	P6	02.04.2024
Combined Plan	0050_SK	100	23.02.2024
Other Plan	231709/TR/02	A	07.06.2024
Other Plan	231709/TR/03	A	07.06.2024
Site Layout Plan	005	P13	14.06.2024
Block Plan	002	P6	14.06.2024
Block Plan	002	P2	14.06.2024
Location Plan	001	P2	09.10.2023
Other Plan	005	P4	09.10.2023
Site Layout Plan	004	P2	09.10.2023
Combined Plan	007	P5	10.11.2023
Combined Plan	008	P5	10.11.2023
Arb / Tree Protection	23105-1		19.09.2023
Plan			
Existing Plans	0050_026		20.09.2023
Existing Plans	0050-027		20.09.2023
Elevation Plan	0050-028		20.09.2023
3. No development shall take place until the developer obtains the Local Planning Authority's written approval of details of both existing and proposed ground levels and the proposed finished ground floor levels of the buildings. The development shall be carried out in accordance with the approved levels.
4. No development shall take place until written details of the materials to be used in the construction of the external surfaces, including fenestration and roof, have been submitted to and approved in writing by the Local Planning Authority, and on development shall be carried out in accordance with the approved details.
5. No development shall commence including demolition and or groundworks preparation until a detailed, scaled finalised Tree Protection Plan (TPP) and the related finalized Arboricultural Method Statement (AMS) is submitted to and approved in writing by the Local Planning Authority (LPA). These shall include details of the specification and location of exclusion fencing, ground protection and any construction activity that may take place within the Root Protection Areas of trees (RPA) shown to scale on the TPP, including the installation of service routings, type of surfacing for the entrance drive and

location of site offices. The AMS shall also include a pre commencement meeting, supervisory regime for their implementation & monitoring with an agreed reporting process to the LPA. All works shall be carried out in accordance with these details when approved.

6. No development shall commence on site until a scheme for the landscaping of the site including the retention of existing landscape features has been submitted to and approved in writing by the LPA. Landscaping schemes shall include details of hard and soft landscaping, including any tree removal/retention, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, and hedge or grass establishment), schedules of plants, noting species, plant sizes and proposed numbers/densities and an implementation and management programme.

All hard and soft landscaping work shall be completed in full accordance with the approved scheme, prior to occupation or within the first planting season following completion of the development hereby approved.

Any trees shrubs or plants planted in accordance with this condition which are removed, die or become damaged or become diseased within five years of planting shall be replaced within the next planting season by trees, shrubs of the same size and species.

7. No part of the development shall be first occupied unless and until the proposed vehicular access to Fir Tree Road has been constructed in the form of a Copenhagen access as shown in Drawing No.(231709/TR/03 Rev B) and, provided with a means within the private land of preventing private water from entering the highway.
8. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
9. No development shall commence until a Construction Transport Management Plan, to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors.
 - (b) loading and unloading of plant and materials.
 - (c) storage of plant and materials.
 - (d) programme of works (including measures for traffic management)
 - (e) provision of boundary hoarding behind any visibility zones.
 - (f) HGV deliveries and hours of operation.
 - (g) vehicle routing.
 - (h) measures to prevent the deposit of materials on the highway
 - (i) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused.
 - (j) no HGV movements to or from the site shall take place between the hours of 8.30 and 9.15 am and 3.15 and 4.00 pm nor shall the contractor permit any HGVs associated with the development at the site to be laid up, waiting, in Fir Tree Road during these times.
 - (k) on-site turning for construction vehicles has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.

10. The development hereby approved shall not be occupied unless and until each of the proposed dwellings are provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
11. The development hereby approved shall not be first occupied unless and until the improvements to the steps on Rose Bushes adjacent to ROW633 has been constructed in accordance with the approved plans (Drawing No.0050_SK 100).
12. The development hereby approved shall not be first occupied unless and until facilities for the secure, covered parking of bicycles and the provision of a charging point for e-bikes with a timer by said facilities have been provided within the development site in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority.
13. The development shall not be occupied until a plan indicating the positions, design, materials and type of boundary treatment to be erected, including provisions for wildlife access, has been submitted to and approved in writing by the Local Planning Authority.
14. No development shall commence until a scheme for the disposal of foul and surface water drainage from the site has been submitted to and approved by the Local Planning Authority. The scheme shall be implemented as approved prior to the occupation of the dwelling hereby permitted.
15. The first floor windows in the side elevations of plots 2-6 hereby permitted shall be glazed with obscured glass which shall be fixed shut, apart from a top hung opening fanlight whose cill height shall not be less than 1.7 metres above internal floor level, and shall be maintained as such at all times.
16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order revoking and re-enacting that Order with or without modification), no first-floor windows, dormer windows or rooflights other than those expressly authorised by this permission shall be constructed.
17. The development hereby approved shall not be first occupied unless and until an Energy and Water Efficiency Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall detail how the development will:
 - Ensure that the potential water consumption by occupants of each new dwelling does not exceed 110 litres per person per day
 - Achieve not less than a 19% improvement in the Dwelling Emission Rate (DER) over the Target Emission Rate (TER) as defined in Part L1A of the 2013 Building Regulations.

The development shall be carried out in accordance with the approved details and any measures specific to an individual dwelling(s) shall be implemented, installed and operational prior to its occupation.

18. All dwellings within the development hereby approved shall be provided with the necessary infrastructure to facilitate connection to a high speed broadband. Unless otherwise agreed in writing with the Local Planning Authority, this shall include as a minimum: A broadband connection accessed directly from the nearest exchange or cabinet Cabling and associated installations which enable easy access for future repair, replacement or upgrading.
19. No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

The LEMP should be based upon the Biodiversity Net Gain Assessment and Strategy and the Preliminary Ecological Appraisal (Applied Ecology Ltd, April 2023) and include, but not be limited to following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions, together with a plan of management compartments.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.
- i) Mechanisms by which the long-term implementation of the plan will be secured by the applicant with the management body(ies) responsible for its delivery.

- j) Monitoring strategy, including details of how contingencies and/or remedial action will be identified, agreed, and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.
- k) Sensitive Lighting Management Plan.
- l) Ecological Enhancement Plan.

The development shall be built out in accordance with the LEMP unless otherwise agreed in writing by the LPA.

20. The development shall be carried out in accordance with the measures set out within Preliminary Ecological Appraisal (Applied Ecology Ltd, April 2023) and Biodiversity Net Gain Assessment Report (Applied Ecology Ltd).
21. Prior to the first occupation of the development full details (and plans where appropriate) of the waste management storage and collection points, (and pulling distances where applicable), throughout the development shall be submitted to and approved in writing by the Local Planning Authority.

All waste storage and collection points should be of an adequate size to accommodate the bins and containers required for the dwelling(s) which they are intended to serve in accordance with the Council's guidance contained within Making Space for Waste Management in New Development. Each dwelling shall be provided with the above facilities in accordance with the approved details prior to occupation of the relevant dwellings.

-End-