



Appeal Decision

Site visit made on 14 December 2015

by Kenneth Stone BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12/01/2016

Appeal Ref: APP/P3610/W/15/3133849
25 Alexandra Road Epsom Surrey KT17 4BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by J. Magauran (Iris Homes) against the decision of Epsom & Ewell Borough Council.
 - The application Ref 15/00316/OUT, dated 10 May 2015, was refused by notice dated 30 July 2015.
 - The development proposed is erection of a block of ten flats, following the demolition of the existing building.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The application was submitted in outline with approval being sought for the matter of access and all other matters reserved for later approval. I have been provided with detailed floor plans, elevations and site layout, however given that the application is in outline with none of these matters before me for consideration I have treated these as illustrative.
3. The Epsom and Ewell Borough Council Development Management Policies Document, September 2015 (DMPD) was adopted in September 2015 after the Council issued its decision on this application and superseded the policies in the Local Plan 2000. Policy BE15 of the Local Plan, as referred to in the decision notice was replaced by DMPD DM8. Along with the Core Strategy (CS) the DMP forms the development plan for the area and I have determined this appeal in accordance with the development plan, as it is now, unless material considerations have indicated otherwise, as I am required to do by law.
4. The Council refused planning permission for the proposal due to the loss of a heritage asset. In its appeal statement however reference is made to the requirement for the scheme to make provision for affordable housing in line with policy CS9 of the Core Strategy following what they describe as the repealing of the Written Ministerial Statement of 28th November 2014. This matter was also raised by a third party. The appellant has had an opportunity to comment and indeed commented on the issue in their final comments, including copies of an e-mail exchange dated 14 November 2015 concerning a programmed Court of Appeal hearing, and are therefore aware of the issue and are not therefore prejudiced by my consideration of the matter.

Main Issues

5. On the basis of the above the main issues in this appeal are:
 - The effect of the loss of 25 Alexandra Road, a locally listed building, on the historic environment; and
 - Whether the proposal makes adequate provision in respect of affordable housing.

Reasons

6. The appeal site presently accommodates a large detached late Victorian house in substantial grounds on the north east side of Alexandra Road. The site is heavily landscaped, particularly towards the frontage, including a number of protected trees.
7. This section of the road has been the subject of substantial change and is now characterised by individual detached blocks of flats of some three storeys, of varying design. The property the subject of the appeal is one of the last large Victorian houses on this side of the road.

Historic Environment

8. The appeal site is not located within a conservation area and the existing building is not subject of a statutory listing; the papers submitted by the parties suggest that in the past such a listing was considered but not agreed. In the context of the National Planning Policy Framework (the Framework) it is therefore a non-designated heritage asset. The advice on the historic environment is set out at chapter 12 of the Framework and paragraph 129 advises that Local Planning Authorities should assess the significance of any heritage asset and take this into account when considering the impact of the proposal. Moreover paragraph 135 states the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application, with a balanced judgement required having regard to the scale of any harm or loss and the significance of the heritage asset.
9. Policy CS5 of the CS and DM8 of the DMPD provide the development plan policy Framework which is the starting point and these indicate the Council will protect and seek to enhance the Borough's heritage assets and that the Council will resist the loss of heritage assets. Policy DM8 also notes the Council will take account of the significance of the asset in considering the impact of the development. These policies are consistent with the Framework.
10. The appeal property as a grand late Victorian house is an attractive building but is shielded from significant views by the heavy vegetation to the frontage which reduces its contribution to the character of the area. The Council identify that the building is on the local list and quote the register description which states "The property is one of the few surviving late Victorian houses on Alexandra Road, with many of its internal and external features intact. In particular its stained glass windows and front door, with plaster mouldings fireplaces, timber details staircase internally". The significance of an asset according to the Framework may be archaeological, architectural, artistic or historic and is the value of that asset to future generations because of its heritage interest. From the information before it appears the significance of

this asset is to be found primarily in the internal features, most notably the stained glass, and with some architectural qualities.

11. The proposal would result in the demolition of the building, and indeed as the building is not statutorily protected as a listed building or within a conservation area the building could be demolished. I also note that the appellant states approval for the demolition of the building under the Building Act 1984 has been given by the Council and this is not challenged by the Council.
12. The Council are concerned that clear and convincing reasons for the demolition of the building have not been provided. They reference paragraphs 132 and 133 of the Framework in this regard however the advice in terms of how to assess the impact of development in these paragraphs is dealing with designated heritage assets and paragraph 135 is of more relevance.
13. There is a long history of applications on this site and a number of approvals have been granted, including at appeal, which have included the demolition of the building. Whilst the proposals would result in the loss of the building it has previously been accepted that the significance of the asset could be safeguarded by the retention of the stained glass and its re-use in the proposed building. A point which the appellant has accepted and which the Council have suggested a condition to secure. Given the potential for the demolition of the unprotected building, the previous history and the ability to safeguard the elements of the building that are of significance I am satisfied that the proposal resulting in the demolition of the building would be acceptable.
14. The redevelopment of the site for a building of the scale and mass of the proposed building would generally be in keeping with the character of the surrounding area. The reserved matters can address details of design, height and other matters that would successfully integrate the development within the local context and there is therefore no substantive objection to the scheme on these grounds.
15. For the reasons given above I conclude that the proposed development would not result in harm to the historic environment and would not conflict with the aims and objectives of policy CS5 of the CS or DM8 of the DMPD nor of the Framework.

Affordable Housing

16. Policy CS9 of the CS requires that developments of between five and fourteen dwellings gross should include at least 20 % of dwellings as affordable. At the time of determination of the application The Written Ministerial Statement of the 28 November 2014 (WMS) and the subsequent alterations to the Planning Practice Guidance (PPG) on planning obligations for affordable housing and social infrastructure contributions was in force. At that time the Council did not therefore require an affordable housing provision for this scheme of ten dwellings.
17. However on 31 July 2015 the High Court issued judgement ¹ on an application by West Berkshire District Council and Reading Borough Council challenging the

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statement and alterations to the PPG. Whilst the judgement did not quash the WMS a declaration Order was issued on 4 August 2015 confirming that the policies in the statement must not be treated as a material consideration in development management and development plan procedures and decisions. This has the effect that as a development plan policy is before me, CS9, section 38(6) requires me to make a decision in accordance with it unless material considerations indicate otherwise, and that the WMS is not a material consideration I can rely on in this regard.

18. The appellant suggests that the appeal should be determined as things stood at the time of the application and that as there is an outstanding appeal to the Court of appeal that things should be as they stood before the High Court decision. However, that judgement is in place and I have to have regard to it and the state of the law and policy at the time I make my decision. On this basis I cannot take account of the WMS or the subsequent changes to the PPG which have now been withdrawn.
19. There is no planning obligation before me securing the affordable housing provision and the appellant has not suggested they are willing to provide one. I also note that one of the objections to the scheme is on behalf of one of the owners of the land and confirms they would not be willing to enter into an obligation on a scheme that did not secure the retention of the heritage asset. On this basis I do not have, and am unlikely to be able to secure, a planning obligation in relation to affordable housing.
20. The Revised Developer Contributions Supplementary Planning Document, sept 2014, sets out the justification for affordable housing need in the borough and supports policy CS9. The proposal provides for ten units and falls within the requirements of policy CS9. The need for affordable housing in the borough is clearly set out and there is no sustainable justification as to why this should not be provided. The Council require the provision to be secured by an appropriate planning obligation and I do not have one before me. I am satisfied that the requirement for the affordable provision meets the tests set out in paragraph 204 of the Framework and is necessary, directly related to the development and fairly and reasonably related to the scale of development. I have considered the potential to apply a condition but this would not be in accordance with the advice in the PPG given the scale and nature of development and there are no exceptional circumstances.
21. On the basis of the above I conclude that the proposed development does not make for adequate provision for affordable housing. Consequently the proposal would conflict with policy CS9 of the CS.

Other Matters

22. I note that there appellant suggests that the conversion of the property is uneconomic due to the structural deficiencies of the property and the dry rot. I have however not been provided with detailed structural surveys, costings or a viability assessment that would enable me to give greater weight to these assertions, to which I give only limited weight.

23. The proposals include details of the access arrangements to be considered at this time but no objections were raised by the Highway Authority and I saw no reason that would support any concerns in this regard.
24. The scheme is in outline with the matters other than access reserved for future consideration. In this context I am satisfied that the design, siting fenestration, materials and landscaping of the site could be suitably designed to ensure there was no harm arising for the wider character of the area, including the protected trees, or living conditions of occupiers of adjoining properties.

Overall conclusions

25. I have found that the scheme would be acceptable with regard to the effect on the historic environment. However, given the changes in circumstance since the determination of the application it is appropriate to consider the provision of affordable housing and in this regard the scheme fails to make any such provision as required by policy CS9 and there are no material considerations to suggest that I should determine the appeal other than in accordance with the development plan. The lack of affordable housing provision is a significant omission and one that justifies resisting the proposal.
26. For the reasons given above I conclude that the appeal should be dismissed.

Kenneth Stone

INSPECTOR

Richborough Estates