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## Appeal Decision

Site visit made on 5 February 2019

**by Amanda Blicq BSc (Hons) MA CMLI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 February 2019**

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**Appeal Ref: APP/P3610/W/18/3205106**

**Land adjacent to the Kings Arms Public House, 144 East Street, Epsom KT17 1EY**

- 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 Jon Bowen of Dalton Warner Davis LLP against the decision of Epsom & Ewell Borough Council.
  - The application Ref 17/01209/FUL, dated 8 November 2017, was refused by notice dated 31 January 2018.
  - The development proposed is erection of a three storey building to provide 8 self-contained flats and associated development including hard and soft landscaping, car and cycle parking and refuse store, and the demolition of a single storey annexe extension to Kings Arms Public House.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. Since the application was determined, the amended National Planning Policy Framework (the Framework) has been issued. This sets out that provision for affordable housing is not required except in cases of major development. As the Council's Local Plan predates this edition of the Framework, the Council has withdrawn its reason for refusal relating to a commuted sum for affordable housing. On the basis of the evidence before me, I see no reason to disagree with the Council in this regard.

### Main Issues

3. The main issues are the effect of the development on:
  - The character and appearance of the area, including whether there would be harm to a locally listed heritage asset;
  - The living conditions of occupiers of The Stanfords and Yeomanry Close with particular regard to outlook, light and privacy;
  - The living conditions of future occupiers with particular regard to private amenity space and outlook; and,
  - Whether the development would secure the comprehensive redevelopment of the site and preserve the heritage asset.

## Reasons

### *Character and appearance*

4. The appeal site is land associated with the former Kings Arms public house. To the side and rear, the site abuts three storey flatted accommodation on Yeomanry Close and at The Stanfords. The development would comprise a flat roofed three storey flatted development built in a boxy contemporary style.
5. The Kings Arms is an early 19<sup>th</sup> century two storey hipped roof building fronting one of the original routes leading out of Epsom town centre. It is locally listed, and although the front ground floor fenestration appears to be a 20<sup>th</sup> century alteration, the building has retained what appears to be the original first floor fenestration. There is also plaster ornamentation on the front elevation, dating from 1903. I conclude that the building's significance is derived from its position in relation to East Street and its social history, as well as its historic fabric, scale and detailing.
6. The heritage report states that the building is of low significance, and that the demolition of a 20<sup>th</sup> century single storey kitchen extension would have negligible or neutral impact. I see no reason to disagree with this conclusion in respect of the demolition, which is reinforced by the officer's report.
7. With regard to setting, the report concludes that the Kings Arms is only appreciated from its immediate environs and that the surrounding streetscape has been subject to extensive change. It is argued that the development would reinstate a former building frontage. However, the former building frontage appears to have been semi-detached dwellings, shown on the 1838 map. It is highly likely that these dwellings would have been comparable at least in scale and construction methods to the Kings Arms. Although there are contemporary buildings on the other side of East Street, these are not viewed in the context of the Kings Arms. The Stanfords bears little relationship to the Kings Arms in architectural terms, but there is sufficient separation for it to have little visual impact on the Kings Arms' setting.
8. When viewed from the street, the development would sit between the hipped roofed Kings Arms and the gable end of The Stanfords. Its flat roof would be significantly taller than the Kings Arms' ridge line as well as the eaves height of The Stanfords. Given the separation distances, the development would appear disproportionately tall and bulky in relation to both of its neighbours, and it would have a poor relationship with the height and form of the Kings Arms. The scale and proximity of the development would also diminish the impact of the Kings Arms' more finely scaled detailing. I disagree that the development would provide an appropriate building frontage in this context. My conclusions in this regard are reinforced by the conservation officer's recommendation that a two-storey building would be most appropriate in this location to avoid the Kings Arms being overwhelmed by a taller structure.
9. I appreciate that the development's footprint would be similar to that of The Stanfords. However, The Stanfords appears to accommodate its three storeys over a lesser height than the development proposed. One section of the development's front elevation would be slightly set back from the building line, with a further set back at second floor level. However, the main bulk, height and outer wall of the front elevation would be unrelieved by such set backs.

- Moreover, compared to The Stanfords the development would appear to be elevated, and would appear prominent and intrusive in the street scene.
10. There are two sycamores (T2 and T3), of some stature on the site's southern boundary. These are assigned category 'B3' in the arboricultural report, indicative of moderate to high landscape value. The report notes that they are in good condition and have life expectancies of more than twenty years. Under BS5837:2012 a Category B tree would normally be considered to be a material constraint to development. However, these sycamores and a smaller companion tree would be removed to accommodate the development's parking.
  11. The tree report appears to justify the loss of the sycamore T2 on the basis that it is relatively small in stature, despite it being listed as 10 metres tall. The loss of T3 is justified on the grounds that although it currently provides screening, there would be less footfall on the site if the development is allowed. However, I noticed that both T2 and T3 are prominent in views of the site from the public domain and soften the rear elevation of Yeomanry Close when viewed from East Street and across the existing (and proposed) car park. Moreover, although the report suggests that replacement trees could be planted in the amenity area to the south-west of the site, there is nothing before me to identify that area. The only area which appears to be available already has a tree. There appears to be little room for any additional planting of significance in the current layout, even if a condition was imposed.
  12. Moreover, it is also proposed to cut back the canopy of a tree located along the boundary with The Stanfords. It is argued that this tree cannot be seen from any windows. However, this tree is very visible from the public domain and the pruning would reduce its visual amenity value. Moreover, notwithstanding that it has deadwood in the canopy, it is also visible from windows at The Stanfords and provides a buffer between those flats and the appeal site.
  13. As such, I give limited weight to the content of this report and conclude that the development would lead to a significant loss of such established tree cover as there is within and near the site.
  14. I conclude that the development would be detrimental to the character and appearance of the area. It would therefore be contrary to Policy CS5 of the Core Strategy (CS) and Policy DM8 of the Development Management Plan (DMP) with regard to the impact of development on a heritage asset, as well as DMP Policy DM5 which sets out to protect and enhance tree cover and which requires replacement planting where trees are to be removed. The development would also be contrary to the design requirements of DMP Policy DM10 insofar as this seeks to ensure that new development should respect, maintain or enhance local character and distinctiveness.

#### *Existing occupiers*

15. Primary windows at the The Stanfords would be directly opposite the development at a distance of some 9.8 metres. I agree that oblique views from the end windows could be directed past the corners of the development. However, this would not be case for the inner windows of The Stanfords, or direct views from the outer windows. The development would have a significant enclosing and overbearing effect on outlook for occupiers of The Stanfords.

16. There is a greater distance between the development and Yeomanry Close, and the elevation facing Yeomanry Close is narrower. Consequently, I have less concern in relation to outlook from flats at Yeomanry Close as the development would be less overbearing and less enclosing for those occupiers.
17. A Daylight and Sunlight report has assessed the development's impact on light levels in The Stanfords. This concludes that the development would not have a detrimental impact on light levels for the majority of primary windows, measured through the application of three criteria, Average Daylight Factor (ADF), No-Sky Line (NSL) and Vertical Sky Component (VSC). Having reviewed the report's results I conclude that about one third of windows would have ADF and NSL levels below the threshold at which adverse effects are to be expected. Furthermore, two windows serving habitable rooms would be adversely affected in respect of all three criteria. The fact that light levels in most habitable rooms would not fall below the thresholds does not diminish or justify the harm that would be experienced by the occupiers of those flats that would be so affected. Moreover, although the centre line of windows serves a communal hall, it does not necessarily follow that reductions in daylight and sunlight within the communal area are acceptable to occupiers of The Stanfords. The development would also cause significant overshadowing to The Stanfords' communal garden.
18. The appellant argues that the development would have similar separation from nearby flatted development to dwellings on Middle Close. However, those dwellings have a different scale and urban grain to that under consideration, and I conclude that the situations are not comparable.
19. Although the decision notice refers to issues relating to privacy for existing occupiers, the windows facing The Stanfords would have obscured glazing or louvres. As such, and in the absence of more specific concerns raised by the Council or other parties, I find no harm in relation to overlooking.
20. I conclude that there would be a detrimental effect on the living conditions of occupiers of The Stanfords in relation to outlook and light. This would be contrary to DMP Policy DM10. CS Policy CS5 and DMP Policy DM9 appear to be concerned with heritage assets and the built environment rather than living conditions, and as such weigh neither for nor against the appeal in this regard.

#### *Future occupiers*

21. There would be full height glazing to the combined living/kitchen areas of the ground floor flats, but their proximity to the car park access and footway would require the use of louvres to provide privacy for occupiers. Although each room would have a section of unobstructed glazing, it would be a small proportion of the overall glazed area. Moreover, two bedrooms on the ground floor would have narrow windows which would look directly onto the site boundary some 1.5 metres away. On the first and second floors, bedrooms on the rear elevation would have either louvred screens across the full expanse of glazing, or obscure glazing to a height of 1.7 metres.
22. Whilst the use of louvres and obscure glazing might be acceptable in some circumstances to mitigate specific and limited issues within a development, the extent of such devices across this development seems to acknowledge that there would be significant issues of loss of privacy for future occupiers, as a consequence of the proximity of the flats to the public domain or other

residential development. It would also have an adverse impact on outlook from the bedrooms and be detrimental to living conditions.

23. With regard to amenity space, a small garden for occupiers of Unit 1 would be remote from the flat and tucked in next to the bike store in the corner of the site. It would be accessed from a path leading around the development's front and side elevations, which is not what I would consider to be direct access. This would be highly unsatisfactory as amenity space and unlikely to be used. In any event, it would be heavily shaded by the adjoining bike store, the flatted development on Yeomanry Close and the site boundary, which would limit its usability.
24. The balconies for Units 3 and 5 would not meet the Council's requirements with regard to amenity space. The appellant argues that the balconies could be increased in size to meet the standard if the appeal was allowed. As amended plans appear to support this argument, I conclude that this shortfall could be addressed through minor layout changes.
25. Nonetheless, I conclude that the development would have an adverse effect on the living conditions of future occupiers with regard to outlook and amenity space. This would be contrary to DMP Policy DM10 with regard to the amenities of occupants, and DMP Policy DM12 which is concerned with housing standards.

#### *Development on adjoining land*

26. CS Policy CS5 requires development to have regard to the need to develop land in a comprehensive way. On the basis of the evidence before me I conclude that it is unlikely that the Kings Arms could be re-established as a public house. However, although the appellant has set out a hypothetical residential conversion of the Kings Arms buildings, it remains that the appeal before me is for one part of the current Kings Arms plot only, and therefore represents a piecemeal approach.
27. I appreciate that additional parking could be provided by reducing the remaining garden area of the Kings Arms. However, that is not the appeal before me and reinforces my impression that there is a lack of certainty and clarity regarding the future development of the Kings Arms site. In any case, as the site is designated as potential housing land it is unclear why a more comprehensive plan, that includes the Kings Arms, could not be submitted. As such, I conclude that the development would fail to secure the comprehensive redevelopment of the site and preserve the heritage asset. It would therefore conflict with CS Policy CS5.

#### *Planning obligation*

28. There is a draft planning obligation before me which sets out arrangements for an affordable housing contribution, in line with the Council's decision notice. However as noted above, the Council has withdrawn this reason for refusal and as such there is no need for me to consider the obligation further.

#### *Other matters*

29. Interested parties have raised concerns relating to traffic flow and parking stress, the loss of a public house and construction disturbance. Whilst I appreciate these observations, particularly in relation to traffic flow and

congestion, as I have found harm in relation to the main issues it is not necessary for me to consider these concerns further.

30. The appellant argues that the Council does not have sufficient housing land supply. However, there is nothing before me to substantiate this claim. Even if I gave this argument weight, the benefits of the development would not outweigh the harm I have identified above.

**Conclusion**

31. In the light of the above, I conclude that the development would be contrary to the relevant policies of the Council's Local Plan and that therefore the appeal should be dismissed.

*Amanda Blicq*

INSPECTOR