
Appeal Decision

Site visit made on 20 September 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 5th October 2016

Appeal Ref: APP/K3605/W/16/3149160

5 Hinchley Way, Esher, Surrey KT10 0BD

- 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 David O'Flaherty against the decision of Elmbridge Borough Council.
 - The application Ref 2015/2683, dated 10 July 2015, was refused by notice dated 30 October 2015.
 - The development proposed is the retention of day nursery (D1 use) in existing building, demolish outbuilding and construct new access and parking, erect two detached five bed houses with attached double garages, parking, landscaping, bin collection point, gates and ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The Council's Committee Report makes reference to the provision of a Unilateral Undertaking provided to secure payment of an affordable housing contribution. However, since the date of the Council's decision, the Secretary of State for Communities and Local Government has successfully appealed against the judgment of the High Court of 31 July 2015¹. The effect of the Court of Appeal's judgment of 11 May 2016 is that contributions for affordable housing and tariff-style planning obligations should not be sought from small scale and self build development such as the appeal proposal. I have not therefore taken the Unilateral Undertaking in account in my decision.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. Located within the established residential area of Hinchley Wood, there is a clear and coherent structure to the pattern of development in and around the appeal site. The dwellings are relatively large and positioned quite close to each other with long rear gardens behind. The combined rear elevations of the dwellings form definite building lines within this urban grain and effectively

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

- create a perimeter of development which encloses a combined area of rear gardens. Here, the visual quality arising from the trees and vegetation and the considerable distances between the backs of houses provides a distinct and important character resource to the area and the many surrounding residents.
5. It is an area which is devoid of any significant built development, other than that of the swimming pool building situated at the end of the garden of No 10 Chesterfield Drive, which appears somewhat isolated from this main perimeter of development, but on its own does not materially alter the overall character of the area.
 6. The front part of the appeal site is occupied by a children's nursery with an enclosed play area to the rear, beyond which is a cleared area and the remains of a tennis court. The proposed development would see the erection of two, five bedroom detached dwellings positioned behind the children's nursery and the rear building line of Hinchley Way, thereby resulting in an uncharacteristic 'backland' form of development.
 7. Whilst the scale and massing of the dwellings would be comparable to a number of the larger dwellings surrounding the site and the design may be acceptable in itself, the dwellings would nonetheless be substantial and would not amount to a subservient form of development in this backland location.
 8. As highlighted by the Inspector for the previous appeals² at this site, paragraph 60 of the National Planning Policy Framework (the Framework) explains that it is proper to promote or reinforce local distinctiveness. I acknowledge that the character of an area can evolve and that the area in and around the appeal site has dramatically changed over the last 100 years or so. Nevertheless, I have considered the appeal proposal within the context of what is now an established residential area. It is within this context that I have found that the introduction of the proposed dwellings would be at odds with the established pattern of development and would result in material harm to the character and appearance of the area. In doing so the proposed development would fail to promote or reinforce the distinctive characteristic of the area. Accordingly, the appeal proposal does not resolve this concern as expressed by the Inspector for the previous appeals at this site.
 9. The consequential harm would not in my view be sufficiently resolved by a limited effect on the street scene as such permissions could be granted all too often, to the overall detriment of the character of the area. In any case, the site is viewed from the rear of a large number of surrounding properties and its current undeveloped nature contributes to the character I have described.
 10. Although the proposed plot sizes are generally wider and shorter than that of the surrounding properties, in overall terms the plot sizes relate satisfactorily to the surrounding area and as such the proposals would not appear as a cramped form of development. In this regard, I agree that the concerns expressed by the Inspector for the previous appeals have been resolved. However, I am not convinced that re-orientating the dwellings to face east and west materially improves the integration of the development within the existing urban grain. Because of its backland position towards the centre of a perimeter of development, either orientation will sit uncomfortably and fail to

² Appeal References: APP/K3605/A/14/2227228 & APP/K3605/A/14/2227230

align with either Hinchley Way/Chesterfield Drive or Claygate Lane/Cumberland Drive.

11. I do not agree that the appeal proposal would insert a cul-de-sac style arrangement or is comparable in its effect to other cul-de-sacs such as Meadow Close and Cumberland Drive. These substantial and established cul-de-sacs, which have been in existence since at least 1935, display a conventional layout of a road, with footpaths and dwellings on each side and merely because Meadow Close is largely positioned to the rear of Manor Drive does not make it backland in nature. In comparison, although the appeal proposal does not utilise an existing rear garden, its characteristics are that of a typical backland development. It would be reached via a private shared drive, with no street frontage, situated within an existing plot and accessed between two buildings. In any case, the Inspector for the previous appeals highlighted that the site's immediate surroundings are not characterised by cul-de-sac layouts.
12. Whilst the appellant has suggested that the site could accommodate an outbuilding for the school, this is not the proposal currently before me and I make no comment on this as to do so would usurp the local decision making process.
13. My decision does not turn on whether or not the proposal would result in a precedent for similar development as each proposal must be judged on its merits, as I have done in this case.
14. I acknowledge that one of the core planning principles of the Framework is to encourage the effective use of land by using land that has previously been developed and that this land is currently surplus to requirements. However, in this case the modest benefits arising from the provision of two dwellings would not out the harm I have explained above.
15. I therefore conclude that the proposed development would result in material harm to the character and appearance of the area, contrary to Policy DM2 of the Elmbridge Local Plan Development Management Plan August 2015, Policies CS8 and CS17 of the Elmbridge Core Strategy 2011 and the Design and Character Supplementary Planning Document Companion Guide: Thames Ditton, Long Ditton, Hinchley Wood & Weston Green, April 2012. The state, amongst other matters, that proposals should preserve or enhance the character of the area. It follows therefore that I also find conflict with Framework which requires high quality design that responds to the character of the area.

Other matters

16. I acknowledge that the Council has found that the proposal would not result in unacceptable harm to the living conditions of neighbouring residents and that the Highway Authority has identified no adverse impact on highway safety. However, these absences of harm cannot weigh in favour of the proposals as such but should properly be considered neutral in the planning balance. It follows therefore that they cannot mitigate the harm I have identified in respect of the character and appearance of the area.
17. Whilst the appeal site may benefit from a sustainable location, as set out in the Framework, good design is a key aspect of sustainable development and on the

basis of the harm to the character and appearance of the locality, the proposal would not amount to sustainable development as envisaged by the Framework.

Conclusion

18. Accordingly for the reasons given above, and having regard to all other matters before me, I dismiss the appeal.

Richard S Jones

Inspector