
Appeal Decisions

Hearing held on 17 January 2017

Site visit made on 17 January 2017

by Wendy McKay LLB Solicitor (Non-practising)

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

Decision date: 23 March 2017

Appeal A Ref: APP/K3605/C/16/3149571

514 Molesey Road, Walton-on-Thames, KT12 3PW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Hubert Vincent against an enforcement notice issued by Elmbridge Borough Council.
- The enforcement notice, (Ref: 160323/PL/ENF), was issued on 4 April 2016.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, the intensification of residential use of the land by the siting and use of two residential caravans resulting in a material change in the character of the area.
- The requirements of the notice are to remove the two caravans, ancillary buildings and any resultant materials from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since there is no appeal on ground (a) and the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Appeal B Ref: APP/K3605/W/16/3147815

514 Molesey Road, Walton-on-Thames, KT12 3PW

- 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 Hubert Vincent against the decision of Elmbridge Borough Council.
- The application Ref 2015/3026, dated 13 August 2015, was refused by notice dated 6 October 2015.
- The development proposed is the use of the land for the stationing of two caravans for residential purposes.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. At the Hearing, an application for costs was made by Mr Hubert Vincent against Elmbridge Borough Council. This application is the subject of a separate Decision.

The appeal on ground (b) – Appeal A

2. The appeal on ground (b) is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The burden of proof for this and the other legal grounds of appeal is on the Appellant and the relevant test is the '*balance of probabilities*'. The relevant date for the purposes of assessing an appeal on this ground is the date of issue of the notice.
3. The enforcement notice alleges: "*the intensification of the residential use of the land by the siting and use of two residential caravans resulting in a material change in the character of the area.*" The notice plan shows the red line area of the land affected as excluding the dwelling house and part of the garden area of No 514 Molesley Road. It is necessary to consider whether the alleged breach of planning control as set out in the notice has occurred as a matter of fact.
4. The Appellant submits that since there was no previous lawful use for the stationing of caravans for residential purposes, there cannot have been any intensification of that use. The caravans are situated within the original residential curtilage of the dwelling at No 514 Molesley Road but they are not used for purposes ancillary to the single dwelling house. The Appellant acknowledges that their use to provide independent residential accommodation constitutes a material change in use. However, that is not what is alleged in the notice.
5. The Council contends that the residential use has been intensified given that the site was originally occupied by only one residential property and a further two units have been introduced. It submits that where a caravan is sited within the curtilage of a dwelling house and the caravan becomes a self-contained dwelling and is used as a separate home thereby creating two planning units, this does not fall within the ambit of s.55(3)(a) of the 1990 Act, nor does it comprise a change of the pre-existing Class C3¹ residential use. It contends that the intensification of that use and the resulting material change in its character represents a breach of planning control and the notice addresses this concern.
6. The Council draws support from an appeal decision relating to land to the rear of Beechcroft, Field Common Lane, Walton-on-Thames, Surrey.² In that case, the allegation was "*the change of use of the land for siting of two mobile homes....*". The Inspector noted that at the date of issue of the notice the site was being used for the stationing of three mobile homes for residential purposes. The Council had accepted that the use of that site for the stationing of one residential mobile home was lawful. In that situation, she correctly identified that the potential breach would be a material change of use by way of intensification from use for the siting of one mobile home to use for the siting of three mobile homes. The Inspector concluded that to change the allegation in a way that would correctly identify the breach of planning control could not be done without causing injustice to the Appellant and the notice was therefore invalid and quashed.

¹ Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended)

² Reference: APP/K3605/C/12/2180846

7. That decision, and the reasoning set out therein, merely reinforce my view that the allegation in this case of a material change of use by way of intensification does not accurately reflect, as a matter of fact, what has taken place. The appeal site did not benefit from any existing lawful use for the siting and use of a single residential caravan at the time that the current unauthorised use commenced. Since there was no existing lawful use for that purpose, there could not have been a material change of use by way of intensification.
8. The Council relies upon the existing lawful Class C3 use of the whole of the original plot which comprised the single dwelling house and its residential curtilage. The caravans are not occupied for purposes ancillary to that dwelling house but are occupied as separate and independent units. The land affected by the notice comprises only part of the original site and does not include the dwelling house and part of the garden. The notice thus reflects the fact that the two caravans which have been sited on part of the original residential curtilage are occupied and used separately from the main dwelling. The stationing on land of a caravan used for the purposes of human habitation independently from the original host dwelling is not the same activity as a single dwellinghouse Class C3 use. It represents a separate and distinct use in its own right rather than an intensification of the lawful Class C3 use³. The correct description of what has taken place is as applied for under the section 78 appeal, namely, the use of land for the stationing of two caravans for residential purposes.
9. The question then arises whether the alleged breach set out in the notice and the corresponding requirements can be corrected and varied using the powers available to me under s.176(1) of the 1990 Act without any injustice being caused. The Appellant submits that the notice is incapable of being amended without causing injustice. He has not made an appeal against the notice on ground (a),⁴ as he does not seek planning permission for a material change of use by way of intensification of an existing use. The s.78 appeal provides another means whereby he could potentially gain the permission that he desires. However, that is proceeding by way of a separate appeal with its own independent process.
10. I concur with the Appellant that it would be inappropriate to place reliance upon the outcome of that separate appeal process when assessing the implications of correcting the errors in the enforcement notice. Since there is no appeal on ground (a), the Appellant is unable to put his case on that ground and seek permission for the revised deemed application based on the corrected allegation. The errors in the notice cannot therefore be corrected without injustice being caused. I conclude that the matters alleged in the notice have not occurred as a matter of fact. The appeal succeeds on ground (b) and the notice will be quashed.

The section 78 appeal – Appeal B

The Development Plan and other policies

11. The Development Plan for the area includes the adopted Core Strategy (2011) and the adopted Development Management Plan (2015). The Council has also a number of Supplementary Planning Documents (SPDs) including the Design

³ See s.336(1) of the 1990 Act and s.1(4) of the Caravan Sites and Control of Development Act 1960

⁴ An appeal on the ground that planning permission should be granted for what is alleged in the notice

and Character SPD 2012, the Design and Character SPD Companion Guide: Walton on Thames, the Developer Contributions SPD 2012 and the Flood Risk SPD 2016.

12. Turning to national policy, the Government issued the National Planning Policy Framework (the "Framework") in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.⁵ Paragraph 211 of the Framework, advises that for the purposes of decision-taking, the policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Paragraph 215, states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.

The Planning History

13. In June 2012, planning permission was refused for the retention of a mobile home to the rear of the property⁶. In 2013, planning permission was granted for the retention of an existing mobile home for a temporary period of three years with a new access to be provided from Molesey Road⁷. A retrospective application for the siting of two mobile homes for a temporary period of three years was refused in 2015⁸.

The Main Issues

14. The main issues are as follows:

- Whether the Council has a five year housing land supply?
- The effect of the development on the character and appearance of the surrounding area.
- The implications that the development would have for the living conditions of neighbours with particular regard to noise and disturbance.
- Whether the scheme would provide satisfactory living conditions for future residents with particular regard to amenity space.
- The contribution that the scheme would make to the Council's housing density target.
- The availability of alternative, suitable and viable sites for the occupiers of the site.
- Whether there has been a failure of policy on the part of the Council in relation to the supply of housing in the borough?
- The economic benefits of the development.

⁵ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

⁶ Ref: 2012/0840

⁷ Ref: 2012/3974

⁸ Ref: 2015/0077

Reasons

Whether the Council has a five year housing land supply?

15. The Framework, paragraph 47, explains the steps that local planning authorities should take to boost significantly the supply of housing, including that they should identify and update annually a supply of deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% to ensure choice and competition in the market for land. Paragraph 49 states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
16. The Core Strategy Housing requirements which provide for 225 dwellings per annum (DPA) over the plan period 2011-2026 are based on the old South East Plan. The Council, in its Statement, maintained that since the adoption of the Core Strategy, it had exceeded its housing target of delivering 225 houses per annum and it had a 5 year housing land supply based on the Core Strategy housing target. Nonetheless, the Council recognised the need to review its evidence to ensure that its Plan is up-to-date. The Council alongside other local authorities commissioned a new Strategic Housing Market Assessment (SHMA) to assess their housing need. The SHMA published in June 2016 provides an objectively assessed need (OAN) for Elmbridge of 474 DPA from 2015 onwards. The Council indicates that this will inform plan preparation and set a housing target to 2035.
17. The Appellant has produced a revised December 2016 assessment of the Council's five year land supply. This calculates that: *"..the total requirement for the Council is a minimum of 4,090 dwellings for the period 2016/2017 – 2020/2021. The supply for this period is 1,270. This equates to 31% of the housing land required or 1.5 years of supply. Even if the buffer is removed, no shortfall is applied, no lapse rate is applied and there is no deduction from the Council's supply for non-deliverability, the Council are still unable to demonstrate a five year supply with requirement and supply figures of 2,370 and 1,614 respectively (3.4 years supply)."*
18. At the Hearing, the Council agreed that the Core Strategy housing requirement should now be regarded as being out-of-date and will need to be reviewed and a new target set through the Development Plan process. Following the publication of the SHMA in June 2016, the Council's officers submitted a paper to the Cabinet of the Council in September 2016. This accepted that the Council did not have a five year housing land supply when measured against the latest OAN. Since the Council does not, at present, have a five year supply of deliverable housing sites, paragraph 49 of the Framework is engaged.
19. The implications of that outcome fall to be considered in the light of the case of *Suffolk Coastal District Council and Hopkins Homes limited v SSCLG [2016] EWCA Civ 168*. The Court of Appeal makes it clear that paragraph 49 is also connected to the policy for the application of the *"presumption in favour of sustainable development"* in paragraph 14. The concept of relevant policies that are *"out-of-date"* in paragraph 14 also embraces *"[relevant] policies for the supply of housing"* that are not to be considered *"up-to-date"* under paragraph 49, and it extends to policies in a plan whose period is still running.

20. The Court of Appeal also considered the meaning of "[relevant] policies for the supply of housing" and concluded that the "wider" interpretation of that phrase should be adopted. This interpretation does not confine the concept of "policies for the supply of housing" to policies which provide positively for the delivery of new housing in terms of number and distribution or the allocation of sites. The concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed including various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. The Council's relevant housing land supply policies will be considered and applied against the background of the absence of a five year supply of housing land and the *Suffolk Coastal* case. However, the weight to be attached to such policies remains a matter for the decision-maker to assess.
21. Paragraph 109 of the Framework indicates that the planning system should protect and enhance valued landscapes. However, the appeal site is not within such a valued location. I concur with the Appellant that Policies CS3 and CS17, which pre-date the Framework, go beyond the aim of paragraph 55 of the Framework to ensure that developments "respond" to local character and are inconsistent with it in that respect.
22. The DMP was examined post-NPPF and tested against the NPPF and found to be sound. The Council's review of the Local Plan is principally due to the need for a revised housing target rather than the lack of conformity of other policies with the NPPF. I consider the Appellant's criticism of the DMP policies to be overstated. Nonetheless, Policies DM2 and DM10 together with Policies CS3 and CS17 are all relevant housing land supply policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed with the exception of the density element of Policy CS17. These housing supply policies cannot be considered up-to-date.
23. Having regard to the particular purposes of these policies, certainly the broad aims of protecting the environment and securing a good standard of amenity for people are consistent with the core planning principles of the Framework. Furthermore, it is clear that the Council is aware of the housing land supply shortfall and is taking steps to address it, albeit that it may take some time before revised policies are put in place to achieve that aim. Overall, I consider that moderate weight should be attached to the relevant DMP policies with modest weight being attached to the CS policies given that the wording of the latter is not so consistent with the Framework.

The effect of the development on the character and appearance of the surrounding area

24. Policy CS3 of the Core Strategy promotes new development through redevelopment of previously developed land, taking account of flood risk, in a way that integrates with and enhances local character.
25. Policy CS17 requires new development to deliver high quality and inclusive sustainable design which maximises the efficient use of urban land whilst responding to the positive features of individual locations, integrating sensitively with the locally distinctive townscape, landscape and heritage assets and protecting the amenities of those within the area. In terms of development density, it seeks a minimum density of 30dph other than in certain specified areas. It is only in exceptional circumstances, where

- overriding harm to the valued character of the area would occur, that development at a lower density may be acceptable. However, The Council accepts that this is not an area with a "valued character", so that caveat does not apply.
26. Policy DM2 identifies that new development should achieve high quality design and proposals should preserve or enhance the character of the area taking account of the design guidance detailed in the Design and Character SPD including the prevailing pattern of built development.
27. Policy DM10 indicates that housing development on garden land and/or to the rear or side of existing residential property will be appropriate provided certain criteria are met including that the scheme as a whole has been well designed to respect the character of the area.
28. The Design and Character SPD Companion Guide: Walton-on-Thames, paragraph 3.55, in relation to "opportunities" states that: *"Development is likely to take the form of infill to existing established patterns of medium to high density and redevelopment of existing buildings."*
29. The dwellinghouse at No 514 Molesey Road originally occupied a large plot fronting Molesey Road. The caravans are sited on the rear part of the original plot within what previously served as the garden area of that property. That area is now occupied separately from the dwelling house and part of the front garden area which has been fenced-off. This section of Molesey Road is characterised by predominantly mixed style residential dwellings which face the main road with a petrol station and car wash further to the north. I concur with the Appellant that the character of the wider immediate area and not just the frontage properties falls to be assessed. In addition to the frontage properties, there is higher density housing development to the south and east and a number of back-land developments in the area.
30. The Council submits that the subdivision of the existing plot to accommodate two mobile homes in the rear garden area of the dwelling is completely at odds with the rest of the grain and layout of development in the local area. However, when considering the 2012 application for the retention of an existing mobile home on the site, the officer's report notes: *"The mobile home is barely visible from any area of the public realm and even then its appearance would be that of an outbuilding. As such in terms of the streetscene and impact on the character of the area the proposals impact would be minimal."*
31. Although the current appeal relates to two caravans rather than one, they are both sited to the rear of the plot and are very well-screened from both public and private views. There is existing mature screening along most of the boundaries and also within the site. Further planting within the site is proposed. From Molesey Road, the small gap in the frontage which gives access to the land would allow views through to the rear part of the site. However, the caravans would hardly be noticeable and there would be little opportunity for either passing motorists or pedestrians to see them in their present position, especially once the new planting is in place. Matters relating to the internal layout such as the siting and number of caravans, hard and soft landscaping and control over outside storage could be secured by planning condition.

32. Whilst the plot sizes and widths along the Molesey Road frontage are fairly generous, that pattern of development is not reflected within other parts of the immediate area which also includes some higher density development in the form of flats and terraced properties. The Appellant calculates that the density of the area centred on the appeal site was 24 dwellings per hectare and, if the new development is permitted, the density would rise to 26 dwellings per hectare which would remain below the minimum quoted in Policy CS17. The increase in density would be consistent with the Core Strategy and the Framework aim of making the best and most appropriate use of land.
33. The Council points to the siting of two mobile homes on garden land as being not something that is seen in the area. However, the Appellant has provided evidence of other dwelling houses nearby which have caravans and/or hardstandings to the rear including on Moseley Road. At Beechcroft, Field Common Lane, there are a number of mobile homes and touring caravans. An appeal decision⁹ dated 2 February 2016 relating to that site records that at that time there were five mobile homes and three small touring caravans on the land. Therefore, as a matter of fact, there are presently caravans within other sites nearby.
34. Although the presence of caravans on other sites may have become lawful through the passage of time, or do not require planning permission as they are used for purposes incidental to the main dwelling house on the site, they nevertheless form part of the existing character of the area whilst they remain in place. Whilst in some instances there may even be a question mark over their lawfulness, that reservation does not apply in all cases. The evidence before me does not identify any material difference between caravans in ancillary use and caravans in separate residential use in terms of their impact upon the character and appearance of an area.
35. I conclude that, subject to the imposition of appropriate planning conditions, the scheme as a whole would be in keeping with the character of the area and would not materially detract from the appearance of the surroundings. It would preserve local character in accordance with Policy DM2 and comply with the relevant criterion of Policy DM10. It would achieve the improvement in density that is sought by Policy CS17. Whilst it would not provide the enhancement to local character required by Policy CS3, as indicated above, that aspect of the policy is inconsistent with the Framework and modest weight is attributed to it.

The implications that the development would have for the living conditions of neighbours with particular regard to noise and disturbance

36. The Framework, paragraph 123, seeks to ensure that new development avoids noise giving rise to significant impacts on health and quality of life and mitigates and reduces to a minimum other adverse impacts on health and quality of life arising from noise, including through use of conditions. Paragraph 109, seeks to prevent new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of, amongst other things, noise pollution.
37. Policy DM10 deals with back-land development and requires that there is a proper means of access; that there is sufficient space for future occupants and

⁹ Ref: APP/K3605/W/15/3134190

that there would not be an unreasonable impact on the amenity of existing and future residents. Policy DM5 is not a policy that is referred to in the Council's decision notice. It states that all development that may result in noise emissions will be expected to incorporate appropriate attenuation measures to mitigate the effect on existing and future residents.

38. Policy DM10 (d)(ii) seeks to ensure that the relationship between buildings within and outside the site preserve the privacy and amenity of existing and future residents and (d)(iii) requires the means of access to be appropriate in size and design to accommodate vehicles and pedestrians safely and to prevent harm to the amenities of adjoining residents. In seeking to restrict *any* harm to the residential amenity of adjoining residents it should be noted that this policy goes beyond what is required by the Framework, paragraph 109.
39. Policy DM2 requires development proposals to protect the amenity of adjoining and potential occupiers and users, by being designed to offer appropriate outlook, and provide adequate daylight, sunlight and privacy. There is no evidence before me of any harm to amenity that would arise from matters other than noise and disturbance.
40. The Council accepts that there is space to the rear of the site for vehicles to park. There is no objection raised to the use of the existing access on highway safety grounds, but there is concern in relation to the effect on neighbouring amenity. It points out that the previous approval for the temporary siting of a mobile home showed a separate driveway running along the southern side boundary of the site with clearly delineated garden areas for the mobile home and the host dwelling at No 514 Molesey Road. The proposed arrangement is for one central access to serve the dwelling and the mobile homes at the rear. The Council submits that the proposed access arrangement would have an unacceptable impact upon the amenities of the occupiers of the dwellinghouse.
41. The Appellant contends that any adverse impacts resulting from the proposal would fall far short of the "*significant*" threshold set out in the Framework. He is critical of the officer's report in that it does not state how the existing dwellinghouse would be adversely affected by unacceptable noise levels nor does it cite any technical report or analysis undertaken by a relevant expert.
42. Although obviously helpful in assessing noise impacts, the provision of technical report or expert analysis of noise impact is not crucial to the assessment of impact in all cases. There are some instances where the facts will speak for themselves and the likely noise impact can be assessed and a reasonable judgement reached without such aids. However, there does need to be some relevant and rational evidence on which to base such an assessment.
43. At the Hearing, the Council clarified its position on this topic and confirmed that it was the coming and going of vehicles and people to and from the site that was the cause for concern rather than the use of the land itself. It submits that the development would result in significant harm arising from such comings and goings up and down the access track through the front part of the site.
44. The Appellant draws support from various Inspector's decisions relating to development which involved access tracks running to the rear of residential properties and points to the Council's position on tandem development having been inconsistent with regard to other schemes. These various other

developments to which the Appellant refers indicate that such access arrangements can potentially be acceptable in terms of their impact upon existing properties. However, not all cases will be alike and they fall to be assessed on their individual merits and circumstances.

45. The previous temporary permission required the access track to be provided on the southern side of the site further away from the existing dwelling house. There is no such proposal included as part of the current appeal and the central access does pass in close proximity to the side elevation of the dwelling house. The house is orientated with its main front elevation facing towards Molesey Road. This road has around 50,000 vehicle movements a day which must inevitably result in traffic noise being experienced by adjacent residents. However, there are windows in the side elevation of No 514 and the comings and goings to and from the caravans at the rear would still be noticeable to the occupants of that property. Nevertheless, in this particular location the scale and frequency of such activity that could reasonably be expected to be generated by the development would be unlikely to result in any significant or unacceptable levels of noise and disturbance being experienced by the occupants of the house.
46. Whilst the means of access is appropriate in size and design to accommodate vehicles and pedestrians safely, there would be a degree of harm to the amenities of the adjoining residents at No 514 contrary to Policies DM10 d (iii). Nonetheless, that harm would not reach the threshold of the significant adverse impact envisaged by the first bullet point of paragraph 123 of the Framework. Turning to the second bullet point, and the expectations of Policy DM5, measures that could appropriately mitigate or reduce to a minimum the adverse impact fall to be considered. The prospect of measures such as acoustic fencing was mentioned at the Hearing. However, that would be likely to have other implications, for example, in relation to character and appearance and the outlook from the dwelling house. The residual harm to neighbours' amenity in the absence of noise mitigation measures is a factor of moderate weight to be weighed in the overall balance of considerations.

Whether the scheme would provide satisfactory living conditions for future residents with particular regard to amenity space

47. Policy DM10 c provides that residential accommodation should offer residents an appropriate level of amenity, including garden or outdoor space, commensurate with the type and location of housing proposed. The Design and Character SPD, paragraph 5.56, states: *"In some instances, a minimum garden depth of 11 metres should be provided, which is a dimension that Elmbridge has often required. However, this will depend on the character of the area and the type of development proposed."* Paragraph 5.57 sets out the issues to be considered and makes reference to, *"... other settings where the character of the area warrants a greater depth, usually in excess of 15 metres."*
48. The Council has not considered the development as a caravan site but against its own residential amenity standards for housing as set out in the Design and Character SPD. The Council does not have a local standard for amenity space for caravans.
49. The Appellant draws attention to the Model Standards 2008 for Caravan Sites in England as established under s.5(6) of the Caravan Sites and Control of

Development Act 1960. This guidance applies to permanent caravans and deals with matters such as spacing of caravans and communal recreation space but does not rigidly set guidance for amenity space.

50. At the Hearing, the Council confirmed that it accepts that the existing house would retain sufficient amenity space. However, it submits that the scheme would make inadequate provision for garden/amenity space for future occupants of the two caravans. It draws support from a previous scheme¹⁰ for one mobile home that was rejected for this reason. A revision¹¹ to that proposal had sought to overcome that objection by using the area on which the second mobile home is sited as private amenity space. The current arrangement would prevent its use for that purpose.
51. The Appellant points out that the length of the site is in excess of the 11m and 15m distances given in the SPD. The proposed site layout has been designed to minimise the impact on the appearance from the street. The siting of the caravans at the rear of the plot leaves an extensive and potentially usable garden area within the front part of the site between the caravans and the road. The Council is critical of the shared nature of this space. However, I consider that the use of this space to accommodate a garden or outdoor area for occupiers of the caravan site would provide those residents with an appropriate level of amenity commensurate with this type of accommodation. In my view, the retention and use of a garden area to the front and side of the plot would be in keeping with the character of this location.
52. I conclude that, subject to the imposition of a planning condition to secure the layout of the site including the designation and retention of amenity space, the scheme would provide satisfactory living conditions for existing and future occupants. Since the development would provide residents with an appropriate level of amenity, it would be in accordance with Policy DM10 c.

The contribution to the Council's minimum and overall housing density target

53. The Appellant complains that the Council has made no assessment or finding of the contribution that the scheme would make to the housing density target for the area. As indicated above, the Appellant has calculated that the current density would rise to about 26dph which would still be below the Council's minimum target of 30dph and well below its overall target of 40dph. The development would contribute to the Council's minimum housing density requirements for the area and would be in conformity with this aspect of Policy CS17. However, given the scale and nature of the contribution this is a factor to which I attribute modest weight.

The availability of alternative, suitable and viable sites for the occupiers of the site

54. The Framework, paragraph 47, footnote 11, states that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and, in particular, that development of the site is viable. The Council accepts that it does not have sufficient sites to enable a five year land supply to be identified. The consequence of this situation is that there is a lack of alternative, suitable and viable sites. This is a material consideration of significant weight in support of this appeal.

¹⁰ Ref: 2012/0840

¹¹ Re: 2012/3974

Whether there has been a failure of policy on the part of the Council in relation to the supply of housing in the district?

55. The Appellant puts forward this consideration on the grounds of ascertaining the likelihood of the Council successfully addressing need in the future. He submits that the best indicator of future performance has to be past performance and that there is a significant and ongoing failure of policy on the part of the Council in relation to the supply of housing in the borough.
56. At present, the existing local planning policy background is certainly deficient in that respect. However, the Council has the benefit of the recent SHMA and recognises that the Core Strategy target is out-of-date. There can also be no doubt that the Council is now taking active steps to address the situation through the development plan process. It seems to me that the Appellant's criticism of the Council on this topic is somewhat exaggerated. This is a factor to which I attribute limited weight.

The economic benefits of the development

57. The caravans represent a use of the land and are already present on the site. At the Hearing, the Appellant agreed that there would be no benefit to the local community through the creation of jobs for any construction phase. That would not be relevant to this development.
58. The Appellant also claims that the scheme would provide longer-term economic benefits to the area through the site occupants' contributions to local shops and services. However, given the scale of the development any such contribution would be limited in scope. Even accepting the value of the cumulative impact of a number of small sites, this is a factor to which I attribute little weight.

Overall Conclusions

59. In the absence of a five year supply of land for housing, the Development Plan must be regarded as being out-of-date. In those circumstances, the Framework, paragraph 14, advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
60. As regards any adverse impacts, subject to the imposition of appropriate planning conditions, the development would be in keeping with the character of the area and would not materially detract from the appearance of the surroundings. There would be no significant adverse impact but there would be a degree of harm experienced by the occupants of No 514 in terms of noise and disturbance to which moderate weight can be attributed. The Council accepts that the dwelling house would retain sufficient amenity space. The amenity space available for the caravan site occupants would be satisfactory for that type of development and would provide residents with an appropriate level of amenity.
61. Turning to the benefits of the development, the scheme would provide two units of residential accommodation at a time when there is no five year supply of housing land. Consequently, there is a current lack of alternative, suitable and viable sites. This is a material consideration of significant weight. The contribution to the Council's minimum housing density target is a factor of

modest weight. The existing local planning policy background is at present deficient in relation to the supply of housing in the district. However, the Council is now taking active steps to address the situation and this is a factor to which I attribute limited weight. The economic benefit of the development is a factor to which little weight is attributed.

62. I conclude that the adverse impacts associated with the grant of permission in this case would not significantly and demonstrably outweigh the benefits in this case when assessed against the Framework as a whole and there are no specific policies in the Framework which indicate that development should be restricted.

Planning Conditions

63. At the Hearing, the parties discussed appropriate planning conditions that might be imposed in the event that the appeal should succeed. The conditions imposed will reflect the advice set out in the Framework, paragraph 206, and the Planning Practice Guidance.
64. Following that discussion, I consider that it is necessary to impose a condition requiring the submission, approval and implementation of a site development scheme to include matters relating to the internal layout including the siting of caravans, and designation of hardstanding, access, parking and amenity areas; soft and hard landscaping including details of planting to be retained and new planting, means of enclosure, external lighting and outside storage including details of the location and height of any such storage. I believe that such a condition is both reasonable and necessary in order to safeguard the character and appearance of the site and surroundings and the living conditions of neighbours and site occupants.
65. The site development scheme condition to be imposed will be drafted in retrospective form to reflect the fact that the development has taken place and that the site is already occupied. The use of such a condition reflects the significance that I attach to the provision of the site development scheme in order to render the development acceptable and the need to enforce the cessation of the use in its absence. I consider that the time periods for compliance with the various steps set out in the condition are reasonable. I also believe that a condition should be imposed to secure the maintenance of any proposed planting.
66. For the same reasons, the number of caravans shall be limited to no more than two being stationed on the site at any time. Since a site development scheme will be required by planning condition, it is not necessary to impose a condition requiring the development to take place strictly in accordance with the approved plans.

Formal Conclusions

Appeal A

67. For the reasons given above, I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice will be quashed. In these circumstances, the appeals under grounds (f) and (g) set out in section 174(2) to the 1990 Act as amended do not need to be considered.

Appeal B

68. For the reasons given above, I conclude that the appeal should be allowed.

Formal Decisions

Appeal A Ref: APP/K3605/C/3149571

69. The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/K3605/W/3147815

70. The appeal is allowed and planning permission is granted for the use of the land for the stationing of two caravans for residential purposes at No 514 Molesey Road, Walton-on-Thames, KT12 3PW in accordance with the terms of the application, Ref: 2015/3026, dated 13 August 2015, and the plans submitted with it, subject to the following conditions:

- 1) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed on the site at any time.
- 2) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the internal layout of the site, including the siting of the two caravans, hardstanding, access road, parking and amenity areas; soft and hard landscaping including details of existing tree, hedge and shrub planting to be retained; and proposed new planting with details of species, plant sizes and proposed numbers and densities; means of enclosure; external lighting and outside storage including details of the location and height of any such storage (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Following the carrying out and completion of the approved site development scheme specified in this condition, that scheme shall thereafter be retained and its terms shall continue to be adhered to; the caravans shall only be sited in the approved positions; no outside storage shall take place except in accordance with the approved scheme and areas designated for a particular purpose shall remain available for use for those specified purposes.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) At the same time as the site development scheme required by condition 2 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green – Green Planning Studio Ltd
Ruth Reed – Green Planning Studio Ltd
Hubert Vincent - Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Briant – Elmbridge Borough Council
Katie Baldwin – Elmbridge Borough Council
Mark Behrendt – Elmbridge Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Attendance List
- 2 Copy letter sent by the Council notifying local people of the Hearing and circulation list
- 3 Copy appeal decision reference APP/K3605/C/12/2180846
- 4 Costs response submitted by the Council