

Appeal Decision

Site visit made on 13 February 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 16th May 2017

Appeal Ref: APP/K3605/W/16/3162038

7, 9 and 11 Hall Place Drive & 165 Queens Road, Weybridge KT13 0AJ

- 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 Urban Matrix Developments LLP against the decision of Elmbridge Borough Council.
 - The application Ref 2016/1644, dated 11 May 2016, was refused by notice dated 20 October 2016.
 - The development proposed comprises 22 residential units with vehicular and pedestrian access, including parking and associated landscaping following demolition of 4 existing houses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the Council's decision notice rather than the application form as it provides the most succinct description.
3. The Council refused the application for a number of reasons including the absence of a planning obligation to secure affordable housing and a financial contribution towards Strategic Access and Monitoring Measures (SAMM) in relation to the Thames Basin Heaths Special Protection Areas (SPA). The appellant has now provided an obligation and the Council has confirmed that these reasons for refusal have been withdrawn.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposal on the character and appearance of the area
 - The effect on the living conditions of future occupiers of proposed plot 7 with regard to privacy; and proposed plot 8 with regard to privacy and private amenity space
 - The effect on the living conditions of the occupiers of no 5 Hall Place Drive and Netherby Lodge with regard to outlook
 - The effects on protected species
 - The effects on drainage
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Reasons

Character and appearance

5. The appeal site comprises the plots of four existing dwellings that together form an 'L' shape addressing both Hall Place Drive and Queens Road. The area is residential with predominantly detached houses of varying age and style. The existing plots forming the appeal site are distinctively large and notably contain many deciduous and evergreen mature trees and shrubs along with boundary hedges. The overall effect is one of a semi-rural area with a spacious and very verdant character. The largest of the trees are particular features and a number of them are protected by Tree Preservation Orders (TPOs).
6. The appeal scheme proposes the creation of seven new buildings, six of which would be accessed by a new service road leading from Hall Place Drive. The remaining building would have access directly off Queens Road. The dwellings would range from terraces, semi-detached houses, bungalows and two separate blocks of flats. Out of necessity, the buildings would be spread across the site.
7. Apart from the two proposed bungalows, the buildings would be substantially larger than those nearby and thus, the overall amount of built form and associated areas of hardstanding would dominate the surroundings. This would irrevocably change the verdant character of the site and, as a consequence, that of the surrounding area. It would have a profound diminishing effect on the area's spaciousness.
8. Plot 8 would only have private amenity space at the front of the dwelling because its rear elevation would be close to the northern side boundary of no. 5 Hall Place Drive. It would therefore be hemmed-in by the boundary fences to the side and rear and by the access road. Plot 14 would be located on what is a very narrow part of the site currently forming the rear garden of 165 Queens Road. The lack of any significant visual relief between its side elevations and the flanking boundary fences would give the impression of it being shoehorned into its plot. The buildings forming plots 1-2, 3-5 and 6-7 would be of substantial proportions and given that there would be only about 2m between them, they would appear in the street scene as one large built mass.
9. When all of this is taken into account, it indicates that the development would appear as a cramped overdevelopment of the site and thus out of character with the currently much more spacious surroundings. Whilst I accept that the proposal would make efficient use of land and be in general accordance with the area's density, these are essentially theoretical calculations that in themselves do not justify an insufficient regard for the prevailing character of the site and its surroundings.
10. Furthermore, the proposed spread of buildings across the site would necessitate the removal of a number of existing trees. The Council is content with this on the basis that certain trees are not considered to be of particularly high quality and that suitable replacements could form part of a landscape scheme for the development. However, whilst I have no reason to disagree with the Council regarding the individual merits of some of the trees, they nonetheless make an important contribution as an overall group to the verdant character of the site and the visual influence on the surroundings. Therefore in

my view, their loss, in combination with the clearance of shrubs and hedges would result in a harmful effect on the area's character and appearance.

11. I recognise that replacement planting could provide some general greening within the proposed development but it would take many years to achieve the same effect created by the existing vegetation. In any case, because of the increase in the amount of built form and hardstanding, the space available for such planting would be somewhat constrained so would not fully compensate for the overall vegetation loss resulting from the proposal.
12. I am mindful that the proposal includes buildings of varied design, which would broadly reflect the characteristic variation in style along Hall Place Drive. I also consider that the buildings themselves are well designed. However, none of this is sufficient to outweigh the clear identified harm to the area's character and appearance by way of the proposal's overall adverse effects.
13. The appellant argues that the amount of proposed hardstanding is typical of a development such as the one in this appeal and has made reference to a similar situation elsewhere in the local area. However, no information has been provided to support this assertion and, in any case, each application and appeal must be judged on its own merits.
14. For the above reasons, the proposal would run counter to Policy DM2 of the Elmbridge Development Management Plan (2015) (DMP) that, amongst other things, requires development to achieve high quality design based on an understanding of local character. The Policy is inextricably linked to the relevant Design and Character Supplementary Planning Document Companion Guide (2012) (SPD); in this case, the one for Weybridge. Although, the SPD identifies the sub-area¹ in which the site is located as having potential to accommodate flatted development and further housing through plot subdivision, the proposal would not meet the clear objectives of Policy DM2. However, the SPD does not form part of the development plan and I therefore give greater weight to the Policy provisions.
15. DMP Policy DM10 includes a specific reference to development on garden land and has broadly similar aims to Policy DM2. The proposal also therefore conflicts with Policy DM10.
16. Whilst Policy CS17 of the Elmbridge Core Strategy (2011) (CS) provides support for schemes that accord with its density requirements and maximise efficient use of urban land, as in this case, it nonetheless also requires them to integrate sensitively into the distinctive townscape. Accordingly, I also find that the proposal conflicts with this Policy.
17. Finally, on this first main issue, the proposal would not accord with the requirement for good design set out in the National Planning Policy Framework, (the Framework).

Living conditions of future occupiers

18. The north facing rear elevation and garden of plot 7 would be capable of being overlooked from the habitable rooms of plot 13 which would be located on the eastern side of the block of flats. This elevation of the block would be sited only about 6.5m from the boundary of plot 7 and would thus result in direct

¹ WEY13: Lower St Georges Hill and East of Brooklands Road

overlooking of its garden and notably, the area near to the dwelling that would be likely to provide the main sitting out space.

19. I accept that some overlooking could take place from adjoining plot 6. However, only very oblique views would be possible of the outdoor area near to the back of the dwelling on plot 7. In any case, whilst such an arrangement is not uncommon in urban areas, particularly with semi-detached houses, I do not consider it acceptable to add to this in the way the proposal would by way of the relationship between plot 13 and plot 7.
20. I now turn to the proposal's effects on plot 8. The front elevation of the bungalow forming proposed this plot would face towards the building containing plots 9-13, which would have a three-storey appearance with windows on each floor serving mostly the main living areas or bedrooms. Plot 8's living area would have a substantial glazed opening giving direct access to the front garden, which as I have already mentioned would be the dwelling's only outdoor amenity space. Accordingly, given the height of the building opposite and the windows in its front elevation, plot 8's occupiers would be likely to have a strong sense of being directly overlooked both indoors and out.
21. Although a reasonable distance would be maintained between their respective front elevations and the proposal would meet the SPD's garden depth requirements, this relationship would be unacceptable. Furthermore, plot 8's garden would be next to the road and whilst it would not be heavily trafficked, its presence so close to the garden, in combination with the effects already described, would result in an unsatisfactory environment for sitting out, drying washing etc. I accept that the retained trees in the front garden would provide a degree of mutual screening between plot 8 and the block opposite but in my view, the perception of being overlooked by the bungalow's occupiers would remain.
22. Notwithstanding this, although the trees are protected by a TPO, they would be in close proximity to the bungalow and dominate its front garden. Given that the bungalow's garden and front elevation would have a northerly aspect, the trees would have some effect on the amount of light reaching the property and shade a substantial amount of the lawn area. Adding these issues to the dropping of leaves and the potential for bird droppings, it is likely that the Council would come under considerable pressure to allow works, including felling that would ultimately have an adverse effect on the character and appearance of the area. Whilst none of this necessarily means that the removal of the trees would be justified and the Council could refuse any application for works to the Pine, BS 5837:2012 – Trees in relation to design, demolition and construction advises that the perceptions of future occupiers can lead to pressure for inappropriate tree works, including removal, which the Council would have difficulty in resisting.
23. All of this points to the unsatisfactory living conditions that the occupiers of plot 8 would be subject to in terms of their privacy and amenity.
24. To conclude on this main issue, the design of the proposal would not provide acceptable living conditions for the occupiers of plots 7 or 8 thereby running counter to DMP Policies DM2 and DM10 that both seek to ensure development provides an appropriate standard of amenity. For the same reasons, the proposal would conflict with the Framework, which is clear that good design is

a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

Living conditions of existing occupiers

25. As already mentioned, plot 8 would sit next to the garden boundary of no. 5 Hall Place Drive. Although it would be of a single-storey, the height of its eaves would still be about 1m higher than the boundary fence. Even though it would have a pitched roof sloping away from the next door property, its overall bulk and mass would be omnipresent above the fence line. I consider that this would result in an adverse effect on the enjoyment of no. 5's rear garden.
26. I turn now to the relationship between the proposed building comprising plots 15-22 and Netherby Lodge which is located to the west on a relatively modest plot. Currently, the southernmost part of the site fronting Queens Road is occupied by a detached two-storey dwelling (no. 165 Queens Road) with a long and gradually narrowing rear garden.
27. Netherby Lodge has a large kitchen dining area, the main windows of which face toward the boundary with the appeal site. The current outlook from this room is of the boundary fence and the relatively modestly sized flank wall of no. 165. Plots 15-22 would be set within a single block of very substantially greater proportions than the dwelling it would replace. Unlike the existing dwelling, it would extend significantly further back into the site and the majority of the western elevation would be less than 2m from the boundary. Whilst the outlook from next door's kitchen/dining room includes the existing dwelling's flank wall, there remains a sense of spaciousness to the rear in that outlook.
28. Furthermore, the proposed block would stretch back into the site for a distance equivalent to that of Netherby Lodge's rear garden. Therefore almost the entire eastern outlook from the rear garden of this neighbouring property would be towards a large and omnipresent mass of built form. This would be exacerbated by the removal of the existing evergreen trees along the site boundary. Given the proximity of the building to this boundary, there would be insufficient space for any appropriate replacement planting. I therefore consider that the proposal would result in very significant harm to the living conditions of Netherby Lodge's occupiers.
29. Accordingly, the proposal would run counter to DMP Policy DM2 that also requires development to protect the amenity of adjoining occupiers. For similar reasons, it would also run counter to the Framework.
30. The appellant argues that DMP Policy DM10 is not relevant to this main issue. However, the Policy clearly says, in relation to development on garden land, that development at the rear or side of existing residential property will only be acceptable provided it meets four criteria including ensuring the preservation of privacy and amenity of existing and future residents through the relationship of buildings. Accordingly, the proposal also conflicts with DMP Policy DM10.

Protected species

31. The reason for refusal in relation to this main issue is based on the potential effects on bats. All species of bats are protected under various legislation². Paragraph 118 of the Framework explains that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. I have two ecological reports³ before me dating from May and November 2016 respectively.
32. The latter of these surveys was provided specifically to address the Council's concerns regarding the potential presence of bats within the dwellings to be demolished and in particular the absence of emergence surveys and loft inspections. Whilst the Council has not addressed the contents of the updated (November) survey, I have taken into account the representation from the Surrey Bat Group.
33. Both ecological surveys assess no. 165 Queens Road as having 'low' potential to support a bat roost. In this circumstance, the Bat Conservation Trust Guidelines⁴ (2016) (the BCT Guidelines) set out that a single emergence or re-entry survey should be carried out between the months of May and August. No such surveys have been provided to me. There is also reference in the ecological reports to other existing dwellings on the site having "negligible to low' potential for roosting bats. However, this term is not sufficiently precise to provide an accurate picture of the potential for bat roosts or the opportunistic occupation by bats.
34. Nevertheless, I have considered whether this matter could be addressed by means of a suitably worded condition were the appeal to be allowed. However, in order to be able to first assess whether such a condition would be effective for the purposes of which it was imposed and for it to meet the relevant tests in the Framework, it needs to be informed by adequate information. In this case, although the November ecological survey sets out a number of measures to be employed in the event of bats being present, the previous survey clearly indicates that emergence or re-entry survey should be carried out. On this basis, I am not persuaded that the imposition of a planning condition would be appropriate.
35. Accordingly, the imprecise assessment within the ecological surveys combined with the incomplete survey information lead me to conclude that the effects on protected species set out within the appellant's evidence do not provide sufficient certainty that bats would not be harmed. The proposal thereby runs counter to CS Policy CS15, DMP Policy DM21 and the Framework, which all seek to protect biodiversity.

Drainage

36. The available evidence indicates that agreement relating to the provision of Sustainable Urban Drainage Systems (SuDS) has been reached between the appellant and the local lead flooding authority. However, it is also clear that such agreed provisions are subject to sign-off by the local water authority; in

² The Wildlife and Countryside Act (1981) (as amended); the Countryside and Rights of Way Act, 2000; the Natural Environment and Rural Communities Act (2006); and the Conservation of Habitats and Species Regulations (2010)

³ Reports by Seasons Ecology Refs SET1479_01 (May 2016) and SEB1479_03 (November 2016)

⁴ Bat Conservation Trust (2016) Bat surveys for Professional Ecologists. Good Practice Guidelines Third Edition

this case, Thames Water. There is nothing before to demonstrate that this sign-off has taken place. Therefore, I cannot be certain that the proposal would not result in acceptable effects on drainage and by extension, flooding.

37. The appellant suggests that in the absence of detailed requirements being received from the water authority, a 'prior to occupation' condition could provide a means of ensuring a fully engineered drainage solution for the development. However, notwithstanding that this might necessitate substantial alterations to the proposed layout, it would not be reasonable to impose a condition requiring an agreement to be reached with an outside body as such agreement may not ultimately be given. Thus, the appellant's suggested condition would not meet the tests in the Framework or accord with the advice in Planning Practice Guidance.
38. For the above reasons, the proposal would run counter to CS Policy CS26 that requires new development to contain SuDS. It would also conflict with the Council's Flood Risks SPD (2016) that supports the Policy requirements and with the Framework.

Other Matters

Planning obligations

39. The proposal includes the provision of 8 affordable units and the appellant has provided a planning obligation in relation to this by way of a Unilateral Undertaking (UU). The provision of affordable housing represents a positive benefit of the proposal that attracts considerable weight. The Council has provided a substantial amount of evidence to demonstrate a pressing need for affordable housing in the borough and the provision of 8 affordable units would broadly accord with the development plan requirement for 40% of the gross number of units to comprise on-site affordable housing.
40. However, I have some concerns about the document itself, its execution and whether it could be relied upon for its intended purpose. For example, the obligation is not complete in that it has not been dated on the third page (which, incidentally, appears after page 4) and does not contain details of each named party's title to the land. In addition it has been signed by someone other than those listed as a landowner and there is no documentation to show that they have the power to sign such a deed.
41. Notwithstanding this, even if I were satisfied that the obligation would secure the envisaged provision of affordable housing and would meet the relevant statutory tests, this would not be sufficient to outweigh the totality of the significant and demonstrable harm that I have identified in relation to the main issues and on which basis I am dismissing the appeal. Accordingly, I have not pursued this matter further with the main parties. Nevertheless, as it stands, I am not satisfied that the UU would be effective to provide affordable housing.
42. The planning obligation would make provision for a financial contribution towards Strategic Access and Management Measures related to the Thames Basin Heaths Special Protection Area (SPA). For similar reasons to those already given, as I am dismissing the appeal for other substantive reasons, I do not consider this matter further.

Conclusion

43. For the above reasons and having had regard to all other matters raised including those by interested parties, the appeal does not succeed.

Hayden Baugh-Jones

Inspector