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## Appeal Decision

Site visit made on 7 September 2017

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

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

**Decision date: 29 September 2017**

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**Appeal Ref: APP/K3605/W/17/3178213**

**Land to the west of 4 Thistlecroft Road, Hersham, Walton-on-Thames KT12 5QZ**

- 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 Rapheal Contract Limited against the decision of Elmbridge Borough Council.
  - The application Ref 2016/3470, dated 10 November 2016, was refused by notice dated 2 June 2017.
  - The development proposed is three bedroom detached house with associated parking.
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### Decision

1. The appeal is allowed and planning permission is granted for three bedroom detached house with associated parking at Land to the west of 4 Thistlecroft Road, Hersham, Walton-on-Thames KT12 5QZ in accordance with the terms of the application, Ref 2016/3470, dated 10 November 2016, subject to the conditions in the attached Annex.

### Procedural Matter

2. The Council, in its decision notice, refers to its Design and Character and Developer Contributions Supplementary Planning Documents (the Design and Character and Developer Contributions SPDs respectively). I have afforded those documents some weight due to their role in supporting the relevant development plan policies.

### Main Issues

3. The main issues are:
  - i) the effect of the proposed development on the living conditions of the occupiers of No 4 Thistlecroft Road in respect of sunlight, daylight and outlook;
  - ii) whether a financial contribution is necessary to make provision for affordable housing.

### Reasons

#### *Living conditions*

4. The Council raises specific concern about the impact of the proposal in respect of first floor side elevation windows of No 4. Whilst there are also ground floor side elevation windows serving habitable rooms, the rooms concerned also

have access to light and outlook from front or rear facing windows, albeit in the case of one such room via a linked kitchen.

5. No 4 has a first floor side facing window which is the sole one serving the bedroom concerned. I note that the relationship would not comply with the Council's standards in terms of proximity and the achievement of an unobstructed vertical angle of 25 degrees from the window concerned. However there would remain some degree of separation and it is likely that it would only be the top part of the proposed roof which would fail to comply. Furthermore, due to the pitched roof design, the extent of roof area which would have any such impact would be limited. As such, in this case, it is unlikely that the relationship between the proposed dwelling and the window concerned would give rise to a material reduction in sunlight and daylight to or outlook from the room concerned.
6. No 4 also has a front habitable room at first floor level with a side facing window. However, that room also has a front facing window which would enable the maintenance of a good degree of outlook from and sunlight and daylight to that room.
7. I note that the Council, in approving a previous similar proposal for a dwelling on the site, considered that there would be sufficient impact in relation to the side first floor windows in terms of outlook and light to warrant a Grampian condition to ensure the insertion of new rear facing windows and roof light to No 4 by way of mitigation.
8. There is a sole second floor side window serving an existing attic room which is at such a height that would be level with the top part of the proposed dwelling's roof. As such, the proposed development would be unlikely to materially reduce outlook from or light to that room.
9. For the above reasons, the proposed development would not cause unacceptable harm to the living conditions of the occupiers of No 4 in respect of sunlight, daylight and outlook. As such, it would accord with policy DM2 of the Elmbridge Local Plan Development Management Plan and the Design and Character SPD which together, in respect of this issue, require development to protect the amenity of adjoining occupiers.

#### *Affordable housing*

10. Policy CS21 of the Elmbridge Core Strategy (the Core Strategy), supported by the Developer Contributions SPD relates to provision for affordable housing. It sets out a requirement for development resulting in a net gain of 1-4 residential units to provide a financial contribution, where viable, equivalent to the cost of 20% of the gross number of dwellings, towards affordable housing elsewhere in the borough. The appellant has not provided a planning obligation in respect of this issue or any substantive evidence to demonstrate that such a contribution would make the scheme unviable.
11. Whilst it is the case that planning applications should be determined in accordance with the development plan, unless material considerations indicate otherwise, policy CS21 and the Developer Contributions SPD predate the Written Ministerial Statement dated 28 November 2014 (the WMS) which is now confirmed as Government policy. The WMS sets out that such contributions for developments of 10 units or less, and which have a maximum

combined gross floor space of 1000 square metres, should not be sought. That policy is reflected in national planning guidance in Paragraph 031 of the Government's Planning Practice Guidance (PPG). This is therefore a significant material consideration to which I have applied great weight.

12. I have nevertheless had regard to the Council's evidence in respect of the continued need for small sites planning contributions for affordable housing, in light of the Borough's circumstances. That evidence includes a statement on the WMS on the exemption of small sites from planning contributions and the Vacant Building Credit dated June 2016 and updated February 2017. I also note that there have been a number of such schemes which have been granted planning permission in the Borough and generated an affordable housing financial contribution in line with policy CS21.
13. I therefore acknowledge, and afford some weight to the specific circumstances of the Borough relating to policy CS21 given a need for 332 affordable housing units per year, house prices being significantly above regional and national averages, and given the proportion of housing delivery that comes forward on small sites due to restrictions on development such as in the Green Belt. I also note that the Council takes account of the viability of developments in the level of contributions expected.
14. I have also had regard to the undisputed position whereby the Council cannot demonstrate a five year supply of deliverable housing sites (5 year HLS) and have no reason to consider differently. This is an important factor in light of paragraph 47 of the Framework which sets out that to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far is consistent with the policies set out in the Framework.
15. Although the proposal would not provide for affordable housing, it would nevertheless add a dwelling to the local supply of housing, contributing to the provision requirements set out in policy CS2 of the Core Strategy. I have afforded significant weight to this factor due in particular to there not being a 5 year HLS.
16. I have had regard to those other appeal decisions referred to in the submissions. They include schemes referred to by the Council where significant weight was given to the development plan policies, outweighing the WMS, including appeal Refs APP/K3605/W/16/3146699 and APP/K3605/W/17/3169210. Those decisions also included reference to little evidence of an unreasonable or disproportionate burden for small scale developers in the area in respect of making the financial contribution.
17. However, there are also other decisions where my colleagues have taken a different view and allowed the appeals. Importantly, of those, there are some fairly recent decisions referred to by the appellant, including Ref APP/K3605/W/16/3163557, whereby the addition of dwellings in the context of a lack of a 5 year HLS was an added consideration in the balance. As that is still a consideration in respect of this appeal I have therefore applied greater weight to those decisions over those other dismissed cases where the 5 year HLS was not an issue.

18. For the above reasons, I conclude on this issue that the benefit of a financial contribution to make provision for affordable housing would not be necessary to make the proposal acceptable due to the greater combined weight that I have afforded to the national policy set out in the WMS and the benefit alone of adding an additional dwelling to the local supply in the context of the Council not being able to demonstrate a 5 year HLS.

### *Conditions*

19. The Council has suggested 12 conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of advice in the PPG and amended some of the wording and omitted two.
20. The standard time condition is required in this case and for the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would also be required.
21. In the interests of the character and appearance of the surrounding area conditions would be necessary to secure: samples of the materials proposed to be used on the external surfaces of the proposed building; and provision for the landscaping of the site and tree protection.
22. In the interests of the living conditions of future residents relating to provision of adequate outdoor amenity space, it would be necessary to secure the removal of the existing garage/outbuilding and its replacement with appropriate landscaping.
23. In the interests of the privacy of neighbouring residents, a condition to remove permitted development rights for windows in the south or east facing elevations at first floor level would be necessary.
24. In the interests of highway and pedestrian safety, a condition to secure the provision of a pedestrian inter-visibility splay on the western side of the modified access onto Thistlecroft Road would be necessary.
25. As referred to in my reasoning, I have found that it is unlikely that the relationship between the proposed dwelling and the side first floor bedroom windows of No 4 would give rise to a material reduction in sunlight and daylight to or outlook from the rooms concerned. The suggested Grampian condition to ensure the insertion of new rear facing windows and roof light to No 4 by way of mitigation would therefore not be necessary or reasonable.
26. I have had regard to the Council's suggested condition to remove permitted development rights under Part 1, Classes A, B, C, E and F of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, I am mindful of paragraph 200 of the Framework which states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, the PPG advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. I have had regard to the controls set out in the GPDO. In the absence of any substantive evidence to the contrary, I find that in this case there would not be any exceptional circumstances relating to maintaining the character and amenities of the premises and adjoining properties that would require specific restriction by

condition of the above permitted development rights. The condition would therefore not be necessary.

**Conclusion**

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

*Andrew Dawe*

INSPECTOR

## **Annex – Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: FLU.381.01 Rev D, FLU.381.02 Rev B, FLU.381.03, FLU.381.04 Rev B, and Tree Protection Plan TPP-01.
- 3) No development shall take place until samples of the materials to be used on the external faces and roof of the building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) The existing garage/outbuilding located to the rear of the site shall be removed and replaced with landscaping approved under the terms of condition 6.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows or other openings shall be installed in the south (rear) or east (side) facing elevations of the development hereby approved at first floor level, other than those expressly authorised by this permission.
- 6) No development shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. This scheme shall include details of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out, and details of the measures to be taken to protect existing features during the construction of the development.
- 7) All hard and soft landscaping works shall be carried out in accordance with the approved details. Arboricultural work to existing trees shall be carried out prior to the commencement of any other development, otherwise all remaining landscaping work and new planting shall be carried out prior to the occupation of any part of the development or in accordance with a timetable agreed with the local planning authority. Any trees or plants, which within a period of five years of the commencement of any works in pursuance of the development die, are removed, or become seriously damaged or diseased, shall be replaced as soon as practicable with others of similar size and species, following consultation with the local planning authority.
- 8) No development shall take place until tree protection measures are installed and any further information provided in accordance with the submitted arboricultural information. The applicant shall arrange a pre-commencement meeting after the installation of the tree protection between the local planning authority and the applicant's project arboriculturist to allow inspection and verification of the protection measures.
- 9) In this condition 'retained tree' means an existing tree, which is to be retained in accordance with the approved plans and particulars; and

paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the development.

- a) no retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any pruning shall be carried out in accordance with British Standard 3998 (tree work) and in accordance with any supplied arboricultural method statement.
- b) if any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- c) tree protection shall be maintained in-situ and not moved or removed until all construction has finished and equipment, materials, or machinery are removed from site.
- d) any arboricultural protection information and plans submitted as part of the application, or submitted to meet a condition of consent, shall be implemented and adhered to at all times during the construction process unless otherwise agreed in writing by the local planning authority. This shall include any requirement for arboricultural supervision and site monitoring. This condition may only fully be discharged on completion of the development subject to satisfactory written evidence of contemporaneous supervision and monitoring of tree protection throughout construction by the appointed arboriculturist.

- 10) The development hereby approved shall not be first occupied unless and until a pedestrian inter-visibility splay measuring 2m by 2m has been provided on the western side of the modified access onto Thistlecroft Road, the depth measured from the back of the footway (or verge) and the width outwards from the edge of the access. No obstruction to visibility between 0.6m and 2m in height above ground level shall be erected within the area of such splays.