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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: 03 October 2017**

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**Appeal Ref: APP/K3605/W/17/3179354**  
**89 West End Lane, Esher KT10 8LF**

- 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 S Reddington of Redridge Building Contractors Limited against the decision of Elmbridge Borough Council.
  - The application Ref 2017/0346, dated 1 February 2017, was refused by notice dated 13 June 2017.
  - The development proposed is demolition of the existing detached dwelling house and detached garage and replacement with a pair of two-storey semi-detached dwelling houses with accommodation in the roofspace served by dormer windows and a detached garage block.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing detached dwelling house and detached garage and replacement with a pair of two-storey semi-detached dwelling houses with accommodation in the roofspace served by dormer windows and a detached garage block at 89 West End Lane, Esher KT10 8LF in accordance with the terms of the application, Ref 2017/0346, dated 1 February 2017, subject to the conditions in the attached Annex.

### Procedural Matter

2. The Council, in its decision notice, refers to its Design and Character Supplementary Planning Document (the Design and Character SPD). Also referred to in the submissions is the Council's Developer Contributions Supplementary Planning Document (the Developer Contributions SPD). I have afforded some weight to those documents due to their role in supporting the relevant development plan policies.

### Main Issues

3. The main issues are:
  - i) whether the proposed development would preserve or enhance the character or appearance of the West End Conservation Area (the CA);
  - ii) the effect of the proposed development on the living conditions of neighbouring residents in respect of outlook;
  - iii) whether the proposed development would provide acceptable living conditions for future occupiers, with regard to provision of private outdoor amenity space.

## Reasons

### *Character or appearance of the CA*

4. The site is located within the CA and so special attention has to be paid to the desirability of preserving or enhancing the character or appearance of the CA.
5. The CA is characterised by a variety of designs and sizes of dwellings set around a substantial green area and woods giving it an open and spacious appearance. At the southern end of the CA in the vicinity of the site, the dwellings are set at varying distances from the road in a verdant setting provided by the woods on the western side of the road and significant vegetation in front of several of the houses on the eastern side. That is the case with the appeal site and those two dwellings to its north which are all also set well back from the road. The existing dwelling is a fairly modest bungalow which has no particular architectural or visual characteristics in terms of its contribution to the CA, and is not a prominent feature of the streetscene. As such, its loss would in itself still preserve the character and appearance of the CA.
6. The general design and architectural features of the proposed dwellings would not appear unusual in the existing context provided by the variety of building designs locally, even if, as is claimed by local residents, they are similar to another development built elsewhere in a completely different context. In any case, although raised above road level, they would be set well back from the road and so although more prominent than the existing bungalow, would not be dominant features within the streetscene. Despite the intended loss of some of the trees on the site, there would remain a substantial number together with those between the site and the road. Furthermore, the proposal makes provision for some new planting. That extent of vegetation would further prevent any dominating effect. The minimised loss of existing trees as a factor in itself would therefore also be insufficient to materially alter the verdant character of this part of the CA.
7. The proposed dwellings would be significantly taller than the existing building on the site, but would not appear incongruous in this respect, particularly given the presence of the fairly imposing four storey dwellings immediately to the south of the site which are also closer to the road and less well screened. There would also be a significant degree of separation between them and those proposed.
8. They would be higher than the dwelling to the north of the site, No 86, and close to the boundary with that property. However, that difference would be seen, including within the roofscape visible from the public open space further to the north, in the context of a variety of building heights in the vicinity. There would also remain a noticeable gap between the side elevations of No 86 and of the proposed development with the former being set off the boundary. That relationship would not jar in the context of varying degrees of separation between existing dwellings on the eastern side of West End Lane, some of which are also fairly close together. Additionally, whilst close to the northern boundary, the development would still be set away from it, and together with the greater separation on the other side and the fairly large size of the proposed plots, the dwellings would be unlikely to appear cramped within them.

9. The proposed car port would be noticeably detached from the dwellings. However, that is already the case with the existing development on the site, albeit that the proposed car port would be larger than that existing garage. Nevertheless, it would be set well within the site and be of a fairly modest single storey height. It is therefore unlikely that it would be clearly visible from public vantage points. Together with those factors, it's fairly simple timber clad design would further ensure that it would appear as a subservient feature in relation to the main dwellings and sufficiently integrated with the scheme.
10. I have had regard to references to dismissed appeals for semi-detached dwellings on land adjacent to No 92. However I saw that that the circumstances of that site in terms of its size, shape and prominence differs from that relating to the appeal site. I have in any case determined this appeal on its own merits.
11. For the above reasons, I conclude on this issue that the proposed development would preserve the character and appearance of the CA. As such, in respect of this issue, it would accord with policies CS9 and CS17 of the Elmbridge Core Strategy (the Core Strategy), policies DM2, DM6, DM7 and DM10 of the Elmbridge Local Plan Development Management Plan (the DMP) and the Design and Character SPD which together require all new development to achieve a high quality design, including in relation to trees and landscaping, which must be based on an understanding of local character and with specific attention to areas of high heritage value including CAs. It would also accord with the National Planning Policy Framework (the Framework) which in paragraph 17 sets out that planning should, amongst other things, always seek to secure high quality design and in section 12 relates to conserving and enhancing the historic environment.

*Living conditions in respect of outlook*

12. The proposed dwellings would be significantly more visually prominent when seen from surrounding properties compared with the existing bungalow due to the increased height and massing. However, in relation to No 86, the development would be to the side of that dwelling with only a small amount of projection beyond the line of its front and rear elevations. In respect of the rear projection, that would in any case mainly comprise the proposed single storey element which would therefore be less prominent.
13. The side of the development would clearly fall within the direct and fairly close line of sight from the ground floor side windows of No 86. However, that outlook is already currently restricted to some extent by the existing boundary fence and trees. Furthermore, the room concerned also has fairly large front and rear facing windows which would continue to provide a good level of uninterrupted outlook to the spacious front and rear outdoor areas of that property. The limited extent to which it would project alongside the rear garden boundary of No 86, together with the substantial width and spaciousness of that property's garden, would prevent an unacceptably enclosing or overbearing effect in relation to that garden space. That would be even more so were the trees alongside that boundary, within that garden, retained.
14. From No 90 to the south, the proposed dwellings would be seen extending in their entirety beyond its rear elevation which includes a number of habitable room windows, including some facing the main part of the site within a rear

outrigger. However, the dwellings would be set away from the intervening side boundary and so would not be so close to those windows as to cause an unacceptable enclosing or overbearing effect. It is also likely that the development would be softened to varying degrees by existing and proposed vegetation adjacent to the boundary.

15. The proposed car port would be more directly visible to the rear of No 90 and fairly close to the boundary. However, it would be mainly seen end on, which together with its fairly modest height and timber cladding would minimise its visual impact to an extent that it would prevent it from being an overbearing feature.
16. In respect of that property to the rear of the site, the dwellings would be set well away from the intervening boundary by the length of the proposed rear garden areas and at a lower ground level than that property. The proposed garage would be closer to the boundary but still set away from it and only alongside a relatively small part of it. Again it would also be mainly seen end on with its fairly modest height and softening effect of its timber materials. That neighbouring dwelling is also set a significant distance away from the boundary and within a large plot. As such the proposal would again not have an unacceptable enclosing or overbearing appearance when seen from that property.
17. For the above reasons, I conclude on this issue that the proposed development would not cause unacceptable harm to the living conditions of neighbouring residents in respect of outlook. As such, in respect of this issue, it would accord with policies DM2 and DM10 of the DMP and the Design and Character SPD which together require, amongst other things, new development to protect the amenity of adjoining occupiers in respect of outlook. It would also accord with the Framework which in paragraph 17 sets out that planning should, amongst other things, always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

*Living conditions for future occupiers, with regard to provision of private outdoor amenity space*

18. The proposed private rear garden areas would be relatively small compared with some others in the vicinity. However, there is no consistency in the sizes of those nearby garden areas. Furthermore, those proposed would still offer a significant amount of useable space such as for recreation and play and sitting out, without having a sense of being hemmed in and with scope for adequate amounts of sunlight and daylight. Furthermore, the front garden areas would not be clearly overlooked from the road due to the intervening belt of vegetation. Although not so private in terms of inter-visibility by prospective residents, those spaces would therefore provide substantial additional fairly private and useable space.
19. For the above reasons, I conclude on this issue that the proposed development would provide acceptable living conditions for future occupiers with regard to provision of private outdoor amenity space. As such, in respect of this issue, it would accord with policy CS17 of the Core Strategy, policies DM2 and DM10 of the DMP, and the Design and Character SPD which together require, amongst other things, a high quality of design and an appropriate level of amenity, including gardens or outdoor space, commensurate with the type and location of the proposed housing. It would also accord with the Framework which sets

out in paragraph 17 that planning should, amongst other things, always seek to secure a good standard of amenity for all future occupants of land and buildings.

*Other matters*

20. Policy CS21 of 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 provided a planning obligation in accordance with policy CS21. However, in line with paragraph 204 of the Framework, it is important for me to consider whether this would be necessary to make the development acceptable.
21. 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.
22. 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.
23. 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.
24. 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.
25. The proposal would provide a net addition of one 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.

26. I have had regard to those other appeal decisions referred to by the Council where significant weight was given to the development plan policies, outweighing the WMS, including appeal Ref APP/K3605/W/16/3146699. That decision 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. However, those decisions differ from the current case in terms of the circumstances relating to account being taken of the 5 year HLS, not a factor in respect of those referred to by the Council. The enhanced benefit of additional housing in the context of a lack of a 5 year HLS was therefore not a consideration in those cases. The weight I have afforded to those decisions is therefore lessened.
27. For the above reasons, the benefit of the financial contribution, as set out in the planning obligation, 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. I have therefore not taken account of the submitted planning obligation in reaching my decision.
28. I have had regard to the effect of the proposal on daylight and sunlight to neighbouring properties. In relation to No 86, as previously referred to, the proposal would only extend a short distance beyond the line of the front and rear elevations of that dwelling, and mainly only at ground floor level to the rear. It is likely that side facing windows of No 86 would have sunlight and daylight impeded to some extent. However, it is unlikely that this would be to a harmful degree, particularly as it is likely that light to those windows is already impeded to some extent by existing boundary treatment and trees, and given that the proposed roof would slope away from the boundary. Therefore, despite the raised position of the proposal in respect of No 86, it is unlikely that there would be a material loss of sunlight and daylight to habitable rooms and private garden space of that property.
29. With regard to No 90, the position of the proposal to the north-east of that property would prevent a material loss of sunlight to it. Furthermore, with the proposed nearest dwelling set away from the boundary to varying degrees, together with the otherwise fairly wide rear aspect to No 90, it is likely that a good degree of natural daylight would be retained to that property. The proposed car port to the rear of No 90, being only single storey would also be unlikely to materially impede sunlight or daylight to that property.
30. In respect of the privacy concerns of neighbouring residents, the main habitable room windows would be on the proposed front and rear elevations. They would therefore only offer limited oblique angle overlooking of the neighbouring properties at No 86 and 90. Of those proposed side windows, views into the neighbouring properties from ground floor rooms could reasonably be expected to be minimised by intervening boundary treatment and existing and proposed vegetation.
31. At upper floor level rooflight windows may offer the potential for direct overlooking, albeit restricted either by the height of the window above floor level or the internal angle of the roof slope. However, as the rooms concerned



would also have either front or rear facing windows, those at the side could be reasonably controlled by condition to be obscure glazed and non-opening below a height of 1.7 metres above the floor level.

32. Rear facing upper floor windows would have the potential to cause some overlooking of the property to the rear of the site. However, the degree of separation of the dwellings, the extent to which the proposal would be set away from the rear boundary and intervening vegetation would be likely to prevent a material loss of privacy to those residents.
33. In terms of highway safety, the proposal would make provision for four off-street parking spaces together with manoeuvring space in front of them to allow access and egress from the site in a forward gear. There is therefore unlikely to be a need to park vehicles on the road or to be left at the bottom of No 90's adjacent drive. I have also not received any substantive evidence to indicate that the level of parking provision and visibility at the access along the road, including forward visibility, would be inadequate. Furthermore therefore, even should there be a circumstance where a car would have to wait on the road for another to exit the site, a situation likely to be minimised by virtue of relating to a development of only two dwellings, it is unlikely that this would cause such a hazard as to pose a risk to highway safety.
34. Concern has been raised that No 90's drive would be used by construction vehicles due to its straighter approach into the site. However, I have received no substantive evidence to indicate that the existing site access would not adequately serve such vehicles so as to cause a need to use No 90's drive.
35. Vehicles manoeuvring along the access drive and in and around the proposed car port would be likely to generate some noise, such as from the engines running, as well as exhaust fumes. However, such effects would be limited by the fairly small amount of activity likely to be generated by only two dwellings. Furthermore, although relating to one more dwelling than is currently the case, the driveway and car port would be in a similar location as for that existing dwelling and set off the boundary for the most part. It is therefore unlikely that the proposal would materially add to any noise and disturbance or fumes experienced by residents of No 90 than could currently occur were the existing dwelling occupied.
36. Concern has been expressed about the design of the proposal in respect the amenities of future occupiers including with regard to inadequate disabled access and overlooking from the front terrace due to residents of plot 1 having to walk past the front of the dwelling at plot 2 in order to gain access. Based on the submitted plans, the terrace would afford a level access from the access drive. Although there could be some degree of overlooking of front ground floor windows of plot 2, that terrace would be fairly wide, preventing the need for people to pass very close to those windows. Furthermore, although fairly deep houses, the habitable rooms would all be likely to have adequate outlook, sunlight and daylight afforded to them by the proposed windows. Due to the fairly large size of the plots there would also be adequate space to accommodate the storage of refuse and recycling bins without also being visually intrusive.

### *Conditions*

37. The Council has suggested 11 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 one.
38. 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.
39. 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 buildings; and details of proposed tree planting and aftercare and protection of retained trees.
40. In the interests of the nature conservation and preservation of biodiversity relating to the adjacent Site of Special Scientific Interest, it would be necessary to ensure its protection from demolition, construction and ongoing activity relating to the appeal site, including the submission of a Construction Method Statement relating to minimising dust. Furthermore, in the interests of the ecology of the appeal site, a condition to ensure that the development is carried out in accordance with the conclusions and recommendations of the submitted ecological work, would be necessary.
41. In the interests of preventing any potential environmental pollution, protecting the living conditions of neighbouring residents, and highway safety, it would be necessary to ensure that the proposed car port is used only for purposes ancillary to the proposed dwellings.
42. In the interests of preserving the privacy of neighbouring residents, a condition would be necessary to ensure that all side windows at upper floor levels are obscure glazed, and non-opening below a height of 1.7 metres above the floor level of the associated room.
43. I have had regard to the Council's suggested condition to remove permitted development rights under Part 1, Classes A, B and E 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**

44. 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: Site Location Plan, RRWEL-001, RRWEL-002, RRWEL-003, RRWEL-004, RRWEL-005, RRWEL-006, RRWEL-009, RRWEL-010, RRWEL-011, RRWEL-012, and DPA-69672-01 Rev A.
- 3) No development shall take place until samples of the materials to be used on the external faces and roof of the buildings hereby approved 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) No works or development shall take place until full details of all proposed tree planting, the proposed times of planting, and arrangements for aftercare over a period of 5 years have been approved in writing by the local planning authority. All tree planting and aftercare shall be carried out in accordance with those details and at those times. If within a period of five years from the date of the planting of any tree, that tree, or any planted in replacement for it, is removed, uprooted or destroyed or dies, another tree of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.
- 5) No development shall take place until tree protection measures have been 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.
- 6) 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.

- 7) No.89 West End lane is located adjacent to a Site of Special Scientific Interest (SSSI) and as such no materials, machinery or work shall encroach into the SSSI either before, during or after demolition, construction or ongoing uses. No pollution from demolition or construction of the development shall adversely affect the SSSI and no development, including any demolition, shall take place until a Construction Method Statement demonstrating how best practice will be used to minimise dust has been submitted to and approved in writing by the Local Planning Authority. All works shall then proceed in accordance with the approved statement.
- 8) The detached car port hereby approved shall not be used for any purposes other than those incidental to the enjoyment of the dwellinghouses hereby approved, and in particular no trade or business shall be carried on therefrom.
- 9) The development hereby approved shall be carried out in accordance with the conclusions and recommendations as identified within the submitted ecological walk-over survey carried out on Thursday 7 July 2016 and the ecological addendum dated May 2017, both of which were prepared by AA Environmental Limited (AAe).
- 10) Any upper floor window located in a wall or roof slope forming a side elevation of the dwellinghouses hereby approved shall be-
  - (i) obscure-glazed, and
  - (ii) non-opening below a height of 1.7metres above the floor of the room in which the window is installed.Those windows shall be subsequently maintained in this form. The glazing shall be sufficiently obscure to prevent loss of privacy. The affixing of an obscure film will not be sufficient.