
Appeal Decision

Hearing held on 28 November 2017

Site visit made on 28 November 2017

by Julia Gregory BSc (Hons), BTP, MRTPI, MCMI

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

Decision date: 19 January 2018

Appeal Ref: APP/K3605/W/17/3171756

Beechcroft and Tall Timbers and land to the rear as shown on the Title Plan SY790622, Field Common Lane, Walton on Thames KT12 3QH

- 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 Redtree Ventures Ltd against the decision of Elmbridge Borough Council.
 - The application ref 2016/3758 dated 10 November 2016 was refused by notice dated 14 March 2017.
 - The development proposed is to demolish the existing house on the site, remove the mobile homes and replace with 17 dwellings, made up of 10x2 bed apartments and 7x1 bed apartments.
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Decision

1. The appeal is dismissed.

Main Issues

2. At the opening of the Hearing the Council withdrew its objections in respect of sunlight and daylight, and the effect of the development on bats. The main issues are:
 - the effect on the character and appearance of the area;
 - whether the apartments would provide satisfactory living conditions for future occupiers in respect of privacy and refuse storage;
 - the effect on the living conditions of the occupiers of neighbouring properties in respect of outlook; and
 - whether there would be sufficient provision for affordable housing when taking into account the viability of the scheme.

Reasons

Character and appearance

3. The development would comprise two blocks of flats one behind another, situated on land with a frontage to Field Common Lane, located within the Walton on Thames Character Sub Area of Holmfield. Field Common Lane is developed with bungalows and two storey dwellings, mainly on the north side, with predominantly open fields on the other side of the road. The land opposite lies within the Green Belt. Although there are proposals for substantial development on the land opposite, the outcome is unknown at this stage.

4. Entrances to the front and rear apartments would be from their south facing elevations. The rear elevation of Block A would contain a refuse store and bicycle storage on the ground floor. To the rear of the site lies a garage and parking court.
5. Block A would respect the regular building line of neighbouring properties and there would be space to either side of the block to provide in and out vehicular access to Block B at the rear. The roofs of both buildings would be hipped to either side. The eaves height would be similar to that at French Gardens. Materials would accord with those used locally.
6. Nonetheless, a three-storey building with a substantial crown roof incorporating the third floor would be introduced into the Field Common Lane frontage. There are 3 storey buildings elsewhere in Holmfield, such as in Byron Close but these do not impact on the street scene in Field Common Lane which is mainly two storey, with some bungalows, and has a distinctly rural outlook. Holmfield overall is mainly two storey in character.
7. Whilst Block A would be only slightly higher than French Gardens, it would be significantly higher than Field View. Its massing and height would be bulky and the side elevations would be exposed to view. There would be an extensive amount of glazing and balcony detailing, including within the roof. For these reasons the building would appear discordant in the street scene viewed with its neighbours. Furthermore there would also be glimpsed views to the similar rear Block B from the accesses. Although there are terraces of dwellings nearby these are more modest in their roof structures and fenestration.
8. Block B would lie directly to the rear of Block A, close to it and the centre of the site would be mainly given over to parking. To the rear of the site is a parking court. The overall effect of the development would be of dense development at depth, the surroundings of which would be primarily hard surfacing and car parking albeit that there would be use of some grasscrete. The site would lack substantial landscaping. There are no other examples of intense backland development in the area brought to my attention. The hard surfacing along with the height and massing of the buildings leads me to the conclusion that the development would harm the character and appearance of the area.
9. The development would not preserve or enhance the prevailing pattern of development of its surroundings taking into account the design character identified in the Design and Character SPD with particular reference to, amongst other matters, appearance, scale, mass, height, and prevailing pattern of built development as required by policy DM2 of the Development Management Plan 2015 (DMP). It would not be well designed to respect the character of the area and would be contrary to DMP policy DM10. It would be contrary to paragraph 64 of the National Planning Policy Framework (the Framework) which states that permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of the area and the way it functions. Good design is required by section 7 of the Framework.

Living conditions - future occupiers

10. The two blocks would be sited parallel to each other and would have a separation distance of some 13m. They would contain a substantial number of windows in their facing elevations, most of which would serve habitable rooms.

Moreover the size of the window openings would be large, with openings down to the floor.

11. Although the centre of the openings would not be directly aligned, the windows would be close to one another and the views from them would not be so oblique as to prevent overlooking. Furthermore, on the first floor of the dwellings in Block A there would be balconies which would be used for sitting out directly opposite the rear block and there would be Juliet balcony features in both facing elevations.
12. Whilst no statutory distance would be contravened, 22m between rear elevations is suggested by the Design SPD unless design features could achieve reasonable privacy. I acknowledge the courtyard approach to the design, but there would be no private elevations since Block A would also face Field Common Lane and Block B would face parking courts in both directions. The distance of 13m between the two blocks with significant fenestration, balconies and Juliet openings would be too modest to produce satisfactory living conditions for future residents in either block in terms of privacy.
13. The development would be contrary to DMP policy DM2 that seeks appropriate privacy. It would also be contrary to DMP policy DM10 which identifies that development on garden land should provide a relationship between buildings that ensures that privacy and amenity of future residents is preserved.
14. The refuse store in the rear of Block A would make provision sufficient to house 4 x 1100 litre bins for residents in the apartments. The Council has a responsibility to collect waste and although the appellant says that a private refuse service would be provided, the Council could be requested to collect rubbish in the future.
15. The Council expects a minimum of 4080 litres for refuse and 4080 litres for recycling. Also 3x 140 litre bins for food recycling would be recommended. The development falls well short of the expected provision, even if the food recycling provision was not essential. Even with an outside contractor who would not be bound by the Council's standards, the inadequacies in this regard would not represent good design as it could result in waste being stored in inappropriate locations harmful to residents living conditions and the appearance of the site.
16. The collection point would be more than 10m from the refuse vehicle stopping point. Refuse vehicles would not enter the site but the Council has provided little substantiation that there would be a risk of serious obstruction to traffic from refuse lorries during the time parked in front of the dwellings. Nonetheless, at some 40m, the pulling distance for the bins would be excessive as according to the Council these can weigh a significant amount even when empty. This would be harmful to the health of refuse operatives.
17. The development would be contrary to DMP policy DM8 which identifies the need for the location and design of bin storage to be integral to the scheme and for appropriate facilities to be provided with storage points accessible for collection vehicles. It would also be contrary to DMP policy DM10 which requires residential accommodation to offer an appropriate standard of living. It would not represent the good design required by section 7 of the Framework.

Living conditions – neighbours

18. French Gardens is a two storey block of flats. There is a first floor side window that would face the side of Block A, but this appears to be non-habitable and outlook would not be harmed. The rear block would be sited with its flank elevation close to the common boundary with French Gardens but this would be adjacent to a parking area and rear windows to French Gardens would not face directly to the rear block. I conclude that the development would not substantially harm the outlook for occupiers of French Gardens.
19. Block A would be sited so that its front elevation would be in approximate line with the front elevation of Field View. Ground floor side windows at present face onto a high boundary fence and so the outlook from those windows would not be harmed to a significant degree.
20. Three dormer windows would face towards the side elevation of Block A and the gap between the blocks, but there would be a separation distance of a single garage width to the boundary and the distance across the access way to the side elevation. The Council estimates a separation distance of some 7m. The side elevation of Block A would have no windows and so privacy would not be harmed in Field View.
21. The scheme satisfies the requirements of BRE guide 'Site Layout planning for daylight and sunlight'. Nonetheless, the side elevation even though it would have a hipped roof would be an imposing presence on the outlook from the first floor windows. However, there had previously been a dwelling on the appeal site close to Field View. Given that outlook from side windows is often restricted, since they rely on outlook over adjacent land, I consider that the relationship would not be unreasonable.
22. Nonetheless, Block B would be located close to the common boundary with Field View and its rear garden. In terms of its scale and massing, it would be a dominating presence from within the rear garden. For that reason, I conclude that the development would unreasonably harm the outlook for occupiers of Field View and would be contrary to DMP policy DM2 that seeks to protect amenity in respect of outlook, and DMP policy DM10 which identifies that development on garden land should provide a relationship between buildings that ensures outlook and amenity of existing residents is preserved.

Affordable Housing

23. Elmbridge Core Strategy (CS) policy CS21 requires that development resulting in 15 dwellings or more should provide 40% of the gross number of dwellings on site as affordable housing. These should be provided on a 70:30 ratio between affordable rented housing and intermediate accommodation as specified in the Council's Developer Contributions Supplementary Planning Document (SPD). The development would be required to provide 7 affordable units, 5 of which would be for affordable rented tenure and 2 for intermediate tenure such as shared ownership.
24. The Council's most recent Strategic Housing Market Assessment in October 2016 (SHMA) identified a housing need of some 474 dwellings per annum 2015 to 2035, with a need for 332 affordable dwellings a year. The need for provision satisfies the three tests in Regulation 122(2) of the Community

Infrastructure Regulations 2010 and there is no suggestion that CS policy CS21 is out of date.

25. The text accompanying CS policy CS21 specifies that developers are expected to consider the overall costs before negotiating the sale or purchase of land. In exceptional circumstances, where it is considered that the delivery of affordable housing in accordance with the policy is unviable this must be demonstrated through the submission of a financial appraisal. This is consistent with paragraph 50 of the Framework which identifies that affordable housing policies should take account of changing market conditions over time.
26. No affordable dwellings would be provided by the development because it is argued that the scheme would be unviable if it did so. A viability report was provided as part of the application. The report was reviewed on behalf of the Council by an independent advisor who is retained by the Council for such purposes to do such reviews at "arm's length" from the Council. I have no reason to conclude that a consistent approach to such matters is not applied throughout the District. This includes assumptions that payments towards CIL and Strategic Access Management and Monitoring of the Thames Basin Heath Special Protection Area would be made.
27. The Framework in paragraph 173 identifies that to ensure viability, the costs of any requirements for affordable housing, standards, infrastructure contributions or other contributions should, when taking into account the normal cost of development and mitigation, provide competitive returns to a willing land owner and developer to enable the development to be deliverable.
28. The Council's consultant has reviewed the appellant's report to give an opinion on whether the viability figures and position put forward is reasonable. A key part of this was to review whether costs had been over assessed and sales values under assessed. The overall approach used by the appellant is considered by the Council to be appropriate. There is a certain amount of agreement between the qualified surveyors who represent the Council and the appellant. Nonetheless, this is not to the extent that no affordable housing at all should be provided.
29. This is because changes to certain of the inputs would skew the overall viability outcome. For the Council it is argued that Benchmark Land Value should be reduced, sales values should be increased to reflect that achieved locally and the profit level should be reduced to a level that is commensurate with risk as identified in *RICS guidance- Financial Viability in Planning*. These changes would result in a significant surplus rather than a deficit. If build costs were also reduced, because those given are much higher than those expressed in Building Cost Information Service figures, then the surplus would be higher. The appellant says that the figures given in the viability report are reasonable and that the proposed scheme can be shown to be marginally unviable. On that basis no affordable housing provision should be made.
30. There is potential for significant variation in the figures. There is nothing inherently problematic resulting in abnormal costs identified about the development site. In another appeal decision dating from 2016, in respect of very small sites between 1 to 4 dwellings, an Inspector found that 90% had paid the total affordable housing contribution, with only 11 out of 116 paying a reduced contribution and only 1 paying no contribution at all. He found no

evidence of the policy requirements of policy CS21 placing an unreasonable or disproportionate burden on developers.¹

31. I consider it important for there to be consistency across the Borough, which I was told at the Hearing was being applied. Provision is being made elsewhere and there was no suggestion about non-viability in respect of the previous scheme for fewer dwellings on the site.² I am not satisfied that no contribution at all towards affordable housing should be made. Given the exceptional circumstances required to be demonstrated, the approach taken by the Council does not seem unreasonable.
32. Since the scheme does not include a provision for affordable housing, it would not be reasonable to require this by condition. In any event, Planning Practice Guidance makes clear that a condition should only be used in exceptional circumstances which are not demonstrated. I conclude that the development without the provision of affordable housing would be contrary to CS policy CS21, Developer Contributions SPD 2012 and the Framework.

Other matters

33. I note the previous scheme that was subject to an unsuccessful appeal has been redesigned. I have paid careful attention to the appeal decision, but that was in respect of a significantly different scheme.
34. Numerous matters could be resolved by conditions, including protection from flooding and ensuring adequate car parking and boundary treatment.
35. I acknowledge that the dwellings would be sited within an existing area of housing where, in principle, the location of additional housing would be acceptable.
36. The Council confirmed that there is not currently a five year supply of deliverable housing land within the Borough. The Council assesses that there is a housing land supply of 3.16 years against the objectively assessed needs based on the SHMA. The need and under supply may be greater than identified by the Council as it has not been tested in the examination of a local plan, but this is not for my determination as part of considering the appeal. I appreciate also that the figure given is identified as an unconstrained need and that a requirement may be formulated that does not provide for the full unconstrained need. Nonetheless, it is an objective of the Framework to significantly boost the supply of housing. I attribute significant weight to the provision of 17 additional homes in an area with a substantial under supply.
37. Paragraph 49 of the Framework specifies 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.
38. There is no dispute that the Council has development plan policies which relates to the supply of housing. CS policy CS1 sets the principle of development within the built up areas and identifies the main settlement areas. CS policy CS2 relates to its provision, location and distribution. These policies are not up to date because of the provisions of Framework paragraph 49.

¹ APP/K3605/W/16/3146699 dated 12 August 2016

² APP/K3605/W/15/3134190

39. Paragraph 14 of the Framework identifies that where the development plan is absent, silent or the relevant policies are out of date, planning 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 unless specific policies in the Framework indicate that development should be restricted. Examples of such policies are given in footnote 9, but this is not a closed list.
40. The Council says that there is a specific policy within the Framework that indicates that development should be restricted. This is paragraph 64 of the Framework which specifies that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. This is within Section 7 of the Framework which is entitled *Requiring Good Design*. The paragraph is consistent with the paragraph 17 core planning principle to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
41. The appellant considers that I should determine the appeal on the basis of weighing up adverse impacts against the benefits as given in paragraph 14 of the Framework. The adverse impacts should substantially and demonstrably outweigh the benefits. This is commonly known as the tilted balance.
42. The development would represent poor design in respect of the first three main issues. It would not comply with the development plan or the Framework in respect of design. Furthermore, it would make no provision at all for affordable housing in an area where there is a substantial need which would be contrary to the development plan and the Framework. These are adverse impacts of substantial weight.
43. The scheme would provide 17 extra homes. There would be economic benefits arising from construction and extra local residents using shops and services. There would be some New Homes Bonus arising for the Council. These would together be more than modest benefits.
44. Even taking the stance most favourable to the development that the tilted balance should be applied, the adverse impacts that I have already identified would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole and the presumption in favour of sustainable development would not apply.

Conclusion

45. For the reasons given above, having considered all other matters, I conclude that the appeal should be dismissed.

Julia Gregory

Inspector

APPEARANCES

FOR THE APPELLANT:

Cormac Dolan, Redtree Ventures Ltd
Kieran Rafferty, KR Planning
Jay Williams, White Arkitekter
Andrew Haynes, Bidwells

FOR THE LOCAL PLANNING AUTHORITY:

Matt Briant - North Area Team Leader
Dan Hay, Dixon Searle Partnership
Edward Chetwynd-Stapleton -Principal Planning Officer, Policy Team
Suzanne Parkes -Acting Planning Policy Officer

INTERESTED PERSONS:

Cllr Christine Cross, Local Ward Councillor
Cllr Malcom Howard, Ward Councillor
Barrie Kirkman, local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Amended Design and Access Statement
- 2 Statement of Common Ground
- 3 Environmental Services comments 15 November 2017
- 4 Forest of Dean Judgement[2016] EWHC 421 (Admin)
- 5 Suffolk Coastal v Hopkins Homes and Richborough Estates Press
Summary and Judgement
- 6 Letter from Right of Light Consulting to Kieran Rafferty dated
7 March 2017
- 7 Appeal decision APP/K3605/W/16/3146699
- 8 Email from Ross Baker, Surrey Bat Group dated 7 November 2017
- 9 Report from LUC dated July 2017
- 10 Statement of Cllr Christine Cross