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## Appeal Decisions

Site visit made on 26 June 2018

by **Nicola Davies BA DipTP MRTPI**

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

Decision date: 17<sup>th</sup> July 2018

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### **Appeal A Ref: APP/K3605/W/18/3197265**

#### **No.38 (Chenies) and No.41 (Chantry) Twinoaks, Cobham KT11 2QW**

- 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 Max Lloyd against the decision of Elmbridge Borough Council.
  - The application Ref 2017/2816, dated 25 August 2017, was refused by notice dated 8 November 2017.
  - The development proposed is erection of "3" two and a half storey family dwellings plus garage with private driveway following the demolition of two existing dwellings.
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### **Appeal B Ref: APP/K3605/W/18/3197287**

#### **No.38 (Chenies) and No.41 (Chantry) Twinoaks, Cobham KT11 2QW**

- 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 Max Lloyd against the decision of Elmbridge Borough Council.
  - The application Ref 2017/2911, dated 5 September 2017, was refused by notice dated 8 November 2017.
  - The development proposed is erection of "4" two and a half storey family dwellings plus garage with private driveway following the demolition of two existing dwellings.
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### **Appeal C Ref: APP/K3605/W/18/3197304**

#### **No.38 (Chenies) and No.41 (Chantry) Twinoaks, Cobham KT11 2QW**

- 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 Max Lloyd against the decision of Elmbridge Borough Council.
  - The application Ref 2017/3765, dated 20 November 2017, was refused by notice dated 21 February 2018.
  - The development proposed is erection of "6" two and a half storey family dwellings plus garage with private driveway following the demolition of two existing dwellings.
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### **Decision**

1. Appeals A, B and C are dismissed.

### **Preliminary Matters**

2. As set out above there are three appeals on this site and this decision letter deals with all three appeals. The differences between proposals relate to the number of dwellings proposed in each case. The development layout and design of the dwellings also differs between the proposals. Nonetheless, given the overall similarity of the schemes in that they seek residential development of the same plot of land relating to 38 and 41 Twinoaks, Cobham, I have dealt with all three in this single decision letter. I have considered each proposal on its individual merits and restricted myself only to the matters of dispute in each

case. To avoid duplication I have dealt with the three schemes together, except where otherwise indicated.

3. I have taken the site address and description of the proposed development in each case from the planning application forms although I note these are expressed differently on other documents.
4. Tree Preservation Order (TPO) EL:307 relates to the land to the north of the appeal site. Both decision notices relating to Appeals B and C refer to a Cedar tree identified as tree T8, however TPO EL:307 identifies this tree as T9. For clarity I have referred to the Cedar tree as T9 within my decision to reflect its referencing within TPO EL:307.

### **Main Issues**

5. The main issues raised in respect of all appeals is: -

- The effect upon the character and appearance of the area.

In relation to Appeals A and B only

- Whether the proposed development would make efficient and effective use of land;
- The delivery of affordable housing; and
- The proposed development effect upon habitat and biodiversity at the Thames Basin Heaths Special Protection Area (SPA).

In relation to Appeals B and C only

- The effect upon the Cedar tree (T9) that is subject to TPO EL:307.

### **Reasons**

#### *Character and appearance (All Appeals)*

6. The appeal site is located at the northern end of a residential cul-de-sac. The properties along Twinoaks are, in the main, two storey although there are four bungalows at the end of the cul-de-sac set around the turning head. The appeal site comprises the two middle detached bungalows that are set in sizeable plots. Each proposal seeks to replace the existing bungalows with detached two storey houses in a similar siting to that of the bungalows. The design and size of the frontage dwellings is similar for appeals A and B but they are of slightly lower height and smaller in overall size for Appeal C.
7. The topography of the land rises in a general easterly direction. The existing bungalows at the appeal site have a staggered elevated siting to the highway. The appeal site occupies a prominent location at the end of the cul-de-sac and is clear in views on the approach along Twinoaks.
8. The proposed road frontage dwellings would be two-storey. Whilst their design would either comprise a sloping roof line (Appeals A and B) or step down in height (Appeal C) next to the bungalows either side, the dwellings, being two-storey, would appear substantially taller than the adjacent bungalows. This would be so even for those smaller Appeal C properties.

9. I accept that the proposed developments would maintain a continuity to the front building line around the cul-de-sac turning head and that the dwellings would have a gap between the dwellings and the side boundaries of the site. Nonetheless, two-storey dwellings would visually dominate the bungalows either side and in particular that of No 39 as the new dwelling at plot 1 would have an elevated positioning. I consider the dwellings would appear out of keeping with the bungalows either side and would appear overly large positioned between them. The dwellings would, therefore, appear as a prominent and discordant feature at the end of the cul-de-sac and would be visually harmful for this reason.
10. I note the appellant has provided a photograph in support of each appeal superimposing the proposed frontage dwellings into the streetscene. This picture is taken some distance from the appeal site and I do not consider it clearly shows the relationship with the dwellings either side and in particular that of No 39 and plot 1.
11. I note the Council is also concerned in respect of Appeal C in regard to the impact of the proposed development upon the spacious and semi-rural character of the area. This residential area, whilst having a verdant appearance, is urban in character. The properties along Twinoaks are sited side by side and close together. Other properties close to the appeal site host hard surfaced areas. I do not consider the layout or density of the proposed development would be appreciably different to that found within the surrounding area.
12. I accept that the proposed developments would have an acceptable relationship with other existing properties in the area and with those within the proposed developments. They would also be of acceptable design and incorporate materials and parking areas similar to that of the existing development in the area. Considering each scheme individually the proposed rear dwellings at the site would not be readily apparent in views from Twinoaks. In addition, the developments would not impinge upon the living conditions of adjoining occupiers and would create family sized dwellings with large gardens and off-street parking. However, my concern relates to the visual relationship of the road frontage development to the existing bungalows either side.
13. I note that other properties in the area have been replaced by large dwellings or have been extended to create larger properties. Nonetheless, I consider these four dwellings at the end of the cul-de-sac and their rising land topography have a markedly different characteristic and relationship to those of the examples cited by the appellant. A number of large dwellings drawn to my attention appear to be positioned between other two-storey dwellings, which is not the case here.
14. For the above reasons, I conclude that each of the proposed developments would be harmful to the character and appearance of the area but only with regard to the proposed road frontage developments. The proposals would, therefore, conflict with Policies CS10 and CS17 of the Elmbridge Core Strategy (the Core Strategy), Policy DM2 of the Elmbridge Development Management Plan (the Development Master Plan), the Design and Character Supplementary Planning Document (SPD) and the provisions of the National Planning Policy Framework (the Framework). These policies and SPD seek development,

amongst other matters, to integrate and enhance local character and the streetscene.

*Efficient and effective use of land (Appeals A and B)*

15. Policy CS17 of the Core Strategy promotes the best use of urban land and set housing density targets for development within the Borough. In this area a minimum density of 30 dwelling per hectare (dph) is required. The density of the proposed development of Appeal A would be approximately 9dph and for the development at Appeal B this would be 12dph. Both schemes would fall significantly short of the density requirements set out in Policy CS17.
16. Policy CS19 of the Core Strategy seeks to secure a range of housing types and sized on development across the Borough in order to create inclusive and sustainable communities reflecting the most up to date Strategic Housing Market Assessment (SHMA) in terms of size and type of dwellings. The Council's 2016 SHMA identifies a need for a higher proportion of one and two bed home in the Borough. The proposals would create either three or four six-bedroom dwellings but it would not provide the type of dwellings for which there is an identified housing need.
17. For the above reasons, I conclude that the proposed development subject to Appeals A and B would not make efficient and effective use of land. The proposal would, therefore, conflict with Policies CS17 and CS19 of the Core Strategy and the provisions of the Framework.
18. I note that other sites in the locality have been subdivided. However, those appear to have related to smaller sites than that of this proposal. This appeal site, being larger than those other examples put forward, offers a greater opportunity to provide a mix of unit sizes and/or a higher density of development.

*Affordable housing (Appeals A and B)*

19. Policy CS21 of the Core Strategy requires new residential development to make provision for affordable housing in support of the Council's aim to deliver at least 1150 affordable homes between 2011 and 2026. For proposals comprising 1-4 dwellings, the Council seeks a financial contribution equivalent to the cost of 20% of the gross number of dwellings.
20. I have been directed to the Council's 2016 SHMA that indicates there is a significant need for affordable housing locally. The supporting text to Policy CS21 indicates that house prices in Elmbridge are significantly above regional and national averages and that affordability is an issue even for those on above average incomes. It also notes that there has been an historic under delivery of affordable housing.
21. Paragraphs 47 and 50 of the Framework set out requirements for local planning authorities to meet the full, objective assessed needs of market and affordable housing and where they have identified that affordable housing is needed, set policies for meeting this on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified.
22. For the above reasons I consider the policy approach to affordable housing as set out in Policy CS21 to be consistent with the Framework and it therefore

remains the starting point for my decision in respect of affordable housing. However, the Written Material Statement of 28 November 2014 (WMS) is also a material consideration and attracts considerable weight.

23. The WMS sets out the Government's intention to prevent affordable housing and tariff style contributions from placing a disproportionate burden on small-scale developers and the consequent adverse effects this has on overall housing supply. The WMS has been translated into updated Planning Practice Guidance (PPG) that states that contributions should not be sought for sites of 10-units or less. Whilst I have found Policy CS21 to be consistent with the Framework, it conflicts with the WMS and PPG affordable housing threshold.
24. The Council has submitted a number of other appeal decisions<sup>1</sup> within the Borough in which this matter has been considered at some length by other Inspectors. Those decisions recognise the pressing need for affordable housing in the Borough, the significant difficulty in delivering affordable housing outside of London and the important contribution of small-scale schemes in its delivery. The Inspectors in those decisions cited also concluded that whilst the WMS is a material consideration it did not outweigh the development plan. They also concluded that the affordable housing contribution sought satisfied the two tests in Regulation 122(2) of the Community Infrastructure Regulations 2010.
25. I have no substantive evidence before me to suggest that the application of Policy CS21 is placing an unreasonable or disproportionate burden on developers of small-scale schemes. Moreover, the appellant has not provided anything that leads me to conclude that viability is an issue in these cases.
26. For the above reasons, whilst the WMS carries considerable weight, I do not consider it to outweigh the development plan given the significant need for affordable housing in the Borough and the importance of small sites, such as the appeal site, to delivery. I, therefore, give full weight to Policy CS21 and the proposal should be determined in line with the development plan. Consequently, as there is no executed planning obligation before me that would make adequate provision for affordable housing, the proposed developments, subject to Appeals A and B, run counter to Policy CS21 and the Council's Developer Contributions SPD .

*Thames Basin Heaths SPA (Appeals A and B)*

27. Policy CS13 of the Core Strategy indicates that new residential development which is likely to have a significant effect on the ecological integrity of the Thames Basin Heaths SPA will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects. Such measures are required to be agreed with Natural England.
28. Whilst the Council indicate that a contribution towards SAMMs, secured by legal agreement, would ensure that the proposal would not adversely impact the SPA, there is insufficient information before me to enable me to form a view on this. However, given my findings in respect of the other main issues I do not consider it necessary to explore this matter further in respect of Appeals A and B.

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<sup>1</sup> APP/K3605/W/16/3146699, APP/K3605/W/16/3154395, APP/K3605/W/16/3156943 and APP/K3605/W/16/3156265

*Cedar tree (Appeals B and C)*

29. There is a TPO Cedar tree within the rear garden of the adjoining property of 4 Fairmile Heights that is located close to the boundary of the appeal site. Section 197 of the Town and Country Planning Act 1990 as amended imposes a duty on the decision-maker to ensure that adequate provision is made for the preservation of trees.
30. The Cedar tree identified as T9 by the TPO is of considerable size, height and has a wide crown spread. It is also situated on higher land to that of the appeal site and the wider land to the south. The amenity value to the setting of the rear garden of No 4 is considerable, as is its visual contribution in views of adjoining occupiers and from the wider surrounding area.
31. The proposed dwelling at plot 3 (Appeal B) and plot 4 (Appeal C) would be positioned close to the boundary of No 4. I saw that part of the canopy of the Cedar tree oversails the appeal site. The Council and other local residents are concerned that alterations to the ground levels of the site and incursion into the root area of this tree would negatively impact the wellbeing of the tree. With regard to Appeal B the Council is also concerned about potential increased pressure from the future occupiers of the proposed dwelling to seek to reduce the canopy of the tree.
32. Turning firstly to Appeal C, the Council's Committee Report indicates that the Council's Tree Officer visited the site. Whilst the Tree Officer assessed that the proposed development would have a greater impact upon the tree than anticipated by the appellant's Arboricultural Report & Impact Assessment (dated 20 November 2017), he concluded that the proposal would not result in a significant adverse impact upon the future health of the tree. He also indicated that an appropriately worded planning condition would ensure measures could be put in place to protect the Cedar tree during construction, demolition and delivery of materials/machinery. Based upon the evidence before me I have no substantive reason to come to a different view to that of the Council's Tree Officer in respect of the impact of the Appeal C development upon the Cedar tree. Furthermore, I have no reason to doubt the effectiveness of an appropriately worded planning condition to protect this tree.
33. With regard to Appeal B, the dwelling at plot 3 would be positioned closer to the tree than that of the development subject to Appeal C. The appellant's Arboricultural Report and Impact Assessment (dated 23 October 2017) indicates that the Root Protection Area of the tree can withstand the limited encroachment without long term detrimental impact to the tree. However, I am mindful that the Council's Tree Officer assessed that the six scheme proposal would have a greater impact upon the tree than anticipated by the appellant's Arboricultural Report & Impact Assessment (dated 20 November 2017). I consider the foundations of plot 3 of the four dwelling scheme, being closer than that of plot 4 of the six dwelling scheme, could potentially encroach more so upon the root area of the Cedar tree. I therefore cannot be certain that the Cedar tree would not suffer long term detrimental impact as a result of the four dwelling proposal.

34. Further to the above, the dwelling at plot 3 would be close to the oversailing tree canopy. Its proximity to the canopy would make it harder for the Council to resist future pruning works to improve the living environment of the occupiers, despite there being a TPO in place. I consider these pressures would not be so immediate if the development were further from the tree.
35. In respect of Appeal C, for the above reasons, I conclude that the proposed development would not significantly harm the Cedar tree that is subject to TPO. As such, the proposed development would not materially conflict with Policy DM6 of the Development Management Plan, Policy CS17 of the Core Strategy, Design and Character SPD and the provisions of the Framework.
36. In respect of Appeal B, for the above reasons I conclude that the proposed development would be harmful to the Cedar tree that is subject to TPO. This proposal would therefore conflict with Policy DM6 of the Development Management Plan, Policy CS17 of the Core Strategy, Design and Character SPD and the provisions of the Framework. These policies require adequate protection for existing trees, including their root systems prior to, during and after the construction process and to ensure development integrates sensitively with the locally distinctive townscape landscape.

### **Conclusion**

37. Having regard to the above findings, all three appeals should be dismissed.

*Nicola Davies*

INSPECTOR