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# Appeal Decision

Site visit made on 5 June 2018

**by H Miles BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18<sup>th</sup> July 2018**

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**Appeal Ref: APP/K3605/W/17/3188993**  
**11 Oakfield Glade, Weybridge KT13 9DP**

- 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 Anthony Martin against the decision of Elmbridge Borough Council.
  - The application Ref 2017/2433, dated 26 July 2017, was refused by notice dated 18 October 2017.
  - The development proposed is the division of the plot of 11 Oakfield Glade to build a detached two-storey house with additional accommodation in the roof and submerged basement. Demolition of the existing garage building and alterations to the facades of the existing house.
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## Decision

1. The appeal is allowed and permission is granted for the division of the plot of 11 Oakfield Glade to build a detached two-storey house with additional accommodation in the roof and submerged basement. Demolition of the existing garage building and alterations to the facades of the existing house at 11 Oakfield Glade, Weybridge KT13 9DP in accordance with the terms of the application Ref 2017/2433, dated 26 July 2017, subject to the eight conditions set out in the schedule at the end of this decision.

## Procedural Matters and Main Issue

2. Planning permission for a detached two storey house in a similar location to the proposal before me now has been allowed under appeal reference APP/K3605/W/17/3181923 (the previous appeal). This decision is a material consideration.
3. The previous appeal decision was issued subsequent to the Council making its decision on the application which is the subject of the appeal before me now. Following its receipt the Council now confirms, in its statement, that it no longer contests the single reason for refusal which related to the effect of the proposal on the character and appearance of the area.
4. The Inspector in reaching the decision on the previous appeal afforded a Unilateral Undertaking (UU) which secured a contribution to affordable housing no weight, and it was not a reason for granting planning permission. However, the Council maintains on this appeal that a contribution is required. This is disputed by the appellant. Nonetheless I have been provided with a completed and correctly executed UU relating to the current appeal. Whilst the appellant would prefer this to be withdrawn, the UU has legal effect and binds the parties

to the actions contained therein. It is therefore a material consideration in the determination of this appeal. In that context the main issue is:

- Whether or not a financial contribution is necessary towards affordable housing.

### *Affordable Housing*

5. Policy CS21 of the Elmbridge Core Strategy 2011 (the Core Strategy) states that for sites with 1-4 dwellings a financial contribution equivalent to the cost of 20% of the gross number of dwellings will be required. However the Written Ministerial Statement (WMS) of 28 November 2014 states that affordable housing contributions should not be sought on sites with 10 units or less and this is translated into the current Planning Practice Guidance (PPG) and therefore forms a material consideration of significant weight.
6. The council has put forward a case that despite this conflict, the requirements of Policy CS21 should be applied to this site and a contribution would be required. This is disputed by the appellant on the basis that a contribution was not found to be necessary for the previous appeal scheme.
7. I am not aware of the evidence before the Inspector on the previous appeal decision which led him to reach his conclusions. Although in his decision he states that "The Council has provided little information in relation to this appeal as to why it continues to apply Policy CS21 and seek affordable housing contributions for small-scale development".
8. However, in the case before me now, the Council has submitted substantial evidence in support of its case including: a Statement on the WMS (June 2016) and update (February 2017); and the Strategic Housing Market Assessment for Kingston Upon Thames and North East Surrey Authorities (June 2016) and a number of recent appeal decisions<sup>1</sup> where the issue of affordable housing is raised. Some of the key messages from these documents are that there is an acute need for affordable housing in Elmbridge in part due to its unaffordability relative to income. Also, that small sites make a significant contribution to the provision of new housing in the Borough. Evidence is provided to demonstrate that the implementation of Policy CS21 has not prevented applications on small sites coming forward, and that the Borough is prepared to be flexible around these contributions where viability evidence supports this.
9. Based on the considerable evidence before me I am satisfied that due to specific local circumstances the Council has a compelling case for the support of the payment of an affordable housing contribution in this instance. Furthermore, the appellant has not stated that the payment of such a contribution would affect the viability of the scheme.
10. In addition, the Council's request for contributions towards affordable housing has been supported by Inspectors in some of the appeal decisions before me. I acknowledge that I do not know the extent of the evidence that was before those Inspectors and whether it was similar to that before me now, and in that

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<sup>1</sup> APP/K3605/W/16/3156943, APP/K3605/W/17/3167882, APP/K3605/W/17/3168617, APP/K3605/W/17/3170237, APP/K3605/W/17/3166743, APP/K3605/W/16/3163928, APP/K3605/W/17/3174279, APP/K3605/W/16/3156943, APP/K3605/W/17/3167961, APP/K3605/W/17/3167270, APP/K3605/W/16/3146699, APP/K3605/W/16/3160470, APP/K3605/W/16/3161055, APP/K3605/W/16/3165031, APP/K3605/W/17/3167461, APP/K3605/W/16/3163555, APP/K3605/W/16/3160775, APP/K3605/W/16/3159613, APP/K3605/W/16/3154395, APP/K3605/W/17/3170775, APP/K3605/W/17/3169210, APP/K3605/W/17/3170220

respect they have not been determinative in this case. Nevertheless, they lend support to my conclusions regarding the requirement for the affordable housing contribution.

11. Therefore, notwithstanding the significant weight to be given to the WMS, based on the evidence before me, in this instance, it would not outweigh the requirement of the development plan. Accordingly, for the reasons above, I conclude that, in this instance, a financial contribution towards affordable housing is required in order to comply with Policy CS21 of the Core Strategy. I am satisfied therefore that it meets the tests in Regulation 122(2) of the Community Infrastructure Regulations 2010 and paragraph 204 of the National Planning Policy Framework (the Framework).

*Other matters*

12. Notwithstanding the Council's position, opposition to this proposal remains from interested parties. These concerns include; the effect on the character and appearance of the area (including the impacts on the footpath, the cramped appearance of the site, the detailed design, height, size, building line, loss of the garden), the existing covenant on the land, the loss of trees and ecological effects of the development, effect on living conditions (including loss of light, overlooking, change to views, disruption during building works), effect on infrastructure (drains, traffic, road surfaces, water, electricity, gas, police, ambulance, care services), that it doesn't contribute to housing targets and that it would set a precedent.
13. A material consideration in the determination of this appeal is the previously allowed appeal which permitted a similar scheme in terms of its character and appearance, albeit with different external design features. Given the similarities between these proposals I find that there is a strong likelihood of the previous appeal scheme being implemented, and therefore I attach significant weight to this fallback position. There are some alterations to the design of the current proposals including changes to the appearance of the façades and materials. However, these are minor in nature and generally introduce elements which would be in keeping with the streetscene. As such the proposed development would not cause harm to the character and appearance of the area and in these respects would be in general conformity with Policies DM2 (Design and amenity) of the Elmbridge Development Management Plan (2015) (the DMP) and CS17 (Local Character, Density and Design) of the Core Strategy.
14. Regarding the effects on infrastructure, the scale of the proposed development (one dwelling) would be unlikely to lead to a significant impact on local services and I am not provided with substantive evidence which leads me to a different conclusion.
15. The remaining matters are largely identified and considered within the Council officer's report and the previous appeal decision. The evidence I have been provided with is not sufficient to prompt me to disagree with the Council's or the previous Inspector's conclusions on these matters.

## **Conditions and Conclusion**

16. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance and have made such amendments as necessary to comply with those documents.
17. Conditions setting a time limit for commencement of development and for it to be carried out in accordance with the approved plans are necessary to provide certainty.
18. Conditions relating to materials, landscaping and tree works are necessary to ensure that the effect of development on the character and appearance of the area is acceptable. The wording has been amended from the Council's suggested conditions to account for the submitted landscape plans which are not disputed by the Council. A condition requiring development to accord with the ecology report is necessary in the interests of biodiversity, while a condition requiring obscure glazing for flank elevation windows is necessary in the interests of privacy.
19. For the above reasons, and having regard to all other matters raised I conclude that the appeal should be allowed.

*H Miles*

INSPECTOR

### **Schedule of 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: 1411\_P\_001 Rev D, 1411\_P\_010 Rev F, 1411\_P\_011 Rev C, 1411\_P\_012 Rev D, 1411\_P\_111 Rev D, 1411\_P\_113 Rev D, 1411\_P\_114 Rev D, 1411\_P\_115 Rev A, 1411\_P\_116 Rev A, 1411\_P\_120 Rev B, 1411\_P\_125 Rev B, 1411\_P\_110 Rev G, 1411\_P\_112 Rev E.
- 3) Other than site clearance and preparation works no works shall commence on the construction of the hereby permitted dwelling 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. Development shall be carried out in accordance with the approved details.
- 4) Other than site clearance and preparation works no works shall commence on the construction of the hereby permitted dwelling until details of landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
  - i) boundary treatments;
  - ii) hard surfacing materials;

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.
- 5) Before development takes place, further arboricultural details shall be submitted to and approved in writing by the Borough Council and these works shall be carried out as approved. This scheme shall include details of:
  - a) The existing trees and hedges to be retained in the form of a tree survey and arboricultural impact assessment, in line with BS5837:2012, and shall include details of all current and proposed hard surfaces, walls, fences, access features and ground levels.
  - b) The measures taken to protect exiting trees and hedges during construction, demolition, and delivery of materials/machinery including a tree protection plan and an arboricultural method statement in line with BS5837:2012.
  - c) Prior to the commencement of works on site and after the installation of the tree protection in accordance with b) above, the applicant shall arrange a pre-commencement meeting between the Borough Council and the applicant's project arboriculturalist 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 Borough

Council. 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 Borough Council.

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, and listed in the approved plans condition, 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 with the Borough Council. 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) The development shall be carried out in accordance with the conclusions and recommendations in Section 6 of the Preliminary Ecological Report including the biodiversity enhancements in sub-section 6.7 by Arbeco dated 3rd March 2017 and in accordance with the conclusions and recommendations in Sections 5 and 6 of the Bat Emergence Report by Arbeco dated 25th May 2017 read in conjunction with the Oakfield Glade Updated Bat Survey Report by Arbeco dated 24<sup>th</sup> July 2017.
- 8) Prior to the first occupation of the development hereby permitted, the first floor flank windows shall be glazed with obscure glass and fitted with non-opening principal lights, and subsequently maintained in this form. Such glass shall be sufficiently obscure to prevent loss of privacy. The affixing of an obscure film will not be sufficient.