



Appeal Decision

Site visit made on 8 October 2019

by Jonathon Parsons MSc BSc DipTP (Cert Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 30 October 2019

Appeal Ref: APP/K3605/W/19/3232321

Dalveen, Sandy Lane, Cobham KT11 2EP

- 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 & Mrs Crola against the decision of Elmbridge Borough Council.
 - The application Ref 2018/2437, dated 7 August 2018, was refused by notice dated 25 April 2019.
 - The development proposed is the demolition of an existing garage to Dalveen and the erection of a new 3-bedroom house with associated access drive, hard standing areas and landscaping to existing and proposed houses.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. As well as the appeal site, site visits were undertaken in neighbouring properties at Harcourt, Laurel House and Shaunavon.

Main Issues

3. The main issues are (a) whether the proposal should contribute to affordable housing provision, its effect on the (b) the character and appearance of the area and (c) the living conditions of the occupiers of neighbouring properties, having regard to outlook.

Reasons

Affordable housing provision

4. Policy CS21 of the Elmbridge Core Strategy (CS) 2011 requires that development resulting in 1 to 4 dwellings should provide a financial contribution equivalent to the cost of 20% of the gross number of dwellings. A draft Unilateral Undertaking (UU) was drawn up to secure an affordable housing contribution in accordance with this policy but was withdrawn due to time delays with securing the necessary signatures to it. Instead, a negatively worded condition is now proposed which would prevent the commencement of development until the developer and Council have entered into a section 106 agreement to secure the contribution.
5. Allied to this suggested condition, the appellants has affirmed in writing commitment to paying the contribution. However, Planning Practice Guidance (PPG) states that a negatively worded condition limiting the development that

- can take place until a planning obligation has been entered into, is unlikely to pass the enforceability test and be appropriate in the majority of cases. The proposal would not meet the exceptional circumstances criteria under the PPG because there is no evidence that the delivery of the development would be otherwise at serious risk. The PPG encourages parties to finalise planning obligations in a timely manner and emphasises the importance of this in the interests of transparency. Whilst I appreciate the difficulties in getting the final UU signatures, the requirement to do so is not uncommon and there has been a significant time period during the appeal process to obtain them. For these reasons, the PPG is given significant weight and the relevant 6 tests for the imposition of conditions would not be met. Without a satisfactory affordable housing provision mechanism, the proposal would conflict with CS policy CS21.
6. Conversely, the National Planning Policy Framework (the Framework) states contributions should not be sought in this instance and this amounts to a significant material consideration. However, the Council has detailed acute housing affordability issues being experienced within Elmbridge, including the failure of provision to keep up with demand, and the important role of small sites in providing affordable provision through contributions. It has also shown that contributions are being used to provide affordable housing.
 7. In the Council's Statement on the Government's National Planning Policy Framework (NPPF) (2018) Nov 2018, it is indicated that contributions collected on small sites have found not to be a disproportionate burden on developers through a viability review of its approach (October 2018). Viability assessments can also be undertaken on developments where applicants consider the contribution to make the development unviable. In this instance, there is no evidence that a contribution would place a disproportionate burden on developing this site.
 8. For all these reasons, the Council's approach in requiring affordable housing provision on this site in accordance with its policy and Developer Contribution Supplementary Planning Document 2012 is correct having considered the proposal on its merits. The conflict of the proposal with development plan policy would outweigh the national policy requirements that no provision is necessary, in this instance. Accordingly, the proposal would not be acceptable in planning terms due to the lack of affordable housing provision.

Character and appearance of the area

9. The appeal site comprises the rear garden of a two storey dwelling and area to the side of the dwelling, where there is a side garage and access drive. The surrounding area comprises large dwellings set in varying but spacious plots with significant trees and boundary vegetation. The Elmbridge Design and Character Supplementary Planning Document (SPD) (and accompanying Companion Guide) 2012 confirms that the appeal site is located within the Cobham character sub-area COS08: Fairmile.
10. Backland development is a feature of the area. The dwellings at Brooklands and Goodwood House are sited in backland positions to the west of the appeal site, with further dwellings sited in similar positions beyond this. Another dwelling is sited in a rearward position opposite the appeal site. The position of the proposed dwelling behind Dalveen would be in keeping with this characteristic of the area. Both Brooklands and Goodwood House are served by an access drive running parallel to the western boundary of the appeal site

- and the proposed access drive serving the appeal dwelling. The proximity of the two access drives to one another would be an unusual feature in the area but it would not markedly stand out due to the verdant nature of the area. In this regard, there is a substantial well-established landscaping containing trees covered by a Tree Preservation Order which would separate and screen them.
11. Recently developed dwellings in the surrounding area have resulted from larger plots and have greater separation with neighbouring dwellings. They also have greater areas of off-road parking and integral or detached garaging. The width of the plot would be narrower than many of the dwellings in the surrounding area, although not Dalveen. However, the main part of the dwelling would be approximately 5m from its eastern boundary and 4m from its western boundary. In relation to the main dwelling part of Dalveen, the new dwelling would have a separating distance of approximately 24m and it would be approximately 11.5m from the common boundary with Laurel House. The dwellings on neighbouring properties would be sited a further distance from the boundaries of the appeal site, with intervening areas of amenity space, including garden. Consequently, the plot would not be constrained and the dwelling's relationship with neighbouring properties would ensure a spacious context to the development in keeping with the area.
 12. Viewed from its frontage, the height of the proposed dwelling would be approximately 8.4m whilst from the rear, this height would be greater by approximately 0.5m due to the lower ground level there. From the side, the height would be about mid point between these two measurements. The plot is on higher ground level relative to neighbouring properties to the east and south. Third parties have identified a minimum land drop of 2.2m between the appeal plot and neighbouring properties.
 13. Nevertheless, the plot would still be spacious given the space about the proposed dwelling and the dwelling density of the development would be low, with the appellant's figure of 13.5 dwellings per hectare not been disputed. The dwelling would also accommodate less floor area as a proportion of plot than 5 nearby properties in the area based on the appellant's analysis. These ratios have relevance because they provide a measure of how built-up the plots would be in relative terms. Although the ratios have been disputed, no alternative evidence has been put forward. Furthermore, its height would be within the broad range of dwelling heights in the area and on a ground level lower than Dalveen and the rear garden of Tanglewood to the west.
 14. The proposed dwelling would be three bedroom and smaller in built form than many larger 5 bedroom dwellings in the area. However, the surrounding area has a mixture of differently sized dwellings in terms of bedroom number based on the appellants' evidence and any differences would not be obvious due to the backland nature of the development. For all these reasons, the dwelling's design, scale, mass, height and backland form would not harm the character and appearance of the area. Accordingly, the proposal would be of a high quality design complying with policies DM2 and DM10 of the Elmbridge Development Management Plan (DMP) 2015.

Living conditions

15. Properties at Harcourt, Shaunavon and Laurel House on Sandy Lane are at a lower level than the appeal site. At Harcourt and Shaunavon, rear gardens have banking bound by walling/stones and vegetation above, including conifer

and deciduous trees, where they are adjacent to the appeal site. At the higher level of the appeal site, there is common boundary fencing and behind this, mainly conifers, and a further less steep rise in ground levels across the appeal plot itself.

16. The proposed dwelling would be sited on the other side of the common boundary fencing and its flank would extend across about half the width of Harcourt's garden. Harcourt has differing floor levels for various habitable rooms, including a partial basement room on the southern part of the building, with a patio outside of this. Given the lower level of this dwelling, outlook would be of the new dwelling on a raised ground level which would be more exposed if the screening vegetation was removed. There can be no guarantee that vegetation would remain in perpetuity because over time, trees need to be removed and replaced for any number of reasons, such as weather damage, disease, etc.
17. However, the new dwelling would be sited approximately 5m away from the common boundary with the neighbour's garden, with just a chimney breast closer. The dwelling's flank would also be visually broken up by the sloping nature of the pitched roof, the roof's hipped nature, the boundary fence, a first floor window (to be obscure glazed) and the chimney breast. In respect of outlook from windows and other openings, the neighbour's dwelling would also be set back a significant distance from the new dwelling by reason of the depth of its rear garden.
18. For Shaunavon, there would similarly be a land drop between the appeal plot and property and vegetation along the common boundary for which there is no guarantee of retention. However, the new dwelling would not be sited alongside the common boundary of this property and its garden. There would be indivisibility between the windows and other openings but there would also be significant distance between the neighbour's dwelling and the appeal dwelling by virtue of the depth of intervening garden and amenity areas. Views would also be mainly oblique because the new dwelling would be sited behind Harcourt.
19. At Laurel House, the new dwelling would be sited approximately 11.5m at its closest point from the common boundary with the garden of this neighbouring property. Although the appeal site is a higher level, this separation would avoid any adverse loss of outlook to occupiers using this part of their garden. In this regard, the affected part of garden is sited beyond the immediate rear area of the dwelling and would be less sensitive to changed outlook. There would also be limited inter visibility between the two dwellings because of the separation distance between them and their angled position relative to one another.
20. The appellant has not expressed any wish to remove vegetation within the appeal site and has employed an arboriculturalist to survey the trees with a view to retaining them. Nevertheless, for all the reasons indicated, the new development would not harm the living conditions of the occupiers of these neighbouring properties having regard to outlook, even if screening vegetation was removed or adversely affected. Other neighbouring dwellings at Barakat, Hardye House and Dalveen would be sited greater distances away from the development and consequently, there would be no loss of outlook to the occupiers of these dwellings.

21. Accordingly, the proposal would comply with policies DM2 and DM10 of the DMP. Similarly, it would not conflict with the advice of the Elmbridge Design and Character Supplementary Planning Document (SPD) 2012. In respect of the SPD's 22m separation distance guideline, this relates to back to back relationship of dwellings which the proposal does not conflict with because it would result in back to side dwelling relationship.

Planning balance

22. The proposal would not harm the character and appearance of the area and the living conditions of the occupiers of neighbouring properties. However, the proposal would not provide affordable housing in conflict with a policy of the CS. The nature of this conflict is considerable and accordingly, the proposal would conflict with the development plan as a whole.
23. The dwelling would boost housing supply where there is an absence of a five year housing land supply (5YHLS). Small sites make an important contribution to meeting the housing requirement of an area and are often built-out quickly. The proposal would support and encourage the development of under-utilised land and buildings so that the need to use virgin greenfield land is minimised. The development would be sustainably constructed. However, it is important that the needs of groups with specific housing requirements are addressed. No affordable housing provision would be made. Therefore, even with the 5YHLS deficit as indicated, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. In conclusion, there would be no material considerations of sufficient weight or importance that determine that the decision should be taken otherwise than in accordance with the development plan and therefore planning permission should be refused.

Other matters

25. Third parties have commented on numerous matters, including the loss of privacy, light, noise and disturbance, and highway safety. As there is a substantive reason to dismiss this appeal, there is no reason for me to consider these matters in this decision. The draft UU detailed provision for a contribution which would provide mitigation in respect of international nature conservation designations. Similarly, as there is a substantive reason to dismiss this appeal, there was no requirement to go back to parties to seek further information and assess whether or not an Appropriate Assessment would be required.

Conclusion

26. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR