



Appeal Decision

Site visit made on 23 October 2019

by D Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th November 2019

Appeal Ref: APP/K3605/W/19/3234255

23 Cranbrook Drive, Esher, KT10 8DW

- 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 Stephen Daly against the decision of Elmbridge Borough Council.
 - The application Ref: 2018/1979 dated 26 June 2018, was refused by notice dated 7 February 2019.
 - The development proposed is described as: Seeking permission to convert 23 Cranbrook Drive KT10 8DW into two separate dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development has already taken place, therefore I am considering this appeal as a retrospective proposal.
3. The application plans set out an area of amenity space to the side of the additional dwelling of approximately 45 square metres. The plans and details indicate no additional means of enclosure of the amenity space, therefore I have assessed the planning merits of this area as seen on site.
4. In the original planning application form the appeal site address was listed as '23A Cranbrook Drive, Esher, KT10 8DW'. However, that address relates to a property that does not appear to benefit from planning permission, therefore in the banner heading above I have used the address of the original dwelling, which appears to be the only address registered for the site by Royal Mail.

Main Issues

5. The main issues are:
 - the effect of the development upon the living conditions of existing and future occupants of the additional dwelling, with particular regard to private amenity space;
 - the effect of the private amenity space upon the character and appearance of the area;
 - the effect of the development on managing the risks of flooding; and,

- whether the development makes adequate provision for affordable housing.

Reasons

Living conditions

6. The amenity area to the new dwelling can be roughly divided into two. Part is the existing front garden area separated from the neighbouring front garden to the east by an approximately 1.8m (metre) high fence with trellis, a short wall fronting the public highway, and being open to the west. This means this area is clearly visible from the public highway and not private. The remaining amenity area is enclosed behind an approximately 1.8m high fence which is mostly behind planting, accommodating a narrow side access and some small sheds on a hardstanding area. Whilst that part of the amenity area is private and provides some storage, it would appear to be capable of little other use.
7. Private amenity space should be both sufficiently private and be capable of meeting the likely needs of current and future occupiers as outdoor living space for normal domestic activities (e.g. including bin storage, drying clothes, sitting outside, gardening or landscaping opportunities). When taken as a whole, by reason of its sub-division, and the lack of privacy to the front area, the amenity space is very constrained and does not provide a particularly pleasant or useable area for outdoor living space such that it is/would be harmful to the living conditions of existing and future occupants.
8. For the reasons set out above the amenity area conflicts with paragraph 127(f) of the National Planning Policy Framework (2019) (the Framework) which requires planning decisions to create places that promote health and well-being with a high standard of amenity. It also conflicts with Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015) (the DMP) which amongst other things, expects that development provides adequate privacy to existing and future occupiers. The Council has referenced paragraph 5.56 of the Design and Character Supplementary Planning Document (2012) (the DCSPD) which suggests a guideline for garden areas of approximately 11m depth, however paragraph 5.56 does indicate flexibility, and does not specify a space being fully private. Therefore, I do not find conflict with paragraph 5.56.

Character and appearance

9. The Council has expressed concerns about the development resulting in an uncharacteristically small plot such that the amenity area is detrimental to the character of the area. Further reference is made in the Council's appeal statement to the provision of a 1.8m high fence enclosing the garden not being acceptable due to the adverse impact upon character of the area. Whilst I note these concerns, there is no such arrangement shown on the plans before me and no definitive proposals in writing, and so my assessment relates to the development as seen on the site.
10. The private part of the amenity area is considerably and uncharacteristically smaller than those present at neighbouring dwellings. However, being largely screened by planting and the neighbouring property, close to the dwelling, set back some distance from the boundary with the highway, the space is not particularly discernible as a separate plot and is set sufficiently far back from

the highway so as not to be obtrusive, or harmful to the character or appearance of the area.

11. For these reasons I consider that the appearance of the amenity area does not conflict with Policy CS7 of the Elmbridge Core Strategy (2011) (the ECS), Policy DM2 of the DMP, or paragraph 5.56 of the DCSPD, which in combination and amongst other things, expects all new development to have regard to and preserve and enhance the local character of the area.

Flood risk

12. The appellant and the Council identify the appeal site as being within Flood Zone 2 which has an annual probability of fluvial flooding of between a 1% and 0.1%. Measures proposed in the appellant's Flood Risk Assessment (FRA) include reference to an Evacuation Plan with the directions to a named rest centre (although this is not in the FRA or before me), registering with the Environment Agency's free flood warning service, using the first floor as a safe haven, and the preparation of a personal flood plan.
13. I note the appellant's view that the development does not involve any additional building work and the offer to provide any further information as part of a necessary planning condition. I have concerns about allowing a proposal that increases the number of households in an area at risk from flooding without having the necessary information to demonstrate risks can be adequately managed. Given the failure to provide information such as the location of, and a safe and manageable route to a safe refuge, the development does not demonstrate that risks can be adequately managed.
14. Therefore, the proposed development would conflict with Policy CS26 of the ECS and paragraph 163 of the Framework which require that in order to reduce the overall risk of flooding, development must amongst other things minimise risks from flooding and demonstrate that residual risks can be safely managed. The proposed development is also contrary to the guidance in section 3.4 of the Flood Risk Supplementary Planning Document (2016), which lists a number of mitigation measures that proposals should seek to integrate.

Affordable housing

15. The appellant did not provide a planning obligation committing to contribute towards affordable housing to the Council and has not provided one to the appeal. I note the appellant's suggestion that if considered justifiable and necessary, there is a willingness to negotiate and make any necessary reasonable financial contributions. However, for written representations appeals, the procedures are clear that if an appellant wants to be certain an obligation will be considered, they must provide an executed and certified copy at the time of making the appeal. Notwithstanding this, there is still a necessity to determine whether a contribution to affordable housing is necessary in relation to the appeal proposal.
16. Policy CS21 of the ECS seeks a financial contribution towards the provision of affordable housing, equivalent to the cost of 20% of the gross number of dwellings of affordable housing, in residential proposals comprising 1- 4 dwellings. The reasons behind this approach are set out in the supporting text to Policy CS21, which explains that house prices in Elmbridge are significantly above regional and national averages.

17. There is conflict of the approach of Policy CS21 to smaller sites with paragraph 63 of the Framework, the November 2014 Written Ministerial Statement¹ and the Planning Practice Guidance, which state that affordable housing contributions should only be sought for residential developments that are for 10 or more dwellings, or a site area of 0.5 hectares or more. Whilst the Framework places significant weight on housing delivery overall, it also highlights the importance of meeting affordable housing needs. The Framework is a material consideration to which significant weight is attached, however it has to be balanced against the primacy of the development plan set out in Section 38(6) of Planning and Compulsory Purchase Act (2004).
18. The Council has provided evidence² that house prices in the Borough remain considerably higher than the regional and national average, being some of the highest in the country. It also sets out the sizeable contribution that sites of fewer than 10 dwellings make towards the supply of new dwellings in the Borough, the need for affordable housing in the Borough, and shown that contributions from these smaller schemes have been an important factor in the provision of affordable housing. No evidence has been provided by the appellant which suggests that the development would be rendered unviable by providing the contribution in-line with Policy CS21.
19. Having regard to the particular circumstances regarding affordable housing provision in Elmbridge, as set out in the Council's appeal statement and accompanying evidence, I conclude that a contribution towards this is justified in relation to the appeal development. It is necessary in relation to the appeal development, and it would satisfy the 3 tests³ in Regulation 122(2) of the Community Infrastructure Regulations 2010.
20. Therefore, I find the proposal fails to adhere to Policy CS21 of the ECS and in the absence of a planning obligation the proposal would not make adequate provision for affordable housing contrary to Policy CS21, which in turn is supported by paragraph 62 of the Framework.
21. The appellant cites a lack of clarity in the Council's Developer Contributions Supplementary Planning Document (2012) (the DCSPD), suggesting that it might not apply in the circumstances of the current proposal, and also suggested a lack of co-operation by the Council. However, I have been provided with no substantive evidence of either and based upon the reasoning set out by the appellant, I see no justification that explains why the DCSPD can be considered unclear in defining the contribution required for the development.

Planning balance

22. Both the Council and the appellant has highlighted the high proportion of overall housing need in the Borough for 1 to 3-bedroom dwellings. In particular the appellant has advocated the weight that should be attributed to, and the value of, the development in providing a deliverable dwelling in a suitable location that provides adequate accommodation in respect of various living conditions, as required by Policy DM10 of the DMP and the Framework.

¹ House of Commons: Written Statement (HCWS50) 28 November 2014

² Statement on the Government's National Planning Policy Framework (NPPF) (2018) – Affordable Housing Provision on Small Sites (November 2018)

³ Necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development

23. The Council confirms that at the time of writing, it did not have a five year supply of deliverable housing land, triggering the tilted balance to be applied in accordance with paragraph 11(d) of the Framework.
24. Applying the tilted balance, on the benefits side, the proposed development would result in the provision of a new dwelling in what appears a reasonably sustainable location that is reasonably well placed to access facilities and services. There would have been a very small temporary economic benefit resulting from conversion activities and being occupied provides a minor sustained benefit to the local economy. There is some small benefit from supporting strong, vibrant and healthy communities through the supply of a single dwelling.
25. However, there are harmful impacts upon the living conditions of the current and future occupants in respect of private amenity space arrangements, and the increased risk of harm to additional households from living in an area susceptible to flooding, which conflict with Policy DM2 of the DMP, Policy CS26 of the ECS, and the Framework. These adverse impacts significantly and demonstrably outweigh the benefits of the development when assessed against the policies in the Framework as a whole. Even if I had been provided with a suitable planning obligation for affordable housing, which would have weighed in favour of the development, it would not have been sufficient to outweigh the harm I have found.

Conclusion

26. I have not been provided with any evidence as to whether the property is occupied, and if so, whether it is the occupant's only or primary residence. However, any future enforcement notice would put the occupation of the dwelling at risk. This would represent an interference with any occupant's rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998.
27. Having regard to the legitimate and well-established planning policy aims to protect the living conditions of occupants, and to minimise and manage the risks from flooding, in this case I consider that greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the occupant(s).
28. Moreover, the proposed development would be contrary to the development plan and the Framework and there are no other considerations, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR