



Appeal Decision

Site visit made on 23 September 2019

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/K3605/W/19/3230165

No 38 (Chenies) and No 41 (Chantry), Twinoaks, Cobham KT11 2QP

- 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 (Forbes Claymore) against the decision of Elmbridge Borough Council.
 - The application Ref 2018/3490, dated 21 November 2018, was refused by notice dated 3 April 2019.
 - The development proposed is the erection of '4' two and a half storey family dwellings and '1' single storey family dwelling, with private drives following demolition of one of the two existing dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 pairs of semi-detached two-storey houses and a detached single-storey house with associated landscaping following demolition of 38 Twinoaks, at No 38 (Chenies) and No 41 (Chantry), Twinoaks, Cobham KT11 2QP in accordance with the terms of the application, Ref 2018/3490, dated 21 November 2018, and subject to the conditions on the attached schedule.

Procedural matters

2. During the course of the appeal it has been confirmed that the appellant should be Mr Max Lloyd (Forbes Claymore), rather than as it was shown on the appeal form.
3. The description of the proposed development has also changed slightly from that originally applied for. The description used by the Council better describes the development applied for and is the description used by the appellant on the appeal form. As the Council have used this revised description in their decision so shall I.
4. The proposal was further amended during the course of the application to provide dwellings of no more than three bedrooms on plots two and five. The revised plans show a reduction in the roof height and removal of accommodation in the roof space. The application was determined by the Council on the basis of the revised plans and I shall therefore consider the appeal on the same basis.

Main Issue

5. I consider that the main issues are:

- The effect of the development on the character and appearance of the area;
- The effect of the development on the Thames Basin Heath Special Protection Area (TBHSPA); and
- The provision of affordable housing.

Reasons

Character and appearance

6. The site is located at the end of an attractive cul-de-sac. The area is residential in character, with a mix of mainly detached two storey houses set within generous landscaped front gardens with areas of hard surfacing for parking. The appeal site is located in the middle two detached bungalows of a group of four, sited around the head of the cul-de-sac to the north of the road. The land slopes up from Twinoaks towards the rear of the site, with further housing sited at an elevated position beyond.
7. The proposed development would see the demolition of one of the bungalows (No 38) with a replacement single storey family dwelling in a slightly different position. The scheme proposes a further four two and a half storey dwellings to the rear of the site. There would be a central access with parking spaces for the new dwellings to the rear.
8. The Council's main concern relates to the siting scale and mass of the proposed dwellings, which they consider would appear out of place with the spacious verdant character of the surrounding area. I recognise that the area has an attractive and spacious character. Nonetheless, the layout of dwellings and their relationship to the road are similar to those found in many other urban areas.
9. My attention has been drawn to three previous appeals, considered in 2018 (APP/K3605/W/18/3197265, 3197287 and 3197304). These appeals were all dismissed. The current appeal has clearly sought to overcome the Inspectors previous concerns, that the two storey dwellings on the frontage would visually dominate the bungalows to either side, appearing out of keeping and overly large positioned between them.
10. In paragraph 12 of her decision, the Inspector found with regard to the dwellings to the rear, '*Considering each scheme individually the proposed rear dwellings at the site would not be readily apparent in views from Twinoaks.*' She goes on to say that the scheme would not impinge on the living conditions of adjoining occupiers and would create family size dwellings with large gardens and off street parking. I have no reason to disagree with this view.
11. I acknowledge that this proposal differs from the previous appeal, as the proposed two storey dwelling on the frontage, has been replaced with one of single storey. This would undoubtedly allow some additional views into, and towards the rear of the site. However, the height of the proposed dwellings to the rear of the site have also been reduced. Therefore, I consider that this would mitigate any adverse effect of the rear dwellings on views into the site from Twinoaks.

12. The scale and mass of the proposed dwellings would be similar to other existing development in the area. Moreover, the rising topography of the land, with the elevated existing dwellings to the rear, would allow the dwellings to the rear of the site to integrate comfortably into the street scene.
13. Overall, I find that the changes proposed to the frontage dwelling with the retention of one of the bungalows and replacement of the other, with one of single storey and of similar scale, would maintain the integrity of the frontage without appearing overly prominent.
14. For the above reasons, I consider that the proposed development would provide four new dwellings, and a replacement single storey dwelling of an appropriate design and scale that would allow them to integrate successfully into the area. Consequently, I do not find that the proposed development would harm the character and appearance of the area or conflict with policies CS10 AND CS17 of the Elmbridge Core Strategy (2011) (CS) and Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015) (LP). These policies seek to ensure that all new development is of an appropriate size, achieves high quality design with an understanding of local character.

Special Protection Area

15. Regulation 63(5) of the Conservation of Habitats and Species Regulations 2017 states, that the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of any European site. The Thames Basin Heaths Special Protection Area (TBHSPA) is designated as a rare example of lowland heathland. It is home to three important bird species, the Nightjar, Woodlark and Dartford Warbler. It is protected by international law as a 'Special Protection Area'. The heaths, and the birds that nest and breed there, are easily disturbed by people and their pets.
16. Whilst the appeal site lies some distance from the TBSPA, it does lie within the 5 kilometre buffer zone. Therefore, the proximity to this protected area is such that it could, either alone or in combination with other projects, have a significant effect on this designated area. New residential development is likely to result in additional recreational pressure from visitors travelling to TBSPA. The proposal would not be directly connected with, or necessary for the management of the protected site. As a result, it is necessary for me to carry out a site specific assessment to determine the extent of those effects.
17. Natural England have been consulted on an Appropriate Assessment for the application in accordance with Paragraph 63 (3) of the Conservation of Habitats and Species Regulations 2017. They consider that, provided that the applicant complies with the requirements of Elmbridge's Avoidance and Mitigation Strategy for the Thames Basin Heaths SPA, through a legal agreement securing contributions to the Strategic Access Management and Monitoring (SAMM), Natural England has no objection to this application. These measures are necessary to avoid an adverse impact on the integrity of the European Site and relevant features.

Appropriate Assessment

18. In summary, the conservation objectives for TBSPA, are to maintain, in favourable condition, the habitats for the populations of bird species of

European importance, with particular reference to lowland heathland and rotational forestry.

19. I have been provided with copies of, and have carefully considered, the TBSPA Delivery Framework (2009). This seeks to ensure that the habitat on which the three bird species rely upon, is returned to good condition; and ensure that people could continue to visit the TBSPA in ways that would not damage the heathland wildlife and habitats. At distances of 400m-5km from the SPA, the Delivery Framework advises that development projects should be required to contribute toward off site provision of Suitable Alternative Natural Greenspace (SANG) and toward access management to the SPA.
20. The provision of the required tariff has now been secured through a legal agreement, that was submitted during the course of the appeal. The parties including Natural England, have been consulted. The legal agreement has been signed by the parties with the exception of one of the charge holders Virgin Money. However, the proposed development, if allowed, would result in the sale of both properties prior to any development being able to take place. The Council are satisfied that the legal agreement would therefore secure the required contributions without the signature of Virgin Money at this stage. I have no reason to disagree with that view.
21. The further consultation with Natural England has confirmed that, as long as the applicant is complying with the requirements of Elmbridge's Avoidance and Mitigation Strategy for the Thames Basin Heaths SPA (through a legal agreement securing contributions to Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM)), Natural England has no objection to this application.
22. For the above reasons I conclude that the signed legal agreement would provide the appropriate mitigation contributions to the Strategic Access Management and Monitoring (SAMM). The contribution would address the potential harm to the TBSPA and can be secured and delivered. Accordingly, it is concluded that the development will not affect the integrity of the SPA, either alone or in combination with other plans and projects in relation to urbanisation and recreation. The proposed development therefore does not conflict with Policy CS13 of the CS which seeks to ensure that adequate measures are put in place to avoid or mitigate any potential adverse effects on the TBSPA.

Affordable housing

23. Policy CS21 of the CS requires new residential developments 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 to 4 dwellings, the Council seeks a financial contribution equivalent to the cost of 20% of the gross number of dwellings. This position remains unchanged since the previous appeals were dismissed. My attention has also been drawn to the Council's Statement on the Government's National Planning Policy Framework– Affordable Housing Provision on Small Sites (2018). This concludes that without affordable housing contributions the Council would be unable to support the delivery of affordable housing in the Borough. As a result, Policy CS21 will continue to be applied as part of the Council's decision making process.
24. It is not in dispute that a contribution towards affordable housing would be required if the appeal was to be allowed. A legal agreement dated 1 April 2019,

was submitted during the course of this appeal. The Council have seen a copy of this and confirmed that it is acceptable to them, although they have not formally withdrawn this reason for refusal.

25. The legal agreement addresses the Council's reason for refusal and provides an agreement to pay the required affordable housing contribution. Therefore, the proposed development would not now conflict with Policy CS21 of the CS.

Conditions

26. I have had regard to the conditions that have been suggested by the Council and assessed them against the advice in Planning Policy Guidance. In some instances, I have amended the condition in the interests of brevity. Those conditions that require details to be submitted prior to other works taking place on site, have been agreed by the appellant.
27. In addition to the standard condition that limits the lifespan of the planning permission, I have specified the approved plans, as this provides certainty. In order to protect the privacy of neighbours, conditions are needed in relation to windows in the side elevations and the installation of obscure glazing. I have also applied a condition to control changes to the roof for plot 6 in the interests of ensuring an appropriate mix of housing in the Borough. A condition to provide details of vehicle electrical charging points is required in the interests of protecting the environment.
28. My attention has been drawn to the protected tree (identified as T9 by the Tree Preservation Order), sited on the adjacent land. It is therefore important to safeguard this tree in addition to any other retained trees, during the course of construction and beyond. Therefore suitable conditions have been imposed. Landscaping conditions and details of materials to be used on the external surfaces of the dwellings are required to protect the character and appearance of the area.
29. I have considered the suggested condition to provide details of how vehicles and materials would be managed during the construction phase. Whilst, the site may initially be able to provide some on-site parking of vehicles and materials, as the development progresses it is unlikely to be large enough to make full storage and parking possible. It is acknowledged that the construction process is likely to be disruptive. However, it would be short term and not a reason to withhold permission and this condition is therefore not necessary.
30. A further condition has been suggested to consider whether the site is subject to any contamination. However, the site is currently in residential use and I have not been provided with any evidence to demonstrate the reasons why such a condition is necessary.

Other matters

31. My attention has been drawn to a number of concerns from local residents. These include fears about the potential for further changes to the dwellings. I acknowledge that future development on the site cannot be ruled out. However, changes to the scheme or alterations to the size of the dwellings would require planning permission. This would give the Council the opportunity to consider whether those changes would be acceptable.

32. Anxiety has also been expressed about, the existence of covenants. However, these are private matters that fall outside the scope of this appeal.

Conclusion

33. I have carefully considered all of the matters raised by the various parties, but for the above reasons, conclude that the proposal would respect the character and appearance of the area. Moreover, the assessments above have concluded that the development will not adversely affect the integrity of the TBSPA, either alone or in combination with other plans and projects, in relation to urbanisation and recreation. Likewise, the legal agreement also meets the required affordable housing contributions.
34. The appeal should therefore be allowed, and planning permission granted, subject to the conditions set out on the attached schedule.

Hilary Orr

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 100 Rev A (Location Plan); 150 Rev A (Proposed Site Plan - Colour); 151 Rev A (Proposed Site Plan - Colour - Annotated); 655 Rev A (Proposed Ground Floor Plan - Plot 6); 656 Rev A (Proposed Roof Plan - Plot 6); 660 Rev A (Proposed Front & Side Elevations - Plot 6); 661 Rev A (Proposed Rear & Side Elevations - Plot 6); 670 Rev A (Proposed Floor Area - Plot 6); all received on 21/11/2018; and amended plans: 152 Rev A (Proposed Site Section & Street Scene); 255 Rev A (Proposed Ground & First Floor Plans - Plots 2 & 3); 256 Rev A (Proposed Roof Plan - Plots 2 & 3); 260 Rev A (Proposed Front & Side Elevations - Plots 2 & 3); 261 Rev A (Proposed Rear & Side Elevations - Plots 2 & 3); 270 Rev A (Proposed Floor Areas - Plots 2 & 3); 455 Rev B (Proposed Ground & First Floor Plans - Plots 4 & 5); 456 Rev B (Proposed Roof Plan - Plots 4 & 5); 460 Rev B (Proposed Front & Side Elevations - Plots 4 & 5); 461 Rev B (Proposed Rear & Side Elevations - Plots 4 & 5); 470 Rev B (Proposed Floor Areas - Plots 4 & 5); all received on 30/01/2019.
3. No development including groundworks and demolition shall take place and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until a pre-commencement meeting has been held on site and attended by a suitable qualified arboriculturist, representative from the Local Planning Authority and the site manager/foreman. To agree working procedures and the precise position of the approved tree protection measures or/and that all tree protection measures have been installed in accordance with all documentation

submitted and approved to comply with the Additional Arboricultural Information condition. The tree protection measures shall be maintained for the course of the development works. To arrange a pre-commencement meeting please email tplan@elmbridge.gov.uk with the application reference and contact details

4. No development including groundworks and demolition shall take place until all supporting arboricultural information has been submitted to and approved in writing by the Local Planning Authority. This shall include updated details of the:
 - a) existing trees and hedges to be retained in the form of a Tree Survey and Arboricultural Impact Assessment, in line with BS5837:2012;
 - b) measures taken to protect existing trees, including the adjacent protected tree identified as T9 on Tree Preservation Order, and hedges during construction, demolition, and delivery of materials / machinery, including a Tree Protection Plan;
 - c) location and installation of services/utilities/drainage, including services to automated gates.
 - d) methods of demolition within root protection area (RPA as defined in BS 5837: 2012) of retained trees.
 - e) details of construction and installations including methodologies within a root protection area or that may impact on retained trees.
 - f) full specification for the construction of any roads, parking areas, driveways, hard surfacing, including details of no dig specification and extent of the areas to be constructed using no dig surfacing.
 - g) detailed levels and cross sections to show that the raised levels of surfacing, where the installation on no dig surfacing within root protection area is proposed, demonstrating that they can be accommodated.
 - h) details of arboricultural site monitoring and supervision by a suitably qualified arboriculturist that is to be provided for the duration of the development.
 - i) methods to improve the rooting environment for retained and proposed trees and landscaping.
 - j) foundations designs and any other proposals involving below ground excavation inside root protection areas or that may impact on root protection areas.
5. Within 20 working days of the substantial completion of the development hereby approved, a completion schedule/report of all the agreed arboricultural site supervision and monitoring in accordance with Condition 4 shall be submitted to the Local Planning Authority. This shall include evidence of compliance through supervision and monitoring of the agreed activities by a suitably qualified arboriculturist.
6. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved. In this

condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

7. No development above the slab level shall take place until full details of both hard and soft landscaping works, have been submitted to and approved in writing by the Local Planning Authority. These details shall include indications of all hard (permeable) surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out. Details are to include tree planting, species, sizes, locations, planting pit design, supports, and guards or other protective measures to be used. Details shall also include planting times and maintenance schedules for aftercare to ensure good establishment. Development shall be carried out in accordance with the approved details prior to first occupation. Any trees or plants, which within a period of five years of the commencement of any works in pursuance of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next available planting season with others of similar size and species.
8. No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the occupation of the dwellings hereby approved, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
9. If any retained tree is cut down, 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, in accordance with condition 4, in the next available planting season or sooner. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
10. No development above the slab level shall take place 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. Prior to the first occupation of the development hereby permitted the first floor side windows of Plots 3, 4 and 5 of the development hereby permitted shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (other glass suppliers are available) and only openable above a height of 1.7m above the internal floor level of the room to which they serve to. The windows shall be permanently retained in that condition thereafter.
11. Notwithstanding the provisions of the Town & Country Planning General Permitted Development Order 2015 (or any Order revoking or re-enacting that Order) no development falling within Part 1 Classes B and C of Schedule 2 to the said Order shall be carried out within the curtilage of Plot 6, unless planning permission is first granted by the Local Planning Authority.

12. The development hereby approved shall not be occupied unless and until each of the proposed dwellings are provided with a fast charge Electric Vehicle socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
13. The mitigation measures of any impacts on the biodiversity, including protected species should be carried out in accordance with the recommendations outlined in Section 5 of the Bat Roost and Nesting Bird Potential Building Assessment Report by Hone Ecology Ltd dated 08/09/2017 received on 21/11/2018.