



Appeal Decision

Site visit made on 16 December 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2020

Appeal Ref: APP/K3605/W/19/3237014

2 Lammas Lane, Esher KT10 8NY

- 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 Tollman against the decision of Elmbridge Borough Council.
 - The application Ref 2018/3714, dated 13 December 2018, was refused by notice dated 14 August 2019.
 - The development proposed is described as 'the purpose of this application is to seek approval to convert the two-storey family house into six new build apartments with four chimney stacks and the underground parking'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Despite the description of development set out above, I consider the description found on the Decision Notice and the Appeal Form better reflects the scheme that is before me and that which the Council considered. The development proposed is therefore for a 'detached three-storey building containing six flats with rooms in the roof space, basement parking and 2m high front boundary wall following demolition of existing house'. I have therefore dealt with the appeal on this basis.
3. The floor plans for the proposal do not appear to match the elevations, as windows in the ground floor side elevations, serving the kitchen and bathroom, are not evident. Given that the plans and elevations before me are those upon which planning permission was sought, consulted on and a determination made by the Council, I have also dealt with the appeal on this basis.

Main Issues

4. The main issues are: -
 - the effect of the proposed development on the character and appearance of the Esher Conservation Area; and
 - whether or not the proposed development would make adequate provision for affordable housing.

Reasons

Character and appearance

5. The appeal site is situated within an area that is broadly residential in character, with houses of two and three storeys in height. The houses are arranged close to Lammas Lane and frontages are enclosed by a combination of boundary walls and planting, with parking accommodated behind. Despite Lammas Lane being a busy between Esher and Hersham, Walton-on-Thames and Weybridge, the site adjoins a significant area of open space, known as Esher Green. The surrounding area therefore retains much of the character of a rural village green and is within the Esher Conservation Area (ECA).
6. The site is occupied by an individually designed detached two-storey house with a tall crown roof and projections to the front façade. This includes a garage which is not an attractive feature. However, the house is set back further from the street frontage than those neighbouring to the west. The house has therefore been identified in the Esher Conservation Area Character Appraisal and Management Proposals (2008) (CAMP) as a 'Neutral Building'. It is an example of post-war infill development that does not hold any historic value or make a significantly positive contribution to the special character of the ECA. Nevertheless, the house is prominent given the elevated nature of the site, the relative openness of the site to Esher Green and the busy nature of Lammas Lane.
7. The significance of the ECA lies, at least in part, in the high architectural quality and variety of buildings. In the immediate context of the site, this includes the classical late 18th century house 'The Lammas', which is a Grade II listed building, and Queen's Close, a grand focal building with dramatic elevations of a Tudor style. The CAMP identifies that one of the principal issues in the ECA is that some modern buildings and extensions have been poorly designed and detailed and tend to be over large in scale.
8. I note that planning permission has been granted for extensions and alterations to the house¹, to which the Council's Conservation Officer did not object. The highest part of the approved development would be a crown roof slightly taller than the existing house. The front façade would be closer to the road and set lower into the site in order to accommodate basement garaging but the position of the rear façade would be similar to the existing.
9. The width of the appeal proposal and its roof form would be almost identical to the approved scheme but the ridge height would be lower, closer to that of the existing dwelling. Despite this, a greater extent of accommodation would be visible within the site, as the forecourt area would be excavated and lowered to provide an additional floor of accommodation, which includes the proposed sunken terrace area to the rear and access to basement parking.
10. In comparison with the approved scheme, the proposed ground floor would be at the same level as the approved basement and the proposed basement would be a full storey lower. Although a large part of the accommodation at these levels would not be visible from public land, the proposal would appear as a large building sunken into the site, significantly below the ground floor level of

¹ Application Ref: 2017/2707 – three-storey front extension, including basement garage, two-storey rear extension, increase in ridge height of 0.2m, alterations to fenestration and 2m high side boundary wall. Approved 20 October 2017.

the existing house and more of the forecourt would be given over to the ramped access into the basement.

11. The additional and extensive built form and engineered land levels within the site, would be highly prominent and visible to the street frontage and Esher Green. Furthermore, the east elevation of the proposal would incorporate less glazing than the approved development. Given the overall scale of the proposed building, this façade would present as being stark and imposing in views from Esher Green. The scale and nature of the proposal would therefore appear as a discordant insertion that would jar with the established grain and form of development within the ECA.
12. I note that the palette of facing materials for the proposed external boundary walls and railings has been carefully considered and there would also be planting to the site frontage. However, these would be unlikely to have a meaningful effect in softening the appearance of the proposal, as it would be likely to be visible through and beyond the screening due to its scale and the elevated nature of the site, particularly as planting would be unlikely to mature for some time. Nevertheless, screening should not be relied upon to hide development from view that would otherwise be visually harmful, specifically in sensitive heritage contexts such as the ECA.
13. I have been referred to Queens Close, as it is a three-storey building incorporating a tall roof. However, its scale and mass are broken down through the composition of its façades and roof form and the building is positioned at street level. It is not therefore elevated above the street to the extent of the appeal site. Similarly, whilst the rear façade of 5 Esher Place is of a similar form to the proposed front façade, views of it from public land are partially restricted by mature trees and it is described in the CAMP as 'not of particular architectural merit'. Furthermore, the ramped vehicular access to a flatted development in Weybridge², to which I have been referred, is below street level and serves a building positioned at a similar level to the street. This is not a site within the ECA. For these reasons these examples of existing development would not be comparable with the appeal scheme before me and would not be compelling reasons to allow development that I have adjudged to be harmful.
14. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. The proposal would have a negative and consequently unacceptable effect on the significance of the ECA, as a designated heritage asset. This would equate to less than substantial harm to the significance of this designated heritage asset. Paragraph 196 of the National Planning Policy Framework (the Framework) and Policy DM12 of the Elmbridge Local Plan Development Management Plan (Adopted April 2015) (DMP) identify that this harm should be weighed against the public benefits of proposals. I undertake this assessment later in the Planning Balance.
15. For the reasons outlined above, I conclude that the proposed development would have a significantly detrimental effect on the character and appearance of the ECA. Hence, the proposal would not accord with policies DM2 and DM12 of the DMP, policies CS9 and CS17 of the Elmbridge Core Strategy (Adopted July 2011) (CS) and Elmbridge Local Plan Design and Character Supplementary Planning Document (Adopted April 2012).

² Queen Elizabeth House, 50 Queens Road, Weybridge KT13 0AZ.

16. Together these policies and guidance require that all new development must achieve high quality design, based on an understanding of local character and townscape, including areas of high heritage value such as the ECA. Proposals should therefore preserve or enhance the character of the area, taking account of design guidance detailed in the Design and Character SPD and having regard to, amongst other things, appearance, scale, mass, height, levels and topography and the prevailing pattern of built development.
17. The proposal would also be in conflict with paragraph 130 of the Framework, which states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Affordable Housing

18. The proposal does not include any affordable housing and the appellant's case is supported by a document entitled *Affordable Housing Financial Viability Analysis*, which has been reviewed by the Council's viability consultants. Whilst the latter is not before me, in determining the application, the Council required a late review mechanism to be agreed with the Appellant. This would have enabled a contribution to be made towards affordable housing, should finances have been favourable in the development process. I note that the appellant agreed to the use of such a mechanism but no legal agreement was signed prior to the determination of the application. There is also no such agreement before me now as part of the appeal.
19. The Planning Practice Guidance suggests that development plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles³. In the case of the policies applicable in the Borough, neither policy CS21 of the CS nor the Elmbridge Local Plan Developer Contributions Supplementary Planning Document (Adopted February 2012) set out the Council's approach to late review mechanisms.
20. Based on the evidence that is before me, it is clear that the profit that could be realised from the proposal has not been properly resolved between the main parties and the policies relevant to the consideration of this main issue are not applicable to the requirement for a review. The evidence before me is therefore inconclusive and I am not able to reach a formal conclusion either way on this second main issue.
21. Given that I have found harm, in the first main issue, in relation to the character and appearance of the Esher Conservation Area, it is not necessary for me to consider this matter in any further detail.

Planning Balance

22. Paragraph 47 of the Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.

³ Paragraph: 009 Reference ID: 10-009-20190509 Revision date: 09 05 2019

23. In the first main issue I indicated that the proposals would lead to less than substantial harm to the significance of ECA, as a designated heritage asset. Paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals.
24. In the context of Paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by this small site, particularly as it could be built-out relatively quickly. There is no threshold for the assignment of weight to the quantum of residential development and the proposal would deliver five additional units of accommodation, each with two bedrooms. This would contribute to the overall housing mix in the Borough, as required by policy CS19 of the CS.
25. I also recognise that the proposal could be said to make more efficient use of the site. However, Paragraphs 117 and 122 of the Framework are clear that making efficient use of land should include taking into account the desirability of maintaining an area's prevailing character and the importance of securing well-designed, attractive and healthy places.
26. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period and the application of the New Homes Bonus and Community Infrastructure Levy. The proposal would also be close to services and facilities that would be supported by expenditure from occupants.
27. It is inconclusive whether the proposal would contribute to the provision of affordable housing in the Borough. Similarly, the benefits that would result from the proposed parking and storage at basement level would be private benefits restricted to the occupiers of the proposed flats.
28. Paragraph 193 of the Framework states that in considering the impact of proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. Considered together, I conclude that the public benefits I have outlined above do not outweigh the less than substantial harm that I have identified.
29. The development plan for the area comprises the CS and the DMP, both which predate the current Framework. However, Paragraph 213 of the Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework.
30. In the context policies CS9 and CS17 of the CS and DM2 and DM12 of the DMP, the approach to design, particularly in a heritage context, in the Borough does not differ from the approach to achieving well designed places and conserving and enhancing the historic environment, as set out in sections 12 and 16 of the Framework. Accordingly, I afford the identified conflict of these policies with the Framework limited weight. Therefore, these policies should be afforded full weight in this appeal.
31. It is common ground that the Council are unable to demonstrate a five-year housing land supply as required by the Framework. In such circumstances, in line with footnote 7 to paragraph 11 of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly

and demonstrably outweigh the benefits, the tilted balance. However, I am mindful that in light of my finding in relation to heritage matters, paragraph 11d) i) of the Framework would apply. Accordingly, as the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development, the tilted balance would not be engaged, and the normal planning balance applies.

32. I have already identified the benefits of the appeal scheme above. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the character and appearance of the ECA. The absence of a formal conclusion on the second main issue, as well as the lack of harm associated with all other matters, including the living conditions of neighbouring occupiers and the vehicular access into the site, would neither weigh for nor against the appeal scheme.
33. In the final balance, I consider that the harm to the character and appearance of the ECA would outweigh the benefits of the proposed development. Therefore, there are no material considerations that would indicate that the appeal scheme should be determined other than in accordance with the development plan.

Conclusion

34. While I have not found against the policies of the development plan in relation to the provision for affordable housing, I have identified harm in relation to the character and appearance of the ECA. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR