



Appeal Decision

Site visit made on 9 March 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Appeal Ref: APP/K3605/W/19/3243271

Dormers, 112 Fairmile Lane, Cobham KT11 2BX

- 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 Khalid Abu Hamam against the decision of Elmbridge Borough Council.
 - The application Ref 2018/0378, dated 5 February 2018, was refused by notice dated 29 August 2019.
 - The development proposed is to demolish the existing 2 storey detached house with associated outbuildings and construction 2no, detached 4-bedroom 2 storey houses with dormers in roof, and new access off Fairacres for one house.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The location plan and block plan¹ identify the main road in front of the site as being 'Fair Oak'. However, the remaining evidence refers to this highway as 'Fairmile Lane'. Accordingly, for the purpose of this appeal I shall use the latter as this is more accurate.
3. Although, access on site was originally arranged it was subsequently determined that this was not required. I have therefore made my observations from the public highway without prejudice to any party.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the streetscene,
 - whether the proposed house type would be appropriate for the area in consideration of the local housing needs, and
 - whether the proposal would affect the integrity of the Thames Basin Heath Special Protection Area (SPA) and if it would whether it provides adequate mitigation to offset the impact.

¹ Location and Block plan ref PL/494/01A

Reasons

Character and appearance

5. The appeal site consists of a two-storey detached dwelling on a relatively corner large plot. It has a comparatively subdued presence due to the extent of local planting. The plot includes a substantial amount of landscaping, to the side of the existing dwelling, consisting of trees and hedge planting. A mature oak tree² is also within the front corner of the site, subject to a Tree Preservation Order. A tall brick wall defines the side boundary of the rear garden. There is a grass verge and further planting between the wall and the adjacent footpath.
6. The site is on the corner of Fairmile Lane and Fairacres. Fairmile Lane mostly consists of large two-storey dwellings on generous plots, many with extensive front boundary trees and hedging. Opposite the site is a sporting venue with boundary hedging that defines its highway edge without a footpath. As such, the Lane has a semi-rural character with built form nestled amongst mature landscaping. Fairacres includes a range of house types. The nearest dwellings to the site are single-storey and relatively low-key. Nevertheless, this secondary highway has a more suburban character than Fairmile Lane with generally smaller plots and reduced landscaping. The extent of landscaping in the area, especially evident on Fairmile Lane, makes a positive contribution to its semi-rural and sylvan character.
7. The proposal would subdivide the plot to accommodate two dwellings. The second dwelling, annotated as '112B', would be located close to the boundary with Fairacres. Unit 112B would require the removal of the substantial belt of existing landscaping. This would provide the required space for the proposed dwelling, its driveways to the front and rear and a single garage. The dwelling and associated works would subsequently be close to the footway of Fairacres. The development would therefore be highly visible, especially when exiting Fairacres as it would project beyond the frontages of existing dwellings. Furthermore, the proposal incorporating an expanse of brickwork with minimal visual relief to the side elevation facing Fairacres would present a somewhat bland appearance when viewed from important vantage points along this and Fairmile Lane. It would also be disproportionately tall in comparison to these properties on Fairacres. It would subsequently be of a mass that would be obtrusive in this context.
8. The streetscene elevation shows the retained and proposed trees in outline form. These would provide some screening. However, most of the mature landscaping would be removed with only limited replacement planting. Accordingly, the effect of the denuded planting and the visual impact of the dwelling would be a substantial intrusion of built form into this semi-rural setting. The protected tree would provide some view in the backdrop from Fairacres, but this would provide only limited visual relief from Fairacres.
9. Furthermore, the replacement planting would not sufficiently soften the visual impact of the proposal or successfully blend it with the local character. Also, there is limited scope for the proposal to accommodate further landscaping as

² Arboricultural Implication study and tree protection strategy, April 2018

this would be precluded by the proximity of 112B to the highway and its associated hardstanding. Therefore, a condition could not ameliorate this impact.

10. The Council's Design SPD³ identifies that Cobham and three nearby settlements are characterised by well-established landscape structure providing a high-quality setting for residential properties. The Guidance establishes a placemaking approach to principles of design. The Appellant's Design and Access Statement⁴ finds that the proposal would respect the established character. However, the proposal would not be in character with the local streetscene due to its prominence and the reasons outlined above.
11. Consequently, the proposal would fail policies DM2 and DM10 of the Elmbridge Local Plan - Development Management Plan (2015) (LP). These seek development that shows an understanding of local character and for development on garden land to be well designed and respects the character of the area. Furthermore, the proposal would fail to satisfy policy CS17 of the Elmbridge Core Strategy (2011) (CS). This seeks development to respond to positive features of individual locations. Moreover, the proposal would fail to satisfy the provisions of the National planning Policy Framework (The Framework) which seeks to development to be sympathetic to local character.

Local housing needs

12. Policy CS19 of the CS, seeks to secure a range of house types and sizes reflecting the most up to date Strategic Housing Market Assessment (SHMA). The companion text explains that the recent supply of new homes has favoured 2-bedroom flats and 4-bedroom plus detached houses, with relatively little provision of 1-bedroom flats and 3-bedroom dwellings. However, the Framework seeks to ensure that a mix of house types is achieved across the plan period. It also recognises that where there is a shortage of land for meeting identified needs, it is especially important to avoid homes being built at low densities and ensure development makes optimal use of the potential of each site.
13. The Council's most recent SHMA was published June 2016. This covers a period from 2015 to 2035 and considers the Objectively Assessed Need (OAN) for Market and Affordable Housing. This indicates that in Elmbridge the majority of the additional housing requirement is for smaller 1-2 bed units⁵. The SHMA also identifies that to reflect demand 4-bedroom dwellings should account for only 1% of the total provision of dwellings, which the Council confirm has already been exceeded. The Council's Authority Monitoring Report (AMR) for the year 2017/2018, found that around 47% were 4-bedroom units or greater. This was repeated to a lesser extent in the 2018/2019 AMR, where 4-bedroom or larger homes accounted for around 26% of the total provision. This therefore continued to misalign with the identified need.
14. The Council's Development Management Notes (appendix E⁶ and F⁷ of its Statement) explain its approach to address the trend. The first note identifies

³ Elmbridge Council, Design and Character Supplementary Planning Document Companion Guide: Cobham, Oxshott & Downside 2012

⁴ Appellant's Design and Access Statement, KB Design November 2017

⁵ SHMA paragraph 14, page 3

⁶ Development Management Note: Understanding Housing Need in Elmbridge 2018

⁷ Development Management Note: Optimising Development Land 2018

an overwhelming need for smaller homes and requires only 1% of new homes to be 4-bedroom dwellings or larger. The second advice note identifies that larger dwellings do not make a positive contribution towards meeting the identified housing needs in the SHMA. It states that these should be avoided unless it can be demonstrated that they are required in order to make efficient use of the land. As the Council has an under-provision of its 5-year Housing Land Supply (HLS) the efficient use of its limited available housing land is especially germane. This objective is consistent with the Framework which seeks the size, type and tenure of housing needed for different groups in the community to be assessed and reflected in planning policies. Furthermore, there is no substantive evidence before me to indicate that the Council has taken an inconsistent approach to the application of this objective.

15. Taking the above together, I do not consider that the appeal scheme would make the most efficient use of the site or optimal use of its potential. Accordingly, the proposal would not deliver housing in alignment with the identified housing need. As such, the proposal would fail to accord with policy CS19 of the CS which seeks to secure a range of house types that reflect the most up to date SHMA in terms of size and type of dwelling. The proposal would also fail to satisfy the Framework. This seeks to promote the effective use of land and take into account the identified need for different types of housing and the availability of land to accommodate it.

Special Protection Area (SPA)

16. The appeal site is within the zone of influence of the SPA. Policy CS13 of the CS requires mitigation to protect the integrity of the SPA. The appeal site is therefore in a location where future occupiers of the development would be likely to use the SPA for recreational purposes. Thus, I cannot rule out the possibility that the development would not have adverse effects on the integrity of the designated area, either alone or in combination with other planned development. In those circumstances, having regard to the 2017 Habitats Regulations, planning permission should not be granted unless an Appropriate Assessment (AA) has been undertaken to assess the likely effects.
17. Following recent case law, potential mitigation cannot be taken into account when determining whether an AA is required. However, such mitigation may be considered if an AA has been undertaken and it is determined that the development would harm the integrity of the SPA. In any event, no mitigation measures have been presented in the current appeal. However, as I am dismissing for other reasons it is not necessary for me to consider this matter further as it would not change the outcome of this appeal.

Other matters

18. The Council initially supported the principle of the proposal⁸ but was delayed in making a final decision and its view changed over time. However, the way in which the Council handled the proposal is not a matter for me to consider, which I have determined on its own merits.
19. 110 Fairmile Lane (No 110) was recently approved for the erection of 8 flats. This plot is currently a cleared site. The details of that scheme are not in evidence. However, the submitted block plan indicates that this plot is not as

⁸ Elmbridge Borough Council- Pre-app advice September 2017

wide as the appeal site and the previous building was much closer to Fairacres than the existing building on the appeal site. It is therefore apparent that the effect of its redevelopment on the streetscene would be substantially different. As such, it is unconvincing that this sets a precedent or is representative of the prevailing character. Moreover, each case must be judged on its own merits.

20. The SHMA considered the type of housing that would be in demand over a 20-year period commencing in 2015. As such, I am satisfied that the dataset remains a useful tool to understand house type demand, even if the housing need figure has since increased. Furthermore, no substantive evidence has been provided to indicate its conclusions on the proportional balance of house types is unreliable or out of date. Also, the Appellant has stated that an assessment of the local market illustrates that smaller units are not in strong demand in the locality. It is also suggested that the Council has approved many large dwellings in the area during 2018. However, decisions in 2018 would largely pre-date the Council's policy approach as set out in the Management Notes. Furthermore, the local market assessment undertaken by the Appellant is not substantiated with evidence.

Planning balance and conclusion

21. The proposal would not accord with policies DM2 and DM10 of the LP or with policies CS17 and CS19 of the CS. The proposal would therefore not accord with the development plan when taken as a whole.
22. The main parties concur that the Council cannot meet its 5-year HLS. In such circumstances, paragraph 11(d) of the Framework is engaged. Hence, permission should be granted unless any adverse impacts in doing so would demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. I have already identified adverse impacts that are contrary to the Framework's objectives to meet identified housing needs and make the optimal use of the potential of each site.
23. The Framework also includes strong emphasis on design including in section 12, achieving well-designed places, and there is a link between good design and delivering housing types that are appropriate for local demand. I acknowledge that the Framework seeks to significantly boost the supply of housing; a matter of significant weight. Furthermore, the proposal would deliver limited social and economic benefits, these are matters of modest weight. Nevertheless, I consider that the identified adverse impacts would significantly and demonstrably outweigh these benefits. Accordingly, the proposal would not satisfy the objectives of the Framework when taken as a whole, notwithstanding the Council's position on 5-year HLS.
24. Consequently, the proposal would not accord with the development plan or the Framework when taken as a whole. Furthermore, no material considerations indicate that a decision should be made other than in accordance with the development plan. For the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR