



Appeal Decision

Site visit made on 8 January 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2020

Appeal Ref: APP/K3605/W/19/3237910

2 Sandown Avenue, Esher, Surrey KT10 9NT

- 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 iLife Developments Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2019/1552, dated 4 June 2019, was refused by notice dated 29 August 2019.
 - The development proposed is erection of 2 detached two storey houses, with rooms in the roof space, dormer windows and integral garages following demolition of existing house.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 detached two storey houses, with rooms in the roof space, dormer windows and integral garages following demolition of existing house at 2 Sandown Avenue, Esher, Surrey KT10 9NT in accordance with the terms of the application, Ref 2019/1552, dated 4 June 2019, subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The appellant has submitted a legal agreement signed by the Council to address the Council's second reason for refusal of the appeal application relating to a contribution towards the provision of affordable housing.

Main Issue

3. The main issue therefore is whether the proposal would make an efficient use of land by reason of the housing type proposed having regard to local and national planning policies.

Reasons

4. The appeal relates to the site of a substantial detached house on a private road with gated access arrangements. Sandown Road is characterised by large detached two storey houses set back from the road frontage within spacious gardens. The size, external materials and detailing of the houses varies but they exhibit traditional design approaches that have been replicated on recently constructed houses in the road.

5. The site is wider than most in the road. Its subdivision would result in two plots similar in width to many plots near to the site. The siting, massing and design of the proposed houses would reflect that of neighbouring dwellings on the southern side of Sandown Avenue. The existing front and back gardens would be largely retained maintaining the spacious character of the road.
6. The Council has no objection to the impact of the proposal on the character and appearance of the area but contends that a more efficient use of the land would be achieved by provision of a larger number of smaller units. Their data indicates a need for more smaller units and that recent delivery of new homes in Elmbridge has been dominated by houses with four or more bedrooms¹.
7. Policy CS19 of the Elmbridge Core Strategy (2011) (ECS) seeks to secure a range of housing types and sizes on developments across the Borough in order to create inclusive and sustainable communities reflecting the most up to date SHMA in terms of the size and type of dwellings. It also seeks to resist an overconcentration of any one type of dwelling if this is considered to have the potential to adversely affect community cohesion.
8. There are similar aspirations in Paragraph 123 of the National Planning Policy Framework (the Framework) which states that where there is a shortage of land for meeting identified housing needs that planning decisions should “*avoid homes being built at low densities, and ensure that developments make optimal use of the potential for each site*”. However, Paragraph 122 of the Framework also points out that making efficient use of land should take into account “*the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change*”. A balance needs to be struck between increasing densities and respecting the character of an area.
9. The Council suggest more effective use of the land could be achieved by designing a building which has the appearance of a large single family dwelling, but which contains smaller units. A building of flats would not be in keeping with the strong character of detached dwellings in Sandown Avenue. The requirements for on site parking and access to garden areas for occupiers of such a flatted building could also differentially impact on the road’s character.
10. The Council supports its case by reference to recent approvals for flats at nos. 3, 33 and 35 New Road, an adjacent road within the same Character Area ESH02². But whilst New Road is predominantly residential in nature, it is not a private road, its houses are generally much smaller than those in Sandown Avenue and parts of the road are closer to Portsmouth Road which has some commercial uses. The character of the two roads is materially different.
11. The new house constructed at 4 Sandown Avenue and the subdivision of the plots at nos.3 and 8 are similar to the development now proposed at no.2. These reflect the balance between maintaining an area’s prevailing character and promoting regeneration to make more effective use of land as set out at Paragraph 122 of the Framework. Policy CS19 is a borough wide policy but its application to individual proposals needs to take account of differing site circumstances, notwithstanding the overall shortage of smaller units.

¹ Strategic Housing Market Assessment (SHMA) for Kingston Upon Thames and North East Surrey (2016) and the Elmbridge Annual Monitoring Report (2017/2018)

² The Companion Guide to the Design & Character Supplementary Planning Document

12. There is no evidence before me to illustrate how a development of a larger number of smaller units could be constructed on site and protect the prevailing character of the road. Although the density of the proposal would remain low, the proposal would provide an additional unit in keeping with recent regeneration along the road. Furthermore, there is little to indicate that the construction of the 2 large houses proposed here would result in an over concentration of any one type of dwelling or that they would have the potential to adversely affect community cohesion. There would be no substantive conflict with Policy CS19.
13. The Council has referred to appeal decisions in which their stance on Policy CS19 has been supported and the appellant has referenced two recent decisions in which it has not. The site circumstances and considerations relating the character of the area differ between Sandown Avenue and the other appeal cases. Each proposal needs to be considered on its individual planning merits.

Other matters

14. The appellant points out that Sandown Avenue is part of a private estate where stringent covenants apply and which only allow for the erection of detached dwellings. Although restrictive covenants are civil matters and therefore not a material planning consideration, their existence in this instance would preclude implementation of the type of development the Council is trying to promote.
15. The legal agreement accompanying the proposal includes a contribution of £81,630.18 towards the provision of affordable housing in Elmbridge calculated in accordance with the Council's Developer Contributions SPD. Regulation 122 of the Community Infrastructure Levy Regulations (CIL Regulations) and paragraph 56 of the Framework require that planning obligations should only be sought, and weight attached to their provision, where they are 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. I am satisfied that the agreement would meet the requirements of Regulation 122 of the CIL Regulations and that the planning obligation can be taken into account as a material consideration in this appeal.
16. The Council cannot currently demonstrate a 5-year housing land supply and has had a poor Housing Delivery Test result for 2019. The proposal would result in the benefits of one additional dwelling and a contribution towards the provision of affordable housing which would assist in meeting another of the borough's housing needs. I sympathise with the Council in looking to optimise the development of land to deliver more homes and homes better suited to perceived housing need, but it is my judgement in this instance that any adverse impacts arising from conflict with Policy CS19 on aspirations for the effective use of land would not significantly and demonstrably outweigh these benefits when assessed against the policies of the Framework taken as a whole.
17. I have noted the representations against the proposal from local residents but consider the separation distances to the proposed dwellings and their profiles when viewed from adjacent properties would not result in material adverse effects on living conditions within these neighbouring dwellings.

Conclusion

18. For the reasons given and having regard to all other matter raised the appeal is allowed subject to conditions. In addition to the standard 3 year commencement condition, I have included a condition requiring the development to be carried out in accordance with the approved plans for certainty and to enable the approval of minor material amendments should this be expedient. Conditions are necessary to approve details of the external materials for the building and to safeguard existing trees to be retained to require adherence to the tree protection measures set out in the submitted tree protection plan to ensure a satisfactory appearance to the site. The Council's suggested condition on biodiversity is necessary to protect and enhance existing species and habitat on the site. Finally, a condition is necessary to control the glazing of windows to the flanks of both dwellings at and above first floor level to preserve the privacy and amenities of neighbouring residents.

Rory MacLeod

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P21/100, P21/103, P21/104, P21/105, P21/110, P21/115, P21/120 Rev. A, P21/210, P21/220 and P21/300.
- 3) No development shall commence above ground level until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) No development including groundworks and demolition and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until all tree protection measures have been installed in the positions identified on tree protection plan TSP/TPP/TRP 01 received on 06 June 2019. The precise position of the approved tree protection measures and to ensure that all tree protection measures have been installed in accordance with the approved tree protection plans shall be confirmed at a meeting on site attended by a suitably qualified arboriculturist and a representative from the Local Planning Authority prior to commencement of building operations.
- 5) All existing trees, hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the development. a) no retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars. Any pruning shall be carried out in accordance with British Standard 3998: 2010 (tree work) and in accordance with any approved supplied arboricultural information. b) if any retained tree, hedge or hedgerow is removed, uprooted or destroyed or dies, another tree, hedge or hedgerow of similar size and species shall be planted at the same place, in the next available planting season or sooner.
- 6) Prior to first occupation, a scheme for the enhancement of biodiversity on the site to achieve a net gain shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall take account of any protected species that have been identified on the site, and in addition shall have regard to the enhancement of biodiversity generally. It shall be implemented in accordance with the approved proposals within it and shall be carried out in accordance with the approved details.
- 7) Prior to the first occupation of the development hereby permitted the windows on the side elevations at first floor level and above shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (or similar) and only openable above a height of 1.7m above the internal floor level of the room to which it serves. The windows shall be permanently maintained in that condition thereafter.