
Appeal Decision

Site visit made on 1 September 2020

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2020

Appeal Ref: APP/K3605/W/20/3246998

4 Fairmile Lane, Cobham KT11 2DJ

- 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 J Sorrentino for Lightwood Property against the decision of Elmbridge Borough Council.
 - The application Ref 2019/2553, dated 11 September 2019, was refused by notice dated 6 February 2020.
 - The development proposed is the erection of 2 x detached two-storey dwellings with rooms in the roof on land rear of 4 Fairmile Lane, following demolition of the existing garage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 x detached two-storey dwellings with rooms in the roof on land rear of 4 Fairmile Lane, following demolition of the existing garage at 4 Fairmile Lane, Cobham KT11 2DJ in accordance with the terms of the application, Ref 2019/2553, dated 11 September 2019, subject to the conditions set out in the schedule attached to this decision.

Main Issues

2. The main issues are;
 - whether the proposal makes the most effective use of land to meet the housing need of the area, having regard to housing mix
 - the effect of the proposal on the Thames Basin Heaths Special Protection Area (the SPA), and;
 - whether or not the proposal should pay contributions towards affordable housing in the Borough.

Reasons

Housing mix

3. The appeal site lies in an area characterised by large, generally detached dwellings with large, mature gardens. Some of these gardens have been divided and developed in a way similar to the appeal proposal.
4. Policy CS19 of the Elmbridge Core Strategy, July 2011 (the Core Strategy) sets out the approach of the Council towards housing type and size. As part of this approach, it seeks to reflect the most up to date SHMA and resist the overconcentration of any type of housing where it could adversely affect

community cohesion. The supporting text to Policy CS19, dated 2011, notes that the recent supply of new homes was predominantly flats and larger houses and as a result, 90% of new housing development should ideally deliver 1,2 and 3-bedroom dwellings.

5. Other Core Strategy policies, including the overarching spatial strategy, set the need to deliver growth whilst respecting the character or the area and local distinctiveness, whilst highlighting the importance of new development integrating with and enhancing existing local character.
6. In alleging that the appeal proposal fails to make the most effective use of land within the urban area, the Council compares it to a number of potential alternative forms of development, which it considers more appropriate than the appeal scheme. However, there are no such alternatives before me, nor were they before the Council when it made its decision. Policy CS19 and the information which supports it does not expressly preclude development such as the appeal proposal. I also note the requirement in Policy CS19 itself, and in the wider Core Strategy to ensure that development respects the character and appearance of the area in which it is proposed. The appeal proposal would be consistent with the established character and appearance of the area surrounding it.
7. Clause 3 of Policy CS19 seeks to resist an over-concentration of any one type of dwelling if it is considered to have the potential to adversely affect community cohesion. Beyond the issue of housing need and demand, and the headline aim of Policy CS19 itself, I do not consider that the Council has presented convincing evidence of such harm arising from the appeal proposal. Indeed, as I have noted above, owing to the existing character and appearance of the area, I consider that the appeal proposal is an appropriate form of development for the appeal site. The appeal proposal also appears to be more appropriate than the theoretical alternatives to which the Council compared the appeal proposal in making their decision.
8. In considering the compliance of the proposal, and in particular, the housing mix it proposes, against the requirements of Policy CS19, I have had close regard to the particular wording of the policy. It states that the Council will "seek to secure a range" of housing. I do not consider that this is an absolute requirement to only deliver housing in line with the mix required by the evidence which underpins the plan. If it were, it would be worded as such.
9. Therefore, in also considering the overarching requirement of both the Core Strategy and the National Planning Policy Framework (the Framework) to deliver additional housing in the Elmbridge Borough Council area, I consider that the proposal does not conflict with Policy CS19 of the Core Strategy.

The SPA

10. The site lies within the 5km buffer zone of the Thames Basin Heaths Special Protection Area (the SPA). The SPA is heathland which supports important breeding bird populations. The conservation objectives for this SPA are to ensure that the integrity of the SPA is maintained or restored as appropriate.

11. It is therefore necessary for me, as the competent authority, to carry out an Appropriate Assessment in relation to the effect of the proposal on the integrity of the SPA. An increased number of dwellings would likely give rise to increased recreational pressure on the SPA. In combination with other development in the area, this would likely have a significant effect on the SPA.
12. Natural England has confirmed that subject to complying with the requirements of the local avoidance and mitigation strategy through contributions to the Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM), they have no objection.
13. The parties have agreed a contribution of £1,462.00 per unit towards these measures, calculated in line with the Community Infrastructure Levy. These contributions will contribute to the costs of managing and monitoring access to the SPA and the provision of alternative green space. I am satisfied that this approach would address the effects associated with the proposed development and its likely effects on the SPA. I therefore find that, subject to the proposed mitigation, the proposal would not result in an adverse effect on the integrity of the SPA.

Affordable housing

14. A signed unilateral undertaking (UU) has been submitted, which provides for the payment of a sum towards affordable housing in line with Policy CS21 of the Elmbridge Core Strategy 2011. I have considered whether the UU meets the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010.
15. The appellant suggests that the Policy CS21 of the Core Strategy is out of date, owing to its age, its conflict with paragraph 63 of the Framework and the housing land supply position in the Borough.
16. However, there is a balance to be struck. If I were to take the view that Policy CS21 is out of date owing to the housing land supply position, and that as such, any affordable housing contribution is not required, I would then be required to carry out the balance required of me by paragraph 11d)ii of the Framework. In such a balance, the benefits which would arise from the development would appear to be largely private and limited to the provision of two dwellings.
17. However, the development plan seeks to meet an established local need, and there is substantial evidence on both the affordability of housing in the borough, and the importance of small sites in delivering housing within the borough. As such, whilst there is a tension between the development plan policy and paragraph 63 of the Framework in this case, there is a demonstrable local need and evidence base supporting the payment of affordable housing contributions. Accordingly, following the test at paragraph 213 of the Framework, I consider that Policy CS21 is consistent with the overarching aim of the Framework to deliver a sufficient supply of new homes. Furthermore, I consider that in making the contribution required by the Council and secured through the UU, the proposal accords with that policy.
18. Therefore, on the basis of the evidence before me, and in line with my conclusions above, I am satisfied that the UU is necessary to make the

development acceptable in planning terms, directly relates to the development and is fairly related in scale and kind to the development.

Other Matters

19. I note a number of objections concerning the effect of the proposal on the privacy of neighbouring properties, particularly any potential for overlooking of properties on Knowle Park to the rear of the site. However, the separation distances between the windows of the appeal proposal, particularly those at first-floor level, which are set back from the ground-floor, and the houses to the rear and the side do meet the requirements of the local plan. As such, I do not consider that the proposal would give rise to any harmful overlooking or loss of privacy. I also consider that fencing along the boundary, the requirement to protect existing trees, and the requirement for the submission and approval of additional landscape planting and boundary treatments would further mitigate any potential for overlooking, loss of privacy or perception of the same.
20. Comments have also been made over the increased density of development on the site which would result from the appeal proposal. It is of course undeniable that the proposal would increase the density of the site. However, given the size of the site and the size of the proposed dwellings, I do not consider that this increased density would cause harm to the character or appearance of the area. As set out above, I consider that the proposal would make effective use of the land in a manner consistent with the character of the area.
21. Representations have also raised the issue of restrictive covenants. The planning process does not override separate legal rights, nor does it provide legal rights where none currently exist. As such, it remains for the appellant to secure such rights, separately from the planning application and appeal process.
22. Other concerns over the level of traffic, air quality and disturbance from construction traffic and activity have been addressed by the Council and their consultees in their Officer Report. Having regard to the submission, the consultation responses, representations and that Report, I am satisfied that the proposal would not cause harm in those respects.

Conditions

23. Having had regard to the requirements of the National Planning Policy Framework and the Planning Practice Guidance (PPG) I have imposed standard conditions concerning commencement (1) and compliance with the submitted plans (2).
24. The Council has suggested a number of conditions to be attached, should planning permission be granted. I am satisfied that conditions 2, 5, 10, 11, 15 and 16 are necessary to ensure the satisfactory appearance of the completed development. Conditions 6, 7 and 9 are necessary to ensure that the site can be safely accessed. Condition 7 is necessary to ensure that neighbouring residential amenity is protected during the construction phase and upon occupation of the development, condition 8 ensures that provision is made for electric vehicle charging. Conditions 10, 11 and 12 ensure the appropriate protection of the natural environment, and conditions 13 and 14 ensure the proper management of surface water drainage. Conditions 7 and 10 are

required to be pre-commencement conditions as these are matters which could not be addressed at any later stage.

25. The Council have requested condition 13 in response to an identified local potential for surface water flooding. This potential is identified in the submitted Flood Risk Assessment and Drainage Strategy, and the need for mitigation is supported by the condition 14, the Flood Risk Supplementary Planning Document 2016 and policies in the Core Strategy. As such, I consider that the restriction of permitted development rights set out in the condition is clearly justified, reasonable and necessary in this case, meeting the tests in the Framework and PPG for the specific restriction of permitted development rights.
26. The conditions overall therefore meet the tests in, and requirements of both the Framework and the PPG.

Conclusion

27. I have found above that the proposal does not conflict with the development plan with regard to the effective use of land to meet the housing need of the area, having regard to housing mix. I have also found that whilst there is some conflict between development plan policy and the Framework with regard to affordable housing contributions, in this case, I consider that this is outweighed by the compliance with the overall aim of both the Framework and the Core Strategy to deliver additional housing, and increase the delivery of affordable housing.
28. As such, I consider that overall the proposal accords with the development plan and there are no material considerations of sufficient weight to indicate that a decision should be taken otherwise.
29. For the reasons given above I conclude that the appeal should be allowed, and planning permission granted.

S Dean

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. That the development hereby permitted shall be carried out in accordance with the following approved plans:
 - AAL-19-189-P01 Rev A
 - AAL-19-189-P02 Rev A
 - AAL-19-189-P03 Rev A
 - AAL-19-189-P04 Rev A
 - AAL-19-189-P05
 - DPA-6074-01 Rev A
 - DPA-6074-02 Rev A
 - DPA-6074-03 Rev A
3. No development above ground floor level shall take place until samples of the materials to be used on the external faces and roof of the buildings have been submitted to and approved in writing by the borough council. The development shall be carried out in accordance with the approved details.
4. The first floor front and side elevations 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 it serves. The windows shall be permanently retained in that condition thereafter.
5. The development hereby permitted shall have no windows or other openings (other than those shown on drawing number AAL-19-189-P01 Rev A, AAL-19-189-P02 Rev A, AAL-19-189-P03 Rev A and AAL-19-189-P03 Rev A) inserted into the elevations unless planning permission has first been granted by the Borough Council.
6. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
7. No development shall commence until a Construction Transport Management Plan, to include details of: a) parking for vehicles of site personnel, operatives and visitors b) loading and unloading of plant and materials c) storage of plant and materials d) measures to prevent the deposit of materials on the highway e) on-site turning for construction vehicles has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.
8. The development hereby approved shall not be occupied unless and until each of the proposed dwellings are provided with a fast charge 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.

9. No part of the development shall be first occupied unless and until the proposed modified access to Fairmile Lane has been constructed and provided with a passing place in accordance with the approved plans.
10. No development shall commence until tree protection measures, as set out in the November 2019 dpa Arboricultural Report and associated drawings (DPA-6074-01 Rev A, DPA-6074-02 Rev A, DPA-6074-03 Rev A), have been installed and a site meeting has taken place with the project arboriculturalist and the relevant Officer of the Council to allow inspection and verification of the protection measures.
11. In this condition "retained tree" means an existing tree, which is to be retained in accordance with the approved plans and particulars; 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 shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars, without the written approval of the Borough Council. Any pruning shall be carried out in accordance with British Standard 3998 (tree work) and in accordance with any supplied arboricultural method statement. b) if any retained tree is removed, 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 at such time, as may be specified in writing by the Borough Council. c) tree protection shall be maintained in-situ and not moved or removed until all construction has finished and equipment, materials, or machinery are removed from site. d) any arboricultural protection information and plans submitted as part of the application, and listed in the approved plans condition, or submitted to meet a condition of consent shall be implemented and adhered to at all times during the construction process unless otherwise agreed in writing with the Borough Council. This shall include any requirement for arboricultural supervision and site monitoring. This condition may only fully be discharged on completion of the development subject to satisfactory written evidence of contemporaneous supervision and monitoring of tree protection throughout construction by the appointed arboriculturist.
12. The development shall be carried out in accordance with the conclusions and recommendations in the Ecological Assessment by Ethos, dated September, 2019.
13. Notwithstanding the provisions of the Town & Country Planning General Permitted Development Order 2015 (as amended - or any Order revoking or re-enacting that Order) no development falling within Part 1, Class A of Schedule 2 to the said Order shall be carried out within the curtilage of the dwellinghouse, unless planning permission is first granted by the Borough Council.
14. All flood mitigation measures shall be carried out in accordance with the approved details set out in the Flood Risk Assessment prepared by Lightwood Planning received on 21st October 2019.
15. Prior to first occupation of the development hereby approved, details of the communal bin store shall be submitted to Local Planning Authority for approval. The details once approved shall be implemented and permanently maintained.

16. Prior to first occupation written details and plans of the following landscaping works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. This scheme shall include: a) positions, height, species, design, materials and type of boundary treatment(s); b) hard surfacing materials; c) secure and covered cycle storage; and d) refuse/recycling bin storage and collection. Development shall be carried out in accordance with the approved details and shall be maintained.

End of schedule of conditions