



Appeal Decision

Site visit made on 6 November 2020

by R. Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 December 2020

Appeal Ref: APP/K3605/W/20/3248418

Birch Mead, The Ridgeway, Oxshott, Leatherhead KT22 0LJ

- 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 and Mrs McGuinness against the decision of Elmbridge Borough Council.
 - The application Ref 2019/2745, dated 3 September 2019, was refused by notice dated 7 February 2020.
 - The development proposed is the erection of 2no. three bedroom dwellings following demolition of existing property.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2no. three bedroom dwellings following demolition of existing property at Birch Mead, The Ridgeway, Oxshott, Leatherhead KT22 0LJ in accordance with the terms of the application, Ref 2019/2745, dated 3 September 2019, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Issue

2. The appellant, as part of their evidence, has produced an alternative revised block ground floor and roof plan (drawing references: A_PL_560_G; and A_PL_550_F) with an amended parking layout to deal with comments made at the South Area Town Planning Sub-Committee regarding the accessibility of the car parking spaces for proposed Plot 2.
3. It is important, however, in the interests of ensuring that no one with an interest in this appeal is unfairly prejudiced, that what is considered at appeal is essentially what was considered by the Council at planning application stage. As set out in Annex M of the Procedural Guide Planning Appeals - England (November 2020), the appeal process should not be used to evolve a scheme. Further, whilst I have seen the minutes of the Sub-Committee, I do not have before me the full comments to establish whether the amended layout does, in fact, deal with the concerns. Therefore, I have considered this appeal based on the plans submitted to the Council with the planning application.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The character and appearance of the area, with regards its layout and proximity to boundaries.

- The living conditions of existing occupiers at Eavescote, The Ridgeway with regards daylight, sunlight and outlook.

Reasons

Character and appearance

5. The application site comprises a large detached 2-storey house known as 'Birch Mead' located on a corner plot on the western side of The Ridgeway, a private road. The Ridgeway is an attractive residential cul-de-sac of medium and large sized house with varying architectural styles and roof forms. It falls within sub-area COS09: Oxshott of the *Design and Character Supplementary Planning Document Companion Guide: Cobham, Oxshott, Stoke D'Abernon and Downside* (April 2012) (Design and Character SPD) which describes the area as comprising medium and large houses, usually set around a crescent or cul-de-sac. The SPD recognises that the variety of plot sizes and variation in density offers an opportunity for development that could support higher densities.
6. As a result of its corner location, the appeal site has a wide frontage with part of the garden to the side of the existing house, adjacent to its neighbour, Eavescote. The larger house proposed for Plot 1 would be located on a similar footprint to Birch Mead. It would be set slightly forward of the existing building line but 'turns the corner' so that the eastern and western ends of the house remain parallel to The Ridgeway. The urban block plan shows that on the western side of The Ridgeway plots are typically smaller, with houses covering more of their plots and site frontage, than the eastern side. Whilst proposed Plot 2 is generally more constrained than Plot 1, being sited on the side garden of Birch Mead, it would nonetheless have a comparable frontage to its neighbours and both Plots would integrate well with the prevailing pattern of development.
7. I saw from my site visit that there are examples of houses on The Ridgeway that are set close to the side boundaries of plots, including Tykes Cottage, Stepping Stones, Redwood and Oakwood. Although there is disagreement as to whether there has been any past subdivision of plots on The Ridgeway, these examples form part of the established character of the area. Proposed Plot 1 would be located slightly closer to the site boundary with its neighbour, Hampers Croft, than the existing house. The northern 2-storey elevation of the proposed house would be set parallel to the common boundary around 2.7m from the flank elevation of Hampers Croft. Plot 2 would be set 1m from the boundary and around 2.8m from Eavescote. Although the proposed separation distances to boundaries are modest they are nonetheless consistent with other houses on The Ridgeway and therein the character of the area.
8. The proposed houses would be around 700mm higher (to the ridge) than their neighbours at Eavescote and Hampers Croft. However, Plot 1 has been designed with a hipped roof and Plot 2 a barn hipped roof which pulls the bulk and massing of the houses away from the boundaries both physically and visually. Combined with the separation distances, the design of the roof form means that Plots 1 and 2 would appear well spaced with each other and their neighbours, rather than cramped or contrived.
9. The Design and Character SPD provides guidance on the provision of gardens and sets out that *'in some instances, a minimum garden depth of 11 metres should be provided, which is a dimension that Elmbridge has often required.*

However, this will depend on the character of the area and the type of development proposed. The gardens of Plot 1 and 2 at their longest point would meet the Council's 11m standard but the irregular shape means that parts of the garden would fall below the guidance in the SPD. The gardens would nonetheless provide usable amenity space appropriate to the size of the 3-bedroom houses proposed. Although smaller than other gardens on The Ridgeway, which are typically linear in form, they would not be discernible from the public realm would not therefore cause harm to the overall character of the area.

10. For these reasons, I find that the appeal proposals would not cause harm to the character and appearance of area. Accordingly, they would accord with Policy CS17 of the Elmbridge Core Strategy (July 2011) (CS) because they maximise the efficient use of urban land and integrate sensitively with the locally distinctive townscape. They would also accord with Policy DM2 of the Elmbridge Local Plan Development Management Plan (April 2015) (DMP) in so far as it requires new development to achieve a high quality design, and preserve or enhance the character of the area, taking into account the guidance in the Design and Character SPD.
11. Further, the proposals would be consistent with paragraphs 117 and 124 of the National Planning Policy Framework (the Framework) which require planning decisions to promote the effective use of land in meeting the need for new homes and the creation of high quality buildings and places.

Living conditions

12. The appeal site is located between neighbouring residential properties known as Eavescote and Hampers Croft. Eavescote is a detached, 2-storey house that is set off the common boundary with the appeal site by around 1.8m. The common boundary tapers slightly so that the front of Eavescote is further from the boundary than the rear.
13. The house proposed at Plot 2 would run parallel to the common boundary offset by 1m and set forward of the main elevation of Eavescote with a projecting feature broadly aligning with its garage. Its siting means that the south west corner of the proposed house would be visible from the front windows of Eastcote although at a reasonable distance. The 45-degree rule shown at Figure 5.6 of the Design and Character SPD is one tool used to assess the effect of new development on a neighbour's amenity. When taken from the outer edge of Eavescote's nearest habitable room window on the front elevation, the 45 degree angle would not be breached. Whilst there would be some change in outlook from the neighbouring house, that outlook would remain largely open, facing The Ridgeway. The relationship where one house sits slightly forward of another is not uncommon and I am satisfied that proposed Plot 2 would not be oppressive or overbearing when viewed from the front facing windows of Eavescote.
14. Those windows on the side elevation of Eavescote would look directly onto the proposed house. At ground floor, to the front, there are two windows to a habitable room (located either side of the chimney) and to the rear a door to a living area. At first floor, there is a window to a bedroom. Other openings on the side elevations are to non-habitable rooms and this is not disputed by the parties.

15. Although there is a close boarded fence along part of the common boundary, the front section is 'hit and miss' panelling which affords a relatively open aspect from the ground floor windows. Because of the location of proposed Plot 2 the outlook from the front windows (at ground and first floor) would change from this relatively open aspect to a largely blank elevation. Harm would therefore be caused to the outlook from these windows which, in isolation, could be found overbearing. To the rear, there is a living area that has a door to the side elevation which is closer to the common boundary than the front. Because this window overlooks a close boarded fence the outlook would not substantively change.
16. The rooms at both the front and back of Eavescote are dual aspect and it is not uncommon to find secondary windows on side elevations close to neighbouring houses. The main orientation of these habitable rooms is either toward The Ridgeway or over the back garden. This principal outlook would remain good and I therefore do not find the overall harm to outlook to be significant, or sufficient to dismiss the appeal on that basis alone.
17. A Daylight and Sunlight Assessment (the DSA) was submitted by the appellant in support of their appeal. The Building Research Establishment (BRE) guidance targets for daylight, the Vertical Sky Component (VSC), is 27%. The DSA shows that all main windows to habitable rooms that I described above would remain unaffected and would meet the BRE guidelines. The side windows would, however all see a reduction of VSC and notably windows identified as W2 at ground and first floor are recorded as seeing up to an 80% reduction in VSC, well in excess of the 20% found acceptable by BRE. I note the concerns raised on behalf of the occupiers of Eavescote that the results for the second window (W3) to the front, ground floor room has not been included in the DSA. I have, however, reasonably assumed given its location that the reduction to VSC would be similar (or even greater) than W2.
18. There would therefore be an undeniable loss of direct daylight to the side windows of Eavescote which the existing occupiers would notice. However, those rooms affected would still have a daylight distribution of between 97% and 100%. This is because the rooms are dual aspect and therefore benefit from an alternative source of daylight. They would therefore remain well-lit and meet BRE guidelines. Concerns have been expressed on behalf of the neighbours in terms of their enjoyment of these secondary windows, but it is accepted practice and appropriate that the daylight to a room, rather than individual windows, should be considered.
19. The DSA also shows that the windows to the front elevation of Eavescote meet BRE guidelines for the number of available probable sunlight hours (APSH). Although there would be a loss of annual APSHs that reduction would comfortably fall within the BRE guidelines. Similarly, I am satisfied that around 79% of the garden of Eavescote and 63% for Hampers Croft would receive at least two hours of sunlight on 21st March and there would be very little change to this as a result of the proposal.
20. I note concerns raised on behalf of the occupiers of Eavescote that the mirror image analysis has not been included in the DSA. Given, however, my conclusions in respect of the assessment of the development as proposed, I do not find it necessary to consider the mirror image principle further here.

21. For the reasons above, the proposal would not cause significant harm to the living conditions of existing occupiers of Eavescote with regard outlook and light. The proposals therefore accord with DMP Policy DM2 in so far as it requires development proposals to protect the amenity of adjoining occupiers. They also accord with paragraph 127 of the Framework which requires a high standard of amenity for existing and future users.

Other Matters

22. I saw from my site visit that although The Ridgeway is relatively narrow, it is quiet, and vehicles appear to move at low speeds. Whilst the access to proposed houses is close to a bend in the road, because of these characteristics, cars would be able to manoeuvre into and out of the access and parking areas for both Plots, but particularly Plot 2, without causing substantive harm to highway safety or convenience.
23. Representations have 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.
24. Concern has also been expressed in representations that the proposal would set a precedent resulting in other plots on The Ridgeway coming forward for multiple houses. In this regard, any application would be assessed by the Council on the characteristics of each site and merits of the proposal before them.

Planning Balance and Conclusion

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. It is common ground between the main parties that the Council cannot currently demonstrate a five-year supply of deliverable housing sites.
26. The Framework is clear that in such circumstances the policies most important for determining applications/appeals are considered out-of-date and that the '*tilted balance*', as set out under paragraph 11(d) of the Framework, applies. For decision making, this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole.
27. In terms of the scheme's benefits, making efficient use of land and the provision of an additional 3-bedroom house in an area where there is an acknowledged shortfall and recognised need would make a small but important contribution to the Council's housing deficit. I afford this significant weight.
28. Overall, the proposal would not cause significant harm to the living conditions of Eavescote through loss of outlook or daylight and the harm I have identified to the side windows of Eavescote would not significantly and demonstrably outweigh the benefits of the proposal. The appeal proposal therefore represents sustainable development that accords with the Framework's policies when taken as a whole.

29. For these reasons, and taking all other matters into account, the appeal is allowed.

Conditions

30. The Council has suggested conditions that the appellant has had the opportunity to comment upon and the suggested Pre-Commencement conditions were agreed with the appellant prior to determination of the planning application. I have considered the conditions against advice in the Framework and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes.
31. I have imposed a condition in relation to the commencement of development and in the interests of certainty, a condition specifying the approved plans is required. To ensure that a satisfactory external appearance is achieved, conditions are required that samples of external materials and details of boundary treatments and hard surfaces be submitted and approved.
32. Conditions to ensure that the proposal adheres to the measures set out in the Arboricultural Report, including implementing tree protection and retaining existing trees and hedges, are necessary in the interests of maintaining the character and appearance of the area.
33. A pre-commencement condition requiring the submission of a Construction Transport Statement is necessary in the interests of highway safety and neighbouring living conditions and would address local concerns regarding construction traffic.
34. In the interests of reducing pollutants and encouraging sustainable transportation choices, a condition is reasonable and necessary to secure that each dwelling is served by an Electric Vehicle charging socket. Whilst the Council, in suggesting a draft condition to this effect, has specified requirements for such sockets, from the evidence before me such detailed specifications are not set out in associated local policy or guidance. It would not therefore be reasonable for the condition to be so prescriptive and shall instead be more flexibly worded. In any event, the final details would be secured by way of a scheme to be approved in writing prior to the first occupation of the development.
35. Because of the location of the site within Flood Zone 2, it is necessary, in the interests of minimising flood risk, for a condition requiring flood mitigation and Sustainable Urban Drainage measures. However, as the site frontage and much of The Ridgeway is within Flood Zone 1, I do not find a personal flood plan to be necessary and have accordingly omitted this condition.
36. I have also omitted the condition requiring the provision and retention of bin and recycling stores as there is sufficient space within the gardens of the houses for this provision to be made without being controlled.
37. Conditions requiring the proposal to be developed in accordance with the measures and enhancements identified within the submitted ecological appraisal are necessary in the interests of biodiversity. Because the measures and enhancements identified do not include additional tree and vegetation planting, a condition requiring native species is not necessary.

38. As set out in the Framework, conditions restricting the future use of permitted development rights should only be used where there is clear justification to do so. In the interests of protecting the living conditions of neighbouring occupiers, and to ensure the houses remain of a size appropriate to their gardens and plot, I am satisfied that it would be both reasonable and necessary to withdraw the future use of permitted development rights with respect to any additional enlargements, improvements or alterations, including to the roof covered by Schedule 2, Part 1, Classes A, B and C of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

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 accordance with the following list of approved plans: A_PL_500 Rev 00 received on 30/09/2019; A_PL_100 Rev D, A_PL_150 Rev B, A_PL_300 Rev C, A_PL_310 Rev D, A_PL_350 Rev C, A_PL_550 Rev E, A_PL_560 Rev F received on 24/10/2019.
- 3) No above ground development 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. Development shall be carried out in accordance with the approved details.
- 4) 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;

Development shall be carried out in accordance with the approved details and shall be maintained thereafter.

- 5) 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 the approved tree protection plan(s) DPA-7085-02 Rev A and DPA-7085-03 Rev A (by DPA Arboricultural Consultants dated September 2019) and maintained for the course of the development. The development thereafter shall be implemented in strict accordance with the approved details and method statements contained in (Arboricultural Report ref: DPA7085/AIS/Rev 1 by DPA Arboricultural Consultants dated September 2019).
- 6) 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 proposed 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.

- 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) provision of boundary hoarding behind any visibility zones
 - (e) measures to prevent the deposit of materials on the highway
 - (f) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused 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 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) Notwithstanding the details within the submitted Flood Risk Assessment, prior to the commencement of the development hereby approved, details of all flood mitigation and Sustainable Urban Drainage measures shall be submitted to and approved in writing by the Local Planning Authority. The approved development shall be carried out in accordance with the approved details.
- 10) The development shall be carried out in accordance with the recommended mitigation and enhancement measures as proposed in the Conclusions and Recommendations section of the Ecology Report (ref: 193306/ARB (AA Environmental Limited) dated 23 August 2019 and content of the Letter dated 14 January 2020.
- 11) 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(es) A, B and C of Schedule 2 to the said Order shall be carried out within the curtilage of any dwellinghouse, unless planning permission is first granted by the Borough Council.