
Appeal Decision

Site visit made on 9 November 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2020

Appeal Ref: APP/K3605/W/20/3254951

9 Leigh Court Close, Cobham KT11 2HT

- 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 David Mumford of Rushmon Homes against the decision of Elmbridge Borough Council.
 - The application Ref 2019/2309, dated 14 August 2019, was refused by notice dated 12 May 2020.
 - The development proposed is construction of 5 no. apartments with basement parking.
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Decision

1. The appeal is allowed and planning permission is granted for construction of 5 no. apartments with basement parking at 9 Leigh Court Close, Cobham KT11 2HT in accordance with the terms of the application, Ref 2019/2309, dated 14 August 2019, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Rushmon Homes against Elmbridge Borough Council. This application is the subject of a separate decision.

Procedural Matter

3. A Unilateral Undertaking¹ was submitted during the appeal process. This would secure a financial contribution to mitigate the effect of the development on the Thames Basin Heaths Special Protection Area. I shall return to this later.

Main Issues

4. The main issues are:
 - a) the effect of the proposal on the character and appearance of the area;
 - b) the effect of additional traffic on highway safety within Leigh Court Close and the living conditions of residents;
 - c) whether the scheme would make adequate provision for parking; and
 - d) whether the proposal should make a contribution towards affordable housing.

¹ Dated 2 November 2020

Reasons

Character and appearance

5. The prevailing pattern of development within Leigh Court Close comprises detached dwellings set within spacious plots. At the end of the close is Leigh Court, a large house which has been divided vertically to create 3 houses. Unlike the planned estate developments to the north and south, the residential properties in the close are individually designed which provides a more informal feel. A predominance of greenery contributes to an attractive semi-rural character which belies the location within a built-up area.
6. No 9 lies midway along the close on its south side. Planning permission has been granted² to redevelop this 2-storey property with a larger dwelling. The appellant advises that for commercial reasons the extant permission would be implemented in the event of this appeal being dismissed and there is no substantive evidence to demonstrate otherwise. The fallback position is genuine and I have attached it significant weight as a material consideration.
7. The proposal is to deliver 5 flats within an identical building envelope to that already permitted. The plans show differences in fenestration, but these are confined to the side and rear elevations and they are not significant in the context of the street scene and surrounding area. The principal elevation would be indistinguishable from the approved scheme and the building would retain the outward appearance of a single large dwelling. The additional parking required by the flatted development would be hidden underground and it would be served by a ramp in the same position. There would be a need for a refuse store, which is not part of the extant permission, but this fenced enclosure would be modestly sized and discreetly sited.
8. Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015) (DMP) states that development proposals must be based on an understanding of local character and take account of the relevant character assessment companion guide in the Design and Character SPD (SPD). Part b. of the policy stipulates that proposals should preserve or enhance the character of the area, taking account of design guidance detailed in the SPD. The bullet point criteria are largely concerned with the physical attributes of development. Applying these to the appeal scheme, there would be no policy conflict, bearing in mind the Council's acceptance of a substantively similar building on the site.
9. The relevant character assessment companion guide is that for Oxshott, Stoke d'Abernon & Downside. This places the site within sub-area COS06: Oxshott Way environs which is described as mainly comprising a private estate of detached houses set in generous plots. The guidance seeks to ensure that future development reflects the consistency of the house types, and the way they address the roadside. It cross refers to Case Study CS1 in the SPD. Whilst this case study is theoretical, it has strong similarities to the appeal scheme. There is nothing within the SPD or companion guide which suggests that flatted schemes are inappropriate within sub-area COS06.
10. Development Advice Note 2 (Optimising Development Land) published in September 2018 recognises the importance of optimising the development potential of housing sites. The Council is explicit in stating that it 'does not

² Council Ref 2019/0633

accept that smaller units and higher densities detrimentally affects the character of an area'. This guidance has been introduced as a tool to remedy the housing land supply deficit (to which I shall return later) and I have attached it great weight as a material consideration.

11. The Planning Committee's case is that since there are no flatted developments on Leigh Court Close the proposal is automatically unacceptable. However, this position is inconsistent with the Council's own guidance and it does not identify those aspects of the scheme that are deemed to be harmful. DMP Policy DM2 focuses on achieving high quality design. Insofar as the physical attributes of development are concerned, the proposal would not have an unacceptable adverse impact on the prevailing pattern of built development in the close or the character and appearance of the area. There would be no conflict with Policy DM2 in this regard.

Traffic impacts

12. Leigh Court Close is a cul-de-sac serving approximately 16 residential properties. It is a private road but signage indicates that it is subject to a 20 mph speed limit. The carriageway width varies, but the majority of the length of road is sufficiently wide for a car and pedestrian to pass safely, applying the standards in Manual for Streets. Some sections of the road are too narrow for two cars to fit side by side; however, there are a number of locations where an opposing vehicle can wait while the other passes.
13. The appellant's transport consultant predicts that the proposal would generate between 1 and 2 vehicle movements in the peak hour, equating to 1 additional vehicle every 30 minutes. This analysis is not contested by the Council and the authority provides no technical evidence of its own. Even with the increase in traffic associated with the appeal scheme, which I acknowledge would include some delivery vehicles, the flows along Leigh Court Close would remain low. Crucially, vehicle speeds would also be low, as they are currently. The majority of traffic is residents who are aware of the road conditions and adjust their driving accordingly; for those who are less familiar, the varying width and alignment of the road encourages them to take care.
14. The access from the site onto Leigh Court Close has clear sight lines in the direction of Leigh Court Road, but it also has restricted visibility to the right due to the existence of a boundary wall. Whilst this sight line is substandard, there is no evidence in the form of accident records to demonstrate that the access is dangerous. In practice, emerging drivers will edge out into the close very slowly and cautiously to the point where better views of oncoming vehicles are available. Traffic speeds are low to the point that collisions are unlikely.
15. The contention on the part of the Council is that the additional traffic would be harmful to both highway safety and the amenities of residents of Leigh Court Close. For the reasons set out above, I do not consider that there would be unacceptable impacts on highway safety. To the extent that there may be occasional instances where vehicles may need to wait or reverse to enable another driver to pass, there may be some limited inconvenience to existing residents. However, these would not amount to significant impacts, or ones which would have a material adverse effect on living conditions. There would be no conflict with DMP Policy DM7 insofar as it seeks to ensure that development does not cause traffic nuisance or result in highway safety issues.

Parking

16. The Council's adopted parking standards set out within Appendix 1 to the DMP require 1.5 spaces per 2 bed residential unit and 2 spaces per 3 bed residential unit, with consideration being given to additional visitor spaces in suburban areas. Applied to the appeal scheme, this would equate to 8 spaces plus visitor parking. The proposed development would provide 10 car parking spaces in a basement with a further 2 surface spaces to the front of the building. This comfortably meets the standards and I note that the Council does not take issue with the quantum of parking provided. Its concern is with the layout of the basement parking which it considers to be substandard.
17. The proposed basement spaces would measure 2.7 m x 4.8 m. An additional clearance of 0.3 m would be provided from the ends of the bays to the wall, and there would be a further 0.3 m of width for those spaces which abut walls to the side. These dimensions comfortably exceed those set out in the relevant professional recommendations³ for the design of underground car parks.
18. Swept path assessments demonstrate how a large private estate car could enter and leave each bay safely. The Council describes the arrangement as tight, but the assessments do not rely on the additional 0.3 m clearance from the bay to basement wall so in reality there is more room to manoeuvre than assumed. Based on the evidence before me, I have no reason to believe that a typical SUV would be unable to safely negotiate the proposed layout. The turntable would provide added convenience, but it is not essential for the basement parking to operate.
19. Further guidance is set out in the Council's Parking Supplementary Planning Document, which was adopted after the application was determined. This advocates a minimum space length of 5.5 m where that space is confined by walls. The appellant supplied an amended plan prior to the committee meeting showing how the layout could be adjusted to meet the then emerging SPD requirement. The Council made its decision against the original plans but no party would be prejudiced were I to make my decision based on the amended plan. The revised arrangement would not alter the outward appearance of the development and moreover would not prejudice cycle parking provision.
20. The implication of inadequate parking is that vehicles would park outside of the site to the detriment of highway safety and the convenience of road users. For the reasons I have set out above, the scheme would not be substandard. However, even if I had come to the opposite view, there would be limited opportunity in Leigh Court Close, given its width and alignment, for vehicles to park at the edges and on verges. It is unlikely that occupiers of the apartments would wish to park further afield and therefore the suitability of the basement parking would be a key factor in deciding whether to occupy the apartments.
21. The Council argues that the car park would not have a safe access/egress due to its narrow nature. The ramp would be 3.7 m wide; this would be sufficient to accommodate a vehicle entering and exiting the basement. It would also be very short so the potential for conflicts between vehicles would be limited – bearing in mind the small number of vehicle movements generated by 5 apartments.

³ 'Design recommendations for multi-storey and underground car parks', The Institute of Structural Engineers (2011)

22. Overall, I am satisfied that parking provision would be adequate. There would be no conflict with DMP Policy DM7 insofar as it requires appropriate parking provision and compliance with the Elmbridge Parking Standards.

Affordable housing

23. Policy CS21 of the Elmbridge Core Strategy (2011) (ECS) states that on sites of 5 dwellings the Council will require 20% of the gross number of dwellings to be provided on-site as affordable housing. Paragraph 63 of the National Planning Policy Framework (the Framework), which post-dates adoption of the ECS, states that affordable housing should not be sought for residential developments that are not major developments (defined as 10 or more homes).
24. The Council acknowledges national policy but continues to consider on a case by case basis whether circumstances warrant the application of Policy CS21. It points to the difficulty in delivering affordable housing in the least affordable authority outside of London, and the significant contribution that small sites make towards affordable housing provision. There is a large body of evidence supporting the Council's position and a growing number of appeal decisions where Inspectors have upheld its approach.
25. Notwithstanding the above, the Council has indicated its willingness to reduce or waive contribution requirements where justified by viability assessments for individual sites. Indeed, Policy CS21 envisages that such scenarios may occur. The appellant has submitted an assessment which concludes that the proposed development cannot viably provide a contribution towards affordable housing. This document was reviewed, at the applicant's expense, by the Council's appointed viability assessors who have calculated that even with a reduced developer profit of 15% the scheme produces a deficit.
26. Despite the advice of its own assessors, who I would expect to be specialists in their field, the Council remains unconvinced that a contribution is not possible. It does not provide any convincing arguments to support its position. Although objectors make criticisms of the viability assessment there is no compelling evidence to support the assertion that it is contrived and distorted. The methodology used reflects Government guidance on viability.
27. Clearly, viability assessments are desktop exercises and they are only as accurate as the inputs used in the model. A Late Review Mechanism (LRM) would provide an opportunity to review actual build costs and sale prices and secure a share of any uplift in profit. Such an approach is included within the recently adopted Development Contributions Supplementary Planning Document. However, the Council accepts that the reason for refusal does not require the appellant to enter into an LRM. That being the case, it would not be appropriate for me to dismiss the appeal based on the absence of such a mechanism.
28. I note that after discussions with officers the applicant agreed to make a contribution of £10,000 towards affordable housing. However, it appears that this was a without prejudice offer to avoid the cost of going to appeal. It does not establish that an affordable housing contribution is viable and is not something to which I have attached any significant weight.
29. Accordingly, I conclude that there is insufficient evidence to justify a contribution towards affordable housing. The conflict with Policy CS21 is outweighed by the viability information which demonstrates that a contribution

would represent a disproportionate burden on the developer and threaten the deliverability of the scheme. Given the significant shortfall of housing in Elmbridge, and the acute need for new homes, this is a consideration to which I have attached substantial weight.

Other Matters

30. The proposal has the potential to cause temporary nuisance and inconvenience to existing residents during the construction phase. This can be addressed by imposing a condition requiring the submission of a construction transport management plan for approval prior to any development commencing.
31. Residents have raised various other highway concerns, including in relation to access for emergency, delivery and refuse collection vehicles, damage to the road itself and the adequacy of sight lines onto Leigh Hill Road. I have given careful consideration to these matters but have no reason to disagree with the Highway Authority's view that the proposal is acceptable in highway terms.
32. I am told that there is a restrictive covenant on the site which would prevent the appeal scheme from going ahead. However, a grant of planning permission would not affect the legal status of any covenant.
33. The proposed building envelope would be identical to the fallback permission for a dwelling, and it would be directly comparable in terms of its effects on adjoining occupiers in relation to daylight, sunlight and outlook. Conditions can be used where necessary to require the installation of obscure glazing and balcony privacy screens. Whilst I note the concerns about the bin store, there is no compelling evidence to support the argument that this would constitute a health hazard for neighbours.
34. I have taken account of the other concerns raised, including in relation to noise from cars using the basement parking, the adequacy of the submitted plans, precedent and the lack of prior discussions with residents. However, based on the information before me, none of these matters would form grounds to dismiss the appeal.

Appropriate Assessment

35. The appeal site lies within 5 km of the Thames Basin Heaths Special Protection Area (SPA). This European designated site provides habitat for important ground-nesting birds species including nightjars, woodlarks and Dartford warblers. It has been established that residential development within the zone of influence would likely result in harm to the protected area through additional recreational disturbance. The proposal would create a net gain of dwellings and in combination with other developments permitted in the area there would be a likely significant effect on the integrity of the SPA.
36. ECS Policy CS13 requires proposals to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects on the SPA. Those measures will be based on a combination of Strategic Access Management and Monitoring (SAMM) and the provision of Suitable Accessible Natural Greenspace. The latter is delivered through the Community Infrastructure Levy mechanism whereas the former is secured by a legal agreement. The SAMM project includes a monitoring programme and access management element focusing on non-infrastructure measures such as wardening, leaflets and educational material.

37. The appellant has provided a signed Unilateral Undertaking which secures a financial contribution towards SAMM projects in line with the Development Contributions Supplementary Planning Document. The measures funded in this manner would ensure that the proposal does not harm the integrity of the SPA and thus secure compliance with ECS Policy CS13, Policy NRM6 of the South East Plan and the requirements of the Habitats Regulations⁴. The obligations within the Unilateral Undertaking are necessary to make the proposal acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. As such, they comply with Regulation 122 of the Community Infrastructure Levy Regulations.

Conditions

38. The Council has provided a list of suggested conditions for use in the event that I am minded to allow the appeal. I have considered these against the tests for conditions which are set out in the Framework and Planning Practice Guidance.
39. In addition to the standard commencement condition I have imposed conditions specifying the approved plans and materials to provide certainty. To protect the living conditions of local residents during construction a condition is necessary to secure the submission of a construction transport management plan for the Council's approval prior to any development commencing.
40. In the interests of preserving the character and appearance of the area a pre-commencement condition is necessary to secure tree protection measures, with supplementary conditions to ensure that these measures are monitored by a suitably qualified arboriculturist and maintained for the duration of construction. For the same reason, conditions are needed to ensure the retention of existing trees and hedges and to require the submission and implementation of a landscaping scheme.
41. To protect the privacy of adjoining residents, conditions are necessary to require the installation of obscure glazing and balcony screens prior to the development being first occupied. A further condition is needed to ensure that any future openings in the flank elevations require planning permission.
42. Conditions are necessary to ensure satisfactory provision of the on-site parking, including charging facilities for electric vehicles. It is reasonable for the condition to require the basement parking to be laid out in accordance with the revised plan which ensures compliance with the new Parking SPD.

Planning Balance and Conclusion

43. The proposal would fall below the minimum 30 dwellings per hectare density required by ECS Policy CS17. Nevertheless, it would make a more efficient use of land than is presently the case to deliver 5 new homes (a net increase of 4) within the built-up settlement area of Cobham, in a location which is within walking distance of public transport and the town centre. The new 2 and 3 bed apartments would comply with ECS Policy CS19 insofar as this seeks to secure a range of house types and sizes which reflect the most up-to-date Strategic Housing Market Assessment (SHMA). The SHMA indicates a requirement for smaller units which the scheme would provide.

⁴ The Conservation of Habitats and Species Regulations 2017

44. Overall, the development would make a small but meaningful contribution to boosting housing delivery in Elmbridge, in circumstances where the Council accepts that it cannot demonstrate a 5 year supply of deliverable housing sites. The latest annual monitoring report 2018-2019 indicates only 3.13 years supply which is indicative of an acute housing shortage.
45. Paragraph 11(d) of the Framework indicates that in such circumstances, where the requisite supply of housing does not exist, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
46. None of the policies in the Framework that protect areas or assets of particular importance as listed in Footnote 6 apply in this case or provide a clear reason for disapplying the presumption in favour of sustainable development. As I have explained above, there would be occasional inconvenience to existing residents arising from the small increase in vehicle movements on Leigh Court Close, but these adverse impacts would not be significant. Taking the scheme overall, there are no adverse impacts that would significantly and demonstrably outweigh the social benefits of delivering additional housing and the economic benefits to the construction sector. The proposal would constitute sustainable development in the terms of the Framework.
47. I conclude that the proposal accords with the policies of the development plan taken as a whole and there are no material considerations that would justify a decision otherwise than in accordance with the development plan. For the reasons set out above, I conclude that the appeal should be allowed.

Robert Parker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos. 1134-50 Rev B, 1134-51 Rev A Ground Floor Plan, 1134-52, 1134-53, 1134-55, 1134-56, 1134-61 Rev D, 1134-62 Rev B, 1134-63, DPA-69910-03 Rev E and 191196/TR/04.
- 3) 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) Programme of works (including measures for traffic management);
 - (e) Provision of boundary hoarding behind any visibility zones;
 - (f) HGV deliveries and hours of operation;
 - (g) Vehicle routing;
 - (h) Measures to prevent the deposit of materials on the highway;
 - (i) Before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused; and
 - (j) On-site turning for construction vehicleshas 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.
- 4) No development, including groundworks and demolition, shall take place and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until a pre-commencement meeting has been held on site and attended by a suitable qualified arboriculturist, representative from the local planning authority and the site manager/foreman. The site visit is required to ensure operatives are aware of the agreed working procedures and the precise position of the approved tree protection measures or/and that all tree protection measures have been installed in accordance with the approved tree protection plan(s) DPA Arboricultural Consultants 9 Leigh Court Close Cobham Surrey KT11 2HT Proposed Site Layout (Tree Protection) Drawing Number DPA-69910-03 Revision E Date Nov 2019. To arrange a pre-commencement meeting please email tplan@elmbridge.gov.uk with the application reference and contact details.
- 5) No development shall take place above slab level until full details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. This scheme shall include:
 - a) a statement setting out the design objectives and how these will be delivered;

- b) earthworks showing existing and proposed finished levels or contours;
- c) means of enclosure and retaining structures;
- d) boundary treatments;
- e) schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate;
- f) tree species, sizes, locations, planting pit design, supports, and guards or other protective measures;
- g) vehicle parking layouts;
- h) other vehicle and pedestrian access and circulation areas;
- i) hard surfacing materials;
- j) minor artefacts and structures [e.g. refuse or other storage units, signs, etc.];
- k) proposed and existing functional services above and below ground [e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant];
- l) retained historic or other landscape features and proposals for restoration, where relevant; renewable energy installations where relevant; lighting, floodlighting and CCTV;
- m) water features; and
- n) an implementation programme.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied or otherwise in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 6) The development hereby permitted shall not be occupied until the above ground floor windows and rooflights on the west and east (flank) elevations of the building have been 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 which they serve. The windows and rooflights shall be permanently retained in that condition thereafter.
- 7) Notwithstanding Drawing 1134-51 Rev A, the development hereby permitted shall not be occupied unless and until the parking and turning areas have been laid out within the site in accordance with drawing no. 1134-50 Rev B and the updated basement layout plan contained within Appendix KL7 of the Appeal Statement provided by Lanmore Consulting (Ref 191196/AP/KL/01 Dated June 2020). The parking and turning areas shall be retained thereafter for their designated purposes.
- 8) The development hereby permitted shall not be occupied unless and until at least two of the available parking spaces are provided with a fast charge socket (current minimum requirement: 7kw Mode 3 with Type 2 connector - 230 v AC 32 amp single phase dedicated supply) in accordance with a scheme to be first submitted to and approved in writing by the local planning authority.

- 9) The development hereby permitted shall not be occupied unless and until the terrace side screens have been erected in accordance with the approved plans. The screens shall be maintained permanently in strict accordance with the approved plans.
- 10) The building hereby permitted shall not be erected other than in the following materials: Freshfield Lane First Quality Multi Facings brick, Wet Case Portland Stone window cills and string course, Spanish slate tiles and Grey powder coated aluminium windows, or such other materials as have been approved in writing by the local planning authority.
- 11) The building hereby permitted shall have no windows or other openings (other than those shown on drawing number 1134-51 Rev. A, 1134-52 and 1134-53) inserted into the western and eastern elevations unless planning permission has first been granted.
- 12) After the agreed tree protection measures have been installed in accordance with the approved plans, all tree protection measures shall be maintained for the course of the construction works. The development thereafter shall be implemented in strict accordance with the approved details and method statements contained in DPA Arboricultural Consultants Arboricultural Report to Accompany Planning Application at 9 Leigh Court Close Cobham Surrey KT11 2HT November 2019.
- 13) The completion schedule/report of all the agreed arboricultural site supervision and monitoring as approved in the arboricultural information DPA Arboricultural Consultants 9 Leigh Court Close Cobham Surrey KT11 2HT Proposed Site Layout (Tree Protection) Drawing Number DPA-69910-03 Revision E Date Nov 2019 shall be submitted to and approved in writing by the local planning authority within 20 working days of the substantial completion of the development hereby approved. This shall include evidence of compliance through supervision and monitoring of the agreed activities by a suitably qualified arboriculturist.
- 14) 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.

--- END ---