
Appeal Decision

Site visit made on 7 April 2021

by J Davis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal Ref: APP/K3605/W/20/3255249

35 New Road, Esher, KT10 9NU

- 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 Caroline Tighe against the decision of Elmbridge Borough Council.
 - The application Ref 2020/0026, dated 6 January 2020, was refused by notice dated 25 June 2020.
 - The development proposed is detached two-storey building with rooms in the roof space and underground parking comprising of 6 flats, detached two-storey house with rooms in the roof space, both with associated parking and amenity space, 900m high entrance gates and bin storage following demolition of existing house.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Caroline Tighe against Elmbridge Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal on the living conditions of the occupiers of 37 New Road, with particular reference to privacy.

Reasons

Character and appearance

4. The appeal site comprises of a detached two storey house, located within a large plot. The surrounding area is similarly characterised by large detached dwellings spaciouly located within well landscaped plots.
5. The site has been the subject of several previous planning applications, the most relevant being for a very similar development which was dismissed on appeal in July 2019. This appeal¹ was dismissed for reasons relating to the

¹ Appeal Ref. APP/K3605/W/19/3226542

impact of the proposal on the health and longevity of some of the retained trees, potential flood risk and failure to provide a contribution towards affordable homes.

6. Both of the main parties confirm that the current scheme is the same as the previous appeal scheme in terms of the size, scale and design of the proposed buildings. However, in order to overcome the previous Inspector's concerns relating to the impact on trees, the siting of the buildings has been amended.
7. The appeal site has a wide frontage which narrows towards the rear. The proposed buildings would be positioned deeper into the site and closer together than the previous appeal scheme. Whilst a generous gap would be provided between the buildings at the front of the site, this gap would lessen significantly towards the rear such that the proposed new dwelling would abut the boundary between the two proposed buildings and would be in very close proximity to the flank wall of the proposed flats. The result of this is that there would be no meaningful separation between the buildings and any views through to the rear of the site would be very limited. Furthermore, the juxtaposition between the two buildings would appear awkward and due to the lack of space around the buildings and their combined bulk and mass, the proposal would appear cramped and out of keeping with the spacious character and appearance of the surrounding area.
8. For the above reasons, I find that the proposal would have a harmful effect on the character and appearance of the area. Accordingly, it would be contrary to Policy CS17 of the Elmbridge Core Strategy 2011 (CS) and Policy DM2 of the Elmbridge Development Management Plan 2015 (DMP), which collectively require development to be of a high quality and to integrate with and enhance local character. The proposal would also fail to comply with advice contained within the Design and Character SPD 2012 (SPD) which also seeks to secure high quality development in the Borough that respects local character. The proposal would also conflict with the National Planning Policy Framework (the Framework) insofar as it requires a high standard of design.

Living conditions

9. As with the previous appeal² scheme, the proposed building comprising 6 flats would be sited close to the boundary with 37 New Road, which is a large detached dwelling with rooms in its roof. Whilst the proposed building is essentially the same as that previous considered at appeal, its siting has been amended such that the building would be positioned deeper into its plot.
10. A consequence of the re-siting of the building is that the first floor window serving flat 4 would overlook the flank elevation of the single storey rear projection to 37 New Road. This relatively large window would serve a kitchen / dining area and clear views would be obtainable into the rear garden area of No 37, albeit at an angle. Furthermore, the second floor window serving the kitchen and living area to flat 6, whilst slightly further from the boundary, would nonetheless allow direct, uninterrupted views into the rear garden of No 37.
11. Whilst I accept that some overlooking is inevitable in most urban situations, I find that the combination of the proximity of the windows to boundary with

² Appeal Ref. APP/K3605/W/19/3226542

No 37 and the size and positioning of the windows would lead to considerable loss of privacy to the occupiers of the adjacent dwelling.

12. I have considered whether in the event that I was minded to allow the appeal, a condition could be imposed requiring the windows to be obscure glazed. However, due to the size and positioning of the windows in relation to 37 New Road I consider that even if they were to be obscure glazed, the perception of overlooking would still be harmful to the living conditions of the occupiers of No 37. Furthermore, as the window to proposed flat 6 would provide the only source of outlook to the kitchen and living area, I consider that this would be harmful to the living conditions of any future occupiers of the flat.
13. In conclusion on this issue, the proposal would have a harmful effect on the living conditions of the occupiers of 37 New Road with particular reference to privacy. Thus, it would be contrary to Policy CS17 of the CS, Policy DM2 of the DMP and the SPD, insofar as they seek to safeguard residential amenity. Furthermore, the proposal would be contrary to paragraph 127 f) of the Framework which seeks a high standard of amenity for existing and future users.

Other Matters

14. A signed unilateral undertaking (UU) has been submitted, which provides for the provision of 2 on-site affordable housing units and a financial contribution towards affordable housing in line with Policy CS21 of the CS.
15. As the appeal is being dismissed on other substantive issues, it is not necessary for me to look at this in detail. Nevertheless, I have taken the proposed contribution towards affordable housing into account in my overall planning balance.
16. I acknowledge that the Council are satisfied that the proposal would not have a harmful effect on trees within the site or in respect of flood risk and that the proposal would now make a contribution to affordable housing. Whilst I do not dispute this, I have found the development to be unacceptable for other reasons, as set out above.
17. The Council cannot meet its five-year supply of deliverable housing. As such, the relevant policies for the supply of housing should not be considered up to date. I shall address the implications of this for the approach to decision making in the planning balance.

Planning balance and conclusion

18. Paragraph 11 of the Framework explains how the presumption in favour of sustainable development applies. As the Council cannot demonstrate a 5-year supply of housing land, in line with paragraph 11d) of the Framework, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.
19. The Framework refers to boosting significantly the supply of housing, the net increase of six additional units including two affordable units (and an affordable housing contribution), would make a meaningful contribution and in providing smaller units, would respond to an identifiable local need. This is a matter that I afford significant weight. Furthermore, there would be economic benefits

during the construction phase and from spending by future occupiers which further weighs in favour of the development.

20. In terms of adverse impacts, I have found that the appeal scheme would cause significant harm to the character and appearance of the area. Furthermore, it would result in harm to the living conditions of the occupiers of 37 New Road. The proposal would therefore conflict with Policy CS17 of the CS and Policy DM2 of the DMP. I attribute significant weight to this policy conflict.
21. Bringing all together in the final balance, I consider that the harm to the character and appearance of the area and to the living conditions of the occupiers of No 37 would significantly and demonstrably outweigh the benefits when assessed against the policies of 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.
22. For the above reasons, the appeal is dismissed.

J Davis

INSPECTOR