
Appeal Decisions

Site visit made on 29 June 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2021

Appeal A Ref: APP/C3620/W/21/3266580

35 Cobham Road, Fetcham, Leatherhead KT22 9AY

- 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 D Absalom of Biles and Co Estates Ltd against the decision of Mole Valley District Council.
 - The application Ref MO/2020/0953/PLA, dated 10 June 2020, was refused by notice dated 6 August 2020.
 - The development proposed is the construction of 2 No. detached dwellings with associated parking and landscaping, utilising the existing access and retaining the existing property.
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Appeal B Ref: APP/C3620/W/21/3266581

35 Cobham Road, Fetcham, Leatherhead KT22 9AY

- 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 Dan Absalom of Biles and Co Estates Ltd against the decision of Mole Valley District Council.
 - The application Ref MO/2020/1662/PLA, dated 18 September 2020, was refused by notice dated 16 November 2020.
 - The development proposed is the construction of 2 No. detached dwellings with associated parking and landscaping, utilising the existing access.
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Decisions

1. In relation to Appeal A - The appeal is dismissed.
2. In relation to Appeal B - The appeal is allowed and planning permission is granted for the construction of 2 No. detached dwellings with associated parking and landscaping, utilising the existing access at 35 Cobham Road, Fetcham, Leatherhead KT22 9AY in accordance with the terms of the application, Ref MO/2020/1662/PLA, dated 18 September 2020, subject to the conditions in the attached schedule.

Procedural Matters

3. As set out above there are two appeals on this site. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated. Both applications propose a two storey dwelling and a bungalow within the grounds of 35 Cobham Road. However, in comparison to Appeal A, the scheme in Appeal B does not include garages for either dwelling, thereby reducing their

respective footprints. In addition, in Appeal B the single storey side extension to No.35 would be demolished and the orientation of Plot 2 is rotated slightly.

4. A Preliminary Ecological Appraisal and Preliminary Roost Assessment¹ has been submitted with Appeal A, which I have been asked to take into account. The same document was submitted as part of the planning application for Appeal B. Therefore, the Council is familiar with the document. Hence, I am satisfied that no one would be prejudiced by my reference to it in determining Appeal A.

Main Issues

5. The main issues are the effect of the proposals on the character and appearance of the area and, in relation to Appeal A, the effect on protected species.

Reasons

Character and appearance

6. The Built Up Areas Character Appraisal for Bookham and Fetcham, Supplementary Planning Document, February 2010 (SPD) shows the appeal site within a predominantly residential area of South East Fetcham. The area comprises mostly of large detached houses set well back from roads within generous planted grounds. The extent and maturity of tree cover notably enhances the area. Overall, this results in a pleasant spacious and verdant residential character. The SPD includes mature gardens, trees and generous spaces between and around buildings within the identified key characteristics for this part of the settlement.
7. The appeal site accords with these key characteristics as it accommodates a detached house within substantial verdant grounds. The footprint of the dwelling is not as elongated as the properties either side and the width of the frontage addresses a bend in the road. Consequently, the ratio of plot coverage to garden space is lower than is generally the case nearby. The sense of spaciousness is enhanced by the open land on the opposite side of Cobham Road. In addition, there are plentiful trees on the site², generally in excess of the number found on other individual plots and some of which are the subject of Tree Preservation Orders. In particular, the established trees along the road frontage are a striking natural feature behind which the building is rather secluded. It follows that the appeal site contributes positively to the character of the area.
8. Policy CS14 of the Mole Valley Core Strategy, October 2009 (CS) states that all new development must respect and enhance the character of the area in which it is proposed whilst making the best possible use of the land available. The policy resonates with national policy in paragraphs 122d) and 127c) of the National Planning Policy Framework (the Framework) whereby an appropriate balance must be struck between making efficient use of land whilst also protecting the positive characteristics that define the area. Essentially, the parties disagree as to whether that balance would be suitably achieved in relation to the schemes before me.

¹ Prepared by The Ecology Partnership, dated September 2020

² Arboricultural Report prepared by Andrew Pinchin surveyed 68 trees

9. Both appeals propose an additional two storey dwelling to the west of No.35 (Plot 1) and a bungalow to the rear (Plot 2). This would involve the removal of 17 trees in each case, of which 3 would be of moderate quality and 14 would be of low quality. However, as the site contains such a high number of trees, 51 of the 68 trees surveyed would be protected and retained, of which 24 would be of moderate quality. Within this context, the loss of the trees proposed would make little difference to the overall arcadian quality of the environment referred to in the character appraisal SPD for the area. Importantly, the considerable belt of trees along the road frontage, which make the most obvious contribution to the character and appearance of the area would remain.
10. My view on this is reinforced by that of the Council's Tree Officer³ who considers that the density of trees is such that some removals would be reasonable and would not result in visual harm. He goes on to state that replacement trees would not be necessary to maintain the verdant character of the wider area. Given his area of expertise, his comments attract considerable weight.
11. The siting of Plot 1 to the side of No.35 would broadly align with the building line established by the properties fronting onto the section of Cobham Road as it turns into Lower Road. As the appeal site has a generally greater width and No.35 has a more compact footprint than many of the surrounding properties, there would be sufficient room to accommodate a further dwelling without undermining the sense of spaciousness. This would be further assisted by the proximity to open space opposite the site.
12. However, the balance is a delicate one and whereas the plot 1 dwelling in Appeal B would successfully respect the context, the same cannot be said for the plot 1 dwelling in Appeal A. The determining factor is the size of the footprint and position of the double garage. In Appeal B there is no garage. As a consequence, the footprint of the building would be more contained allowing the principal elevation to naturally align with the road using a similar set back to the adjacent properties. In addition, there would be greater separation from the belt of trees to the frontage. Furthermore, the removal of the structure to the side of No.35 would assist in maintaining a reasonable gap between the properties.
13. In contrast, the inclusion of a large garage for Plot 1 in Appeal A results in an L shaped footprint whereby the garage would be forward of the principal elevation of the proposed dwelling, as well as the building line. Even though this would be well shielded by the trees along the frontage, some glimpses of the structure would be possible between the trees and as they are mostly broadleaf trees, leaf coverage would not be continuous throughout the year. The encroachment of built form into the characteristic generous set back would undermine the sense of spaciousness and in this context, appear cramped.
14. Reference is made to the presence of an outbuilding at 1 Lower Road which I was able to glimpse at my site visit. In that case the building is not positioned directly in front of the principal elevation of the main dwelling which avoids a cramped appearance. The supporting text to policy ENV24 of the Mole Valley Local Plan, October 2000 (LP) which refers to the space around buildings, explicitly states that positioning of detached double garages in front of houses

³ Set out in the Council's respective Planning Officer Reports

- can suggest that the house is too large for its plot. For the reasons outlined, proposed Plot 1 in Appeal A is an example of this.
15. Plot 2 in both schemes would be single storey and set a considerable distance from the road behind No.35. The size of the plot would be broadly similar to those adjoining to the south in Sycamore Close. It would comfortably accommodate the building, provide a reasonable area of usable garden as well as retain the majority of trees. In combination with the mature planting along the boundaries, this would mean that it would be inobtrusive both in views in the street scene as well as from surrounding gardens. Furthermore, given the retention of the mature trees lining the driveway to Plot 2, natural features would dominate rather than the driveway. The orientation of the dwelling employed in Appeal B would be more aligned with No.35 and therefore better integrated into the setting, but that shown in Appeal A is not objectionable.
 16. The Council raise concerns at the backland position of Plot 2 and it follows that unlike most dwellings in the area, it would not have a street frontage. However, the key characteristics identified in the SPD for South East Fetcham do not expressly list a street frontage as important, rather they refer to dwellings being set well back, with generous space both between and around the buildings. Moreover, as Appendix 1 of the appellant's appeal statements illustrate, there are several examples of infill development reasonably close by, some of which include dwellings arranged so that they face towards the rear of another⁴. As such, Plot 2 would retain the important qualities of the area and would not be out of keeping with the wider context.
 17. Drawing these factors together, whilst the proposed dwellings in Appeal B would be successfully integrated into their context, the proposed unsympathetic form and layout of Plot 1 in Appeal A would prevent it achieving this.
 18. Reference is made to a recent appeal⁵ concerning 3 dwellings in the grounds of 21 Cobham Road. My findings in relation to the local character of the area are broadly consistent with those of the Inspector in that case. However, the schemes before me propose fewer units, consequently the layouts proposed differ. Moreover, it is not shown that the site in that case had such dense tree cover as the appeal site, such that the removal of some trees was considered reasonable by the Council's tree officer. Therefore, it is of limited weight. In any event, I have determined the proposals before me on their own merits.
 19. The Council refers to the appeal site as occupying a prominent corner position. Be that as it may, as the tree frontage would be largely retained, the most conspicuous features of the site would not be materially harmed.
 20. In relation to Appeal B, the Fetcham Residents Association⁶ raise concerns that there could be subsequent applications to add garaging. Nevertheless, I am required to consider the details of the scheme before me. Any future proposals requiring planning permission would need to be determined against the development plan policies on their own merits.
 21. Accordingly, I find that the proposal in Appeal A would have a harmful impact on the character and appearance of the area contrary to policy CS14 of the CS

⁴ Examples 1, 4 and 5, Appendix 1, Appellant's Appeal Statements

⁵ Reference APP/C3620/W/19/3235229

⁶ Letter dated 21.10.20

and policies ENV22, ENV23 and ENV24 of the LP. In combination, and amongst other matters, these policies require development to respect and enhance the character of the area and should avoid having a cramped appearance having regard to the general space around buildings in the locality. However, in relation to this main issue it would not conflict with policy CS15 of the CS as the trees within the site would, as far as practicable, be retained.

22. In relation to Appeal B, I further find that the proposal would strike an appropriate and measured balance between respecting the spacious verdant character of the area whilst making more efficient use of the land available. As such, it would not result in harm to the character and appearance of the area. Therefore, it would meet the requirements of policies CS14 and CS15 of the CS, as well as policies ENV22, ENV23 and ENV24 of the LP.

Protected species

23. There is no dispute between the main parties that the ecological information provided in the Preliminary Ecological Appraisal and Preliminary Roost Assessment is acceptable in its content and methodology. The appraisal considers the likely impact on bats, badgers, great crested newts, hedgehogs and nesting birds. It further found that the site did not support habitats which would be likely to support other protected species including dormice, reptiles, otters or water voles. I have not seen substantive evidence that would undermine its findings that subject to certain recommendations, protected species or their habitats would be unlikely to be harmed. Furthermore, it makes wider recommendations in relation to biodiversity enhancement.
24. Accordingly, I find that the proposals would not result in harm to protected species. Therefore, there would be no conflict with policy CS15 of the CS or ENV15 of the LP which, amongst other matters, seek to prevent development that would materially harm a protected species or its habitat.

Other matters

25. Representations received raise highway safety concerns. The proposed dwellings would use an existing but widened access onto Cobham Road. Two additional dwellings would generate limited traffic movements and consequently, the development would not have significant impacts on the wider transport network. Moreover, the Highway Authority having assessed the proposals on safety, capacity, and policy grounds, does not object to the proposal subject to various conditions. Given their local knowledge and expertise, their conclusions attract considerable weight in this regard, and I have seen little technical evidence that would lead me to a different view.
26. Further concerns are raised in relation to privacy and noise. However, given the separation distances involved and degree of retained tree cover, the new dwellings would not have an unacceptable impact on the privacy of other residents. The land would remain in residential use and two additional dwellings would be unlikely to generate significantly increased levels of general activity. Therefore, there is little basis to suppose unreasonable noise disturbance would result. In addition, I have seen no quantifiable evidence to show that the proposals would exert unacceptable pressure on existing local facilities or infrastructure. Hence, these matters attract little weight.

27. Neighbouring residents raise concerns that the proposed works relating to tree reference T42 (Norway Maple) would be insufficient, but the evidence suggests that the condition and maintenance of the tree has been the subject of ongoing communication irrespective of proposals to develop the site. The tree survey recommends that the crown of this tree should be reduced by 2.5m all round to reduce the risk of failure. No technical evidence has been provided to demonstrate that the proposed works to T42 would be an inadequate response having regard to the development proposals. Furthermore, matters concerning the safety of overhanging branches of an existing tree on the boundary is primarily a private matter between the respective parties and this aspect has had little bearing on my decision.

Planning balance

28. The Council cannot demonstrate a five year supply of deliverable housing sites and the information provided refers to a 2.74 years supply⁷, which represents a sizeable shortfall.
29. It will be seen from my reasoning above that in relation to Appeal B I found no conflict with the development plan. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise⁸. It follows that there would be no harm arising from conflict with local or national planning policies that would provide a reason to prevent the development. Accordingly, the presumption in favour of sustainable development set out in paragraph 11 of the Framework would not lead me to a different outcome in relation to that proposal. Furthermore, I am not aware of any other material considerations that would lead me to determine Appeal B other than in accordance with the development plan.
30. Nevertheless, in relation to Appeal A, I found harm would arise to the character and appearance of the area. Given the housing supply position, footnote 7 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. There is nothing otherwise before me to show that the Framework policies in footnote 6 provide a clear reason for refusing the proposal. Consequently, the presumption in favour of sustainable development in the Framework states that permission should be granted unless 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.
31. The proposal would provide 2 new houses in a reasonably accessible location. This would assist in boosting the supply and mix of housing in an area where there is unmet need. Furthermore, there would be economic benefits associated with the construction itself, as well as the activity of future occupants. Paragraph 68 of the Framework highlights that small and medium sites can make an important contribution to meeting the housing requirement and are often built-out relatively quickly. Therefore, although the scale of the benefits overall would be limited, in view of the extent of the shortfall, the benefits attract moderate weight.

⁷ Council's letter dated 2.6.21

⁸ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

32. Balanced against this is the harm to the character and appearance of the area. The Framework stipulates that good design is a key aspect of sustainable development⁹. Therefore, the conflict with design policies referred to above in the CS and LP which are generally consistent with the Framework in this regard, attracts significant weight. Furthermore, paragraph 130 of the Framework stipulates that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. It is evident that Appeal B represents a proposal that would secure benefits equivalent to those presented by Appeal A but would avoid the consequent harm to the character and quality of the area. As such, insofar as Appeal A is concerned, significant weight is given to the harm arising from the conflict with the policies of the development plan taken as a whole.
33. The adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply to Appeal A. There are no other considerations, including the provisions of the Framework, which outweigh the conflict with the development plan. Therefore, Appeal A should not succeed.

Conditions

34. In relation to Appeal B, the three-year period in which the planning permission may be implemented is a statutory requirement. I also consider that it is necessary to specify the plans that are approved, and that the development shall be undertaken in accordance with these, as this provides certainty.
35. To safeguard the verdant qualities of the site and assist in the assimilation of the development into its context, a number of conditions are justified to ensure the quality of the development. Firstly, agreement of the finish of the external materials to be used is reasonable given their impact on the overall quality of the design. Secondly, a landscaping scheme is necessary to establish the boundary treatments, areas of hardsurfacing and suitable planting for the separate garden areas. This should have reference to the recommended species that would enhance biodiversity in the Preliminary Ecological Appraisal provided. In addition, it is important that the development should proceed in accordance with the arboricultural report provided. This details the trees to be removed and measures for the protection of remaining trees.
36. Cognisant of the recommendations of the Surrey Wildlife Trust and to ensure suitable protection for protected species as well as provide a net gain for biodiversity in accordance with paragraph 170 d) of the Framework, it is necessary to ensure the measures detailed in the Preliminary Ecological Appraisal provided are carried out.
37. In addition, in the interests of highway safety conditions are imposed to ensure the provision of the widened access and appropriate car parking prior to the occupation of the dwellings. Secure and undercover cycle parking provision is also required to encourage the use of transport modes other than the car. Furthermore, charging points for electric vehicles should be provided to ease the transition from reliance on fossil fuels. A condition is also imposed in order

⁹ Paragraph 124 NPPF

to respond to the requirements for sustainable construction in policy CS19 of the CS.

38. The Council has suggested a pre-commencement condition requiring details of surface water drainage to be agreed. However, the information provided in the relevant Council officer report makes little reference to surface water drainage. There is little otherwise to suggest there are particular surface water drainage concerns and no comments from the Lead Local Flood Authority have been provided. Planning Practice Guidance (PPG) states that pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission. Based on the evidence before me, I am not satisfied that the high threshold for such a pre-commencement condition has been met. Consequently, I have not imposed it.
39. Two conditions are suggested by the Council that would restrict the future use of permitted development rights in relation to extensions, windows and rooflights. PPG advises that the blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The Council considers that additional control is required in the interests of the visual and residential amenities of the locality. However, these concerns are generic and lack specific justification by reference to the nature of the development proposed. In the absence of this, it is not shown that the proposed conditions would be necessary to make the development acceptable in planning terms. Therefore, they do not meet the necessary tests referred to in paragraph 55 of the Framework.

Conclusion

40. For the reasons given above, I conclude that Appeal A should be dismissed but that Appeal B should be allowed.

Helen O'Connor

Inspector

Schedule of conditions for Appeal B

- 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: Site Layout and Site Location Plan, drawing number AAL-20-181-P01; Site Comparison and Dimension Plans, drawing number AAL-20-181-P02; Plot One Plans & Elevations, drawing number AAL-20-181-P03; Plot Two Plans & Elevations, drawing number AAL-20-181-P04; Existing House Plans & Elevations & Garage Removed, drawing number AAL-20-181-P05; Site Section A-A, drawing number AAL-20-181-P06; Extended Block Plan drawing number, AAL-20-181-P07.
- 3) Before any above ground works commence, details of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The dwellings permitted shall not be occupied until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The submitted details shall include details of boundary treatments to be erected or retained and areas of hard-surfacing. The planting scheme proposed shall demonstrate how the recommended species for planting in paragraphs 4.43-4.44 of the Preliminary Ecological Appraisal and Preliminary Roost Assessment prepared by The Ecology Partnership, dated September 2020 has been taken into account. The boundary treatments and hard surfacing shall be implemented in accordance with the agreed details prior to the first occupation of the dwellings permitted.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The development shall be carried out in accordance with the recommendations and biodiversity enhancement measures set out in paragraphs 4.20-4.23, 4.27-4.31, 4.37-4.40 and 4.43-4.48 of the submitted Preliminary Ecological Appraisal and Preliminary Roost Assessment prepared by The Ecology Partnership dated September 2020. In particular at least 2 bat boxes referred to in paragraph 4.22 and hedgehog homes referred to in paragraph 4.39 shall be installed prior to the first occupation of the dwellings hereby approved.
- 7) The development shall be carried out in accordance with the Arboricultural Impact Assessment and Arboricultural Method Statement prepared by Andrew Pinchin - Chartered Arboriculturist, reference APA/AP/2020/077 Rev C dated 15 September 2020. In particular the tree protective fencing shown on Tree Protection Plan drawing number TPP/APA/AP/2020/077 Rev C shall be in place prior to the commencement of other construction works on site and low invasive

surfacing incorporating cellular confinement system shall be used as described where indicated on that drawing.

- 8) The dwellings hereby permitted shall not be occupied until the modified vehicular access to Cobham Road, driveways and parking areas have been constructed and provided in accordance with drawing number AAL-20-181-P01. Thereafter the access shall be maintained and kept permanently clear of any obstruction and the parking and turning areas shall be retained and maintained for their designated purposes.
- 9) The dwellings hereby permitted shall not be occupied until each of the proposed dwellings are provided with secure parking for bicycles in accordance with a scheme previously submitted and approved in writing by the local planning authority. Thereafter, the approved space shall be kept available for the parking of bicycles.
- 10) The dwellings hereby permitted shall not be occupied 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 previously submitted and approved in writing by the local planning authority. Thereafter, they shall be retained and maintained.
- 11) Prior to any above ground works commencing, details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted and approved by the local planning authority and be implemented prior to the first occupation of the development.