



Appeal Decision

Site Visit made on 9 August 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th October 2021

Appeal Ref: APP/K3605/W/20/3262447

71 Grove Way, Esher KT10 8HQ

- 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 Andrew Kretzschmar against the decision of Elmbridge Borough Council.
 - The application Ref 2019/0675, dated 10 March 2019, was refused by notice dated 16 October 2020.
 - The development proposed is described as a detached two-bedroom house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above the appellant's name is taken from the appeal form. The applicant, as stated in the application form (Ms Shirley Kretzschmar) has confirmed that the appeal is being pursued by her husband and that they were both responsible for the planning application.
3. Prior to the Council's decision, the appellant submitted a unilateral undertaking (the UU). It relates to the provision of affordable housing. I deal with this consideration in 'other matters' below.
4. At the prior request of the respective occupiers, I viewed the appeal site from the rear garden and rear ground and first floor rooms of No 69 Grove Way and from front ground and first floor rooms of Nos 45 and 47 The Drive.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - the living conditions of the existing occupiers of No 69 Grove Way and Nos 43, 45 and 47 The Drive with regard to privacy, outlook and daylight and sunlight.

Reasons

Character and appearance

6. The appeal site, No 71 Grove Way, is a large two-storey detached house in a suburban residential area. It is similar to a majority of the properties nearby in Grove Way and in the main (public highway) part of The Drive to the east, with houses arranged in closely spaced rows facing these roads. This regimentation

of residential development is repeated in other roads in the vicinity of the appeal site. At junctions the long landscaped rear gardens of most houses on corner plots stretch alongside the edge of the adjoining road frontage, including at No 71 on the north side of a short spur of The Drive which is a private road (the spur). This gives a more spacious feel to the area and this pattern of development is locally distinctive.

7. The proposal is for a chalet bungalow (the bungalow). It would be sited at the end of a sub-divided rear garden at No 71, facing the spur. The overall form, appearance and resulting layout of development on the appeal site would broadly reflect the general siting and juxtaposition of a fragment of residential development opposite it — a house on the opposing corner at No 73 Grove Way and a chalet bungalow behind (Rowan Cottage) on the south side of the spur. However, and nonetheless, the rear garden at No 71 would be severely truncated such that the part retained for this house would be significantly smaller. In addition, the bungalow would be sited in a relatively small plot and its footprint would occupy a significant proportion of it.
8. Rowan Cottage is part of a closely spaced built-up frontage of dwellings that extend along the south side of the spur. While the house at No 43 The Drive, on the north side of the spur, is sited beyond the end of the appeal site and faces the spur, it has a rear garden on one side and a road on the other side. In addition, the dwellings in the cul-de-sac behind it extend in depth away from the spur such that the smaller size of these dwellings and gardens do not form any meaningful part of the spur streetscene. Nor are they observed in the wider streetscenes of Grove Way or The Drive. As a result, there is no similar built-up frontage along the north side of the spur and even though it would be close to No 43, the infilling of the end of the rear garden of No 71 by the bungalow would not establish a continuously built-up frontage. Moreover, the proposal would therefore have no meaningful purpose as a transition between the scale, mass and layout of houses in Grove Way (or elsewhere in The Drive) and those in the spur or the cul-de-sac behind No 43.
9. Accordingly, despite its relatively low eave and ridge heights and some tall, dense existing boundary planting, inserting the bungalow in this position on the appeal site would appear cramped in relation to its plot size and the resulting plot size at No 71 would be incongruous. Furthermore, it would unduly erode openness between No 71 and No 43. The proposal, and the resulting effect on No 71, would therefore be out of keeping with the prevailing pattern and arrangement of dwellings and rear gardens on corner plots in Grove Way and The Drive and elsewhere in the vicinity of the appeal site. This would be conspicuous in public views from the junction of Grove Way and The Drive and to users of the spur. Even if some existing landscaping was retained permanently and supplemented to screen some of the bungalow, it would not alleviate the intrinsic loss of openness or the discordant juxtaposition of buildings and plot sizes on the appeal site and in relation to its relevant context.
10. Considering the above, I find that the proposal would cause harm to the character and appearance of the area. Consequently, it would not comply with Policies CS8 and CS17 of the Elmbridge Core Strategy, July 2011 (the CS) or with Policy DM2 of the Elmbridge Local Plan Development Management Plan, April 2015 (the ELP). These policies include that development should be well-designed, contribute to local character and a distinct sense of place,

integrate sensitively with locally distinctive townscape and enhance the public realm and streetscene having regard to scale, mass, height, prevailing pattern of built development and layout. It would also not reflect the associated provisions of the Council's Design and Character Supplementary Planning Document, April 2012. It would also conflict with the National Planning Policy Framework (the Framework) which seeks to ensure that development adds to the overall quality of the area, is visually attractive as a result of good layout, is sympathetic to local character including the surrounding built environment and maintains a strong sense of place using the arrangement of streets, spaces and building types to create attractive and distinctive places to live.

Living conditions

No 69 Grove Way

11. The bungalow would be sited close to the boundary with the end of the rear garden of No 69 (the garden) and the first floor rear dormer windows (the windows) would face directly towards this part of the garden. Views from the windows towards ground and first floor rooms in the rear elevation of No 69 and part of the garden closest to this house, including patio areas and a conservatory, would be at an oblique angle and at a significant distance. Even if some intervening trees in the appeal site were removed, these views would not therefore be intrusive. Furthermore, notwithstanding the siting, height, scale and massing of the bungalow, it would be sufficiently far away that it would not appear overbearing in relation to the use of this part of the garden or restrict outlook from, or daylight or sunlight received into, these rooms.
12. However, the end and middle parts of the garden would be substantially closer to the windows and downward views would be, respectively, perpendicular or at a less acute angle and thus more extensive in nature. Even if these parts of the garden were less used, the significant degree of overlooking would nonetheless therefore be unduly intrusive when in use. This adverse effect would not be alleviated by existing or proposed boundary landscaping (including in the garden of No 69) as this planting would not necessarily be permanent. In addition, even if the windows were obscured glazed and non-opening below 1.7m from internal floor level, the close proximity, elevated position and large extent of glazing proposed would appear as an overly conspicuous feature. As a result, it would cause a tangible and disconcerting perception of being overlooked.
13. The bungalow roof would slope away from the garden, with the main ridge height inset further from the boundary. Nonetheless, the apparent height, scale and massing of the upper part of the bungalow, including vertically to eaves level, would project significantly above the boundary fence. In addition, the long dormer window would extend significantly beyond the plane of the roof and therefore add substantially to the bulk of the building at this upper level. Allied to its close proximity to the end and middle parts of the garden, the bungalow would therefore be an overly dominant built-form and be unduly overbearing in relation to the use of these parts of the garden.

No 43 The Drive

14. The bungalow would be sited opposite the side elevation of No 43, separated by the narrow intervening cul-de-sac road. This part of No 43 contains windows for a ground floor kitchen and a first floor bedroom. Due to the proposed

orientation and close proximity of these two dwellings there would be no views possible from the windows towards these rooms in No 43 or its gardens, thus no overlooking.

15. However, the small size of the facing half-hipped roof would have little effect on the overall height, scale and massing of the bungalow as it would be apparent above the existing fence or between or over retained planting on or off the appeal site. The planting would not, in any event, necessarily be a permanent feature. As a result, combined with its close juxtaposition, the bungalow would significantly restrict views out of these windows, including upwards towards the sky, and therefore be overbearing. In addition, it would unduly restrict daylight and sunlight received into these rooms.

Nos 45 and 47 The Drive

16. Due to the siting and orientation of the bungalow with Nos 45 and 47, views from the windows towards the front elevation ground floor kitchens and first floor bedrooms would be at an oblique angle and, for the kitchens, steeply downwards. This would significantly restrict overlooking and these views would not therefore be intrusive. While the bungalow would be seen in some views from these windows at No 47, it would be at a significant angle to the side in one direction only and would not interfere with perpendicular views or views in the other direction. Despite the intervening separation distance, the height, scale and massing of the bungalow would not therefore be overbearing, nor would it unduly restrict daylight or sunlight received into these rooms from these other directions.
17. However, the bungalow would be materially closer to the kitchen and bedroom at No 45 and as a result be more conspicuous and prominent in a more extensive arc of view from these windows than at No 47. While there would be some perpendicular views and angled views in the other direction, this would nonetheless therefore significantly restrict views in the direction of the bungalow and as a result be overbearing. In addition, it would unduly restrict daylight and sunlight received into these rooms, particularly the kitchen which is lower down in the building.
18. Considering the above, while the proposal would not have any unacceptable effect on living conditions at No 47 The Drive, it would not be conducive to the enjoyment of valued parts of the garden at No 69 Grove Way or the use of habitable rooms in No 43 The Drive and a habitable room in No 45 The Drive for normal domestic activity. Nor would it be reasonable for the proposal to dictate how different parts of the garden at No 69 or of the relevant rooms in Nos 43 and 45 might be used. The proposal would therefore be an unneighbourly form of development and cause harm to the living conditions of the occupiers of No 69 with regard to privacy and outlook and to Nos 43 and 45 with regard to outlook and daylight and sunlight.
19. Consequently, it would not comply with ELP Policy DM2. This policy seeks to ensure that development protects the amenity of adjoining occupiers and offers appropriate outlook, adequate daylight and sunlight and privacy. It would also conflict with the Framework which seeks to ensure that development should provide a high standard of amenity for existing users, such as the occupiers of neighbouring dwellings.

Other Matters

20. The Council has provided relevant background to its position on the acute need for affordable housing in the Borough. The Council considers that by means of the UU 'the correct affordable housing contribution has been secured' towards the provision of affordable housing off-site elsewhere. However, I do not have a copy of the UU or any detailed explanation of how the specific contribution in this appeal has been calculated. Even if the contribution has been paid, I am therefore unable to determine whether there is sufficient legal commitment to guarantee that it would be used for its intended purpose. Nor can I reach any rational conclusion about whether the UU would be necessary, directly related to the development and fairly and reasonably related in scale and kind or would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations in Framework paragraph 57.
21. The appeal site is part of a residential garden in a built-up area. It is not therefore previously developed brownfield land¹. Even if it is under-utilised land it would not be an effective use of this land for the reasons I have identified in the 'main issues' above. I have considered the conditions suggested by both main parties but these would not overcome the harm that I have identified in the 'main issues' above and would not therefore make the development acceptable. The spur is a private road and consequently whether the appellant has a right of way to use it to serve the proposed development is a private matter between the relevant respective parties.
22. I appreciate the appellant considers that the proposal reflects pre-application advice given by Council officers, who also recommended that planning permission be granted. However, the Council made the decision that it did and I have determined the appeal on its individual planning merits.

Planning Balance

23. The Council agrees that it cannot demonstrate a 5-year housing land supply (5YHLS), though there is no evidence before me that quantifies the extent of the shortfall in supply. I also note that against the Government's Housing Delivery Test the delivery of housing was substantially below² (ie less than 75%) the Council's housing requirement over the previous three years. Either way, as a consequence, Framework paragraph 11(d) is engaged.
24. In terms of benefits, the provision of one dwelling would make a small contribution to the Borough's housing supply and help to meet an 'overwhelming' local need for small 2-bedroom homes. It would also result in requisite Community Infrastructure Levy and New Homes Bonus payments to the Council. There would also be some economic, social and environmental benefits associated with building and occupying the bungalow. Considering the modest scope of the proposal, these benefits therefore have limited weight. For the reasons explained in 'other matters' above, I am therefore unable to give any weight to the provision of affordable housing in this appeal. It would not, in any event, have been a determining factor in the planning balance, and my decision, or therefore led to a different outcome in this appeal.

¹ Framework glossary.

² Framework paragraph 222.

25. Subject to appropriate conditions, and notwithstanding the concerns of some interested parties, the proposal would have a suitable means of access, adequate car and cycle parking (including electric charging points) and satisfactory provision for refuse storage. It would incorporate renewable energy technologies and sustainable drainage measures for the control of surface water run-off and would not be at unacceptable risk of flooding. It would also comply with the Nationally Described Space Standards for room sizes and be satisfactory for future occupiers with regard to privacy, outlook, daylight and sunlight and private amenity space. The development would not involve the use of contaminated land or cause harm to ecology or biodiversity. There is no compelling evidence that the proposal would result in undue noise or light intrusion from normal domestic activity and hours of working could be controlled by a condition to avoid antisocial disturbance. The absence of harm in these regards, or compliance with the Council's development plan, are therefore neutral factors in my decision.
26. However, the proposal would result in material harm to the character and appearance of the area and to the living conditions of existing occupiers of some nearby dwellings. It would conflict with the Council's relevant development plan policies, which are consistent with the Framework, and diminish the Council's objectives in these regards, including for individually distinctive residential neighbourhoods and to ensure that people's amenity is not damaged by poorly designed development. Consequently, I give substantial weight to these considerations. Although the Framework seeks to significantly boost the supply of homes, it also states that good design is a key aspect of sustainable development, creates better places to live and that high quality, well-designed places are fundamental to what the planning and development process should achieve.
27. Notwithstanding that the benefits would be aligned with the Framework and the absence of a 5YHLS, and even if the shortfall in supply was substantial, the adverse impacts of the proposed development would therefore significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. Accordingly, the presumption in favour of sustainable development does not apply in this case.

Conclusion

28. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
29. Therefore, for the reasons given above, I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR