



Appeal Decision

Site Visit made on 8 November 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/K3605/W/21/3273649

145-149 Hersham Road, Hersham KT12 5NR

- 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 Lawrence Pope, on behalf of DevCon, against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1222, dated 21 May 2020, was refused by notice dated 11 February 2021.
 - The development proposed is a part three/part four-storey detached building comprising 18 flats and 1 retail unit (105 sqm) with associated parking and communal areas following demolition of existing houses and retail unit.
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Decision

1. The appeal is allowed, and planning permission is granted for a part three/part four-storey detached building comprising 18 flats and 1 retail unit (105 sqm) with associated parking and communal areas following demolition of existing houses and retail unit at 145-149 Hersham Road, Hersham KT12 5NR in accordance with the terms of the application, Ref 2020/1222, dated 21 May 2020, and the plans submitted with it, subject to the attached schedule of conditions.

Applications for costs

2. An application for costs has been made by Mr Lawrence Pope against Elmbridge Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. Planning permission was granted¹ on site for 20 flats and a retail unit in October 2018 (The Approved Scheme). Key differences from this to the proposal is a reduction from 20 to 18 flats, reduced parking from 10 to 8 spaces and an increased affordable housing provision from 40% to 100%. It seems that this approval may have expired recently unimplemented. Nevertheless, the relevant local policies seem unchanged, and I see no reason why such a scheme would not still be found to be acceptable to the Council. The previous decision therefore forms an important material consideration within this appeal.
4. The proposal has been submitted with a Unilateral Undertaking (UU)². This would provide for all on site flats to be made available for affordable rent.

¹ Planning Application Reference: 2017/1323

² Unilateral Undertaking, dated 28 January 2021.

5. An amended layout plan³ has been submitted that shows a buggy store within part of the previous cycle parking area. I will return to this later in my decision.

Main Issues

6. The main issues are:

- The effect of the proposed development on parking availability, with particular respect to the impact on the convenience and amenities of local residents, and
- The effect of the proposal on the living conditions of future occupiers with respect to the absence of a lift and buggy store and with regard to access to daylight, sunlight and outlook for flats 9 and 15 and in regard to the pollution impact and ease of access for flats 2 and 3.

Reasons

Parking provision

7. Hersham Road is a main route through the area. It includes a combination of commercial and residential development close to the appeal site. Parking restrictions are evident along the highway in front of the site, and towards Halfway Local Centre to the northwest. Consequently, double yellow lines and a pedestrian crossing limit available parking close to the frontage of the site. Also, most of Felcott Road is subject to a Controlled Parking Zone (CPZ) with permit parking restrictions imposed between 08:00 and 18:00 hours Monday to Saturday. Also, West Grove opposite the site is covered by a CPZ.
8. The proposal would include eight parking spaces and a bicycle store with fourteen spaces. The site has good access to bus services and Walton-on-Thames Railway Station which is within a 10-minute walk of the site. A range of goods and services are also available locally.
9. Although only offering a snap-shot in time, when I visited the site on a weekday morning, local on-street parking was broadly available. Furthermore, many residential properties have driveways, reducing demand for on-street spaces. This capacity was also found in the appellant's parking surveys. The surveys provide a current and reasonable insight into parking availability on local roads.
10. Consequently, whilst the Council's Car Parking SPD (2020) requires the proposal to include a maximum of 25 parking spaces, local car ownership of occupiers of flats is only around 74%. Therefore, the accessibility benefits of the site, combined with the availability of on-street parking and the provision of on-site bicycle storage, would limit demand for on-street parking in the area. Furthermore, whilst recognising the parking concerns of the Council and interested parties, the site is in a relatively accessible location and would therefore provide reasonable access to various forms of non-car related transport. Accordingly, the reduced parking provision of the scheme would result in only limited on-street parking demand.
11. The concerns raised by local residents, with respect to congestion experienced on local roads and the parking pressure experience locally, are recognised. My attention has been particularly drawn to the busy nature of West Grove and

³ Amended Plan: 2018/008/PL03 Rev G

Felcott Road. However, these concerns largely relate to existing difficulties, which the proposed development would not materially exacerbate. I also recognise that the Highway Authority found that the proposal would not result in any adverse impact upon highway safety or capacity grounds, a point of significant weight. The limited impact of on-street parking is also supported by the appellant's Transport Assessment⁴. This illustrates that the scheme would result in only a small increase in car and rail trips in comparison to the existing uses of the site. I see no reason, in evidence, not to accept these conclusions.

12. Accordingly, the effect of the proposed development on parking availability, with particular respect to the impact on the convenience and amenities of local residents would be limited. The proposal would therefore accord with policy DM7 of the Elmbridge Local Plan 2015 (LP) and the Council's parking SPD. The policy seeks, among other matters, for parking provision to be appropriate to the development and to not result in an increase in on-street parking stress that would be detrimental to the amenities of local residents.

Living conditions

13. The appellant has provided a revised plan that incorporates a buggy store. However, this provision would result in a reduction of the bicycle store which would reduce the sustainable travel benefits of the scheme. I have therefore not accepted this revision. The proposal would include two-bedroom flats, which could accommodate families. Although a buggy store and lift would be of benefit to families and others within the development, the Council has not identified a specific policy requirement for such provision. A lift would be useful too, but this is not an essential requirement, especially as the building is relatively low rise. Also, the bicycle store is of sufficient size to accommodate an informal buggy store area if deemed required by a future occupier. For these reasons, the absence of these facilities would not warrant the refusal of the proposal.
14. Proposed flats 9 and 15 would be located at the far end of the block. These are at first and second floor and each have a bedroom and kitchen window that would look towards the rear garden of 1 Felcott Road. It would be necessary for the bedroom and kitchen windows of flats 9 and 15 to be obscurely glazed to prevent overlooking. The bedroom window would serve the second bedroom of each flat and the kitchen window would be a secondary window for the large room it is within. As such, future occupiers of these flats would experience a limited loss of outlook from these windows. Furthermore, this arrangement would be similar to that seen within the Approved Scheme, requiring the bedroom windows of flat 10 to be obscurely glazed.
15. The appellant's daylight assessment⁵ has identified that the level of daylight reaching the bedrooms of these two flats would pass the Average Daylight Factor criteria and all rooms would meet the Room Depth Criteria. Only Flat 9 would experience daylight levels from the sky that would be slightly below the recommended level. However, this would result in only minimal harm to future occupiers. Accordingly, as the bedroom windows affected would serve the smaller of the two bedrooms in each flat, the overall effect to these two flats would be marginal. As such, the effect of obscure glazing would not demonstrably harm the living conditions of future occupiers.

⁴ Transport Statement, May 2020 by Caneparo Associates

⁵ Interior Daylight Analysis – 31 March 2021, by eight associates

16. Proposed flats 2 and 3 would be located at ground floor and their south elevations would overlook the car park. The windows of each flat would include a bedroom and a kitchen window. These windows would serve a second bedroom window and kitchen. The kitchen window would offer a secondary light source for the main living space which principally overlooks the embankment. Although the proposed car park would be close to these windows, it would be relatively small, and contain vehicles that would be likely to move infrequently. Furthermore, cars would be unlikely to remain in situ with the engine running for long periods that might cause substantial pollution nuisance to adjacent occupiers. It is also not uncommon for such a relationship to exist in close knit urban spaces. As a result, this relationship would not create a poor-quality living environment.
17. Consequently, the proposal would be acceptable despite the absence of a lift and buggy store. Also flats 9 and 15 would have sufficient access to daylight, sunlight and outlook and flats 2 and 3 would not suffer substantial pollution impact. As a consequence, the proposal would comply with policies DM2, DM5, DM7 and DM10 of the LP, the Design and Character SPD and the National Planning Policy Framework (The Framework). These seek development, inter alia, to protect the amenity of adjoining and potential occupiers and to minimise the impact of vehicle and traffic nuisance.

Other Matters

18. The proposed development would provide eighteen flats of various sizes. The Framework seeks to significantly boost the supply of housing. This is an important point in favour of the appeal scheme especially as the Council cannot demonstrate a 5-year Housing land supply.
19. Policy CS21 of the CS requires that development resulting in 15 residential units or more should provide 40% of the gross number of dwellings to be affordable housing. A UU has been submitted that seeks to provide a provision of 100% that would meet and exceed this requirement. The UU would bind the proposal to deliver Affordable Rent dwellings, at 20% below local market rent. This type of Affordable Housing is recognised as a suitable mechanism in the Framework, and this would be properly secured by the UU. As such, this would satisfy the policy requirement. The provision of 18 affordable dwellings within this borough also weighs significantly in favour of the merits of the proposal.
20. The proposal is to the northwest of houses on Fewcott Road. As such, it would not result in a loss of sunlight to these neighbouring dwellings. In terms of daylight and outlook impact, the proposal would be within the vista of 1 Fewcott Road. The Council's '45 degree rule', as established within its Design and Character SPD, would be breached. However, the impact on daylight and outlook would be limited due to the relatively significant separation distance between No 1 and the proposal. Furthermore, overlooking from flats 8 and 14 would offer only oblique views towards rear gardens of Fewcott Road. A condition could be applied to prevent overlooking from the south facing windows of flats 9 and 15.
21. A planning appeal was dismissed in 2018 for a proposed flat conversion at 8 West Grove⁶ due to its impact on on-street parking. The submission was absent

⁶ Planning Appeal Reference: APP/K3605/W/17/3187926

a parking survey and the site was found to be within an area of high parking stress. As such, the context was substantially different to the current case.

22. Deliveries to the commercial unit would consist of a combination of light goods vehicles and large vehicles. Although the Transport Statement indicates that large deliveries would take place from the highway, it seems likely that the majority of delivery vehicles would be smaller and would use the on-site turning and delivery provision. Furthermore, the car park would predominantly provide for resident parking and would therefore be a low intensity use, having a negligible effect on local traffic levels. As a result, the access into the site would be lightly trafficked, with limited chance of conflict between vehicles entering and leaving simultaneously.
23. The footway in front of the site is relatively deep. Accordingly, this would provide sufficient visibility splays and form a safe exit onto the highway, without detriment to vehicular or pedestrian safety. The evidence before me does not indicate that this minimal increase of traffic would cause significant harm to highway safety, and I note that the Highway Authority takes a similar view.
24. It is not in evidence that the site is vulnerable to flooding. The Lead Local Flood Authority raised no objection to the scheme subject to the imposition of drainage conditions in accordance with the appellant's drainage strategy. Consequently, I do not find that flood related matters present a reason to reject the development.
25. I have also taken into account representations made in regard to water supply and potential damage to the highway from construction vehicles, but these matters do not affect my findings on the main issues.

Conditions

26. I have considered the use of conditions in line with the guidance set out in the Planning Practice Guidance (PPG). I shall impose most of the Council's suggested conditions with some adjustments for clarity.
27. It is necessary for conditions that relate to drainage, decontamination and Construction Transport Management, to be submitted prior to the commencement of development [conditions 8, 12 and 14]. I consider these pre-commencement conditions to be so fundamental to the development that it would have been otherwise necessary to refuse permission. These are required at an early stage as they relate to underground works, site set up and how the construction process would be undertaken. These conditions are necessary in the interests of flood prevention, the living conditions of future occupiers and to prevent disturbance to adjacent residents and road users.
28. I have imposed the standard conditions advised by the PPG for clarity and certainty [1 and 2]. Conditions with respect to landscaping and materials are necessary in the interests of the character and appearance of the area [3, 6, 7 and 10]. Further conditions are necessary, to require the south facing windows of flats 9 and 15 to be obscurely glazed to protect the privacy of neighbouring dwellings [4]. Conditions are required to provide for a refuse store, verification of decontamination and drainage scheme and sound insulation in the interests of the living conditions of future occupiers [5, 9, 15, 16, 17, 18 and 23] and to protect the living conditions of neighbouring occupiers [19, 20 and 21]. A

condition to enhance on-site biodiversity is required to address policy DM21(a) of the LP [22]. It is also necessary for sustainable travel measures to be provided to address the requirements of policy DM7 of the LP and Paragraph 107(e) of the Framework [11 and 13].

29. The Council has suggested the imposition of two conditions that relate to tree protection measures. However, the proposal would not incorporate the existing on-site trees, which I found during my visit to be of limited value and having a negligible positive impact on the wider area. Consequently, their loss would be adequately offset by the proposed replacement planting. Such conditions for tree protection have been insufficiently justified and would therefore be unnecessary.

Conclusion

30. The proposal would accord with the development plan, when taken as whole, and there are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. As such, the appeal is allowed, and planning permission granted subject to the attached conditions and the associated Unilateral Undertaking.

B Plenty

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 2018.008.PL02 Rev.C, 2018.008.PL04 Rev.C received on 2nd October 2020, 2018.008.PL03 Rev. F, 2018.008.PL05 Rev.C, 2018.008.PL06 Rev.D, CA3359-SK001 and CA3359- SK002 Rev.
- 3) Before any above ground works commence, details of the materials to be used in the construction of the external surfaces of the development and details of all hard surfacing 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) Prior to the first occupation of the development hereby permitted, the windows in Flats 9 and 15, facing towards Felcott Road, shall be glazed with obscure glass, up to a height of 1.7 metres above internal floor level, that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (or equivalent) and only openable above a height of 1.7m above the internal floor level of the room to which it serves. The obscure glazing shall be permanently retained in that condition thereafter.
- 5) The refuse store for the development hereby approved shall be provided in accordance with the approved plans prior to occupation of the development and shall be retained thereafter.
- 6) Prior to first occupation of any part of the building, 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 treatments and b) hard surfacing materials. Development shall be carried out in accordance with the approved details and shall be maintained.
- 7) All hard and soft landscaping works shall be carried out in accordance with the approved details. Arboricultural work to existing trees shall be carried out prior to the commencement of any other development, otherwise all remaining landscaping work and new planting shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the borough council. Any trees or plants, which within a period of five years of the commencement of any works in pursuance of the development die, are removed, or become seriously damaged or diseased, shall be replaced as soon as practicable with others of similar size and species, following consultation with the borough council, unless the borough council gives written consent to any variation.
- 8) The development hereby permitted shall not commence until details of the design of a surface water drainage scheme has been submitted to and approved in writing by the planning authority.
- 9) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
- 10) The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
- 11) The development hereby approved shall not be occupied unless and until all the proposed parking spaces 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) and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
- 12) 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) vehicle routing (g) measures to prevent the deposit of materials on the highway (h) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused (i) on-site turning for construction vehicles or equivalent traffic management 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.
 - 13) The development hereby approved shall not be first occupied unless and until a bicycle storage system, within the cycle store, has been submitted to and approved in writing by the local planning authority. These facilities shall be provided, retained and maintained to the satisfaction of the local planning authority.
 - 14) No demolition or site clearance shall be commenced until a Preliminary Investigation (taking into account the risks from the nearby petrol station), an intrusive demolition asbestos survey (in accordance with HSG264 supported by an appropriate mitigation scheme to control risks) and a Method Statement and Remediation Scheme shall be submitted to and agreed in writing by the Local Planning Authority.
 - 15) Upon completion of the remediation detailed in the Method Statement, and before occupation of any part of the site by any end user, a written Verification Report shall be submitted to, and agreed in writing by, the Council providing verification that the required works regarding decontamination and installation of post remediation monitoring, have been carried out in accordance with the agreed Method Statement and any addenda thereto.
 - 16) No development above ground level shall take place until a scheme to demonstrate that the internal noise levels within the residential units will conform to the 'indoor ambient noise levels for dwellings' guideline values as specified within BS8233:2014, Guidance on Sound Insulation and Noise Reduction of Buildings, shall be submitted to and approved by the North Area Planning Sub-Committee. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to the occupation of the premises and be retained thereafter.
 - 17) Before the commercial use commences, a detailed scheme shall be submitted to, and approved in writing by the LPA setting out how the construction of the separating ceilings/floors shall exceed an airborne sound insulation value of 55dB DnT, w+Ctr (i.e. 10dB above the standard required by the Building Regulations). The scheme approved by the LPA shall be fully implemented in accordance with the approved details, before the use is hereby permitted, commences. The works and scheme shall thereafter be retained, in accordance with the approved details. Before the use commences, a suitably qualified person shall be carried out post-completion testing to ensure that the above sound

insulation value has been achieved. The results of the assessment shall be submitted in writing to the Local Planning Authority.

- 18) The use of the commercial premises shall not commence until a scheme for the control of noise and vibration from any plant and equipment (including ventilation, refrigeration, air conditioning and air handling units) to be used in pursuance of this permission has been submitted to and approved in writing by the Local Planning Authority. This shall then be installed prior to first occupation of the premises and this shall be retained and operated in compliance with the approved plans. The plant shall be supported on adequate proprietary ant-vibration mounts as necessary to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.
- 19) The use hereby permitted shall not be open to customers outside the following times Monday to Sunday 07.00hrs to 23.00hrs.
- 20) Deliveries and collection of goods from the premises shall only be carried out between the following hours: Monday to Saturday 0.00hrs to 22.00hrs, Sundays and Bank Holidays 09.00 to 18.00hrs.
- 21) Prior to the use commencing a detailed lighting scheme shall be submitted to and approved in writing by the LPA setting out how the design of the exterior lighting shall ensure that the total light contribution shall not exceed the obtrusive limitations for exterior lighting installations in accordance with the Institute of Lighting Professionals Guidance Note GN01:2011, both at ground level, at the boundary of the nearest light sensitive residential property. The scheme approved by the LPA shall be fully implemented in accordance with the approved details, before the use hereby permitted commences. The works and scheme shall thereafter be retained, in accordance with the approved details.
- 22) The development shall be carried out in accordance with the conclusions and recommendations in the ecological assessment report including any biodiversity enhancements by Ethos Environmental Planning dated December 2020.
- 23) No development above ground shall take place until a full and detailed application for the Secured by Design award scheme, or an alternative specification is agreed with the Surrey Police Northern Division Designing Out Crime Officer shall be submitted to the Local Planning Authority and the Surrey Police Northern Division Designing Out Crime Officers, setting out how the principles and practices of the Secured by Design Scheme are to be incorporated. Once approved in writing by the Local Planning Authority in consultation with the Surrey Police Designing Out Crime Officers, the development shall be carried out in accordance with the approved details.

End of conditions