



Appeal Decision

Site visit made on 8 February 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 02 March 2022

Appeal Ref: APP/K3605/W/21/3279964

Site of 85 and land north-west of 77 to 83 Manor Road North, Hinchley Wood, Esher, Surrey KT10 0AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mark Hendy of Shanly Homes Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2020/3459, dated 8 December 2020, was refused by notice dated 21 June 2021.
 - The application sought planning permission for Variation of Condition 2 (Approved Plans) of planning permission 2020/2120 (Variation of Condition) to increase size of first-floor level and new privacy screen (plot 4), addition of second-floor terrace with privacy screen (plot 5), revise and re-position north-west dormer window and alterations and revisions to the fenestration of Plots 6-15 at first floor level without complying with a condition attached to planning permission Ref 2020/2120, dated 23 November 2020.
 - The condition in dispute is No 2 (List of Approved Plans) which states that: "The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 1371/S73/200; 1371/S73/201; 1371/S73/202; 1371/S73/203; 1371/S73/204; 1371/S73/205; 1371/S73/206; 1371/S73/207; 1371/S73/208 and DPA-7001-03 Rev D all received on 24th August 2020 and AAL:-19-103-P01; AAL-19-103-P12; AAL-19-103-P13 received on 3rd April 2019 and attached to the parent permission (ref: 2019/0942)".
 - The reason given for the condition is: "to ensure that the development is carried out in a satisfactory manner".
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Decision

1. The appeal is allowed and planning permission is granted for 5 pairs of two-storey semi-detached houses with rooms in the roof space, dormer windows, detached outbuildings/cycle stores, detached two-storey building with rooms in the roof space comprising 5 flats and new access with associated car parking and amenity areas following demolition of the existing house at Site of 85 and land north-west of 77 to 83 Manor Road North, Esher, Surrey KT10 0AB in accordance with the terms of the application, Ref 2020/3459, dated 8 December 2020, subject to the conditions set out in the Schedule to this decision.

Preliminary Matters

2. I have used the Council's site address, as this more comprehensively describes the appeal site.
3. During my site visit it was clear that development was nearing completion, and has been carried out in accordance with the revised plans now submitted as

part of this appeal, rather than the originally consented plans. Whilst it is not clear whether the relevant plans condition had already been breached at the time the application was first made, I have determined this appeal under s73A of the Town and Country Planning Act 1990 (rather than s73), as it is apparent that the changes sought are now retrospective.

4. Planning permission was originally granted for the construction of 5 pairs of two-storey semi-detached houses and a separate block of 5 flats under planning reference 2019/0942 on 6 November 2019 ("Original Permission"). The Original Permission has since been amended by two separate s73 applications, being applications 2020/1178 granted on 20 August 2020 and 2020/2120 granted on 23 November 2020 ("Second Variation Permission"). It is the Second Variation Permission which the appellant is now seeking to amend under this appeal.
5. Nonetheless, it is important to note that under s73 of the Town and Country Planning Act 1990, I can either allow the appeal and create a new planning permission, or dismiss the appeal. In either event, all the existing planning permissions would remain extant. Therefore, I have used the description of development from the Original Permission as this relates to the development as a whole, and will ensure clarity over the development now permitted.
6. The appeal application originally sought to introduce a terrace within plot 5 of the development (at second floor level of the block of flats). Due to concerns from both the Council and neighbouring occupiers, the appellant has since carried out the development without incorporating this terrace. Consequently, a revised plan has been submitted as part of this appeal (1371/PLN/309 Rev D (Plots 1-5 Plans and Elevations)), which no longer includes the terrace within plot 5. Given the updated plan reflects the as-built position and the Council has been given the opportunity to comment, I am satisfied I can determine this appeal based on the updated plan, without prejudice to the main parties.
7. Since determination of the planning application, the 2019 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issues of this appeal. I have therefore determined this appeal with regard to the current version, published in July 2021.

Background and Main Issues

8. The appellant wishes to amend the plans approved under the Second Variation Permission to regulate the as-built position. These as-built changes include an increase to the size of the first-floor level of the block of flats including amendments to the rear dormer, introduction of an outdoor terrace and privacy screen within plot 4 and various amendments to the fenestration arrangements on both the flats and the semi-detached dwellings. Given the Council has not raised any issue with the revised fenestration arrangement on plots 6–15, the main issues of this appeal will focus solely on the proposed changes to the flats (being plots 1–5).
9. In this context, the main issues are the effect that varying condition 2 (Approved Plans) of the Second Variation Permission would have on:

- the character and appearance of the area, specifically in relation to the terrace and privacy screen within Plot 4; and
- the living conditions of neighbouring occupiers, with particular regard to outlook and privacy.

Reasons

Character and Appearance

10. Although the floorspace at first-floor level of the block of flats has been increased, the overall footprint of the building is not affected by the revisions to the scheme. Indeed, the new terrace has been inset from the rear wall on the south-western side of the flats, which means it is fully integrated within the building without protruding in any way at the side or the rear. As a result, it discreetly assimilates within the main fabric of the building, without impacting on its overarching character. Moreover, given the terrace is located at the rear of the building, it is not readily visible from the road, and therefore does not impact on the prevailing street scene.
11. On this basis, I am satisfied that the introduction of the terrace at first floor level does not harm the character and appearance of the area. It is consistent with Policy CS17 of the Elmbridge Core Strategy (2011) and Policy DM2 of the Council's Development Management Plan (2015)¹ (DMP), both of which seek to ensure development responds properly to local character. The development is also consistent with the guidance set out in the Council's Design and Character SPD (2012)² (Design and Character SPD) and the overarching design objectives of the Framework, both of which promote high-quality design which integrates effectively with the surrounding character and streetscape.

Living Conditions

12. Whilst the terrace within plot 4 of the flats does slightly increase the scope for overlooking of the gardens of nos. 83 and 87, the surrounding wall to the terrace and the tall privacy screen along the south-western flank elevation, mean it is enclosed, at least to some degree, on all sides. This ensures only oblique views can be obtained over the neighbouring gardens. The tall boundary treatments between the flats and no. 87 further limit any scope for overlooking. In time, the tree planting along the south-western side of the flats will also further obscure any intervisibility between the terrace and the rear of the garden to no. 83. On this basis, I am satisfied that the terrace does not give rise to an unacceptable degree of overlooking to either of these neighbouring properties.
13. In terms of the amended fenestration arrangement on the south-western flank wall of the flats at first floor level, the number of windows has been changed from 5 to 3. Accordingly, the window coverage at first floor level has been reduced, and the potential for any mutual overlooking between the flats and no. 83 has in fact improved. Moreover, a condition has already been imposed requiring these windows to be obscure glazed, which further mitigates against any scope for overlooking between the two.

¹ Elmbridge Local Plan, Development Management Plan, April 2015

² Elmbridge Local Plan, Design and Character Supplementary Planning Document, April 2012

14. I am therefore satisfied that the development carried out pursuant to the amended plans does not cause undue harm to the living conditions of neighbouring occupiers. The as-built development remains consistent with Policy DM2 of the Council's DMP, which seeks to ensure new development is designed in such a way that offers appropriate outlook and privacy to neighbouring occupiers. Similarly, the development accords with the Design and Character SPD and the provisions of the Framework, which also seek to safeguard neighbouring amenity as part of new development.

Other Matters

15. Whilst I note local concern regarding the potential for increased noise arising from the new terrace within plot 4, I consider that any increase in noise would only be commensurate with that typically expected between gardens of neighbouring properties in such a residential area.
16. In terms of any disparities regarding the inclusion of obscure glazed/clear windows on the revised plans for the flank elevations of the flats, a condition has been carried over from the Second Variation Permission which ensures all flank windows at first floor level must be obscure glazed. In the event of non-compliance, this will be an enforcement matter for the Council.

Conditions

17. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Whilst development is now at a late stage, I have little information before me about the status of other conditions imposed on the Second Variation Permission (even where pre-commencement). Subject to the amended plans conditions, I shall therefore impose all those conditions previously attached to the Second Variation Permission to ensure continued compliance. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
18. In terms of condition 3 which relates to obscure glazing, I believe the Council has mistakenly referenced no. 75 Manor Road North instead of no. 83. I have corrected this in the attached set of conditions. Given the privacy screen on the first-floor balcony has now been constructed in brick (in accordance with the updated plans), there is no longer a requirement for any additional obscured glass privacy screen. I have therefore not included the condition proposed by the Council requiring the obscure glass privacy screen to be installed.

Conclusion

19. For the reasons given above, and having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal should be allowed and the planning permission is varied accordingly.

James Blackwell

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved drawings: 1371/PLN/300 (Block Plan and Site Location); 1371/PLN/310 Rev B (Site Layout Plan); 1371/PLN/302 (Plots 6-7 Plans and Elevations); 1371/PLN/303 (Plots 8-9 Plans and Elevations); 1371/PLN/304 (Plots 10-11 Plans and Elevations); 1371/PLN/305 (Plots 12-13 Plans and Elevations); 1371/PLN/306 (Plots 14-15 Plans and Elevations); 1371/PLN/308 Rev A (Dimensioned and Comparison Plan); 1371/PLN/309 Rev D (Plots 1-5 Plans and Elevations); and DPA-7001-03D (Tree Protection Plan).
- 2) Prior to the first occupation of the development hereby permitted the upper floor flank elevation windows facing numbers 83 and 87 Manor Road North of plots 1-5 and the side dormer windows of plots 6-15 at the rear of the site permitted shall be 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 shall only be openable above a height of 1.7m above the internal floor level of the room to which it serves. The windows shall be permanently retained in that condition thereafter.
- 3) The development hereby permitted shall have no windows or other openings inserted into any elevations unless planning permission has first been granted by the Local Planning Authority.
- 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 suitably 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 DPA-7001-03 Rev D. The tree protection measures shall be maintained for the course of the development works. To arrange a pre-commencement meeting please email tplan@elmbridge.gov.uk with the application reference and contact details.
- 5) 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 development works. The development thereafter shall be implemented in strict accordance with the approved details and method statements contained in the Arboricultural report produced by DPA dated March 2019.
- 6) All existing trees and 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 proposed 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 or hedgerow is removed, uprooted, 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.

- 7) 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).
- 8) No part of the development shall be first occupied until the proposed vehicular and pedestrian access to Manor Road North has been constructed and provided with visibility zones in accordance with the approved plans and thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high.
- 9) The development hereby permitted shall not be first occupied unless and until existing access from the site to Manor Road North has been permanently closed and any kerbs, verge, footway, fully reinstated.
- 10) The development hereby approved shall not be first occupied unless and until a pedestrian inter-visibility splay measuring 2m by 2m has been provided on each side of the access to Manor Road North, the depth measured from the back of the footway (or verge) and the widths outwards from the edges of the access. No obstruction to visibility between 0.6m and 2m in height above ground level shall be erected within the area of such splays.
- 11) 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 area(s) shall be retained and maintained for their designated purposes.
- 12) For flats, the development hereby approved shall not be occupied unless and until at least 1 (20%) 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 submitted to and approved in writing by the Local Planning Authority. For houses, the development hereby approved shall not be occupied unless and 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 to be submitted and approved in writing by the Local Planning Authority and thereafter retained and maintained to the satisfaction of the Local Planning Authority.

- 13) The development hereby permitted shall be carried out in accordance with the recommendations and enhancements identified within the Preliminary Ecological Survey prepared by Greenlink Ecology Ltd dated March 2019 and Protected Species Survey Report also prepared by Greenlink Ecology Ltd dated March 2019.

End of Conditions