



Appeal Decision

Site visit made on 25 January 2022

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2022

Appeal Ref: APP/K3605/W/21/3276579

Bransby Lodge, St Leonards Road, Thames Ditton KT7 0RN

- 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 B Saund (Octagon Developments Ltd) against the decision of Elmbridge Borough Council.
 - The application Ref 2020/0865, dated 22 April 2020, was refused by notice dated 8 December 2020.
 - The development proposed is "a detached two storey building with rooms in the roofspace comprising No.7 Units and a detached two storey building comprising No.2 units, with associated parking, landscaping and refuse storage storey following the demolition of the existing house. "
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A new Bat Emergence and Re-entry Surveys Report (BERSR)¹ accompanies the appeal and seeks to address ecological objections raised by the Council. The Council and third parties have had time to assess it during the appeal publicity time frame, and therefore, their opportunity to make representations has not been prejudiced. For all these reasons, it has been accepted for consideration in this appeal assessment.
3. A section 106 agreement dated 30 November 2020 details the provision of an affordable housing contribution predicated on the basis that any flat ground rents charged do not financially benefit the developer. Such matters will be commented upon in my reasoning.

Main Issues

4. The main issues are the effects of the proposal on (a) the character and appearance of the area, (b) the living conditions of the occupiers of neighbouring dwellings, having regard to outlook and privacy, (c) the living conditions of the future occupiers of the residential units, having regard to the provision of outdoor private space and noise, disturbance and smells from a refuse storage enclosure (for unit No.2), (d) the provision of car parking and sustainable transport and (e) protected species.

¹ Bat Emergence and Re-entry Surveys Report, Bransby Lodge, St Leonards Road, Thames Ditton, Surrey KT7 0RN, Octagon Developments, Arbtech, 2021.

Reasons

Character and appearance

5. The appeal site comprises a dwelling, garage and ancillary outbuildings with an extensive rear garden. It lies between a dwelling, known as Holkham, and a retirement development, comprising a large frontage building and a smaller rear building, known as Lynton. Lynton has an internal access road serving its residential units alongside the boundary of the appeal site. Behind the site, there are the extensive long rear gardens of dwellings along Portsmouth Road which comprise substantial sized trees adjacent to the site's rear boundary. The surrounding area comprises mainly two storey dwellings of varied designs within spacious and landscaped rear gardens.
6. The proposed frontage building, two storey, would be consistent with the building line along St Leonards Road and would be physically divided up, with a staggered façade. The roof would similarly be divided up with differing gables, rooflights, dormers and pitched roof elements. However, the development would have a substantial roof because of an extensive flat 'crown' atop high and steeply pitched roofs. The roof (second) floor floorspace would extend across much of the footprint of the building and the roof would be notably greater in height than each of the individual storeys below. The scale, height, size and footprint of the new frontage building would be significantly greater in relation to detached dwellings along St Leonards Road and would be markedly out of keeping with dwellings in the street as a result.
7. In relation to Lynton, the new building's width would be significantly narrower, its overall footprint would not be dissimilar, and its height would be no greater than the highest part of this neighbouring building. Lynton's rearward projection would also be greater than that of the appeal building. However, part of this neighbouring building's façade is set back and most of the building would be of lower height than that of the appeal building. The two storey frontage of the Lynton building would be significantly shorter in depth and its rearward projecting flank is largely single storey, with a low pitched roof. In contrast, the scale, massing and extent of the appeal building's frontage and principal side elevation would be substantial and visually overwhelming, due, in effect, to its three storey appearance. This elevation would be prominent due to the open nature of this part of the street.
8. Opposite the appeal site, there are 2 two storey detached dwellings, with third floor accommodation above. There are substantial residential buildings at 1-6 St Leonards Court, with a top floor within a mansard roof, and at Royston on Portsmouth Road, with a top floor within a pitched and flat crowned roof. Further high storey development has been permitted/built at Poplars and Dolphins and the site, formerly known as Tiger Jones, AC Court on Ashley Road and Giggs Hill Green.
9. However, the dwellings opposite have top floor accommodation contained within their hipped pitched roofs and upper wall sections, which are of far smaller extent than that of the appeal development before me. Both the Royston, St Leonards Court and Tiger Jones buildings are at corner locations with major 'A' classified roads and not within a residential street. At Poplars and Dolphins, the development is individual dwellings, albeit large, on a major road. The Royston development, along with those at Tiger Jones, AC Court and Giggs Hill Green are located significant distances away from the development.

For all these reasons, there are considerable context differences between these developments and the scheme before me and in any case, every proposal has to be considered on its own particular planning merits.

10. Similarly, the rear proposed building would be adversely dominant due to its scale, height, width and footprint, especially given the confined nature of the site here. In this regard, the flank and rear corner of this building would be in close proximity to the boundaries of neighbouring properties at Holkham and Keighley. The Lynton development has a rear building but it is single storey with greater space to the rear and thus, it does not justify the appeal building proposed here.
11. There would be limited views of the rear building from St Leonards Road but lack of public views is not the sole determining consideration of acceptability of a scheme. The National Planning Policy Framework (the Framework) takes a broader assessment in that it requires good design to create better places for people to live and work. The buildings and hard surfaced areas would result in an overdeveloped plot out of context with its surroundings where more spacious landscaped surroundings mainly prevail. Such an adverse impact would be noticeable to residents both within the new development and those at Lynton. There are examples of backland dwellings on Rythe Bank Close, Mount Holme, White Gates and Hawkes Yard but these examples would not be nearby, being located a significant distance away from the site and its immediate context which severely limits their relevance.
12. The four major trees sited alongside the rear common boundary of the site have a substantial public presence because of their significant height and canopy spread. The appellant's Arboricultural report² details the group to be significant in height, extent and moderate to high in quality. The two closest trees, a lime and a beech would have canopies close to the back of the rear proposed building, with the canopy of one tree almost touching. The appellant's Daylight and Sunlight report (DSR)³ demonstrates that the trees would not impact on the occupiers of the residential units in terms of light and daylight.
13. However, future occupiers may wish to severely prune or fell these trees, for other reasons, such as danger from falling branches, debris or trees. Given their proximity and height, it would be difficult to resist moves to undertake such work and any significant deterioration in the visual status of the trees would be detrimental to the character and appearance of the area.
14. For all these reasons, the development would harm the character and appearance of the area. Accordingly, the proposal would be contrary to Policies CS8 and CS17 of the Core Strategy (CS) 2021 and Policies DM2, DM6 and DM10 of the Development Management Plan (DMP) 2015.

Living conditions of neighbouring residents

15. The proposed rear building would be located a considerable distance from the back of Holkham and would be located adjacent to the rear most part of this neighbour's garden. However, the appeal building would have a significant sized and high flank elevation, with little meaningful physical articulation, and would be close to the neighbour's garden. Such a relationship would adversely

² Tree Survey and Arboricultural Impact Assessment, Clive Fowler Associates Tree Consultancy, undated.

³ The Daylight and Sunlight Study (Within Development), Right of Light Consultancy, July 2020

affect the neighbour's outlook when this part of their garden is used. In terms of privacy, the rear building would have no flank windows to cause overlooking whilst its frontage windows would only have indirect views limiting any privacy concerns.

16. Turning to the frontage building, it would flank the ground floor and second floor side windows of Holkham. However, the outlook of the ground floor windows would already be of boundary treatments and detached garage on the appeal site. Based on the DSR, the second floor window serves an internal circulation area limiting its importance and sensitivity. The back of the neighbouring dwelling has two first floor windows serving a bathroom/WC and bedroom, but both windows mainly face the garden of Holkham, with any views of the frontage building angled and indirect. Furthermore, the bathroom/WC does not serve a habitable room (main living space), and whilst the bedroom is a habitable room, it is sited further into the plot of Holkham beyond the bathroom/WC.
17. The frontage building would extend beyond the rear of Holkham but where it does, it would be further set back from the common boundary with this neighbouring property. This would leave good separation between it, and the garden and dwelling of the neighbouring property. The frontage building's flank would have first floor windows, serving bathrooms/WCs, and these could be obscure glazed to prevent overlooking, including perceived.
18. The frontage building's principal elevation has numerous first floor windows which would face the frontages of the residential units of Lynton. However, there would be significant distance separation between the two buildings. The rear proposed building would be sited alongside the rear building at Lynton with separation provided by amenity space and hard surfacing. Here, the windows of the nearest residential unit at Lynton would mainly face the front and rear of its plot. The first floor windows of the appeal building could be obscure glazed where they face the Lynton site. Consequently, there would be no overlooking or loss of outlook for residents of the rear Lynton building.
19. In summary, the rear building would harm the living conditions of adjoining residents at Holkham through poor outlook for all these reasons. Accordingly, the proposal would be contrary to Policy CS17 of the CS and Policies DM2 and DM10 of the DMP.

Living conditions of future residents

20. There would be private outdoor space serving the units within the rear building, the units at the frontage building, namely the rear ground floor units, a first floor unit (balcony) and top storey flat (balcony/roof terrace). There would also be communal outdoor space between vehicle parking/turning and rear of the frontage building and private outdoor space serving the ground floor units. The Council has no planning policy or Supplementary Planning Document stipulating area requirements for outdoor space serving flats.
21. However, the National Planning Policy Framework (the Framework), requires the creation of places, that amongst other matters, promote health and well-being, with a high standard of amenity for existing and future users. Three of the flats would have no private outdoor space that is essential for every day domestic activities, such as outside relaxation and clothes drying. The communal open space would not compensate for this because it is irregularly

shaped and bordered by private terraces, pathways and parking which would limit its usefulness as an attractive amenity area to use. For all these reasons, the provision of outdoor space would be poor for the occupants of three flats within the frontage building.

22. There would be a communal bin storage area behind the frontage building and adjacent to the rear of unit No. 2 on this building. However, the storage area would be enclosed, located approximately 4m distant from the unit, and would be sited to the side of the units main internal living space. The private amenity terrace of this unit would be closer but it would be separated by a pathway and similarly located to one side of it. Consequently, this relationship would not give rise to significant problems of noise, disturbance and smells.
23. In summary, the development would harm the living conditions of future residents of the frontage building through the poor provision of outdoor space for all these reasons. Accordingly, the proposal would conflict with Policies DM2 and DM10 of the DMP.

Car parking and sustainable transport

24. The appeal development comprises 8 two bedroom flats and 1 three bedroom dwelling. There would be 18 vehicle parking spaces to serve them which would require a ratio of 2 spaces per dwelling. Appendix 1 of the DMP contains the Elmbridge Parking Standards and under these standards, the maximum parking provision for the proposal should be 14 spaces.
25. Under CS Policy CS25, improvements will be promoted to sustainable travel, and accessibility to services, through a variety of measures, including applying maximum parking standards to all uses. Policy DM7 of the DMP requires that parking provision should be appropriate to the development.
26. The appellant has accepted the provision of electric vehicle charging points for each residential unit. There would also be nearby bus stops and Thames Ditton Railway Station. The walk to the station would be just under 15 minutes, with services south involving a change incurring additional travel time, and bus services are infrequent. However, residents of the development would be within a short walking distance of Thames Ditton with a range of facilities and services and therefore, availability of sustainable transport options to residents to access services and facilities would be good overall.
27. The Highway Authority and third parties' comment on parking stress, street parking at over capacity, but no detailed evidence has been submitted to demonstrate this or whether there would be harmful parking stress if provision was made in accordance with the standards. As proposed, the designated parking would be above the Council's own maximum standards and there are services and facilities that can be accessed by sustainable transport modes. Therefore, there is no clear and compelling justification for parking provision above the maximum standards. Over provision of parking spaces would further conflict with the one of the objectives of the CS which is to reduce people's reliance on driving, by directing new development to sustainable locations, promoting attractive and convenient alternatives, including public transport, and in doing so reducing congestion and pollution caused by traffic.

28. For all these reasons, the parking above the DMP standard would not be justified and there would be conflict with Policy CS25 of the CS and Policy DM7 of the DMP.

Protected Species

29. The BERSR details three bat surveys carried out on the site during the summer of 2021 where bat species were recorded foraging and commuting. Based on the assessment, bats are very unlikely to be roosting within the existing dwelling and as such, there are not anticipated to be any impacts on bats as a result of the proposed works. Following review of the BERSR, the Council raise no objections on ecological grounds subject to the inclusion of a condition requiring bat boxes and lighting measures as set out in the BERSR.
30. The BERSR is comprehensive, based on accepted professional guidance and policy, and carried out by experienced ecologists. In the absence of contrary comparable evidence, significant weight is given to the findings of the BERSR report. In the unlikely event that bats are unexpectedly found during any stage of the development, legislative requirements would necessitate work stopping immediately and appropriate advice taken. For all these reasons, the development would not harm protected species and the proposal would comply with Policy CS15 of the CS.

Unlateral Undertaking

31. CS Policy CS21 requires that development resulting in the net gain of 6 - 14 residential units should provide 30% of the gross number of dwellings on-site as a financial contribution. The Developer Contributions Supplementary Planning Document (SPD) 2021 supports the delivery of affordable housing and provides guidance on contribution sums.
32. The s106 provides an affordable housing contribution that is informed by a developer viability assessment. There is no detailed evidence to dispute the viability assessment. The s106 also details that flat ground rents charged do not financially benefit the developer which would otherwise increase profit and scope for affordable housing contribution on the site. In contrast to local plan policy, the Framework and Planning Practice Guidance would not require a contribution for the proposed development. The Framework and Guidance reflect the Written Ministerial Statement November 2014 which indicates the lack of a requirement is due to the disproportionate burden of developer contributions on small scale developers and is intended to help increase housing supply. National policy is a significant material consideration.
33. However, the Council's Affordable Housing Statement (AHS) October 2021 indicates that contributions collected on small sites are not a disproportionate burden on developers as a result of a viability review of this approach. As has been done here, it also indicates viability assessments can also be undertaken on developments where applicants consider the contribution to make the development unviable. Consequently, there is no evidence that a contribution would place a disproportionate burden on developing this site. The AHS further provides evidence that affordable housing need is acute given high property prices in the borough and that affordable housing provision is necessary on smaller and medium sized sites because they contribute significantly to housing supply.

34. For all these reasons, the Council's approach in requiring affordable housing provision in accordance with its policy and guidance is correct having considered the proposal on its merits. In this instance, compliance with development plan policy would outweigh any conflict with national planning policy. For all these reasons, the contribution and rent restriction would meet the statutory tests of the Community Infrastructure Regulations 2012 (as amended) and paragraph 57 of the Framework. In particular, the requirements are necessary to make the development acceptable in planning terms, directly related to the development and are fairly and reasonably related in scale and kind to it.

Planning Balance

35. The proposal would boost housing supply in accordance with paragraph 60 of the Framework in a borough where housing development is constrained by the Green Belt. The latest available Council Monitoring Report 2019/2020 details a deficit 5 Year Housing Supply (3.96 years) and the 2021 Housing Delivery Test (HDT) results show poor housing delivery. The proposal would make a small but valuable contribution to housing supply on this basis. The affordable housing contribution would be a small benefit. The development of the site would make effective use of land and would provide much needed smaller scale housing units in compliance with paragraph 69 of the Framework. Residents would have good accessibility to services and facilities through sustainable transport means. These benefits of the proposal would weigh significantly in favour.
36. However, the development would be poorly designed. As a result, there would be harm to the character and appearance of the area, the living conditions of existing and future residents and the over provision of parking would discourage use of sustainable transport contrary to local objectives. By reason of the significant size, scale, massing and extent of the development, the adverse impact on the character and appearance of the area would be considerable and overriding. Under the Framework, the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. The proposal would fall considerably short of good design for the reasons indicated.
37. The conflict with the character, design and transport CS and DMP policies are central to the consideration of the proposal and overriding, and there would be conflict with the development plan taken as a whole. Under tilted test, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. There are no material considerations of sufficient weight or importance that determine that the decision should be taken other than in accordance with the development plan and therefore, planning permission should be refused.
38. Third parties have objected to the appellant's Daylight and Sunlight Report⁴ (Neighbouring Properties) but as there are substantive reasons to dismiss this appeal, there is no reason for me to consider this further.

⁴ Daylight and Sunlight Report (Neighbouring Properties), Right of Light Consulting, August 2020.

Conclusion

39. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR