



Appeal Decision

Site visit made on 20 April 2022

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 MAY 2022

Appeal Ref: APP/K3605/W/21/3281073

Pelhams Ridge, 1 Copsem Lane, Esher KT10 9EU

- 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 Astindale Developments against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1076, dated 27 April 2020, was refused by notice dated 27 April 2021.
 - The development proposed is demolition of the existing dwelling and associated garaging in forming a new apartment block for eight dwellings with surface parking, bin, cycle storage and communal garden.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing dwelling and associated garaging in forming a new apartment block for eight dwellings with surface parking, bin, cycle storage and communal garden at Pelhams Ridge, 1 Copsem Lane, Esher KT10 9EU in accordance with the terms of the application, Ref 2020/1076, dated 27 April 2020, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. A completed and signed Section 106 Agreement (S106) has been submitted which includes a mechanism to contribute towards affordable housing. The Council has not confirmed that it is not pursuing the reason for refusal relating to this issue. Nevertheless, in the circumstances of this case, I must reach a finding on the obligation. I will therefore return to this matter later in this decision.
3. I have been presented with a tree removal plan and tree conflicts, protective fencing and ground protection plans as part of the Arboricultural Survey Impact Assessment and Tree Protection Plan dated February 2021 by Ben Larkham Associates Ltd. These include a site layout and works to trees which broadly reflect those in the other plans under consideration. The Council states that these plans were not before it at the time that it made its decision. However, the information in these plans is reflected elsewhere and as such the parties would have been aware of the general content and had the opportunity to respond to the matters relevant to these drawings. For the reasons above, the parties would not be prejudiced if I were to consider these plans, and therefore the appeal is assessed on the basis of these amended plans.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area, and whether or not the proposed development would make adequate provision for affordable housing.

Reasons

Character and Appearance

5. This part of Copsem Lane is characterised by large, detached dwellings. They are generally set back behind landscaped front gardens, some of which include mature trees, resulting in an open, green feel. In this area, Copsem Lane inclines from West Lodge, which is at a lower level than the appeal site, to 1 Haymeads Drive which is at a higher level.
6. The style of properties is varied and in the vicinity of the appeal site includes traditional two storey detached houses mainly in brick with pitched roofs, single storey bungalows with low pitched roofs and cladding and the property at West Lodge, which also has a low pitched roof and cladding, although it has a prominent two storey element. In the wider area there are taller terraces at Princess Square as well as contemporary flat roofed properties at Lakeside Drive. The varied appearance along this part of Copsem Lane contributes to its interest.
7. The appeal property is a single storey bungalow which occupies the majority of the width of the plot. Its appearance is similar to those on Haymeads Drive, which is characterised by single storey bungalows, including its neighbour at no 1. However, due to its position fronting Copsem Lane its main relationship is with the Copsem Lane streetscene. There are mature trees within the front garden which are covered by TPOs and these make a positive contribution to the spacious, green character of the area.
8. The proposed building would be two storeys with a flat roof and would extend to the majority of the width of the plot. It would be in a modern design with a flat roof using render and cladding. The building would be positioned further to the rear than at present and would be set back from the frontage.
9. The modern appearance including the proposed flat roof is not found in the immediate area, and flats are uncommon, however similar features are present in the wider locality. Therefore, the difference in appearance is not harmfully discordant in this location, and the proposed building would contribute to the variety of styles which form part of the character of this area.
10. Due to the topography, the overall height of the proposed building would be broadly similar to 1 Haymeads Drive, and the proposed single storey element to the north results in an appropriate relationship with the height of West Lodge. Furthermore, two storey properties are common in this area. Whilst it would result in a two storey building at one of the higher parts of the road, due to this site specific context, the increased height and massing would not be dominant and would be appropriate within the streetscene. Furthermore, it would retain the important set back, greenery and sense of spaciousness.
11. Consequently, the proposed development would have an acceptable effect on the character and appearance of the area. As such, in this respect, it would be in accordance with Policy CS17 of the Core Strategy July 2011 (CS) and Policy

DM2 of the Development Management Plan April 2015. Together these require all new development to provide high quality design and set out detail as to how this can be achieved. As well as the advice in the Design and Character Supplementary Planning Document April 2012 which provides design guidance for new development to achieve distinctive, high quality development that respects local character.

Affordable Housing

12. Policy CS21 of the CS requires that for this development 30% of the gross number of dwellings on site should be provided as affordable housing. However, the policy pre-dates the National Planning Policy Framework July 2021 (the Framework) which states that affordable housing should not be sought for residential developments that are not major developments.
13. The Council has provided evidence that there is a high level of affordable need in the Borough, the importance of small sites in delivering this, and that the requirements of this policy have been assessed from a viability viewpoint and consequently do not place a disproportionate burden on developers. Therefore, based on this specific local evidence, the Framework's provisions do not outweigh the development plan in this instance.
14. Where it is considered that the delivery of affordable housing in accordance with the policy is not viable, this must be demonstrated through a financial appraisal. The appellant has submitted a Financial Viability Appraisal which concludes that, based on market conditions, there would not be sufficient scope for an affordable housing contribution. This conclusion is not disputed by the Council and I have no detailed evidence which leads me to disagree with these findings.
15. The Development Contributions Supplementary Planning Document (July 2020) provides that for any development providing five and more homes the Council will secure review mechanisms. The submitted S106 includes a late stage review contribution which would reassess the viability of the scheme when 75% of the development has been disposed. If any development surplus profit is identified at this stage 60% would be a financial contribution to the Council towards the provision of affordable housing. This would take into account the actual costs and values and would not result in any affordable housing provision unless it is viable.
16. I am not provided with detailed evidence that a late stage mechanism would prevent funding being secured for this development, and the viability appraisal is now somewhat dated. As such, taking into account that the CS requires that this site should provide affordable housing where viable, this requirement is not onerous on this scheme. Therefore, I have taken account of the S106 and attach full weight to its planning obligations in determining this appeal.
17. Consequently, the proposed development would make adequate provision for affordable housing and would comply with Policy CS21 of the CS, the aims of which are set out above.

Other Matters

18. Vehicles could enter or exit the site in a forward gear, and appropriate visibility splays would be provided. Furthermore, vehicles within and entering the site are visible to one another, reducing the limited risk of conflict at the access

- point. The access is located close to a signal controlled junction where queues form at peak times. However, given the scale of the development and its layout, the proposed small increase in vehicles using this access would not lead to unacceptable harm to highway safety.
19. The proposed development would include car parking in line with the Council's parking standards. Considering the provision of cycle parking and the accessibility of the location, car parking levels are appropriate. Although safe on street parking nearby is limited, I am satisfied that any minimal overspill parking that may occur could be accommodated.
20. The proposed building would be located to the north of 1 Haymeads Drive and would be some distance from the windows with a need for daylight and sunlight at both 3 Haymeads Drive and West Lodge. Taking this into account along with the scale and position of the proposed building, there would not be a harmful loss of light to neighbouring properties.
21. The appeal scheme would introduce windows at first floor. However, the angle of view and position of these rear windows would be unlikely to result in harmful overlooking to the rear garden at 1 Haymeads Drive, and the first-floor windows to the side elevation could be conditioned to be obscure glazed and non-opening below 1.7m, preventing any direct views. The first floor rear windows would face towards the garden at 3 Haymeads Drive. However due to the distance, angle of view, topography and proposed boundary treatment these would not result in direct views towards the dwelling at no. 3. Consequently, there would not be an unacceptable loss of privacy as a result of the proposed development.
22. Although the number of occupiers would increase, the domestic use of the site and rear gardens would not change. Therefore, this is unlikely to significantly increase noise and disturbance. Nor am I persuaded that the location of the bin store would be harmful to the living conditions of neighbouring occupiers.
23. Many of the units are on one floor and accessible via a lift, therefore they would be likely to be adaptable for elderly people. Future occupants would also have access to appropriate outdoor space. There is an identified need for smaller units in the Borough, and these dwellings would contribute to this.

Conditions

24. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.
25. I am attaching the standard implementation condition, and in the interests of certainty a condition to define the plans with which the scheme should accord. The layout shown in drawing 19-11-003 does not reflect the other plans, therefore this has not been included in the list of approved drawings. A condition requiring the scheme to be built in specific materials, as well as details of landscaping would be necessary to preserve the character and appearance of the area. A condition that first floor windows in the south elevation must be obscure glazed and non-opening under 1.7m is needed in the interests of the living conditions of neighbouring occupiers.

26. The provision and retention of cycle parking, car parking, and vehicle turning as well as a Construction Transport Management Plan (CTMP) are required in the interests of highway safety. However, point g) of the Council's suggested condition 6 requires the developer to enter an agreement to fund works on land that is not controlled by the applicant. Given the circumstances of this scheme such a condition would not be appropriate and would not meet the test of reasonableness. As such, I have removed this element. The CTMP condition is required to be precommencement as the measures are required for the full duration of the works.
27. A condition to protect the existing trees on site in the interest of the character and appearance of the area is required. Further information is needed in addition to the submitted arboricultural report to ensure trees are protected during the construction period, for the same reason. I have combined the Council's suggested conditions 9 and 10 for brevity. This condition is required to be precommencement as the measures are required for the full duration of the works. The development must be carried out in accordance with this condition. Consequently, a pre commencement meeting and a completion report to check compliance is not necessary, and as such these suggested conditions are not included.
28. First floor side windows are required to be obscure glazed for the reasons set out above. Details of the electric vehicle charging points are required in the interests of air quality and the development is required to be implemented in accordance with the recommendations in the ecology report in order to maintain and enhance biodiversity.

Conclusion

29. For the reasons given above I conclude that the appeal should be allowed.

H Miles

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 18/16/29, 18/16/30, 18/16/20 Rev B, 18/16/21 Rev B, 18/16/22 Rev B, 18/16/23, 18/16/24, 18/16/25, 18/16/26 Rev A, 18/16/27, tr-1449-19 S+C, tr-1512-20 DEM, tr-1526-20 AMS Rev A, tr-1578-21 (orig tr 1449-19) Rev B (Tree Removal), tr-1578-21 (orig tr 1449-19) Rev B (Tree conflicts, protective fencing and ground protection), 3m FalcoRail Drawing No 1, Materials Schedule Rev A.
- 3) No development shall commence until a Construction Transport Management Plan, to include details of:
 - i) parking for vehicles of site personnel, operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials
 - iv) programme of works (including measures for traffic management)
 - v) provision of boundary hoarding behind any visibility zones
 - vi) measures to prevent the deposit of materials on the highway
 - vii) before and after construction condition surveys of the highway
 - viii) on-site turning for construction vehicleshave been submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be implemented in strict accordance with the details hereby approved.
- 4) No development shall commence until the following information has been submitted to and approved in writing by the Local Planning Authority:
 - i) Tree Protection Plan to include measures taken to protect existing trees and hedges during construction/demolition; details of delivery/storage of materials/machinery, mixing area, cleaning tools and site welfare.
 - ii) Detail of mitigation measures to protect against root damage under the current tarmac driveway surface.
 - iii) Specification and methodology for the construction of any roads, parking areas, driveways, hard surfacing, including details of no dig specification, extent of the areas to be constructed using no dig surfacing, and detail of any removal of sub base.
 - iv) Detail of arboricultural site monitoring and supervision.
 - v) Methods to improve the rooting environment for retained and proposed trees and landscaping.
 - vi) Details of foundation designs and any other proposals involving below ground excavation

No development shall commence until the tree protection measures have been installed in accordance with the Arboricultural Survey, Impact Assessment and Tree Protection Plan by Ben Larkham Associates dated February 2021 including tr-1449-19 S+C, Tree Removal Plan tr-1578-21-19 (orig tr 1449-19) Rev B, Tree conflicts, protective fencing and ground protection tr-1578-21-19 (orig tr 1449-19) Rev B, tr-1526-20 AMS Rev

A, tr-1512-20 DEM and the plans and details hereby approved, and shall be maintained for the course of the development works. The development thereafter shall be implemented in strict accordance with the details hereby approved.

- 5) The development hereby approved shall not be first occupied unless and until the first floor windows on the south side elevation of the development hereby approved are 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 only 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.
- 6) 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 and cycles 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.
- 7) The development hereby approved shall not be first occupied unless and until details of fast charge sockets (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) for each of the proposed dwellings are submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be implemented in strict accordance with the details hereby approved. Thereafter the fast charge sockets shall be retained and maintained for their designated purposes.
- 8) The development hereby approved shall not be first occupied unless and until written details and plans of the following landscaping works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:
 - i) positions, height, species, design, materials and type of boundary treatments
 - ii) hard surfacing materialsDevelopment shall be carried out in accordance with the approved details and shall be maintained as such thereafter.
- 9) The development hereby approved shall not be first occupied unless and until all the recommended actions in paragraphs 4.5.3 to 4.5.7 of the Preliminary Ecological Appraisal Report by Corylus Ecology dated June 2019 are undertaken.
- 10) All existing trees, hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the first occupation of the proposed development.
 - i) 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.
 - ii) if any retained tree, hedge or hedgerow is removed, uprooted or 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.
- 11) The development shall not be carried out other than in the materials detailed in the Materials Schedule Rev A.