



Appeal Decision

Site visit made on 17 May 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2022

Appeal Ref: APP/K3605/W/21/3286248

32 Green Lane, Cobham KT11 2NN

- 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 Fairpek Property Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2021/1833, dated 17 May 2021, was refused by notice dated 3 September 2021.
 - The development proposed is erection of a terrace of 4 x 2-storey houses with additional loft space accommodation, with associated basement court parking, landscaping details and bin storage following demolition of existing house.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposal makes adequate provision toward infrastructure, with particular reference to affordable housing

Reasons

Character and appearance

3. The appeal site comprises a detached dwelling and its associated curtilage land. The dwelling is the end property on Green Lane, a residential street lined with tall mature trees, and large dwellings within spacious grounds.
4. The forecourt areas of properties on Green Lane are generally flat, largely undeveloped and paved for the purposes of frontage parking. These areas are often screened by boundary vegetation, but views through the accesses in most cases reveal a sense of space, and an uncomplicated division between the roadside boundary and the set back dwellings. These spaces make an important contribution to the setting of dwellings in the area and add to the street's palatial character.
5. The proposed building would be set back a similar distance from Green Lane as the existing dwelling. The flat and spacious parking forecourt would be significantly altered through the introduction of two sets of ramps and stairs leading to a basement parking area below the proposed building. These would cut deep into the existing flat surface and be surrounding by retaining walls

that would create a highly engineered forecourt area. When viewed from the popular public footpath that runs along the site's frontage the proposed works would appear jarring and stark, in contrast to the flat and understated forecourts that characterise the street. This aspect of the scheme would visually harm the setting of the proposed building, the soft landscaped surroundings, and the street scene in general.

6. Two elongated bin store enclosures, set in from the plot's side boundaries and measuring around 2.5m in height would be positioned close to the access ramps. They would be visually prominent from the adjacent footpath and together with the ramps, stairs and the various vehicular and pedestrian accesses into the site, would result in a fragmented and intensively developed forecourt area that would harm the character of the street. There would be some proposed grass areas and tree planting on the forecourt, yet they would cover a modest area and would not sufficiently screen or soften the features which I have found to be harmful.
7. The host dwelling would be replaced by a much taller and deeper building, yet it would be consistent with the scale and appearance of other properties in the area. It would be divided into four dwellings, but this would not be obvious when looking at the building's frontage, as the entrances to the dwellings are discreetly positioned. Despite the presence of the two access ramps and bin stores, these would not clearly distinguish the proposal as four separate terrace units. Accordingly, the building's appearance would be consistent with others in the locality.
8. It is acknowledged that the appellant has sought to address the Inspector's concerns in relation to an earlier appeal scheme at the site¹. However, I have found that the revised parking solution within the proposed building's basement would have consequential visual impacts along the site's frontage that would be incongruous and harmful. This matter therefore attracts limited weight.
9. For the above reasons, I therefore conclude that the appeal scheme would result in material harm to the character and appearance of the area and would fail to accord with Policies CS10 and CS17 of the Elmbridge Core Strategy (July 2011) (Core Strategy), Policies DM2 and DM8 of the Development Management Plan 2015 and the Elmbridge Design and Character SPD 2021. Collectively these require proposals to preserve or enhance the character of the area by taking into account the local area's appearance, scale, layout, and the general pattern of development. The proposal also fails to accord with the objectives of the National Planning Policy Framework (the Framework) in achieving well designed places.

Affordable housing

10. Policy CS21 of the Core Strategy requires that for this development a financial contribution equivalent to the cost of 20% of the gross number of dwellings should be provided. This position is also reflected, and elaborated on in more detail, in the Elmbridge Developer Contributions Supplementary Planning Document (2020) ("Developer Contributions SPD"), published by the Council.
11. However, both Policy CS21 and the SPD predate the most recent version of the Framework, which at Paragraph 63 states that the provision of affordable

¹ Planning Inspectorate decision Ref APP/K3605/W/21/3272296

housing should not be sought for residential developments that are not major development, unless in designated rural areas. Given that the appeal scheme is for 4 dwellings it is not categorised as a major development.

12. Notwithstanding this, I consider that the specific circumstances within this Borough together with the evidence to support affordable housing provision on small sites are sufficient, in this case, to outweigh the guidance of the Framework. Furthermore, this finding is consistent with other Inspectors who have considered this issue in relation to appeals on similar sites in the locality.
13. A unilateral undertaking has been submitted by the appellant. Nonetheless, it is undated and has not been signed by the relevant parties, in addition there is no indication of a financial contribution toward affordable housing. Even though the broad contents of the legal agreement appear acceptable, there are important elements and terms missing and it cannot be relied upon to secure the provision of affordable housing. The proposal would therefore fail to accord with Policy CS21 as there would be no certainty that affordable housing, envisaged by that policy, would be delivered.
14. It may be the case that the appellant would be prepared to make changes to the legal agreement in order to make it acceptable, given it has committed to comply with the Council's affordable housing strategy. Yet, as I have found against the development in other respects, it is not necessary for me to pursue the appellant to amend and submit a completed planning obligation.
15. Therefore, in the absence of a completed planning obligation to secure affordable housing, the proposal would fail to make adequate contributions towards local infrastructure. Therefore, it would conflict with the aims of Policies CS21 of the Core Strategy and the Developer Contributions SPD.

Other Matters

16. The Thames Basin Heaths Special Protection Area (SPA) is designated for its internationally important habitat which supports breeding populations of three rare species of bird: Nightjar, Woodlark and Dartford Warbler. The conservation objectives for the SPA are, in summary, to ensure that the integrity of the site is maintained or restored in order to protect the habitat and the birds that depend on it. The birds which are features of the SPA are vulnerable to disturbance from recreational activities, which would likely increase through new housing development.
17. However, as the main issues provide clear reasons for dismissing the appeal, there is no need for me to consider the implications of the development on the integrity of the SPA or the provisions of the Conservation and Habitats and Species Regulations 2017 (as amended), since findings on those issues would not change the appeal outcome. In any case, the appellant's UU, which commits to providing a financial contribution towards the management and monitoring of the SPA has not been signed or dated, therefore the mechanism to secure the mitigation is not binding.
18. There is an extant planning permission² at the site for the demolition of the existing dwelling and the construction of a detached building containing four flats along with basement parking. That scheme would have undercroft parking, a largely landscaped front garden and incorporate a similar scale and

² LPA decision Ref 2019/2469

appearance to the appeal proposal. In addition, a contribution towards affordable housing has been secured.

19. In the event that I was to dismiss this appeal it is not clear whether the approved scheme would be implemented as the appellant has indicated that aspects of its construction would render it unviable. Therefore, I can only give limited weight to the fallback position. Notwithstanding this, I have found that this appeal scheme would harm the character and appearance of the area, whereas the fallback development would not.
20. The grade II* listed Benfleet Hall is located to the north west of the appeal site and separated from it by the existing road and associated boundary trees and vegetation. There is also a locally listed building at No 26 Green Lane to the south. The Council has not raised any concerns regarding the proposal's effect on the setting of those nearby heritage assets, whilst I have not been presented with detailed evidence which would lead me to conclude otherwise.

Planning Balance

21. The Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently Paragraph 11 d) of the Framework is engaged. Furthermore, the appellant indicates that the Council has failed to deliver against its objectives for new homes for the period 2016 – 2019.
22. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives.
23. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an area where there is good access to facilities and services and public transport. Moreover, the proposal would result in social and economic benefits associated with the provision of four dwelling units, make a modest contribution to the Council's housing supply as well as the government's target to significantly boost the range and supply of homes. The provision of four additional units would therefore have moderate benefits.
24. The appellant has committed to provide financial contributions towards affordable housing locally, in addition to funds towards the mitigation of the SPA. However, I am unable to give any weight to those benefits in the absence of a completed legal agreement.
25. There would be similar benefits between the appeal proposal and the fallback scheme, in terms of the number of dwellings provided and the associated social and economic benefits. Yet in that case a payment towards affordable housing has been agreed, whereas one is not in place for the appeal scheme. Therefore, there would be no tangible benefits delivered by the appeal scheme given what has already been approved at the site.
26. A high standard of design is also a key aspect of sustainable development. The harm I have identified to the character and appearance of the area would be significant. As a result, the social objective of sustainable development of fostering well-designed and beautiful places, would not be achieved. Whilst the Framework encourages the efficient use of land in meeting the need for homes and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified and would not address or outweigh the

aforementioned harm that I have identified to the character and appearance of the area.

27. Therefore, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations, including the Framework.

Conclusion

28. For the reasons given above, I conclude that the appeal should be dismissed.

R E Jones

INSPECTOR