



Appeal Decision

Site visit made on 24 May 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2022

Appeal Ref: APP/K3605/W/21/3279585

19 Old Esher Road, Hersham, Walton-On-Thames KT12 4LA

- 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 Walbury Estates (Hersham) Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2021/0366, dated 29 January 2021, was refused by notice dated 28 June 2021.
 - The development proposed is Demolition of existing dwelling and outbuildings; erection of 9no. apartments with associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework) and I have had regard to it in considering this appeal. The appeal process has afforded suitable opportunity for the main parties to comment on the foregoing policy changes.
3. The third reason for refusal attached to the Council's decision notice outlines that the proposal fails to secure the necessary affordable housing contribution given the absence of a completed legal agreement. A Section 106 agreement was subsequently agreed between the parties and provided to me as part of this appeal. The Council and the Appellant are signatories to the agreement. The Council has therefore confirmed that it no longer wishes to defend this reason for refusal and I have considered this appeal on that basis.
4. Given that I am dismissing the appeal on other grounds it is not necessary to consider whether the planning obligation meets the tests set out under the Community Infrastructure Levy Regulations 2010. Albeit, for the purposes of assessing the benefits of the proposed development I will assume that the affordable housing contribution as set out within the agreement would be made (which represents a best-case scenario for the appellant).

Main Issues

5. The main issues are:
 - The effect of the proposed development on the character and appearance of the appeal site and surrounding area.

- The effect of the proposed development on the living conditions of the occupiers of 17 Esher Road and the property known as 'Harrison House', with particular regard to outlook and privacy.

Reasons

Character and Appearance

6. The appeal site is located on Old Esher Road and comprises a two-storey dwelling (No 19), garden and area of grass verge. The site is located on a corner plot adjacent to Mole Road. No 19, 17 and 15 Old Esher Road are all two-storey residential properties which have been extended to the rear, with No 15 comprising fairly significant rear extensions. Despite this, within the street scene the scale of these properties is relatively uniform.
7. The character of development within the wider surrounding area is much more varied¹ and includes more modern and prominent commercial properties to the west and south-west of the appeal site, including a large supermarket. To the west, development predominantly consists of residential properties. These typically include two-storey detached, semi-detached and terraced properties but there are more substantial blocks of flats within the vicinity of the appeal site, including those located on Brittain Road. Whilst there is a lot of variation in architectural style, most of the residential properties have a fairly traditional appearance in contrast to the more contemporary design of the nearby commercial properties.
8. Given its location between the larger scale development to the west and the smaller scale residential development to the east, the site serves as a transition between these two different characters. As such, the appeal site, which comprises a relatively large plot, provides some scope for a larger scale development.
9. Notwithstanding this, the proposed development would completely dominate the appeal site with the layout filling the vast majority of it. The proposed development would have a significantly higher maximum ridge height than the immediately surrounding residential properties. Furthermore, the height to the furthest extremities of the building (whilst slightly reduced in places) is not sufficiently tapered to the rear and sides. As a result, the massing of the development would significantly exacerbate the harmful visual appearance of the building. This would have a particularly harmful visual impact when the development is viewed from Old Esher Road or Mole Road in conjunction with neighbouring two storey dwellings.
10. The proposed architectural style provides a blend between modern and contemporary design which (in isolation from the scale and layout of the development) is in keeping with the varied architectural styles employed in the surrounding area. In addition, the proposed bin store could be sufficiently visually screened by proposed planting. But overall, these factors do not significantly mitigate the incongruous appearance which would result from the dominant scale and layout of the development.
11. I acknowledge that there are many more prominent buildings within the wider surrounding area, including several blocks of flats and many commercial properties. However, the proposed development would not respond effectively

¹ As recognised within the Design and Character SPD, April 2012 (Pages 16-17)

to the smaller scale character of the closest residential properties. As such, the proposed development would not serve as an effective transition between these differing scales of development.

12. The appellant has provided various examples of development granted planning permission by the Council within the wider surrounding area. However, having reviewed the layout plans provided, these developments appear to occupy a smaller proportion of their respective plots. I note that these developments are more prominent than their neighbouring buildings. However, in the case of the appeal development, it is the combination of the scale and plot coverage which results in significant visual harm. As such, none of the examples provided alter my conclusions in relation to the appeal scheme.
13. The evidence before me indicates that the site was partly used for the display of large advertisements in the past. However, at the time of my site visit there were no such advertising boards in place. In any case, the development would have a far more prominent impact than signage in this location, given its more dominant scale.
14. For these reasons, the proposed development would have a significant harmful impact on the character and appearance of the area, contrary to Elmbridge Core Strategy (July 2011) policy CS17 and Elmbridge Local Plan Development Management Plan (April 2015) Policy DM2, which require that development is of a high-quality design which preserves or enhances local character.
15. There would also be a conflict with the Design and Character SPD (April 2012) for the same reasons.
16. The proposed development would also conflict with Framework Paragraph 130, which requires that development is sympathetic to local character.

Living Conditions

17. The western flank of the proposed development would be located in relatively close proximity to the eastern flank of No 17. There is an existing ground floor window in the facing elevation of No 17. However, the outlook from this window is already dominated by the existing dwelling at No 19 and as such the proposed development would not result in a significant increase in harm in this regard.
18. However, this neighbouring property includes a single storey rear conservatory with windows facing directly towards the appeal site. Whilst the proposed development includes various setbacks which step away from this neighbouring property, the western flank of the development would still completely dominate the outlook from these neighbouring windows. This would be exacerbated by the full height scale of the development where it is parallel with the neighbouring conservatory.
19. Further to the rear, the development would be even further stepped away from this neighbouring dwelling. However, this part of the development would consist of a dominant height which would extend deep towards the rear of the site, with insufficient tapering to reduce the physical presence of the proposed building. As a result, when viewed from the rear elevation, rear garden or side facing conservatory windows of No 17, the development would have a significant overbearing impact which would be harmful to the living conditions of the occupiers of No 17.

20. I accept that this neighbouring property has some primary garden space to the west which would be visually screened by the existing conservatory. However, this is only a small area which would not sufficiently mitigate the harm caused by the proposed development. There would also remain less constrained outlook from this property to the south, but this would not reduce the overbearing impact to an acceptable degree given the extensive plot coverage and scale of the development.
21. Towards the rear of the appeal site is a property known as Harrison House, which is located on Mole Road. This is a two-storey residential property. I did not identify any windows in the northern flank (facing the appeal site) of this neighbouring dwelling. The orientation of the development is such that direct views into the neighbouring garden from the rear windows of the proposed development would not be easily attainable.
22. However, the development includes balconies which would enable views down towards the rear garden of Harrison House. Notwithstanding this, it is possible that the harmful impact could be mitigated through a condition requiring privacy screens to be installed. Furthermore, most of the primary garden space would be visually screened by the existing garage of Harrison House. Given that the existing area to the front of Harrison House is already overlooked by neighbouring properties on the opposite side of Mole Road, there would be no significant harm to living conditions to this side.
23. Whilst the proposed development would not be harmful to the living conditions of the occupiers of Harrison House (subject to a condition requiring privacy screens), this does not negate the significant harm caused by the overbearing impact upon the living conditions of No 17. As such, the proposed development would conflict with Development Management Plan Policy DM2, which requires in part that new development protects the amenity of adjoining occupiers.
24. There would also be a conflict with the Design and Character SPD insofar as it requires that development does not have a negative effect on neighbouring outlook.
25. The development would also conflict with Framework Paragraph 130, which requires that development provides a high standard of amenity to 'existing users'.

Planning Balance

26. The Council has confirmed that it cannot currently demonstrate a five-year supply of deliverable housing sites (HLS). Indeed, the evidence before me indicates that a large proportion of the Borough is within the Green Belt which presents a challenge in terms of supply.
27. Although I requested it, the Council has not provided a figure to indicate the extent of the shortfall. The appellant's Planning Statement outlines a HLS of 4.31 years. Furthermore, the Government published the Housing Delivery Test: 2021 Measurement (HDT) on 14 January 2022. These figures show that, over the preceding three-year period, 70% of the Council's housing requirement was delivered.
28. Given the results of the HDT and that there is a HLS shortfall, Framework Paragraph 11d applies. As there are no relevant Framework policies which direct refusal within the terms of Framework Paragraph 11d(i), Paragraph

- 11d(ii) is engaged. Therefore, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. I have already outlined the harm that would result from the proposed development. Given the extent of the harm which would occur in this instance, I afford it substantial weight.
30. There would be some social and economic benefits associated with the provision of market housing and the financial contribution towards affordable housing. The development would also provide smaller homes which are in need within the Borough² as well as an accessible unit. Taking into account the Council's HLS shortfall³ and the HDT results, despite the relatively limited number of dwellings proposed, these social and economic benefits can be afforded great weight. This would accord with the emphasis in the Framework on significantly boosting housing supply.
31. The appellant asserts that the development makes the optimal viable use of the site in accordance with the guidance contained in the Framework. However, whilst the development would enable a large number of dwellings relative to the size of the site, this would be at the expense of the character and appearance of the surrounding area and the living conditions of neighbouring occupiers.
32. There would be some minor benefits associated with the provision of biodiversity enhancement, albeit these would likely be limited given the relatively small scale of the development proposed. As such, they can only be afforded moderate weight.
33. That the site has good access to services and facilities is not a benefit of the development. It is a neutral factor, given the Frameworks emphasis on ensuring that all significant residential development is located in sustainable locations.
34. Finally, the appellant asserts that the payment of the New Homes Bonus (NHB) and Community Infrastructure Levy (CIL) are benefits of the development. However, the NHB and CIL are designed, inter alia, to ensure that the effects of new development are adequately accommodated and as such, they are not benefits which offer compelling support for the scheme.
35. Overall, whilst the development would result in some significant benefits, the adverse impacts of the proposed development, to which I afford substantial weight, would significantly and demonstrably outweigh those benefits, when assessed against the policies in the Framework taken as a whole.

² DM Advice Note 1: Understanding housing need in Elmbridge & DM Advice Note 2: Optimising development land

³ Accepting the appellant's contention of 4.31 years HLS but noting that this is only a best-case scenario for the appellant (based on the 19/20 AMR) in the absence of any evidence from the Council to the contrary.

Conclusion

36. The proposed development would conflict with the development plan taken as a whole. There are no other material considerations (of sufficient weight), including the approach set out at Framework Paragraph 11, which indicate a decision other than in accordance with the development plan. The appeal is therefore dismissed.

Luke Simpson

INSPECTOR