



Appeal Decision

Site visit made on 2 August 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2022.

Appeal Ref: APP/K3605/W/22/3295363

Arenella, Mountview Road, Claygate, Esher KT10 0UD

- 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 and Mrs Jens Ostergaard against the decision of Elmbridge Borough Council.
 - The application Ref 2021/2962, dated 5 August 2021, was refused by notice dated 9 November 2021.
 - The development proposed is a new single storey dwelling with partial basement and attached garage
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Decision

1. The appeal is allowed and planning permission is granted for a new single storey dwelling with partial basement and attached garage, at Arenella, Mountview Road, Claygate, Esher KT10 0UD, in accordance with the terms of the application, Ref 2021/2962, dated 5 August 2021, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

3. The appeal site is in the front garden of the property called Arenella. Mountview Road is characterised by large, detached dwellings in generous plots, with a wide range of architectural styles. On the east side of the road, dwellings are set back behind relatively shallow front gardens and have a strong street frontage and a clear building line. This pattern of development is also evident in the southern part of the eastern side of Mountview Road. Magnolia Rise appears to be a relatively recent dwelling which has prominent and largely unscreened street frontage close to the road. It sits forward of Ruxley Mount and Hillside which are at a higher level. To the north of it is a large garage forward of Ridgeway House, relatively close to the road but well screened by trees. This southern section of the eastern side of Mountview Road therefore features both built form close to the road and dwellings set behind the street frontage dwellings. The middle section of the east side of Mountview Road contains a small number of dwellings, including Arenella, which are set well back from the road behind large front gardens with mature trees. In the northern section of the east side, dwellings are again closer to the road as it bends towards Ruxley Crescent.

4. The Council's Design and Character Supplementary Planning Document (April 2012) (SPD) provides character summaries for different areas. The character summary for Claygate includes detached houses on large well landscaped plots, and well landscaped front gardens and boundaries of natural vegetation that define the roadside. The appeal site matches those character traits. The SPD notes that development in the area is likely to take the form of replacement dwellings or possibly sub-division of plots. Therefore, plot sub-division, as proposed here, is not ruled out.
5. At present, the additional setback and mature landscaped frontages of Arenella and its immediate neighbours creates a pleasant green visual break in the streetscape on one side of the road. The dwellings are generally only glimpsed through the opening at their access.
6. The proposal would introduce a new dwelling forward of Arenella but offset to one side. The proposed design and orientation would mean that the dwelling did not occupy all of its frontage and would appear as a modest single storey development. The proposal would be visible to an extent through the existing access when travelling south along Mountview Road. However, when travelling north, the bend in the road and location of the proposal relative to the access opening would mean the dwelling was not readily visible.
7. The proposed dwelling would be significantly screened by the existing trees along the front boundary. As no new access would be created and the dwelling is set off from the trees, there is no necessity to remove any significant number of trees to enable the development. Suitable conditions can be used to secure the retention of the existing trees and their protection during construction and I note the Council raise no objection on arboricultural grounds. I appreciate that it can be difficult to ensure the protection of landscaping in perpetuity and there may well be pressures to reduce and remove trees in the future. However, given the number of trees along the boundary and the modest scale of the proposed development, it is likely that an adequate level of landscaping can be maintained.
8. The proposed dwelling would be detached, set within a good sized garden and the boundary vegetation would continue to define the roadside and provide significant screening. As such the development would not appear overly prominent or cramped and would respect the main positive and distinctive characteristics of Mountview Road.
9. However, the dwelling would be set further forward than its immediate neighbours and would result in built form being introduced to a currently green and open garden space. Despite this, given the mixed pattern of development in the surrounding area, and the limited visibility of the proposal, this would result in only minimal harm.
10. Both the appellant and the Council have made numerous references to previously refused proposals for a new dwelling at the site, including an unfavourable submission for pre-application advice. I have had regard to this information but full details of previous proposals are not before me. I have determined this appeal on the basis of the current proposal, as set out in the submitted drawings, rather than by comparison to previously refused proposals. Notwithstanding this, the proposal subject to this appeal does not include a new access, which was a feature of all previous proposals, as well as reducing the amount of built form along the frontage. As a consequence of

these changes, no trees would need to be removed to create the new access, the proposal would be far less visible through the single existing access and it would have less prominent frontage. Taken together, as set out above, these changes mean that most of the previously identified harm has been addressed.

11. I conclude that the proposed development would cause harm, albeit minimal, to the character and appearance of the surrounding area. It would be generally well designed and would respond to positive features of the location and reflect the prevailing pattern of built development in the area. However, it would not follow the pattern of built development of its immediate neighbours. Consequently, the development would not comply fully with Policies DM2 of the Elmbridge Local Plan Development Management Plan (2015) and Policies CS11 and CS17 of the Elmbridge Core Strategy (2011). However, I find no specific conflict with the National Planning Policy Framework (the Framework), in particular paragraphs 130 and 134, which seek to secure well designed places which are sympathetic to local character.

Planning balance

12. It is common ground that the Council cannot demonstrate the deliverable supply of housing sites as required by the Framework. Therefore, in accordance with the provisions of paragraph 11d and footnote 8 of the Framework, policies which are most important for determining the application are considered to be out of date. The proposal does not impact on areas or assets of particular importance, so in accordance with paragraph 11dii, 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.
13. In terms of benefits, the dwelling would make a contribution towards the supply of housing, in an area with an ongoing under supply. It would also be a smaller 3 bedroom dwelling for which the Council have identified a shortage and is seeking to promote. There would also be social and economic benefits arising from the construction period and future spend of occupants giving support to local services and facilities. As construction benefits would be short term and the proposal adds only a single dwelling to local supply, I give these benefits limited weight. However, I have identified minimal harm, to which I can ascribe only minimal weight.
14. With the above in mind, and when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits. Consequently, the paragraph 11d presumption in favour of sustainable development applies and advises that planning permission should be granted.
15. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determination must be in accordance with the development plan unless material considerations indicate otherwise. In this case, the presumption in favour of sustainable development is a material consideration of sufficient weight to indicate that permission should be granted notwithstanding the minor conflict with the development plan.

Other Matters

16. Concerns have been raised regarding setting a precedent for future development in the area. I have not been provided with information regarding comparable sites to which this might potentially apply. Each appeal must be determined on its individual merits, including the relevant material considerations at the time of the application, and I am unable to give weight to a generalised concern of this nature.
17. Concerns have been raised by neighbours regarding the impact of the construction phase on neighbours and the impact of the development on parking and surface and ground water. No objection was raised by highways or drainage, subject to suitable conditions and these elements did not form part of the Council reason for refusal. I have been presented with no substantive information which would lead me to conclude otherwise. Deeds and other private legal issues are not planning matters.
18. The applicant has indicated that they are prepared to pay a policy compliant financial contribution towards affordable housing. To this end they have submitted a signed unilateral undertaking. On this basis the Council did not include a lack of an affordable housing contribution as a reason for refusal. Given the details of this proposal and the identified local need, the use of a planning obligation to secure a suitable contribution towards affordable housing provision can meet the 3 tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.

Conditions

19. The Council have suggested a range of conditions, which the appellant has been made aware of. I have considered the suggested conditions and amended and reordered them as necessary in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance (PPG).
20. A condition specifying the approved plans is necessary to provide certainty. In the interests of the character and appearance of the site and surrounding area, conditions are necessary to ensure the use of appropriate materials in the external surfaces of the development, to protect existing trees and hedges, to secure the implementation and maintenance of appropriate hard and soft landscaping and to ensure suitable bin storage and collection arrangement.
21. A condition has been attached to ensure construction management arrangements are in place to safeguard the living conditions of neighbouring occupants. However, given that the development is only one dwelling, precluding HGV movements to and from the site at certain times is not necessary, reasonable or enforceable so has not been required. Funding of road repairs cannot be secured by condition and on a scheme of this scale could not be justified. No details of drainage have been provided with this appeal, so I have attached a condition to ensure that an adequate system for the drainage of the site is provided.
22. Permitted development rights have been removed for extensions and ancillary buildings. Due to the relatively modest size of the garden, compared to surrounding dwellings, this is reasonable in order to retain sufficient outside amenity space to meet the needs of future occupants of the dwelling and to protect the surrounding character and appearance.

23. I have limited the use of pre-commencement clauses to where they are essential for the condition to achieve its purpose. However, the boundary trees and hedges need to be retained and the works involve excavations which will involve significant vehicle movements. For these reasons, it is necessary to secure tree and hedge protection and construction management arrangements before work on site starts. Therefore, conditions 3 and 5 are prior to commencement conditions.

Conclusion

24. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed.

Helen Davies

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following list of approved drawings: CMR:460/101, CMR:460/102, CMR:460/103, CMR460-104, CMR:460-/106, CMR:460/200, CMR:460/121, CMR460-122, CMR:460/123 and CMR:460/1250.
- 3) No site clearance, preparatory work or development shall take place, and no equipment, machinery or materials shall be brought onto the site for the purposes of the development, until a scheme for the protection of the retained trees (tree protection plan) and hedges and the appropriate working methods (arboricultural method statement), in accordance with paragraphs 5.5 and 6.1 of 'British Standard BS 5837: Trees in relation to design, demolition and construction – Recommendations' (or in an equivalent British Standard if replaced), have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees and hedges shall be implemented as approved.
- 4) All existing trees and hedges shall be retained, unless shown in the approved tree protection plan as being removed. No retained tree or hedge shall be cut down, uprooted, destroyed, pruned, or damaged in any manner within 5 years from the date of the occupation of the dwelling hereby permitted. Any tree or hedge which dies or becomes diseased within 5 years from the date of the occupation of the dwelling shall be replaced in the same location with another tree or hedge of a similar size and species, by no later than the next planting season.

- 5) No development shall commence until a construction transport management plan has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The construction transport management plan shall include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials
 - (d) programme of works (including measures for traffic management)
 - (e) provision of boundary hoarding behind any visibility zones
 - (f) HGV deliveries and hours of operation
 - (g) vehicle routing
 - (h) measures to prevent the deposit of materials on the highway
 - (i) before and after construction condition surveys of the highway
 - (j) on-site turning for construction vehicles.
- 6) No development above slab level shall take place until a detailed scheme for the management of surface and foul water drainage of the development hereby approved has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved scheme has been implemented and it shall be retained as approved thereafter.
- 7) No development above slab level shall take place until details of hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. The scheme shall include all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out. The scheme shall be implemented in accordance with the approved details prior to occupation of the dwelling hereby approved and maintained as such thereafter.
- 8) Any element of the new planting which is uprooted, destroyed, damaged, dies or becomes diseased within 5 years from the date of the occupation of the dwelling hereby approved, shall be replaced in the same location with planting of a similar size and species, by no later than the next planting season.
- 9) Prior to their use in the development, samples of the materials to be used in all external surfaces of the dwelling shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 10) Prior to occupation of the development hereby approved, details of bin storage and collection point shall be submitted to and approved in writing by the local planning authority. Once approved, the details shall be implemented and retained as such thereafter.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that order) the dwelling shall not be enlarged, improved or altered, including through additions or alterations to the roof, and no buildings or enclosures incidental to the enjoyment of the dwellinghouse shall be constructed.

*****End of Conditions*****