



Appeal Decision

Site visit made on 22 August 2022

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2022

Appeal Ref: APP/K3605/W/21/3288660

Land Adjoining No. 2 Hollingworth Close, West Molesey, KT8 2TW

- 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 Asare against the decision of Elmbridge Borough Council.
 - The application Ref 2021/1095, dated 25 March 2021, was refused by notice dated 11 June 2021.
 - The development proposed is described as the 'erection of new fence around designated land. Change of use of land to residential purposes'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form sets out that the development was completed in February 2021. I saw on site that the fence is in place, in accordance with the plans before me, and I have considered the appeal on the basis that the development has already taken place.
3. The second refusal reason makes reference to a failure to provide a Flood Risk Assessment (FRA). However, the Council's appeal statement accepts that a FRA was submitted during the application process, but sets out that it is not satisfied that the FRA demonstrates that the proposal does not increase flood risk elsewhere.

Main Issues

4. As such, the main issues are
 - the effect of the proposal on the character and appearance of the surrounding area;
 - the effect of the proposed development on flood risk; and
 - the effect of the proposed development on biodiversity.

Reasons

Character and Appearance

5. No.2 Hollingworth Close is a two-storey detached dwelling, prominently sited on the entrance to Hollingworth Close from Freeman Drive, within a wider suburban development comprising of properties of similar scale and character. The property is sited next to open ground running through the residential area.

6. This lengthy linear open space, including footpaths and trees, creates a significant and well-defined gap in the built form which provides the estate with a spacious open character. Whilst the part of the wider space next to the appeal site does not include a footpath, it clearly appears to visually be part of a wider deliberately designed area of incidental open and green space.
7. It is unclear whether the appeal site is formally identified as open space on the large-scale overview map of the East and West Moseley settlement area provided by the appellant, however, the Council has provided the plans from the approved residential development¹, which shows the land was indeed originally set out as open space. I have no information before me to suggest that this has changed since the development took place. Not being formally nominated as an asset of community value does not change this, and the ownership of the parcel of land does not impact its designated use, nor allow for a change of use without planning permission.
8. Policy CS14 of the Elmbridge Core Strategy (2011) (ECS) sets out that Green Infrastructure, which includes 'amenity greenspace, informal recreation spaces, greenspaces in and around housing', should be protected. This is because it is '*highly valued by local people and plays a key role in contributing to the Borough's landscape setting and local identity*'. Even if it is undesignated on the East and West Moseley settlement area map, I consider that this parcel of land, as incidental open green space in and around housing, falls under this policy.
9. The 1.8m high fencing projects significantly and prominently into this open space. Whilst there is similar boundary fencing visible elsewhere in the vicinity, these appear as side or rear boundary fencing immediately next to the dwellings. Even with shrub hedging obscuring some elements, the appeal fencing appears as an incongruous extension of built form, conspicuously forward of the previous building line when viewed from Freeman Drive and Augusta Close. I do not consider that a condition to alter the fence or reduce it in some way, or for additional obscuring planting, would mitigate against this. It results in the loss of an area of incidental open space that positively contributes to the overall spacious character and visual amenities of the street scene. It also results in the loss of a valuable visual gap in the built form of the estate.
10. I acknowledge that the officer report for the original development sets out that the amount of open space provided is '*in excess of the amount normally required*', and there does remain open space immediately adjacent to the development site. However, the officer report also states that this additional open space is welcomed, and this does not represent a formal assessment of whether the land in question is now clearly surplus to requirements. I also acknowledge that the applicant sets out there was previously unsavoury use of the land, however this is not substantiated, and it has not been demonstrated that the fence is essential to address safety and security concerns. The loss of the open space therefore does not meet the criteria listed under paragraph 99 of the National Planning Policy Framework (Framework), which include that any loss should be replaced by appropriate alternative equivalent space.
11. I find that the development results in the loss of an area of visually important incidental open space, that harms the character and appearance of the

¹ Application reference 1988/1992

surrounding area. Accordingly, the appeal proposal is contrary to ECS Policies CS7, CS14 and CS17 and Policy DM20 of the Development Management Plan (2015) (DMP), which, along with the Framework, collectively seek to ensure that development integrates sensitively with the locally distinctive townscape and landscape.

Flood Risk

12. The Environment Agency map submitted by the appellant shows that, whilst the appeal site is located on the periphery of Flood Zone 2, it is located within Flood Zone 1, which is within an area of low risk from flooding. The Supplementary Planning Document Flood Risk (2016), in accordance with Paragraph 167 of the Framework, requires a FRA for development outside Flood Zone 1. There is no evidence before me that the site meets the criteria of Framework footnote 55 for exceptions to this. Nevertheless, as stated above, the appellant has submitted a FRA.
13. As set out in the submitted FRA, the land use proposed is an extension of an existing domestic garden with a lack of permanent built form (other than the boundary fence). The development does not therefore introduce a more vulnerable use. The land and existing trees and plants also act as a natural long-term filtration for any residual water. The additional planting within the site compared to the previous open grassed area and scrub also improves mitigation in this respect.
14. Whilst the boundary fencing and concrete base may provide some limited barrier to the free flow of floodwaters, given its location within Flood Zone 1, this is a low risk. A suitably worded condition could also ensure details of appropriate alleviation in this respect. As such, I am satisfied that the flood risk is minimised and there is not an increase in flood risk elsewhere as a result of the development.
15. I therefore find no conflict with ECS Policy CS26 which states that development must be located, designed and laid out to ensure that it is safe and the overall and local risk of flooding is reduced.

Biodiversity

16. The Planning Practice Guidance indicates that an ecological survey will be necessary in advance of a planning application, if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate. ECS Policy CS15 sets out that the Council will seek to avoid loss and contribute to a net gain in biodiversity across the region by *'protecting.... sites designated for their biodiversity importance.'*
17. The Council set out that the land is undesignated in terms of its nature conservation value. Photographs show that the site, like the remaining adjoining open land, previously comprised of grass open land and some scrub bushes. There is no information before me to suggest that the site or its immediate surroundings, located within a wider housing development, has the potential for the presence of protected species or is high in biodiversity qualities, and therefore that the development is likely to affect biodiversity.

18. Whilst the area is now enclosed by fences, given the limited scale of the site and its minor nature conservation value, improved by the additional planting shown on the plans, I am satisfied that there is no harm to biodiversity,
19. ECS Policy CS15, along with ECS Policy CS14, also seeks to maximise the contribution of other green spaces and features. I note that no trees have been removed and further additional benefits and net gain could be secured through a condition relating to details such as improved planting or wildlife access.
20. As such, I find no conflict with the ecology and biodiversity protection and enhancement goals of ECS Policy CS15, DMP Policy DM21 and the Framework.

Other Matters

21. I note that letters of support were received. Other similar development is mentioned; however, it is stated that these also do not have formal planning permission. As such, they do not provide justification for the harm identified above.
22. The lack of any highway safety impact is a neutral factor not in favour of the development. The improvement to property values on the estate is not a material planning consideration.

Conclusion

23. There are no material considerations that indicate the application should be determined other than in accordance with the development plan.
24. Although I have found that the erection of a new fence around designated land and a change of use of land to residential purposes does not result in unacceptable flood risk nor impact upon biodiversity the harm identified to the character and appearance of the surrounding area means that the development fails to accord with the development plan as a whole. The appeal is therefore dismissed.

B Phillips

INSPECTOR