



Appeal Decision

Site visit made on 31 August 2022

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 13th September 2022

Appeal Ref: APP/K3605/W/22/3293891

5 Hinchley Way, Hinchley Wood, Esher, Surrey KT10 0BD

- 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 Martin Tuthill against the decision of Elmbridge Borough Council.
 - The application Ref: 2021/1431 dated 6 June 2021, was refused by notice dated 8 December 2021.
 - The development proposed is the erection of two pairs of semi-detached 3 bedroom houses and two number 2 bedroom apartments for affordable housing on two storeys, with associated car parking bicycle storage and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two pairs of semi-detached 3 bedroom houses and two number 2 bedroom apartments for affordable housing on two storeys, with associated car parking bicycle storage and landscaping at 5 Hinchley Way, Hinchley Wood, Esher, Surrey KT10 0BD in accordance with the terms of the application, Ref: 2021/1431 dated 6 June 2021, subject to the conditions set out in the schedule at the end of this decision letter.

Preliminary Matters

2. Revised plans were submitted at the application stage and my decision is based on the plans determined by the Council.
3. A Section 106 Agreement in the form of a Unilateral Undertaking was submitted with the appeal; this required a minor correction, and a revised obligation was received during the appeal process. The obligation provides for two of the on-site units to be affordable units for rent. I shall address the obligation later in the appeal.

Main Issue

4. The main issue in this appeal is the effect of the proposal on the character and appearance of the local area.

Reasons

5. The appeal site comprises a relatively flat area of overgrown and unused land, including a disused tennis court, to the rear of No 5 Hinchley Way. No 5 is in use as a nursery school; the surrounding area is predominantly residential with

mainly good-sized detached houses. There is a small building to the immediate east of the nursery within the application site and as a result there is currently only pedestrian access to the rear.

6. The proposal would demolish the existing building to provide pedestrian and vehicular access to the site at the rear which would be developed for 2 x pairs of semi-detached houses each comprising three bedrooms and 1 x building comprising two flats, each comprising two bedrooms which would be affordable housing units for rent. Each property would be provided with parking and garden space. The orientation of the dwellings would provide, access, car parking and entrances towards the southern boundary to the rear of the nursery and private gardens to the north.
7. The proposed development would be within the urban area in a generally sustainable location, and would comprise the redevelopment of previously developed land. I consider that the layout, proportion of built development to open space and the margins to the site boundaries would all be appropriate for the form of development proposed, taken in isolation.
8. However, the individual plot sizes and size of dwellings would be smaller than the pattern of surrounding development. Furthermore, it would be backland development which does not form part of the general pattern of development in the immediate context, where nearly all residential development fronts the road. The Council's policies do not appear to restrict all backland forms of development, but the key consideration relates to the impact on the character and appearance of the local area. I have noted the examples provided by the Appellant of backland development in the wider area, but in so far as the information has been made available to me, they do not seem to be directly comparable to the proposal before me in terms of the characteristics of the site, the form of development proposed and prevailing pattern of development.
9. As a result of the introduction of backland development with smaller plots than typical of the local area there would be harm to the character and appearance of the local area. This would conflict with Policies DM2 of the Elmbridge Development Management Plan (2015), Policies CS8 and CS17 of the Core Strategy (2011), and the Design and Character SPD.
10. There have been a number of previous proposals to develop the site, refused by the Council and upheld at appeal including under Refs: APP/K3605/A/14/2227228 and APP/K3605/A/14/2227230 in January 2015 and APP/K3605/W/16/3149160 in September 2016. These were for different forms of residential development to the proposals before me and were now some period of time ago and circumstances including national planning policies have progressed, but nonetheless there are similarities in the findings in respect of the character of the local area and the impact of development of the site on that character.

Other Considerations

11. I have taken into account the representations from local residents. In terms of protecting the amenities of surrounding residents, I consider that the proposed development would be respectful in terms of its siting and distances to boundaries, as well as in terms of the arrangement of fenestration. I do however agree with the Council that, notwithstanding the good sized garden to No 44 Claygate Lane, it would be necessary for the first floor side windows of

- Plot 6 to be non-openable below 1.7m above floor level and in obscure glass to protect the amenities of the neighbours, in terms of overlooking and loss of privacy. I do not consider that the living conditions of the future residents would be compromised as the living space would also be served by windows to the rear.
12. I do not consider that the additional traffic movements would be of such a scale that they would lead to material levels of noise and disturbance to surrounding residents, and the introduction of a residential use, given the modest numbers proposed, would not be inappropriate in an existing residential area in this respect.
13. The Highways Authority raised no concerns in terms of traffic flows and highway safety and given the modest scale of the development I have no reason to take a different view. There would be appropriate provision for car parking and servicing within the site and the revised plan has indicated parking retained for the nursery.
14. I am satisfied that in terms of layout and content, the scheme would be well considered and would not give rise to material harm to surrounding neighbours. The Council has also raised no concerns in this regard. Technical and environmental matters have also been addressed and I am satisfied that these have either been appropriately resolved or could be addressed by condition, both at the construction stage as well as on completion of the development. In addition, I consider that the proposed dwellings in terms of both internal and external layout and design would provide a high quality of living environment for future residents.
15. There is no evidence before me to suggest that the development of this land, either from the loss of the land or the resultant development, would have any adverse impact on the nursery operation.

Planning Balance

16. There is no dispute between the parties that the Council is unable at the present time to demonstrate a five year supply of deliverable housing land. Accordingly, in line with paragraph 11(d) of the Framework, the policies most important for determining the application are out of date. Planning permission should be granted unless the adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The tilted balance is therefore engaged.
17. I have found that the scheme, as a result of its backland form, would not respect the predominant character and appearance of the local area. However, it would not be widely seen and given its relatively modest scale, I regard this as a localised harm; I attribute moderate weight to this harm and policy conflict.
18. The proposed development would provide six additional dwellings, of which two would be affordable for rent. The provision of two of the six units being affordable for rent would exceed the requirements of Policy CS21 of the Council's Core Strategy.
19. The Council has confirmed that not only is there an overall shortfall of housing sites but that there is in addition a significant need for affordable housing. Although relatively modest numbers, the provision of both market and

affordable housing units on this site would contribute towards that identified need. Moreover, the proposed development would provide 4 x 3 bed dwellings and 2 x 2 bed dwellings which would accord with the identified housing need as identified by the Assessment of Local Housing Need. I attach significant weight to the proposed provision of six additional dwellings, which includes both market and affordable housing of a size and mix to meet the identified need.

20. The proposed development would also redevelop vacant, previously developed land in a generally sustainable location and the Framework supports such developments in principle. This adds moderate weight in support of the scheme.
21. In terms of other benefits, the scheme would create local construction jobs and support the local supply chain. These benefits would however be short lived. More long-term benefits would accrue from future residents spending in the local economy. I therefore give them moderate weight.
22. The Appellant points out that the scheme would provide CIL contributions as well as New Homes Bonus. Whether a 'local finance consideration' is material to a particular decision will depend on whether it could make the development acceptable in planning terms. In this case I do not consider that these matters would, on their own, render the development acceptable in planning terms and therefore, CIL and New Homes Bonus considerations do not add weight in favour of the scheme.
23. Overall, I find that the policy conflicts and the adverse impact I have identified to the character and appearance of the local area would not significantly and demonstrably outweigh the benefits when assessed against the policies within the Framework, taken as a whole. I conclude that there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. Accordingly planning permission should be granted.

Planning Obligation

24. The submitted Planning Obligation would secure 2 affordable housing units for rent on site, and this would exceed the requirements of Policy CS21 of the Core Strategy.
25. I am satisfied that the above obligation is necessary, directly related to the development and fairly related in scale and kind. It complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.

Conditions

26. Conditions are required to ensure that the development is undertaken in accordance with the submitted details, including materials, refuse stores, tree works and landscaping to ensure that the completed scheme respects the character and appearance of the local area. However, with the exception of the refuse stores where further information is required, in respect of each of these matters detailed plans, reports and / or schedules have been provided and I am satisfied that the conditions can refer to these rather than require the submission of further details. A condition specifying the approved plans is also necessary for the avoidance of doubt and in the interests of good planning.

27. Conditions are also required to ensure that the modified access is installed prior to occupation and also on site parking to protect highway safety and in the interests of protecting the amenities of local residents. In order to promote sustainable travel, conditions are also necessary to provide for cycle parking and electric vehicle charging points.
28. I have already advised that a condition is necessary to require obscure glazing and non-openable windows to the first floor side elevation of Plot 6 to protect the living conditions of the neighbours in Claygate Lane.
29. A Construction Transport Management Plan has been submitted and requires to be followed to protect the amenity of nearby residents during the construction phase.
30. A condition to require the proposed flood mitigation measures to be carried out is required to safeguard the local area in terms of surface water flood risk.
31. Conditions are required to ensure that the development is undertaken in accordance with the recommendations of the submitted ecology report and that further submissions are made to respect and enhance biodiversity on the site. I agree with the Council that this is required to be a pre-commencement condition to ensure that a viable plan can be agreed prior to any works on site. The Appellant has provided detailed comments on the draft conditions set out within the Officer's report and has indicated that they are agreed unless specific comments made. No comments were made in respect of the proposed biodiversity condition. In accordance with Section 100ZA (5) of the Town and Country Planning Act 1990 and The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018, I am therefore satisfied that the Appellant has provided his agreement to the imposition of this condition. I have slightly amended the wording but am satisfied that no party would be prejudiced as a result.
32. I have also attached a further condition, for clarity, to require the development to be undertaken in accordance with the recommendations of the submitted ecology report. This condition has not been seen by the Appellant or the Council but as the report with its recommendations was part of the application and appeal submissions, I am satisfied that no party would be prejudiced by its imposition of this condition.

Conclusion

33. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that the appeal should be allowed.

L J Evans

INSPECTOR

Schedule of Conditions (Nos 1- 15 inclusive)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan; 2101.PL.02; 2101.PL.04 Rev A; 2101.PL.01 Rev C; 2101.PL.03 Rev C and LP21001 Rev C.
- 3) The development hereby permitted shall be constructed in accordance with the external materials set out on the Materials Schedule dated April 2021.
- 4) The development hereby permitted shall be undertaken in accordance with the recommendations of the Preliminary Ecological Appraisal dated March 2021, prepared by The Ecology Partnership.
- 5) Prior to the commencement of any development on site the applicant shall submit to the Local Planning Authority for written approval a detailed document/plan to demonstrate that a measurable biodiversity net gain, secure for the lifetime of the development, will be achieved. Proposals for net gain should be clearly recorded and reported through use of an appropriate metric such as the DEFRA Biodiversity Metric 3.0. The document/plan shall, once approved, be implemented in full in accordance with an agreed timescale, and maintained to the satisfaction of the Local Planning Authority thereafter.
- 6) Prior to the first occupation of the development hereby permitted the first floor windows on the east side elevation of Plot 6 of the development hereby permitted shall be glazed with obscure glass 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.
- 7) All flood mitigation measures shall be carried out in accordance with the approved details set out in the flood risk assessment prepared by Motion received on 09/06/2021.
- 8) All tree works and tree protection measures shall be carried out in strict accordance with the Arboricultural and Planning Integration Report prepared by GHA Trees dated 2 June 2021 under the ref: GHA/DS/122560:21.
- 9) All hard and soft landscaping works shall be carried out in accordance with the approved details shown on drawing no. LP21001 Rev C. Arboricultural work to existing trees shall be carried out prior to the commencement of any other development, otherwise all remaining landscaping work and new planting shall be carried out prior to the

occupation of any part of the development or in accordance to the timetable agreed with the Local Planning Authority. Any trees or plants whether new or retained which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species in the same place.

- 10) No part of the development shall be first occupied unless and until the proposed vehicular modified access to Hinchley Way has been constructed and provided with visibility zones in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter the visibility zones shall be kept permanently clear of any obstruction over 600mm high.
- 11) 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 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 area shall be retained and maintained for their designated purposes.
- 12) The development shall be constructed in accordance with the approved Construction Transport Management Plan (CTMP). Any changes to the CTMP shall be agreed in writing by the Local Planning Authority.
- 13) 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 bicycles to be parked. Thereafter the parking area shall be retained and maintained for their designated purposes.
- 14) The development hereby approved shall not be occupied unless and until each of the proposed dwellings are provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) and thereafter retained and maintained to the satisfaction of the Local Planning Authority.
- 15) Prior to the occupation of the development hereby permitted details of the individual refuse stores for the four semi-detached dwellings shall be submitted to the Local Planning Authority for written approval. The agreed details shall then be implemented prior to first occupation of the development hereby permitted and thereafter maintained.