



Appeal Decision

Site visit made on 5 September 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2022

Appeal Ref: APP/K3605/W/21/3282825

Garages and associated hard standing accessed between 66 and 64 Waverley Road, Oxshott KT20 0RZ

- 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 PA Housing against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1627, dated 3 July 2020, was refused by notice dated 4 May 2021.
 - The development proposed is to demolish the existing rank of 22 garages and build 4 maisonettes with associated parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted to demolish the existing rank of 22 garages and build 4 maisonettes with associated parking and landscaping at the garages and associated hard standing accessed between 66 and 64 Waverley Road, Oxshott KT20 0RZ in accordance with the terms of the application, Ref 2020/1627, dated 3 July 2020, and the plans submitted with it, subject to the conditions set out in the schedule below.

Preliminary Matters

2. During the appeal the main parties were given an opportunity to update their positions on flood risk. I have taken comments received into account in determining the appeal.
3. During the appeal the appellant submitted an executed unilateral undertaking dated 14 March 2022. It relates to the provision of affordable housing. The Council has confirmed in writing that the unilateral undertaking is acceptable to it and overcomes its reason for refusal 3, which it has withdrawn. I deal with this consideration in 'other matters' below.

Main Issues

4. These are:
 - whether the future occupiers of the proposed maisonettes and the existing occupiers of Nos 62 and 64 Waverley Road would be at unacceptable risk from flooding;
 - whether the proposal would make provision for climate change mitigation; and
 - its effect on car parking for residents of nearby houses.

Reasons

5. The appeal site is in a residential suburb of Oxshott, behind houses in Waverley Road, including Nos 62 and 64. It comprises two rows of garages in a hard surfaced courtyard and an access drive. The site would be redeveloped to provide a block of four maisonettes over two floors.

Flood risk

6. Since the Council's decision, and after the appeal was lodged, the Environment Agency updated its flood risk map. I have been provided with a copy. There is agreement that the site is now in Flood Zone 1, not Flood Zone 2, so the sequential test does not apply. While the proposal is for a more vulnerable type of development, the site therefore has a low probability of fluvial flooding so residential use is not restricted.
7. After heavy rainfall overland water run-off from nearby higher ground and a drainage ditch can flow across the site and towards the houses and rear gardens of Nos 62 and 64. It stems from land that is not owned by the appellant who cannot therefore control it at source. Instead the appellant's surface water drainage strategy includes a small wall constructed along the southern boundary of the site. It would divert surface water away from the maisonettes, towards the adverse camber of a re-laid access road with tanked permeable paving. New gardens would replace impermeable hard surface and significantly improve surface water drainage to ground within the site.
8. These measures would be low in the hierarchy of the Council's preferred drainage options. Nevertheless, they would alleviate the low risk of surface water flooding across the site, including away from Nos 62 and 64. It would also control the rate of surface water discharge to ground and to the local surface water sewer. This would be a significant betterment of the existing situation. Suitable details for the long term management and maintenance of these measures could be secured by condition.
9. I therefore find that the future occupiers of the maisonettes and the existing occupiers of Nos 62 and 64 Waverley Road would not be at unacceptable risk from fluvial or surface water flooding. Consequently, the proposal would comply with Policy CS26 of the Elmbridge Core Strategy July 2011 (CS). It includes that development must minimise the risk of flooding, not increase flood risk elsewhere and safely manage residual risks.

Climate change

10. At the outset, the appellant's Design and Access Statement referred to Policy DM2 of the Elmbridge Local Plan Development Management Plan April 2015 (DMP) and to sustainability objectives for the development, including with regard to site conditions, orientation and environmental features. Albeit during the appeal, the appellant's architect has confirmed that the maisonettes would be low carbon homes. They would be constructed with recycled or sustainable materials, be well insulated, include water efficient fixtures and fittings, solar panels and non-fossil fuel heating (such as air source heat pumps or an all-electric system) and electric vehicle charging points would be provided on the site. The homes would also comply with Building Regulations.
11. It is not clear why details of these measures could not have been provided by the appellant, or sought by the Council, at an earlier stage. However, there is

no evidence that these measures would be fundamentally incompatible with the proposed design and appearance of the dwellings or the layout and use of the site, or that they would not appreciably reduce energy and water consumption including by means of rainwater harvesting, as also suggested by the Council. There is, therefore, no reason why suitable and appropriate details could not be secured by a condition.

12. Considering the above, I am satisfied that the appellant has demonstrated environmental awareness. The proposal would not 'fail' to contribute to the Council's environmental objectives; ie at all, or in any reasonable and meaningful way. Accordingly, I find that the proposal would make provision for climate change mitigation. Consequently, it would comply with DMP Policy DM2 which seeks high quality design in these respects.

Car parking

13. The garages were provided for residents of houses nearby to park their cars, though are now mostly derelict and not used for this purpose. The courtyard is strewn with rubbish and fenced off with a locked gate. There is no evidence of a planning mechanism that made the garages available to these residents or still does. No resident has objected to the loss of this parking and the majority of nearby houses have driveways, garages or front garden parking. At the time of my site visit, and albeit a snap-shot, there was significant capacity in unrestricted on-street parking spaces in nearby roads. As a result, a number of residents' cars could be conveniently parked by these means and not interfere with the public highway or access to private off-street parking.
14. In these circumstances, there is little evident prospect of widespread future use of the garages to park cars. Furthermore, I have not been informed about any development plan policy that seeks to safeguard or replace existing parking that is unrelated to new development. Car parking on the site would meet the needs of future occupiers and visitors so there is not likely to be any significant increase in on-street parking.
15. Accordingly, I find that the proposal would not have an adverse effect on car parking for residents of nearby houses. Consequently, it would not conflict with DMP Policy DM2. This policy includes that development should take account of local character and the built environment.

Other Matters

Affordable housing

16. The appellant is a registered provider of affordable housing (AH). It has been granted planning permission by the Council for residential development on another site in the Borough¹. The Council considers that the appellant's unilateral undertaking (UU) would ensure that the houses in that development are provided as AH and be satisfactory in number, type, size and tenure and would offset provision of AH in this appeal. I have no reason to disagree.
17. The Framework sets out that AH should not be provided in minor residential developments, such as in this case. This is also reflected in relevant Planning Practice Guidance (PPG) and further to the Written Ministerial Statement November 2014 (WMS). These are important considerations.

¹ Ref 2020/1629

18. However, the Council has demonstrated in detail that in the Borough there is currently a very serious market housing affordability problem, a substantial quantum of unmet AH need and that small sites make a significant contribution to housing delivery². Moreover, the Council's approach to AH in CS Policy 21, including the level of AH sought in minor residential development and the delivery of small sites, is underpinned by financial viability assessment.
19. Consequently, while the CS was adopted in 2011 and pre-dates the original Framework published in 2012, as well as the (current) Framework, these local circumstances and the Council's up-to-date objective evidence carry significant weight. As such these considerations outweigh the relevant parts of the Framework, PPG and the WMS in this appeal and the proposal would comply with CS Policy CS21. I am also satisfied that the UU would accord with the provisions of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and the tests for planning obligations set out in the Framework and relevant PPG advice.

Conditions

20. The Council's suggested conditions include some of a pre-commencement of development type. The appellant did not object to these conditions. Where required, I have considered modified wording in the interests of clarity and have had regard to the tests and advice in the Framework and in PPG. I have also considered the need for any other conditions and the main parties were given an opportunity to comment in this regard. I have taken comments received into account in my decision.
21. In addition to the standard time limit condition (1), conditions would be necessary to specify the approved plans to ensure certainty (2) and to obtain details and samples of the proposed external materials so that the development would be in keeping with the character and appearance of the area (6).
22. The site is reasonably limited in shape and area with a narrow access drive and is near existing trees and dwellings. It would be necessary to ensure that building the development does not affect highway safety or cause undue inconvenience to road users (3) and to protect important trees or hedgerow (4). In addition, suitable and appropriate climate change and low carbon home measures would need to be incorporated into the proposal as building work progressed (5). There is therefore a clear justification to secure these details before the development commenced. A condition to restrict hours of working would also be necessary to prevent unacceptable noise and disturbance to the occupiers of the nearby dwellings (7).
23. It would also be necessary to ensure that surface water drainage (8), car and cycle parking (9) including electric vehicle charging points (10), glazing in an upper floor window (11), hard and soft landscaping (12) including retained trees and hedgerow (13) are in situ prior to the first occupation of the maisonettes. This would be in the interests of the character and appearance of the area, biodiversity and existing or future living conditions.

² Authority Monitoring Report 2019/20, Assessment of Local Housing Needs March 2020 and Statement on Affordable Housing Provision on Small Sites (update) October 2021

Planning Balance

24. While the quantum of shortfall is not in evidence, there is agreement that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites. As a result, paragraph 11 d) of the Framework is engaged.
25. In this appeal the application of policies in the Framework that protect areas of particular importance (at risk of flooding) do not provide a clear reason for refusing the development. There are no adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. Accordingly, the presumption in favour of sustainable development applies in this case.

Conclusion

26. The proposal would accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
27. Therefore, for the reasons given above and subject to conditions, the proposal is acceptable and the appeal succeeds.

Robin Buchanan

INSPECTOR

Schedule of Conditions (13)

- 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:
 - PA914-0-01 Rev B Location plan
 - PA914-0-03 Rev C Proposed block plan
 - PA914-0-04 Rev D Proposed site plan
 - PA914-1-01 Rev B Proposed ground and first floor plan
 - PA914-1-02 Rev A Proposed roof plan
 - PA914-2-01 Rev B Proposed elevations plan
 - PA914-3-01 Rev B Proposed section A-A plan
 - PA914-4-01 Rev B Bike store plans and elevations
 - PA914-4-02 Rev B Bin store plans and elevations
 - TPP 01 Rev 1 Tree protection plan
 - EHI-JBAU-XX-XX-DR-D-0001 Rev P01 Proposed surface water strategy plan

- 3) Notwithstanding condition 2, no development or site preparation, including groundworks and demolitions, shall commence and no equipment, machinery or materials shall be brought onto the site for any of these purposes until a Construction Transport Management Plan (CTMP) shall have been submitted to and approved in writing by the local planning authority. The CTMP 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) a programme of works, including measures for traffic management;
 - (e) boundary hoarding behind any visibility zones;
 - (f) measures to prevent the deposit of materials on the highway;
 - (g) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused; and
 - (h) on-site turning for construction vehicles or equivalent traffic management.

The approved CTMP shall be implemented and maintained for the duration of the construction of the development, including site preparation, groundworks and demolitions.

- 4) Notwithstanding condition 2, no development or site preparation, including groundworks and demolitions, shall commence and no equipment, machinery or materials shall be brought onto the site for any of these purposes until all tree protection measures have been installed in accordance with the approved Tree Protection Plan TPP 01 Rev 1. The development shall thereafter be carried out in accordance with the approved Arboricultural Method Statement contained in this plan. The approved tree protection measures shall be maintained for the duration of the construction of the development, including site preparation, groundworks and demolitions.
- 5) Notwithstanding condition 2, no development below or above ground shall take place until there shall have been submitted to and approved in writing by the local planning authority details of climate change mitigation and low carbon home measures to be incorporated in the development hereby approved, including:
- (a) recycled or sustainable materials;
 - (b) building insulation;
 - (c) water efficient fixtures and fittings;
 - (d) solar panels and non-fossil fuel heating such as air source heat pumps or an all-electric system; and
 - (e) rainwater harvesting.

The development shall be carried out and thereafter retained in accordance with the approved details.

- 6) Notwithstanding condition 2, no development above ground works (slab level) shall take place until there shall have been submitted to and approved in writing by the local planning authority details and samples of the materials

to be used for the external surfaces of the elevations and roof of the building hereby approved. The development shall be carried out in accordance with the approved details and samples.

- 7) Construction works and deliveries, including site preparation, groundworks and demolitions shall take place only between 0800 and 1800 Monday to Friday and between 0800 and 1300 Saturday and shall not take place at any time on Sunday or on Bank or Public Holidays.
- 8) The building hereby permitted shall not be first occupied until:
 - (a) the sustainable drainage system for the site shall have been completed in accordance with the approved proposed surface water drainage strategy plan and the details set out in the Flood Risk Assessment (JBA Consulting, June 2019) and Surface Water Drainage Strategy (JBA Consulting March 2021); and
 - (b) details of the long term management and maintenance of the sustainable drainage system shall have been submitted to and approved in writing by the local planning authority.

The sustainable drainage system shall be thereafter managed and maintained in accordance with the approved details.

- 9) The building hereby permitted shall not be first occupied until car and cycle parking, including provision for vehicles to turn so that they can enter and leave the site in forward gear, has been constructed and provided in accordance with the approved plans. The parking spaces and turning area shall thereafter be retained for these purposes.
- 10) Notwithstanding condition 2 and what is shown in the approved proposed site plan, the building hereby permitted shall not be first occupied until each maisonette has been provided with an electric vehicle fast charge socket to meet current minimum requirements (namely, 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) or equivalent future minimum requirement. The electric vehicle fast charge sockets shall thereafter be retained for this purpose.
- 11) The building hereby permitted shall not be first occupied until the first floor window in the north (side) elevation has been fitted with obscured glazing that accords with level 3 of the Pilkington textured glass privacy levels (or recognised equivalent). This window shall only be openable beyond a height of 1.7m above the internal floor level of the room in which it is installed. The window shall be retained in this condition thereafter.
- 12) The building hereby permitted shall not be first occupied until there shall have been submitted to and approved in writing by the local planning authority details and plans of a scheme of hard and soft landscaping works. The scheme shall include details of:

- (a) the type and position of boundary treatments, including height, design, materials or species;
- (b) hard surfacing materials and layout;
- (c) the position and species of other new planting, seeding or turfing; and
- (d) a schedule of maintenance for a minimum period of 5 years.

All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the building, or completion of the development, hereby permitted, whichever is the sooner; and boundary treatments and hard surfacing provided before the building hereby permitted is first occupied. Any trees or plants, which within a period of 5 years from the first occupation of the building or 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 or in accordance with the approved schedule of maintenance.

- 13) All existing trees and hedgerow on the site shall be retained (the retained trees and hedgerow), unless shown in the approved tree protection plan to be removed. Within a period of 5 years from the first occupation of the building hereby permitted no retained tree or hedgerow shall be cut down, uprooted or destroyed (if pruned, shall work accord with British Standard 3998: 2010 Tree Work – Recommendations, or any replacement). If within this period any retained tree or hedgerow is cut down, uprooted, destroyed or dies another tree or hedgerow of similar size and species shall be planted in the same place in the first planting season thereafter and retained in accordance with this condition.