



Appeal Decisions

Hearings held on 15 March 2022, and 6 September 2022

Site visits made on 21, 22, 23 March 2022, and 8 September 2022

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2022

Appeal A Ref: APP/K3605/W/21/3275803

Esher Place, 30 Esher Place Avenue, Esher KT10 8PZ

- 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 Birchwood Esher One Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2020/0438, dated 12 February 2020, was refused by notice dated 26 November 2020.
 - The development proposed is a contemporary extension to the main house to accommodate 8 x 2-bed flats.
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Appeal B Ref: APP/K3605/Y/21/3275807

Esher Place, 30 Esher Place Avenue, Esher KT10 8PZ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Birchwood Esher One Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2020/0568, dated 12 February 2020, was refused by notice dated 26 November 2020.
 - The works proposed are a contemporary extension to the main house to accommodate 8 x 2-bed flats.
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Decisions

Appeal A Ref: APP/K3605/W/21/3275803

1. The appeal is dismissed.

Appeal B Ref: APP/K3605/Y/21/3275807

2. The appeal is dismissed.

Preliminary matters

3. This appeal was made alongside appeals¹ against the refusal of planning permission and listed building consent for four developments at Esher Place or within its grounds. Each application for permission, alongside any parallel application for consent, was made by a different applicant, and concerned a

Appeal Refs: APP/K3605/W/21/3275789+APP/K3605/Y/21/3275801 Conversion of the house
APP/K3605/W/21/3275803+APP/K3605/Y/21/3275807 Extension to the house
APP/K3605/W/21/3275808 3 houses
APP/K3605/W/21/3275811 4 houses

different site within the house or its grounds. I have considered each appeal on its own merits.

4. Evidence concerning the issue of affordable housing common to all the appeals was heard at a Hearing. In reaching agreement on one aspect of this issue, detailed evidence on viability was exchanged between the appellant and the Council, before the Hearing. However, as this was only submitted shortly before the Hearing, the Hearing was adjourned to allow time for its proper consideration. A further round of evidence was exchanged between the main parties before the Hearing resumed.
5. At the resumed Hearing, the appellant mentioned that, because of the increase in building cost indexes and the Bank of England base rate since agreement was reached in the statement of common ground on the residual land value (RLV), the RLV might no longer be accurate. They requested that the main parties be allowed to reconsider the agreed RLV together, and to make a simple adjustment to it, during a brief adjournment during the Hearing.
6. The Council, however, refused to reconsider the agreed RLV in a brief adjournment. Its concern was that the RLV was properly agreed by quantity surveyors, with many of its assumptions not index-based but specific to the developments, and agreed through compromise. An updating exercise, it said, would require full and proper re-examination of all the assumptions rather than the application of a notional allowance; a far longer exercise than could be carried out in a brief adjournment. Moreover, it also identified the risk that if the cost allowances in the agreed RLV were to increase, then so may the other assumptions in it, such as capital values. This may balance out any index adjustments.
7. The appellant also remarked that, though this was not a position advanced by them in their statement of case nor in their financial viability appraisal, that credit should be given against the vacancy of the existing building (VBC). The National Planning Policy Framework (the Framework) supports the re-use of brownfield land, where vacant buildings are being reused or redeveloped. It indicates that any affordable housing contribution due should be reduced by a proportionate amount.
8. The Council was unable, at such short notice given it at the resumed Hearing, to agree that VBC should be applied. Without substantive evidence on the vacancy of the building, it was unable to properly consider whether VBC would

apply, and if it did, what proportion may apply. I saw at my site visits that some of the building appeared to be occupied. In these circumstances, without details of what precisely is being claimed, and without the evidence to support that, the weight I can give this is very limited.

9. In the event, no evidence on these late matters was advanced, nor was any adjustment to the agreed RLV or to the appellant's financial viability appraisal pursued by the appellant. Moreover, there is no allowance for VBC in the appellant's FVA, neither against the proposal in the existing building, nor against the aggregate of the four developments.
10. Other matters were considered under written representations. I visited the site and neighbouring land over three days after the adjourned Hearing; the first and second days in the company of the appellant, the Council, and interested parties, to the building, grounds and neighbouring land; the third day, to the grounds, on my own. I also revisited the building and grounds, alone, after the close of the resumed Hearing.
11. As the proposal concerns a listed building, I have had special regard to sections 16(1) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Application for costs

12. An application for costs was made by Elmbridge Borough Council against Birchwood Esher One Ltd. This application is the subject of a separate decision.

Main issues

13. From everything I have read, seen and heard, the main issues are:
 - A. Whether the proposal would preserve the grade II listed building Esher Place, 30 Esher Place Avenue, and any of the features of special architectural or historic interest that it possesses;
 - B. The effect of the proposal on the setting of the listed building; and,
 - C. whether the proposal would provide satisfactory living conditions for future occupiers, with particular regard to the daylight within and the outlook from flats 1, 3, 4, and 6; and,
 - D. Whether the proposal should make a financial contribution to affordable housing.

Reasons

The significance of the listed building and its setting

14. There is broad agreement between the parties on the historical development of Esher Place. Most of what is visible today of this grand country house and grounds is the remodelling work of architect George Robinson and landscape architect Achille Duchêne at the end of the C19, for Lord Vincent, the first Viscount d'Abernon. He altered and extended the core of this house which was originally built by Edward Lapidge in the early C19, for stockbroker John Spicer.
15. However, this was not the first development here. Henry Pelham, the third prime minister of Great Britain, acquired the site in the early C18 and commissioned William Kent to remodel the C15 house and grounds built for Bishop Wayneflete including its gate house, the Wayneflete Tower. The Tower survives, and is a grade I listed building.
16. Robinson re-orientated the house and he upgraded its classical villa appearance to follow an altogether grander, more formal, French influence. As well as altering its frontage, he extended the house, with a wing to the north, and he added a building for real tennis, linked to the north wing by a long, low, curving gallery. The architect Sir Edwin Lutyens added a sunken theatre and a sunken garden in around 1905. The house was given to the Ragged School Union in 1930. The children's home continued until 1952 when it was sold to the Unite Trade Union.
17. There is thus historical, associative and some communal, social value in the development of the building and its landscape, much of which survives today. Reflecting the architectural taste at the end of the C19, the historical value that can be attributed to the French formal style by the considerable efforts and costs to change the building is substantial.
18. The special architectural interest in the building, described by Pevsner as a very large, Frenchy mansion, is apparent in the French design influence. Externally, this has been achieved by the formal arrangement of classical elements in the facades and the forms of the buildings. This includes, for instance, the raised roof and projecting elements of the central section; the vertical ascendancy in the order and pairing of pilasters; the modulation and layering of the different textured panels of stone and brick; the semi-circular headed openings; the stone balustrading, including at parapet level; the

mansard roofs; and the oeil-de-boeuf windows. These highly crafted, expressive elements in the language of its architecture give the listed building a very high degree of historic and architectural significance.

19. The late C19 curving gallery connecting the north wing of the house to the former tennis court building is centred, like the footprint of the rest of the building, on the front approach to the house. The gallery serves as a corridor. Yet its numerous, large windows set under segmental arches, on opposite walls, and following a symmetrical arrangement around its formal entrance on the front side, allow the space and landscape on each side to percolate through to the other.
20. With its single storey height and its flat roof, it makes an unassuming spatial transition between the more dominant, more opulently decorated, occupied parts of the building which it connects. In the context of the whole building, and particularly between the forms which it joins, it reads as a secondary, connecting element, which reflects its purpose.
21. Despite its position in the hierarchy of the whole building, its detailed design and use of materials continues the themes of the north wing of brickwork panels encapsulated by stone, albeit with a lower order. It has an imposing entrance opening on the front under a decorated lintel and through paired columns projecting from recessive pilasters supporting high level, unoccupied plinths. The entrance on the back side is less ostentatious, with simple brick panels and additional, plain, stone pilasters.
22. Thus the gallery has special historic and architectural interest in its own right. Despite its secondary role in the hierarchy of spaces in the house, it is an essential part of the whole building which has a very high degree of historic and architectural significance.
23. Despite the development of much of the original grounds for housing in the C20, views from the house towards the River Mole reveal the logic of siting the original house here on a promontory, commanding the approach from the river through the gatehouse. While most of the Picturesque landscape devices are only visible in historical documents now, the siting of the house, the sheer modelling of the ground behind it, and the location of surviving trees, suggest the hand of William Kent. The Crouching Venus, attributed to him, survives

from this phase. It presently stands close to Lutyens' sunken theatre. The mid C18 Pelham Vase, its plinth inscribed with beautiful relief panels, listed grade II, remains close to the modern boundary of the garden.

24. There remains a geometric character to the layout, often symmetrical, and the detailing of the terraces, the formal lawns, and the paths which connect them, to both the front and back of the house reflecting the French landscape tradition. The setting of the house borrows the French concept of the landscape which, like the house, contains a sequence of outside 'rooms', notable at the rear with the inclusion of Lutyens' sunken garden and sunken theatre. Theatre and drama, an important element of the French tradition, is raised to a new height by Lutyens with the formal, enclosing embankments of his sunken theatre. It has been spaced off from the house, in the intermediate zone of the garden, between the immediate terracing or paths beside the house and the deeper, less controlled hinterland.

A. Whether the proposal would preserve the grade II listed building

25. Regarding the physical effects of the proposal on the listed building, I share the Council's concerns over the lack of details about the connection between the lobby of the proposed building and the gallery of the house. It is not clear how the abutment of the connecting roof would sit in relation to the cornice encapsulating the gallery and the modulating piers and spandrels of its external wall, and the joinery within them.
26. I note the appeal decisions regarding information, referred to by the appellant. However, without the details of those proposals it is not possible to draw any parallels to the proposals in these appeals. I appreciate that the level of detail of a proposal need be no more than is sufficient to understand the potential impact on significance. Also, a planning condition may be used to make otherwise unacceptable development acceptable. However, general arrangement drawings at a scale of 1:100 do not sufficiently describe a connection of this scale and complexity and the effect on the fabric of the listed building and the features of its architectural and historic special interest. Given the significance I have identified, and the status of the house as a listed building, it would be reckless to leave the detailed design of this connection to a planning condition because of the risk of very considerable harm to its significance.

27. Without further information on this important aspect of the proposal, which the appellant acknowledges² would cause less than substantial harm to significance albeit at the lower end of that range, it is not possible to conclude that the proposal would preserve the features of special architectural and historic interest that the listed building possesses. The proposal would therefore be contrary to the clear expectations of the Act, and the objectives of policies DM2 and DM12 of the Development Management Plan 2015 (DMP), which require the character and features of special architectural or historic interest of a listed building to be preserved.

B. The effect of the proposal on the setting of the listed building

28. The proposed extension would have several effects on the setting of the listed building. First, its spatial setting, or the space around the building in which it is experienced. The height and position of the proposed building, standing so close to the rear elevation of the listed building, would diminish the clearly defined, formal relationship between the building and the space which provides its landscape setting. Its siting would intrude into the wide, uninterrupted vista of the garden from the terrace, an important feature of the French influence. It would also block the tantalising glimpse of the sunken theatre, a feature on the formal walk through the garden, as well as the visual connection between some of the rooms of the house and the garden. This would undermine the order in the landscape setting wherein the house occupies the commanding, central point of the garden, and from whose rear terrace the garden is overlooked.

29. The gallery is a long, relatively narrow space, connecting two separate parts of the house. However, the arrays of large windows on both its flanks visually connect the garden behind the house to the forecourt in front of the house. The size and number of the windows makes this passage less of a corridor and more of an enclosed walk through the landscape. The siting of the proposed building would result in a cramped, overshadowed, back-of-house, space on the garden side of the gallery, undermining the spatial role of the garden as a setting to this part of the house, as well as the architectural quality of the space within the gallery itself.

30. More significantly, given the projection of the proposed building into the garden, its height would undermine the hierarchical order of the different

² Built Heritage Appeal Statement, May 2021, paragraph 7.16

phases of development of the house, relegating the status of the north wing in relation to the whole house. As the appellant's perspective 2 shows, the clear, subsidiary height of the gallery in relation to the house and the wing, which reinforces the status of the various phases of development of the listed building, would be lost beside the proposed building standing so close and tall behind it.

31. Second, the proposed building would stand uncomfortably close to the sunken theatre, with its north corner landing almost on the edge of its outer slope. It would be an intrusive, distracting element in the space around the theatre. Its location would undermine the separation of the outside rooms from the immediate confines of the house, an important principle of the French tradition. I appreciate that modern development has eroded some of its setting on the opposite side, still its integrity as a theatrical landscape device, which this proposal would undermine, remains intact.
32. Further, the elevations facing the theatre would include wide and deep projecting balconies, directly overlooking the theatre, whereas the charm of this landscape device resides in its seclusion from the house, which is part of the rationale of its sunken form, and its isolation from the immediate environs of the house. The concave section of the proposed building facing the garden would create a crude and overpowering focus on the space beside the sunken theatre which contains a stand of trees. These presently form a loose, naturalistic enclosure to the theatre, and the opportunity for the delight in its discovery.
33. Overall, the height and the proximity of the proposed building to the sunken theatre, together with its concave tail and its additional focus and animation, would undermine the landscape function and status of this important feature of the garden, which as an important part of the landscape setting of the house, is part of its historic and landscape significance.
34. Aside from the effect on the theatre, the proposal would displace a part of the connected terrace and garden walk behind the house. The balustraded stairway route which leads down from the main terrace of the house into the garden, would no longer lead the eye to the Crouching Venus and then to encounter the sunken theatre as an element of surprise and delight in the landscape. Instead, the walk would be terminated abruptly beside the 2-storey

wall of the proposed building and the private space in front of the living room doors of one of its flats.

35. Third, architecturally. While the sections of the proposed building which would stand closer to the gallery would appear to spring from the same centre, the main section, 3-storeys in height, would incorporate a section with a concave curve, centred on the reverse side of the gallery, in opposition to the geometry of the gallery, and to the alignment of the listed building. The antithetic geometry of the concave section, which would stand directly opposite the house, would set-up an architectural tension between the gallery and the proposed building. This would be exacerbated by the stepping of the proposed building and its use of yet more curves with quite different geometries.
36. In the setting of a listed building so clearly influenced by the French style, notable for its formality and symmetry, it is important that a new building has a strong unity with its geometry. I appreciate that the north wing and the tennis court building have different footprints and different end conditions. I have taken into account that the overall plan and alignment of the house reflects the hands of its different architects and the successive periods of development. However, the design of the proposed building with its differing alignments and geometries, would be the slave of both conditions and the master of neither.
37. I appreciate that the masonry of the proposed building would reflect the materials of the house. However, I am not convinced that the number and size of the proposed balconies would sit well beside the listed building, whose rear facades are more subtly articulated.
38. The forecourt of the house forms an important part of its landscape and marks an important phase in the development of the house. The formality of its layout, the colours and textures of its lawns and terraces, and the changes in level, reflect the late C19 geometry of the house and its spatial order, as well as directing movement and establishing a foreground architectural character to the building. The stone balustrade enclosing the east boundary, and the changes in level with steps up to the higher-level, flanking lawns and terraces are important landscape devices attributed to Duchêne.

39. With regard to the proposed external works shown within the red-line area, the loss of balustrade in the northern section, the removal of lawn area for parking, and the additional set of stairs would diminish the historic integrity of the lawns, terraces, and enclosures as landscape devices and the symmetry of the forecourt, its character of lawns and terraces, and its enclosure.
40. In the elaborate architectural context surrounding the forecourt and its point of focus at the entrance of the house, the utilitarian appearance of the large bin store and its conspicuous, asymmetrical siting to the right-hand side would intrude in the formal, elaborate setting of the listed building. So too would the bike store beside the northern balustrade to be retained, though to a lesser degree.
41. The enclosed, forecourt of this house should not be the place to stand bin stores. Nor should part of the Duchêne enclosing balustrade, an important part of the C19 landscape, be removed to accommodate a bike store. There is an architecturally more servant section of the building and landscape which is set off from the principal sections of the house and its more prominent landscape, which may be able to more sensitively accommodate bins and bikes.
42. I also question the sensitivity of planting what appear as specimen trees as a screen in front of the former tennis court building. This would risk undermining the status of the building and the prominence and visual integrity of the whole building as well as the relationship between the building and its landscape, which is an important part of the architectural and historic significance of the listed building.
43. Overall, the external works in these proposals would undermine the synergy between the house and its landscape, a critically important and interdependent principle of the French tradition. The harm they would cause to the setting of the listed building would diminish its historic and architectural significance very considerably.
44. I conclude on this issue that the proposed development would harm the setting of the listed building, resulting in very considerable harm to the historic and architectural significance of the listed building. It would conflict with the clear expectations of the Act, DMP policies DM2 and DM12 where they require proposals to take account of the historic environment, and to preserve or

enhance the setting of listed buildings. It would also conflict with the Framework, which in paragraph 200, identifies the potential for harm to the significance of a designated heritage asset including from development within its setting, and which in paragraph 206 encourages development within the setting of heritage assets to look for opportunities to better reveal their significance.

C. Living conditions of future occupiers

45. Because of the proximity of the proposed building to the listed building, the outlook from the second bedrooms of the flats in each end of the proposed building, flats 1, 3, 4 and 6, would be limited.
46. However, having stood at the position of the ground floor windows of these flats, my impression is that though the outlook would not be an expansive one, given the quality of the building onto which it would look out, and the distance of the windows from it, which would afford some connection to the sky above the gallery, the outlooks would be sufficient.
47. Moreover, the outlook from the other bedroom and living room in each of these flats would be directly on to the garden of the house. At first floor, the enclosing effect of the gallery would be reduced and the outlooks from the bedrooms on this level would be more generous than those on the ground floor. In terms of outlook therefore, I find the living conditions of the future occupiers would be more than satisfactory.
48. I recognise that the light reaching the second bedrooms of these flats would be restricted by the proximity of the listed building. However, these are not deep bedrooms. The positions of the windows serving them, and their distances from the listed building, would ensure that sufficient diffuse skylight as well as some direct or reflected sunlight is captured. Moreover, there is no substantive evidence that the light levels within them would be other than satisfactory.
49. Policy CS11 of the Elmbridge Core Strategy 2011 (CS) which concerns Claygate and to which the Council refers has less relevance to this issue.
- Notwithstanding this, I conclude on this issue that the proposal would provide satisfactory living conditions for future occupiers, with particular regard to the daylight within and the outlook from flats 1, 3, 4 and 6. There would be no conflict on this issue between the development and CS policy CS17 where it

seeks sustainable design, and DMP policies DM2 and DM10 which require development to provide appropriate outlook and adequate daylight and sunlight.

D. Whether the proposal should make a financial contribution to affordable housing

50. The Council has set out in CS policy CS21 its aim to provide 1,150 affordable homes between 2011 and 2026. On sites of 6 to 14 homes it requires 30% of them to be for affordable housing. The sub-text to the policy indicates that where the delivery of affordable housing is unviable, this must be demonstrated through the submission of a financial appraisal alongside a planning application.
51. I note that the Framework says that affordable housing should not be sought from residential development that is not major, and I acknowledge that this proposal is not a major development. The policy in the Framework is a material consideration of significant weight.
52. However, whereas the Council estimates³ that the need for affordable housing in the borough is 269 homes per annum, it reports⁴ that in the 9 years to 2020 it provided a total of only 615 homes. It describes how, in order to have met the affordable housing need in that period, 94% of residential development would have needed to have been affordable. It also suggests that the acute need for affordable housing in Elmbridge has been caused by its very high house prices, which are significantly above regional and national averages. It also sets out the importance of small sites to housing, which provided almost half of its total between 2011 and 2021.
53. The appellant has not objected to the application of CS policy CS21. Indeed, it has submitted a Financial Viability Appraisal (FVA) to justify the lack of any provision or contribution to affordable housing. On this basis, I can see no reason why CS policy CS21 should not apply to the development in this proposal.
54. In the planning application the subject of this appeal, the appellant initially indicated⁵ that two of the dwellings would be for affordable housing which would be secured by a planning obligation. However, when the Council

³ Para 4.49, Assessment of Local Housing Needs, March 2020, by Cobweb Consulting for EBC

⁴ Statement on Affordable Housing on Small Sites (update) by EBC, October 2021

⁵ Application covering letter, 12 February 2020 ref: SB/JS/7974

determined the application, no obligation had been provided, the lack of which prompted one of the reasons for refusal.

55. The appellant has submitted with the appeal a financial viability appraisal (FVA). This has assessed the aggregate viability across all four developments. It acknowledges that CS policy CS21, which would require, across all the developments together, 14 homes as affordable housing, but concludes that the aggregate proposal would be unable to provide any affordable dwellings or contributions to affordable housing.
56. The parties agree that the aggregate residual land value (RLV) of the four developments would be £7,916,989. They disagree however, on the benchmark land value.
57. Benchmark land value (BLV) based on the existing use value (EUV): In calculating the EUV the appellant values the existing buildings at £8,100,000 to which they add £900,000 as a special assumption for the value of an unbuilt extension. This makes their EUV £9,000,000. The Council, on the other hand, values the existing use at £4,320,000; the difference between the parties is more than 100%.
58. The appellant's value of the existing use is based on the agreed nett internal area of the building, 36,000ft², and a capital value of £225/ft², wherein the difference lies. This capital value was based initially on a schedule⁶ of sales transactions of sites in the area. However, whereas the Planning Practice Guidance (PPG) advises that EUV is the value of the land in its existing use, and the last use of the building was as a residential training centre, the appellant's schedule of transactions has no similar reference but instead includes transactions for sites with uses as diverse as skilled nursing facilities, care facilities, hotels, and schools.
59. I appreciate that the location of the appellant's comparables are close to the appeal site, but the schedule is not comparing like use with like use. This makes the accuracy of the £225/ft² valuation uncertain. Moreover, notwithstanding that the uses are incomparable, it is not clear how the collection of rates in the schedule, which vary from £76/ft² to £508/ft², has led to the valuation of £225/ft².

⁶ Section 18, Valuation Report by Perry Hill, 19 May 2021

60. In support of their EUV, the appellant submitted further comparables⁷ of sites sold within a radius of 7.5 miles. However those examples vary substantially in size and use ranging from a former police station to a church, a day nursery, surgeries, care homes, schools, hotels, a meeting hall and a riding centre. Again, this is not comparing like with like, and, as before, it is unclear how the rates which vary from £233/ft² to £1,089/ft² have led to a valuation at the appeal site of £225/ft². That the appellant's valuation is neither as high nor as low as the comparables they present does not give me confidence in the valuation.
61. The Council's valuation⁸ of EUV on the other hand, at £120/ft², or £4,320,000, included an example of a training centre, Alvescot Lodge, in Oxford. Though the floor area of that training centre was around half that of Esher Place, the area of its grounds was similar. It sold at £104/ft². Applying the same £/ft² rate, £/acre rate or a room rate of that sale, would give an EUV of less than £4,000,000 for Esher Place.
62. I recognise that as a location, Oxford may have less land value than Esher. It may be further from London and from Heathrow Airport. However, the catchment area of a conference centre is far broader than that of a house, a nursing home, or a school. Indeed, I heard that delegates from across the world have attended conferences at Esher Place. Oxford is a well-connected city. Moreover, for the purposes of a residential training course or conference, the land value of the location is, I consider, of less relevance than the character of the place, the quality of the conference space and accommodation, and how easy it is to reach.
63. A second example from the Council, of a language centre in St. Albans, with around three times the floor area and ten times the land area of Esher Place, sold for £66/ft². Setting aside the acreage rate because it would result in a very low value at the smaller Esher Place, and applying the Council's uplifted rate of £100/ft² would, like the other training centre example, result in an EUV at Esher Place of less than £4,000,000. Given the smaller size of Esher Place, the Council's estimate allowing some uplift, seems fair.

⁷ Supplementary evidence by Perry Hill, 15 March 2022

⁸ Appendix 3, Review of Benchmark Land Value, 2 March 2022, by Dixon Searle Partnership

64. On this basis therefore, and given all the evidence before me, the appellant's valuation of £8,100,000 appears a substantial over-estimate of EUV for the existing building. The EUV of the existing building is more likely to be at or very close to the Council's estimate of £4,320,000.
65. Special assumption in the EUV: The appellant has added £900,000 to the EUV of the site for the value of the unbuilt extension to the main building. However, the PPG is explicit⁹ in defining EUV as the value of the land in its existing use, and that it should disregard hope value. It states¹⁰ that alternative use value (AUV) refers to the value of land for uses other than its existing use, and that where it is assumed that an existing use will be refurbished or redeveloped this will be considered as an AUV when establishing BLV.
66. The area of land for the extension is part of the grounds of the house. The whole site was marketed in 2017, well after the planning permission for the extension was received, but received no interest in the continued use. Moreover, the appellant's own valuation¹¹, albeit with reference to market conditions after the Covid-19 pandemic, considered that it would be 'unlikely that demand will fill the existing building', let alone the building extended. I appreciate that this referred to booking anxiety in the aftermath of the pandemic, which may now have subsided. But equally, during the pandemic, online conference calls and online meetings became commonplace. It is unclear how, since the pandemic, this technology has affected the expectations of potential conference delegates and the demand for residential conference and training centres.
67. In these circumstances, I am not convinced that to add £900,000 to the EUV for an unbuilt extension to a building for whose use there is no evidence of demand, is justified. Moreover, the appellant's nominal value of the extension at £900,000 is based on an allowance of £100,000 for each of its 36 rooms, giving a gross development value (GDV) of £3,600,000. However, it is not clear how that value was reached, nor the reason why it should switch from the area rate used for the existing building to a room rate for an extension to it.

⁹ Planning Practice Guidance, paragraph 10-015

¹⁰ Planning Practice Guidance, paragraph 10-017

¹¹ Valuation Note 3, Valuation Report by Perry Hill, 19 May 2021

Its value lies in being part of the rest of the building whose facilities it would share. This suggests it should be valued on an area basis.

68. Notwithstanding this, and even incorporating the £900,000 value for the unbuilt extension, for the reasons already given, the appellant's position remains a substantial over-estimate of EUV.
69. Conclusion BLV based on EUV: The parties agree that a 10% premium over the EUV should be included as a reasonable incentive for the landowner to sell. Using the agreed RLV of £7,916,989 and the appellant's EUV of £9,000,000 indicates that there would be no surplus for affordable housing.
70. However, for the reasons above, I cannot agree with the appellant's valuation of the EUV which the evidence and the application of the PPG suggests is an over-estimate. Using the Council's more accurate EUV of £4,320,000 and adding a 10% premium of £432,000 would result in a BLV of £4,752,000. This suggests that there would be sufficient headroom in the aggregate scheme for more than a nil contribution to affordable housing, as required by the development plan.
71. Even if I agreed with the appellant that the unbuilt extension should be part of the EUV, which I do not, this would make an EUV, based on the Council's rate for the existing building but with the appellant's value of the extension, of £5,220,000. Adding to this a 10% incentive would make a BLV of £5,742,000; still sufficient margin for some contribution to affordable housing.
72. Benchmark land value based on an alternative use value (AUV): The PPG recognises that an AUV may be informative in establishing BLV. It is, however, limited to those uses which would fully comply with up-to-date development plan policies. Where it indicates that plan makers can set out the circumstances in which AUVs can be used it includes where the alternative use could be implemented; where it can be demonstrated that there is market demand for that use; and if there is an explanation as to why the alternative use has not been pursued. It also indicates that the AUV should be supported by evidence of costs and values and that the AUV already includes the premium to the landowner.

73. AUV as a hotel: The appellant has proposed that an alternative use for the building might be as a hotel, with 52 rooms. With a capital value of £8,100,000 for the building, the room rate would need to achieve £155,769.
74. By comparison, they refer to two, local hotels with capital values, by room, of £162,463 and £193,000. However, the higher value is for a hotel in a more prestigious location than Esher Place, being alongside the Thames and with Hampton Court Palace in sight.
75. The Council has also submitted examples of comparable hotels. Most of these I find incomparable, because of size, or facilities, or location, or a combination of these factors. However, its example of the Warren House Hotel in Kingston, surrounded by large properties, a private estate, similar in the area of its grounds, similar in the number of bedrooms, and not least its location, has much in common with Esher Place. I appreciate that Esher Place does not have a pool or spa, but it has compensating factors, not least its splendid interior and its spatial setting. The room rate that the Warren House Hotel achieved, of £165,217, suggests that the appellant's room rate of £155,769 to achieve the £8,100,000 valuation of the building would not be an unrealistic aspiration at Esher Place.
76. Another example, the 3* Kingston Lodge Hotel, a 67-room hotel with conference facilities, sold at a rate of £162,687/room. Given the similarity of its location and size, this example too suggests that the appellant's target room rate of £155,769 is not unrealistic.
77. Notwithstanding this, the compared hotels had been trading, whereas the existing building was last used as a residential training centre, and would require works to convert it to a hotel. From my own inspection, save for a very few, the bedrooms in Esher Place would require modernisation to bring them up to the standard of a modern hotel like those in the comparisons. Moreover, the other, non-bedroom spaces are important in a hotel. These spaces would also require some work and hence cost. This is a listed building where internal works to change it to a hotel would present opportunities, but also extra-over costs.
78. The appellant insisted that the building is ready-to-trade, whereas the Council estimated that the cost of converting the building to a hotel would be around £100/ft², or £3,600,000. The Council does not set-out the assumptions it used in selecting that cost. Equally, and despite the clear guidance in the PPG that

an AUV should be supported by evidence of costs, in the face of that estimate, an estimate which changes decisively the valuation, the appellant does not set-out how changing the use could be totally cost-free, which I saw could not realistically be the case. I cannot therefore rely on the appellant's valuation.

79. Assuming that the appellant's aspirational room rate is achievable, the conversion works suggested by the Council would result in an AUV as a hotel of £4,500,000. This too would suggest that with an alternative use as a hotel, there may be sufficient headroom for more than a nil contribution to affordable housing, as required by the development plan.
80. However, as well as there being no substantive evidence from either side on the cost of conversion, neither is there any evidence of market demand for a hotel here. This introduces even more uncertainty to the value of this alternative use. Moreover, while the Council could not point out any obvious conflicts with the development plan from a change of use to a hotel during the Hearing, the lack of evidence of the use fully complying with the development plan also casts doubt. While AUV may be informative in establishing BLV, the factors above make any reliance on an alternative use as a hotel a precarious assumption. This limits the weight I can give this speculative AUV.
81. AUV as a care home: The examples of care homes and skilled nursing facilities from the appellant range in value from £75.81/ft² to £507.72/ft². However, the size of most of them, which range from around 4,000ft² to around 11,000ft² are too small to compare to Esher Place, which is £36,000ft². At the other extreme, the St. John's Wood care home, at 60,000ft² and £108.21/ft², which is far larger than Esher Place, is equally an outlier. However, the homes in Hayes and Dorking which have areas of around 29,000ft² and 21,000ft² are more comparable to Esher Place, at least in size. They sold for £152.64/ft² and £150.17/ft². This suggests that the appellant's value of £225/ft² may be slightly over the mark.
82. More significantly, there is no evidence of demand for a care home here, and no indication of the costs for the works which would be necessary to convert it from its present use. This limits the weight I can give this speculative AUV too.
83. AUV as a day school: I discount most of the Council's examples of day school transactions, located in the shires, or a considerable distance from London, as being incomparable geographically. The appellant's examples of schools,

except for one which is less than half the size of Esher House which limits its relevance, have values substantially less than £225/ft². However, there is no evidence of any demand for a day school here, no indication of the costs required for conversion of the building to that use, and no evidence that the use would fully comply with the development plan. This limits the weight I can give this speculative AUV too.

84. AUV as a boarding school: I have also considered the examples of boarding schools given by the appellant, the most comparable of which, Hampton Court House, is a period building of 30,000ft², with a value of £463/ft². While this suggests that the appellant's rate of £225/ft² may be reasonable, there is no evidence that there is demand for a boarding school here, and no indication of the costs to convert the building from its present use. Again, this limits the weight I can give to the claimed value of such an alternative use.
85. Conclusion on BLV: For the reasons above, none of the alternative use values are sufficiently reliable to inform the benchmark land value to any significant degree. Returning to the BLV above, based on the existing use, it is clear that there is sufficient headroom for some contribution to affordable housing.
86. Overall Conclusion on affordable housing issue: Notwithstanding my findings above, the assumptions in the appraisals of both parties, particularly the RLV and BLV, relate to the aggregate of four developments on four sites, rather than this singular development on this particular site. The calculations and conclusions in the FVA do not separate the development in this appeal from the developments in the other appeals. There is no means to disaggregate the elements in the FVA relevant to this proposal from the other proposals. There is also no certainty that all the developments included in the FVA will gain the necessary planning permissions and listed building consents. Nor is there any certainty that they would be implemented, and no mechanism to secure an adjustment in the event that they were not.
87. In other words, whereas the applications concern four separate proposals, the financial calculations are based on the collective value. This flies in the face of DMP policy DM4 which encourages developers of adjoining sites to work together to deliver comprehensive development. It means that the success of each appeal on this issue, is dependent on the success of each of the other

appeals, or as the appellant put it during the Hearing; it's either all of them or its none of them.

88. In these circumstances, it is not possible to conclude that the proposal should not make a financial contribution to affordable housing. In fact, the evidence suggests that it should. In the absence of any contribution, the development would be in conflict with CS policy CS21. This weighs against the proposal.

Other matters

89. I appreciate that the scheme that was allowed at appeal¹², the extant status of which the Council considers to be likely though undemonstrated, included an extension in connection with the existing use then. However, eleven years have elapsed since those appeals were allowed, and there is no sign of the building rising from the ground. The appellant's own evidence¹³ indicates that the property is no longer viable for its existing use or for any other social or community use that could be achieved through conversion or redevelopment; hence the applications the subject of these appeals. The likelihood of that development being implemented is, in my view, no more than a theoretical possibility now.
90. Moreover, as well as its different use, the form of the extension in this proposal differs from the allowed extension. This proposal has a quite differently shaped footprint and connection from the allowed scheme, and it would stand closer to the listed building. Its form turns its back on the listed building whereas the allowed scheme's alignment was coherent with the geometry of the gallery to which it connected. This proposal would project closer to the sunken theatre and it would have a broader and higher connection to the gallery of the listed building. I acknowledge that its elevation height would be a little shorter than the allowed extension, however the effect of this in views from the forecourt would be marginal. Moreover, the allowed scheme retained the C19 stone balustrade, an important element of Duchêne's landscape design. Nor did it include a freestanding storage building so conspicuously in the forecourt of the listed building. These harmful impacts are absent in the allowed scheme.

¹² Appeal Refs: APP/K3605/A/10/2315373 & APP/K3605/E/10/2135377 of 4 February 2011

¹³ CBRE Marketing Report of 10 February 2020

91. Another important distinction between the two schemes is that in the allowed scheme the Inspector found no harm, whereas in this case, both the Council and the appellant¹⁴ consider that the proposal would result in less than substantial harm to the significance of the listed building. In my view, for the reasons already given, I do not find the allowed scheme more harmful than this proposal. All these factors limit the weight I can give to the fallback position claimed by the appellant.
92. The Planning Practice Guidance indicates that when assessing the setting of a heritage asset it may be necessary to consider the implications of cumulative change. I have considered this proposal on its own merits, and found very considerable harm to the significance of the listed building from development within its setting. The same is true of the appeals for the other three projects which I have dismissed with similar conclusions.
93. The collective harm to significance from the four sets of harms considered together would be greater than the harm to significance from the harm I have identified in each singular case, though still, in my view, amounting collectively to no greater than less than substantial harm to significance. As I am dismissing these appeals on their own merits in each individual case, I have not pursued the matter of cumulative change any further.
94. Because of the distance of the house from Wayneflete Tower, the height and nature of these proposals, as well as the trees and development between them, the setting of Wayneflete Tower would not be affected by these proposals. So too the Pelham Vase, which is too distant from this proposal for any ill effect to its setting.
95. The settings of these listed buildings would therefore be preserved in accordance with the expectations of the Act, and the objectives of the Framework which recognise the potential for harm to the significance of a designated heritage asset from development within its setting.
96. I have taken into account the other matters raised by local residents, including traffic and road safety, trees and drainage. However, as I am dismissing the appeal on the main issues and they could not alter my conclusions, I have not considered them further.

¹⁴ Section 5.1, Heritage Statement, December 2019, & section 8.9 Built Heritage Appeal Statement, May 2021

Planning balance

97. The proposals would preserve neither the special historic and architectural interest of the listed building, nor its setting. I give this harm considerable importance and weight in the planning balance of these appeals.
98. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to its conservation. It goes on to advise that significance can be harmed or lost through the alteration or destruction of the asset or development within its setting, and that any harm to the significance of a designated heritage asset should require clear and convincing justification.
99. The degree of harm to the historic and architectural significance of the listed building that I have identified would be very considerable. Though this would, in the language of the Framework be less than substantial, a conclusion shared by the appellant, this does not equate to a less than substantial planning objection, especially where the statutory tests are not met. In these circumstances, paragraph 202 of the Framework anticipates that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this should be weighed against the public benefits of the proposal.
100. It is not clear how the extension would secure a new use for the building and ensure its maintenance and repair. Neither is it clear how the proposal would better reveal the significance of the listed building, nor how it would be brought into the public realm while the access leading to it is a private road. The lack of harm to trees, the living conditions of surrounding occupiers, and ecology as claimed, are neutral factors. They do not amount to public benefits.
101. There is no dispute that the Council cannot demonstrate a five-year supply of deliverable housing sites. The appellant's claim that the Housing Delivery Test indicates that the delivery of housing has been substantially below the housing requirement over the last three years, and their estimate of a supply of around 3.9 years, has not been refuted. The appeal therefore falls to be determined in accordance with paragraph 11d) of the Framework.
102. Designated heritage assets are protected by policies in the Framework. In applying its policies concerning designated heritage assets, I have found clear

reason for refusing the development. Accordingly, in appeal 'A' the tilted balance does not apply, and the Framework is not a material consideration in this context to indicate a decision other than in accordance with the development plan.

103. Notwithstanding this, the proposals would bring new dwellings with a range of sizes, in a location with good access to services and facilities, and in an area which suffers from a shortfall of housing. In the context of the Government's objective to significantly boost the supply of homes, this attracts significant weight. Construction would bring economic benefits too, from employment, and the commissioning of services, which attract moderate weight. Future occupiers would bring local economic benefits from using facilities, additional spending and commissioning local services.

104. However, the public benefits in the proposal would not outweigh the less than substantial harm to the significance of the listed building and its setting, to which I attribute considerable importance and weight, and to the conservation of which the Framework indicates that great weight should be given.

Conclusion

105. The proposal would provide acceptable living conditions for future occupiers, but it would result in very considerable harm to the significance of the listed building and to its setting. It would fail to satisfy the requirements of the Act, paragraph 197 of the Framework, and it would not be in accordance with the development plan. Moreover, while the development plan requires the development to include affordable housing, it has not been possible to conclude that the proposal should not make a financial contribution to affordable housing. In the absence of any contribution, this too puts the proposal in conflict with the development plan.

106. Notwithstanding all the factors advanced in favour of the proposal, including the benefits, which attract significant weight, they would not outweigh the very considerable harm to the significance of the listed building, and the conflict with the development plan, when read as a whole.

107. There are no other material considerations which suggest that the decisions should be taken other than in accordance with the development plan, insofar as

relevant. Having taken into account all matters raised, and for the reasons above, the appeals are therefore dismissed.

Patrick Whelan

INSPECTOR

Appearances

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