



Appeal Decision

Site visit made on 21 November 2022

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/K3605/W/22/3300969

39 Charlton Avenue, Hersham, Walton-on-Thames KT12 5LE

- 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 M Anderson against the decision of Elmbridge Borough Council.
 - The application Ref 2021/4404, dated 25 November 2021, was refused by notice dated 25 May 2022.
 - The development proposed is subdivision of existing dwelling with consented extension to create 3 no 1 bedroom and 4 no 2-bedroom apartments with associated parking, bin and cycle storage.
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Decision

1. The appeal is allowed and planning permission is granted for the subdivision of existing dwelling with consented extension to create 3 no 1 bedroom and 4 no 2-bedroom apartments with associated parking, bin and cycle storage at 39 Charlton Avenue, Walton-on-Thames, KT12 5LE in accordance with the terms of the application, Ref 2021/4404, dated 25 November 2021, subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs was made by M Anderson against Elmbridge Borough Council. This application will be the subject of a separate Decision.

Preliminary Matters

3. The appellant has submitted an amended drawing¹ showing an alternative layout for the bin store. This represents a minor alteration to the original scheme. The Council has commented on this amended plan and confirmed that this addresses their concerns regarding the bin pull-distance from the highway and the surface material of the parking area. On this basis, I do not consider that any party would be unfairly prejudiced, and I therefore have had consideration to the submitted drawings in determining this appeal.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area;

¹ 4. Reference P203 Rev A

- The effect of the proposal on the living conditions of neighbouring residents with particular regard to car parking stress, noise disturbance and pollution; and
- Whether the proposal makes appropriate provision for affordable housing

Reasons

Character and appearance

5. 39 Charlton Avenue is a large, 6-bedroom detached property which occupies a large, prominent corner plot at the junction of Charlton Avenue and Queens Road with a parking area to the front. Properties in Charlton Avenue and Queens Road are predominantly large, detached 2 storey family dwellings which are set back from the road in substantial plots. This, along with planting within grass verges and front gardens contributes to a green and spacious character to the surrounding area.
6. 39 Charlton Avenue has undergone a number of extensions and is a larger dwelling occupying a larger corner plot than other properties within the surrounding area. Nonetheless, the dwelling makes a positive contribution to the spacious character of the surrounding area.
7. The proposal would extend and subdivide this dwelling to form 7 self-contained flats. Parking would be located to the front of the building and a bin storage area located on the site's northern boundary to the front. Occupants of the flats would be provided with communal amenity space and a cycle store to the rear.
8. Permission has already been granted for the erection of extensions and alterations to the appeal property². Whilst full details of this proposal are not before me, there is no dispute between the main parties that this permission could be implemented and that it would result in a similar scale and massing to the appeal proposal. Whilst I have limited information about whether there would be an intention to carry out the works approved by these permissions if this appeal were dismissed, there would seem a greater than just theoretical possibility that this alternative would take place. I therefore give this existing permission significant weight.
9. Notwithstanding the above, the Council state that the increased number of occupiers for the 7 flats would result in harm to the character and appearance of the surrounding area.
10. Access to 6 of the flats would be from the existing main building entrance and the 7th flat would be accessed from the side elevation. The proposed extensions and alterations to the building would be domestic in scale and appearance. Consequently, whilst larger than the surrounding properties, the appeal property would retain the appearance of a single dwelling.
11. Parking for the occupants of the flats would be to the front of the building within an existing parking area. Whilst the increased number of occupiers would likely increase the number of vehicles parked in this parking area, the appeal site is large, and the parking area is partly screened from view from the street scene by boundary treatment and vegetation. Thus, the increased use of

² Application ref 2021/2620

this parking area would not compromise the residential character and appearance of the site.

12. The proposal would increase vehicular and pedestrian movements to and from the site. However, I have not been presented with any evidence that the increase in such movements would be so substantial as to result in any marked change to the character and appearance or the residential nature of the site and the surrounding area.
13. On balance of the above, whilst the proposal would result in additional occupiers and would have a higher density than dwellings in the surrounding area, this would not threaten or be harmful to the character and appearance of the site and surrounding area. Therefore, the proposal accords with those aims of Policy DM2 of the Elmbridge Development Management Plan (2015) (DMP) and Policy CS17 of the Elmbridge Core Strategy (2011) (ECS) which require, amongst other things, that new development achieve high quality design based on an understanding of local character and that proposals should preserve or enhance the character of the area maximising the efficient use of urban land whilst responding to the positive features of individual locations. I also find no conflict with the National Planning Policy Framework (the Framework) which requires that developments are sympathetic to the surrounding built environment.

Living conditions

14. At my site visit I observed that bins for the existing dwelling were stored to the front of the property close to the boundary with No 37 Charlton Avenue. A thick tall hedge screens the front elevation of the appeal property from No 37 and a hedge and fence enclose the appeal site to the rear. Charlton Avenue is located in a controlled parking zone and there are parking restrictions along this road.
15. The proposal includes a bin store, positioned to the front elevation of the property close to the boundary with No 37. The proposal would result in an increase in use of the bin store and an increase in noise levels from the increased number of vehicles manoeuvring within the parking area. However, a thick boundary hedge which separates the appeal property from No 37 would minimise noise disturbance resulting from the vehicular and pedestrian movements and use of the bin store, and the hedge and covered nature of bin store would minimise pollution. Therefore, the proposed increase in the number of occupiers living in and visiting the building would not result in noise disturbance or compromise the living conditions for the occupants of No 37 through pollution.
16. The proposal makes provision for 7 car parking spaces for the 7 proposed flats. This does not exceed the maximum parking standards set out in Appendix 1 of the DMP and meets the minimum parking requirements of one space per residential unit required to ensure that proposals do not result in an increase in parking stress to the detriment of the amenities of local residents. Consequently, the proposal makes provision for a policy-compliant level of car parking. Nonetheless, the Council state that the increase in the number of residents would result in overspill parking onto the street and roads outside of the controlled parking zone, which, it is stated, would be harmful to the living conditions of the occupiers of neighbouring dwellings. Whilst I note that there are parking restrictions in place along Charlton Avenue and in the surrounding area, I have not been presented with a compelling case which justifies the

imposition of maximum parking standards in this instance, or with any evidence that this proposal would result in parking stress within the local area to the detriment of the living conditions of the neighbouring properties. I note that Surrey County Council in their capacity as Highways Authority raised no objection to the proposed level of car parking and based on the information before me and my observations on site, I find no reason to take an alternative view.

17. Therefore, the proposal accords with those aims of DMP Policies DM2, DM7 and DM8 which state, amongst other things, that new development should protect the amenity of adjoining and potential occupiers and users, minimise the impact of vehicle and traffic nuisance, that parking provision should be appropriate to the development and not result in an increase in on-street parking stress that would be detrimental to the amenities of local residents and the design and siting of bin storage and external plant should respect the visual amenities of the host building and the area. I also find no conflict with the Framework which states that decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Affordable housing

18. ECS Policy CS21 requires that for this development 30% of the gross number of dwellings on site should be provided as affordable housing. This proposal would result in a net increase of 6 dwellings and would therefore be required to provide 2 affordable units. This is elaborated on in the Elmbridge Developer Contributions Supplementary Planning Document (2020) (DCSPD). However, the policy pre-dates the Framework which states that affordable housing should not be sought for residential developments that are not major developments.
19. The Council has provided substantive evidence that there is an acute need for affordable housing in the borough, the importance of small sites in delivering this, and that these requirements do not place a disproportionate burden on developers. Therefore, based on this specific local evidence the Framework's provisions do not outweigh the development plan in this instance.
20. ECS Policy CS21 goes on to state that in the exceptional circumstances where it is considered that the delivery of affordable housing in accordance with the policy is unviable, this must be demonstrated through the submission of a financial appraisal alongside a planning application. The appellant has not objected to the application of ECS policy CS21. Indeed, they have submitted a viability appraisal to justify the lack of any provision or contribution to affordable housing. On this basis, I can see no reason why ECS policy CS21 should not apply to the development in this proposal.
21. The application is supported by a viability appraisal and both parties agree that the proposal is unable to viably provide the affordable housing obligations required under ECS Policy CS21. The DCSPD states that developments of 5 or more units that do not provide a policy compliant affordable housing contribution at the application stage will be subject to an early Review Mechanism, where deemed appropriate. If developments are commenced within two years of planning permission being granted, then the early Review Mechanism is not applied. The DCSPD goes on to state that all development proposals that do not provide the policy required level of affordable housing contribution at the application stage will be subject to a late review mechanism, which will be secured prior to grant of permission through a legal

agreement. This review mechanism is necessary to ensure compliance with the DCSPD for affordable housing delivery, which itself guides on the implementation of ECS Policy CS21. The imposition of the review mechanism is necessary to achieve a policy-compliant level of affordable provision.

22. This proposal is not supported by a legal agreement setting out a review mechanism. Therefore, the proposal fails to comply with those aims of ECS Policy CS21 which seek to provide affordable housing and conflicts with those aims of the DCSPD which state that proposals that do not make a policy-compliant affordable contribution will be the subject of a review mechanism secured by a legal agreement.

Other Matters

23. I have given careful consideration to comments raised by interested parties regarding the capacity of local infrastructure to cope with the increased number of residents including the local drainage system, garden waste collection, local schools and doctor's surgeries. However, I have no evidence before me that the proposal would result in unacceptable impacts on local infrastructure and note that the Council did not object on these grounds.
24. Comments regarding the increase in traffic and the suitability of the junction between Charlton Avenue and Queens Road for the increase in vehicle movements are noted. I note that the Council and Surrey County Council as Highway Authority found the application to be acceptable in terms of the impact on the local highway network and did not raise any objections on grounds of the effect of the proposal on the safety of this junction. In the absence of any evidence to the contrary, I find no reason to take a different view.
25. Comments regarding the quality of the accommodation proposed, including the internal and external spaces, are noted. However, I note that the Council found that the proposal would provide an acceptable standard of living accommodation. Based on the information before me I find no reason to take an alternative view.
26. Comments regarding the internal layout of one of the flats are noted. The plans appear to show that the flat in question is open plan. Even if I am wrong the insertion of a door into the kitchen/breakfast room would be an internal change that the developer could rectify at a later date.
27. Concerns that there would not be a demand for the proposed flats are noted, including the number of flats under construction in the local area, as are comments that the proposed flats would be too expensive. However, I note that both parties agree that there is a demand for smaller properties in the district. The sale price of the proposed flats, and a preference for social housing, is not a matter for consideration in the determination of this appeal.
28. Comments regarding the cumulative effects of the current proposal and extant permissions at a neighbouring site are noted. Whilst the full details of this proposal are not before me, based on the information provided I find no reason to conclude that the existing and current proposal would, in combination with other permissions, result in harm to the character and appearance of the surrounding area or the living conditions of the occupants of neighbouring properties.

29. I have found that the individual characteristics of this particular site would enable the proposal to be accommodated without harm to the character and appearance of the surrounding area or the living conditions of the occupants of neighbouring properties. However, I see no reason to suppose that my decision in this case would set a precedent. Differing circumstances, and the potential for cumulative harm, would represent matters to be considered were other similar proposals to be advanced elsewhere in the future.
30. Comments regarding the number of planning applications which have been submitted at the appeal property are noted. However, I am tasked with determining the proposal before me and this has no bearing on the outcome of this appeal.
31. Comments regarding existing noise disturbance from the site are noted. As set out in relation to the second main issue I have found that the site has the capacity to accommodate the proposed development without adverse impacts on the living conditions of the occupants of neighbouring properties. Any current alleged noise disturbance has no bearing on the outcome of this appeal.
32. Finally, concerns regarding overlooking and an associated loss of privacy for the occupiers of 104 Queens Road are noted. The Council did not raise any concerns regarding the effects of the proposal on the living conditions of the occupants of this property. Based on my observations on site I note that this property is some distance from the appeal site and on the opposite side of the road. Consequently, I find that the proposed extensions would not result in openings which would overlook 104 Queens Road.

Planning Balance

33. The Council has confirmed that it is not able to demonstrate a five-year supply of deliverable housing sites and is unable to identify sufficient housing land supply. I have no reason to take an alternative view. As the proposal involves the provision of housing, Footnote 8 of the Framework indicates the most important policies for determining the appeal are deemed to be out of date and paragraph 11. d) ii. of the Framework is engaged. This requires that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. The proposal would make a small contribution towards the borough's housing supply on a site with good access to facilities and public transport. This would contribute to the Government's objective to significantly boost the supply of homes and would meet an identified local housing need for smaller properties. This factor weighs in favour of the scheme. There would be short-term economic benefits associated with construction and Council tax revenues in the longer term. Given the scale of the proposal, I attach moderate weight to the development's positive contributions to the social and economic objectives of the Framework.
35. I have found that the proposal would fail to make provision for affordable housing or an appropriate review mechanism to secure this. Therefore, the proposal conflicts with those aims of ECS Policy CS21 and the development plan as a whole. It has been demonstrated that the proposed development cannot viably secure a policy-compliant level of affordable housing

contributions. Thus, the conflict with the development plan relates to the lack of review mechanism. In light of the shortfall in deliverable housing sites in the borough I find that the lack of review mechanism for this small-scale proposal would not significantly outweigh the aforementioned benefits of the proposal. Therefore, the presumption in favour of sustainable development applies which points towards the grant of planning permission.

36. In conclusion, while not fully in accordance with ECS Policy CS21, the proposed development would provide a suitable location for housing having regard to the character and appearance of the area and the specific circumstances of this case. It would also represent sustainable development in accordance with paragraph 8 of the Framework.

Conditions

37. I have had regard to the conditions suggested by the Council in their statement of case, on which the appellant has had the opportunity to comment. Where necessary I have made revisions to some of the conditions put to me to ensure that they meet the tests in the Framework and PPG, without altering their fundamental aims.
38. Planning permission is granted subject to the standard three year time limit condition for implementation. In addition, it is necessary to specify the approved plans in the interest of certainty.
39. A condition relating to the provision of a parking and turning area is necessary in the interests of highway and pedestrian safety. A condition relating to the provision of cycle storage facilities is necessary to ensure the provision of this residential facility. I have imposed the suggested condition relating to electric car charging points to support more sustainable living, in accordance with DMP Policy DM7 and ECS Policy CS25.
40. I note that conditions relating to materials and tree protection measures were imposed on the previous permission for the extension. However, I am granting permission for the extension as part of this permission so these conditions must be reimposed. The approval of materials is necessary in the interest of the character and appearance of the host building and street scene, however I see no reason why this condition cannot require the approval of this detail prior to development above foundation level.
41. A pre-commencement condition, to which the appellant has agreed, relating to a scheme for the protection of the retained trees and hedges is necessary to ensure appropriate measures for the protection and retention of retained trees and hedges.
42. The Framework and PPG state that removing Permitted Development (PD) rights should only be done in exceptional circumstances. However, if a proposed development would only be acceptable if certain PD rights are not exercised in the future, it may be necessary and reasonable to impose a condition to withdraw those rights. In the interests of safeguarding the privacy of the future occupants of the approved neighbouring property it is necessary to control the installation of obscure glazing and restrict further openings to the side elevation of the building.

Conclusion

43. For the above reasons, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Nichola Robinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 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 drawings P101, P102, P105, P203 Rev A, P206 Rev C, P207, P208, P209, DPA-9040-01 Rev A.
- 3) No development hereby permitted shall take place above foundation level until full details of all external facing materials have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall be carried out in accordance with the details thus approved, which shall thereafter be retained.
- 4) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees and hedges (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 5) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the occupation of the building for its permitted use, other than in accordance with the approved plans, without the prior written approval of the local planning authority.
- 6) If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted, at such time as may be specified in writing by the local planning authority.
- 7) The first floor window in the southern elevation of the development shall be obscure glazed to a level equivalent to Pilkington Level 3 or above and shall be non-opening up to a minimum height of 1.7 metres above the internal floor level of the room in which it is installed. This specification shall be complied with before the development is occupied and thereafter be retained for the lifetime of the development.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows or any other openings (other than those expressly authorised by this permission) shall be constructed on the first floor southern side elevation of the dwelling hereby approved.
- 9) The development hereby approved shall not be first occupied until facilities for the secure and covered parking of bicycles has been provided in accordance with the approved plans, and thereafter the approved facilities shall be kept available for the parking of bicycles.
- 10) The new dwelling shall not be occupied until a scheme of electric car charging points has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out and operated in accordance with the approved scheme.
- 11) No part of the development hereby approved shall be occupied until space has been laid out within the site in accordance with drawing no. P2013 Rev A for 7 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.