



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/22/3301985

4 Queens Road, Hersham, Walton-on-Thames KT12 5LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Ryan (Pegrid Ltd) against the decision of Elmbridge Borough Council.
 - The application Ref 2021/4167, dated 3 December 2021, was refused by notice dated 10 June 2022.
 - The development proposed is partial change of use from Class E (Commercial) to C3 (Residential), first-floor rear extension, roof terrace and alterations to fenestration.
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Decision

1. The appeal is allowed and planning permission is granted for partial change of use from Class E (Commercial) to C3 (Residential), first-floor rear extension, roof terrace and alterations to fenestration at 4 Queens Road, Walton-on-Thames, KT12 5LS in accordance with the terms of the application, Ref 2021/4167, dated 3 December 2021, subject to the conditions in the attached schedule.

Applications for costs

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

Preliminary Matters

3. I have taken the description of the development from the appeal form as this more accurately describes the proposal following the submission of amended plans during the planning application period.
4. Additional information in the form of a parking stress survey has been submitted by the appellant, which interested parties have had the opportunity to comment on. The Council have confirmed that, in light of the survey they no longer contend refusal reason 3 should apply. On this basis, I do not consider that any party would be unfairly prejudiced, and I therefore have had consideration to the submitted information in determining this appeal.
5. The Council's second reason for refusal refers to the effect on neighbouring amenity. The Officer report states that the most affected property is 2 Queens Road. It has since been confirmed by the main parties and during my site visit that 2 Queens Road is an office. The Council have subsequently commented that the proposal would be harmful to the users of this office, which I have factored in my decision.

Main Issues

6. The main issues are:

- The effect of the proposal on the character and appearance of the surrounding area and the Hersham Village Conservation Area;
- The effect of the proposal on the living and working conditions of occupiers of nearby buildings, with particular regard to their privacy and outlook; and
- Whether the proposal makes appropriate provision for affordable housing.

Reasons

Character and appearance

7. The appeal property is a two storey semi-detached building located on a corner plot. The area contains predominantly 2 storey buildings. Queens Road contains a mixture of commercial properties with limited setback from the footpath and residential properties, most of which are set back from the road. Properties on Mills Road have limited separation to site boundaries and neighbouring properties. Consequently, the character and appearance of the area is varied, modest and compact.
8. The appeal site is also in the Hersham Village Conservation Area (CA). The CA encompasses the open spaces of Hersham Green, Vaux Mead, the Memorial Gardens, and most of the properties overlooking these open spaces. The open spaces are attractive and contribute to the significance of the CA. Clear views of the appeal property can be gained from Hersham Green. The building makes a positive contribution to the CA.
9. The front part of the ground floor of the building is currently vacant and was last in commercial use (class E). The rear part of the ground floor and the first floor of the building comprise a 2-bedroom residential unit. The proposal would extend the appeal property to the first floor to form 2 studio apartments over the ground and first floors. The proposed extension would project 3 metres from the rear elevation.
10. The proposed first floor flat would be accessed via an external staircase, and the top of a balustrade handrail to the side of this staircase would be visible above the existing single storey rear projection. 2 additional door openings are proposed within the side elevation of the existing rear projection to provide access to the proposed flats. The proposed extension would be visible from several vantage points within the CA, including from Hersham Green, Queens Road, Mills Road and Faulkners Road. Both parties agree that the appeal site would have a higher density than housing in the surrounding area.
11. Nonetheless, the proposed rear extension would be a relatively small addition to the appeal property and would sit on top of a sizeable flat roof rear projection. The extension would be subservient to the host building and would not dominate this building or the surrounding area in scale or massing. Consequently, the increase in density would not be harmful to the character and appearance of the area and would not result in an overdevelopment of the plot or a cramped form of development.

12. Furthermore, the extension would be consistent with the design, roof form and material finish of the host building. Whilst the top of the balustrade would be visible, given its minimal height above the existing flat roof extension it would have minimal visual impact. Additionally, the proposed openings would appear consistent with the existing openings within this elevation. Thus, the proposal would not appear out of keeping with the varied and compact character of the surrounding area.
13. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for development which affects a conservation area, to pay special attention to the desirability of preserving or enhancing the character or appearance of land in a conservation area. For the reasons set out above I consider that the proposal would not compromise the character or appearance of the conservation area and would not result in harm to its significance.
14. For these reasons I conclude that the proposal would not have a harmful effect on the character and appearance of the street scene and the Hersham Village Conservation Area. I therefore find no conflict with those aims of Policies CS5 and CS17 of the Elmbridge Core Strategy (2011) (ECS) and Policies DM2 and DM12 of the Development Management Plan (2015) (DMP) which, amongst other things, seek to ensure that development is well designed and responds to the positive features of individual locations, integrating sensitively with the locally distinctive townscape, landscape, and heritage assets and protect, conserve and enhance the Borough's historic environment. I also find no conflict with the Design and Character Supplementary Planning Document (2012) (DCSPD) which has similar aims. I find no conflict with the National Planning Policy Framework (the Framework) which sets out that great weight should be given to the conservation of heritage assets and requires that developments are sympathetic to the surrounding built environment.

Effect on living and working conditions

15. The Council's second reason for refusal relates to the effect on the living conditions of neighbouring residents through overlooking and loss of outlook. The Officer Report confirms that the affected property is 2 Queens Road, a 2-storey office building, the first floor rear elevation of which contains two windows, one of which is partly obscurely glazed.
16. The Council state that the proposed first floor rear extension would breach the 45-degree rule, as set down in the DCSPD, and the resultant loss of light and outlook would be harmful to the working conditions of the occupants of this property. The proposal is not supported by a 45 degree daylight test. Nonetheless, based on the submission before me and my observations on site I consider that there would be some loss of light to the rear first floor window closest to the appeal property. However, the proposed extension is limited in height and depth and thus any loss of light would be minimal and would not be harmful in nature. Additionally, given the scale of the proposal it would not result in loss of outlook for the occupiers of 2 Queens Road. Therefore, I find that the proposed extension would not compromise the working conditions of the occupiers of this office through loss of light or outlook.
17. The second reason for refusal also states that the proposal would result in an increase in actual and perceived overlooking and loss of privacy. However, the Council's Officer Report and Appeal Statement set out that the scheme has

been designed to mitigate overlooking, perception of overlooking and loss of privacy to this property by providing no windows in the flank elevations. I agree with this assessment and find that the proposal would not result in loss of privacy through overlooking to the occupants of 2 Queens Road or any other neighbouring property including the residential properties in Mills Road and the Bricklayers Arms public house and its associated beer garden.

18. Thus, I find that the proposal accords with those aims of DMP Policy DM2 which, amongst other matters, require that proposals take full account of the amenity of adjoining and potential occupiers and users. I also find no conflict with the DCSPD, which has similar aims, or with the Framework, which requires that developments should create places with a high standard of amenity for existing and future users.

Provision for affordable housing

19. ECS Policy CS21 requires that for this development a financial contribution equivalent to the cost of 20% of the gross number of dwellings should be provided. This is elaborated on in the Elmbridge Developer Contributions Supplementary Planning Document (2020) (SPD).
20. Whilst the Framework indicates that affordable housing should not be sought for residential developments that are not major, the Council has provided substantive evidence that there is an acute need for affordable housing in the borough. They also evidence the importance of small sites in meeting this acute need, and that these requirements do not place a disproportionate burden on developers.
21. ECS Policy CS21 states 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.
22. I note that a viability appraisal was submitted during the course of the planning application which sets out that the proposal could not support making a policy-compliant contribution towards affordable housing. The Council did not assess this viability appraisal and have not commented on this as part of the appeal as it is stated that such information must be submitted at the time the application is registered to be taken into consideration, referring to their validation checklist which sets out that once an application has been registered there will be no further opportunity to contend the viability of the development.
23. Notwithstanding the wording of the Council's validation checklist, the Council have had the opportunity to review and comment on the submitted viability appraisal in the course of the planning application and appeal and haven't done so. The appellant's viability appraisal confirms that the development cannot viably provide contributions towards affordable housing. In the absence of any evidence to the contrary, I find no reason to disagree with that assessment.
24. The Council also suggest that a legal agreement would be required to secure an appropriate review mechanism. This requirement is set out in the SPD which states "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". Such a review mechanism is therefore necessary

to ensure compliance with the SPD in terms of affordable housing delivery, which itself guides on the implementation of ECS Policy CS21. No legal agreement has been submitted securing a review mechanism.

25. Accordingly, the proposal fails to comply with the aims of ECS Policy CS21 which seek to provide affordable housing where viable and conflicts with those aims of the SPD which has similar aims and states that proposals that do not provide the required level of affordable housing contribution will be subject to a late review mechanism, secured through a legal agreement.

Other Matters

26. The appeal site is within the 5-7km Buffer Zone of the Thames Basin Heath Special Protection Area (SPA). The Council accept that large-scale residential proposals (more than 50 dwellings) within the 5-7 km Buffer Zone may be capable of affecting the SPA and may require an appropriate assessment. However, given the minor scale of this proposal and its location relative to the SPA it is not necessary in this instance to undertake an appropriate assessment to consider the effect on the SPA.
27. Comments from neighbouring residents regarding the difficulties parking and manoeuvring vehicles on Mills Road and the limited parking capacity on Queens Road and Faulkners Road are noted, as are concerns regarding disruption caused by deliveries. The proposal does not make any car parking provision. Nonetheless, the appeal is supported by a parking stress survey which states that the minimal increase in parking demand resulting from the additional unit can readily be catered for by the existing public highway network without inconvenience, a loss of amenity, or a highway safety problem.
28. The main parties agree that the proposal would not result in an increase in on-street parking stress and the Council has confirmed that it no longer wishes to defend refusal reason 3 relating to parking stress. Surrey County Council as the County Highways Authority raised no objection on highway safety or capacity grounds. Thus, even if the proposed flats did accommodate more than one occupant, based on the above and my observations on site I see no reason to find that this would result in harm to the highway network.
29. Objections have been made regarding the potential disruption to vehicular access to Mills Road caused by bins on the narrow road on bin collection day. At my site visit I observed that Mills Road is a narrow road, the narrowest part of which is to the side of the appeal site. I also observed that wheelie bins for 4 Queens Road were positioned to the front of the property at Queens Road where the footpath appeared wide enough to accommodate the bins without disruption to pedestrians. Even if future occupiers of the proposed units were to place their bins on Mills Road on bin collection day, this would be a short-term disturbance and I have no evidence before me that this would compromise the function of the highway network.
30. Issues have been raised regarding safety issues arising from the location of the front doors to the proposed units. Nonetheless, Mills Road serves a limited number of properties. Given the width of the road, the number of parked vehicles overhanging the road and the proximity to the junction with Queens Road, vehicle movements within Mills Road are likely to be limited in number and driving at a slow speed. Thus, whilst the doors to these properties would open directly onto the highway the proposal would not result in safety issues,

either to those entering and exiting the proposed flats or those using Mills Road.

31. Comments regarding the use of an earlier prior approval application¹ for the conversion of the appeal property to residential use as a 'stepping stone' to the current proposal are noted, as are comments from neighbouring residents regarding the Council's handling of this prior approval application. Nonetheless, I have determined this appeal on its planning merits, and these are matters which do not affect my findings on the main issues.
32. Objections have been raised regarding the location of the entrance doors in the side elevation of the building and the subsequent change in orientation of the dwelling towards Mills Road. As set out in relation to the first main issue I find that the proposed openings would not result in harm to the character and appearance of the surrounding area. Furthermore, the existing flat is accessed from a door within the side elevation of the property and the existing commercial frontage to the property onto Queens Road would remain. Thus, the proposal would not result in the reorientation of the property to the detriment of the character of the surrounding area.
33. Issues have been raised regarding the lack of disabled access. However, this matter is dealt with under separate legislation and is not a consideration in the determination of this planning application.
34. Comments regarding the adequacy of proposed bin and bike storage are noted. However, the Council have found these facilities to be adequate to meet the needs of future occupiers and I see no reason to take a different view.
35. I have given careful consideration to comments made in relation to sewage, surface water and flooding. I note that the Council found the proposal to be acceptable in these regards, subject to appropriate conditions. Based on the information before me I see no reason to take a different view.
36. Finally, whilst the errors with the application raised by parties are noted, they are of such a nature which does not affect the outcome of the appeal.

Planning Balance

37. 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.
38. The proposal would make a small contribution towards the borough's housing supply on a modest sized small brownfield 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 one-bedroom properties. Both of those factors weigh in favour of the scheme. Moreover, there would be short-term economic benefits

¹ Ref 2021/2890

associated with construction and Council tax revenues in the longer term. I attach moderate weight to the development's positive contributions to the social and economic objectives of the Framework.

39. I have found that the proposal would fail to make provision for an appropriate review mechanism to secure affordable housing which conflicts with the aims of ECS Policy CS21 and the development plan as a whole. Nevertheless, it is demonstrated that the proposed development cannot viably secure a policy-compliant level of affordable housing contribution.
40. In light of the shortfall in deliverable housing sites in the borough I find that the absence of a review mechanism for this small-scale proposal would not significantly outweigh the aforementioned benefits of the proposal. This is largely because there is nothing convincing in the case made indicating there is a likely prospect of financial value changes impacting on viability outcomes in the short to medium term. Therefore, the presumption in favour of sustainable development applies, which points towards the grant of planning permission.
41. In conclusion, whilst 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

42. 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.
43. 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. In the interest of the character and appearance of the street scene, a condition is necessary to control the external materials of the development (which need not delay any development).
44. A condition relating to the provision of bin and bike storage facilities is necessary to ensure the provision of these facilities.
45. A condition requiring compliance with the recommendations of the submitted Preliminary Roost Assessment Survey is necessary to ensure appropriate protection of a protected species (bats).
46. A condition relating to the approval of details of flood resilience and alleviation methods including the management of surface water is necessary in the interests of pollution and flooding. I note that the appellant deems that this condition is not necessary given the limited extent of external alterations, the lack of ground works and the site's location in flood zone 1. The Council confirm that the site is in an area at medium to high risk of surface water flooding. The proposal would result in the creation of a residential unit entirely at ground floor, whereas the existing layout has residential accommodation split over 2 floors. It is therefore reasonable to seek enhanced resilience measures for the occupiers of the ground floor flat. It is necessary for this

information to be provided and the measures implemented prior to the first occupation of the development.

47. I have amended the trigger points of conditions put to me relating to the approval of materials as I see no reason why such details cannot be submitted prior to the construction of the external walls.

Conclusion

48. 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: 01_SITE_LOCATION_PLAN_-_EX01_-_REV_A,
EXISTING_BLOCK_PLAN_ELEVATIONS_FLOOR_PLANS_ROOF_PLANS_-_EX01_-_REV_A,
PROPOSED_BLOCK_PLAN_ELEVATIONS_FLOOR_PLANS_ROOF_PLANS_-_PL02_-_REV_A.
- 3) Prior to the construction of the external walls full details of all external facing materials shall 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) The new dwelling shall not be occupied until the bin and bike storage facilities have been provided in accordance with the approved plans. The facilities shall thereafter be retained.
- 5) Prior to the first occupation of the development hereby approved full details of flood resilience and alleviation methods including the management of surface water shall have been submitted to and approved in writing by the local planning authority. The proposed flood resilience and alleviation methods and surface water drainage proposals shall be implemented prior to first occupation of the development hereby approved and thereafter shall be managed and maintained in accordance with the approved details.
- 6) The proposal shall be carried out in accordance with the recommendations set out in the Arbtech Preliminary Roost Assessment Survey submitted in support of application 2021/4167. This shall include:

-Immediate cessation of works in the events that bats are found at any stage of the development and a suitably qualified ecologist contacted for

advice.

-Any new lighting shall follow guidance from the Bat Conservation Trust including the use of low impact lighting strategies and the use of measures to reduce the impacts of light pollution and light spill.

-Use of precautionary methods of working in line with Section 1-8 of the Wildlife and Countryside Act 1991.