



Appeal Decision

Site visit made on 31 October 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/K3605/W/21/3285531

Child's Play Centre, Manor Road, Walton on Thames, Surrey, KT12 2PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by PA Housing against the decision of Elmbridge Borough Council.
 - The application Ref 2021/0744, dated 23 February 2021, was refused by notice dated 23 August 2021.
 - The development proposed is demolition of the existing former nursery buildings and the erection of an affordable housing scheme which will accommodate 19 residential units, with associated access and other works including car and cycle parking, amenity space and refuse storage.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing former nursery buildings and the erection of an affordable housing scheme which will accommodate 19 residential units, with associated access and other works including car and cycle parking, amenity space and refuse storage at Child's Play Centre, Manor Road, Walton on Thames, Surrey, KT12 2PH in accordance with the terms of the application, Ref 2021/0744, dated 23 February 2021, subject to a Unilateral Undertaking dated 9 November 2022 and the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by PA Housing against Elmbridge Borough Council. That application is the subject of a separate decision.

Preliminary Matters

3. The appeal site has been subject to two previous refused planning permissions and appeals for residential developments relating to houses. This proposal differs to that of the previously proposed schemes in that it proposes mostly flatted development. For the purposes of clarity, I have considered the proposal, the subject of this appeal, on its own merits.
4. Planning history indicates that the site has been used as a children's nursery but that the nursery has not operated for a number of years. I saw at my visit that a new nursery building had been erected at the site. Further clarification has been provided advising that this is a temporary nursery school development, and that nursery will move to a permanent building at a different site when it becomes available in the future. Irrespective of that temporary development I am required to consider the proposed development that is before me taking into account that the site has and can be used as a nursery as that has been its historic land use.

5. The appellant submitted revised plans with the appeal. The appellant indicates that all neighbours originally consulted have been notified of the revisions and that the appellant received seven responses. However, those responses do not appear to me to be in the public domain, as would be the case under the Council's consultation process and I have not seen sight of them. In the interests of natural justice and fairness to all parties I have dealt with the appeal on the basis of the scheme and drawings that were considered and determined by the Council, and on which interested people's views were publicly sought. I have therefore not taken the amended plans into account in reaching my decision.

Main Issues

6. The main issues raised in respect of the appeal are: -
- a) The effect of the proposed development upon the character and appearance of the area;
 - b) The effect of the proposed development upon the living conditions of existing neighbouring occupiers; and
 - c) The delivery of affordable housing.

Reasons

Character and appearance

7. The residential development in the surrounding area is mixed comprising detached, semi-detached and terraced properties. In the main the development is two-storey, although some properties have an additional storey within the roof slope. The area immediately surrounding the site is characterised predominantly by dwelling houses. The proposed development, being a mostly flatted development, would result in buildings of a greater scale and form to that of those existing dwellings in the area.
8. Building A fronting onto Manor Road at the southern end of the site would be taller than neighbouring buildings. However, it has an increased set back from Manor Road than that of the existing development either side of it. Although building A would be a larger taller building to those in the area, given the varied character and appearance of properties in the area, building A would not appear substantially out of keeping or unduly visually conspicuous. There is also space either side of the building, therefore it would not appear cramped within the existing development.
9. The proposal seeks a bungalow to the northern part of the site (building D). Although sandwiched within surrounding existing residential development, being a single storey building it would not have the appearance of being cramped to a degree that would be harmful to the character and appearance of the area.
10. Considering all four buildings collectively, the three flatted buildings would be of larger size than that of the development within the area. Nonetheless, the area has a mixed character with variation in sizes and styles of properties. Pathways and landscaping would separate the proposed buildings. There is separation between the buildings and the site boundaries creating space around the buildings. Overall, I do not consider the proposed development

would appear unduly cramped or be of a scale and massing that would appear visually out of keeping with the existing surrounding development, taking into consideration the variety of types and styles of property within the environs of the appeal site.

11. Further to the above, a modern approach has been taken within the design of the development. This would encompass roof dormers, rooflights and balconies within the elevations. Whilst some elements of the design would differ to that of existing properties in the area, given the variety of existing designs the proposal would not appear substantially at odds with the development in the area.
12. The boundary wall along Stonebanks is to be retained. This would limit the visibility of the hardsurfaced access and parking along the eastern side of the site. The plans illustrate that parking spaces would not be fully hard up against the boundary, therefore there would be some space for landscaping. Other parts of the site would host green space for the recreational enjoyment for future occupiers.
13. For these reasons, the proposed development would not have a harmful effect upon the character and appearance of the area. As such, the proposed development would comply with Policies CS3 and CS17 of the Core Strategy and Policy DM2 of the Development Management that seek, amongst other matters, to promote development on previously developed land and to deliver high quality design, which maximises the efficient use of urban land whilst responding to local distinctiveness within the area.

Living conditions

14. To the front of the site there would be space between neighbouring properties and building A. There would be separation between buildings B and C and the boundaries of the site. Building D would be a single storey bungalow with space between it and the boundaries of the site. Along part of the western boundary is a high wall that provides some screening of the development in the rear outlook from properties within Swan Road that back onto the appeal site. Nonetheless the ground levels of the site are higher than those of the adjacent properties in Swan Close and Sullivans Close and a section of Stonebanks.
15. Building C, at its northern end, would bring the flatted development to its closest proximity to surrounding residential development at Sullivans Reach. However, due to the proposed angle of building C along with its hipped roof design, the visual massing of the building would be offset in outlook from neighbouring properties.
16. The Council's recommended separation distance to prevent overlooking is 22m between buildings. The Council has provided details of measurements that place the development at 14.6m from 11 Sullivans Reach, 17.6m from 1 Stonebanks and 19.5m from 10 Swan Close or around 18m as put forward by the occupiers. It is contended that the development would result in harmful overlooking toward surrounding properties negatively impacting upon the living conditions of the existing occupiers of properties within Stonebanks, Sullivan's Road and Swan Close.
17. First floor windows and roof dormers would provide elevated outlook from habitable rooms within the development toward the rear living spaces,

including gardens, of adjoining properties. There is reasonable separation of buildings A, B and C to the site boundaries and adjoining existing occupiers. The angle of building C would deflect outward observation toward a parking court and not toward 11 Sullivans Reach. There would also be the tall wall along part of the eastern boundary. Building D would be a bungalow with space around it that would reduce some observation toward neighbouring properties. Taken these matters collectively, there would be sufficient separation to ensure that harmful overlooking would not occur to existing neighbouring occupiers that might harm the privacy that they should reasonably expect to enjoy within and at their homes. Some mutual overlooking already occurs within this residential area. I consider that reasonable privacy can be achieved by the separations achieved and through the orientation of buildings within the design, despite the development not conforming to the 22m separation distance advocated by the Council.

18. The development would be visible in the outlook and views of neighbouring occupiers that abut the site from rear habitable rooms and modest sized gardens. However, given the separation of the development from the boundaries of the site, I do not consider that the development would be overly dominant or overbearing in the outlook of neighbouring occupiers such that it would be harmful to the living conditions.
19. The applicant, now appellant, has submitted a Daylight, Sunlight and Overshadowing Analysis in support of the planning application. The assessment demonstrates the proposal would not adversely impact the surrounding windows and gardens of neighbouring properties and these properties will retain sufficient levels of daylight and sunlight and will not be adversely overshadowed by the development.
20. Shading caused by trees within the development would have a more dappled impact as some light would generally penetrate the crown when compared to that caused by the shadow of a building. Landscape trees within the site can be controlled by means of a suitably worded planning condition. Such condition would allow for future consideration of the size and height of trees within the site to ensure adverse overshadowing of neighbouring properties could be avoided. This would also allow for consideration of tree canopies potentially oversailing neighbouring properties that might cause nuisance leaf drop in autumn.
21. For these reasons, I conclude that the proposed development would not have a harmful effect upon the living conditions of existing neighbouring occupiers. As such, the proposed development would comply with Policy CS17 of the Core Strategy that seeks, amongst other matters, to protect amenities within the area.

Affordable housing

22. Policy CS21 of the Elmbridge Core Strategy (Core Strategy) 2011 requires new residential development to make provision for affordable housing in support of the Council's aim to deliver at least 1150 affordable homes between 2011 and 2026. Development resulting in the net gain of 15 plus residential units should provide 40% of the gross number of dwellings on-site as affordable housing.
23. The proposal is for a 100% on-site provision of affordable housing. The delivery of affordable housing would meet the significant needs of the borough

- and would provide accommodation for families, key workers and those with limited means. It would also contribute to housing delivery, noting that the Council does not have a five-year supply of deliverable housing sites in place.
24. The appellant has provided a completed Unilateral Undertaking (UU) to secure the development as an affordable housing scheme. I consider this necessary to make the development acceptable in planning terms. However, the Council contends that whilst the proposed mix would add to the overall number of affordable housing in the borough, it would not meet the housing need in the borough which is very much social/affordable rent.
25. The appellant has directed me to the Strategic Housing Market Assessment (SHMA) 2016, advised to be the most up to date SHMA. This indicates a need for 66 shared ownership dwellings within the borough. The 12 shared ownership units secured in the UU would specifically meet part of the identified need for this type of affordable housing. Moreover, there would be 4 x 1 bed shared ownership units against a need of 10 x 1 bed, 7 x 2 bed against a need of 27 x 2 bed and 1 x 3 bed wheelchair unit against a need of 16 x 3 bed units. The proposals will meet an identified need for affordable housing in Elmbridge and in a borough in which the need for all types of affordable housing in Elmbridge is understood to be chronic and within a borough that is the least affordable area in the country outside London.
26. The proposal would provide 11 more affordable homes than a policy compliant scheme and the shared ownership units would meet an identified need in the latest SHMA. Therefore, the proposal would comply with Policy CS21 of the Core Strategy and the Development Contributions SPD.
27. With regard to the UU the appellant has provided the Official Copy (Title Plan) that highlights that there is a small area at a corner of the site that is not within the appellant's ownership or control. The Council has advised that the land registry documents should cover all the land that is encompassed within the application red line to secure a satisfactory UU. The UU identifies the land in which the person entering into the UU has an interest and expressed the intention to bind its freehold interest in the land. It is not a requirement of the UU to bind all interest in the plan site area. Moreover, the developer can negotiate with the owner to unilaterally bind themselves to the agreement at a time in the future or negotiate to buy the land from the owner in order to implement the planning permission. This discrepancy does not render the UU unacceptable or prevent the grant of planning permission.

Other Matters

28. Concern is raised to the development being too dense for the small site. The Council has not raised this as a concern and highlights that the proposal would provide significant benefit to meeting the housing need in the borough.
29. Concern has also been raised to the structural integrity of the boundary wall between Swan Close and the appeal site. However, on the evidence available to me I am not able to substantiate this, nor have any substantive reason to consider the proposed development would undermine the stability of the boundary wall or be affected by the root systems of any future trees planted.
30. This is an urban area where some degree of noise would be generated by residential occupiers enjoying their outdoor living spaces. Future occupier's

use of their balconies would not create undue disturbance out of character with this residential area and would be likely to create less disturbance than that of the nursery at the site.

31. There is no substantive evidence that would lead me to conclude that this affordable housing development would not be executed in a well-designed sustainable form or increase antisocial behaviour in the area.
32. The development would be located some distance from the Riverside Conservation Area; therefore, it would not substantially impact its character or appearance.
33. Concern is raised to the impact of traffic in Manor Road, highway safety, visitor and delivery spaces, access for refuse and emergency vehicles, parking provision and potential overspill in area. Photographs of the neighbouring highways have been provided by some of those making representation. The County Highway Authority (CHA) have raised no objection to the proposal on highway safety or capacity grounds and the CHA have put forward planning conditions that would improve access, parking and turning, amongst other things. The CHA also consider that the anticipated trip rates associated with the proposed development would be lower than the predicted rates from the nursery use of the site. This would reduce the impact on the local highway network. It has been pointed out that the appellant's parking stress survey was conducted during winter and during Covid lockdown, however more people would have been likely to be at home and parking their vehicles on street as they were not travelling to work. No objection has been raised by the CHA to the adequacy of the survey. I have no substantive evidence before me that would lead me to come to a different view in respect of these matters.
34. The Council have provided copies of a number of appeal decisions amongst other documents as appendices to their statement of case. However, the Council have not made specific reference to them or directed me to any points of note.

Conditions

35. I have considered the conditions provided by the Council in light of paragraph 56 of the Framework and the advice in the Planning Practice Guidance. I have changed or omitted some wording in the interests of conciseness.
36. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
37. In the interest of the visual appearance of the area conditions relating to materials, tree protection measures, tree retention, tree planting and maintenance, as well as a landscaping scheme are necessary. To prevent risk of flooding a surface water drainage scheme is required, along with a verification report to confirm the scheme has been carried out as approved. To protect the living conditions of neighbouring residents an obscure glazing condition relating to certain windows is necessary. To avoid pollution a land contamination assessment is required. In the interests of highway safety conditions relating to the vehicle access, parking and turning, construction management plan and road markings are necessary to ensure highway safety. Electric vehicle charging would encourage sustainable travel. In the interests

of biodiversity a condition relating to a detailed landscape and ecological management plan is necessary. It has been advised that the bat emergence survey has been carried out on the former buildings in advance of the temporary nursery building being erected so the development no longer requires compliance with various appraisals and reports.

38. Some conditions require matters to be approved before development commences. This is necessary in the case of conditions 4 (surface water drainage), 7 (land contamination), 10 (construction transport management plan), 13 (tree protection measures), 15 (tree planting and maintenance) and 18 (landscape and ecological management plan) because these conditions seek to address issues arising during the construction phase of the development. The appellant has been consulted as to the willingness to accept these pre-commencement conditions and has not raised any objection.

Conclusion

39. For those reasons set out above, the appeal should be allowed, subject to the Unilateral Undertaking dated 9 November 2022 together with the imposition of those conditions within the attached schedule.

Nicola Davies

INSPECTOR

SCHEDULE

CONDITIONS

1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: Tree Protection Plan, 001, 0011 Rev C, 0015 Rev A, 0021 Rev A, 0025 Rev A, LLD2186-LAN-DWG-001 Rev 03 received on 02/03/2021; 0010 Rev F, 0020 Rev B, 0022 received on 26/03/2021.
3. No above ground development shall take place until samples of the materials to be used on the external faces, bay details, balconies and roof of the buildings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4. The development hereby permitted shall not commence until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The required drainage details shall include:
 - a) The results of infiltration testing completed in accordance with BRE Digest: 365 and confirmation of groundwater levels.
 - b) Evidence that the proposed final solution will effectively manage the 1 in 30 & 1 in 100 (40% allowance for climate change) storm events, during all stages of the development. The final solution should follow the principles set out in the approved drainage strategy. If infiltration is deemed unfeasible, associated discharge rates and storage volumes shall be provided using a maximum discharge rate of 1 l/s.
 - c) Detailed drainage design drawings and calculations to include: a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections of each element including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc.). If infiltration is deemed feasible confirmation is required of a 1 m unsaturated zone from the base of the proposed permeable paving for infiltration to the seasonal high groundwater level and confirmation of half-drain times.
5. Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer shall be submitted to and approved in writing by the local planning authority. This must demonstrate that the surface water drainage system has been constructed as per the agreed scheme, provide the details of any management company and state the national grid reference of any key drainage elements (surface water

attenuation devices/areas, flow restriction devices and outfalls), and confirm any defects have been rectified.

6. Prior to the first occupation of the development hereby permitted all first floor side windows in Buildings B and C and the bathroom window serving Unit 8 of the development hereby permitted shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (other glass suppliers are available) and only openable above a height of 1.7m above the internal floor level of the room to which it serves. The windows shall be permanently retained in that condition thereafter.
7. No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 28 days of the completion of such works.
8. Notwithstanding the submitted plan, before the new development is first occupied the existing vehicular access to Manor Road shall be provided with tactile paving at the crossing point across the crossover access in accordance with a scheme to be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved vehicular access plan and the access shall be retained as approved for the lifetime of the development.
9. The development hereby approved shall not be occupied until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes for the lifetime of the development.

10.No development shall take place, including any works of demolition of any building at the site, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

- The parking of vehicles of site operatives and visitors.
- Loading and unloading of plant and materials.
- Storage of plant and materials used in constructing the development.
- The erection and maintenance of security hoarding.
- Wheel washing facilities.
- Measures to control the emission of dust and dirt during construction; a scheme for recycling/disposing of waste resulting from demolition and construction works.
- Delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

11.Notwithstanding the submitted plan, before the new development is first occupied the existing road markings (Zigzag and School Keep Clear) along the site frontage shall be removed from the ground in accordance with a scheme to be submitted to and approved in writing by the local planning authority.

12.The development hereby approved shall not be occupied until each of the proposed dwellings are provided with a fast charge Electric Vehicle socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector- 230v AC 32 Amp single phase dedicated supply) in accordance with a scheme to be submitted and approved in writing by the local planning authority and thereafter retained and maintained.

13.No development including groundworks and demolition and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until all tree protection measures have been installed in the positions identified on the approved tree protection plan(s) Clive Fowler Associates, Tree Protection Plan February 2021 and maintained for the course of the development. The development thereafter shall be implemented in strict accordance with the approved details and method statements contained in Clive Fowler Associates Tree Consultancy Tree Survey and Arboricultural Impact Assessment in relation to Proposed Development at Former Nursery Site Manor Road Walton on Thames Surrey KT12 2PH.

14. All existing trees, hedges or hedgerows inside the identified site boundary shall be retained, unless shown on the approved drawings as being removed and the paragraph below shall have effect until the expiration of 5 years from the first occupation of the proposed development. No retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, other than in accordance with the approved plans and particulars. If any retained tree, hedge or hedgerow is removed, uprooted or destroyed or dies, another tree, hedge or hedgerow of similar size and species shall be planted at the same place, in the next available planting season or sooner.

15. No development including groundworks and demolition of any building at the site shall take place until full details of all proposed tree planting has been submitted to and approved in writing by the local planning authority. Details are to include species, sizes, locations, planting pit design, supports, and guards or other protective measures to be used. Details shall also include planting times, provision of suitable soil volumes to sustain the trees into maturity, and maintenance schedules for aftercare to ensure good establishment. Taking into consideration the size of the site and anticipated area for new planting, the Council expects a minimum of 10 trees, 5 of which will be of a semi mature size (25cm+ girth) to be planted to maintain future arboricultural amenity. All tree planting shall be carried out in accordance with BS 8545:2014 and the details approved prior to the occupation of any part of the development or in accordance to the timetable agreed with the local planning authority. If within a period of 5 years from the date of the planting of any tree, that tree, or any planted in replacement for it, is removed, uprooted or destroyed or dies, another tree of same size and species shall be planted at the same place, in the next available planting season or sooner. The development shall be completed in accordance with the approved details.

16. Prior to first occupation of the approved development written details and plans of the following landscaping works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. This scheme shall include:

- a) positions, height, species, design, materials and type of boundary treatment(s) including any new fencing shall incorporate suitable gaps (13cm x 13cm) to allow species such as hedgehogs to move through the site post development;
- b) hard and soft surfacing materials; and
- c) structures.

Development shall be carried out in accordance with the approved details and shall be maintained.

17. A detailed Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the local planning authority prior to the commencement of development.

The LEMP should include details of proposed impact avoidance and mitigation for the protected species. In addition, the LEMP should include details of enhancement measures and adequate details of the following:

- a) Description and evaluation of features to be managed
- b) Ecological trends and constraints on site that might influence management
- c) Aims and objectives of management
- d) Appropriate management options for achieving aims and objectives
- e) Prescriptions for management actions, together with a plan of management compartments
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period
- g) Details of the body or organisation responsible for implementation of the plan
- h) Ongoing monitoring and remedial measures
- i) Legal and funding mechanisms by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.
- j) Monitoring strategy, including details of how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved details shall be implemented in full to the satisfaction of the LPA prior to the first occupation of the development and maintained as agreed.

End of schedule