



Appeal Decision

Site visit made on 11 January 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2023

Appeal Ref: APP/K3605/W/22/3302102

Southlands, 40 Queens Road, Weybridge, Surrey, KT13 0AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Smith of First Regent Securities Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2021/3769, dated 29 October 2021, was refused by notice dated 4 May 2022.
 - The development proposed is a terrace of three two-storey houses with rooms in the roof space following demolition of existing garage (for Access, Appearance, Layout and Scale).
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Decision

1. The appeal is allowed and planning permission is granted for a terrace of three two-storey houses with rooms in the roof space following demolition of existing garage (for Access, Appearance, Layout and Scale) at Southlands, 40 Queens Road, Weybridge, KT13 0AR in accordance with the terms of the application, Ref 2021/3769, dated 29 October 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by First Regent Securities Ltd against Elmbridge Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. For clarification, whilst the declaration on the application form is dated 11 April 2021, the Ownership Certificates are dated 21 October 2021. Thus, for the purpose of the application date, as the 21 October 2021 is also listed on the Appeal Form, I have used this date for the purpose of this appeal.
4. Outline planning permission is sought, with only 'Landscaping' reserved for future consideration. I have dealt with the appeal on this basis.
5. Whilst the appellant submitted a viability appraisal¹ with their original submission and initially contested the requirement for a financial contribution towards affordable housing, the appellant submitted an executed unilateral undertaking (UU) dated 10 October 2022. This relates to financial contributions to off-site affordable housing and Strategic Access Management and Monitoring Contribution (SAMM) for the Thames Basin Heaths Special Protection Area (SPA).

¹ Financial Viability Appraisal by SI06 Management, dated 11 July 2022

6. The Council has not raised any objections to the UU and I find no issues to the contrary. The Council has confirmed in its submission that the contributions are policy compliant and that as a consequence they withdraw refusal reason no's 3 and 4 on its decision notice, which relate to affordable housing and a SAMM contribution. Additionally, the appellant confirms in later correspondence received by email dated 20 December 2022, that due to the UU the need to address reasons for refusal 3 and 4 is removed. I have dealt with the appeal on this basis.

Main Issues

7. Consequently, the main issues on this appeal are:

- the effect of the proposed development on the character and appearance of the appeal site and surrounding area, including protected trees; and,
- the effect of the proposed development on highway safety.

Reasons

Character, appearance and trees

8. The appeal site is situated to the rear of No.40, which contains 4no. flats and situated on the southern side of Queens Road. The surrounding properties are predominantly residential and vary in form and appearance. The proposed dwellings would be accessed through sharing the existing access and the demolition of the existing single detached garage to the side of No 40. The site is situated within the WEY13 - Lower St Georges Hill and East of Brooklands Road character area, as defined in the Weybridge Companion Guide to the Design and Character Supplementary Planning Document.
9. The properties surrounding the site are largely all situated in generous plots, with long rear gardens and positioned in an orderly arrangement fronting the road. This gives a distinct sense of spaciousness and ordered pattern of development to the immediate surroundings. The generous plot sizes contribute to a regular rhythm of development, making a positive contribution to the surrounding area, characterising WEY13.
10. However, although the proposed development would amount to 'backland' development, this would not be unique to the area, as a similar style of tandem development can be found in the locality², with examples of terraced housing³ also present. In this context, the appeal scheme would not be distinctly at odds with the character of the surrounding area, as it would not appear discordant in its location. Whilst the size of the dwellings proposed would be smaller than those surrounding the site, including No 40 itself, collectively the bulk, massing and overall appearance of the 3no. dwellings would provide sufficient mitigation to allow the proposed development to integrate successfully within its immediate and wider environment.
11. To facilitate the proposed development 3no. trees require removal, 2no. of which are protected. The unprotected tree is T28 and the protected trees are T26 and T27 (T21 and T22 on Tree Preservation Order EL:04/38 respectively), as identified in the appellant's arboricultural report⁴ (the report). Both T26 and

² Regency Gardens and St George's Avenue

³ Outram Place and St George's Close

⁴ Arboricultural impact Assessment by DPA, dated October 2021

T27 are mature pine trees and are classified as categories 'U' and 'C' respectively. T28 is a bay laurel tree and is categorised as 'C' in the report. Both T27 and T28 are expected to have a lifespan of 20+ years, whilst T26 is expected to have a lifespan of less than 10 years. The Council's Tree Officer accepts the findings and recommendations in the report, although would require more detail regarding the replacement trees. These comments are a material consideration of significant weight.

12. I accept that the trees, particularly the protected trees, have some amenity value, especially given their size/height. However, given their location and the development that surrounds the site, they have limited visibility in the public realm. Additionally, I found the trees to have poor form and vigour, particularly in the case of T27. Thus, I agree that the site has the potential to offset the loss of the 3no. trees, particularly the protected ones, through a carefully considered planting scheme, with particular regard to size and species, suitable in context of the trees that they are to replace. I note reference by an interested party to comments from another arboricultural consultant, but no corresponding report has been provided. Thus, these comments attract little weight.
13. Planning conditions have been suggested by the Council, to secure suitable specimens as replacement trees and the wider planting. Additionally, this would likely dovetail with any future 'Landscaping' scheme that would be the subject of a future reserved matters application. Therefore, I am satisfied that otherwise unacceptable development could be made acceptable in this instance, through the imposition of suitably worded conditions.
14. For the reasons given above, I conclude that the proposed development would not harm the character and appearance of the appeal site or surrounding area. Therefore, the proposed development complies with the design, character and appearance aims of Policies CS4, CS17 of the Elmbridge Core Strategy, July 2011; Policies DM2, DM6 of the Elmbridge Local Plan Development Management Plan, April 2015 (DMP) and the requirements of the National Planning Policy Framework (The Framework).

Highway safety

15. The planning application had been recommended for approval by Council officers, in the absence of objection on highway grounds from its internal specialist consultees. It appears that Council members relied on their own assessment of the submissions, informed by their familiarity with the site and local conditions, to refuse the application for this reason.
16. There is no clear technical evidence before me to justify a conclusion that additional pedestrian and vehicle movements relating to the use of the proposed development would result in congestion that would give rise to a safety risk for pedestrians and road users. I accept, the single nature of the existing access route to the garage, but note that the County Highway Authority (CHA) raise no objections, subject to the implementation of the improvements in the submitted drawings⁵.
17. It has been put forward that there would be occasions where vehicles may need to wait on Queens Road for a vehicle to exit the site, before it can enter

⁵ P204 RevB

itself. The CHA considers this would not likely to be regular on the basis of the proposed development. I agree with this view. In this instance, unacceptable development could be made acceptable, through the imposition of suitably worded conditions.

18. For the reasons given above, I conclude that the proposed development would not give rise to conditions prejudicial to highway safety. Therefore, the proposed development complies with the highway safety aims of DMP Policies DM7, DM10 and the requirements of the Framework.

Other Matters

19. Whilst the main parties agree to the withdrawal of refusal reasons 3 and 4 on the Council's decision notice, I still have to consider the wider implications surrounding the UU and its overall justification. The Framework sets out that affordable housing (AH) should not be provided in minor residential developments, such as in this case. This is also reflected in relevant Planning Practice Guidance (PPG) and further to the Written Ministerial Statement November 2014 (WMS). These are material considerations.
20. As the Council has demonstrated in detail that in the Borough there is currently a very serious market housing affordability problem, a significant unmet AH need, I accept that small sites such as in this case, make a significant contribution to housing delivery. As such these considerations outweigh the relevant parts of the Framework, PPG and the WMS in this appeal and the proposed development would comply with CS Policy CS21. The UU would deliver a financial contribution of £123,411.83 towards off-site AH. The Council has provided a plethora of appeal decisions in support of this requirement which I have had regard and consider them to be material considerations on this matter.
21. The appeal site lies within a buffer zone, between 400 metres and 5 kilometres of the SPA. The SPA has been identified for its importance as habitat supporting breeding populations of three protected bird species: the Dartford Warbler; the Woodlark and the Nightjar. The SPA is protected as a European Site and is therefore subject to statutory protection under the Conservation of Habitats and Species Regulations 2017.
22. CS Policy CS13 requires new residential development to make an appropriate contribution towards the provision of Suitable Alternative Natural Greenspace (SANG) and SAMM to mitigate impacts. From the evidence before me, within the buffer zone visitor pressure resulting from new housing development, such as in the case before me, is likely to have significant effects (either alone or in combination with other schemes) on the SPA unless it is properly mitigated. Developers are therefore required to contribute towards such mitigation. The Council has produced an avoidance strategy⁶, which draws upon advice provided by Natural England and provides guidance on the mitigation of the impacts of residential development on the SPA.
23. This strategy sets tariffs for residential development to contribute to SAMM and SANG mitigation measures and how they would be collected through the Community Infrastructure Levy (CIL) and other mechanisms, such as Planning

⁶ Development Contributions Supplementary Planning Document July 2020 (updated April 2021)

Obligations/UUs. The UU provided would secure a financial contribution of £3735.00 towards SAMM.

24. As part of my Appropriate Assessment (AA) it is necessary to ascertain the implications for the site and what any potential effects could be. Further to Regulation 63(3) of the Habitats Regulations 2017, I have consulted Natural England (NE) as part of this AA and had regard to their comments in relation to this matter. NE have confirmed that they have no objection to the proposed development providing compliance with the requirements of the Council's avoidance strategy for the SPA, securing contributions to SANG and SAMM. Furthermore, NE have confirmed that they are satisfied that the proposed development would avoid and mitigate impacts to the European site.
25. I have considered the UU against the tests contained in CIL Regulations 122 and 123 and paragraph 56 of the Framework. The 3 tests in CIL Regulation 122 and paragraph 56 of the Framework are that obligations are necessary, directly related to the development, and fairly and reasonably related in scale and kind. I have found that an off-site contribution is required in this instance and that visits generated by three additional dwellings would be highly likely to have an impact on the SPA. Consequently, I am satisfied that the submitted UU would satisfy these tests and meet the requirements of Regulation 122 of the CIL Regulations. Additionally, as in the case before me, paragraph 54 of the Framework states that obligations should only be used where it is not possible to address unacceptable impacts through a condition.
26. Whilst noting some letters of support for the scheme, I have had regard to a number of objections received from local residents as part of this appeal, expressing a wide range of concerns including, but not limited to the following: planning history of the site, over development, living conditions, disruption during construction, parking, congestion, refuse collection flood risk/drainage, ecology/biodiversity, loss of a WWII air raid shelter, sustainable development, amongst other things. However, I note that these matters were considered where relevant by the Council when it determined the planning application. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conditions

27. I have considered what planning conditions would be appropriate, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the PPG. In addition to conditions relating to the time limit for implementation, for reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans/documents is necessary.
28. Pre-commencement conditions for the submission of external materials, Construction Transport Management Plan, Refuse Management Plan, biodiversity, trees including foundations and drainage are all reasonable and necessary in the interest of the appearance of the development, highways, living conditions, ecology and trees on site, including those which are protected.
29. Pre-occupation conditions are reasonable and necessary for obscure glazing to ensure the living conditions of neighbouring occupiers. Pre-occupation

conditions are reasonable and necessary regarding access, parking and electric charging points for highway safety and sustainable travel. A pre-occupation condition is reasonable and necessary surrounding a drainage verification report to ensure acceptable living conditions for future and occupiers of surrounding properties.

30. Other conditions have been included surrounding the insertion of additional windows, biodiversity, external lighting and retained existing trees, hedges or hedgerows and are all reasonable and necessary to ensure acceptable living conditions for neighbouring occupiers and in the interests of ecology, character and appearance. I have not removed permitted development rights from the proposed development as the PPG advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. A blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness.

Planning Balance and Conclusion

31. Even though the actual shortfall has not been presented by either main party, I acknowledge the agreement between the parties that the Council is not able to demonstrate it has a 5-year housing land supply. However, in this instance I have found that the proposed development accords with the development plan when taken as a whole. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
32. For the reasons given above, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

Schedule of Conditions

Time Limits

- 1) Prior to the commencement of development, the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority (LPA) and shall thereafter be carried out in accordance with the approved details.
- 2) The application for the approval of all reserved matters referred to in condition 1 above shall be made to the LPA before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Approved Drawings

- 4) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: P201; P205; P207; P208 and P209 all received on 29th October 2021; and P202 rev A; P203 Rev B; P204 Rev B and P206 Rev B all received on 2nd February 2022.

Pre-commencement

- 5) Prior to the commencement of development, samples of the materials to be used on the external faces and roof of the building have been submitted to and approved in writing by the LPA. The development shall then be carried out in accordance with the approved details.
- 6) No development shall commence until a Construction Transport Management Plan, to include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors
 - (b) loading and unloading of plant and materials
 - (c) storage of plant and materials
 - (d) HGV deliveries and hours of operation
 - (e) measures to prevent the deposit of materials on the highway
 - (f) on-site turning for construction vehicles has been submitted to and approved in writing by the LPA.

The approved details shall then be implemented in full during the construction of the development.

- 7) Prior to the commencement of the development hereby permit, details shall be submitted to and approved in writing for a Refuse Management Plan to provide collection of the waste from the site. The development shall then be carried out in accordance with the approved details.
- 8) Prior to the commencement of development, including groundworks and demolition shall take place and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until details of measures to enhance the biodiversity of the site as a consequence of the development, together with a timescale for implementation have been submitted to and approved

by the LPA. The development shall then be carried out in accordance with the approved details and the protection measures shall be maintained for duration of the development works.

9) Prior to the commencement of development, including groundworks and demolition shall take place and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until a pre-commencement meeting has been held on site and attended by a suitable qualified arboriculturist, representative from the LPA and the site manager/foreman.

The site visit is to ensure operatives are aware of the agreed working procedures and the precise position of the approved tree protection measures or/and that all tree protection measures have been installed in accordance with the approved details.

10) Prior to the commencement of development, including groundworks and demolition shall take place until all supporting arboricultural information has been submitted to and approved in writing by the LPA. This shall include details of the:

(a) Landscape proposal that adequately mitigates the loss of 2 mature Pine trees, their contribution to wildlife amenity and the expected rooting area needed through to maturity.

(b) Supervision details will need to be submitted re-inspection of tree protective fencing at appropriate intervals.

The submitted details should also include species, sizes, locations, planting pit design, supports, and guards or other protective measures to be used. Details shall also include planting times 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 suitable proposal adequately replacing the loss of protected trees to be planted to maintain future arboricultural amenity.

A completion schedule/report of all arboricultural site supervision and monitoring, shall be submitted to and approved in writing by the LPA within 20 working days of the substantial completion of the development hereby approved to ensure the development shall then be carried out in accordance with the approved details.

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.

11) Prior to the commencement of development, details of foundations designs and any other proposals involving below ground excavation must be submitted to and approved by the LPA. The development shall then be carried out in accordance with the approved details.

12) Prior to construction of the development hereby approved the following need to be submitted to and approved in writing by the LPA:

(a) Detailed development layout at an identified scale;

(b) A drainage layout detailing the exact location of suds elements, including finished floor levels; and

(c) Details of all suds elements and other drainage features, including long and cross sections of soakaway, invert and cover level of manholes, pipe diameters including the details of the methods of flow control and respective levels and how these relate to submitted calculations.

The development shall then be carried out in accordance with the approved details.

Pre-occupation

13) Prior to first use and occupation of the development, all the flank windows on both elevations 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 window shall be permanently retained in that condition thereafter.

14) Prior to first use and occupation of the development, the proposed modified access to Queens Road must be constructed, providing the visibility zones in accordance with a scheme to be first submitted to and approved in writing by the LPA and thereafter the visibility zones shall be kept permanently clear of any obstruction over 0.6m high.

15) Prior to first use and occupation of the development, space must be 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 purpose.

16) Prior to first use and occupation of the development, each of the proposed dwellings must be provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) in accordance with the approved plans.

17) Prior to first use and occupation, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the LPA to demonstrate that the sustainable drainage system has been constructed in accordance with the approved scheme.

Other

18) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: P201; P205; P207; P208 and P209 all received on 29th October 2021; and P202 rev A; P203 Rev B; P204 Rev B and P206 Rev B all received on 2nd February 2022.

19) The development hereby permitted shall have no windows or other openings (other than those shown on the approved drawings) inserted into any flank elevation unless planning permission has first been granted by the Council.

20) The development shall be carried out in accordance with the conclusions and recommendations in the AAE Environmental Consultants report dated April 2021 including any biodiversity enhancements in the recommendations and conclusions section.

21) Any external lighting shall comply with the guidance in the "Bats and artificial lighting in the UK - Bats and The Built Environment Series" Guidance Note 08/18 and shall thereafter be maintained and retained for the life of the development.

22) All existing trees, hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the proposed development.

(a) no retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars. Any pruning shall be carried out in accordance with British Standard 3998: 2010 (tree work) and in accordance with any approved supplied arboricultural information.

(b) 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.

****End of Conditions****