



Appeal Decision

Hearing (Virtual) held on 14 February 2023

Site visit made on 15 February 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2023

Appeal Ref: APP/K3605/W/22/3303891

Land North of 6 Kings Warren, Oxshott, Leatherhead KT22 0PE

- 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 Jamie Roberts against the decision of Elmbridge Borough Council.
 - The application Ref 2022/1020, dated 8 March 2022, was refused by notice dated 28 June 2022.
 - The development proposed is detached three-storey house with detached garage and new access following demolition of existing garage.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Elmbridge Borough Council against Mr Jamie Roberts. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area; and
 - ii) whether or not the proposal would make appropriate provision for affordable housing.

Reasons

Character and Appearance

4. Kings Warren is a residential cul-de-sac within the Crown Estate. The appeal site includes a garage and part of the garden to 6 Kings Warren, a large detached dwelling which faces towards a tight bend in Kings Warren.
5. The Crown Estate is generally characterised by large detached dwellings of individual designs. There is variety in the layout of development, but the dwellings are typically set within substantial landscaped plots and are for the most part set back from the streets with generous separation between buildings and their boundaries, particularly at first-floor level and above. Mature landscaping provides for significant screening to many, but at least partial views of the dwellings are usually possible from the streets above boundary hedges or along accesses, even if only glimpsed, and the widths of

their plots were generally readable. As a result, I found there to be a fairly clear impression of the setting and spacing around and between dwellings, and I cannot agree with the appellant that the distance between properties is largely imperceptible.

6. In my view, the loose-knit pattern of development is appreciable, and despite the variety in layout and built form, there is an overriding and attractive spacious and verdant character to the area which is distinctive. Indeed, the Design and Character Supplementary Planning Document ('SPD') 2012 refers to this as a special low-density residential area, and Policy CS17 of the Elmbridge Core Strategy 2011 ('the CS') identifies the Crown Estate as an area where usual minimum development density requirements would not apply.
7. Given the mixed styles and forms of other dwellings nearby, I am satisfied that the design of the proposed dwelling would not stand out, and that the appearance of the building would in itself be acceptable.
8. However, the Council's evidence indicates that the plot to serve No 6 is already one of the smallest in the street. The 2 plots that would be created by the proposal would be smaller still, and they would each be significantly smaller than others on Kings Warren. The plot to the proposed dwelling would also be smaller than existing examples within the wider Crown Estate referred to by the appellant, in my view significantly so, and would further be one of the narrowest in the vicinity.
9. I acknowledge that the size of plots is often not clearly read from the street. However, the position within a curve on Kings Warren means that a significant proportion of the boundary to the plot for the proposed dwelling would be visible. The proximity of the neighbouring dwellings at 6 and at 8 Kings Warren would also give a general indication of the approximate position of the remaining boundaries. As a result, I find that passers-by would have a fairly clear impression of the overall extent and relatively limited size and width of the plot in this case.
10. Furthermore, spacing between the dwelling and No 6 would be comparatively slight against the generous separation usually found to the sides of other buildings nearby at two-storey level, and would leave little opportunity for visual relief or soft landscaping between the buildings. In my judgement, their proximity to one another would be particularly striking in the Kings Warren street scene where I observed that the degree of spacing around buildings was notably greater than on the closest part of Queens Drive for example. Though larger, separation between the dwelling and the closest parts of the boundary with Kings Warren to its other side would also be fairly modest.
11. The appellant indicates that the plot coverage ratio would be comparable to other sites nearby. To my mind however, it is not solely the coverage of the plot that would determine any effect on spaciousness, and other factors such as the scale, bulk and mass of development may also be relevant. In this case, the dwelling would be of at least two-storey and in part three-storey height across very nearly its full width and depth. In contrast, I saw that Bearsland was a single-storey bungalow and 1 Kings Warren and The Mount included fairly sizeable single storey sections. Notwithstanding the plot coverage ratio, the dwelling would therefore have a larger volume of development relative to its footprint, and its impression of scale against the size of the site would be greater than these other examples.

12. Taken in isolation, I consider that the plot size, the proximity of the dwelling to its boundaries, and the limited spacing to No 6, would each have no more than a minor effect on the character and appearance of the area. Cumulatively though, I find that these factors in combination would cause the dwelling to appear overlarge relative to its plot and uncharacteristically squeezed onto the site. The proposal would consequently erode the distinctive spacious quality of Kings Warren and the Crown Estate.
13. In addition, the dwelling would be orientated in the opposite direction to No 6, and would face towards the boundary with No 8 rather than fronting the street. The side elevations of 1 Kings Warren and 4 The Spinney are visible alongside Kings Warren. However, No 4 has no access from this street. No 1 is accessed from Kings Warren, but faces onto Queens Drive and its position occupying this corner is appreciable from the closest part of Kings Warren. While they do not front Kings Warren, these dwellings are therefore read as fronting different streets. 11 Kings Warren does not directly front a street, but this positioning is atypical, and the dwelling's visual impact and presence in the street scene is lessened by its set back position. I nevertheless accept that there is some variety in the orientation of buildings locally, and the dwelling's lack of a front elevation facing the street would not be wholly exceptional. Even so, it would still be unusual. The positioning would be highlighted by the contrast to the orientation of No 6 close by, and in my view would further distinguish and set the development apart from the prevailing pattern of its surroundings, exacerbating its incongruous nature.
14. The proposal includes additional planting which would supplement existing vegetation to the site boundaries. Together with other vegetation and the topography along Kings Warren, this would act to obscure views of the development from many viewpoints. Nevertheless, screening would not be complete. There would be views into the site along the proposed new access, as well as along the existing access to No 6 where the development would be perceptible alongside this dwelling. In addition, I saw that there are some points on Kings Warren where the roof to No 6 is visible above the boundary hedge. Based on my observations at my visit, the roof to the development would be similarly appreciable, including in views on the approach towards the site from the junction with Queens Drive.
15. I acknowledge that views of the development would only be likely to be possible from a small section of Kings Warren. Noting also that Kings Warren is a cul-de-sac with few properties beyond the appeal site, the visual impact of the development would undoubtedly be low. Nevertheless, the tight relationship of the dwelling with its boundaries and with No 6 would be appreciable. Together with the comparatively modest size of the plot and the unusual orientation of the dwelling, the development would be appreciated as an unsympathetic departure from the characteristic pattern of development. This would cause some, albeit localised and limited, harm to the appearance of the area. I further find that the limited visibility of the development would not be sufficient to offset or mitigate its adverse impact on the spacious quality of its surroundings and the resulting detriment to the character of the area.
16. In reaching this view, I have had regard to examples of other developments drawn to my attention by the appellant, and I acknowledge that a number of plots within the Crown Estate have been subdivided in the past.

17. The Mount and Hamilton House; Ivy House and Maple House at 1 The Spinney; Bearsland and 1 Kings Warren; Gatehouse and Tavistock; Kings Chase and Brooke House; Parklands and Park House are all given as examples of dwellings in similar or closer proximity to one another than the appeal scheme. However, while they contribute to the character of the wider area, these examples are not part of the Kings Warren street scene and do not form part of the immediate context of the appeal site.
18. Moreover, the part of The Mount closest to Hamilton House is single storey, and I saw that separation to the boundaries to the other sides of these dwellings was more generous. Similarly, the closest parts of Ivy House and Maple House are single storey garages (albeit with accommodation in their roofs), and there is substantial separation to their other sides. Bearsland and a large part of Gatehouse are single-storey in height, reducing their volume and visual impact, and while Kings Chase and Brooke House, and Parklands and Park House are fairly close to one another, there is much greater spacing to neighbours to their other sides. These factors together with the typically larger size of their plots help to balance the overall effect of the proximity of the noted dwellings on the spaciousness of the area in both spatial and visual terms.
19. 1 Kings Warren and 4 the Spinney do have a visual presence in Kings Warren and are positioned very close to their boundaries with this street. However, this relationship is again balanced by the larger size of their plots and the more generous spacing to their other boundaries, tempering their overall effect on the spaciousness of this street scene.
20. While they exhibit some elements in common with the appeal proposal, it seems to me that none of these developments are on plots of comparable size, and in such close proximity to boundaries to both sides at two-storey scale, and in such close proximity to neighbouring buildings as would be the case here. Accordingly, their cumulative effect on the spacious feel of the area is more moderate than would result from the development before me, and I find that they are not directly comparable.
21. I have also noted reference to development at 1 and 2 Oaksend Close and 3 and 4 Oaksend Close, and, at the Hearing, to permission for development at Foxholes on Stokesheath Road. I do not have full details of the Foxholes scheme to be able to draw direct comparisons with the appeal, including in relation to the size of plots and proximity of buildings to their boundaries. In any event, the dwellings at Oaksend Close sit around a small close accessed directly from Copsem Lane which is a fairly busy A road, and I saw that Foxholes is adjacent to the railway line and opposite open fields. Their context therefore differs somewhat from the appeal site. They are also both each a significant distance away from the site. As a consequence, I find that they do not offer significant support for development that would result in harm to the character and appearance of this part of Kings Warren and the Crown Estate.
22. The Council's emerging draft Local Plan includes a proposed allocation at 3 The Spinney to deliver 8 dwellings. This would result in a significantly greater density of development than is proposed under the current appeal. However, I heard that the draft plan has not yet been submitted for examination. The policies and allocations within it could therefore be subject to change, and I can not be certain that the allocation would be confirmed. With regard to the advice within the National Planning Policy Framework ('the Framework'), I afford

limited weight to the allocation. Even if the allocation were to be carried forward, I have no firm information to indicate what form development would take, and I note for example the Council's suggestion that it could potentially comprise flats. Irrespective of the overall density of the draft allocation, it is not therefore currently clear how any future development at No 3 might relate to its boundaries and surroundings, nor any effect on spaciousness.

23. In purely numerical terms, I am satisfied that the density of development on a dwelling per hectare basis would not be unacceptably high. I also note objectives within the development plan and Framework seeking efficient use of land. However, these are balanced and qualified alongside requirements seeking to ensure high quality design and development that respects and is sympathetic to local character. For the reasons set out above, I do not consider that the proposal would achieve those aims.
24. I conclude that the proposal would cause unacceptable harm to the character and appearance of the area. As a consequence, it would conflict with Policies CS10 and CS17 of the CS and Policy DM2 of the Development Management Plan 2015 ('the DMP'). Amongst other things, these policies broadly seek well designed development that makes the best use of land while responding positively to its surroundings and preserving or enhancing local character.

Affordable Housing

25. Policy CS21 of the CS includes a requirement for developments on sites of 1-4 dwellings to provide, where viable, a financial contribution towards affordable housing equivalent to the cost of 20% of the gross number of dwellings.
26. The CS pre dates the Framework which outlines that affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. However, the Council highlights a pressing need for affordable housing in the borough. It outlines that sites of less than 10 dwellings are an important source of housing delivery, and that application of the threshold within the Framework would have a significant adverse effect on the Council's ability to deliver affordable housing. It further indicates that the viability of individual development schemes and the deliverability of the plan have not been undermined by the requirements of Policy CS21. I have not been provided with substantive information to the contrary, and I find that there is compelling evidence of specific local circumstances which justify the continued application of the requirements of Policy CS21. While the Framework is an important material consideration, it would not outweigh the development plan in this instance.
27. Policy CS21 does however recognise that there could be circumstances where meeting affordable housing requirements may not be viable. As part of the planning application, the appellant had submitted a Viability Assessment dated February 2022 ('the VA') which concluded that no contribution towards affordable housing would be viable. The Council did not review the VA prior to determining the application because no fee for doing so had been received. However, its appeal evidence includes a Review of the VA dated November 2022 ('the VAR') which concludes that the development would generate a surplus of just over £400,000.
28. This surplus would be more than sufficient to fund the contribution of £70,099.40 towards affordable housing which the VAR indicates would be

required in line with further guidance in the Developer Contributions SPD 2020, updated 2021. The appellant's calculation of the required contribution within the VA was lower. At the Hearing, the appellant also referred to forthcoming publication of updated Land Registry House Price Index ('HPI') data which they anticipated would show a fall in values since November 2022 suggesting a reduction in the required contribution, albeit that no further details have been provided. Given my findings below however, it is not necessary for me to consider this further as it could not be determinative.

29. Much of the distance between the VA and the VAR appraisals reflects their approach to the dwelling at 6 Kings Warren. The Council's VAR challenges the VA's inclusion of No 6 as part of the assessed Gross Development Value ('GDV') and the Benchmark Land Value. Because they are based on percentage assumptions applied to GDV, the inclusion of No 6 in the GDV figure also increases the actual marketing and finance and acquisition costs within the VA appraisal, as well as developer profit which is substantially higher than that indicated in the VAR.
30. The appeal site includes existing garages to No 6 which would be demolished. However, the main dwelling at No 6 is not within the boundary of the appeal site, and is not part of the development applied for. The circumstances are therefore different to a proposal at 20 The Drive, Cobham cited by the appellant where an existing dwelling was to be demolished as part of the scheme, and was accordingly part of the assessment of development viability. In this case, there is no clear information before me to suggest that it would be necessary to acquire the retained dwelling at No 6 in order to deliver the development. In addition, returns to the developer essentially reflect potential risk as part of development, and no firm evidence to demonstrate why a profit on the existing dwelling would be reasonable here has been provided. On this basis, and from the evidence before me, I am not persuaded that the inclusion of No 6 within the appellant's VA is appropriate, and I find that it has caused consequential substantial overinflation of developer profit, as well as exaggerated marketing and finance and acquisition costs within the appraisal.
31. There is also difference between the parties in respect of the appropriate level of build costs. The VA and VAR both use median per sqm figures from Building Cost Information Service ('BCIS') for one off housing. However, the VA uses the February 2022 figure for 'detached 3 storey', while the VAR prefers the figure for 'detached – generally' at November 2022 which is lower. At the Hearing, the appellant queried whether use of the median figure was most appropriate given the location of the development and likely specification of the dwelling, but this was the approach taken in their VA, and no convincing justification has been provided to depart from it.
32. The cost figure used in the VAR is based on a much larger sample size than the VA figure, and is therefore likely to be a more robust estimate in general terms. Given also that the dwelling is only partly three-storey, with a greater proportion of its footprint to be two-storey, I consider that the Council's build cost is likely to be more realistic. Furthermore, the appellant confirmed that the VA had applied the same build cost figure for 3 storey housing to the detached garage while the VAR treated the garage as a separate element. Without substantive evidence to the contrary, it seems to me having regard to the relatively simple form and single-storey height of the garage that it would in reality have a lower build cost than a 3 storey dwelling.

33. For these reasons, I consider that the build costs, marketing and finance and acquisition costs, and developer profit stated within the VA are all likely to be unduly high. In my judgement, the proposal is likely to generate a surplus closer to the Council's figure in the VAR rather than a deficit as advanced by the appellant's VA, and I find that the development could therefore viably support a contribution to affordable housing.
34. I was advised that BCIS data as at February 2023 shows an increase in costs since November 2022 when the VAR was prepared. Even so, the figure quoted at the Hearing for one off Housing (detached - 'Generally') was still lower than the per sqm build cost used in the VA, and the Council further commented that costs are forecast to fall in quarter 2 of 2023. In addition, I have not been provided with any further details in respect of the effect of HPI data on values. Even if they have fallen since the VAR was completed, I have no updated appraisal before me, and I consider that any reduction in GDV would not be so significant as to be likely to fully offset the probable surplus. These factors do not therefore alter my findings above.
35. Despite initially advising that a unilateral undertaking planning obligation was being drafted to provide for a contribution if I were to find that one would be viable, the appellant has not submitted an obligation, and there is no mechanism before me to secure a contribution to affordable housing. The appellant suggested at the Hearing that an obligation could potentially be prepared if required. However, my Pre Hearing Note drew the parties' attention to the Procedural Guide: Planning Appeals – England which is clear that a final draft of any obligation should be received before the hearing opens, and that it should normally be executed before the hearing closes. No compelling evidence has been provided of exceptional circumstances to justify delaying my decision for an obligation to be completed in this case.
36. Even if I were to find that the amount required should be less than had been sought by the Council because of changes to values since the VAR was prepared, I conclude in the absence of any contribution that the proposal would fail to make adequate provision for affordable housing, and it would conflict with Policy CS21 of the CS.

Planning Balance

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
38. The Council's Annual Monitoring Report 2021/22 identifies a housing land supply of 4.36 years. In addition, the results of the most recent Housing Delivery Test show that past housing delivery has been around 70% of requirements. As a consequence, the policies which are most important for determining the proposal would be deemed out of date in accordance with paragraph 11 and footnote 8 of the Framework. Policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development, and paragraph 11 therefore sets out 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.

39. The Council's general approach to meeting needs for growth is to focus development within built up areas. Although the proposal would result in a low density of development, it would still make more efficient use of land in comparison to the existing site to deliver an additional dwelling in a built up area. The dwelling would not be a smaller unit which the Council identifies as of greatest need, but it would still add to the overall supply of housing, and could potentially result in smaller properties elsewhere being released as part of a chain, contributing indirectly to the available supply of smaller homes. In light of clear objectives within the Framework including to make efficient use of land and to boost significantly the supply of housing, and the shortfalls in past delivery and identified future supply of housing, these are important benefits to which I afford great weight. That said, the contribution made by just one dwelling would make a minimal difference so that the extent of the benefits advanced by the appellant would be very limited. Social and economic benefits associated with the construction and occupation of the development would also be very small.
40. Set against the modest benefits of the proposal, I have found that there would be harm, albeit localised, to the appearance of the area, and to its character, contrary to Policies CS10 and CS17 of the CS and Policy DM2 of the DMP. The relevant provisions of these policies are broadly consistent with the Framework, and I have no firm reason to reduce the weight that I afford to the ensuing conflict with them. The harm would also be contrary to requirements within the Framework seeking well-designed places, development that is visually attractive as a result of good layout, sympathetic to local character and that adds to the overall quality of the area.
41. I have also found that the proposal would fail to make adequate provision for affordable housing resulting in conflict with Policy CS21 of the CS. This policy is not fully consistent with the Framework in respect of the threshold for seeking affordable housing, but nevertheless reflects objectives to address the housing needs of different groups. I afford significant weight to the conflict with it and the Framework.
42. I find in the context of paragraph 11(d) of the Framework that the cumulative adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development within the Framework. Furthermore, it would conflict with the development plan when it is read as a whole, and material considerations including the Framework do not indicate that a decision contrary to the development plan should be reached.

Conclusion

43. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Wood	WSP
Daniel Harley	WSP
Jamie Roberts	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Graham Healey	Elmbridge Borough Council
Peter Brooks	Elmbridge Borough Council
Andy Leahy	Bespoke Property Consultants

INTERESTED PARTIES:

Malcolm Alsop	Alsop Verrill, on behalf of HES Estate Management and Birds Hill Estate
Robert Sear	Birds Hill Oxshott Estate Company
Clarke Jarrett	

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

- 1 Email from the appellant agreeing to the imposition of a Pre-Commencement condition.