



Appeal Decision

Site visit made on 12 April 2023

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 MAY 2023

Appeal Ref: APP/K3605/W/22/3309168

27 Douglas Road, Esher, Surrey KT10 8BA

- 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 S Taylor against the decision of Elmbridge Borough Council.
 - The application Ref 2022/2270, dated 4 August 2022, was refused by notice dated 30 September 2022.
 - The development proposed is described as "Change of use of open land to residential dwelling (Use Class C3)".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application proposes the use of the appeal site as part of the garden of the house at No 27 Douglas Road and erection of a boundary fence. For these reasons, I consider the development to be change of use of land to residential and erection of boundary fence.
3. I have considered the appellant's argument the proposed change of use does not constitute development as defined by section 55 of the Town and Country Planning Act 1990. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Act. It is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal. I have decided the appeal on its merits.
4. The application form states the development was completed in May 2022. I saw during my visit that a fence has been erected in accordance with the plans before me and the site is being used as an additional area of garden by the occupants of No 27 Douglas Road. There is no boundary treatment separating that house's existing garden and the appeal site. I have therefore considered the appeal on the basis that the development has already taken place, as did the Council.
5. Drawing no. 2022/14/PD 03 'Street Scene Elevation' was submitted with this appeal but was not included with the planning application. It provides an additional perspective of, but does not include any changes to, the development applied for. Consequently, it would not prejudice any parties and I have taken account of this drawing in my consideration of this appeal.

Main Issues

6. The main issues in this appeal are the effect of the development on the provision of open space, and on the character and appearance of the surrounding area.

Reasons

Open space

7. Policy DM20(b) of the Elmbridge Local Plan Development Management Plan (EDMP) defines open space as including all open space of public value¹ and does not require open space to be designated as such in the development plan. It uses the same definition of open space as the glossary of the National Planning Policy Framework (the Framework)². Policy DM20(b) of the EDMP and paragraph 99 of the Framework protect open space unless certain circumstances apply.
8. There is evidence before me that local residents used to use the site over a period of some years, for activities such as children's play and recreation. On this basis, I consider the appeal site meets the EDMP definition of open space.
9. Reference is made to studies undertaken by the Council: an Open Space and Recreation Assessment and a Local Green Space Designation Study. The extracts of these studies that are before me do not clearly relate to the area near the appeal site and date from some time ago. Unlike domestic gardens, public spaces encourage community interaction and enable chance encounters between members of different households. The loss of the appeal site as open space would reduce the opportunity for this type of community interaction.
10. The appellant points to several other areas of open space near the appeal site that which are available for local people to use. Some of the examples provided are not publicly accessible, such as Sandown Park, which is a racecourse requiring tickets for entry. Be that as it may, other public open spaces nearby include a large park behind the appeal site, a recreation ground a short distance away, and areas of communal space associated with nearby housing. However, this does not in itself demonstrate the appeal site is surplus to requirements for open space in the area. No replacement provision has been provided as part of the development and the site is now in domestic use rather than providing recreational space of public value.
11. I do not have full details of the previous applications at No 27a and the appeal site or what the policy context was at the time. Furthermore, any future application for a dwelling is outside the scope of this appeal. A condition to retain the appeal site as garden space would not overcome the concerns from loss of open space.
12. For the above reasons, I conclude the proposal would unacceptably reduce the provision of open space. This is contrary to Policy DM20(b) of the EDMP and paragraph 99 of the Framework.

¹ Footnote 40 of the EDMP

² Page 70 of the Framework

Character and appearance

13. The area surrounding the appeal site is suburban and residential. Much of Douglas Road comprises plots set out in a broadly symmetrical pattern around communal spaces with a spacious feel. Nevertheless, the appeal site and adjacent/opposite properties face onto a terrace with a more enclosed feel to the street scene.
14. The development has resulted in a slight reduction in the amount of visible space along Douglas Road. Nevertheless, the site is not prominent. It is on the margins of the nearby communal spaces, so their overall layout and the sense of openness opposite the railway embankment are largely unchanged. I note the fence enclosing part of the appeal site is taller than some other boundary fences nearby. It changes the appearance of the gap between the houses at Nos 27 and 27a. However, the height of the fence still allows views over it and retains what spaciousness there is at this part of the road. Overall, I consider the changes resulting from the development are not harmful to the character and appearance of the area.
15. A concern has been raised about loss of “amenity greenspace”, which is protected as green infrastructure under Policy CS14 of the Elmbridge Core Strategy (ECS). The supporting text to the policy states green infrastructure is “highly valued by local people and plays a key role in contributing to the Borough’s landscape setting and local identity, whilst also providing habitats for wildlife”. Even if the definition of green infrastructure applies to the appeal site, I see no conflict with the policy as the development does not harm the character or appearance of the area.
16. My attention has been drawn to an appeal decision relating to a similar proposal elsewhere in the Borough of Elmbridge³. The appeal related to land described by the Inspector as “clearly visually part of a wider deliberately designed area of incidental open and green space”. Therefore, it is materially different to the context of this appeal.
17. For the above reasons, I conclude the development does not harm the character and appearance of the surrounding area. Accordingly, I find no conflict with Policies CS14 or CS17 of the ECS or the Framework. These policies protect green infrastructure and require new development to integrate sensitively with the locally distinctive landscape.

Other Matters

18. The Council accepts a fence like the one that has been erected could be developed with planning permission granted by the Town and Country Planning (General Permitted Development)(England) Order 2015. I see no reason to disagree with this conclusion. Given it already exists, there is a greater than theoretical possibility the fence would remain. However, enclosure by a fence does not necessarily preclude public use of an area of open space. Consequently, the fallback position relating to the fence is a material consideration to which I ascribe moderate weight.
19. The ownership of land does not affect its use in planning terms, nor allow for a change of use without planning permission. I have also considered the appellant’s argument the site was unmanaged, insecure and subject to illegal

³ Reference APP/K3605/W/21/3288660

parking prior to the development taking place. There is little evidence to substantiate this. Consequently, I have given these considerations little weight.

Conclusion

20. For the above reasons I conclude that, while the proposal does not harm the character and appearance of the surrounding area, the unacceptable reduction in the provision of open space is determinative. Therefore, having had regard to the development plan, the Framework and all other matters raised, I conclude the appeal should be dismissed.

C Carpenter

INSPECTOR