



Appeal Decision

Site visit made on 23 May 2023

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/K3605/W/22/3290292

Rear office, 95 Hersham Road, Walton-on-Thames, Surrey, KT12 1RN

- 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 Heydon Investments Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2021/2611, dated 16 July 2021, was refused by notice dated 1 November 2021.
 - The development proposed as described on the planning application form is demolition of a rear office unit to provide 2 x 2 bed residential units over two storeys, with associated bike parking and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the living conditions of existing and future occupiers of Nos 93 and 95 Hersham Road; and whether or not appropriate provision has been made for affordable housing.

Reasons

3. The appeal building is a vacant single storey office in the Hersham Road local centre behind a frontage building that has commercial use at the ground floor and residential above that. It is an accessible location and there is no objection in principle to residential development provided other planning policies and material considerations are satisfied.

Living conditions

4. The single storey flat roofed office and the roof over the covered area which attaches it to the main frontage building, would be demolished. The main part of No 95 has an office at the rear of the ground floor which has prior approval for conversion to a one-bedroom flat and planning permission for an extension to form a three-bedroom maisonette above¹. There would be habitable room windows some 5.2m from the wall of the proposed building and a lesser distance from the proposed access stairway which would have a high obscure privacy screen.
5. The existing roof overhang constrains the outlook from the rearmost ground floor window of No 95 and its removal would improve the outlook from that window. However, the proposed two storey building with hipped roof and external staircase would be significantly wider and taller than the structures it

¹ 2019/2354 and 2020/1319

would replace, albeit set a little further away. Due to this the proposed building would be intrusive and over-bearing as viewed from these windows, most particularly that on the ground floor but also that of the first floor living room/kitchen window of the permitted maisonette. There is another window to the affected ground floor room but this looks out onto a three-floor building some 5m away so that outlook is also constrained. I conclude the proposal would result in a gloomy and oppressive outlook resulting in unsatisfactory living conditions for future occupiers.

6. The proposed building would be some 5m from windows of flats at No 93 across the access way. Due to its length, height and proximity the proposed building would be intrusive and over-bearing as viewed from the windows in that property, most particularly those on the ground floor. It would result in a gloomy and oppressive outlook resulting in unsatisfactory living conditions for existing and future occupiers.
7. The appellant has provided a Daylight and Sunlight Assessment² (the Assessment). This is widely used as a tool to help assess development proposals. I have reservations about the applicability of the Assessment to the appeal proposal. Amongst other things the accompanying site photograph modelling appears to relate to a different proposed building. Paragraph 7.1.4 suggests the appeal site is currently empty whereas it contains an existing, albeit single storey, building so it may not be the case that there will be unusually high existing light levels to justify the extent of reduction in the Vertical Sky Component identified (the VSC).
8. Notwithstanding my reservations the calculations indicate that two windows at the ground floor of No 93 would lose 29.8% and 45.7% of VSC respectively as a result of the proposed development which would be to the south of them. The results of such calculations need to be applied flexibly depending on the circumstances of the case. However, in my judgement the area could not be described as central London so VSC values of 13% to 18% that may be acceptable in such a location would not be applicable on the appeal site. Moreover, the retained winter hours of sunlight would be noticeable being reduced to 0.7.
9. The Assessment refers to CAD drawings of No 93 but these have not been included in the evidence before me. The submitted plan Ref 2230-P201 Rev A shows a living room/kitchen served by windows identified as "Ground W1" and "W2" on the window map WM01, but does not show a dual aspect window that might help provide appropriate day and sun light. Overall, I conclude that the loss of daylight and sunlight to these windows would cause unacceptable harm by creating gloomy and oppressive daylight conditions.
10. In the absence of calculations relating to windows in the rear of No 95 it is not possible to conclude that daylight and sunlight levels would be acceptable particularly for the ground floor. I acknowledge that the existing overhang would be removed but the taller, wider building proposed would impinge on the 25 degree line from the ground floor window and its effect is likely to be considerable. Also, although there is a second window to the affected room this

² Using the methodology in the Building Research Establishment Guidance Site layout planning for daylight and sunlight: a guide to good practice 2011 (the BRE guidance); British standard BS 8206 Part 2: Code of Practice for Daylighting 2008; Chartered Institute of Building Services Engineers guide LG10 Daylighting a Guide for Designers 2014.

is already constrained by the three-floor building some 5m away. Accordingly, I cannot confidently conclude that conditions for occupiers would be satisfactory.

11. There would be a privacy screen on the side of the external staircase giving access to the proposed first floor flat. This would provide adequate privacy for windows at the rear of No 95.
12. The proposed bedroom windows would be at an angle of about 45 degrees. There would be no direct view into ground floor windows of No 93 which would be an improvement compared to the current ground floor windows directly facing them. There would be an oblique view into a window at No 93 identified in the Assessment as "First W1" from a bedroom in the proposed first floor flat. No information has been provided about the room which "First W1" serves so I cannot confidently predict that this would not cause unacceptable overlooking. The proposed window is relatively small and at an angle to the room it would serve so I do not consider obscure glazing/non-opening would be a satisfactory option as it would not provide appropriate living conditions for future occupiers.
13. The existing outbuilding and yard are somewhat rundown and do not provide a particularly attractive environment. However, lack of maintenance would not be a reason to permit an otherwise unacceptable proposal.
14. It is not clear how the Home Extensions Companion Guide Supplementary Planning Document 2012 relates to a development for a new dwelling. I have therefore not referred to it in reaching my Decision.
15. I have taken account of the Design and Character Supplementary Planning Document which recognises that in more compact contexts such as in the centre of towns it may not be possible or appropriate to achieve the conventional distances of 22m between habitable room windows, and Paragraph 125 of the National Planning Policy Framework 2021 (the Framework) encourages a flexible approach. I also acknowledge that the Council does not specify specific standards relating to outlook, day and sun light or privacy and it is to be expected that the decision maker makes an informed judgement on the planning merits of the case.
16. In this case and exercising my judgement, for the reasons set out above, I conclude that the proposed development would have a harmful effect on the living conditions of existing and future occupiers of Nos 93 and. Accordingly I find conflict with Policy DM2 of the Development Management Plan 2015 and those principles of the Framework that seek a high standard of amenity for existing and future users.

Affordable housing

17. Policy CS21 of the Core Strategy 2011 (CS) and the Elmbridge Borough Council Development Contributions Supplementary Planning Document July 2020, updated April 2021, (the SPD) require that for small schemes a financial contribution equivalent to the cost of 20% of the gross number of dwellings should be provided. Policy CS21 pre-dates the Framework which states that affordable housing should not be sought for residential developments that are not major developments.
18. The Council has demonstrated there is an acute need for affordable housing in the Borough, the importance of small sites in delivering this, and that these requirements do not place a disproportionate burden on developers. The

appellant does not dispute the relevance of Policy CS21 to the proposal. Therefore, based on this specific local evidence, the Framework's provisions do not outweigh the development plan in this instance.

19. The appellant considers that, as the office has the benefit of prior approval for conversion to a flat, there would only be a net increase of one unit. However, that conversion does not exist at present and may never be implemented. Paragraph 4.21 of the SPD states "*The policy applies to the gross number of units proposed on all housing sites ... where there is a net increase in the number of units on the site. For example, where it is proposed to demolish 5 houses and to build 10, the policy would be applied to 10 units.*" The size of the development should not be artificially reduced in order to reduce or eliminate the affordable housing requirement. On this basis I see no justification to base the requirement on other than two units.
20. Nor have I seen the evidence required under Paragraph 4.77 of the SPD to demonstrate that the building for which the Vacant Building Credit could be claimed was not vacated for the sole purpose of redevelopment; has been vacant for a continuous period of five years prior to the submission of the application; and that during that time the property was actively marketed for a minimum of two years at realistic prices. Accordingly, I see no reason to suppose that the Credit is currently claimable.
21. The Council calculates a policy compliant affordable housing contribution of £45,337.60. This is based on 2 new dwellings with an average of one relevant or comparable affordable unit of £251,428.57. This latter figure is calculated on the basis of the Open Market Valuation of one flat of £245,000 and the second flat of £235,000 and applying the formula set out in Paragraph 4.13 and Table 3 of the SPD.
22. The submitted obligation offers a contribution of £22,089.20 but I have seen no detailed evidence that indicates the scheme would not be viable if the full contribution applied. Accordingly, I conclude that appropriate provision has not been made for affordable housing and that the proposal conflicts with Policy CS21 of the CS and the SPD in this respect.

Other Matters

23. The current proposal was submitted to address concerns relating to a similar but slightly larger building. However, this does not affect the planning merits of the case before me.
24. The site is in the 5km to 7km Buffer Zone of the Thames Basin Heath Special Protection Area. Neither of the Parties has provided much by way of evidence to enable me to undertake an Appropriate Assessment of the impact of the development and whether or not mitigation would be required. I also have some reservations about the submitted Unilateral Undertaking in respect of the affordable housing contribution as there is no plan with it and land ownership and the relationship of the signatories with the appellant, Heydon Investments Limited, are unclear. Had my conclusions on the main issues been otherwise I would have sought more information in relation to these matters.

Planning Balance and Conclusion

25. The Council cannot demonstrate a five year supply of deliverable housing land. Consequently Paragraph 11 d) of the Framework is engaged.

26. The proposed development would result in economic benefits including during construction; spend in the local economy and New Homes Bonus if applicable. There would be social benefits arising from the efficient use of land, additional residents in the local community and some contribution towards affordable housing. Additional dwellings would contribute to the government's target to significantly boost the supply of homes and these would be of the size of most need in the local area. However, given the scale of the proposed development, the benefits in this regard are very modest.
27. On the other hand, the proposal would not make adequate provision for affordable housing and would have a harmful effect on the living conditions of existing and future occupiers of Nos 93 and 95. I give these matters great weight in the context of this appeal. I conclude the adverse impacts of the proposal would significantly and demonstrably outweigh the very modest benefits, when assessed against the policies in the Framework as a whole. The development would be contrary to the Framework in this respect.
28. The proposal would not accord with the development plan and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise than in accordance with the development plan. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

S Harley

INSPECTOR