



Appeal Decision

Site visit made on 13 April 2023

Decision by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 JUNE 2023

Appeal Ref: APP/K3605/W/22/3308041

Land south of 8 Arnison Road, East Molesey KT8 9JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to details required by a condition of a planning permission.
 - The appeal is made by Mr Samuel and Miss Zoe Foxman against the decision of Elmbridge Borough Council.
 - The application Ref 2020/1224 dated 21 May 2020, was refused by notice dated 31 March 2022.
 - The development proposed is a reserved matters application for layout, scale, external appearance, access and landscaping pursuant to Condition 1 of outline application 2019/3606.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely layout, scale, appearance, access and landscaping, submitted in pursuance of condition No 01 attached to planning permission 2019/3606 dated 7 May 2020, and subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The description of development used on the application form is very lengthy and includes extraneous detail. For this reason I have used the description of development from the appellant's planning appeal form.
3. As the proposal is in a conservation area (CA), I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. The principle of the development of an additional house at the site has been established through the grant of outline planning permission. This appeal therefore only relates to the reserved matters pursuant to that outline permission.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area, with due regard to the location of the site in the East Molesey (Kent Town) CA; and
 - the effect of the proposal on the living conditions of the occupiers of 16 Bridge Gardens and 4 St Johns Road with particular regard to outlook.

Reasons

Character and appearance

6. 8 Arnison Road is a relatively large detached dwelling with an expansive rear garden. The surrounding area is residential in character and the majority of the dwellings in this part of the CA are set a similar distance back from the roads, behind front gardens with mature trees and planting or off street parking, with space between the buildings and reasonably sized rear gardens.
7. The character of this part of the CA and its significance stems from, amongst other aspects, the arrangement of generously sized detached properties, finished in a variety of materials including red brick, render, stucco and decorative plaster. With its grand three storey built form and generous spacing to the sides of the dwelling, No. 8 contributes positively to the character of the area.
8. No. 8 has an unusually large rear garden which extends beyond the gardens of its neighbouring properties to the west. The rear part of the garden, within which the proposal would be located, is not visible in views from surrounding streets, and as a consequence it makes a limited contribution to the character of the CA.
9. The proposal would occupy a plot that would be similar in size to properties on St John's Road and larger than plots on Bridge Gardens. This reflects the appeal site's position in an area of transition, given its location at the southern edge of the CA's boundary. Both parties agree that the principle of the subdivision of the plot, and the erection of a new dwelling in this backland location without a street frontage, are established by the extant outline permission.
10. As a result of its location, the screening of views by No. 8, and use of an existing access to the side of No. 8, the proposed dwelling is unlikely to be visible in public views from nearby vantage points and views of the existing property within the streetscene would be unaffected by the proposed development.
11. The appeal scheme has marked differences to the previous appeal decisions¹ at the site, which related to the construction of two, two storey dwellings with pitched roofs within the rear garden. In this first instance, this appeal concerns the reserved matters approval only, the principle of a dwelling being located on the site having been established by the outline planning permission. This was not the position before the previous Inspector. Furthermore, the scheme before me is for a single dwelling which would be part single, part two storey, with a flat roof design. It would have a larger ground floor, with a smaller footprint at first floor level, ensuring that it would not appear as a large or bulky addition. Overall, it would be lower in height than the previous appeal proposals and a larger proportion of the garden would remain.
12. The dwelling would also be smaller in size and scale than the neighbouring dwellings on Arnison Road and St Johns Road. This would reflect its location as a backland development which would be subservient to the dwellings fronting the street. Rather than seeking to replicate the architecture of the host building and surrounding dwellings, the proposed contemporary flat roof design would

¹ APP/K3605/W/16/315674 & APP/K3605/W/16/315675

- distinguish the proposal as a new phase of development in the area's overall evolution. I consider this to be an appropriate design response in this location.
13. The proposed materials comprise stock brick, render and painted wood for the window and door fittings. This approach would be appropriate given the prominent use of brickwork and render within nearby buildings within the CA.
 14. The appellant has brought to my attention that the site benefits from permitted development rights and indicates that this is a fallback position. The potential for what may be able to be built through permitted development rights was considered by the previous Inspector. However, since then a Certificate of Lawfulness² for a proposed detached garage incorporating a home office and associated accessway has been granted by the Council. In light of this evidence, in my view, there is a greater than theoretical possibility that the fallback position would be implemented in the event that this appeal was dismissed. As such, I consider that in the context of this appeal, this represents a realistic fallback position.
 15. Whilst the accessway would draw some attention to the proposed development, it would be constructed using a 'Bodpave' system which would create a much greener access. This would blend in better with the surroundings than the hardstanding which was proposed as part of the previous appeal schemes. Whilst the proposal would require the removal of five trees, the Council has suggested a condition requiring replacement planting to off-set the loss of the trees. Future details including a re-planting strategy will form part of a Landscape and Environmental Management Plan to be submitted to the Council for approval. I agree such a condition would be both necessary and reasonable. As a consequence, the hardstanding, and proposal overall, would have less visual impact than the previous appeals.
 16. For the above reasons, I find that the proposal would preserve the character and the appearance of the CA, and the significance of the CA would not be adversely affected. I therefore find that it would comply with Policy CS17 of the Core Strategy (2011) (CS) and Policies DM2, DM10 and DM12 of the Elmbridge Development Management Plan (2015) (DMP) and the Elmbridge Borough Council Design and Character Supplementary Planning Document (2012) (SPD) which, taken together, aim to ensure good design and that new development preserves or enhances the character of the historic environment. It would also comply with the aims of the National Planning Policy Framework (2021) which sets out that great weight should be given to the conservation of a designated heritage asset, such as a conservation area.

Living conditions

17. The Council's concerns in this regard relate specifically to 4 St John's Road and 16 Bridge Gardens. I deal with each property in turn.
18. 4 St John's Road has ground floor rear windows located close to the appeal site boundary and a rear garden which looks directly onto the appeal site. Drawings and measurements submitted by the appellant with the appeal show that there would be a separation distance of 23 metres from the closest part of the proposal to the closest part of the neighbouring dwelling, and an 18 metre separation from the proposal to the site boundary. Whilst No. 4 is slightly lower

² 2017/3802

in level than the appeal property, the extent of separation would ensure that the new house would not be overly oppressive to the extent that it would significantly harm the level of outlook for occupiers 4 St John's Road.

19. 16 Bridge Gardens has a relatively short rear garden and rear windows facing the appeal site. Whilst the site and the proposal are slightly elevated above No. 16, the existing brick wall along the shared boundary between the properties would prevent direct views towards the ground floor of the proposal, and limit views of the upper parts of the proposal, particularly when viewed from the garden. The first floor element of the proposal would be lower in height, have a reduced width and would be located a further distance from No. 16 than the proposal which was previously dismissed at appeal³.
20. The submitted drawings and measurements provided by the appellant show that the closest part of the proposal would be 9 metres from the shared boundary with No. 16, whilst the separation from No. 16's ground floor windows would be 17 metres. The combination of the separation distance and the reduced bulk of the proposal ensure that the new house would not be overly oppressive to the extent that it would significantly harm the level of outlook for occupiers of 16 Bridge Gardens.
21. Whilst there is no formal test identified to assess the impact on outlook and a subjective assessment is required, during my site visit I was able to view the proposals from both 16 Bridge Gardens and 4 St Johns Road. From my on-site assessment and review of the submitted drawings, I conclude that the proposed development would not harm the living conditions of neighbouring occupiers with particular reference to outlook. In coming to this view, I have taken into account the levels difference between the two neighbouring properties and the appeal site.
22. Whilst the proposal would create additional built form which would be visible from neighbouring residential properties, a generous proportion of the site would not have buildings on. This remaining space would provide car parking, a turning area and garden area which would assist in reducing the development's impact on neighbouring occupiers and prevent it from appearing cramped and overbearing. The appeal proposal has a flat roof, which would not be particularly high, and a proportion of the proposal would be single storey only. These design features would reduce the bulk and mass of the proposal, and would as a result minimise the impact of the proposal on the aforementioned neighbouring properties.
23. Accordingly, I find no conflict with Policy DM2 of the DMP and the aforementioned SPD. Amongst other aspects, these seek to protect the living conditions of occupiers of neighbouring adjoining properties from unreasonable visual intrusion. I also find no conflict with the principles of the Framework that seek the creation of places that are safe and have a high standard of amenity for existing and future users.

Other Matters

24. In addition to the living conditions I have addressed above interested parties have raised concerns about the potential loss of natural light and privacy for occupiers of neighbouring properties. Given the separation distances involved,

³ APP/K3605/W/16/3151674

and as the north facing upper floor window would be obscure glazed and conditioned to remain as such, I do not find that there would be harm to the living conditions of neighbouring occupiers.

25. Whilst previous appeals at the appeal site and within the CA may have been dismissed, in this instance, as I have found that the proposed development would cause no harm to the character and appearance of the CA it would not create a precedent for other developments that would cause harmful effects in this regard.
26. Interested parties also state that the proposed development would harm highway safety, with concerns raised about an increase in traffic and parking. The appeal proposal provides a single dwelling which would result in a limited increase in local traffic. It would share an existing vehicular access and the proposal would have a parking area of sufficient size for two vehicles and a turning area which would enable vehicles to enter and leave the site in a forward gear. Furthermore, the Highway Authority have raised no objection to the appeal proposal. Based on the evidence before me, I can see on reason to disagree with this conclusion.
27. Concerns have been raised about a lack of information on proposed materials for the new dwelling. I have imposed a condition requiring samples of the proposed materials to be submitted to and approved by the Council which is necessary to ensure the appearance of the development is satisfactory.
28. Interested parties have raised concerns about the content of the appellant's Ecological Report. In order to prevent a loss of biodiversity and to prevent harm to protected species, a condition is imposed to require a Landscape and Ecological Management Plan to be submitted and approved by the Council. Whilst details have not been provided regarding air or ground source heat pumps it is likely that permission would be required to add either at a later date.
29. Concerns in relation to construction traffic and noise have also been raised. I have sympathy for existing occupiers as development of this nature would inevitably give rise to some disruption. However, the works would be time limited and it would not be reasonable to withhold consent on this basis alone. The addition of a single dwelling within a residential area is unlikely to cause harmful noise and disturbance as a result of the additional comings and goings of future occupiers and visitors.
30. A number of other matters have been raised by interested parties and I have taken them all into account. Those related to planning include the rebuilding of the wall to 4 St John's Road, the addition of one house having minimal impact on local housing demand and the suggestion that insufficient arboricultural information has been provided to ensure the retention of trees on site. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.
31. The Council has provided a detailed update on the application of the Council's affordable housing policies. However, as a legal agreement secured an affordable housing contribution as part of the Outline Permission it is not necessary for me to comment further on this issue.

Conditions

32. I have had regard to the various planning conditions that have been suggested. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and for clarity and consistency.
33. I have imposed an approved plans condition in the interests of certainty. I have not imposed the Council's condition setting a time limit for the commencement of development as this is already controlled by condition 3 of the outline permission.
34. Conditions requiring samples of the external materials and the submission of detailed drawings of the doors and windows are necessary in the interests of the character and appearance of the area. However, I have modified the conditions because the details are not required prior to commencement of the development.
35. I have included a condition to prevent the use of the roof of the dwelling as a terrace or balcony, to prevent additional first floor windows and to require obscure glazing in the northern elevation of the house. These are all necessary in order to protect the living conditions of neighbouring occupiers.
36. I have not imposed the Council's suggested condition to remove permitted development rights related to Class AA and Class AD of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. This is because these rights are not applicable to dwellings constructed after 2018.
37. To prevent damage to trees I have included a condition requiring that all protection measures are undertaken as outlined in the submitted Tree Protection Plan and Arboricultural Method Statement. I have also imposed a condition requiring the retention of all existing trees and hedges unless shown on the approved drawings. These are necessary to protect the character and appearance of the area. However, I have not imposed the Council's suggested condition the Council's suggested condition requiring an on-site meeting attended by a qualified arboriculturist, representative from the Local Planning Authority (unless advised) and the site manager/foreman. The approved tree protection measures are controlled by a separate condition which must be complied with. For this reason, the condition requiring an on-site meeting is not necessary or reasonable.
38. I have imposed a condition requiring the submission of a Landscape and Ecological Management Plan in order to prevent a loss of biodiversity and to prevent harm to protected species. However, I have modified the wording to remove many of the details suggested by the Council as they are not necessary or reasonable for a scheme of this size.
39. I have included a conditions requiring the provision of electric vehicle charging points to promote low emission vehicles. I have also included a condition requiring the provision of details of cycle and refuse store. These are necessary to promote active travel and to ensure that future occupiers have sufficient facilities for refuse and recycling.

Conclusion

40. For the above reasons, and having had regard to all other matters raised, the proposed development would accord with the development plan and the Framework. The appeal is therefore allowed.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Rev A; 150 Rev F (Proposed Site Plan); 250 Rev F (Proposed Plans and Elevations); 450 Rev D (Proposed Elevations); Arbtech AIA 01 (Arboricultural Impact Assessment) and Arbtech TPP 01 (Tree Protection Plan); Arbtech AMS 01 (Arboricultural Method Statement); and Arbtech Preliminary Ecological Appraisal Survey.
- 2) The development hereby permitted shall not be constructed above the damp proof course of the new house until samples of the materials to be used in the construction of the external surfaces have been submitted to and approved in writing by the Local Planning Authority. The relevant works shall be carried out in accordance with the approved samples.
- 3) The development hereby permitted shall not be constructed above the damp proof course of the new house until detailed drawings at a scale of 1:10 and sections at 1:5 of the following have been submitted to and approved in writing by the Local Planning Authority: i) Windows, ii) Doors. The relevant works shall be carried out in accordance with the approved details.
- 4) The flat roof to the single storey elements of the development hereby permitted shall not at any time be altered or adapted to form a balcony, roof garden or similar amenity area without the grant of a further specific permission from the Local Planning Authority.
- 5) The development hereby permitted shall not be occupied until the first floor window on the north elevation of the development hereby permitted has been glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (other glass suppliers are available). The window shall be openable only 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.
- 6) The development hereby permitted shall have no windows or other openings inserted into the southern elevation at first floor level unless planning permission has first been granted by the Local Planning Authority.
- 7) The development hereby permitted shall not be occupied until a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) has been installed. It shall be maintained in an operable condition thereafter.
- 8) The development hereby approved shall not be occupied until the following details have been submitted and approved in writing by the Local Planning Authority:
 - a) the location and design of a cycle store
 - b) the location and design of a bin store

The cycle and bin stores shall be installed in accordance with the approved details prior to the occupation of the development and maintained and retained thereafter.

- 9) 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.
- 10) Throughout the entire construction period (including site clearance), all protection measures for trees will be undertaken in accordance with the details contained within the Arbtech AIA 01 (Arboricultural Impact Assessment) and Arbtech TPP 01 (Tree Protection Plan) and Arbtech AMS 01 (Arboricultural Method Statement).
- 11) The development hereby permitted shall not commence until a Landscape and Ecological Management Plan (LEMP) based on the proposed impact avoidance, mitigation and enhancement measures specified in the Preliminary Ecological Appraisal Report prepared by Arbtech has been submitted to and approved by the Local Planning Authority. The LEMP shall include a description and evaluation of features to be managed and demonstration of how a proposed planting palette will benefit biodiversity such that all species selected provide some benefit to biodiversity, as well as a timetable for implementation. The measures outlined in the LEMP shall be carried out and completed in accordance with the approved details and timetable and thereafter maintained in accordance with the approved details.