



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 July 2023

Appeal Ref: APP/K3605/W/22/3304143

52 Manor Road South, Esher, Surrey KT10 0QQ

- 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 Nick Perrin, AS Ashcroft against the decision of Elmbridge Borough Council.
 - The application Ref 2021/1690, dated 10 May 2021, was refused by notice dated 16 February 2022.
 - The development proposed is erection of a detached dwelling and 2 no. semi-detached dwellings following the demolition of the detached house, garaging and outbuildings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached dwelling and 2 no. semi-detached dwellings following the demolition of the detached house, garaging and outbuildings at 52 Manor Road South, Esher, Surrey, KT10 0QQ in accordance with the terms of the application, Ref 2021/1690, dated 10 May 2021, and the plans submitted with it, subject to the attached schedule of conditions.

Preliminary Matters

2. One of the Council's reasons for refusal related to insufficient information being provided to demonstrate that the proposal would not result in harm to protected species.
3. An Ecological Assessment Report with findings, and Bat Emergence Surveys with mitigation measures and recommendations was submitted with the appeal. This identified the presence of bats in the appeal property. As the Council have now reviewed this report and as it could not have been provided within the timescales of the application's determination due to the seasonal nature of surveys, I have accepted its submission and taken account of this evidence.
4. The report outlines mitigation measures which include the building being carefully checked by a licensed bat worker prior to demolition, with any bats that are found being transferred to a bat box on site. Additionally, the installation of bat boxes on site would also provide alternative roosting opportunities for bats during the works.
5. The Council has confirmed that the survey and proposed mitigation measures are sufficient to overcome the reason for refusal, subject to the imposition of a condition requiring the submission of an Ecological Mitigation, Compensation and Enhancement Plan. They therefore advise that they no longer wish to

defend the reason for refusal in respect of protected species, and I therefore do not address this matter in the reasoning below.

Main Issue

6. The main issue is whether the proposal makes adequate provision towards affordable housing.

Reasons

7. Policy CS21 of the Core Strategy (2011) requires that for this development a financial contribution equivalent to the cost of 20% of the gross number of dwellings should be provided. However, Policy CS21 predates the most recent version of the National Planning Policy Framework (2021) (Framework), which, at Paragraph 64, states that the provision of affordable housing should not be sought for residential developments that are not major development, unless in designated rural areas. Given that the appeal scheme is for 3 dwellings it is not categorised as a major development.
8. Notwithstanding this, I consider that the specific circumstances within this Borough together with the evidence to support affordable housing provision on small sites are sufficient, in this case, to outweigh the guidance of the Framework. Furthermore, this finding is consistent with other Inspectors who have considered this issue in relation to appeals on similar sites in the locality.
9. Where it is considered that the delivery of affordable housing in accordance with the policy is not viable, this must be demonstrated through a financial appraisal. The appellant has submitted a Financial Viability Appraisal which concludes that, based on market conditions, there would not be sufficient scope for a policy compliant affordable housing contribution.
10. The Council's independent viability consultants have confirmed the appellant's contention that the proposals are unviable to support a policy compliant contribution. They recommend the imposition of a late review mechanism (LRM) to allow the Council an appropriate method to seek to capture any planning gain beyond the forecasted levels. Support for this stance is taken from the Council's recently updated Development Contributions Supplementary Planning Document (2021) (SPD).
11. The appellant accepts that a LRM is warranted for the appeal proposal given the viability findings but has submitted two completed unilateral undertakings incorporating differing LRM formulas. Both unilateral undertakings include LRMs which would reassess the viability of the scheme when 75% of the development has been disposed. If any development surplus profit is identified at this stage, 60% of that would be a financial contribution to the Council towards the provision of affordable housing. This would take into account the actual, instead of predicted, costs and values and would not result in any affordable housing contribution unless it is viable.
12. One of the Unilateral Undertakings (UUb) includes the late review mechanisms in the standard format which follows the formula identified within the Council's SPD.
13. The second unilateral undertaking (UUa) amends the formula within the SPD with the insertion of a term 'G' that allows the deficit of £214,314 to be collected by the developer. The appellant outlines that this would ensure that

the profit margin achieved is reinstated to 17.5% after which point the Council will receive 60% of any increased profitability in accordance with their standard formula.

14. It has been put to me that planning policy, planning law and CIL Regulation 122 all require that the Late Review Mechanism cannot be used to reduce the profit that the developer will receive from the development below the target return on 17.5%. However, the National Planning Policy Guidance confirms that review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project¹.
15. I am not provided with detailed evidence that Council's LRM formula would prevent funding being secured for this development, or would necessarily result in the developer failing to achieve a 17.5% return. As such, taking into account that Policy CS21 requires that this site should provide affordable housing where viable, this requirement is not onerous on this scheme.
16. I am satisfied that the submitted planning obligation which uses the Council's standard formula (UUb) would be a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development. Conversely, for the reasons given above, I consider UUA which would provide a lesser contribution, would not be reasonably related in scale and kind.
17. The appellant has provided a copy of the Mayor of London's Viability Review Mechanisms Procedure Practice Note. However, as Elmbridge Borough Council is not under the jurisdiction of the Greater London Authority, it is of limited relevance in the determination of this appeal.
18. It has been put to me that the Council needs to be party to the legal agreement as it includes a LRM. However, as the unilateral undertaking does not provide any covenant on the part of the Council, it is not necessary for them to execute the undertaking.
19. From the evidence and my observations on site, I am satisfied the proposal would be acceptable subject to conditions and a suitable planning obligation. I have taken into account the unilateral undertaking (UUb) and attach full weight to its planning obligations in determining this appeal. For the reasons set out above, the proposal would make adequate provision for affordable housing and would comply with Policy CS21 of the CS and the SPD, the aims of which are set out above.

Other Matters

20. A significant number of neighbours have raised other concerns in relation to the development. During my site visit I was able to view the proposals from 50 Manor Road South and 43 Greenways.
21. Concerns have been raised in relation to the proposal resulting in a loss of privacy and light and creating unreasonable visual intrusion for occupiers of properties on Greenways. The appeal site is higher than properties on Greenways, and the proposal would create additional built form which would be visible from neighbouring residential properties. However, given the separation

¹ 009 Reference ID: 10-009-20190509

- distances from the built form to the shared site boundary and to the rear windows of neighbouring properties on Greenways, I do not find that there would be harm to the living conditions of these neighbouring occupiers.
22. Whilst a Daylight Sunlight Assessment was not submitted with the application and the proposal would be constructed close to the side windows of 50 Manor Road South, the overall impact would not be unacceptably harmful. The side windows referred to are not the sole sources of light. They provide secondary windows to the main living space which is open plan and has large windows to both the front and the rear of the property. Also due to the single storey design, and limited projection beyond the rear of the adjoining properties on Manor Road South, the rear projections from the new houses would not cause a significant loss of light or visual intrusion when viewed from the rear windows or garden areas of the neighbouring properties.
23. Whilst there would be views from the new patios and rear windows of the houses, into the rear gardens of the adjoining properties on Manor Road South, given the extent of existing mutual overlooking into the gardens of properties I do not find that the proposal would result in a demonstrable unacceptable loss of privacy for neighbouring occupiers. Similarly, as the side facing upper floor windows 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.
24. It has been suggested that the historic permission for the existing property at the appeal site was designed to enable sufficient light and outlook to the occupiers of No. 50. Whilst this may be the case, as set out above, I have not found that the appeal proposal would harm the living conditions of the immediately neighbouring occupiers.
25. Many interested parties raised concerns about the impact of the proposal on the character and appearance of the area, the density of development being too high, the design appearing incongruous and unimaginative and the principle of demolition of the existing property being unacceptable.
26. Two storey dwellings with hipped roofs would not appear out of character within the street. Whilst semi-detached properties are not common within the immediate context, the proposed design would have the appearance of one large single dwelling, which would prevent it from appearing incongruous. The proposed material palette of facing brick, white render and clay roof tiles, are all used prominently in the local area. Overall, I have been provided with no substantive evidence which would prompt me to disagree with the Council's conclusions on these matters which was that there would be no unacceptable harm in these respects.
27. Interested parties have raised concerns that the proposal does not provide affordable housing. However, I have not been directed to any local planning policies which would require the provision of on-site affordable housing as part of this development. As set out above, the appellant has submitted a Unilateral Undertaking, which includes a late review mechanism which would capture any planning gain beyond the forecasted levels.
28. Interested parties also state that the proposed development would harm highway safety, with concerns raised about an increase in traffic, the level of parking provision, the safety of the vehicular accesses and issues with existing

on-street parking locally. The appeal proposal provides three dwellings which would result in a limited increase in local traffic. It would have two vehicular accesses and the proposal would have a parking area of sufficient size for four vehicles and a turning area which would enable vehicles to enter and leave the site in a forward gear. In the interests of highway safety I have imposed a condition requiring further details of the proposed vehicular accesses, including visibility zones. The level of parking is acceptable given the site's accessible location close to a local bus stop and Hinchley Wood Rail Station.

29. Concerns have also been raised about the loss of trees on site. In order to prevent a loss of additional trees, I have included a condition requiring that all protection measures are undertaken as outlined in the submitted tree protection plan and method statement.
30. In relation to the effect of the proposal on the ability of the occupiers of No. 50 to carry out maintenance on their property, this is a private matter to be resolved by the parties and is therefore not relevant to my decision.
31. The existence of restrictive covenants does not affect the acceptability of the appeal proposal in terms of its planning merits. The concerns expressed regarding the Council's conduct during the processing of the pre-application enquiry and planning application fall outside of the remit of this Decision.
32. It has been suggested that the planning appeal was submitted outside the 6 month deadline period for appeal submissions. However, the Council's decision was made on 16 February 2022, and the appeal was submitted on 29th July 2022, and subsequently confirmed as a valid appeal within the six month deadline.
33. 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 increased risk of flooding, increases in security risks, and the impacts on sewage capacity and local infrastructure. 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.

Conditions

34. 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.
35. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty.
36. In order to minimise disruption to surrounding highways and residents it is necessary to approve a Construction Transport Management Plan. I have also included a condition to require obscure glazing in the first floor side facing windows of the houses. This is necessary in order to protect the privacy of neighbouring occupiers.
37. To prevent damage to trees, I have included conditions requiring the installation of tree protection measures and the retention of all trees which have not been identified for removal. I have also imposed a condition requiring

details of tree planting in the interests of character and appearance. However, I have modified the condition because the details are not necessary prior to commencement of the development.

38. A condition requiring details of the external materials is necessary in the interests of the character and appearance of the area. However, I have modified the condition because the details are not required prior to commencement of the development.
39. I have imposed a condition requiring the submission of an Ecological Mitigation, Compensation and Enhancement Plan in order to prevent a loss of biodiversity and to prevent harm to protected species.
40. I have included a condition requiring the provision of electric vehicle charging points to promote low emission vehicles. A condition requiring the provision and retention of the new vehicular accesses to Manor Road South and the off-street car and cycle parking are necessary in the interests of highway safety.

Conclusion

41. For the above reasons, and having had regard to all other matters raised, I conclude that 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 begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in strict accordance with the following list of approved plans: 616 E02 Rev C, 616 P10 Rev B; 616 P11 Rev B; 616 P12 Rev A; 616 P13 Rev A; 616 P14 Rev A; 616 P15 Rev A; 616 P16; 616 P17 Rev A; 616 P18.
- 3) No development shall take place until a Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved CTMP shall be implemented and adhered to throughout the entire construction period. The CTMP shall include the following details:
 - (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) programme of works (including measures for traffic management)
 - (e) provision of boundary hoarding behind any visibility zones
 - (f) measures to prevent the deposit of materials on the highway
 - (g) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused
 - (h) on-site turning for construction vehicles or equivalent traffic management.
- 4) No development shall take place until, an Ecological Mitigation, Compensation and Enhancement Plan (EMCEP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved EMCEP shall be implemented and adhered to. The EMCEP shall set out the proposed measures for mitigation, compensation and enhancement measures in detail as referred to in the Ecological Assessment Report with findings and Bat Emergence Surveys with mitigation measures and recommendations dated 28/07/2022 by AA Environmental Limited (included within Appendix 5 of the Appellant's Statement of Case), and should include, but not be limited to mitigation box types and details and the location of the four bat tubes for compensation and enhancement.
- 5) No development shall take place, including groundworks and demolition, and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until all tree protection measures have been installed in the positions identified on the approved tree protection plan: CONSULTANT: CLIVE FOWLER/SITE: 52 Manor Road South Esher Surrey KT10 0QQ/TPP: RICHARD GARINER ARCHITECTS/DATE: 04,2021. The protection measures shall then be maintained for the course of the development and the development shall be implemented in strict accordance with the approved details and method statement contained in CONSULTANT: CLIVE FOWLER/SITE: 52 Manor Road South Esher Surrey KT10 0QQ/REPORT: 52 Manor Road South Esher Surrey KT10 0QQ/DATE: 04,2021.

- 6) The development hereby permitted shall not be constructed above the damp proof course of the new houses until details 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 details.
- 7) All existing trees, hedges or hedgerows inside the identified site boundary will be retained, unless shown on the approved drawings as being removed. For the 5 years from the first occupation of the proposed development no retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, other than in accordance with the approved plans and particulars. If, within 5 years from the first occupation, 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.
- 8) The development hereby approved shall not be occupied until full details of all proposed tree planting has been submitted to and approved in writing by the Local Planning Authority. Details are to include species, sizes, locations, planting pit design, supports, and guards or other protective measures to be used. Details shall also include planting times, provision of suitable soil volumes to sustain the trees into maturity, 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 minimum of 1X Ginkgo biloba Extra heavy standard 14 to 16 > 3 500cm in height to be planted centrally at the front of the site to maintain future arboricultural amenity. All tree planting shall be carried out in accordance with BS 8545:2014. The tree planting shall be completed prior to the occupation of the development. 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.
- 9) The development hereby permitted shall not be occupied until a scheme for the proposed vehicular accesses to Manor Road South, including visibility zones, has been submitted to and approved in writing by the Local Planning Authority. The accesses and visibility zones shall be constructed prior to the occupation of the development and shall be maintained thereafter with visibility zones which are maintained permanently clear of any obstruction over 1.05m high.
- 10) The development hereby permitted shall not be occupied until space has been laid out within the site in accordance with the approved plans for vehicles and cycles to be parked and for vehicles to turn so that they may enter and leave the site in a forward gear. Thereafter the parking areas shall be retained and maintained for their designated purposes.
- 11) The development hereby permitted shall not be occupied until the first floor windows to the north and south (flank) elevations to each of the dwellinghouses have 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 windows shall only openable above

a height of 1.7m above the internal level of the room to which they serve. The windows shall be permanently retained in that condition thereafter.

- 12) 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 in accordance with the approved plans. It shall be maintained in an operable condition thereafter.