



Appeal Decision

Site visit made on 2 August 2023

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2023

Appeal Ref: APP/K3605/W/22/3311985

4-6 Oatlands Drive, Weybridge, KT13 9JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by The Bridge (Oatlands) LLP against Elmbridge Borough Council.
 - The application Ref 2022/2118, is dated 6 July 2022.
 - The development proposed is described as development comprising 2 detached buildings with 27 flats in total, with associated car parking, cycle and refuse storage, amenity areas and shared access following demolition of existing 2 houses.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The appeal has been lodged in response to the Council's failure to issue its decision within the prescribed period. The Council's appeal submissions outline that had it been in a position to determine the application, it would have refused planning permission on the basis of the proposed impacts on the character and appearance of the area, trees, living conditions of the neighbouring properties and the lack of affordable housing contributions secured through a Section 106 Agreement. I will return to these matters later.
3. The tables included on the submitted tree protection and tree constraints plans state that Tree No.9 is to be removed as it is showing advanced signs of Ash dieback. However, the tree protection site plan shows it as being retained and the appellants' technical note dated 4 October 2022 confirms that it is being retained. The appeal has been dealt with on this basis.
4. In addition to the plans and documents submitted at the planning application stage, the appellant has submitted a revised tree protection plan, which includes 'root protection areas' (rpa's). These rpa's are shown on the Tree Constraints Plan and so the information is not new. The Technical Note 001 relating to trees responds to evidence submitted by the council. Accordingly, I am able to take them into account in relation to this appeal.

Main Issues

5. Having regard to the evidence submitted, I consider that the main issues include:
 - 1) The effect of the proposal on the character and appearance of the street scene and the area, including its effect on protected and other existing trees.
 - 2) The effect of the proposed roof terraces/balconies on the living conditions of the occupiers of nearby dwellings, with particular regard to noise and privacy.
 - 3) Whether the proposal makes adequate and necessary contribution towards the provision of affordable housing.
 - 4) Whether the site is in an appropriate location with regard to Flood Risk.
 - 5) The contribution the proposal would make to the supply of homes in Elmbridge.

Reasons

Character and appearance

6. The appeal site is located within an accessible and primarily residential area and comprises two detached family houses with large mature landscaped plots. The dwellings fall within the definition of previously developed land, as defined in the National Planning Framework 2023 (the Framework), although their domestic gardens fall outside this definition.
7. Policy CS1 of the Elmbridge Core Strategy (2011) (CS), seeks to direct new development to previously developed land within existing built-up areas, taking account of the relative flood risks of available sites. Together with CS Policy CS3, it identifies Walton and Weybridge as one of the most sustainable locations in Elmbridge and states that new development should be sensitive to the character and quality of the area. CS Policy CS2 similarly encourages appropriate housing development on previously developed land in urban areas and the delivery of high-density housing developments in the most sustainable locations. CS Policy CS25 seeks to direct new development to previously developed land in accessible locations.
8. The appeal site occupies a prominent position within the street scene, adjacent to the busy controlled staggered junction between Oatlands Drive (A3050), Walton Bridge Road, New Zealand Avenue (A244) and Bridge Street. Other than the controlled junction this part of Oatlands Drive is verdant and residential in character, with the tree cover making a significant and positive contribution to the visual amenity of the surrounding area.
9. Oatlands Drive comprises a diverse range of detached dwellings that typically occupy generous sized and mature landscaped plots. Slightly further to the southwest along Oatlands Drive are a row of flat roofed flats developments and immediately to the side of the appeal site a large two/three storey apartment development is currently being constructed. It comprises two blocks of apartments facing Oatlands Drive and two blocks to the rear of them.

10. Immediately to the front of the appeal site is the approach to the controlled junction, where the carriageway has four lanes. This has an urbanising effect on the immediate setting of the appeal site. However, the appeal site itself includes numerous trees, shrubs and other soft planting. It reflects and makes a valuable contribution to the verdant character of the area. In particular, collectively the existing trees on and around the site make a significant contribution to the verdant character and appearance of the street scene.
11. On the eastern side of Oatlands Drive and opposite the adjacent apartments' development, the dwellings at Nos. 1 & 3 Oatlands Drive are grade II listed. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when assessing proposals for new development which affects the setting of a listed building, special attention shall be paid to the desirability of preserving its setting. The Framework states that when considering the impact of a development on the significance of a designated heritage asset and its setting, great weight should be given to its conservation. Any harm requires clear and convincing justification. DMP Policy DM12 has similar objectives.
12. The significance of both dwellings is derived from their form, materials and detailed design. The dwellings are set back and screened from the street scene by a combination of trees, shrubs and boundary walls and railings. In addition, the highway junction acts as a strong physical barrier between the listed buildings and the appeal site. As a consequence of these factors the proposal would not affect the setting of either of the listed buildings.
13. Walton Bridge Road links the urban fringe/rural area to the rear of the appeal site with the edge of the built-up area of Walton on Thames. Immediately to the north of the appeal site Walton Bridge Road is separated from the appeal site by an elevated area of grassland and a footpath/bridleway that provides access to Cowley Sale, including the area of woodland, Engine River and Engine River path. The shrubs and trees on either side of this path, together with the adjacent trees within the appeal site, blend in with and are seen as an integral part of Cowley Sale and in particular the adjacent wooded area. This area to the rear of the appeal site is within the Green Belt and includes land within a Landscape Character Area and a Biodiversity Opportunity Area.
14. Due to its elevated position the existing dwelling and adjacent outbuildings at 4 Oatlands Drive are prominent within Walton Bridge Road and around the controlled road junction. Conversely, the dwellings on the opposite side of Walton Bridge Road are set back from and sit at a lower level to the road, are modest in height and partially screened by mature planting within and around their front gardens.
15. In the vicinity of the road junction, the southern side of New Zealand Avenue is characterised by detached family dwellings, whilst the northern side includes a variety of single and two storey commercial buildings.
16. Together paragraphs 123 & 125 of the Framework promote the efficient use of land, taking into account the identified need for different types of housing; the availability and capacity of infrastructure; the desirability of maintaining an areas prevailing character and appearance, and the importance of well designed, attractive and healthy places. Applications that fail to make efficient use of land, taking account of other policies in the Framework, should be refused.

17. Collectively paragraphs 126, 130, 134 & 174 of the Framework state that good design is a key aspect of sustainable development. New development should be sympathetic to local character, including the surrounding built and landscape setting, whilst not preventing or discouraging appropriate innovation or change. It should be visually attractive as a result of good design and decisions should contribute to the enhancement of the natural and local environment. Development that is not well designed should be refused.
18. Collectively, CS Policies CS3 & CS17 and Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015) (DMP), state that Elmbridge is characterised by its green infrastructure, river corridors, historic assets and distinctive town and village settlements. New development is required to deliver high quality and inclusive sustainable design. It should maximise the efficient use of land whilst being responsive to the positive features of locations. New development should be based on an understanding of local character and respond to the positive features of individual locations. It should demonstrate environmental awareness, be appropriately landscaped, integrate sensitively with the locally distinctive townscape and protect the Borough's green spaces. Proposals should preserve or enhance the character of the street scene, the public realm and the area. The Elmbridge Design and Character Supplementary Planning Document (SPD), is consistent with this.
19. Having regard to these policies and advice, together with the prominent corner location of the appeal site, the proposal should respond positively to the varied street scenes and the parkland to the rear of the appeal site.
20. The proposed development includes two apartment buildings, one fronting Oatlands Drive (Block A) and the other within the existing rear gardens (Block B). Block A would fill most of the width of the plot and would sit slightly forward of the apartment building currently being constructed immediately to the southwest. Due to the alignment of the highway, Block A would sit materially closer to the pavement than the adjacent apartments development and other dwellings along this part of Oatlands Road.
21. Block A would be three/four storeys in height, with a lower ground floor. It would be similar in form and would have a similar mansard roof set in from the sides of the building. However, it would be materially wider, deeper and taller than the adjacent building currently being constructed and its fenestration would be of a larger scale.
22. As a result of these factors the proposed frontage building would appear unduly tall, bulky, cramped and out of character with the street scene, when viewed from Oatlands Drive. From Walton Bridge Road, the parkland footpath/bridleway and the controlled road junction the proposed development would be highly prominent and intrusive. It would undermine and have an uncharacteristic urbanising impact on the verdant edge of settlement appearance of this part of Walton Bridge Road and the approach to the parkland and Walton Bridge. It would fail to respect or respond positively the varied street scenes, its prominent corner position and the parkland to the rear of the appeal site.
23. Block B would be sited 20 metres to the rear of Block A. It would have a slightly smaller footprint and would be three storeys in height, with a basement level which would be used for three flats, access and storage. To the rear the upper floors would be cantilevered forward of the basement's rear elevation

- and the top floor would include a full width terrace which would overlook Engine River pond and the adjacent path.
24. The gap between the two buildings would be used for parking and turning, with pedestrian and vehicular access through the adjacent development currently under construction. Pedestrian access to Block A would also be possible from a front entrance off Oatlands Drive. A 1.8 metre high fence is proposed between the appeal site and the neighbouring development and there would be 1.6 metre high metal railings along the front and northeast boundaries of the site.
 25. Due to the site coverage of the buildings and parking area much of the existing soft planting, shrubs and trees on the site would be removed and there would be little space available for a meaningful soft landscaping scheme at ground level. The level of usable amenity space would similarly be modest. These factors highlight the cramped nature of the appeal proposal.
 26. Block B would be largely screened from Oatlands Drive, but would be prominent in views from Walton Bridge Road and the adjacent path/bridleway. I acknowledge that some of the existing planting just inside this part of the northerly boundary would be retained and that planting outside the boundary may be retained by the owner of that land. Notwithstanding this, due to its combined height, depth, mass and proximity to the side boundary the proposed rear building would be prominent in the street scene. It would have an urbanising impact on the adjacent parkland and its treed setting.
 27. From the Engine River path the rear apartment buildings on the adjacent site are clearly visible and do detract from the rural character of the path and its setting. However, these buildings are contained by the mature planting on either side, which provide good screening and help soften their appearance. Block B, together with the associated loss of trees and soft planting would further expose the approved buildings and collectively the three buildings would be visually hard and dominant. They would have an uncharacteristic and urbanising impact which would materially detract from the rural character and appearance of Engine River pond, Engine River path and Cowey Sale. The use of the proposed rear terrace would exacerbate the developments urbanising impact for users of the path.
 28. Overall, the proposal would cause significant and unacceptable harm to the character and appearance of the street scene and its treed parkland setting. In view of the nature and extent of this harm it is not a matter that could be adequately dealt with by the imposition of conditions.
 29. Regarding the trees to be retained, the updated Tree Protection Plan shows that Block B and the proposed parking and turning area would fall partially within and/or would be located close to the rpa's of a number of trees identified as being retained. This includes Trees T9 & T15 which are Ash trees that are showing signs of Ash dieback and T10, a Horse Chestnut tree which the appellant advises is not in good health. These three trees are the subject of Tree Preservation Order Ref: EL:12/25. Other trees located close to or within the footprint of Block B and/or the parking area include T12, T13 & T14.
 30. Whilst none of these trees are outstanding specimens in their own right, collectively their form, height and prominence make a significant and positive contribution to the visual amenity of the area. This includes the immediate and

- wider street scene and the setting to Cowley Sale, Engine River, Engine River pond, the adjacent footpaths/bridleway and the river Thames.
31. Having regard to the number of trees and shrubs that would be removed as part of the proposal, the prominence and importance of the retained trees to the amenity of the locality would be increased. There is disagreement between the Council and the appellant concerning their condition and longevity. Notwithstanding this, their importance to the character and appearance of the area highlights the benefits of ensuring that they would be protected both during and after the construction of the proposed development.
 32. DMP Policy DM6 deals with landscape and trees. It states that proposals should not result in the loss of, or damage to trees and hedgerows that are capable of making a significant contribution to the character or amenity of the area. That is other than in exceptional circumstances where the benefits would outweigh the loss. Also, that trees should be adequately protected during the construction period.
 33. British Standard BS 5837:2012 – Trees in relation to design, demolition and construction – Recommendations, advises that building within rpa's should be avoided unless there is an overriding justification for construction within them. Where development is undertaken within a rpa it should be demonstrated that the tree can remain viable and that the area lost due to encroachment can be compensated for. Mitigation measures to improve the soil environment used by the tree for growth should be identified. It also advises that trees with health issues are more susceptible to changes to ground conditions and physical works to them.
 34. Not only would the rpa's of some of the trees referred to above fall within the footprint of Block B and the parking area, they would fall partially outside the proposed tree protection fencing and within the construction area, where ground protection would be laid. Whilst the rear part of the site would be subject to cut and fill no finished site levels have been provided other than the rear building line of Block B which is shown as being at a consistent level of 11.500 metres. Without such information and appropriate mitigation, I am concerned that the trees referred to above could be adversely affected by the proposal, leading to their decline and potentially their removal. This would result in further harm to the character and appearance of the appeal site and its setting.
 35. BS 5837:2012 goes on to advise that a realistic assessment of the probable impact of any proposed development on trees and vice versa should take into account the condition of the trees with due regard to their future growth and maintenance requirements. Also, that shading of buildings by trees can be a problem particularly where there are rooms which require natural light.
 36. The habitable rooms in the proposed basement apartments in Block B would be totally reliant on their north-westerly facing windows and patio doors for outlook, daylight and sunlight. These flats sit at a low level on the site and the upper floor apartments are cantilevered forward of them. The upper floor apartments would be primarily reliant on the north-westerly facing windows and doors. Tree T15 tree would be sited a short distance to the front of some of these apartments, where due to its combined proximity, height and canopy spread it would dominate the outlook from some of the apartments. It would also result in a material loss of daylight and evening sunlight, particularly

during the summer months when the tree is in leaf. The proximity of T9, T10 & T11 to Block B would add to the sense of enclosure within the rear garden environment and result in some loss of outlook and daylight from the apartments at the northern end of Block B.

37. For these reasons the occupiers of the proposed Block B could well apply pressure to have T15, T9 and T10 removed. Their loss would detract from the treed and verdant character and appearance of the area, the green infrastructure network and the associated ability to address climate change, air pollution and carbon capture.
38. The appellant has stated that T9, T10 & T15 are being retained as the tree cover on the site is valued, although they will be lost in future years due to their failing health. To address this new tree planting is proposed. Even with the retention of these trees, the new tree planting shown on the Landscape masterplan would fail to offset the harm to the treed and verdant character and appearance of the locality. Given the intensive nature of the proposal there would be minimal space available for further tree planting that would be sufficiently distant from the proposed buildings to enable them to grow and mature without affecting the living conditions of the occupiers of the proposed apartments. This adds to my concerns regarding the cramped appearance of the proposal and the harmful effect it would have on its surroundings.
39. For these reasons I conclude on the first main issue that the proposal would unacceptably harm the character and appearance of the street scene and the area. In this respect the proposal would conflict with CS Policies CS3, CS14, CS15 & CS17, DMP Policies DM1, DM2 & DM6, the SPD and paragraphs 130 and 174 of the Framework.

Living conditions

40. Block A would have narrow terraces along the sides of the buildings at third floor level and rear facing balconies at ground, first and second floor levels. Block B would have narrow terraces along the sides and rear of the building at third floor level.
41. Amongst other things DMP Policies DM2 and DM5 seek to protect the living conditions of the occupiers of adjoining buildings. This is particularly important when considering raised terraces and roof gardens. Paragraph 130 f) of the Framework seeks a good standard of amenity for existing and future users. The Council has also referred to the Elmbridge Design and character Supplementary Planning Document 2012 (Home Extensions Companion Guide) (SPDHE). Whilst directed at house extensions, it advises that raised terraces and balconies can result in privacy concerns unless well screened. This advice can be equally applicable to new apartment blocks in residential areas.
42. The proposed terraces are all narrow. Thus, provided the terrace area around the mansard roof of Block B was allocated to the flats immediately adjacent to them, the terraces would not have the capacity to comfortably accommodate large gatherings. It is noted that other apartments within the proposed and approved buildings have large living room doors with Juliet windows on the upper floors. Also, the terraces are sited a considerable distance from the dwellings on the northern side of Walton Bridge Road. The proposed balconies would be modest in size and would be located 20 metres from the front elevation of Block B. As a result of these factors the use of the proposed

terraces and balconies would be unlikely to have a materially adverse impact on the living conditions of local residents, due to noise and disturbance, or result in a material loss of privacy for the occupiers of Block B.

43. The proposed balconies/terraces do not include any privacy screens within or around them. Due to their proximity and juxtaposition, it would be possible to look into the upper floor windows of the adjacent apartment blocks currently being constructed. In reaching this conclusion I have taken into account both the relative heights of the buildings and the green roof to the front of the proposed terrace on block A. This loss of privacy could be satisfactorily addressed by the introduction of privacy screens, which is a matter that could be dealt with through the imposition of conditions. Such screens would require careful design and siting to ensure they respected and did not add to the perceived bulk of the buildings.
44. I note that an application for the introduction of roof terraces on the adjacent apartments was refused. Whilst no details for that scheme have been provided, the setting of the two developments differ. The adjacent development is flanked by low density and modest height detached houses occupying mature landscaped gardens. Conversely the proposed buildings would be located alongside a large and *intensive* apartment development and a busy distributor road.
45. For these reasons I conclude on the third main issue that the proposed terraces and balconies would not have a materially harmful impact on the living conditions of nearby residents due to noise and privacy. Accordingly, in this respect the proposal would comply with DMP Policies DM2 & DM5, the SPDHE and paragraph 130 f) of the Framework.

Affordable housing

46. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework¹ states that Plans should set out the levels and types of affordable housing provision required and that such policies should specify the type and not undermine the deliverability of the Plan. In relation to contributions planning applications should comply with up-to-date policies. The weight to be given to viability assessments is a matter for the decision maker, having regard to all the circumstances in the case.
47. The Elmbridge Development Contributions Supplementary Planning Document 2021 (DC-SPD) sets out the identified need for affordable houses and seeks to secure the achievement of the requirements set out in CS Policy CS21 where possible. Paragraph 1.2 states that the DC-SPD provides greater detail on the practical application of the relevant policies and paragraph 4.70 states that all developments that do not provide the required level of affordable housing contribution at application stage will be subject to a "Late Review Mechanism" (LRM). This aims to secure the maximum public benefit over the period of the development and assists in addressing economic uncertainties. For this and as encouraged in the National Planning Practice Guidance (PPG)² a standard Unilateral Undertaking template is set out at the end of the DC-SPD.

¹ Paragraphs 34, 58 and 63

² 016 Reference ID:23b-016-20190901

48. The Council agrees that the appellant's viability assessment demonstrates that the development cannot viably make a contribution towards affordable housing. This follows a review of the appellant's viability assessment by the Council's independent assessors, who advised the Council that the scheme could not make any affordable housing contribution and recommended that the Council incorporate a LRM into the S106 agreement.
49. Although the appellant has submitted a unilateral undertaking (UU) relating to the provision of affordable housing, they consider that it is unnecessary. The Council's position is that a 'UU' is necessary and that the 'UU' submitted by the appellant does not accord with their DC-SPD.
50. CS Policy CS21 requires the provision of 40% affordable homes on sites of 15 or more dwellings where viable. The appellant points out that this policy was informed by the Elmbridge CIL Viability Study produced in 2011 and that their viability assessment accords with it. Paragraph 65 of the Framework requires the provision of at least 10% affordable homes on sites where more than 10 homes are provided.
51. CS Policy CS21 does not set out the nature of any viability testing, or the precise nature of the affordable housing required. However, the supporting text to Policy CS21 states that an Affordable Housing Supplementary Planning Document (SPD) will be produced for this policy and that until the SPD is produced the information set out in the CS provides guidance on policy implementation.
52. The Developer Contributions Supplementary Planning Document was published in 2012. This was replaced by the Development Contributions Supplementary Planning Document, which was adopted in 2020 and the current DC-SPD was adopted in 2021.
53. The Unilateral Undertaking (UU) submitted by the appellant varies from the standard formula used by the Council. It introduces clause 'G' which allows a deficit of £470,000 to be collected by the developer.
54. As stated in the PPG³, the purpose of review mechanisms is to strengthen a local authority's ability to seek compliance with relevant policies over the lifetime of a project. They are not a tool to protect a return to the developer. Insufficient evidence has been submitted to demonstrate that the terms set out in clause G are needed to secure funding for the development or that without it the developer would fail to achieve their stated target profit.
55. Accordingly, I find that the submitted 'UU' would unjustifiably and unreasonably affect the Council's ability to seek compliance with CS Policy CS21 over the lifetime of the project.
56. The appellant and the Council have referred to appeal decisions which either reject or support the use of LRM's and the content of associated 'UU's'. I also note that in relation to the appeal decision in Esher the Inspector found that a 'UU' with a similar clause 'G' would not be reasonably related in scale or kind to the proposal.

³ 009 Reference ID: 10-009-20190509

57. For these reasons I conclude on the third main issue that the proposal would fail to make adequate provision for affordable housing and would therefore conflict with CS Policy CS21 and the DC-SPD.

Flood Risk

58. The western part of the appeal site lies within Flood Zones (FZ) 2 and 3 and within the outer flood areas relating to both Queen Mary Reservoir and Knight Reservoir. The appellant's Flood Risk Assessment also states that the appeal site may have been affected by flooding in the past.
59. Together CS Policy CS26 and paragraphs 159 & 161 of the Framework state that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. A sequential test should be applied when any part of the site is at risk of flooding. Where development is necessary in such areas, the development should be made safe for its lifetime, without increasing the risk of flooding elsewhere. The objectives of the Elmbridge Borough Council Flood Risk Supplementary Planning Document 2016 (SPD-FR) are consistent with this.
60. Paragraphs 023, 027 & 028 of the PPG advise that even where flood risk assessments show the development can be made safe throughout its lifetime without increasing flood risk elsewhere, the sequential test still needs to be satisfied. The planning authority needs to determine the appropriate area of search, based on development type and relevant spatial policies. It should identify whether other sites of lower flood risk exist within a reasonable search area and there is no requirement for other sites to be within the ownership or control of the applicant. Decision makers need to consider whether the sequential test is passed, with reference to the information it holds on land availability.
61. It is noted that that the locality benefits from one flood risk management scheme and that another is proposed. In undertaking a sequential test paragraph 024 of the PPG advises that initially existing flood risk defences should be ignored, as the long-term funding, maintenance and renewal of this infrastructure is uncertain. Having considered the spatial variation of risk within medium and high-risk areas to identify the lowest risk sites, it may then be appropriate to consider the role of flood risk management infrastructure.
61. It is acknowledged that flood risk and sequential testing may not have been addressed in relation to the development on the adjacent site, which was allowed on appeal. That appeal took place prior to the publication of the current 2021 Framework and the advice in the PPG which was updated in 2022. Also, it is unclear what evidence was before the Inspector when the appeal was determined. Irrespective of this, given the importance placed on flood risk by the Framework, it is not a matter that can be set aside, even if it was not cited as a recommended reason for refusal by the council in relation to both the current appeal and the appeal relating to the adjacent site.
62. From the evidence submitted it appears that the appellant did not ask the Council to identify a search area within which to undertake a sequential test

and their submitted sequential test was not in line with the approach of the Framework. Although the Environment Agency restricted their comments to the requirements for a site-specific flood risk assessment, they advised the Council that a sequential test should be undertaken. The Council did not request one and in February 2023 the appellant wrote to the council stating that an acceptable sequential test was supplied with the original FRA.

63. In relation to this appeal, the Council has confirmed that a reasonable search area has not been discussed with the appellant and the appellant has not provided details of alternative sites that fall fully within FZ1. As such the Council is unable to confirm that the sequential test has been satisfied. The Council has also confirmed that the site is not identified within the Land Availability Assessment for the Local Plan.
64. The appellant argues that a sequential approach has been taken in relation to the appeal site itself, by locating the built development within FZ1. This approach originally appears to have been accepted by the Council. However, paragraph 023 of the PPG clearly states that even where flood risk assessments show the development can be made safe throughout its lifetime without increasing flood risk elsewhere, the sequential test still needs to be satisfied. Furthermore, flood risk mapping is not an exact science and it may be that the extent of flood risk is greater than that shown.
65. In relation to the proposal, the Climate Change AEP flood zones shown on Drawing No. 21147/FRA/D2 project up to and/or close to the living room doors and bedroom windows of the basement level apartments in Block B. The upper floor apartments in Block B would be cantilevered over the Climate Change AEP flood zones. Also, without details of the proposed finished ground levels it is unclear whether any land would be raised within the 1% annual exceedance probability plus 35% climate change extent.
66. Ultimately the appeal site presents a greater risk of flooding than sites that are in FZ1 and outside areas at risk of other forms of flooding. Paragraph 161 of the Framework, states that development should not be permitted if there are reasonably available sites in areas with a lower risk of flooding and this should be demonstrated through the application of the sequential approach set out in the Framework. The location of the most vulnerable parts of the development within FZ1 is a matter that could form part of an exception test.
67. Regarding exception tests, the PPG clearly states that this should only be applied where the sequential test has been passed and there are no reasonably available, lower risk sites, suitable for the proposed development. I have found that the sequential test does not satisfy the requirements set out in the Framework and the PPG. As such the need for the exception test, if necessary, has not been demonstrated.
68. For these reasons, on the basis of the evidence submitted, I conclude on the fourth main issue that the proposed development would result in inappropriate development in an area at high risk of flooding, resulting in unjustified flood risk to people and property. Accordingly, in this respect the proposal would conflict with CS Policies CS1, CS3 & CS26, the objectives of the SPD-FR, paragraphs 159, 160, 161, 162, 163, 164, and 166 of the Framework and Paragraphs 023, 024, 027 & 028 of the PPG.

Housing contribution

69. The appellant has stated that the current housing need in the borough is based on the standard methodology set out in the Framework and equates to 623 dwellings per year. This is well in excess of the figure set out in CS Policy CS2. Also, Elmbridge has failed to deliver sufficient homes for a number of years, when assessed against the Housing Delivery Test.
70. In 2020 the Council prepared an Action Plan which states that small sites must play an increased role in meeting the borough's housing need. It will be crucial that new development makes the most efficient use of land due to the need for homes and constrained housing supply.
71. Collectively and amongst other things paragraphs 60, 62, 119, 123, 124 & 130(e) of the Framework and CS policies CS17 & CS19, seek to significantly boost the supply of homes. They encourage making full and efficient use of sites to meet identified housing needs; the desirability of maintaining an areas prevailing character and appearance; and the importance of well designed, attractive and healthy places. Paragraph 125 of the Framework states that applications that fail to make efficient use of land, taking account of other policies in the Framework, should be refused.
72. Although the density of the proposal exceeds the density target set out in CS Policy CS17, in itself this would not weigh against the scheme. The Council's Development Management Advice Note 2018, advises that the Council does not accept that smaller units and higher densities detrimentally affect the character of the area. Schemes need to be innovative and utilise higher densities while respecting local character. I also note that the housing development currently being constructed on the adjoining site materially exceeds the density target set out in the CS.
73. Whilst the appellant and the Council do not agree on the current shortfall in the five-year supply of deliverable housing sites, the Housing Delivery Test results published in January 2022 show a score of 70%. The proposal would deliver 25 new homes of various sizes which comply with the identified housing size mix. This would make a valuable contribution to the supply of housing within Elmbridge and is a benefit to which I attach considerable weight.
74. Notwithstanding this, having regard to my conclusions on the first, third and fourth main issues the proposal would cause significant harm to the character and appearance of the locality. It would be inappropriately located in relation to flood risk and would fail to make adequate provision for affordable housing. Accordingly, it would conflict with CS Policies CS1, CS14, CS15, CS17, CS19 & CS21, DMP Policies DM1, DM2, DM5 & DM6 and paragraphs 119, 123, 124 & 125, 159, 160, 161, 163, 164, 166, 174 & 130 of the Framework.

Other matters

75. As stated by the appellant, the site is situated in an accessible location. The proposed apartments would be energy efficient, would use renewable energy sources and the scheme would include electric charging points. These are benefits to which I collectively attribute a moderate amount of weight.
76. The proposed development would provide direct and indirect employment during its construction and the residents of the proposed development would

support local community facilities and businesses. As a benefit to the local economy, I attribute this a modest amount of weight.

77. I note the traffic, highway and parking concerns raised by local residents. However, the highway authority has not raised any objections and I have no reason to come to a different conclusion. Subject to the imposition of the highway, parking and cycle storage conditions suggested by the council, the proposal would comply with the highway requirements set out in DMP Policy DM7.
78. The proposed use of the access approved in relation to the adjacent apartments scheme would result in additional vehicular movements in close proximity to the dwelling at 16 Oatlands Drive (No.16). Oatlands Drive is relatively busy in the approach to the controlled road junction and the proposed access is already approved for use in relation to the adjacent apartments' development. As a consequence, although the proposal would add to the level of traffic noise and fumes in the vicinity of No.16, it would not amount to a reason for refusing the proposal.
79. Concerns have been raised regarding the ability to achieve the 10.85% biodiversity net gains set out in the appellants Ecological Report. Having regard to the content of that report I am satisfied that this level of biodiversity net gain could be secured through the imposition of planning conditions. As a benefit of the scheme, I attribute a modest amount of weight to this factor.
80. Conversely, whilst it would not amount to a reason for refusal, collectively the proposal and the approved development on the adjoining site would have the potential to have a negative impact on the adjacent Biodiversity Opportunity Area (BIO). This is due to the proximity of the rear buildings to the BIO and Engine River pond and associated loss of sunlight, light pollution and loss of vegetation.
81. Matters relating to bin/refuse storage areas could be adequately dealt with by condition and whilst concerns have been raised, no external lift infrastructure is shown on the submitted drawings.
82. Whilst I note that the proximity of the Green Belt boundary to the rear of the appeal site, no policies have been brought to my attention which relate to its setting.

Planning Balance and Conclusion

83. My conclusion on the first main issue weighs heavily against the proposal and I give substantial weight to it. This is due to the significant harm the proposal would cause to the character and appearance of the street scene and the area and the associated conflict with the stated policies.
84. The proposal would take place in an area at high risk of flooding, resulting in unjustified flood risk to people and property. The appellant has failed to demonstrate that there are no reasonably available sites appropriate for the proposed development in areas at lower risk of flooding, contrary to the sequential testing set out in section 14 of the Framework. This is a concern to which I give substantial weight.

85. The submitted viability report indicates that the proposed scheme would not be viable if it made provision for affordable housing. The LRM requested by the council would ensure that an appropriate contribution towards the provision of affordable housing could be secured should circumstances change. The 'UU' provided by the appellant would provide a lesser contribution and so could fail to meet the requirements of CS Policy CS21. Whilst this is a matter that weighs against the proposal, the outcome of any LRM is uncertain. Consequently, I give this factor a moderate amount of weight.
86. In relation to the second main issue the absence of harm to the living conditions of local residents is a neutral factor which attracts no weight.
87. The proposal would deliver 25 new homes of various sizes which comply with the identified housing size mix. This is a sizable development and as the council does not have a five year supply of deliverable housing sites I give considerable weight to this factor.
88. As indicated above, collectively I give a moderate amount of weight to the accessible location of the appeal site and the energy efficient nature of the development and the use of renewable energy. I also give a modest amount of weight to the short and long term economic benefits of the proposal.
89. Finally, the appellant and the Council have confirmed that the borough does not have a deliverable supply of sites to provide a minimum five-years supply of housing sites. Therefore, the development plan policies that are most important for determining the appeal are out-of-date and the tilted balance as set out in paragraph 11d of the Framework is engaged. However, as stated in paragraph 11 d) and d)i of the Framework, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 clarifies that such policies include those relating to areas at risk of flooding.
90. Accordingly, having regard to my conclusion on the fourth main issue, the tilted balance set out in paragraph 11 of the Framework is not applicable to the appeal proposal.
91. Even if the presumption under Paragraph 1 d)ii of the Framework applied here, taking all of the factors above into account, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. The proposal would therefore not represent a sustainable form of development when assessed against the Framework read as a whole. In these circumstances, there are no material considerations to justify making a decision other than in accordance with the development plan.
92. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Elizabeth Lawrence

INSPECTOR