



Appeal Decision

Site visit made on 13 September 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2023

Appeal Ref: APP/K3605/W/23/3315617

90 Fairmile Lane, Cobham, Surrey KT11 2DA

- 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 Matthew Estwick of FGM Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2022/2665, dated 25 August 2022, was refused by notice dated 24 January 2023.
 - The development proposed is erection of a five-bedroom detached house with rooms in the roof and creation of new access, and a three-bedroom detached bungalow with rooms in the roof, together with on-site parking and hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal process it has been brought to my attention that planning permission¹ for a revised proposal has been granted at the appeal site. However, from the evidence I have before me, it is apparent that the approved scheme differs from the appeal proposal in that the approved dwelling is positioned further from the protected Oak tree within the rear garden of No. 4 Ashcroft Park.
3. On my site visit, ground works were underway on the appeal site and the existing outbuilding and double garage had been removed.

Main Issues

4. The main issues are:
 - Whether the proposal would provide acceptable living conditions for future occupants, with particular regard to daylight and sunlight;
 - The effect of the proposal on the character and appearance of the area, with particular regard to protected trees; and
 - The effect of the proposal on the living conditions of the occupants of No. 92 Fairmile Lane, with particular regard to privacy.

¹ Planning application references: 2023/0292 and 0223/0643.

Reasons

Living conditions for future occupants

5. Although there are no protected trees on the appeal site, the parties agree that there are three protected trees located close to the site. These include an Oak tree in the neighbouring garden of No. 4 Ashcroft Park and two Cedar trees in the neighbouring gardens of No. 10 Ashcroft Park and No. 88 Fairmile Lane.
6. The protected Oak tree located in the garden of No. 4 Ashcroft Park would be positioned to the north-east of the proposed new dwelling on plot 2 and some of this tree's canopy would overhang the proposed garden space for this property. Along this boundary there is also a group of Leyland Cypress trees and a group of Apple trees. Together the trees are relatively tall, dense, and imposing.
7. As part of the appeal proposal, the apple trees would be removed. The remaining trees along this boundary, including the protected Oak, would be positioned to the north of the proposed dwelling and are therefore unlikely to significantly affect the overall amount of sunlight and daylight to the proposed dwelling itself.
8. In terms of the proposed garden for plot 2, the Addendum Daylight/Sunlight Report² (ADSR) demonstrates it would obtain at least two hours of sunlight to 84% of its area. This is more than 50% of the garden area, which the ADSR has used as a guide to demonstrate that acceptable sunlight would be obtained throughout the year. The Council have not challenged this as an indicator. Appendix 1 of the ADSR shows the 84% of the garden area to include most of the primary garden space to the north-east of the property as well as some of the secondary garden space to the north-west.
9. I saw on site that the canopies of the two protected Cedar trees in the gardens of No. 10 Ashcroft Park and No. 88 Fairmile Lane are high and their branches and leaves relatively spread out, meaning they are not overly dense. Although they overhang the existing access road, they did not appear to overhang the appeal site itself. Given this, while these two trees are some of the tallest in the immediate area, they are not overbearing.
10. The ADSR explains that the two Cedars have quite visible gaps between the branches and leaves, such that it would be reasonable to assume 50% of the differential sunlight would permeate through into the garden area to plot 2. From the evidence before me and my observations on site, I can find no reason to disagree. In any case, the ADSR shows that even if these Cedar trees are assessed as causing full obstruction, the garden area would obtain at least two hours of sunlight to 56% of its area, indicating that acceptable sunlight would be obtained throughout the year. Appendix 1 of the ADSR shows the 56% of the garden area to include approximately half the primary garden space to the north-east of the property as well as some of the secondary garden space to the north-west.
11. Nevertheless, while the ADSR shows that the proposed garden space for plot 2 would receive an acceptable level of sunlight, ariel photos included in the Officer Report show that the part of the site where the proposed dwelling for plot 2 would be located would be more overshadowed by adjacent trees than

² Prepared for 90 Fairmile Lane Cobham KT11 2DA by Daylight Sunlight Consulting Ltd, dated 11 January 2023.

the proposed garden space. I note that these photos are relatively old. However, there is no substantive evidence before me to suggest a change in circumstances. The windows serving the principal living areas for the proposed dwelling on plot 2 are on the northern elevations and the south-east elevation most affected by the shading of the adjacent trees, including the protected Cedars. Given this, in the absence of any evidence demonstrating that the proposed dwelling for plot 2 would receive suitable levels of daylight and sunlight, I cannot be certain that the proposal would provide acceptable living conditions for future occupants.

12. Overall, while the garden of the proposed dwelling on plot 2 would enjoy suitable levels of daylight and sunlight throughout the year, there is insufficient information to demonstrate that the proposed dwelling would. Accordingly, it has not been demonstrated that the proposal would provide acceptable living conditions for future occupants, with particular regard to daylight and sunlight. The proposal would conflict with policies DM2 and DM10 of the Elmbridge Local Plan Development Management Plan (2015) (Local Plan) in this regard. These seek to protect the living conditions of potential occupiers and users by ensuring development proposals are designed to, among other things, provide adequate daylight and sunlight.

Character and Appearance

13. There are a significant number of mature, large trees along Fairmile Lane, which flank either side of the highway, as well as being set further back from it in front and rear gardens. Together with soft boundary treatments in the form of hedges and sections of grass verge, the area has a very green and verdant character.
14. The protected Oak Tree and both the protected Cedars can be seen from Fairmile Lane above the existing bungalow on the site. All three trees are of a good size and height, and they add positively to the verdant character of the surrounding area. The Arboricultural Method Statement³ (AMS) identifies the trees as mature and middle aged respectively and in an average and moderate condition. I have no substantive evidence before me to suggest that the trees would be unlikely to survive for many years.
15. Once in place, the proposed two-storey house with rooms in the roof on plot 1 would obstruct views of these trees from Fairmile Lane and it is unlikely that the protected Oak tree would be visible at all at first. Nonetheless, it would be visible, as would the protected Cedar trees, from the access lane and neighbouring properties. Thus, all three trees would continue to make a positive contribution to the visual amenity of the area.
16. The AMS identifies that as a result of the proposal there would be an incursion to the canopy of the protected Oak tree by the proposed dwelling on plot 2 and an incursion to its Root Protection Area (RPA) by a proposed shed. To address the incursion with the canopy, it is recommended that the crown of the west and south-west canopy is lifted to 9 metres above ground level. The AMS records the existing crown clearance of the protected Oak tree to be 5 metres, thus these works necessarily require a relatively significant lift, which would change the form of the tree.

³ Prepared by Arbtech for 90 Fairmile Lane, Cobham, KT11 2DA, dated 10 December 2022

17. Nevertheless, I saw on site that the crown of the protected Oak tree is closely surrounded by other trees. Given this, and despite the loss of the Apple trees, the changes to the form of the tree would be less noticeable than if the tree stood alone and would not result in appreciable harm to the character and appearance or visual amenity of the immediate area.
18. The submitted plans show the proposed shed/bin and cycle store that would be located within the RPA of the protected Oak tree to be free-standing without foundations. It would be placed on Geocell panels to help protect the tree's root structure. I am satisfied that, provided the advice set out in the AMS was followed, the placement of the proposed shed would not affect the viability of the tree.
19. Notwithstanding this, BS 5837:2012 Trees in relation to design, demolition, and construction – Recommendations (BS 5837) explains that during the design process, to maximise the probability of successful tree retention certain factors should be taken into account, including direct damage, the future pressure of removal and seasonal nuisance.
20. In this case, although the proposal has been amended so that it would be further from the RPA, the proposed dwelling on plot 2 would still be positioned close to the protected Oak tree. Even with the crown of the protected Oak tree raised to 9 metres, the canopy would overhang a fair amount of the proposed rear garden space and be close to the proposed dwelling. This relationship would likely increase pressure for future pruning of the tree or even removal of the tree altogether. For example, due to leaf litter and likely apprehension of the occupants that significant damage to the proposed dwelling would result if the tree was compromised in any way. Also, likely apprehension of the occupants regarding their health if in the future the tree was affected by Oak Processionary Moth.
21. Given this, despite the tree being protected and on third party land, there is a tangible risk that the proposal would result in future pressure to extensively prune or remove the tree. This would significantly harm the character and appearance and visual amenity of the immediate area, albeit this harm would be localised.
22. I note that the appeal site benefits from permission to extend the existing garage⁴. However, the garage has been removed and therefore the permission can no longer be implemented. I therefore afford this very limited weight in my decision. Furthermore, the extension of the garage is a significantly different proposal to the appeal proposal both in terms of its scale, the associated use of the site and thus, subsequently, the amount of future pressure to remove the protected tree.
23. The appellant refers to an approved planning application⁵ at No. 70 Fairmile Lane, where a new dwelling touches the RPA of two trees, including a protected tree. However, I do not have the full details of the proposal or details of the trees before me. I am therefore unable to assess whether the relationship between the proposal and the trees would be similar to that of the appeal proposal. This example is therefore not determinative, and I afford it limited

⁴ Planning application reference: 2021/3597

⁵ Planning application reference: 2020/2293

weight in my decision. In any event, I have determined the appeal on its own planning merits.

24. Accordingly, for the reasons above, it has not been demonstrated that the proposal would not result in a detrimental impact upon the long-term viability of the protected Oak tree and subsequently localised harm to the character and appearance of the immediate area. It would therefore conflict with policies DM2, DM6 and DM10 of the Local Plan in this regard. These seek to ensure all new development achieves a high-quality design and preserves or enhances the character of the area, including by the retention of trees that make a significant contribution to the character or amenity of the area. It would also be contrary to the similar provisions of the National Planning Policy Framework (the Framework).

Living conditions of the occupants of 92 Fairmile Lane

25. The rear elevation of the proposed dwelling on Plot 2 would be positioned relatively close to the boundary with No. 92 Fairmile Lane and would face directly towards the side elevation of the house. Nonetheless, the three first floor windows would be velux windows and, given the height of the Leyland Cypress trees that form the boundary, views would be predominantly of the dense upper foliage of the trees and the sky. Moreover, views of the velux windows from No. 92 Fairmile Lane, would be largely obstructed by the trees and therefore it is unlikely that the proposal would result in the perception of overlooking from these windows. While there could be the perception of overlooking if the boundary trees were ever removed, they are located within the garden of No.92 Fairmile Lane and in my view are likely to remain in a similar form in the interests of privacy.
26. Furthermore, the submitted plans propose a new hedge, which would bolster the existing boundary and, in the event the appeal was allowed, this could be secured by condition as part of a soft landscaping scheme. A condition could also be imposed, if needed, requiring the velux windows to be obscure glazed and non-opening below 1.7 metres. Subsequently, the perception of overlooking would be limited and would not result in any appreciable harm to the living conditions of the occupants of No. 92 Fairmile Lane.
27. Accordingly, for the reasons above, the proposal would not result in unacceptable harm to the living conditions of the occupants of No. 92 by virtue of the perception of overlooking from the proposed velux windows. It would therefore accord with policy DM2 of the Local Plan, which seeks to ensure that all development proposals are designed to protect the amenity of adjoining occupiers by, among other things, providing adequate privacy.
28. The Council's Decision Notice also refers to the Elmbridge Design and Character Supplementary Planning Document Companion Guide: Home Extensions (2012) (SPD). However, given that the proposal is not for a home extension, this SPD is not applicable.

Other Matters

29. The proposal would provide one additional dwelling in an accessible location close to public transport and facilities, which would contribute towards the Borough's housing supply. The Council cannot demonstrate a five-year supply of deliverable housing sites. From the evidence before me, the current five-

year housing land supply figure is 4.36 years, which shows there to be a moderate shortfall in supply. Housing Delivery Test data also shows a continued period of under delivery, although the shortfall in delivery has recently improved.

30. Given this, whether or not some or all of the site is previously developed land, it is considered that delivery of housing in this location is beneficial and not contrary to the Framework. In view of the housing land supply position, the provision of any additional housing would carry significant weight, and I acknowledge, the additional dwelling, in this case, would be a smaller 2-bedroom home supported by the Council's Development Management Advice Note 2: Optimising Development Land (2018). Nevertheless, the provision of one additional dwelling would only make a modest contribution to the Borough's housing supply.
31. The proposal would also have modest social and economic benefits resulting from the construction of the new dwellings and their subsequent occupation, as future occupants would be likely to contribute to the viability of local services and facilities.
32. The appellant has referred to several examples of similar schemes to the proposal in the surrounding area. While these schemes have similarities to the appeal proposal, I do not have the full details of these schemes before me, and it appears that the merits and circumstances of these schemes are different. Each scheme needs to be considered on its own merits and circumstances and the examples provided do not lead me to allowing the appeal, given the harm I have identified.

Planning Balance and Conclusion

33. Given the shortfall in housing supply and delivery, paragraph 11d) falls to be considered. In this case permission should be withheld only where the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits. In that context I have reasoned that the proposal would be acceptable in terms of its effect on the living conditions of the occupants of 92 Fairmile Lane with regards to the perception of overlooking from the proposed velux windows.
34. However, this absence of harm neither outweighs nor addresses the harm I have identified to the living conditions of future occupants with regards to sunlight and daylight and the harm to the character and appearance of the area arising from the potential extensive pruning or loss of the protected Oak tree. In this regard the proposal would conflict with Policies DM2, DM6 and DM10 of the Local Plan, and overall, would conflict with the development plan read as a whole.
35. Policies DM2, DM6 and DM10 of the Local Plan are broadly consistent with the aims of the Framework to create high quality, beautiful and sustainable buildings and places, by ensuring that developments, among other things, are sympathetic to local character and history, including the surrounding built environment and landscape setting, and create places with a high standard of amenity for existing and future users.
36. Therefore, while the Framework seeks to significantly boost the supply of homes and recognises the important contribution that small sites can make to

meeting the housing requirement of an area, the adverse impacts of the proposal would outweigh the benefits I have identified above. The proposal would not, therefore, benefit from the presumption in favour of sustainable development.

37. For the reasons above, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

Hannah Guest

INSPECTOR