



## Appeal Decision

Site visit made on 12 October 2023

**by K Savage BA(Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 November 2023**

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**Appeal Ref: APP/K3605/W/22/3312669**

**2 New Zealand Avenue, Walton on Thames, Surrey KT12 1PU**

- 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 Mrs Rebecca Scorer against the decision of Elmbridge Borough Council.
  - The application Ref 2022/0344, dated 18 March 2022, was refused by notice dated 20 September 2022.
  - The development proposed is a two storey side extension, first floor rear extension, loft conversion to form two flats.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - The design of the proposal and its effect on the character and appearance of the area;
  - The effect on neighbours' living conditions;
  - Whether the proposal would provide a suitable standard of accommodation;
  - Whether the proposal would make adequate provision for affordable housing;
  - The effect of the proposal on trees.

### Reasons

#### *Design, Character and Appearance*

3. The appeal site is located at the corner of New Zealand Avenue and Oatlands Drive, both busy A roads just outside the centre of Walton-on-Thames. The site contains a detached building, originally a dwelling but more recently used as offices and now containing three self-contained flats. The proposal seeks various extensions to the side, rear and roof of the building which would facilitate the creation of two additional flats.
4. The building forms part of a linear pattern of generously sized, detached dwellings fronting New Zealand Avenue, and its position at the end of the street and on the corner of a large road junction renders it prominent in the street scene with views in particular from the eastern approach along Bridge Street and various points around the open intersection.

5. Nos 4, 6 and 8 immediately next to the appeal site along New Zealand Avenue are individual in design, but share a general consistency in terms of height, massing and inclusion of mock-Tudor features. Nos 10-16 are consistent in design with hipped roofs and striking white rendered facades, but maintain the general scale of neighbouring dwellings. Where dwellings have been extended, this appears to mainly be to the rear at lower levels, with the notable exception of side and rear dormer windows to the roof of No 4. The appeal building has a large, single storey rear extension which spans the full width of the building and also wraps around into the side passage on the No 4 side.
6. The proposed rear extension would be built over the rear ground floor extension, adding a first and second floor level to the rear of the building, the latter in the roof space of a new rear gable. There would also be two side facing dormers on the Oatlands Drive side of the roof. On the No 4 side, a triangular dormer structure is proposed above the existing side addition which would extend to ground level, facilitating an internal staircase to the second floor. Finally, a dormer window is proposed to the existing front roof slope.
7. The proposals would introduce significant additional bulk and massing to the host building at the rear which is not present to adjoining properties and would result in a dominant, overbearing scale. Viewed from the side on Oatlands Drive, the rear of the building would be physically dominant over the front, upsetting the traditional primacy of the principal elevation. Significantly, the overall ridge height of the building would increase by around one metre, which would result in the building standing taller than adjoining dwellings on New Zealand Avenue and out of step with the prevailing scale of development.
8. Furthermore, the proposed side dormers facing Oatlands Drive would not match in depth or design, with one recessed to incorporate a high level balcony, resulting in an uncoordinated appearance. On the other side, the dormer-like addition for the staircase would be an incongruous addition spanning out beyond the eaves and merging awkwardly with an extended ground floor side element that would stand in front of and partially obscure the existing side addition and its front facing window. Perhaps most jarringly, when viewed from the front, the dormer elements to either side would not align in height, width or shape, resulting in a disjointed roofscape to the building lacking any symmetry or architectural merit. The front dormer window would sit awkwardly high on the front roof slope and would form another contributing element to a highly cluttered roofscape.
9. The proposals would result in the building changing dramatically in size and form. The substantial and ill-conceived massing to the rear and roof level would overwhelm the existing building with little regard for its original scale or design, resulting in a top heavy, dominant and incoherent building that would be widely visible in the street scene, where it would detract severely from the prevailing scale and form of development along New Zealand Avenue and would significantly harm the character and appearance of the area.
10. In reaching a view, I recognise that the dwelling at No 4 has a side dormer and large rear dormer, and smaller side and rear dormers have been added to No 10. However, neither of these examples are comparable in terms of the size, shape and cumulative scale of additions proposed. Moreover, they relate to dwellings different in shape to the appeal dwelling and therefore are additions which are not automatically capable of replication on other properties. As such,

I am not of the view that these neighbouring additions provide justification for the proposal, which on its own merits I have found unacceptable in design.

11. The appellant further points to various developments surrounding the road junction which are of larger scale than the proposed development. I saw a large development of flats on Oatlands Drive, modern office blocks at 2/3 storeys opposite the appeal site and a car dealership with large forecourt. Whilst these developments are part of the immediate built form, they are clearly separate elements of a mixed townscape not read as part of a uniform character. However, the appeal site forms part of a linear pattern of housing on this side of New Zealand Avenue and its contribution to the townscape is as part of this row. The proposal is not for complete redevelopment of the site, but for extensions which ostensibly seek to retain the existing character of the dwelling and street scene on this side. I have considered the appeal in this context and the presence of other forms of development nearby does not alter my conclusions above.
12. For these reasons, I conclude that the proposed development would cause significant harm to the character and appearance of the area, in conflict with Policy CS17 of the Elmbridge Core Strategy 2011 (the ECS) and Policy DM2 of the Elmbridge Development Management Plan 2015 (the EDMP), which together require high quality and inclusive sustainable design, which maximises the efficient use of urban land whilst responding to the positive features of individual locations, integrating sensitively with the locally distinctive townscape and based on an understanding of local character. There would also be conflict with the key aim of the National Planning Policy Framework (the Framework) to secure high quality design in all new development.

#### *Neighbours' Living Conditions*

13. The Council's concern relates to the effect of the proposed side extension on light and outlook to ground floor side facing windows to No 4 next door. The appellant points to these windows serving a kitchen and that the neighbour erected a tall boundary fence to provide privacy which is itself an impediment to light and outlook.
14. I saw on site that the existing side extension stands in front of both neighbouring windows, with the fence extending forward of the extension to the front of the site, at a height which obscures the lower half of the larger window to No 4. Nevertheless, there remains open space in front of the side extension which allows light to reach the neighbouring windows and provides the larger window at least with a glimpse of the sky.
15. The proposed side extensions on this side would add considerable height and bulk that would further enclose the space between Nos 2 and 4. The proximity of the extensions to the side windows would result in an overbearing effect that would reduce existing levels of outlook and light to the side windows. I accept that these effects would only relate to these windows, but it would nonetheless be a further drawback of the design which would detract in a small but harmful manner from the living conditions enjoyed by neighbouring occupants.
16. Therefore, the proposal would conflict with Policy DM2 of the EDMP in terms of its requirements that proposals should be designed to offer an appropriate outlook and provide adequate daylight, sunlight and privacy to protect the amenity of adjoining and potential occupiers and users. There would also be

conflict with the Framework which seeks places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

### *Standard of Accommodation*

17. To accommodate the proposed flats, an existing first floor flat would be reconfigured from a one-bedroom unit measuring 66.5m<sup>2</sup> to a two-bedroom, three-person unit measuring 51.75m<sup>2</sup>. This would fall some way short of the space standard for such a unit of 61m<sup>2</sup> as set out under the Nationally Described Space Standards<sup>1</sup> and incorporated under Policy DM10 of the EDMP. Notwithstanding that the main bedroom may meet the required 11.5m<sup>2</sup> size, the flat would have a confined layout with a notably narrow living room and a hallway providing little usable space beyond access. In addition, the main windows would face to the north-east and both the kitchen and bathroom would be set deep in the floorplan with no windows. As a result, the flat would suffer from poor levels of direct sunlight.
18. The appellant argues that other flats have been permitted below the relevant space standards, but I do not have evidence to verify this. It is also argued that there should be flexibility in applying space standards for older dwellings, in light of the contribution conversions can make to meeting housing needs. However, the space standards are applicable to all developments to ensure new housing is suitable in size and quality and it is for the developer to design a layout in which flats can meet these standards, not for a preferred number of units to dictate how large each flat is. Moreover, in this case, significant extensions are proposed and the appellant is not constrained by an existing building envelope. Therefore, I give little weight to perceived physical constraints on development when it is clear that a principal factor in the size of the units is the fact that two are proposed at first floor level where one presently exists.
19. Though not raised by the Council, the layout of the rear first floor flat exemplifies the substandard layout, due to the cluttered arrangement of the entrance and access to the living room and bedroom being gained through a galley kitchen. This adds to my overall concerns with the proposed standard of accommodation.
20. The proposed side extension housing the stairwell would stand in front of the window serving a bedroom to one of the ground floor flats. The design of the extension would result in it oversailing the window, leaving it facing toward a small void underneath. I saw on site that the window is obscurely glazed to provide privacy, hence the provision of light to this room is important to compensate for the lack of outlook. However, the proposal would severely enclose the window and reduce the level of light reaching it, which would undermine the quality of the internal space and with it the living conditions of the flat's occupants. The appellant suggests moving the window, but no plans have been put before me. Even so, the window could only be moved a small distance and I am not persuaded that this would be sufficient to overcome the harm identified.
21. For these reasons, I conclude that the proposal would fail to provide a suitable standard of accommodation for future occupants, contrary to Policies DM2 and

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<sup>1</sup> Technical housing standards – nationally described space standard (March 2015)

DM10 of the EDMP, in terms of their requirements for high quality design and provision of an appropriate standard of living, internally and externally, in new development and conversion schemes, through application of minimum space standards and requiring appropriate levels of light, outlook and amenity. There would be further conflict with the aforementioned aims of the Framework to secure high standards of amenity in new development.

### *Affordable Housing*

22. Policy CS21 of the ECS requires that on sites delivering between 1 and 4 dwellings, a financial contribution towards affordable housing provision in the district, equivalent to the cost of 20% of the gross number of dwellings, will be sought. However, a significant material consideration is Paragraph 64 of the Framework, which states that affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas.
23. The aim of Paragraph 64 is to ensure that financial contributions do not become a disproportionate burden to small developers and thereby frustrate housing supply. However, the Framework also stresses the importance of meeting the needs of groups with specific housing requirements, including those who require affordable housing.
24. The Council has set out extensive evidence of significant affordability challenges in the district due to median house prices which are amongst the highest in the country. The Council's evidence also sets out that the affordable housing it has delivered in recent years has overwhelmingly come via small sites. As such, it is argued that contributions from small sites below the Framework threshold are necessary to deliver sufficient affordable housing to meet the district's needs. The Council further sets out that it takes a flexible approach to small sites by enabling viability to be assessed on a case-by-case basis, which may result in a reduced contribution or no contribution at all.
25. I am also referred to a number of appeal decisions dating from 2016 onwards where the Council's approach to affordable housing has been supported. The Council's evidence does acknowledge a smaller number of appeals where its approach has not been supported, and I acknowledge that each case must be determined on its own merits. However, the evidence before me at the very least indicates that Inspectors have consistently recognised the acute affordable housing situation in Elmbridge as a factor which is capable of outweighing the general approach of the Framework.
26. The appellant has not specifically challenged the Council's approach, but has produced a viability statement indicating that an affordable housing contribution could not be made. The Council has not disputed the conclusion that the scheme would not be able to make an affordable housing contribution. However, it points to its Development Contributions Supplementary Planning Document 2020 (the SPD) which at Paragraph 4.70 sets out that all proposals that do not provide the policy required level of affordable housing contribution at application stage will be subject to a late review mechanism (LRM), which will be secured prior to grant of permission through a legal agreement. The appellant questions the policy basis for this.
27. The SPD is a material consideration, but it represents guidance rather than policy. Policy CS21 is clear in only seeking contributions 'where viable' and

makes no explicit reference to an LRM or similar mechanism. Whilst I give weight to the Council's evidence in general regarding the need for affordable housing, it is not clear on what basis an LRM is justified in this case, as the small scale of the proposal means it is unlikely to yield a substantially different financial position when an LRM would become due towards the latter stages of construction.

28. On the evidence before me, therefore, I am not satisfied that the Council's request for an LRM is warranted. The proposal has been found to be unable to provide a contribution towards affordable housing following a viability assessment, and on that basis the proposal would not conflict with Policy CS21. Therefore, the absence of a legal agreement to secure an LRM is not a matter weighing against the proposal in the overall planning balance.

### *Effect on Trees*

29. The Council's reason for refusal relates to the proximity of trees on Council-owned land adjacent to the site on the Oatlands Drive side and the potential for them to be damaged by construction works. The appellant states that no ground works would take place near these trees.
30. I saw on site that there are trees standing close to the side wall of the building, one in particular which extends above the height of the building next to the chimney stack. These trees contribute to the visual amenity of the area, adding greenery and softening the appearance of the corner at a prominent, open road junction. I accept that the proposals do not include groundworks on this side of the building, but the roof and rear extensions would necessitate significant scaffolding being erected and equipment and materials being moved in the vicinity of these trees which poses a risk to their health.
31. Moreover, based on the plans before me, which incorrectly show the chimney stack on the other side of the roof, an existing tree would stand directly in front of the proposed side dormer windows at roof level. This would present a high chance of complaint from future occupants to cut back or fell the tree due to it restricting outlook, light or otherwise causing nuisance.
32. Given these considerations relate to the actual design of the proposal, rather than simply matters of construction detail, I am not satisfied that they are capable of being left to be dealt with by planning condition. Therefore, in the absence of satisfactory information, the proposal fails to demonstrate how it would protect trees of amenity value, contrary to Policy DM6 of the EDMP, which requires that development does not result in loss of, or damage to, trees and hedgerows that are, or are capable of, making a significant contribution to the character or amenity of the area. This aligns with the Framework which states that trees make an important contribution to the character and quality of urban environments, and existing trees should be retained wherever possible.

### **Other Matters**

33. The Council did not refuse permission in respect of parking, access or general highway safety, notwithstanding that this was a matter raised as a concern by an interested party. The site was assessed as not suffering from undue parking stress, that it is located within walking distance of shops and public transport options, and that the proposed two units would not lead to a significant increase in trips. I have no evidence to counter these conclusions, though I was

concerned with the general safety of the access which emerges onto a wide, 4-way, multi-lane junction with sequential traffic lights, conditions which make it difficult for vehicles to emerge safely. However, I recognise this access is existing and there is insufficient space for additional parking to be accommodated on the site. As such, there are unlikely to be more vehicles regularly using the access and therefore no greater risk than already exists. Consequently, I do not raise additional harm in respect of highway safety.

### **Planning Balance and Conclusion**

34. The Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites, with supply indicated to stand at 4.88 years. Therefore, pursuant to paragraph 11(d) of the Framework, the presumption in favour of sustainable development is engaged.
35. The proposal would deliver benefits in terms of delivery of two residential units dwellings in an accessible location at a time when the Council cannot demonstrate a sufficient supply of deliverable housing sites. However, despite these circumstances, the small scale of the proposal means this is a benefit of moderate weight at best. There would also be minor benefits in terms of the economic activity generated in the construction of the scheme and subsequently by additional occupants in patronising local businesses.
36. Set against this, I have found that the proposal would cause demonstrable harm to the character and appearance of the area; to the living conditions of existing occupants; in a failure to provide a suitable standard of accommodation and in failing to safeguard existing trees. This results in conflict with several policies of the development plan and the guidance of the Framework. I afford significant weight to these conflicts.
37. Overall, in the context of Paragraph 11, the adverse impacts associated with granting planning permission would significantly and demonstrably outweigh the benefits, when considered against the policies of the Framework, taken as a whole.
38. Consequently, the Framework, as a material consideration, does not indicate that permission should be forthcoming, and there are no other material considerations that would justify a decision being made other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

*K Savage*

INSPECTOR