



Appeal Decision

Hearing held on 31 October 2023

Site visit made on 1 November 2023

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2023

Appeal Ref: APP/K3605/W/22/3310449

Land north of Ramli, Beech Close, Cobham KT11 2EN

- 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 Mercatura Developments Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2021/4161, dated 3 December 2021, was refused by notice dated 27 July 2022.
 - The development proposed is a detached two-storey block of 5 flats with rooms in the roof space, bin and cycle stores and associated access and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mercatura Developments Ltd against the decision of Elmbridge Borough Council, and also by Elmbridge Borough Council against Mercatura Developments Ltd. These applications are the subject of separate decisions.

Procedural Matters

3. During the appeal process, the description of development had changed from 'construction of five apartments with associated access and landscaping' to that shown in the banner heading above. However, during the Hearing, the main parties agreed that the altered description better reflects that proposed.
4. During the Hearing, a pre-hearing note submitted by the appellant was brought to my attention. The note sought to expand on affordable housing viability matters and, in my mind, would not have materially altered the proposal. However, due to the lateness in submission adequate consultation could not be undertaken and therefore there is potential that were I to accept it other parties would be unfairly disadvantaged. Nonetheless, I am satisfied the discussion during the Hearing on affordable housing viability brought to the fore the main gist of the pre-hearing note, and I have made my decision accordingly.
5. I am aware the proposal before me constitutes a resubmission of a previously refused application (reference 2021/0697) and sought to overcome the issues within that scheme. Nevertheless, I have dealt with the proposed development before me on its own merits.

Main Issues

6. The main issues are:

- whether the proposed development would provide adequately for affordable housing having regard to national and local policy;
- whether the proposal would provide appropriate living conditions for future occupants with specific regard to the outlook from the bedrooms of units 3 and 4; and
- the effect of the proposed development on the character and appearance of the area.

Reasons

Affordable housing

7. Policy CS21 of the Core Strategy (CS) sets out how the Council seeks to deliver affordable housing in the borough. Where it is viable, it sets out that 20% of the gross number of dwellings on sites of 5 dwellings, such as the proposed development, should be affordable housing. It goes further to state that on-site provision would be expected for sites of 5 or more dwellings, and that only in exceptional circumstances will an alternative to on-site provision be appropriate.
8. During the Hearing, the appellant's viability consultant raised concerns relating to the application of CS Policy CS21. It is also acknowledged that the CS pre-dates the National Planning Policy Framework (the Framework) which at Paragraph 64 states that affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. However, the Council had submitted substantial evidence which points to the pressing affordable housing need of the borough and that the delivery of such housing would be significantly restricted if the Framework's thresholds were used.
9. On that basis I am unconvinced the Framework, a material consideration, outweighs the requirements of the development plan. Consequently, with no substantive information to the contrary in this case, the specific local circumstances justify the continued application of CS Policy CS21.
10. It is noted early in the application process the appellant and Council had agreed a contribution of £75,000 towards the provision of off-site affordable housing. However, this was before the proposal was reduced in size and therefore it became necessary to revisit the financial viability of the scheme.
11. On completion of the re-assessment the appellant concluded that the financial surplus of the scheme, which could be used towards affordable housing would be £4,301.47. Although, they confirmed they would honour the previously agreed £75,000. The Council's position changed considerably. It concluded that with all 5 units sold on the open market, the scheme could provide a financial surplus of between £301,000 and £437,000 depending on the developer profit margin, and that this would allow the onsite provision of one affordable unit, with 4 remaining as open market housing.
12. However, neither party have undertaken any financial assessment as to how the conversion of one unit to affordable housing would impact the viability of

the scheme as a whole. Both parties' viability consultants confirmed at the Hearing, that were one unit converted to affordable housing it could have a considerable influence on the overall value and therefore viability of the scheme with regard to, amongst other things, Gross Development Value (GDV) and developer profit margins.

13. Without such an assessment it cannot be concluded whether on-site affordable housing provision would or would not be viable, nor can a baseline be drawn to consider whether an alternative provision for affordable housing, such as a financial contribution, would be appropriate, irrespective of whether appropriate exceptional circumstances exist to require an alternative to on-site provision.
14. The level of work undertaken by both viability consultants is noted, as are the number of concessions both have made to try and come to a mutually beneficial conclusion. However, this does not mitigate the failure of the appellant and Council to consider the effect a policy compliant scheme would have on financial viability.
15. Consequently, I am unable to conclude that the proposal would be able to provide adequate affordable housing in compliance with local policy, specifically CS Policy CS21.

The outlook from the proposed bedrooms of units 3 and 4

16. The proposal would provide a full height window for each of the 2 bedrooms in both units 3 and 4. These would be opposite each other and so provide direct views across a reasonably narrow gap into the other bedroom of the same unit. All other windows servicing these bedrooms would be either high level or obscure glazed. Thus, views from the bedrooms would be limited to that of the sky or at an obtuse angle across the rear garden of the proposal and that of an adjacent property, Desswood. This would give all 4 bedrooms an enclosed and confined outlook to the detriment of users of those spaces.
17. It is argued by the appellant that the limited view from these bedrooms would be negated by the broader outlook provided by the windows in the main living space of both proposed units 3 and 4, and as bedrooms there is not such a need for an outlook. Nevertheless, this does not overcome the fact that of the proposed 3 habitable rooms in each unit 2 would have significantly constrained outlooks. Moreover, there is nothing before me preventing the rooms in question being used for functions other than bedrooms by future occupants.
18. Policies DM2 and DM10 of the Development Management Plan (DMP) both refer to outlook needing to be appropriate. There is, however, no guidance within these policies or the supporting text to clarify what is considered appropriate, beyond reference to the Design and Character Supplementary Policy Document (DCSPD). This equally does not specify what would be considered appropriate in terms of outlook. It is therefore a matter of planning judgement.
19. Consequently, for the reasons set out above, I find the proposal would fail to provide adequate living conditions for future occupants of units 3 and 4 due to poor outlook. Accordingly the proposal would, in this respect, be contrary to the requirements of DMP Policies DM2 and DM10, and to the advice of the Framework which requires that new development creates places with a high standard of amenity for existing and future users.

Character and appearance

20. Beech Close forms part of a wider residential area constituting, in the main, private roads and enclaves accessed off Sandy Lane. Most properties are large, detached, two-storeys, and generally individually designed. They are set back behind areas of off-road parking and have reasonably large rear gardens. Although there is a suburban feel to the area, with neighbouring properties visible from each other, the whole area is characteristically verdant. This is created by the hedged garden boundaries and pockets of trees and woodland interspersed between dwellings and each road or enclave.
21. The appeal site is broadly square and located between the frontage of Ramli, understood to be the original donor dwelling, and the adjacent property Turners House. It has direct access onto Beech Close and immediately to the rear is the garden of a further residential property, Desswood.
22. The site slopes away from Beech Close towards the garden of Desswood, which is at a lower level again and, from Turners House towards Ramli. It is currently clear and enclosed by hedging on all sides. There are some mature trees in the garden of Desswood which provide a leafy backdrop to the site and from that direction screen it from the wider area.
23. The proposal would create a singular building with accommodation provided across 2 floors and into the roof space. Although it would provide 5 separate residential units, when viewed from Beech Close, it has been designed to look like a singular dwelling with a central door and detailing representative of other properties in the locality.
24. The proposed new building would be wider than other properties in the immediate vicinity. However, it would not be so large as to look out of proportion with other dwellings in the area, and the spacing between it and the side boundaries of the site would replicate a similar level of separation evident between existing nearby properties. Thus, I am satisfied that visually the proposal would not harm the appearance of Beech Close and would maintain the verdant and residential character of the local area.
25. The proposed parking area to the front of the new building, with a single point of access, would also be commensurate in size to areas of hardstanding provided at other nearby properties. It is acknowledged the proposed parking area would be more intensively used, due to the flatted nature of the proposal, nevertheless, I am satisfied that appropriate landscaping along the front boundary would ensure this would not be visually harmful to the area.
26. Spatially it is appreciated that the proposal would not have an extensive back garden and the plot is smaller than some of the others within the locality. However, the rear boundary of the site would be largely screened by the front boundary treatment and new building, and when it is glimpsed would be indistinguishable from the leafy backdrop created by the gardens behind. This along with the fall of land across the site would therefore give the visual impression of space to the rear of the new building which is characteristic of properties along Beech Close and the wider area.
27. It is appreciated that the limited depth of the site would be more easily visible from the rear of Desswood. However, as the side boundary of that property is already in reasonable proximity to the side elevation of Ramli and the rear

elevation of Turners House, both of which are visible from Desswood, and there are no public or wide ranging views from this location, I do not find it to be so impactful as to harm the area's character and appearance.

28. Turning to the design of the proposed building. The front elevation replicates the generous domestic scale, articulation and features found within the local area and would be commensurate with other properties along Beech Close. It is appreciated the proposed side elevation facing Ramli and rear elevation are not as successful in their proportions and include features which may be considered unique to that design. Nevertheless, as a whole, the proposed building is reasonably and cohesively designed in a manner which would not be so out of keeping with the residential character of the area or proportions of other nearby properties to be harmful.
29. In respect to character and appearance, CS Policy CS17 states new development should enhance the public realm and street scene. Whilst DMP Policy DM2 seeks proposals to preserve or enhance the character of the area, and DMP Policy DM10 requires garden land development to respect the character of the area. Therefore, it is evident that although within the development plan the impact on local character is considered intrinsic to good design, it varies on how that impact should be assessed.
30. Although it has not been satisfactorily shown how building on an otherwise undeveloped piece of land would be an enhancement, irrespective of the perceived quality of the design. I do not find the proposal to be harmful to the street scene and I am satisfied it would integrate with its surroundings adequately, thus respecting and preserving the character of the area.
31. I am therefore satisfied the proposal would not harm the character and appearance the area and would comply with DMP Policies DM2 and DM10; and the overarching aims of the more strategic policies within the CS, CS10 and CS17, as far as they seek to protect the general character of the area. I also find the proposal would align with the guidance set out in the DCSPD.

Other Matters

32. The appeal site falls within the 400m to 5km buffer zone for the Thames Basin Heath Special Protection Area (SPA). The SPA qualifies for such protection as it covers areas of heathland which support populations of internationally rare bird species that are susceptible to predation and disturbance. The proposal would create 5 new dwellings, which would contribute to an increased population in combination with other plans, projects, and developments in the area. Due to the proximity of the development to the SPA, it is likely that its contribution to the increase in population could lead to an increase in visitor and recreational pressure within the SPA. Given the susceptibility and vulnerability of the qualifying features of the SPA to such uses, it cannot be concluded that the development would not adversely affect the integrity of the protected sites in combination with other projects.
33. Nevertheless, the Council has a long-standing mitigation strategy which has been agreed in principle by Natural England. This seeks financial contribution towards the creation of a suitable accessible natural greenspace, and towards strategic access management and monitoring. The appellant and Council agree that the proposal would require a contribution of £4,365 to be secured by a section 106 agreement, and the Council confirm the submitted unilateral

agreement would indeed secure this, notwithstanding the section within that agreement referring to affordable housing. Therefore, I am satisfied the proposal could sufficiently mitigate any harm towards the SPA.

34. Concerns were raised by interested parties relating to the living conditions of adjacent neighbours, on- and off-road parking, and the ecology of the site.
35. The proposed new building would be set away from the boundaries of the site and most upper floor windows would either be obscure glazed, high level, or overlook areas of neighbouring properties which are already visible from the public realm. The exceptions being the proposed floor to ceiling bedroom windows of units 3 and 4. These would be clear glazed, but the insular orientation would mean views over the garden of Desswood would be limited due to the restricted outlook from them. They would also be located to one side and at some distance from the rear elevation of Desswood thus preventing any direct views into any rear facing windows.
36. The alignment of the proposed building and its orientation would limit the impact of shadowing to the far end of Desswood's garden and the frontage of Turners House. This would have some effect but as these areas are not the most private or heavily used parts of the gardens associated to those properties (on viewing the properties during my site visit this would appear to be the patios directly to the rear of each house), this impact would not be so great as to make the associated open space unusable.
37. In relation to outlook, it is not in dispute that the property would be visible from all 3 adjacent properties, Desswood, Turners House, and Ramli. However due to the size of those properties' plots, the visibility of existing adjacent dwellings, and the relationship between them and the proposed new building, I do not consider the proposal to be so enclosing or overwhelming to make the living conditions within these adjacent properties untenable.
38. Turning to on- and off-road parking. The Council confirmed during the Hearing that the proposed on-site parking complied with the development plan's car parking guidance, that cycle storage could be dealt with by condition, and that the Local Highways Authority (LHA) did not consider the scheme to impact highway safety; and there is nothing before me to draw an alternative conclusion. However, it is noted that Beech Close is a private road and so not under the authority of the LHA. Concerns were raised in relation to the potential the proposal would hold for future occupants to park on Beech Close and the impact of this on the character of the area. It is acknowledged that cars parked on Beech Close could affect its character, but as it is a private road and therefore beyond the control of the LHA, it would be for the landowner to implement appropriate parking restrictions if on-road parking is deemed a problem.
39. Finally, it is understood that prior to the appellant's ownership and the submission of the appeal and associated application, the appeal site was cleared of several trees which had a beneficial impact on its ecology. Although unfortunate, this decision must be made considering the current situation as was also the duty of the Council during the application process. Nevertheless, CS Policy CS15 seeks to avoid loss of biodiversity and create a borough wide net gain, and it was agreed during the Hearing that in this case, this could be dealt with by condition.

40. The appellant has also drawn my attention to a development approved by the Council at Fairfield Lodge, reference 2019/2469. However, this scheme would appear to be differently located to that which is before me, for fewer units, and an affordable housing contribution was agreed. I am therefore satisfied it is different to the appeal scheme and simply serves to confirm that each case should be considered carefully on its own merits.

Planning Balance

41. It is agreed by the main parties that the Council does not benefit from a 5-year housing land supply. As such, and because of the provision of footnote 8, it is necessary for me to apply paragraph 11d) ii of the Framework. This indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
42. The Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework, and in this instance, I find the relevant development plan policies broadly consistent, notwithstanding CS Policy CS21. Nevertheless, for the reasons set out in my first main issue, I find that CS Policy CS21 and the proposal's failure to comply with this policy carries significant weight.
43. The proposal would provide 5 dwellings reasonably quickly, due to its small scale. I have considered that the Framework seeks to boost significantly the supply of housing and recognises the importance of small sites in meeting the housing requirement of an area. This contribution to the Council's 5-year housing land supply, along with the site's capability to provide a net increase in biodiversity and that smaller dwellings are an identified housing need within the borough, would attract moderate weight based on the number of dwellings involved.
44. It has also been identified that the proposal would not harm the character and appearance of the area, the SPA, the living conditions of adjacent occupants, and highway safety. Nevertheless, an absence of harm would be neutral in the planning balance.
45. Moreover, when taken cumulatively, the failure of the proposal to adequately provide for affordable housing, a pressing need in the borough over and above that for smaller dwellings; and its failure to provide appropriate living conditions for future occupants of units 3 and 4, would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
46. Returning to the SPA, clause 63(1) of the Conservation of Habitats and Species Regulations 2017 states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. An appropriate assessment is not, therefore, necessary where there is no intention to grant permission. As I am dismissing the appeal for other reasons, I am not required to pursue this matter further.

Conclusion

47. In making this decision I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation,

and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nevertheless, it does not follow from the PSED that the appeal should succeed, and for the reasons set out above, the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Horsefield	Director	Mercatura Developments Ltd
Matthew Keller	Director	Mercatura Developments Ltd
Richard Bailey	Associate Director	Avalon Planning and Heritage
Andrew Golland	Chartered Surveyor	Andrew Golland Associates

FOR THE LOCAL PLANNING AUTHORITY:

Peter Brookes	Team Leader	Elmbridge Borough Council
Jack Trundell	Senior Planner	Elmbridge Borough Council
Nick Molyneux	Senior Viability Consultant	Dixon Searle Partnership
Emily Hatch	Consultant	Dixon Searle Partnership

INTERESTED PARTIES:

David Burdett	Woodside, Beech Close, Cobham
Ronald Sainsbury	Thraves, Beech Close, Cobham
Konrad Stanczyk	Desswood, Sandy Lane, Cobham
Denise Stanczyk	Desswood, Sandy Lane, Cobham
David Votier	Honeypot House, Beech Close, Cobham