
Appeal Decision

Site visit made on 13 December 2023

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2024

Appeal Ref: APP/K3605/W/23/3316875

Grace Lodge, 4 Manor Road South, Esher Surrey KT10 0QL

- 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 A Sabherwal (ASPI Homes Surrey Ltd T/A ASPI Homes) against the decision of Elmbridge Borough Council.
 - The application Ref 2022/1057, dated 30 March 2022, was refused by notice dated 13 December 2022.
 - The development proposed is change of use and demolition of existing buildings and two replacement buildings of 2.5 storeys comprising 4 x 3 bedroom dwellings with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the refusal of the application, which is the subject of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 19 December 2023. The main parties have had the opportunity to comment upon the revised Framework in respect of the appeal, and I have taken it into account where relevant to my decision.

Main Issues

3. The main issues are:
 - Whether the appeal site is a suitable location for the proposal, having particular regard to its impact upon community and social facilities;
 - The impact of the proposal on the character and appearance of the area;
 - Whether the proposal makes appropriate provision for affordable housing;
 - The impact of the proposal on the living conditions of future occupiers, with particular regard to outdoor living space; and
 - Whether the development provides for adequate on-site parking provision.

Reasons

Community and social facilities

4. Policy CS16 of the *Elmbridge Core Strategy* (July 2011) (the Core Strategy) resists the loss of existing social and community facilities or sites, in order to

ensure that social and community infrastructure is provided to meet the needs of the Borough, having regard to its growing population. For the purposes of the policy, the listed infrastructure includes care homes, within a wide range of educational and health facilities, community centres, indoor and outdoor recreational facilities, and any other facilities owned by a publicly funded body to provide front line services.

5. The information before me is that the existing Class C2 15-bedroom care home has been vacant since December 2019, when it fell into receivership. The appellant has provided supporting information to demonstrate that the property, due to factors including its small size, internal room layout, limited room sizes and poor condition, render it unsuitable for refurbishment as a viable business to meet the current elderly care provision requirements.
6. On the basis of the information before me, including the appellant's submitted *HPC Care Home Need Assessment* (April 2022), and my site inspection, I have no reason to doubt that the site is not suitable for the continued use as a Class C2 care home, and that there is no quantitative need within the Borough for the property to be retained as such.
7. As such, there is no conflict with the part of Policy CS16 which requires demonstration that an existing social and community facility is no longer needed for its original purpose.
8. Policy CS16 also requires the appellant to prove that there is no requirement from any other public service provider for an alternative community or social facility that could be met through a change of use or redevelopment of the site. The appellant has submitted an estate agent's letter confirming that marketing took place over a 2 and a half month period towards the end of 2021, and that the only interest shown was from residential developers. No details of the marketing brochure have been provided, nor detailed evidence that the site was marketed for an alternative community or social facility, or that approaches had been made at that time to other public service providers of such infrastructure.
9. The main parties have confirmed that the appellant subsequently provided additional information in respect of the aforesaid, in support of a later planning application¹ for the residential redevelopment of the appeal site. The Council has confirmed that the submission of this evidence as part of the current appeal would enable it to withdraw its first reason for refusal. However, as the information has not been submitted as part of the current appeal, I cannot take it into account, as my decision must be based upon the substantive documentary evidence that has been submitted with this appeal.
10. Therefore, for the purposes of the determination of this appeal, the appellant has failed to satisfactorily demonstrate that there is no requirement from any other public service provider for an alternative community or social facility that could be met through a change of use or redevelopment. The proposal therefore fails to comply with bullet point 3 of criterion 2 of Core Strategy Policy CS16.

¹ LPA Ref 2023/0342

11. For the above reasons, I therefore conclude that the appeal site is not a suitable location for the proposal, having particular regard to its impact upon community and social facilities.
12. For similar reasons, the proposal would also be contrary to Policies of the Framework which seek to ensure the promotion of healthy and safe communities as set out in Chapter 8.

Character and appearance

13. The site lies within a predominantly residential urban area to the south of the A309 Kingston bypass. It occupies a visually prominent corner position on the west side of Manor Road South. The A309 runs alongside its northern boundary, at an elevated height in relation to the appeal site.
14. The site lies within designated character area DHW03 (Hinchley Wood, including Lynwood Road and Woodfield Road) of the Thames Ditton, Long Ditton, Hinchley Wood and Weston Green Companion Guide to the Council's adopted *Elmbridge Local Plan Design and Character Supplementary Planning Document* (2012) (the D and C SPD).
15. Built development in this sub-area is described as mainly dating back to the 1930s. Whilst including pockets of non-residential development, including local centres, the area is generally characterised by a high degree of homogeneity and cohesiveness. On the evidence before me, including my site visit, I find that this is evident in the area to the south of the Kingston Bypass, within which the appeal site is located. This area is characterised by mainly detached, two storey, street-facing houses, of a traditional pitched/hipped roof design, with consistent front building lines which are set back from the road frontage behind front gardens or parking areas, and having generously sized rear gardens.
16. The prevailing domestic scale two-storey building height, spacing between and to the front of buildings, and frontage and backdrop soft landscaping, street trees and grassed highway verges, all contribute to a high-quality public realm with a pleasant, verdant spacious suburban character.
17. The existing building has a large footprint, which extends to nearly the whole width of the site. However, its single storey height and the shallow hipped roof form of most of the building, combined with its setback position from the street frontage, lower ground level than the roads to the front and north side of the site, and frontage and backdrop landscaping, mean that the existing property retains a spacious and green character to the site. As such, it sits harmoniously within it, respecting, and making a positive contribution to, the prevailing street scene.
18. The proposal would replace the existing building with two pairs of semi-detached houses. Each building would have a part hipped and part pitched roof form incorporating a single chimney and a single front facing gable feature. I acknowledge that these design features, together with the absence of roof level windows on the front elevation would support the impression of two detached houses when viewed from the street.
19. However, the roof eaves and ridge heights of the new buildings would be significantly higher than those of the adjacent property and those that exist further southwards along the same side of the road. Moreover, the combined

footprint, scale and bulk of the new buildings would be notably greater than that of the adjacent property at 6 Manor Road South.

20. These factors, together with the proposed close proximity of the new buildings to their side boundaries, would result in form of development that would appear unduly high, bulky and cramped, and incongruous within the prevailing more modestly-sized and spacious two-storey housing townscape.
21. In addition, the incorporation of a part flat-roofed gable end to one side of the roof of each building would result in a bulky and discordant asymmetrical element to each roof. This would be particularly evident in views from the north, where a variety of roof features would be visually apparent, including front and side gable features, large ground-to-second floor height chimney and rear dormers, which would combine to draw attention to an overly-bulky roof form.
22. Also, the inclusion of two large, flat-roofed and boxy dormers within the rear roof slope of each building would also serve to reinforce the resulting visual overdominance of the proposed roof element of the proposal. This is due to their large size and proposed proximity to the roof ridge and eaves. Visual discordance would also result from a non-alignment of the dormers with the ground and first floor windows below.
23. As a result, the proposal would assume an unduly large and high 3-storey, top-heavy appearance when viewed from neighbouring properties from the rear and from the public realm of the Bypass to the north.
24. All the above factors would combine to give the new buildings an unduly visually prominent and overbearing impact within their surroundings. The proposal would appear at odds with the more spacious, modest scale development which surrounds the site, to the detriment of the character and appearance of the area.
25. In coming to this view, I acknowledge the presence of a higher density of built development to the north of the A309, including terraced and three/four storey residential/care home development, of a greater scale and mass, and with a tighter urban grain than that to the south of the bypass. However, the bypass forms a clear dividing line between two distinctly different townscapes, with the appeal site clearly falling within the looser, more spacious and smaller scale built development which characterises the area to the south of the A309.
26. I have also noted that there are a variety of different dwelling designs and materials within the site vicinity, and that 8 Manor Road South has benefitted from a two-storey side extension. However, these matters do not alter my aforesaid views on the appeal scheme.
27. For the above reasons, I therefore conclude that the proposed development would have a materially harmful impact on the character and appearance of the area. As such, it would be contrary to Core Strategy Policies CS8 and CS17, Policy DM2 of the *Elmbridge Local Plan Development Management Plan* (April 2015) (the DMP) and the D and C SPD.
28. These policies, amongst other things, seek to ensure that new development supports the primary role of the area as an attractive and individually distinctive residential neighbourhood and is of a high-quality design which integrates sensitively with the locally distinctive townscape and enhances the

public realm and the street scene. This is with particular regard to, inter alia, appearance, scale, mass, height, prevailing pattern of built development and separation distances to plot boundaries.

29. For similar reasons, the proposal would also be contrary to Chapter 12 of the Framework, which seeks to achieve well-designed and beautiful places.

Affordable housing

30. Planning law requires that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. Core Strategy Policy CS21 aims to provide at least 1150 affordable homes between 2011 and 2026, by requiring all proposals where there will be a net increase in dwellings to contribute to the provision of affordable housing in the Borough, subject to viability. For proposals of 1-4 dwellings, the policy requires a financial contribution to be paid towards off-site affordable housing, to be equivalent to the cost of 20% of the gross number of dwellings. This contribution is to be secured by way of a legal agreement in line with the *Development Contributions Supplementary Planning Document* (2021) (the DCSPD).
31. Policy CS21 predates the Framework, and conflicts with Paragraph 65 of the Framework, which says affordable housing should not be sought for residential developments that are not major developments, unless they are within designated rural areas. Major developments are defined in the Framework as development comprising 10 or more new homes or with areas of at least 0.5ha. This position is consistent with the content of the Ministerial Statement (2014) (WMS) and *Planning Practice Guidance* (PPG).
32. The Framework, PPG and WMS aim to ensure that financial contributions should not place undue hardship on small developments which could risk frustrating housing delivery. However, there is no substantive evidence before me which suggests Policy CS21 is placing undue financial burden on developers within Elmbridge. The Council's *Statement on Affordable Housing Provision on Small Sites (Update)* (October 2021) (the SAHPSS Update) shows that, in the vast majority of cases, developers of small sites have been able to meet the affordable housing requirement set out in Policy CS21 in full, without any viability concerns. Where viability issues have been evidenced, the Council has either reduced the contribution requirement or waived it completely, thereby ensuring such requirements do not impede housing delivery.
33. Moreover, the SAHPSS Update highlights an acute and substantial need for affordable housing within Elmbridge. This need is due to continued affordability issues for first-time buyers, associated with soaring house prices which are significantly above regional and national averages. The Council's evidence clearly demonstrates that small sites make a valuable contribution to the provision of affordable homes in its area, and without such contributions, the Council would significantly limit its capacity to support delivery of such homes.
34. On the basis of the specific local evidence before me, the Framework's provisions do not outweigh the development plan in this instance. I am therefore satisfied that the Council is justified in requiring small sites to contribute towards affordable housing within the Borough, where viable, and that the requirement meets the tests in Regulation 122(2) of the Community Infrastructure Regulations 2010 and Paragraph 57 of the Framework.

35. Furthermore, the Council's requirement for contributions towards affordable housing has also been supported by Inspectors in other appeal decisions submitted in evidence by the Council.
36. In this instance, whilst the appellant has confirmed an intention to pay an affordable housing contribution, no executed legal agreement has been submitted in connection with this appeal. Moreover, the evidence before me is that negotiations, including viability reviews, regarding the amount of contribution and whether the legal agreement should include a late review mechanism, took place between the appellant and the Council during the course of the determination of the planning application, prior to its determination in December 2022, but that agreement was not reached. No subsequent, more recent detailed viability information has been provided as part of this appeal.
37. The appellant has confirmed willingness to continue negotiations with the Council, with the intention of completing a planning agreement. To this end, the appellant suggests that this matter is capable of being dealt with by means of a pre-commencement planning condition to secure the required Section 106 Agreement.
38. However, the PPG² states that a negatively worded condition limiting the development that can take place until a planning obligation has been entered into, is unlikely to pass the enforceability test and be appropriate in the majority of cases. The proposal would not meet the exceptional circumstances criteria under the PPG because there is no evidence that the delivery of the development would be otherwise at serious risk. The PPG encourages parties to finalise planning obligations in a timely manner and emphasises the importance of this in the interests of transparency. For these reasons, the PPG is given significant weight and the relevant 6 tests for the imposition of conditions³ would not be met.
39. Moreover, for written representations appeals, the procedures are clear that if an appellant wants to be certain an obligation will be considered, they must provide an executed and certified copy at the time of making the appeal.
40. The proposal is without a legal mechanism to secure a planning contribution towards affordable housing, or a recent viability appraisal to demonstrate that making such a payment would render the development unviable. I therefore consider that the development would fail to make adequate provision for affordable housing. As such, for the reasons set out above, it would therefore conflict with Core Strategy Policy CS21 and the DCSPD, which seek an affordable housing contribution secured by a planning obligation.

Outdoor living space

41. The dwellings, by reason of their size, incorporating living accommodation over three floors and including 3 bedrooms plus a study and ensembles in addition to a family bathroom, would be of sufficient size that they would be readily suited to family occupancy, including families with children. As such, there would be a requirement for outdoor living space to accommodate activities associated with family occupancy, such as outdoor play and outdoor dining facilities, as well as drying space.

² Paragraph: 010 Reference ID: 21a-010-20190723

³ Paragraph: 003 Reference ID: 21a-003-20190723

42. The Council has referred to guidance within the D and C SPD which requires gardens that are included within residential development to be of an appropriate size to provide amenity space for occupiers. The SPD states that in some instances, a minimum garden depth of 11 metres should be provided, depending on the character of the area and the type of development proposed, and that more spacious gardens will be appropriate in other settings where the character of an area warrants a greater depth, usually in excess of 15 metres.
43. The Council's third reason for refusal is concerned with the impact of the proposed garden sizes upon the living conditions of future occupiers of the development. As such, notwithstanding that the proposed rear gardens would be significantly shorter than the aforesaid suggested minimum garden depths of the D and C SPD, and those that prevail within the vicinity of the appeal site, each dwelling would, nonetheless have a private enclosed rear garden. This would be positioned directly to the rear of the dwelling, and accessed via sliding glazed doors, directly from the ground floor dining/living room.
44. As such, the proposed gardens would be appropriately positioned having regard to their function as an external extension of the indoor living space of each dwelling. Moreover, they would each incorporate a rear patio area immediately adjacent to the rear of each house which would readily lend itself to outdoor sitting out or dining, in association with the residential use of the dwellings.
45. Notwithstanding that part of each garden would be taken up with bin and cycle storage provision, I find that the garden space for each dwelling would be sufficiently large to provide for the typical outdoor living requirements associated with family occupancy of the proposed 3-bedroom houses.
46. For the above reasons, whilst smaller than other nearby gardens of similar-sized properties, I conclude that there would be no material harm to the living conditions of future occupiers as a result of the proposed outdoor living space. The development would therefore accord with DMP Policy DM10 and the D and C SPD, in so far as these policies and guidance seek to ensure that new development provides an appropriate standard of living, externally, and that gardens or outdoor amenity space are commensurate with the type and location of housing proposed.
47. This is generally consistent with Paragraph 135 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

Parking provision

48. Vehicular access is from Manor Road South, at a point where queuing vehicular traffic approaches the traffic-lighted road junction with the A309, and opposite the entrance to a petrol filling station/convenience store on the opposite side of Manor Road South. This access would be retained to serve the development, and 6 on-site parking spaces are proposed to the front of, and partially under, the proposed building.
49. The Council is concerned that the appeal proposal would fail to provide adequate on-site parking, having regard to the amount and layout of the parking proposed, and that this would result in an unacceptable level of on-street parking.

50. I have noted that on-street parking is restricted by double-yellow lines on both sides of the northern end of Manor Road South between the A309 and the junction with Greenways and for a small stretch of roadside around the junction with Greenways.
51. However, I did not witness any localised parking problems, parking congestion or impeded access to the highway network within the vicinity of the appeal site during my site visit. I also saw that unrestricted on-street parking is available further along Manor Road South and in Greenways. At the time of my visit, I was able to park in the street within easy walking distance of the appeal site.
52. I acknowledge that this was only a snapshot during a weekday afternoon, and there may well be more on-street parking at other times, including in the evenings. However, I have no detailed evidence before me of the existence of on-street parking issues within the vicinity of the appeal site. Moreover, neither main party has provided up-to-date parking surveys (the appellant's survey dates back to 2017) to confirm the extent of any issue.
53. Whilst 6 on-site parking spaces are indicated on the submitted drawings, the proposed parking arrangement would be tight for manoeuvring, as there would be spaces that are marginally narrower than the dimensions required by the Council's *Parking Supplementary Planning Document* (2020) (the Parking SPD).
54. However, the Parking SPD requires a maximum of 2 spaces per unit for 3-bedroom houses. As such, a reduction in on-site parking to enable better on-site manoeuvring could still result in a development that complies with the maximum parking standards as set out in the Parking SPD.
55. Moreover, the site lies in an accessible location within walking distance of local retail and community facilities and is close to public transport links by bus and rail. This is not, therefore, a location where the occupants need to be reliant upon a private car for their day-to-day requirements.
56. For the above reasons, whilst the development does not strictly accord with the parking standards of the Parking SPD in terms of the dimensions of the parking spaces proposed, given the location of the appeal site in relation to public transport routes and community facilities and services, and the lack of compelling evidence of parking stress arising from the development, I conclude that the development provides adequate on-site parking, having regard to the transport needs of the property.
57. The development therefore accords with the objectives of Core Strategy Policy CS25, DMP Policy DM7 and the Parking SPD, insofar as they seek to promote improvements to sustainable travel by, inter alia, applying maximum parking standards to all uses, and to ensure that the proposed parking provision is appropriate to the development.
58. This accords with advice in Paragraph 115 of the Framework advises that *"Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe"*.

Other Matters

59. The Council has confirmed that it cannot demonstrate a 5-year supply of deliverable housing sites as required by the Framework. The information before

me, which is not disputed by the main parties, is that the Council's supply stands at 4.36 years of deliverable housing land. Coo

60. As such, Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a 5-year housing land supply cannot be demonstrated, or the Housing Delivery Test indicates that the delivery of housing was substantially below the housing requirement over the previous three years.
61. Paragraph 11 sets out that, where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted.
62. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development, and Paragraph 11 d) of the Framework is engaged.
63. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area within a designated settlement boundary, where access to facilities and services and public transport connections is likely to be greatest.
64. Paragraph 60 of the Framework refers to boosting significantly the supply of homes, and four additional dwellings would make a contribution towards addressing the housing delivery deficit. By providing 3-bedroomed dwellings, the proposal would contribute towards providing a housing type for which, the Council has confirmed, there is an identified need within the Borough.
65. Moreover, the development could be built out relatively quickly, having regard to Paragraph 70 of the Framework.
66. There would also be economic benefits as a result of the construction of the new dwellings, and economic and social benefits as a result of their future occupation.
67. The proposal would also potentially contribute to the Framework objective of creating mixed and balanced communities by providing a financial contribution towards the provision of affordable housing. However, the weight I attach to this is significantly diminished given the absence of a completed S106 legal agreement, so that a satisfactory mechanism to secure the affordable housing has not been secured.
68. The above benefits weigh in favour of the development, and I afford them moderate weight, having regard to the modest size of the proposed residential development and the lack of a method of securing an affordable housing contribution.
69. Moreover, a high standard of design is also a key aspect of sustainable development. The harm I have identified to the character and appearance of the area would be significant. As a result, the social objective of sustainable

development of fostering well-designed and beautiful places, would not be achieved.

70. The Council has raised no objection to the appeal scheme in respect of matters including the impact of the proposals upon the living conditions of neighbouring residents, biodiversity and flood risk. Moreover, I have not found harm in respect of living conditions having regard to the provision of private outdoor living space for the appeal scheme, or the impact of the appeal scheme on on-street parking.
71. In terms of the planning balance, the lack of identified harm is a neutral factor that does not diminish the harm that would arise from the appeal scheme in respect of the impact on community facilities and services, the character and appearance of the area and the failure to provide an affordable housing contribution.
72. Whilst the Framework encourages the effective use of land in meeting the need for homes and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified and would not address or outweigh the aforementioned harms that I have identified.
73. Having given careful consideration to the balance of factors, I consider that, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

74. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR