



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: 17 January 2024

Appeal Ref: APP/K3605/W/23/3317170

Land to the rear of 18 Freelands Road, Cobham KT11 2ND

- 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 Linea Cobham Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2022/2482, dated 3 August 2022, was refused by notice dated 6 December 2022.
 - The development proposed is erection of a single storey detached dwelling including ancillary refuse and cycle stores and associated landscaping and parking, following demolition of the existing buildings.
-

Decision

1. The appeal is dismissed.

Procedural Matters

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.
3. During the course of this appeal, in order to address the Council's third and fourth reasons for refusal, the appellant has submitted a formally completed unilateral undertaking (UU), pursuant to section 106 of the Town and Country Planning Act 1990, signed and dated 31 July 2023, in respect of contributions towards the provision of affordable housing and Strategic Access Management and Monitoring (SAMM) of the Thames Basin Heaths Special Protection Area (TBHSPA). These are matters to which I later return.
4. The appeal documents include a revised roof plan, incorporating an additional 6 rooflights, and an *Internal Daylight and Sunlight and Proposed Overshadowing* assessment, which includes reference to the revised roof plan. These were not before the Council at the time that they made their decision.
5. The planning appeals procedural guidance¹ (Section 16), confirms that, if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested

¹ Procedural Guide. Planning Appeals – England. The Planning Inspectorate 11 December 2023

people's views were sought. Accordingly, having regard to the Wheatcroft Principles², and noting that a large number of interested parties commented upon the planning application, who would not have been made aware of the revisions, I have determined the appeal on the basis of the scheme that was refused by the council. I have not considered the merits or otherwise of the aforesaid revised/additional information submitted with the appeal.

Main Issues

6. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- the effect of the proposal on the living conditions of future occupiers with particular regard to indoor living space;
- the effect of the proposal on the living conditions of future occupiers with particular regard to outdoor living space;
- whether the proposal makes appropriate provision for affordable housing; and
- the effect of the proposal on the integrity of the TBHSPA.

Reasons

Character and appearance

7. The appellant has sought to address concerns raised by the Inspector in dismissing a previous appeal³ for the residential redevelopment of the site, where the main issue related to the impact on the character and appearance of the area. The changes include reducing the number of units from 2 to 1, reducing the height of the dwelling and its overall building footprint, and increasing the distance between the dwelling and the side boundaries.
8. The previous appeal decision is a material consideration to be apportioned appropriate weight. As such, I have taken it into account, in so far as it is relevant to the current proposal. It does not alter my findings in respect of the current appeal scheme, having regard to my reasoning as set out below.
9. The appeal site lies within an established residential area to the northeast of Cobham local centre. It comprises a rectangular piece of land to the rear of 18 Freelands Road, which is a detached, 2-storey house. Vehicular access is from Freelands Road, via a long, narrow drive. The site is occupied by several single storey structures, which are understood to have been most recently used for storage.
10. The appeal site comprises a backland site, between frontage residential development extending along Freelands Road and Hogshill Lane. The site is located within designated character area COS03 (Tartar Hill) of the Cobham, Stoke D'Abernon, Oxshott and Downside Companion Guide to the Council's adopted *Elmbridge Local Plan Design and Character Supplementary Planning Document* (2012) (the D and C SPD).

² Wheatcroft (Bernard) Ltd v Secretary of State for the Environment (1982) JLP 37

³ APP/K3605/W/21/3275015

11. This area is noted to be a fine-grained character area, with the second phase of development, including Freelands Road and the upper part of Hogshill Lane, being lined with larger houses, set back in gardens. Within this area, it is noted that houses are generally two-storey with terraced, semi-detached and detached houses usually set in regular, relatively modest, plots. The consistency of style to houses, in streets with shared architectural characteristics, gives a cohesion to streets within this sub-area.
12. I saw, during my site visit, that there is a distinct urban grain within the southern parts of Freelands Road and Hogshill Lane within which the appeal site is located. These are characterised by two-storey, detached or semi-detached dwellings, which are positioned in a regular linear manner along their road frontages in long rectangular-shaped plots, incorporating generous rear gardens, which back onto each other.
13. The rear gardens provide a spacious and distinct separation between two rows of linear street-facing built development, comprising a defining and positive characteristic of the townscape. Whilst there are garages/outbuildings within some rear gardens, these are modest in size, ancillary in function to the dwellings to which they relate, and their designs are akin to those of domestic outbuildings. As such, they do not fundamentally alter the established layout of frontage residential development, comprising frontage housing with generous private and secluded gardens in between.
14. The appeal site is occupied by modest single storey outbuildings. These include small, dilapidated shed-like structures and a larger, more robust, pitched roof corrugated building. The evidence before me is that buildings have been present on the site historically prior to the building of No.18, and that the appeal site may have had a commercial use in the past. However, there is no cogent evidence before me that this was a lawful planning use.
15. Moreover, notwithstanding that the appeal site has been severed from No.18, having regard to their presence within the current residential townscape, the existing buildings are of a size and appearance that accords with typical domestic outbuildings. As such, they appear ancillary to No.18 in terms of their siting and design. In terms of the amount of site coverage and the space around the structures, the existing buildings do not appear unduly cramped on the site. As such, I find these structures to be entirely compatible with the prevailing residential character of the locality.
16. The proposed introduction of a new dwelling on the appeal site, in the manner proposed, would result in an uncharacteristically small plot remaining for the host property, and an unusually large new dwelling footprint, in comparison to the prevailing layout of development on this side of Freelands Road.
17. The proposal would be set further off the side boundaries, and would have a smaller overall footprint than that of the two dwellings, the subject of the dismissed appeal. Nonetheless, the proposal would result in an unduly cramped form of built development on the appeal site, having regard to the relatively large building footprint in relation to the size of the new plot, and the proximity of the new building to both sides and the rear boundaries of the site.
18. Moreover, a large proportion of the plot would be taken up with the new building and associated hard-surfacing, leaving only a very small garden, which would be out of keeping in comparison with the large spacious gardens which

- characterise the area. As a result, the proposal would significantly erode the spacious separation between the two rows of residential development.
19. The new dwelling would be clearly subservient in height to the surrounding residential properties in Freelands Road and Hogshill Lane. However, the incongruous nature of the proposal would be compounded by its single storey height, combined with a proposed flat crown roof, which would be strongly at odds with the two-storey traditional pitched roof form of the surrounding dwellings.
 20. Moreover, the incompatible nature of the proposal would be exacerbated by its contemporary design, incorporating an elaborate variety of fenestration and roofing architectural features, together with the introduction of materials which are not typical of those within the local built environment. Whilst the scheme incorporates various examples of architectural elements found on some nearby buildings, the overall combination of architectural features results in a disjointed design. This lacks cohesion with the surrounding traditionally designed two storey buildings.
 21. The result would be a visually discordant dwelling design, and a layout of built development that would be unsympathetic to, and would harmfully erode the established pattern of built development along this part of Freelands Road.
 22. The harm that I have identified to the prevailing character of the area would not be justified by the fact that the proposal would be less visually dominant in public views than that of the previous appeal scheme and only likely to be glimpsed fleetingly from the street. Moreover, it would be visible from the upper floors of some neighbouring properties.
 23. Although the existing buildings are in a dilapidated condition, they do not appear unduly visually prominent, nor result in a cluttered, untidy appearance that gives rise to material harm to the visual amenities of the locality and the outlook from neighbouring dwellings. As such, I do not consider that their removal is necessary in the interests of the visual amenities of the locality, and it would not justify the harm I have identified in respect of the appeal scheme.
 24. 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 Policies CS10 and CS17 of the *Elmbridge Core Strategy* (July 2011) (the Core Strategy), Policies DM2 and DM10 of the *Elmbridge Local Plan Development Management Plan* (April 2015) (the DMP) and the D and C SPD.
 25. These policies, amongst other things, seek to ensure that new development, including housing development on garden land and/or to the rear or side of existing residential property and within Cobham, Oxshott, Stoke D'Abernon and Downside, is of a high quality design, which preserves or enhances the character of the area, having particular regard to, inter alia, appearance, scale, mass, height, prevailing pattern of built development and separation distances to plot boundaries.
 26. For similar reasons, the proposal would also be contrary to Chapter 12 of the Framework, which seeks to achieve well-designed and beautiful places.

Living conditions – indoor living space

27. It is not unreasonable to assume that the amount of natural light entering proposed bedrooms 1 and 2 would be restricted to some extent as a result of their windows being positioned close to the canopy of an existing mature tree sited close to the boundary with No.16. Light-restricting impacts would be particularly felt when the tree is in full leaf.
28. Additionally, natural light entering the aforesaid rooms, particularly bedroom 1, would reasonably be affected, to a lesser degree, by the proximity of the return wall of the kitchen/dining/living room element of the dwelling.
29. However, the Council has not provided an objective assessment using a recognised tool for assessing daylight/sunlight impacts. The bedrooms in question have a southwesterly aspect, so they would benefit from afternoon/evening sun. Moreover, they are not the sole bedrooms within the proposed dwelling, comprising the smaller of the three bedrooms. There is no disagreement between the parties that the main, double ensuite bedroom would receive a satisfactory amount of natural light. Also, having regard to the overall size of the proposed dwelling, bedrooms 1 and 2 would not take up a disproportionately large area of the total indoor living space within the dwelling.
30. Having regard to the above, and in the absence of cogent evidence to the contrary, I am not persuaded that there would be an unsatisfactory living environment for future occupiers as a result of the levels of natural light enjoyed by bedrooms 1 and 2, nor that this matter adds up to material harm that would amount to a reason for dismissing the appeal.
31. For the above reasons, I therefore conclude that there would be no material harm to the living conditions of future occupiers, with particular regard to indoor living space. The development would therefore accord with DMP Policy DM10, in so far as this policy seeks, amongst other things, to ensure that new development provides an appropriate standard of living, internally, and offers residents an appropriate level of light.
32. 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.

Living conditions – outdoor living space

33. The proposed dwelling would be of a sufficient size and would include 3 bedrooms, plus a playroom, family bathroom, wet room and ensuite, such that it 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.
34. 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.

35. The proposed side/rear garden would be marginally shorter than the suggested minimum garden depth of the D and C SPD. Moreover, having regard to its relatively narrow width compared to its length, it would be notably smaller in size than surrounding gardens and those that prevail within the vicinity of the appeal site.
36. However, the proposed dwelling would, nonetheless, have a private enclosed garden, which would be positioned adjacent to all three bedrooms, and would benefit from direct access from the open plan kitchen/dining/living area of the dwelling.
37. As such, the garden would be appropriately positioned having regard to its function as an external extension of the indoor living space of the dwelling. Moreover, it would be of a sufficient size to incorporate outdoor sitting out and or dining facilities in association with the residential use of the building.
38. Notwithstanding that part of the garden would experience shading impacts from the adjacent tree within the garden of No.16, the information before me suggests that this would not impact upon the whole of the garden area. Moreover, the garden would benefit from sunlight associated with its southwesterly aspect.
39. In addition, due to the position of the proposed dwelling behind No.18, there is scope to use part of the frontage turning area adjacent to the parking spaces as private outdoor living space, and there is sufficient space to the side/rear of the building to accommodate cycle and bin storage without encroaching on useable garden space.
40. Accordingly, I find that the garden space for the dwelling would be sufficiently large to provide for the typical outdoor living requirements associated with family occupancy of the proposed 3-bedroom house.
41. 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.
42. 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.

Affordable Housing

43. 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).

44. 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).
45. The Framework, PPG and WMS aim to ensure 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.
46. 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 that, without such contributions, the Council would significantly limit its capacity to support the delivery of such homes.
47. 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.
48. 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.
49. The appellant has submitted a signed and dated Section 106 planning obligation but has not used the Council's Unilateral Undertaking template. As such, the Council will not confirm that it is acceptable unless it is reviewed by its Legal Services Department, for which it requires a fee.
50. The legal agreement has been fully executed and would secure an affordable housing payment in accordance with the Council's confirmed requisite amount of around £46,000. This would be paid prior to the commencement of development. With this in mind, and in the absence of any specific detailed comments from the Council in respect of the format of the submitted unilateral undertaking, I am satisfied that the development would make adequate provision for affordable housing. As such, for the reasons set out above, it

would accord with the Core Strategy Policy CS21 and the DCSPD, in so much as these seek to ensure an affordable housing contribution secured by a planning obligation.

SPA

51. The site is within 5km of the TBHSPA, where a net increase in housing development, either alone or in combination with other plans and projects in relation to urbanisation and recreational pressure effects, has the potential to significantly adversely impact on the integrity of the TBHSPA. The Council's adopted TBHSPA Avoidance Strategy to satisfy the Habitats Regulations, requires mitigation by means of a contribution towards Strategic Access Management and Monitoring (SAMM), to be secured by a legal agreement. The aforesaid submitted unilateral undertaking includes a requirement for a SAMM payment in accordance with the amount specified by the Council.
52. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the TBHSPA European designated site falls to me as the competent authority. Were I minded to allow the appeal, I would need to carry out an AA before considering the proposed mitigation set out in the submitted UU, since the proposal would be likely to have a significant effect on the TBHSPA. However, as the first main issue provides clear reasons for dismissing the appeal, I have not had cause to pursue undertaking an AA. I do not need to consider this matter further, since any findings on this issue would not change the appeal outcome.

Other Matters

53. The Council has confirmed that it cannot demonstrate a 5-year supply of deliverable housing sites as required by the Framework. The statements of case by both parties refer to a supply of 4.88 years of deliverable housing land. In relation to another current appeal⁴ in respect of new housing within the Borough, the Council has confirmed a more up-to-date figure from the Council's Annual Monitoring Report for 2021-2022 of 4.36 years.
54. 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.
55. 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.
56. 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

⁴ APP/K3605/W/23/3316875

- within a designated settlement boundary, where access to facilities and services and public transport connections is likely to be greatest.
57. Paragraph 60 of the Framework refers to boosting significantly the supply of homes, and an additional dwelling would make a small contribution towards addressing the housing delivery deficit. By providing a 3-bedroomed dwelling, the proposal would contribute towards providing a housing type for which, the Council has confirmed, there is an identified need within the Borough.
58. Moreover, the development could be built out relatively quickly, having regard to Paragraph 70 of the Framework.
59. There would also be economic benefits as a result of the construction of the new dwelling and economic and social benefits as a result of its future occupation.
60. The proposal would also make an important contribution to the Framework objective of creating mixed and balanced communities by providing a financial contribution towards the provision of affordable housing.
61. These above benefits weigh in favour of the development, and I afford them moderate weight, having regard to the modest size of the proposed development and associated affordable housing contribution towards off-site affordable housing provision.
62. 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.
63. 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, highway safety and parking, biodiversity and flood risk. Moreover, I have not found harm in respect of living conditions of future occupiers, having regard to indoor and outdoor living space.
64. 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 the character and appearance of the area.
65. Moreover, the proposed incorporation of sustainable design elements and on-site biodiversity enhancement are requirements of national and local planning policies in any case, and do not outweigh my conclusions on the first main issue.
66. 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.
67. Having given careful consideration to the balance of factors, notwithstanding whether footnote 7 to Paragraph 11 of the Framework applies with respect to habitat sites, 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

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

S Leonard

INSPECTOR