



Appeal Decision

Site visit made on 10 October 2023

Decision by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2024

Appeal Ref: APP/K3605/W/22/3306090

22 Otlands Avenue, Weybridge, KT13 9TN

- 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 D Jarvis of Cleaning Services against the decision of Elmbridge Borough Council.
 - The application Ref 2021/3609, dated 14 October 2021, was refused by notice dated 1 April 2022.
 - The development proposed is 12no. flats (9no. x 1 bed and 3no. x 2 bed) within two detached two storey buildings with rooms in the roofspace with associated parking, landscaping, refuse and cycle storage areas following the demolition of the existing dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2023, and accordingly for the purposes of this decision I have referred to the latest version of the Framework. Chapter 12 of the Revised Framework included updates and seeks to achieve 'well-designed and beautiful places'. Both main parties have had the opportunity to comment on the amendment to the Framework and I have considered the appeal on this basis.
3. I have also dealt with another appeal (APP/K3605/W/23/3320159). Whilst the two appeal proposals share similarities that appeal is the subject of a separate decision.
4. The appeal submission includes additional evidence which was not before the Council at the time of its decision. This includes a revised Bat Survey Report, an Arboricultural and Planning Integration Report Addendum and Tree Protection Plan. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
5. In this case, the additional information provides additional evidence in relation to the Council's reasons for refusal, rather than any amendments to the proposal. For this reason, I consider that there would be no prejudice to any party and I have therefore determined the appeal on the basis of the revised Bat Survey Report, Arboricultural and Planning Integration Report Addendum and Tree Protection Plan.

6. One of the Council's reasons for refusal is related to the effect of the proposal on protected species. I am content that the submitted Revised Bat Survey Report is identical to the document submitted to the Council during the determination of the planning application 2022/2795, which is the subject to appeal (APP/K3605/W/23/3320159). In relation to that appeal Surrey Wildlife Trust and Officers raised no objection to the proposal, subject to planning conditions. The absence of satisfactory information assessing the impact on ecology, biodiversity and protected species did not form a reason for refusal.
7. The Council have confirmed that they are satisfied on this basis that it has been demonstrated, subject to relevant planning conditions, that the proposal would not be harmful to protected species, on the understanding that the evidence before me is identical to that received in connection with 2022/2795.
8. As such there would be no conflict with Policy CS15 of the Elmbridge Core Strategy (2011) (CS) and Policy DM21 of the Elmbridge Development Management Plan (2015) (DMP). I have nothing before me to dispute the evidence provided or the findings of the Council and therefore I have not found it necessary to consider this matter further.
9. In relation to the Council's reason for refusal concerning insufficient internal living space for future occupiers, the appellant has provided further clarification in relation to the internal floor area and internal height of two of the units.
10. The Council has confirmed that that it has now been demonstrated that the units in question meet the relevant technical standards for new residential accommodation. I have nothing before me to dispute the evidence provided or the findings of the Council and therefore I have not found it necessary to consider this matter further.
11. As such there would be no conflict with Policies CS1 and CS4 of the CS, Policies DM2 and DM10 of the DMP, and the technical housing standards - nationally described space standards (2015) (NDSS).
12. Turning to the Council's reasons for refusal on the effect of the proposal on the privacy of neighbouring occupiers, the Council has confirmed that the reference to privacy was an error and that their primary concern is the effect of the proposal on outlook for the occupiers of 12 and 24a Oatlands Avenue. The officer report clearly outlines the Council's concerns related to the outlook of occupiers of both neighbouring occupiers. Consequently, I have determined the appeal on this basis.
13. In relation to the Council's reason for refusal in relation to the affordable housing contribution, one of the documents in the appeal bundle is an updated Financial Viability Appraisal (FVA) prepared by S106 Management that did not form part of the original submission.
14. It is suggested that the submission of the FVA closer to the date of decision of this appeal would make it more up to date than if it were submitted during the course of the planning application, as it would take into account changed economic circumstances. I acknowledge that many variables can influence viability and that these can change quickly. Regardless, the onus is on the appellant to demonstrate whether particular circumstances justify why a policy compliant affordable housing contribution is not provided at the planning application stage.

15. The FVA not been subject to a public consultation or reviewed by the Council's independent viability consultant. I have considered the FVA taking into consideration the principles established by the Courts in *Holborn Studios Ltd*¹ and find that to consider the new information provided with this appeal or to be agreed at a later date would unacceptably prejudice those who should have been consulted. Therefore, I have not taken into account the updated FVA submitted by the appellant in this case.

Main Issues

16. The main issues are the effect of the proposal on:

- the character and appearance of the area;
- the living conditions of occupiers of neighbouring properties, with particular reference to outlook for the occupiers of 12 and 24a Oatlands Avenue;
- trees surrounding the site; and
- whether the proposed development would make an appropriate affordable housing contribution.

Reasons

Character and appearance

17. The appeal site is located within the Oatlands Park, York Road and Oatlands Chase Environs character area, as defined in the Design and Character Supplementary Planning Document (SPD). The Weybridge Companion Guide to the SPD describes the area as being defined by predominantly mixed residential 20th Century two storey houses at a low to medium density on medium to large plots with some post-war three storey flatted development interspersed throughout.
18. This part of Oatlands Avenue is residential in nature and primarily characterised by detached dwellings laid out in a low-medium density. The width and depth of plots on this side of the road is largely consistent and properties are generally set back from the road behind car parking in a uniform pattern. Mature trees and planting, as well as generous spacing between buildings is a notable positive feature of the area. A notable exception to this is 12 Oatlands Avenue (No 12), the adjoining property to the right of the appeal site, when viewed from the road, which is positioned significantly further forward of the prevailing building line.
19. The existing dwelling at the appeal site is noticeably smaller and lower in height than the neighbouring properties. However, as a result of its diminutive appearance, it is not a prominent feature within the street scene and does not harm the character of the area. When viewed from the highway, properties to the left of the appeal site are generally bungalows or chalet style bungalows with low eaves heights and dormer windows at first floor level. To the right of the appeal site, properties are generally two storey and therefore taller in height and display variation in the widths of front elevations facing the highway. Whilst there is a variety of building designs, the predominant materials on the front elevations include brickwork, hanging tiles and decorative bargeboards.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

20. No 24A Oatlands Avenue (No 24A), located to the left of the appeal site is a chalet bungalow, with very low front eaves and first floor level dormer windows. The proposal consists of two separate blocks containing flats. The block adjoining No 24A would have two fully expressed storeys, with the third storey within its roof form. As result it would be noticeably taller and bulkier than the adjoining property.
21. The other proposed block would be constructed near the shared boundary with No 12. Whilst this neighbouring property has a two-storey side projection and integral garage, as a result of their significant set back from the front elevation, these elements are not read as part of the main mass of the property. In contrast, the proposed block would be taller and wider than the principal part of No 12. The introduction of two tall and wide blocks, where there is currently a single building, would result in the infilling of the site with a significant amount of built form and resultant loss of spacing around buildings.
22. Overall, as both blocks would be noticeably taller than their immediate neighbours, and would each have an additional storey of accommodation, I do not find that the proposal would act as a visual transition between the neighbouring properties.
23. Both of the blocks would be significantly deeper than the adjoining properties. The blocks' large footprints would create bulky and visually awkward buildings. The side elevations, which would be visible in views from adjoining properties and in limited views from the front of the site, would be expansive with few features to soften their appearance.
24. Whilst the blocks would be set back from the highway, the majority of space to the front of the blocks would be almost entirely covered by hardstanding and large refuse storage areas. In comparison to neighbouring properties, there would be a low proportion of remaining front garden area and soft landscaping. I find that the proportion of the site which would be covered by built form and hardstanding would create a cramped form of development which is indicative of overdevelopment. The 1 metre gaps between the blocks and the side boundaries would not provide sufficient spacing to alleviate the cramped form of development.
25. There is a mixture of pitched and hipped roofs within the area. However, despite the limited articulation provided by the dormers windows, due to their size and bulk the proposed crown roofs would appear as large, heavy and somewhat unrelenting masses. During my site visit I did not see other examples of crown roofs as the primary roof form at properties within the local area. Overall, the two large crown roofs with significant areas of flat roof would be prominent and uncharacteristic features within the streetscene.
26. The Council has no objection to the principle of the redevelopment. Similarly, the materials proposed, and the architectural detailing, when viewed in isolation, may be acceptable. However, the impact of the development, when viewed in its context, due to its size and bulk, combined with the quantum of hardstanding and reduction of soft landscaping would cause harm to the character and appearance of the area.
27. For the above reasons, I conclude that the proposal would harm the character and appearance of the area. Consequently, it would conflict with Policy CS17 of the CS and with Policy DM2 of the DMP which require development to be of

high quality design, based on an understanding of local character and context. I also find conflict with the principles within the National Planning Policy Framework (2023) and the Elmbridge Design and Character Supplementary Planning Document (2012) (SPD) which expect development to be visually attractive as a result of a good layout whilst maintaining a strong sense of place.

Neighbouring occupiers

28. The proposal's side elevation would project a significant distance beyond the rear elevation of No 24A. At three storeys high, albeit with the top storey within a hipped roof, the proposal would extend significantly above the 1.8m close boarded fence on the boundary. As its side elevation would be positioned very close to the shared boundary with No 24A, its width and height would have the potential to impact the outlook for neighbouring occupiers from their rear garden. At the time of my site visit the garden appeared to be well used, containing garden furniture and domestic paraphernalia.
29. The roof of the proposal would be hipped and would pitch away from the shared boundary. However, as the neighbouring property's garden is not particularly deep, views from the area of the garden closest to the boundary would look directly onto the house's rear elevation with minimal separation distance. The side elevation would have limited articulation and as a result would present a large expanse of brickwork facing No 24A and would have a looming presence over the neighbouring garden. The combined depth, height and proximity of the proposal to the neighbouring garden means that it would be a dominant and oppressive feature for the occupiers of No 24A.
30. No 12, the neighbouring property to the other side of the appeal site, has a larger and deeper footprint than No 24A. As a result, the proposal would not project as far beyond No 12's rear elevation. In addition, No 12 has a large garden, much of which is located a significant distance from the boundary with the appeal site. Consequently, whilst the proposal would be visible in views from the garden towards the appeal site, it would not significantly enclose the garden to the extent that the neighbouring occupiers' outlook would be unacceptably harmed.
31. However, I have found that the proposal would have an unacceptable impact on the living conditions of the neighbouring occupiers of No 24A. Therefore, in this respect, it would be contrary to Policy DM2 of the DMP and the SPD. Amongst other aspects these seek to protect the living conditions of occupiers of neighbouring adjoining properties. I also find conflict with the principles of the Framework that seek the creation of places that are safe and have a high standard of amenity for existing and future users.

Trees

32. The appeal is accompanied by an Arboricultural and Planning Integration Report Addendum (AIPR) prepared by GHA Trees. A Scots Pine tree adjacent to the site, detailed as T1 within the AIPR is subject to a Tree Preservation Order (TPO). This tree has been assessed as Category B, with an estimated remaining life expectancy of at least 20-40 years.
33. The TPO tree is prominent from the street scene and positively contributes to the visual amenity of the surrounding area. Due to the close proximity of the

tree to the proposal including the new parking area, there is the potential that harm could be caused to the root system of the tree. The submitted AIPR confirms that an area over 27.5% of the root protection area (RPA) of T1 will be covered by a building and car parking area.

34. The Council's tree officer has raised concerns that the extent of development within T1's RPA would have a negative impact on the tree's future health.
35. The default position of BS 5837:2012 – 'Trees in relation to design, demolition and construction' is that structures should be located outside of RPAs, and only where there is an overriding justification for construction within the RPA should technical solutions be considered to prevent root damage.
36. However, even with the specialist foundation techniques that are recommended in the AIPR, the incursion into the RPA of T1 would be significantly greater than the maximum 20% recommended in BS 5837:2012. Therefore, on the evidence before me, I am not persuaded that the proposed development could be accommodated on the appeal site without causing harm to the protected tree and its longevity. Furthermore, even if the tree's health is not negatively affected, the position of the tree in proximity to habitable windows to bedrooms at ground and second floors, and a kitchen/living room at first floor level, could lead to foreseeable pressure to have the tree pruned or removed to the detriment of the character and appearance of the area.
37. The trees detailed as Lawson Cypress T2 & T3, Apple T5 and Lawson Cypress T6 & T7 are shown to be removed to facilitate the proposed development. These trees are noted as being BS 5837:2012 Category C (Low Value) trees within the AIPR and I agree that these trees are not significant within the context of the local or wider landscape. I consider that the loss in the amenity that the trees to be removed provide can be satisfactorily offset by the planting of new and replacement trees (the exact numbers, sizes, species and positions of which could be confirmed during the discharge of planning conditions).
38. However, the proposal would be detrimental to the long term future of the adjacent protected tree. As such it would be contrary to Policies CS14 of the CS and Policy DM6 of the DMP, which seek to ensure that existing trees and hedges are protected and enhanced and that the design of new development takes account of trees and landscaping. I also find conflict with paragraph 136 of the Framework which states that trees make an important contribution to the character and quality of urban environments.

Affordable housing

39. Policy CS21 of the Core Strategy requires that for this development a financial contribution equivalent to the cost of 30% of the gross number of dwellings should be provided. Where it is considered that the delivery of affordable housing in accordance with the policy is not viable, this must be demonstrated through a financial appraisal.
40. The appellant's FVA submitted with the planning application, based on a 100% market scheme on the site produces a residual land value (£839,943), which after deduction of the Benchmark Land Value (BLV) of £1.4m leaves a deficit of -£560,057, taking into account all costs and factoring in a Community Infrastructure Levy (CIL) payment of £98,664 and developer's profit at 20%.

The FVA concludes that based on market conditions, there would not be sufficient scope for a policy compliant affordable housing contribution.

41. However, the Council disputes the FVA based on a review of it undertaken by its independent consultants. In particular, an integral component in calculating the BLV is the Existing Use Value (EUV+). EUV is the first component of calculating benchmark land value (BLV) and EUV+ is the value of the land in its existing use, plus a premium for to incentivise the landowner to bring the site forward for development.
42. The appellant's BLV of £1.4m has been calculated by considering local transactions of properties which had occurred within the previous year and which were located within a quarter of a mile from the appeal site. However, on the submitted evidence it appears that the properties presented by the appellant are not comparable to the subject site for a range of reasons. These include having larger gardens, being located on quieter roads away from rail tracks, and being in better overall condition. Overall, I agree that the selected properties are likely to receive a substantial premium over the appeal site, and this therefore has inflated the EUV+ and potential BLV of the subject site.
43. Furthermore, whilst the Planning Practice Guidance (PPG) is clear that the price paid for land is not the EUV, it confirms that local authorities can request data on the price paid for land (or the price expected to be paid through an option or promotion agreement). The Council's independent assessment confirms that the site was sold within the 12 months prior to the appellant's FVA. As it was sold in its existing use it offers a reasonable and fair indication of the EUV of the property, excluding the premium to the landowner for release for development.
44. The Council's assessment indicates that the site's sale figure was £700,000 and has accounted for additional growth in the value by using the Land Registry price index for residential properties in the Elmbridge area to establish the EUV at the time of the assessment. Furthermore, a reasonable 20% premium paid to the landowner was factored in. Using this analysis, the Council's assessors arrived at BLV of £963,407 rounded to £965,000. Consequently, the lack of clarity and disparity over the BLV calculations, leads me to doubt the conclusiveness of the appellant's FVA.
45. The appellant suggests that the use of a 20% developers profit, which is at the top end of what the PPG states may be considered a suitable return to a developer is justified by the current inflationary environment, with interest rates increasing in tandem with build costs, currently outpacing sales growth for flats. However, even if I were to accept this, it seems to me that the proposal would still be capable of providing a contribution towards affordable housing.
46. Accordingly, I find that the proposal fails to make appropriate provision for affordable housing and for this reason it would conflict with Policy CS21 of the CS, the aims of which I have set out. In reaching a view on this issue I have also paid regard to the Council's Development Contributions Supplementary Planning Document (2020) in regard to affordable housing contributions.

Other Matters

47. I acknowledge that Elmbridge as a borough is heavily constrained by land designations and, as such, the availability of land and specifically of brownfield land for development is limited and faces severe pressure. The Framework seeks to significantly boost housing supply and indicates the value of using suitable land within settlements for homes. It also encourages the optimal use of underutilised land, and states that, where there is a shortage of land for meeting identified housing needs, planning decisions should avoid homes being built at low densities. The proposal would contribute to local housing supply and would represent a more efficient use of previously developed land. These matters weigh in favour of the development.
48. The main parties agree that residential development in this general location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan, for instance the units would meet a need identified within Council documents. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
49. A number of neighbours have raised other concerns in relation to the development, such as in relation to its effect on parking and highway safety. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.
50. I understand that the appellant undertook pre-application discussions with the Council in advance of the submission of the planning application. However, the concerns expressed regarding the Council's conduct during the processing of the planning application are outside the remit of this appeal decision.

Planning Balance and Conclusion

51. The appellant and the Council are in agreement that the Council cannot demonstrate a 5-year housing land supply. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
52. Policies CS17 of the CS and DM2 of the DMP are broadly consistent with the Framework's aim to create high quality, beautiful and sustainable buildings and places by, among other things, being sympathetic to local character including the surrounding built environment. This is considered fundamental to what the planning and development process should achieve, and paragraph 139 of the Framework advises that development that is not well designed should be refused.
53. The Framework also sets out at paragraph 136 that trees make an important contribution to the character and quality of urban environments, whilst paragraph 135 f) states that development should create places with a high standard of amenity for existing and future users. Paragraph 64 of the Framework states that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required and expect it to be met on-site. Consequently, Policies CS14 and CS21 of the CS and Policies DM2 and DM6 of the DMP are consistent with the Framework. As such they have been given full weight.

54. As described above the benefits associated with 11 (in net terms) additional new homes would be significant. The Framework also gives substantial weight to the value of using suitable brownfield land within settlements for housing. I recognise that the windfall development would incorporate high-quality building insulation levels alongside renewable technologies. These all weigh in favour of the proposal.
55. The support for the principle of development within the Framework is countered by the importance it places on the provision of development that preserves character and appearance. Equally, the identified adverse impacts of the development in respect of affordable housing, trees and living conditions are matters of a high order.
56. Consequently, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
57. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework and the presumption in favour of sustainable development, which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR