



Appeal Decision

Site visit made on 29 February 2024

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 29th April 2024

Appeal Ref: APP/K3605/W/23/3326297

4 Thirlmere Terrace, Ambleside Avenue, Walton-On-Thames, Surrey KT12 3BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr G Cywinski against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/0733.
 - The development proposed is the erection of a two-storey side extension and the subdivision to create an additional dwelling house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters relied on by the main parties are unchanged. Therefore, I did not need to consult with the main parties regarding the revised Framework and in determining this appeal, I have had regard to the most recent version.
3. The parties comments have been sought on whether or not the sequential test in terms of flood risk has been undertaken and passed. I have determined the appeal in light of the representations made.
4. A completed legal agreement made under s106 of the Town and Country Planning Act 1990 was submitted with the appeal, dated 29 November 2023. This would secure an off-site affordable housing contribution of £22,932.59. The Council has confirmed that this addresses the fourth reason for refusal and this is reflected in the main issues accordingly.
5. As I am dismissing the appeal, it is not necessary in this case to explore whether the tests set out in the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Regulations 2020 (as amended) are met.

Main Issues

6. The main issues are:
 - whether the proposal would adequately address flood risk,

- the effect of the development on the living conditions of the occupiers of 1 Burley House (No 1) with regard to light and outlook, and
- whether the development would make appropriate provision for parking.

Reasons

Flood risk

7. The appeal site is located within flood zones 3a and 3b and is therefore at high risk of flooding.
8. Policy CS26 of the Elmbridge Core Strategy 2011 (CS) states, amongst other matters, that planning permission will only be granted where it is demonstrated through a sequential test that the development is located in the lowest appropriate flood risk zone. The policy contains an outdated reference to the superseded Planning Policy Statement. Nonetheless, the aims of the policy align with those of the Framework and the Planning Practice Guidance (PPG) which indicate that a sequential test followed by an Exception Test need to be passed in order to justify 'more vulnerable development', which includes new residential dwellings.
9. The FRA, with reference to topographical data for site together with the modelled flood levels, concludes that the site sits above the flood plain and outside of the modelled flood levels for zone 3b. As such, it is not likely to experience fluvial flooding. However, it remains within a wider area which is at risk. Paragraph 23 of the PPG advises that "Even where a flood risk assessment shows that development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied."
10. Furthermore, notwithstanding the findings in respect of fluvial flooding, the FRA identifies a risk from surface water, with particular regard to the access routes, as well as a high risk from ground water flooding. The Framework clarifies that the sequential test should take account of all sources of flood risk when permitting development and that the sequential test should be applied in all areas at risk including from ground and surface water.
11. The site is not allocated in a development plan, neither is it a type of development exempt from the sequential test as specified in footnote 56 of the Framework. It is therefore necessary for the sequential test to be applied and passed in order to justify the development. Whilst a FRA was submitted with the appeal, this did not include information to enable the sequential test to be undertaken.
12. In the absence of any information to enable the sequential test to be undertaken, I cannot be satisfied that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal therefore fails the sequential test and would therefore not be an acceptable form of development with regards to flood risk.
13. My attention has been drawn to a Surface Water Drainage Strategy. However, even if I were to accept that this strategy provided suitable mechanisms for managing surface water, it would not overcome the issues identified above in relation to the sequential test. Similarly, it is not necessary for me to explore whether the exception test would be passed, as the Framework indicates that the sequential test must be passed before the exception test can be applied.

14. The failure to pass the sequential test is a compelling reason why the development should not be permitted. Therefore, the proposed development has failed to adequately address flood risk and therefore fails to comply with Policy CS26 of the CS 2011, the Flood Risk SPD and the Framework.

Living conditions

15. No 1 is a semi-detached two storey property, which is well set back within its plot. There are habitable room windows to No 1 on both the side and front elevations, providing natural light and a high-quality outlook to the property. The proposed dwelling would adjoin number 4 Thirlmere Terrace and would be sited much further forwards in the plot relative to No 1.
16. My attention has been drawn to a breach of the 45-degree sightline test set out in the SPD, in relation to the effect of the proposed dwelling on light to the nearest first floor window, serving a bedroom. Whilst a useful measure, a more detailed assessment is before me in the form of a sunlight and daylight report.
17. The daylight and sunlight report, which assesses the effect of the development on neighbouring properties including No 1, finds that the neighbouring rooms subject of the reason for refusal, would meet the BRE guidelines for loss of daylight and sunlight. In terms of daylight, it is noted that the nearest bedroom would retain a very high percentage of the existing light. Given the orientation of No 1, together with the relative proposed siting of the new dwelling, any effect on direct sunlight would be very limited.
18. From my own observations, I note that the proposed dwelling would be set much further forward in its plot and would be well separated from No 1, such that it would only be visible in oblique rather than direct views. Given the above factors, no adverse loss of light or outlook would occur.
19. The Council have drawn my attention to a potential conflict with the 22m separation guideline, contained within the Design and Character SPD 2012 (SPD). However, the SPD states that this requirement relates to rear elevations facing each other. The rear elevation of the proposed dwelling would not face the rear elevation of No 1, and as such this requirement would not be breached.
20. The proposal would therefore be acceptable in terms of its effect on the living conditions of the occupiers of No 1 with regard to light and outlook, in accordance with Policy DM2 of the Development Management Plan 2015, the SPD and the Framework. This policy and guidance, taken together, requires development to protect the amenity of adjoining occupiers, including providing adequate daylight and sunlight.

Parking

21. The sole car parking space for the proposed dwelling is proposed to the side of the dwelling and adjacent to the side boundary. This would provide the single space requirement set out in the Parking Supplementary Planning Document 2020 (the Parking SPD).
22. The position of the space would leave minimal separation to the solid structures either side, comprising the house and the side boundary. The Parking SPD provides guidance on the minimum size of parking spaces, however, it is clear

that it may be necessary to increase the size dependent upon the site circumstances.

23. Whilst the modest separation to the solid structures could restrict the ability of occupiers to enter/exit the vehicle, the width of the space would be sufficient to compensate for this. Furthermore, the space tapers away from the wall, with the separation to solid structures increasing towards the back of the space.
24. Given the above, the proposal would make appropriate provision for parking such to accord with the requirements of Policy DM7 of the Development Management Plan 2015, the Parking SPD and the revised NPPF. These policies and guidance, taken together, require parking provision to be appropriate to the development, including a minimum of one space per residential unit.

Other considerations

25. The contribution towards off-site affordable housing, which in principle would have been secured if I was allowing the appeal, would have been modest. Nonetheless, there is a clearly identified need for affordable housing in the Borough and therefore this weighs in favour of the appeal scheme.
26. The proposal would make a modest contribution towards the supply of housing, and this would result in social and economic benefits. This would contribute to the government's target to significantly boost the supply of homes.

Planning Balance

27. The appeal proposal would conflict with policies in relation to flood risk. This harm carries significant weight. Therefore, there would be a conflict with the development plan as a whole.
28. The Council is currently unable to demonstrate a five-year supply of deliverable housing sites. In these circumstances, footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date.
29. However, in this case, the proposal would conflict with policies of the Framework in relation to areas at risk of flooding. The application of these policies provide a clear reason for refusing the development. The presumption in favour of sustainable development does not apply.

Conclusion

30. The material considerations do not indicate that a decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

R Lawrence

INSPECTOR