



Appeal Decision

Site visit made on 24 May 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Appeal Ref: APP/K3605/W/23/3326984

**Land southwest of Grace Land, Molembur Road, East Molesey, Surrey
KT8 9NH**

- 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 Herranz against the decision of Elmbridge Borough Council.
 - The application Ref 2022/3724, dated 12 December 2022, was refused by notice dated 1 June 2023.
 - The development proposed is detached two-storey house with ancillary parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A revised version of the National Planning Policy Framework ('the Framework') was published in December 2023. Paragraph 226 sets out that local planning authorities that have submitted a Local Plan for examination are required to identify and update a supply of specific deliverable sites sufficient to provide a minimum of 4 years' worth of housing (with a buffer, if applicable) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than 5 years old.
3. The Council's existing adopted housing requirement is set out in the Elmbridge Borough Council Core Strategy (2011) (CS), which is more than five years old. The Council are currently at Examination with its emerging Local Plan that once adopted will set out the new strategic housing requirement for the borough. Therefore, at present the Council's land supply position must be judged on a 4 year supply of deliverable sites against local housing need, rather than a minimum of five years. The Council are currently unable to demonstrate a 4 year supply at the present time. I consider the implications of this in the planning balance section of this decision.

Main Issues

4. The main issues are whether the proposed development is acceptable in respect of:
 - the character and appearance of the area;
 - whether the proposed development would increase the risk of flooding elsewhere;

- the density of development, and whether it would be an efficient use of land; and
- Parking provision.

Reasons

Character and appearance

5. The appeal site is an open area of land on Molembor Road that contains grass, trees and shrubs. To the south east is the River Ember and associated flood defences that are located between the site and the water. The character of the area comprises predominantly detached two-storey dwellings with either hipped or gable ended roofs. Materials used are predominantly brickwork, render and pebbledash.
6. The proposed dwelling would have a contemporary style comprising on its front elevation large areas of blank facades, within an overall bland frontage design. This is in direct contrast to the front elevations of dwellings in the area that, whilst displaying a range of different styles, have vertical proportions with visual interest from the number and positioning of openings that contribute positively to a high quality and varied street scene. The front elevation would, therefore, not sit well within this context and represents an incongruous design in terms of its horizontal emphasis with its utilitarian design that would harm the character and appearance of the area.
7. The rear elevation would have a more varied and interesting façade with openings that optimise the site's location overlooking the adjacent river. Whilst this elevation is more appropriate to its particular riverside setting, it does not justify the harm that would arise to the character and appearance of the Molembor Road street scene.
8. Due to the site constraints, the proposed dwelling would be linear in shape to fit within the developable area that is available. The design would include a single storey flat roofed element, which, as set out in the Council's Design and Character Supplementary Planning Document (SPD) (2012), should be designed to relate to and integrate successfully with the host dwelling.
9. In this case, the single storey element would appear as a discordant addition that would not assimilate well with the rest of the development due to the bland façade as discussed above. The appellant has highlighted that there are other dwellings nearby that have single storey flat roof components. However, I do not have full details of these before me and must judge this appeal on its own merits, but from my site visit these examples appeared more integrated with their host dwellings in design terms than would be achieved by the appeal proposal.
10. However, given the site constraints, I do not find that the narrow footprint would be sufficient reason of itself to justify dismissing the appeal. The reason being that the narrowest part is contained to western end of the site, with a very localised impact that would only be seen from limited public vantage points that are partially screened by mature vegetation. This is, however, only a neutral factor and does not outweigh the significant harm to the character and appearance of the area that I have identified.

11. I also note that the appellant undertook pre-application discussions with the Council where the principle of a modern development was discussed. I do not have the full details of those pre-application discussions before me so can only give this very limited weight in this decision. However, it appears from the information before me that the Council remains open to considering a modern design, subject to the submission of a robust character assessment. Whilst the appellant sought to respond to this in the submitted design and access statement, I agree with the Council that the particular form of modern design subject of this appeal is not acceptable in terms of its impact on the character and appearance of the area.
12. To conclude, and for the aforementioned reasons, the appeal proposal would harm the character and appearance of the area contrary to CS Policy CS17 and Policy DM2 of the Elmbridge Local Plan Development Management Plan (2015) (DMP). The proposal would also not be consistent with the advice in the Elmbridge Design and Character SPD and relevant sections of the NPPF with regard to design and impact on character.

Flood Risk

13. The appeal site is in Flood Zones 2 and 3. The development footprint would be located in Flood Zone 2, where it is classified as being a 'more vulnerable' use in the Planning Practice Guidance (PPG). I note that the Council reviewed the submitted Flood Risk Assessment and concluded that the sequential test has been met and the development itself would include appropriate flood mitigation and resilience measures. I concur with the Council's conclusions in this regard.
14. Notwithstanding this, the Environment Agency (EA) has raised concerns that the development would remove an area of open land and restrict access for essential maintenance, emergency access and improvement works to the river and flood defences. The EA have also raised concern that the proposal would be likely to adversely affect the construction and stability of flood defence ground anchors.
15. In respect of maintenance, it is not clear how the EA currently undertake essential maintenance and emergency access and whether the appeal site is the only opportunity to do this in the vicinity. I accept the appellant's points that the site represents only a very small proportion of the flood wall, with the majority of it already having restricted access due to existing dwellings along the river. That said, however, there is no information before me that demonstrates that the site is not essential to retain with regard to providing the access required by the EA. Without this, it is not possible to definitively conclude that the development would not result in any harm in respect of the relevant responsible body being able to carry out essential maintenance and other works.
16. The same conclusion applies to the impact on the ground anchors. The information before me includes a diagram of where the anchor locations could be, but lacks specific detail on their precise locations and indicates that further investigative work is required to determine this. I accept that the structural report sets out that it could be possible for the development to proceed without undermining the ground anchors. The appellant also indicates that there could be other engineering solutions such as to drive sheet piles into the ground next to the flood wall. These techniques may well be feasible, but none of the

information presented conclusively demonstrates that any of the options would ensure the development would not damage or affect the structural integrity of the adjacent flood defences.

17. Accordingly, there remains the risk that the proposal could adversely affect the adjacent flood defences, which could result in damage to the property and elsewhere downstream. This is not an acceptable position from which to consider granting planning permission, and I give this potential for harm to flood risk elsewhere considerable weight in this decision.
18. To conclude, the proposed development would not be acceptable with regard to flood risk and would fail to accord with CS Policy CS26, which requires that development must be located, designed and laid out to ensure that it is safe; and that the risk from flooding is minimised whilst not increasing the risk of flooding elsewhere. The proposal would also fail to comply with Paragraph 165 of the Framework, which requires that development should be made safe for its lifetime without increasing the risk of flooding elsewhere.

Density

19. Policy CS17 of the Core Strategy requires a minimum density of 30 dwellings per hectare. The site is highly constrained and, as demonstrated in the information before me, only has a comparatively small developable area.
20. In response, the appellant has presented an innovative layout that seeks to optimise the developable land available. When considering the area of the site that is developable, it is evident that the minimum requirement of CS Policy CS17 would be met. There is nothing in the Council's policies or supporting guidance that prevent a tighter layout on a site where site circumstances requires it, which would be the case here.
21. I, therefore, agree with the appellant that the proposal has sought to maximise the density within the constraints that exist, which are significant in terms of the developable area. I, therefore, find that the proposal would be consistent with the aims of Policy CS17 of the Core Strategy, and the relevant sections of the Framework in respect of making efficient use of land.

Parking

22. The appeal scheme as submitted does not comply with the Council's space requirements for parking. This is not in dispute between the two parties. The appellant has, however, demonstrated that it could be possible to provide the required two parking spaces in accordance with the Council's space requirements.
23. Based on the information presented, I am satisfied that there is sufficient space at the site to provide the required parking to meet the Council's standards in accordance with Policy DM7 of the DMP. Had the appeal been allowed it would have been necessary to address parking provision to ensure the Council's standards are met. However, as I am dismissing the appeal for other reasons it is not necessary to consider this matter further.

Planning Balance and Conclusion

24. The appeal scheme would conflict with the development plan taken as a whole. The Council cannot currently demonstrate 4 years of deliverable housing

supply. Accordingly, the development plan policies most important for determining the application are deemed 'out of date'. In these circumstances Paragraph 11 of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

25. However, Footnote 7 to Paragraph 11 includes specific reference to policies within the Framework including those relevant to areas at risk of flooding. As has been discussed, the proposal is not acceptable with regard to flood risk which provides a clear reason for refusing the proposed development.
26. Therefore, the Framework's presumption in favour of sustainable development does not apply, and there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan.
27. For the reasons given above I conclude that the appeal should be dismissed.

N Perrins

INSPECTOR