



Appeal Decision

Site visit made on 24 May 2024

by N Perrins MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2024

Appeal Ref: APP/K3605/W/23/3332221
40 New Road, Esher, Surrey KT10 9NU

- 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 Runnymede Homes Ltd against Elmbridge Borough Council.
 - The application Ref is 2022/2086.
 - The development proposed is demolition of existing dwelling; creation of new access to the rear of the plot; erection of one detached dwelling; two pairs of semi-detached dwellings and a terrace of four dwellings all two storeys high; provision of car parking and private amenity space.
-

Decision

1. The appeal is dismissed.

Procedural Matter

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 have confirmed that with their emerging Local Plan at examination they are assessing housing supply against the 4-year requirement at present. The Council has also confirmed during the appeal process that they are 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.
4. I am aware that amended plans were submitted during the course of the planning application, which for the avoidance of doubt I have used to assess this appeal.

Main Issues

5. The main issues are whether the proposed development is acceptable in respect of:
 - The character and appearance of the area with particular regard to the layout of the development, and the appearance of Plot 1 within the street scene;

- The living conditions of future occupiers of the development, and for No 42 New Road and No 2 Broomfield Road with particular regard to their outlook;
- Future pressure to remove trees;
- Biodiversity;
- Parking provision with particular regard to on-street parking impacts.

Reasons

6. The appeal site is a detached two-storey dwelling with large and spacious grounds located in a private residential estate. The site is an irregular shaped plot that widens from the frontage towards the rear. There are various trees subject to tree preservation orders around the site within neighbouring properties' gardens, which provide the rear garden area with a secluded and private character. Dwellings along New Road are laid out in predominantly linear form fronting the road with large gardens to the rear. Accordingly, the density of development is relatively low, which contributes positively to the spacious and high quality character of New Road.
7. The proposal seeks permission to replace the existing property with a new dwelling, and erect a back land development comprising two pairs of semi-detached dwellings and a terrace of 4 dwellings in the existing rear garden area. The principle of development on garden land is established as acceptable by Policy DM10 of the Elmbridge Local Plan Development Management Plan (DMP) 2015. Policy DM10 confirms that housing development on garden land will be appropriate subject to compliance with four criteria including that development is to be well designed to respect the character of the area.
8. In this case, the semi-detached dwellings at the rear of the site would be located next to each other facing towards New Road reflective of how frontage development is laid out on the road. The position of the semi-detached dwellings would also relate sympathetically with the line of development on the adjacent Broomfields development.
9. However, the terrace of 4 dwellings in the central part of the site would have a very different juxtaposition to the prevailing pattern of development in the area due to being positioned vertically within the plot. Whilst I acknowledge that it has taken its design cue from the nearby terrace to the north, that development is located fronting onto New Road and therefore does not provide any support for the orientation of the layout as proposed in this case.
10. Moreover, the terrace due to its width would appear as an excessive and elongated building within the central part of the site. When this is considered together with the hard surfacing required for access and parking and the proximity to the semi-detached dwellings, the terrace would appear as overly large creating a cramped layout within the central part of the site behind the frontage. The overall effect would be to create a markedly different and incongruous layout of development.
11. Furthermore, the individual plots sizes are significantly smaller than the prevailing plot sizes along New Road. Whilst this approach would enable the Council's minimum density requirements as set out in Policy CS17 of the Elmbridge Local Plan Core Strategy 2011 (CS) to be met, it also would result in

- a cramped and uncharacteristic overall layout not in keeping with the overriding pattern of development in the area.
12. I note the appellant has drawn attention to a recently approved scheme at 35 New Road with the contention that the appeal scheme is more spacious and less cramped than at No 35. However, from the information before me the No 35 New Road is not backland development and respects the prevailing character of the area by following the established building line and having dwellings that front on to the road. Therefore, I am not satisfied that the context is directly comparable for the approval at No 35 to provide any justification for the overall layout in this case.
 13. The appellant has also pointed out examples nearby where cul-de-sacs have been created in the area that don't have street-facing layouts and plot sizes are varied. However, none of the examples provided are located off New Road and, therefore, do not form part of the character of the road on which the appeal site is located. Moreover, the dwellings on these nearby cul-de-sacs have larger overall plots that more closely reflect the scale and pattern of development that exists in the area than that proposed in this appeal. Overall, I find that these examples further serve to highlight that the appeal proposal layout would not respect the character of the area.
 14. With regard to Plot 1, I note that the Council, in justifying their reason for refusal 6, consider that both the proposed building and its plot width would be too narrow in comparison to the other houses fronting New Road. Whilst the plot width and building would be narrower than some of the nearby buildings, I do not agree that it would result in material planning harm to the street scene. The reason being is that frontages and dwellings along the southern part of New Road around the appeal site are generally narrower than those further north. Furthermore, the overall design approach of using typical Surrey vernacular throughout the proposal including materials and detailing would represent a high quality and appropriate design that would enhance the character and appearance of the street scene when compared with the existing dwelling at the site.
 15. Plot 1 would also strengthen the building line along New Road with the dwelling being brought further forward in the plot than the existing property. Therefore, whilst I have found harm arising from the cramped nature of the overall development as it would extend into the rear garden area, Plot 1 in isolation is acceptable in design terms and would not result in material planning harm to the character and appearance of the street scene.
 16. To conclude, the layout beyond the frontage would be cramped and not respect the prevailing pattern of development in the area. The proposal, therefore, does not accord with Policy CS17 of the CS and Policies DM2 and DM10 of the DMP. The proposal would also conflict with the advice within the Elmbridge Local Plan Design and Character Supplementary Planning Document (SPD) 2012 and Paragraph 135 of the Framework. Amongst other things, these require development to integrate sensitively with the locally distinctive townscape, be based on an understanding of local character and respect and be sympathetic to local character.

Living conditions

Future Occupants

17. The Council contend that the amenity space for Plots 6 and 8 would be compromised by the overhanging branches from TPO trees affecting daylight and sunlight to the proposed gardens. The relevant trees are T7 for Plot 6 and T10 for Plot 8, both of which are located within the adjacent gardens. I note that the Council consider T10 could be affected by Oak Processionary Moth (OPM) as it is highly prevalent in the borough that would further impact on the amenity space for these plots. However, the impact from OPM has not been substantiated by any conclusive evidence and I, therefore, can only give this limited weight in this decision.
18. However, whilst I observed on my site inspection that the branches from the trees are relatively high, they are also dense and mature and would in my view have an effect on the amenity of the garden areas for both plots 6 and 8 through overshadowing. The additional garden areas identified as mitigation are comparatively small compared with the main rear gardens for both properties and would not provide adequate compensation for the overshadowing that would occur in the main garden areas for much of the year.
19. I acknowledge that there could be benefits from the shade with regard to increasing temperatures. However, I am not persuaded from the information before me that this would outweigh the harm identified as even with increased temperatures having access to suitable levels of daylight and sunlight will likely remain an important requirement for any future occupier of the properties.
20. Whilst I have found harm to the living conditions of future occupiers of Nos 6 and 8 for the reasons stated, I have no concerns with the amenity areas for any of the other properties, which are all suitably sized and not materially affected by tree cover.
21. To conclude, I share the Council's concerns that the trees would harm the amenity and enjoyment of the gardens areas for Plots 6 and 8 due to overshadowing through much of the year contrary to Policies DM2 and DM10 of the DMP and the advice in the SPD and NPPF with regard to the living conditions of future occupants.

Outlook from No 42 New Road and No 2 Broomfields

22. No 42 New Road is located fronting the road with its rear elevation facing down the plot in a conventional manner. Its side elevation looks across the existing dwelling on the site, which is situated deeper in its plot than No 42. The proposed replacement dwelling will come forward in the plot, which would provide a larger gap to the adjacent development than the existing situation.
23. Whilst the appeal proposal would introduce the terrace of 4 dwellings in the central part of the site, it would be located some distance away from No 42. With the mature screening that exists on the common boundary, the separation distances are such that there would not be material loss of outlook to No 42.
24. With regard to No 2 Broomfields, Plot 9 is the dwelling that would have the most impact to outlook. However, whilst Plot 9 would be the closest dwelling to No 2, it would still be located over 20m away. There is also extensive mature

landscaping on the common boundary which when considered with the distance would mean there would not be a material harm to outlook to sufficient to justify refusing planning permission.

25. To conclude, I find the proposal would not harm the living conditions with regard to outlook of No 42 New Road and No 2 Broomfields and accords with Policy DM2 of the DMP and advice in the SPD and NPPF in this regard.

Trees

26. The Council's primary concern is that the development would lead to the future pressure to remove tree T10, which is a TPO Oak tree located in the adjacent garden. In view of T10 being located on land outside of the control of the future occupier of Plot 8, I find it unlikely that it would be practical for a future owner of the appeal property to be able to successfully have it, or any other tree around the site, removed.
27. Notwithstanding this, T10 also provides a significant level of screening to the adjacent property, which I doubt any future resident would actively want to lose by seeking its removal.
28. Overall, I do not find that there is any information before me that demonstrates that there is any realistic prospect or necessity for any of the trees in adjacent areas to come under pressure to be removed. Accordingly, I find the proposal in accordance with Policy CS15 of the CS and Policies DM6 and DM21 of the DMP.

Biodiversity

29. I am aware that a number of trees were removed from site prior to the application being made. I acknowledge also that this was not undertaken by the appellant. The biodiversity situation on the site can, therefore, only be determined on the site context at the point of submission. This is explained in detail in the submitted preliminary ecological appraisal that provides the biodiversity baseline. I have also had regard to the Biodiversity Net Gain Technical Note that explains the opportunities that exist to deliver a net gain in biodiversity through the development.
30. Moreover, the application was submitted before the Government's mandatory requirements to achieve a minimum of 10% net gain in biodiversity. I note that the development plan also does not prescribe a specific local requirement for a net gain in biodiversity.
31. Notwithstanding this, the information before me demonstrates that the development has the potential to deliver a planting scheme for 25 new trees along with other biodiversity enhancements. Such biodiversity measures and their specific detail, along with landscaping, could be secured by condition. I am, therefore, satisfied that the proposal with conditions would meet the requirements of Policy CS15 of the CS and Policy DM21 of the DMP by delivering an enhancement in biodiversity on the site.

Parking

32. The Elmbridge Parking Standards are set out in Appendix 1 of the DMP. When applying the Council's parking standards, the development would be required

to provide 17 spaces. 19 spaces are proposed with the 2 additional spaces notionally available as visitor spaces.

33. The development evidently provides sufficient spaces to meet the Council's standards. The two additional spaces could be controlled by condition as visitor spaces, which I consider would be beneficial in this case to act as a further control against excessive proliferation of on-street parking.
34. Furthermore, no evidence has been provided that demonstrates that New Road is an area that is suffering from parking stress and that this development, which meets standards and over provides for parking, would lead to overflow parking issues along New Road. Accordingly, I find the proposal provides sufficient parking to serve the properties as well additional parking to protect against on-street parking issues. The proposal, therefore, is consistent with Policy DM7 of the DMP.

Other Matters

35. I note representations to the planning application raised a number of additional concerns with the development albeit these did not form part of the Council's reasons for refusal. However, as I have found the proposal unacceptable in accordance with my reasoning above and below, it is not necessary for me to consider these other matters any further here.
36. I note that the a financial contribution has been agreed towards affordable housing in accordance with Policy CS21 of the CS.

Planning Balance and Conclusion

37. The proposal would be contrary to Policy CS17 of the CS and Policies DM2 and DM10 of the DMP, which amounts to a conflict with the development plan as a whole. These Policies are consistent with the Framework in ensuring that development comprises high quality design that preserves the character and appearance of the area and provide a high standard of amenity for future users.
38. The Council's case at the start of the appeal set out that they consider they are able to demonstrate a 4-year supply of housing based on data from the Land Availability Assessment 2023. That document is not before me and, if connected with the local plan examination, I have no reassurances about its soundness. The Council has, subsequent to submitting their statement of case, clarified that they now cannot demonstrate a 4-year supply of deliverable housing sites in accordance with Paragraph 226 of the Framework.
39. In these circumstances, an absence of evidence to demonstrate 4 years of supply triggers consideration of whether Paragraph 11(d) of the Framework applies. Paragraph 11 (d) of the Framework states that planning 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 taken as a whole.
40. With regard to benefits, the proposed development would contribute to the supply of new homes on a small brownfield site with a net increase of 8 homes in a situation where there is a housing supply shortfall. The proposal would deliver 2 and 3 bed units, which is consistent with the Councils Local Housing Needs Assessment (2020) that identifies that development should focus on

providing smaller dwellings. The site has also been identified as being a sustainable location for residential development in the Council's Land Availability Assessment, albeit for 7 dwellings as opposed to the 9 proposed in this case.

41. In terms of adverse impacts, the proposal would harm the character of the area principally by reason of the centrally located and elongated terrace that would result in a cramped and uncharacteristic overall layout. Whilst the harm would be largely localised to the appeal site, it would still likely be visible from New Road through the access drive. Overall, it would introduce a markedly different and harmful layout of development to anything that currently exists along New Road. The living conditions for the future occupants of properties 6 and 8 would not be acceptable due to overshadowing from adjacent trees in the main rear garden areas. Taken together, I give significant weight to these harms.
42. I have also had regard to the other appeal decision referred¹ that highlights where the titled balance has been engaged previously in the borough. However, in that case the Inspector found the scheme did not harm the character and appearance of the area and, therefore, the context is not same with regard to the main issues in this appeal.
43. Taking all matters into consideration, and notwithstanding the great weight I have attributed to the scheme's benefits, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole. 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.

Conclusion

44. The proposal would conflict with the development plan as a whole and there are no material considerations, including the provisions of the Framework, which outweigh this finding. For the reasons given, I conclude that the appeal should be dismissed.

N Perrins

INSPECTOR

¹ APP/K3605/W/23/3315205