



Appeal Decisions

Site visit made on 23 July 2024

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2024

Appeal A Ref: APP/K3605/W/23/3335238

120 Fairmile Lane, Cobham, Surrey KT11 2BX

- 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 Black Onyx Projects Limited against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/2670.
 - The development proposed is detached two-storey house with rooms in the roof space with associated landscaping and entrance gates following partial demolition of existing house.
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Appeal B Ref: APP/K3605/W/23/3332443

120 Fairmile Lane, Cobham, Surrey KT11 2BX

- 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 BlackOnyx Projects Limited against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/1062.
 - The development proposed is detached dwelling with associated landscaping following subdivision of the existing plot.
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Appeal C Ref: APP/K3605/W/24/3338064

120 Fairmile Lane, Cobham, Surrey KT11 2BX

- 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 BlackOnyx Projects Limited against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/2691.
 - The development proposed is two detached two-storey houses with rooms in the roof space, associated landscaping and entrance gates following partial demolition of existing house.
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Decision

1. Appeals A, B and C are all dismissed.

Preliminary Matters

2. Unilateral Undertakings (UU) have been submitted with Appeals A, B and C which include mechanisms to contribute towards affordable housing and mitigate the effects of the proposed developments on the Thames Basin Heaths Special Protection Area (TBHSPA). I will return to this matter later in this decision.

3. Planning permission has been granted for a replacement dwelling at the host property. It would have accommodation across three storeys and would be higher than the ridge line of the existing dwelling. Its implementation would appear to be unconnected to the development of the appeal site. There is a real prospect that these works would be carried out and consequently, I have taken this into account in my assessment of the appeal scheme.
4. Revised plans were submitted to the Council before the decision notice was issued for Appeal C. However, they were not formally accepted by the Council. The plans show changes to the internal layout of the houses, but no change to the number of bedrooms and the removal of windows. These are minor changes to this scheme. It is also clear in the Council's evidence that it is aware of the content of these drawings and I am satisfied that it has had the opportunity to respond. For the reasons above, the parties would not be prejudiced if I were to consider these plans, and therefore appeal C is assessed on the basis of the amended plans.

Main Issues

5. The main issues are; the effect of the proposed developments on the character and appearance of the area, and whether or not the proposed developments provide an appropriate housing mix and density.

Reasons

Character and Appearance

Appeals A, B and C

6. Fairmile Lane is characterised by large houses set in substantial plots which front the main road, resulting in a clearly evident road frontage to this streetscene. Large front and rear gardens are generally soft landscaped, and the sports ground opposite 120 Fairmile Lane includes open fields. This results in a pleasant sense of spaciousness and greenery. Furthermore, there is clear separation between properties in the nearby area and whilst the gaps between some properties on the west of Nightingale Close are smaller, overall, generous spacing makes a positive contribution to this sense of openness. This follows the advice in the Design and Character Supplementary Planning Document Companion Guide: Cobham, Oxshott, Stoke D'Abernon & Downside (2012) which identifies the Fairmile area as having a semi-rural character with houses set within a high quality landscape.
7. Roads lead off Fairmile Lane to clear groups of multiple houses which appear to have been developed within the combined garden plots of a number of properties. In the vicinity of the appeal site, these include Heatherbank Close and Fernlea Place. The front elevations of the groups of houses result in a prominent front building line to the cul de sacs. As well as the clear front building line to Fairmile Lane. These coherent and clearly identifiable frontages are a characteristic feature of the streetscene and make a positive contribution to the pattern of development in this area.
8. Side elevations to buildings that back onto one another are generally separated by rear gardens and planting. This is the case between 2 Nightingale Close and 3 Fernlea Place where a combination of landscaping and boundary treatment mean that the relationship between these side elevations does not form an important part of the pattern of development in this area.

9. My attention has also been drawn to 70 Fairmile Lane¹ and 90 Fairmile Lane where an individual dwelling has been constructed to the rear of each of these single houses. However, these are not in the immediate vicinity of the appeal site and therefore such tandem development is not so common as to form an overriding part of the character and appearance of this area. 4 Fairmile Lane² is located some distance from the appeal site and as such the development of the two dwellings on this site does not form part of the character and appearance of the appeal site.
10. As such, overall, this area is characterised by groups of properties with a clear road frontage and a spacious, open nature.

Appeal A

11. The proposed development would create a single dwelling set behind the host property. It would be accessed via an individual private driveway and therefore would not have a clear road frontage. The front elevation would not relate to any building line, and this would harmfully undermine this important characteristic of the surrounding area.
12. For the reasons above, its lack of alignment with the side elevations of 2 Nightingale Close and 3 Fernlea Place would not be harmful. However, this standalone building with a personal private access results in a dwelling that does not relate to any frontage building line. This would unacceptably erode the pattern of development in this location, which would be significantly harmful to the character and appearance of the area.

Appeal B

13. The development would follow a similar pattern of development to Appeal A and would be harmful in this regard for the reasons set out above.
14. Additionally, the dwelling proposed in Appeal B would be larger than Appeal A. It would create a substantial house across three floors, extending close to the boundaries of the plot and with a single storey garage projecting from the main front elevation. The proximity to the boundaries and the amount of built development proposed relative to the size of the plot would undermine the sense of openness in this area. Furthermore, the scale of the house proposed would be larger than both the existing and the proposed replacement host property and it would be harmfully dominant in this regard. As such, the scale of the proposed house would appear cramped and bulky in this context and this would unacceptably undermine the spacious character of this area.

Appeal C

15. The proposed development would subdivide the appeal site into two plots, located to the rear of a single dwelling. The two dwellings would be located around 1.5m away from one another at both ground and first floor with a steeply pitched crown roof resulting in a limited increase in separation at second floor.
16. The Home Extensions Companion Guide provides advice for residential extensions and therefore is not directly relevant to the appeal scheme. Notwithstanding, the proposed dwellings would be closer to one another than

¹ LPA ref: 2020/2903

² Appeal ref: APP/K3605/W/20/3246998

the prevailing character of the nearby houses. As such the two properties in narrow plots would result in a cramped appearance in this context. This would unacceptably erode the open and spacious character of the area.

17. Whilst the access road would not serve an individual property, nevertheless, the subdivision of this single site would require a long and semi private access route, and neither of the proposed houses would have a clear frontage within the streetscene. Consequently, the appeal scheme would undermine the pattern of development and would be harmful in this regard.

Appeals A, B and C

18. There is no dispute between the main parties regarding the principle of the development. Policy DM10 of the Development Management Plan (2015) (DMP) sets criteria as to where development on garden land would be appropriate. The criteria include that the scheme respects the character of the area, as such the garden development proposed in these schemes would not comply with this policy.
19. For the reasons set out above, Appeals A, B, and C would be significantly harmful to the character and appearance of the area. Consequently, they would be contrary to Policies CS10 and CS17 of the Core Strategy 2011 (CS), Policies DM2 and DM10 of the DMP, Together, in addition to the aims previously explained, these seek high quality design that enhance local character, with particular regard to the area of Cobham.

Housing mix and density

Appeals A, B and C

20. Policy CS19 of the CS requires that the Council seeks a mix of housing types and sizes across the Borough. The Assessment of Local Housing Needs March 2020 (LHNA) states that 10% of the market housing required is for 4+ bedroom homes and 20% as three-bedroom homes. The Authority Monitoring Report shows that in the 2021/22 monitoring year 4 bedroom homes accounted for 9.6% of delivery and 3 bedroom homes accounted for 10.8% of delivery, albeit that some of these may be replacement dwellings. As such although there continues to be an identified need for smaller dwellings, this does not indicate an oversupply of 4+ bed homes.
21. Policy CS17 of the CS requires a minimum density of 30 dwellings per hectare (dph). It also provides that in exceptional circumstances, where overriding harm to the valued character of the area would occur as a result of the application of the minimum density threshold, development at a lower density, which maximises the efficient use of land, may be acceptable.
22. The appeal site is characterised by large, detached dwellings in generous grounds. The density of new homes in the wider area was around 14-18dph in 2020-2022, with recent developments on Fairmile Lane, Heatherbank Close and Fernlea Place between 6-16dph. There has been consideration as to whether flats could be appropriate on this site and the Council refers to the flatted development at 110 Fairmile Lane. However, such development is not so common as to be an overriding part of the character and appearance of the area and a scheme for flats is not before me now. Furthermore, the larger scale development site at Crow Gables is not comparable to this smaller appeal site. Given the prevalent character of the area with large spacious dwellings and on

the specific circumstances of this case, the application of the minimum density threshold would be likely to result in harm to the valued character and appearance of the area, therefore a lower density would be acceptable in these circumstances.

Appeal A

23. The proposed development would provide a large 4-bedroom house. Whilst it would not meet the greatest housing need in the borough, which is for smaller homes, this size of property would provide a contribution to the 4+ bedroom market housing that is required. Furthermore, I am not provided with detailed evidence that a single new large dwelling in this location would adversely affect community cohesion. This does not conflict with the decision of the Inspector in the appeal at 4 Fairmile Lane.
24. The proposed development would result in a density of 10 dph. However, given my findings above, adhering to the minimum density threshold could harm the character and appearance of the area, the proposed density less than 30dph would not result in conflict with the policy in this case.

Appeal B

25. Appeal B proposes a 5-bedroom house also with a density of 10 dph. Although larger than that in Appeal A, the same considerations for 4+ bedroom homes and the lower density apply.

Appeal C

26. The proposed dwellings are generous three bedroom homes and include ancillary rooms such as a study and store at first and second floor. These rooms are reasonable inclusions in a family home and as such I have considered the appeal scheme on the basis of the drawings, as a three bedroom dwelling. The proposed development would therefore make a positive contribution towards the provision of three bedroom housing, for which there is an identified need in the borough.
27. Whilst the proposed development would result in a density of around 20dph, for the reasons above there would not be a conflict with development plan policy in this regard.

Appeals A, B and C

28. I am referred to appeal decisions³ where development was found to conflict with policies CS17 and CS19 of the CS. These decisions appear to be based on the Strategic Housing Market Assessment for Kingston Upon Thames and North East Surrey Authorities 2016, where the need for 4+ bedroom properties is different. As such these are not directly comparable to the circumstances before me now and do not alter my conclusions.
29. Therefore, the proposed development would provide an appropriate housing mix and density. As such there would not be a conflict with Policies CS17 and CS19 of the CS, the aims of which are set out above.

³ APP/K3605/W/18/3218070, APP/K3605/W/19/3225092

Other Matters

Affordable Housing

30. Policy CS21 of the CS requires that for this development a financial contribution equivalent to the cost of 20% of the gross number of dwellings should be provided. However, the policy pre-dates the National Planning Policy Framework (the Framework) which states that affordable housing should not be sought for residential developments that are not major developments.
31. There is a significant shortfall in the delivery of affordable housing in this borough. I am provided with specific local evidence of affordable housing need, the importance of small sites, and that such contributions are viable and therefore do not place a disproportionate burden on developers. Considering the evidence in this specific case, the Framework's provisions do not outweigh the development plan in this instance. This is in general conformity with the multiple appeal decisions that have been submitted on this matter.
32. I am provided with a UU which includes a financial contribution towards the provision of off-site affordable housing. I am satisfied that the contribution proposed is reasonable. Although there would be no affordable housing provided on site, the contribution towards off site provision is nevertheless an important social benefit.

Planning Balance

33. The Council cannot demonstrate a 4 or 5 year supply of deliverable housing sites. There is dispute as to the extent of this shortfall with the Council stating there is a 3.1 year supply for development management purposes. The appellant refers to a 2.4 year supply when measured against the standard method which the Written Ministerial Statement Building the homes we need (2024) (WMS) mandates is the method used as the basis for determining local authorities housing requirements.
34. In any case, paragraph 11 (d) of the Framework is engaged. This requires that planning permission be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development, when assessed against the policies within the Framework taken as a whole. Therefore, the policies that are the most important for the determination of the application would be deemed to be out of date. However, this does not mean they would not apply and overall, the proposal conflicts with the development plan as a whole.
35. Appeals A and B would deliver the social and economic benefits associated with the creation of one dwelling within a built up area including temporary economic benefits during construction and spend from future occupants and would make an effective use of this land. All three schemes would also provide the important benefit of a contribution towards off site affordable housing. Appeal C would additionally provide such benefits of two dwellings and housing of a size where there is a greater need in the borough.
36. This would make a positive contribution to the government's target to significantly boost the supply of homes and addressing the needs of groups with specific housing requirements. These needs are emphasised in the WMS. They are also included in the Proposed reforms to the NPPF and other changes to the planning system, and the National Planning Policy Framework: draft text

for consultation. Albeit this is in draft and therefore it is unclear as to whether it will be adopted in the form proposed and as such, I afford it limited weight. Nevertheless, taking into account the scale of the appeal schemes these are important but modest benefits in the case of all three appeals.

37. However, the proposed developments would result in significant harm to the pattern of development in Appeal A, and additional harm to the spacious character of the area associated with Appeals B and C. In all three cases, this would result in significant harm to the character and appearance of the area. Therefore, they would not create a high quality place which is fundamental to what the planning and development process should achieve.
38. As such, even if I were to consider the lowest housing land supply figure put to me of 2.4 years, these significant adverse effects would therefore significantly and demonstrably outweigh the modest benefits set out above. Therefore, the presumption in favour of sustainable development would not apply in this case.

Thames Basin Heaths Special Protection Area

39. The TBHSPA is a habitats site that has a high level of protection. It is designated due to the presence of breeding populations of birds. The Council has determined that, without any mitigation in place, in combination with other plans and projects there would be a significant effect on the interest features of the site from the proposed residential development. Notwithstanding this, there is no need to consider the implications of the proposal on the protected site because the scheme is unacceptable for other reasons.

Conclusion

40. Appeals A, B and C would not accord with the development plan and there are no other considerations including the Framework to indicate that the appeals should be determined otherwise. Therefore, for the reasons given above, I conclude that Appeal A, B and C should be dismissed.

H Miles

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/K3605/W/23/3335238	BlackOnyx Projects Limited
Appeal B	APP/K3605/W/23/3332443	BlackOnyx Projects Limited
Appeal C	APP/K3605/W/24/3338064	BlackOnyx Projects Limited