

Appeal Decision

Site visit made on 19 August 2024

by Graham Stallwood BA(Hons) DipTP MBA FRTPI MCMi FRSA

Appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/K3605/W/24/3336413

Cherry Garth, Stokesheath Road, Oxshott, LEATHERHEAD, KT22 0PS

- 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 Charybdis Developments Limited against the decision of Elmbridge Borough Council.
 - The application reference is 2023/0806.
 - The development proposed is 2 detached two-storey houses with rooms in the roof space, attached garages and rear balconies, new access to plot 1, entrance gates and piers following demolition of existing house and outbuildings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) The effect of the proposed development on the character and appearance of the area.
 - b) The effect of the proposed development on great crested newts as a protected species.

Reasons

Character and appearance

3. The immediate surrounding area is characterised by large, detached houses set back from the road frontage in spacious plots with well-established landscaping. The landscaping provides a verdant backdrop to the area and is visible between and around the houses, providing a distinctive and attractive setting which also defines the streets at ground floor level. The Council's Design and Character SPD identifies the appeal site as within character area COS10 (The Crown Estate (Birds Hill Estate) and Bevendean). Some of the main attributes identified in the SPD include the very large plots and the mature landscaping.
4. Nearby houses generally use traditional materials externally including brick and tile and are two storeys in height, sometimes with additional

accommodation in the roofspace. Many of the recent nearby houses are inspired by classical designs, albeit the scale, detailed designs and execution make them contemporary in appearance. Despite these elements of commonality, a distinctive feature of the area's appearance is that each house is different from its neighbour and that positions and orientations on the plots vary.

5. The designs of the proposed houses reflect the scale of other houses in the area, their materials and some of the design features. The piers and gates would punctuate the retained frontage hedge only as necessary to serve the houses, consistent with the broader character of the area. However, at first floor level particularly, the sense of spaciousness around the houses would be noticeably tighter compared to the established character. The rhythm of built form would be comparatively more dominant, and the landscaping would not have the space to provide a setting consistent with the area's distinctive character and appearance. Although with some subtle differences, the two houses proposed would appear as a pair in siting and design, which would further harm the distinctive appearance of the area.
6. The appellant has identified examples of developments in the wider area which I recognise contain multiple buildings of similar designs or have plots which are more like those proposed than the existing plot. Whilst some of these examples have similarities with the proposal, they are not the general character of the area. They do not change my assessment.
7. For these reasons the development would not comply with the development plan, in particular Policy DM2 of the Elmbridge Development Management Plan seeking proposals which preserve or enhance the character of the area. As an irreversible change which is contrary to the development plan, the resulting harm would be significant.

Great crested newts

8. The application was accompanied by reports produced by an ecological consultant. In relation to great crested newts, it concludes that there is low potential for their presence due to the low value of the pond to be removed, and the presence of more extensive habitat locally. The assessment took place in February 2023, when great crested newts would normally be hibernating and outside of the survey season for great crested newts.
9. A further report produced by a different ecological consultant accompanies the appeal. It provides more information on how a precautionary approach to the development could occur if permission were granted.
10. The Council has detailed criticisms of both the original and supplementary reports. Some of those criticisms go well beyond what can be expected of a proportionate approach to preliminary ecological appraisal. Preliminary ecological appraisal can take place at any time of the year and the low value of the site for great crested newts identified by the first report could be sufficient basis for not undertaking a full survey.
11. However, the first report did not consider known ecological assets in the surrounding area. I understand the logic that, if the pond on the site is of low value, then great crested newts will not travel to it from other ecological

assets. However, I have seen no clear evidence as to the value of the other ecological assets in the surrounding area. Were any of those assets to be of more than low value, that could change the likelihood of the pond on the site being part of a wider habitat.

12. In the circumstances, I am not satisfied that the proposal would not have an adverse effect on protected species. This matter could not be dealt with by condition as it is a matter of principle which needs to be considered before planning permission can be granted. Consequently, the development would not comply with Policy CS15(8) of the Elmbridge Core Strategy regarding the requirement that there is no net loss of biodiversity and Policy DM21(a) of the Elmbridge Development Management Plan regarding existing habitats, protected species and biodiversity features. As great crested newts are a species protected by law, the harm resulting would be significant.

Other Matters

13. Representations from residents and a management company raise additional concerns in relation to matters including private covenants, property values and traffic from the development affecting highway safety. The possible existence of covenants is a private matter for relevant parties. The potential for the development to affect property values is not a matter I can consider in my decision. The Council considers the proposal to be acceptable in traffic safety terms, and I saw nothing on my visit which would make me disagree.

Planning Balance

14. The Elmbridge Borough Local Plan was submitted for examination on 10 August 2023. In such circumstances the National Planning Policy Framework (the Framework) requires the Council to maintain at least four years' land supply for housing. Using its latest land availability assessment, the Council's evidence is that it has such a supply, so that the 'tilted balance' in paragraph 11d) of the Framework is not therefore engaged. The appellant considers the supply to be 3.81 years based on the Council's latest Authority Monitoring Report published in December 2023, such that paragraph 11d) is engaged.
15. There is limited evidence before me to demonstrate what is behind this difference in position. One additional house would contribute to the Framework's aims of boosting housing supply and making more efficient use of land. However, if I were to accept the appellant's lower 3.81 year position, both the shortfall and the contribution the proposed development would make would be small.
16. Construction creates temporary economic benefits through job creation and an additional house would bring spending on local services. The proposal would bring contributions to improve local infrastructure through Community Infrastructure Levy. The existing house largely dates from before modern energy performance standards and is likely to perform reasonably poorly in respect of energy efficiency. Both new homes would meet the latest energy performance standards of the Building Regulations, bringing additional benefit in relation to energy consumption.
17. The scheme would be acceptable in terms of development requirements including affordable housing, highway safety, parking and the effect on living

conditions of nearby occupiers. However, the absence of harm or conflict with the development plan is a neutral factor. These matters do not weigh either for or against the proposal.

18. Taken together, the economic, environmental and social benefits in favour of the development would be moderate. However, the Framework indicates that creating high quality buildings and places is fundamental to what planning should achieve. I have identified harm to the character and appearance of the area, and I am not satisfied the development would not have an adverse effect on protected species.
19. Even if the Council cannot demonstrate a four year housing land supply and the policies which are the most important for determining the appeal are out of date, the harms identified weigh significantly against the proposals. These adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Consequently, the proposal would not benefit from the presumption in favour of sustainable development set out in paragraph 11 of the Framework.

Conclusion

20. The proposal is contrary to the development plan as a whole and material considerations do not indicate a decision should be made other than in accordance with the development plan.
21. For the reasons given above the appeal should be dismissed.

Graham Stallwood