



Appeal Decision

Site visit made on 16 August 2024

by N Perrins MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2024

Appeal Ref: APP/K3605/W/24/3339790

Bransby Lodge, St Leonards Road, Thames Ditton, Surrey KT7 0RN

- 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 Octagon Developments Ltd against the decision made by Elmbridge Borough Council.
 - The application Ref is 2023/0794.
 - The development proposed is detached two-storey building containing 6 flats and two detached single-storey houses, bin and cycle stores, associated parking and landscaping and alterations to existing access following demolition of the existing house and buildings.
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Decision

1. The appeal is dismissed.

Preliminary 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 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 has confirmed that with their emerging Local Plan at examination they are assessing housing supply against the 4-year requirement.
4. I am aware of the site's planning history that includes a previous scheme Ref: 2020/0865 that was refused planning permission and dismissed at appeal¹.

Main Issues

5. The main issues are whether the proposed development is acceptable in respect of (i) the character and appearance of the area, (ii) the living conditions of future occupiers of the development in terms of the provision of outdoor amenity space, (iii) the living conditions of occupiers of neighbouring dwellings with particular regard to light, privacy and outlook for Nos 11-14 Lynton, and privacy for Holkham, (iv) parking provision, and (v) biodiversity.

¹ APP/K3605/W/21/3276579

Reasons

Character and appearance

6. The appeal site comprises a detached two-storey dwelling, garage and large garden to the rear. At the front is hardstanding with a driveway that provides access to and from St Leonards Road. The character of the area is residential with mainly detached two-storey buildings with a range of designs, materials and architectural detailing. The appeal property is located between a retirement development, Lynton, and a detached dwelling, Holkham.
7. The proposal would replace the existing building with a block of 6 flats facing St Leonards Road and then 2 bungalows at the rear of the site. The proposal has been revised and reduced in scale from the previous scheme dismissed at appeal. The changes include reducing the scale of the front building, amendments to access and hardstanding and replacing the previously proposed building in the rear garden with two bungalows.
8. The bungalows are well designed in terms of appearance and scale and would not result in any material harm to the character of the area.
9. To the front is the proposed block of flats. The front elevation of this block that faces towards St Leonards Road has been well-designed and would respect the existing street scene in terms of its design, scale, appearance and part hipped roof.
10. However, the two-storey rear projection would have a flat roof and parapet walls, which would not create an integrated and cohesive design when considered together with the building's front section. The rear projection would also extend significantly further into the plot than most other dwellings along the road. Therefore, the block of flat's scale, form, excessive depth and flat roof on its rear projection would appear as a discordant and incongruous addition that would be at odds with, and undermine, the quality of the design to the front. Furthermore, the excessive depth of the rear projection would result in the frontage building having an overly large footprint that is out of keeping with the prevailing pattern of dwellings along St Leonards Road.
11. The appellant contends that the frontage building's rear projection would not be prominently visible within the street scene, and that a flat roof is not an incongruous feature in an urban area. Whilst I accept that views of the rear section would be limited, the frontage building, and its excessive depth and discordant roof design would still be seen from adjoining properties and access roads to the appeal site and adjacent Lynton development. For these reasons, the frontage building would result in harm to the character of the street scene and wider area from these vantage points.
12. The Council contend that the previous Inspector's concerns regarding an overdevelopment of the plot from buildings and hardstanding have not been overcome. I agree. Whilst I acknowledge the reduction in scale of the buildings from the previous scheme, the prevailing character of the area comprises large landscaped rear gardens. The proposed rear parking area and access road would result in a significant amount of hardstanding across the site. When this is considered with the footprint of buildings, the site would appear overdeveloped from neighbouring properties, and a marked change from the existing landscaped rear garden.

13. Whilst the use of permeable materials would help to improve the appearance of the access road and parking area, it would not resolve the more substantive issue of the size and coverage of buildings and hardstanding within the site. The resulting impact, even with the use of permeable materials, would be an overly urban and developed layout that would not accord with the prevailing landscaped character to the rear of properties along St Leonards Road.
14. There are mature trees to the rear on adjacent land to the appeal site, which appear to be in good health and have a positive contribution to the character and appearance of the area. The Council are concerned that the development would lead to future pressure to remove or prune these trees.
15. The planning officer's report contends that the canopies from the neighbouring trees would have an adverse impact on daylight and sunlight to the rear gardens of the bungalows. I note in the previous appeal decision that it was concluded that these tree canopies would not result in adverse loss of daylight and sunlight to the occupiers of the residential units for that scheme. The Council's statement of case also highlights that the previous Inspector's concerns regarding falling branches, debris and trees still stand.
16. I agree that pruning or felling the neighbouring trees would have a significant adverse impact on the character and appearance of the area. Having regard to the appellant's statement, previous appeal decision and my observations on site, I am not persuaded that there would be a materially harmful impact from the canopies with regard to daylight and sunlight to the rear gardens such that it would definitively result in pressure to fell or prune the trees.
17. However, there is no information before me that adequately addresses the previous Inspector's concerns regarding falling branches, debris and trees. Without this, there remains an unacceptable and unresolved level of risk that future occupants would seek to remove or prune these trees due to the potential impacts from falling branches, debris and trees.
18. I note the appellant's point about inconsistency as the impact of the same trees was not considered when the Council granted planning permission Ref: 2023/1088 for an outbuilding at the neighbouring property Keighley. However, the full details as to why the Council did not require any tree information for that scheme, or how the two developments are directly comparable to each other, are before me. Therefore, whilst I agree that consistency in decision making is important, I am not persuaded from the information before me that the planning permission granted at Keighley provides justification for the harm to trees identified in the appeal scheme, and which has not been overcome from the previous appeal.
19. To conclude, the incongruous design of the rear projection would result in the front building having an unacceptable impact on the street scene and character of the area. The proposal would also result in foreseeable pressure to remove or prune trees, which would harm the character of the area. The proposal is, therefore, contrary to Policy CS17 of the Elmbridge Borough Local Plan Core Strategy 2011 (CS), and Policies DM2, DM6 and DM10 of the Elmbridge Local Plan Development Management Plan 2015 (DMP), 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, and respect and be sympathetic to local character.

Living conditions for future occupants

20. Policy DM10 of the DMP, whilst not setting prescribed standards for amenity space, expects development to offer an appropriate standard of living both internally and externally as well as outdoor space commensurate with the type and location of housing proposed. Paragraph 135 of the Framework expects developments to promote health and well-being, with a high standard of amenity for existing and future users.
21. The proposed flats would have floor areas in excess of the Nationally Described Space Standards. The proposed amenity space to the rear would be irregular in shape, and very small in terms of comparative size to the flats. The proposed amenity space to the rear would also be located between the main windows of the rear ground floor unit and the parking area. This would create an unacceptably intrusive environment for anyone using the amenity space as well as for the occupiers of the ground floor flat. When these matters are considered together, the rear amenity space would not offer an attractive and usable outdoor amenity area for the future residents of the flats.
22. The proposed amenity space at the front would be smaller than that proposed to the rear and would be set somewhat awkwardly adjacent to parking spaces where there would be potential for noise and fumes in close proximity. Accordingly, I am not satisfied that the front outdoor amenity space would provide a usable or quality outdoor environment for future residents.
23. The appellant's proposal for the outdoor amenity spaces to be separated from parking by screening would further compound the inadequacy of the outdoor amenity areas by enclosing what would be small spaces in comparison to the size of the flats. A landscape plan to be secured by condition to create an attractive and biodiverse environment would also not sufficiently address my concerns around the overall size and functionality of the proposed outdoor amenity spaces.
24. I acknowledge that there is public amenity space nearby. However, not all domestic activities that future occupants might need, such as outdoor areas for drying clothes, could reasonably be provided for on nearby public open space. I note the appellant also contends that the development would be occupied by new residents who would have the choice whether to purchase the flats with the amenity space proposed, nor would they necessarily expect a private garden. However, the Framework is clear that it expects development to support the health and well-being of residents with a high standard of amenity, which for the reasons set out would not be met in this case in regard to the proposed outdoor amenity space.
25. I have considered the appellant's examples where a small, or no, amount of communal amenity space has been accepted by the Council in the past. However, the limited details provided do not demonstrate whether these other examples are directly comparable to the appeal proposals before me. As such, the examples presented only have very limited weight and do not provide justification for the proposal's poor-quality outdoor amenity space.
26. I acknowledge that amenity space is only one aspect when considering the quality of living accommodation, and that the Council also need to optimise land to respond to housing needs. However, a balance needs to be struck between optimising land and ensuring the quality of accommodation for future

residents. In this case, I find that the balance is unacceptably focused on built form as opposed to ensuring there is also an equitable provision of high-quality outdoor amenity space within the site.

27. To conclude, the flats would not be served by adequate outdoor amenity space commensurate to the quality of the internal environment, which would result in harm to the living conditions for future occupants. Accordingly, the proposal is contrary to Policies DM2 and DM10 of the DMP, which require development to be designed to offer appropriate provision of amenity space. The proposal would also conflict with Paragraph 135 of the Framework.

Living conditions for neighbouring dwellings

28. There would be a minimum separation distance of around 13 metres between the appeal building and Nos 11-14 Lynton. The Council contend that the appellant has misinterpreted the guidance within the SPD regarding the 45-degree angle rule to Lynton. Notwithstanding this, the Council has now accepted that there would not be a materially harmful loss of light to the occupiers of Nos 11-14 Lynton due to the affected rooms being non-habitable. I agree and find that for this reason the proposal would not result in a materially harmful loss of light to the occupiers of Nos 11-14 Lynton.
29. In terms of outlook from Nos 11-14 Lynton, the non-habitable rooms would comprise a kitchen and a bathroom. They would look across to the side elevation of the two-storey projection without any views to either side or over the building. The view from these windows would, therefore, change from the existing situation that looks across car parking to boundary treatment and garden beyond.
30. However, the previous larger scheme at the site was found to not result in harm to Nos 11-14's outlook due to the proposed separation distance in that case. Whilst the appeal proposal before me would be brought closer to Lynton, it has been reduced in scale from the previous scheme. A 13m separation between the appeal property and non-habitable rooms is a sizeable gap in a residential area. I also attribute weight to the fact that the main outlook for Nos 11-14 is from habitable rooms on the opposite side of the units to the west away from the appeal site. Furthermore, the appellant has confirmed they would accept a condition to require a landscaping proposal that could include landscaped enhancements on the common boundary with Lynton.
31. Overall, with a condition to secure a landscaping plan, the size of gap that would exist, and that the affected rooms are non-habitable, I find that the appeal proposal would not materially harm the outlook from Nos 11-14 Lynton sufficient to justify refusing planning permission. Given the size of the gap, I also find that there would not be a material loss of privacy to Nos 11-14 Lynton from the 1st floor bedroom of the appeal scheme.
32. The Council are also concerned with the impact of the two first floor windows that would serve a bedroom that face towards the adjacent property Holkham. As these would be the only windows that would serve the bedroom, I agree that it would not be appropriate to require these windows to be obscure glazed.
33. The appellant has highlighted that the only window on Holkham that could be impacted from the proposed 1st floor windows is a dormer window in the roof. The proposed 1st floor windows would not be directly opposite the adjacent

dormer window. I also understand that the dormer window at Holkham serves an internal circulation area, which limits its importance and sensitivity. For these reasons, I agree that the proposed 1st floor windows would not lead to a harmful loss of privacy to the dormer at Holkham.

34. However, the appeal proposal would also see the garage structure demolished and replaced with the access road. The existing garage helps to safeguard privacy between the properties by being higher than a standard fence height. With the garage removed there would likely be a more open relationship between Holkham and the appeal property. Whilst I acknowledge that views from the 1st floor windows to the rear garden areas would be oblique, they would still directly overlook other parts of Holkham thereby increasing actual and perceived loss of privacy. The proposed 1st floor windows are also both larger than the existing secondary window at the appeal property and would have a proportionately greater impact than the existing situation. In summary, the increase in the potential for overlooking from the proposed primary 1st floor windows would result in an unacceptable loss of privacy to Holkham.
35. To conclude, the proposal would result in harm to the living conditions of Holkham contrary to Policy DM2 of the DMP and advice in the SPD and the Framework, which seek to protect the amenity of adjoining occupiers.

Parking

36. Policy CS25 states that development should include improvements to promote sustainable transport and accessibility to services through a range of measures including applying maximum parking standards. CS25 sets the strategic context for what the Council is seeking to achieve by ensuring new development contributes positively to addressing issues such as congestion and air quality in the borough.
37. Policy DM7 states that provision of car parking should accord with the Elmbridge Parking Standards, which are set out in Appendix 1 of the DMP. When applying the Council's parking standards, the development would be required to provide 12 spaces. The appeal scheme proposes 13 spaces and is, therefore, contrary to Policy DM7 of the DMP.
38. Paragraph 112 of the Framework states that maximum parking standards should only be set where there is a clear and compelling justification that they are necessary for managing the local road network. The Paragraph 112 provisions were added to an updated Framework in 2018 and, therefore, after when the Elmbridge Parking Standards were adopted in 2015. However, the rationale for having maximum standards is clearly articulated in the DMP in Paragraph 2.25 as being part of the package of measures needed to deliver the CS's aims of minimising the effect of trips from new development to address congestion and impacts on air quality. There is no information before me that indicates these aims are no longer relevant or needing to be met.
39. The appellant highlights a potential inconsistency with how parking provision has been considered at the site on separate applications over the past two years. However, the Council has explained how this has come about including most recently the previous appeal inspector concluding that there was no justification for an over provision of parking. This was due to the site being near to bus stops and Thames Ditton Railway Station, a range of facilities and services in Thames Ditton being within a short walking distance, as well as

recognition of the CS's objectives in terms of sustainable transport and reducing congestion and pollution caused by traffic.

40. I agree with the Council that the conclusions regarding parking in the previous appeal decision are a material consideration that this latest scheme needs to address. From the information before me there has not been a change in circumstances in terms of the Council's objectives and context for applying maximum parking standards, or any compelling new evidence or rationale for why the appeal scheme before me should exceed the Council's maximum parking standards. Accordingly, I find that the Council's parking standards are justified and not out of step with the Framework. As the proposed exceedance of parking standards has not been adequately justified, the proposal is contrary to Policy CS25 of the CS and Policy DM7 of DMP.

Biodiversity

41. Policy CS15 of the CS seeks to ensure that development does not result in a net loss in biodiversity and where feasible can contribute to a net gain. From the information before me, the application was supported by a Preliminary Roost Assessment and Bat Emergence Survey. Whilst this assesses the potential impacts and mitigations required for bats, there is no other information or surveys that considers other species.
42. With regard to bats, I accept the appellant's explanation regarding the prior removal of the apple trees, which addresses that part of the objection from the Surrey Wildlife Trust. I also accept that the application was submitted before the Government's mandatory requirements to achieve a minimum of 10% net gain in biodiversity.
43. However, whilst the development plan does not prescribe a specific local requirement for a net gain in biodiversity, it does require development to demonstrate it would not result in a net loss. The information before me does not adequately do this with the only information provided relating to bats. Without any other biodiversity information before me I am unable to conclude whether it is possible for Policy CS15 to be complied with. For this reason, it would not be acceptable to rely on this information being subject to conditions.
44. I acknowledge that the Council has accepted using conditions to secure net gain elsewhere. However, the full details as to why the Council did this elsewhere are not before me and I can, therefore, only give this very limited weight in this decision. Notwithstanding this, each case must be assessed on its own merits. In this case and for the reasons stated, it would not be appropriate to defer this issue to conditions without any form of objective evidence before me that demonstrates the requirements of Policy CS15 could be met.
45. To conclude, the appellant has not provided sufficient information to assess the potential impacts on biodiversity and the proposal is, therefore, contrary to Policy CS15 of the CS and Policy DM21 of the DMP.

Other Matters

46. In terms of affordable housing, the Council's independent advisors reviewed the viability of the scheme and concluded that the scheme is unable to provide affordable housing, which I am satisfied is an approach in accordance with Policy CS21 of the CS.

47. Other concerns raised are that the development would have minimal landscaping, impact residents during the construction phase, result in loss of light to the ground floor windows of Holkham, create air, light and noise pollution, have a density that is not characteristic of the area, harm drainage conditions in the area and place additional pressure on local services. However, these matters did not form part of the Council's reasons for refusal and, due to finding the proposal unacceptable in other respects, I am not required to consider these further in this decision.

Planning Balance and Conclusion

48. The appellant considers there is 3.15 years housing supply once a number of sites that do not meet the definition of deliverable are removed from the analysis. The Council, whilst not commenting on the appellant's housing supply figure, confirm that they are unable to demonstrate a 4-year supply of deliverable housing sites in accordance with Paragraph 226 of the Framework.
49. In these circumstances, 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.
50. 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 7 homes in a situation where there is a housing supply shortfall. The proposal would deliver 2 bed units, which is consistent with the Council's objectives to provide more smaller dwellings. The development is located near to services and facilities that can be accessed using sustainable transport means. I attribute significant weight to these benefits.
51. In terms of adverse impacts, the proposal would harm the character of the area by the frontage building's incongruously designed rear projection. Living conditions for future occupants would be adversely impacted by inadequate amenity space. The proposal would result in direct overlooking that would unacceptably harm living conditions of the neighbouring property Holkham. The proposal exceeds parking standards, which would undermine the Council's objectives to reduce congestion and improve air quality. It has not been demonstrated that the development is acceptable in terms of biodiversity. These harms are at odds with the related provisions within the Framework.
52. 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.
53. For the reasons given, I conclude that the appeal should be dismissed.

N Perrins

INSPECTOR