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## Appeal Decision

Site visit made on 24 September 2024

**by Lynne Evans BA MA MRTPI MRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 October 2024**

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**Appeal Ref: APP/K3605/W/24/3344193**

**110 Fairmile Lane, Cobham 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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.  
The appeal is made by BMK Constructions Ltd against the decision of Elmbridge Borough Council.
- The application Ref is 2023/3086.
- The application sought planning permission for detached two-storey building with rooms in the roof space consisting of eight flats with additional access from Fairacres with associated parking and landscaping following demolition of the existing garage.  
without complying with conditions attached to planning permission Ref: 2018/3184 dated 23/10/2019.
- The conditions in dispute are:  
Condition No.2 which states that: The development hereby permitted shall be carried out in strict accordance with the following list of approved plans:  
Loc 01 - Location Plan;  
2923 PL06 - Proposed Street Scene; and  
2923 PL07 Rev A - Comparative Layout, all received on 22/10/2018;  
2923-PL08 - Proposed Bin Store received on 31/10/2018;  
19 1617 TPP 001 Rev 2 - Tree Protection Plan received on 01/02/2019; and  
2923 PL01 Rev B - Proposed Ground Floor Plan/Site Plan;  
2923 PL02 Rev D - Proposed Site, First Floor, Second Floor Plans;  
2923 PL03 Rev B - Proposed Front & Side Elevations; and  
2923 PL04 Rev A - Proposed Rear Elevation & Sun Path, all received on 14/02/2019.

Condition No.8 which states that: The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for 13 vehicles and 10 cycles to be parked and vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes. Cycle parking should be secure covered and lit.

- The reasons given for the conditions are:  
Condition No 2: To ensure that the development is carried out in a satisfactory manner.  
Condition No 8: In order that the development should not prejudice highway safety, the free flow of traffic nor cause inconvenience to other highway users in accordance with Policy DM7 of the Elmbridge Development Management Plan 2015.

## **Decision**

1. The appeal is dismissed.

## **Preliminary Matters**

2. Planning permission was granted under the Council's reference: 2018/3184 for a detached two storey building with rooms in the roof space consisting of 8 flats with additional access from Fairacres with associated parking and landscaping following demolition of existing garage.
3. The building works appear to have been largely completed and at least some of the building is now occupied. From the information submitted, there have been a number of previous applications seeking to amend the approved plans which have either been refused by the Council or withdrawn by the applicant.
4. The Council advises that permission is currently sought for the following changes: to reconfigure unit mix following change in size of unit 7, revise car parking layout, revise terrace space, alter height of parapet to single-storey side and rear wings, enlarge dormers and reconfigure spacing to rear dormers, increase height of lift overrun and installation of pergola to the rear. The Council has raised no objection to some of these changes, including the change in the size of Unit 7; the parking arrangement in general and particularly at the front of the site in relation to the protected Cedar tree and the revised first floor terrace.
5. The main changes to which the Council has raised objection, and which form the reasons for refusal relate to the alteration to the height of the parapet to the single-storey side and rear wings, the enlargement of the dormers, as well as the refuse store provision.
6. From my site visit and the information before me I have no reason to take a different view.
7. At the site visit, it was apparent that some of the changes had already been undertaken whilst others are still to be undertaken. It was also clear at the site visit that some of the site layout does not currently accord with either the plans as approved or the plans as submitted, and particularly in respect of the parking spaces at the rear and the location of the bin store area. However, my consideration is necessarily on the basis of the proposed plans before me. Therefore, only some of the changes are retrospective and others remain as proposed changes.

## **Main Issues**

8. The main issues in this appeal are:
  - a) The effect of amending the approved scheme plans on the character and appearance of the built development and the local area, and
  - b) The effect of amending the approved scheme plans in terms of the provision of an adequate bin store area.

## Reasons

### ***Issue a) Character and Appearance***

9. The appeal building is a large new development fronting Fairmile Lane with a side return along Fairacres and within a predominantly residential area. It comprises 8 flats with parking at the front as well as at the rear. The surrounding area is characterised by the verdant setting to the residential development, comprising larger flatted developments as well as individual dwellings, including single storey properties.
10. The building includes a single storey wing on the northern side, with a parapet, and pitched roof and dormer. The development as undertaken has increased the height of the parapet, so that the wing appears as a more dominant addition to the building. Whilst there would under the approved plans always be a flank wall to this element facing towards Fairacres, the increase in height has resulted in this having a more dominant and overbearing presence in the street scene. The extent of blank and unrelieved brickwork so close to the site edge in this location detracts from the more verdant surroundings which are characteristic of the local area. I therefore consider that the flank wall as erected in this location does harm the character and appearance of the building and the verdant surroundings which are characteristic of the local area.
11. To soften the appearance of this wall the Appellants have offered to accept a condition to require a trellis and planting to this side elevation, but no details have been provided as to the form that this would take and how it would be implemented and maintained. At the site visit I noted that the extent of ground area between the flank wall and the site edge is very narrow. Furthermore, the available area for planting is further restricted because of the number of utility services and outlets within this narrow space.
12. Although a well-designed trellis landscaping scheme could soften the appearance of this flank wall and integrate the scheme more appropriately into the verdant surroundings, I am not persuaded on the very limited information before me and given the constraints of the space available that such an approach would work in this instance. I do not therefore consider that without further details, it would be appropriate to rely on the imposition of a condition to secure the greening of this flank wall in order to overcome the harm I have found.
13. The dormers at main roof level are larger than as shown on the approved plans. They are also closer to the edge of the roof space than as shown on the approved plans. As a result, they are more dominant on the building than as proposed. Nonetheless, they are seen as individual dormers in the roof planes. In the context of this substantial building with its variety of elements, levels and design forms, I do not consider that the dormer windows appear overly obtrusive such that planning permission should be withheld for this element in isolation.
14. However, my finding in respect of the main roof dormers does not override the harm I have concluded from the increased height of the flank elevation to the wing on the northern side of the building. I therefore consider that the effect of approving the amended plans as submitted does and would have a harmful impact on the character and appearance of the development and of the local area. This conflicts and would conflict with Policy CS17 of the Council's Core

Strategy and Policy DM2 of the Council's Development Management Plan (DM Plan) as well as the National Planning Policy Framework (Framework) and in particular Section 12, all of which amongst other matters seek a high quality of design which respects the local context.

***Issue b) Adequate Refuse Provision***

15. The siting of the waste and recycling facilities has been altered from the approved scheme and the submitted plans show it proposed towards the rear of the site, beyond the car parking and in an area of the site that was previously shown as part of the amenity space.
16. There is very limited information before me to enable me to assess the proposed bin store in terms of its overall capacity and the form of the enclosure. Both the Council and the appellant have referred to the guidance produced by the Council for recycling and waste storage provision.
17. The submitted plans show an enclosure with smaller bins than originally proposed but the note on the plans does not confirm that the enclosure would accommodate the capacity that the Council has identified would be required to serve the overall development. The note indicates that there would be an under provision.
18. In contrast to the approved plans which the appellant is seeking to replace, there is also no information before me regarding the form of the bin enclosure and in particular its roof form for me to be able to consider whether this revised siting would be acceptable in respect of the neighbours' living conditions immediately to the rear. The neighbouring property to the rear is single storey and there are double doors leading out to a small courtyard close to the common boundary with the appeal site and directly to the rear of the proposed bin store. The submitted plans show a planting zone between the bin store and the boundary but again there are no details on the planting proposed and its effectiveness given the limited extent of available area between the bin store and the boundary.
19. The appellant has invited that any outstanding matters could be addressed by condition, but there are too many outstanding matters on this issue to be satisfied that one or more conditions would be an appropriate way forward.
20. On the limited information available I am not satisfied that the proposed plans do make adequate provision for refuse collection. This would have a harmful impact on the visual amenities of the local area, including the neighbouring residents at 2 Fairacres. This would conflict with Policy DM8 of the DM Plan which sets out that adequate waste and recycling facilities must be provided for all new developments and the supporting text confirms that this is both to protect amenity and the street scene.
21. However, I am satisfied that were no other matters of concern and planning permission were to be granted, a condition could be imposed in order to secure appropriate management arrangements to ensure that the bins would be moved to and from the collection point for the site on bin collection days.

**Other Considerations**

22. A number of objections have been submitted raising concerns that the development has not been built in accordance with the approved plans. My

assessment is necessarily based on the planning permits of the proposals before me.

**Conclusion**

23. The proposal would not accord with the development plan and there are no other material considerations to override this finding. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that this appeal should be dismissed.

*L J Evans*

INSPECTOR