



Appeal Decision

Site visit made on 4 September 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/K3605/W/24/3343242

8-14 Oatlands Drive, Weybridge, Surrey KT13 9JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr B Nason on behalf of Consero Oatlands Limited against the decision of Elmbridge Borough Council.
- The application Ref is 2023/1741.
- The application sought planning permission for a redevelopment scheme to provide 51 apartments split between four 2½-storey blocks with additional lower ground level parking, plant, storage and accommodation comprising 19 x 1-bed flats, 27 x 2-bed flats and 5 x 3-bed flats with 53 associated parking spaces, bin and bicycle storage, additional landscaping and new vehicular access following demolition of the existing 4 detached properties without complying with a condition attached to planning permission Ref 2020/3223, dated 16 June 2021.
- The condition in dispute is No 30 which states that:
The development hereby permitted shall be carried out in accordance with the following approved plans:
MA196 201 Rev P1, MA196 230 Rev P3, MA196 250 Rev P1, MA196 251 Rev P3, MA196 252 Rev P1, MA196 253 Rev P1, MA196 254 Rev P1, MA196 255 Rev P1, MA196 300 Rev P1, MA196 310 Rev P1, MA196 320 Rev P1, MA196 321 Rev P1, MA196 331 Rev P1, MA196 335 Rev P1, MA196 336 Rev P1, MA196 340 Rev P1, MA196 341 Rev P1, MA196 350 Rev P1, MA196 351 Rev P1 received on 26/11/2020; MA196 330 Rev P1 received on 14/12/2020.

Decision

1. The appeal is allowed and planning permission is granted for a redevelopment scheme to provide 51 apartments split between four 2½-storey blocks with additional lower ground level parking, plant, storage and accommodation comprising 19 x 1-bed flats, 27 x 2-bed flats and 5 x 3-bed flats with 53 associated parking spaces, bin and bicycle storage, additional landscaping and new vehicular access following demolition of the existing 4 detached properties in accordance with the application Ref 2023/1741, without compliance with Condition 30 attached to planning permission Ref 2020/3223, but otherwise subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. In addition to the drawings originally submitted with the application, during the appeal the appellant has submitted further drawings. These revised

drawings include balcony screens which were granted approval¹ after the appeal was submitted. Because these drawings seek to regularise a design discrepancy and do not significantly alter the nature of the original proposal, I have accepted these drawings. For these reasons, I have proceeded with the appeal on the basis of revised drawings and determined the appeal on this basis. I do not consider that the interests of any party have been prejudiced.

Background and Main Issue

3. The appeal site is the subject of two recent appeal decisions², both of which were allowed. I understand from the evidence before me that the appellants chose to build out the development containing four separate residential buildings which was approved under application reference 2020/3223³.
4. The application subject to this appeal is made under Section 73A of the Planning Act. At my site visit I observed that the development appeared to be largely complete and has been carried out without complying with a condition subject to which planning permission was granted, and an application has been made retrospectively. The application sought to vary Condition No 30 (approved plans) which requires the development is carried out in accordance with the approved plan. The appellant seeking to replace this condition with a varied condition specifying the plans which reflect an amended design.
5. Therefore, the main issue is the effect of the varying the condition on the character and appearance of the area.

Reasons

6. The appeal site, 8-14 Oatlands Drive, comprises a rectangular parcel of land, which previously contained four residential dwellinghouses. However, these have been demolished and the site has now been redeveloped to provide four substantial, detached buildings, providing 51 self-contained flats. It is accepted by the parties that the recent development of the site to provide four large buildings has changed the character of the area, the buildings are somewhat taller than their neighbouring residential dwellings. The site is located at the very northern end of Oatlands Drive, close to the junction with Bridge Street.
7. The character of the surrounding area is predominantly residential in nature. The open space area of Cowey Sale lies to the rear of the site and forms part of the Green Belt, although the site itself does not fall within the Green Belt. Beyond the rear boundary of the site is the Engine River pond and a heavily wooded area.
8. This appeal seeks retrospective approval for amendments to the approved plans to include the already constructed lift overruns and adjacent smoke shafts at roof level on each of the blocks. On each of the four buildings the lift overrun, and smoke shaft have been constructed as a conjoined unit. The units are located broadly within the centre of the roof plan, but all are situated further towards the courtyard. Based on the evidence before me, this positioning would appear to be influenced by the internal layout of the

¹ Planning Application Ref: 2024/0726

² Appeal Ref: APP/K3605/W/20/3261529 and APP/K3605/W/21/3270427

³ Appeal Ref: APP/K3605/W/21/3270427

buildings, and the location of the lift shaft and lobby below. However, this positioning also serves to limit views of the development.

9. The development is not readily visible from Oatlands Drive immediately in front of the appeal site. The development is also only visible from certain viewpoints within the courtyard, and in glimpses from the footpaths and open space situated to the rear. When viewed in the context of the courtyard elevations, which are clearly more functional than those elevations which face towards the public realm. Nevertheless, the lift overruns and adjacent smoke shafts would involve an addition to the roof profile of the approved building, which would in turn increase the overall height and alter the profile of the buildings. However, the roof profile is already stepped, with the use of flat, boxed design elements as part of the overall building design. For these reasons, I find that the position of the units, towards the centre of the buildings and closest to the courtyard facing elevations, is such that the development does not appear unduly bulky or incongruous.
10. The views which are possible from the open spaces to rear comprise glimpses, rather than clear, prominent views and again these glimpses would be experienced in the context of the views of the recently constructed modern buildings. Therefore, whilst I accept that the units would be visible from certain locations, the buildings are clearly of modern construction and as such the addition would not appear out of character with the design of the building taken as a whole. Furthermore, by virtue of their location on the building, the visual impact of development is minimised in views from within the development and wider surrounding area.
11. I accept that some views of the development are possible from a distance of approximately 30 metres away on Oatlands Drive. However, whilst the development does increase the height of the building, it has been designed to be the same colour as the roof tiles, which helps assimilate it to the building design, without appearing as a unduly bulky or incongruous addition.
12. I understand from the evidence before me that the development has already been through multiple alterations. However, whilst the Council states these changes have eroded the character and design of the original scheme, I understand from the evidence before me, that most, if not all of the alterations applied for have been approved and therefore deemed to be acceptable. In this particular case, whilst I recognise that the development is a further change to the originally approved scheme, by virtue of the limited viewpoints and design of the existing buildings which have been constructed, the development does not cause harm to the character and appearance of the area. Furthermore, I find that it does not detract from the design quality of the existing buildings.
13. Turning to the benefits, paragraph 6.14 of the Elmbridge Local Plan Design and Character Supplementary Planning Document 2021 (SPD) states that flatted development, whether new or converted, should be designed to provide lifts to service floors above ground floor ensuring all flats are accessible. In respect of this development, the provision of lifts to all buildings enables all apartments to have level access, regardless of their location within the building. Thus, adhering to this guidance.
14. I have had regard to the Council's statement which questions whether alternative solutions could have been provided to ensure the scheme adheres

to the relevant requirements of building regulations. However, the appellant has provided details of alternative solutions which have been considered, including a platform lift. However, based on the evidence before me, this would not be suitable for a multi-occupancy development such as this. For these reasons, I find that there is little evidence before me that an alternative provision could be secured, and even if it could, that any alternative would result in lesser change to the appearance of the building.

15. In relation to the previous decisions⁴, I accept that it is not possible to conclude whether or not the Inspector would have deemed the proposal to be acceptable had the lift overruns and smoke shafts been included on the proposed plans. I also note that the previous Inspector also granted approval for a different scheme, of a contemporary design and which appears to include proposals for lift overruns. However, notwithstanding this, each proposal must be considered on its own merits and although I have had regard to the previous decisions as a material consideration, it does not alter my above findings.
16. Consequently, I therefore conclude that the development does not cause adverse harm to the character and appearance of the area. Thus, it would comply with Policy CS17 of the Elmbridge Local Plan Core Strategy, adopted 2011 and Policy DM2 of the Elmbridge Local Plan Development Management Plan, adopted 2015, which require high quality design that would integrate sensitively with the locally distinctive townscape. The proposal would also comply with the guidance in the SPD and the National Planning Policy Framework (the Framework) which requires high standards of design that accord with local character.

Other Matters

17. Whilst I acknowledge the third-party comments regarding the retrospective nature of the development, I considered the development on its own merits and site-specific circumstances, which in this instance, for the reasons set out above, I found to be acceptable. I have also had regard to third party concerns over whether granting planning permission would create a precedent for similar proposals elsewhere. However, my decision is based on the characteristics of this appeal site, and therefore I see no reason as to why it should set a precedent for others.
18. There are two Grade II Listed Buildings opposite the site at 1⁵ and 3⁶ Oatlands Drive. I therefore have a duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting. However, the Council did not raise any specific concerns in relation to the development causing harm to their setting and based on the evidence before me, I see no reason to disagree.

Conditions

19. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to

⁴ Appeal Ref: APP/K3605/W/20/3261529 and APP/K3605/W/21/3270427.

⁵ List Entry Number: 1030139

⁶ List Entry Number: 1030056

have effect. The Council has identified⁷ those conditions imposed on the original planning permission that are still subsisting and capable of taking effect.

20. I have considered the Council's suggested conditions against the tests in the Framework and the advice in the PPG. I have made such amendments as necessary to comply with those documents. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
21. I have not imposed the time for commencement condition given the development has already commenced. I have imposed a condition requiring the development to be carried out in accordance with the submitted plans.
22. A condition is necessary in respect of drainage to ensure that the system is constructed in accordance with the agreed scheme. A condition to control the use of imported materials is necessary to prevent the use of imported contaminated materials, to avoid environmental harm.
23. A number of trees within the appeal site are protected by a Tree Preservation Order, therefore conditions requiring tree protection measures to be implemented, the retention and replacement of identified trees and to require tree planting to be carried out in accordance with approved details are necessary to protect the character and appearance of the area. A further condition in requiring landscaping to be carried out in accordance with the approved details is necessary to ensure a satisfactory appearance to the completed development.
24. To ensure the privacy of future occupiers and neighbouring occupiers, conditions are necessary to require obscured glazing to side windows and privacy screens to balconies. A condition preventing the use of flat roofs is necessary to protect the living conditions of neighbouring occupiers. A further condition on sound attenuation and requiring submission of a noise assessment in respect of the substation is necessary to avoid adverse impacts on health from noise.
25. Highway conditions are necessary to ensure the provision of the new vehicular and pedestrian accesses, visibility splays, parking and cycle spaces, turning areas, the closure of existing accesses and provision of electric charging points to ensure that the site operates effectively and does not prejudice highway safety. For the same reasons, in view of the scale of the development, it is appropriate to include a condition requiring works on Oatlands Drive adjacent to the site prior to occupation including bus stop upgrades, a pedestrian crossing and a "Keep Clear" road demarcation. A condition is needed to ensure refuse storage is provided in accordance with the approved plans for the convenience of occupiers and service vehicles.
26. It is necessary to include a condition requiring adherence to agreed flood mitigation measures to reduce the risk of flooding at the site and elsewhere. The Council's suggested condition on "Secured by Design" is appropriate in the interests of creating safer communities.
27. I have also included the Council's sensitive lighting management condition and a condition requiring adherence to the approved Ecology Report in relation to safeguarding and enhancing biodiversity.

⁷ Appendix B – Amended List of Suggested Conditions received 5 August 2024.

Conclusion

28. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be allowed.

K Lancaster

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following plans:
 - 1535-P2-1001 Rev A – Proposed Site Plan
 - 1535-P3-1210 Rev B – Block A – Proposed Floor Plans
 - 1535-P3-1211 Rev B – Block B – Proposed Floor Plans
 - 1535-P3-1212 Rev B – Block C – Proposed Floor Plans
 - 1535-P3-1213 Rev B – Block D – Proposed Floor Plans
 - 1535-P5-1310 Rev A - Proposed Elevation Block A (received 19 August 2024)
 - 1535-P5-1311 Rev A - Proposed Elevation Block B (received 19 August 2024)
 - 1535-P5-1312 Rev A - Proposed Elevation Block C (received 19 August 2024)
 - 1535-P5-1313 Rev A - Proposed Elevation Block D (received 19 August 2024)
 - 1535-P5-1321 Rev A - Proposed Street Elevation (received 19 August 2024)
 - 1535-P5-1420 Rev A - Proposed Site Sections (received 19 August 2024)
 - 1535-P5-1421 Rev A - Proposed Site Section Street to River Visibility Lines (received 19 August 2024)
 - 1535-P5-1422 Rev A - Proposed Site Section Parallel to Road Showing Sight Lines (received 19 August 2024)
- 2) Prior to the first occupation of the development, the following shall have been provided:
 - a) new access to the site from Oatlands Drive
 - b) bus stop upgrades at stops adjacent to the site on Oatlands Drive
 - c) a new uncontrolled pedestrian crossing on Oatlands Drive
 - d) reinstatement of the kerb line and footway and existing accesses closed
 - e) provision of "Keep Clear" demarcation to the road in front of the new access.

These details shall be provided in accordance with a scheme to be submitted to and approved in writing by the local planning authority through a Section 278 agreement, under the Highways Act 1980. The measures thereafter shall be permanently retained and maintained.

- 3) Prior to the first occupation of the development, the proposed vehicular and pedestrian accesses to the site shall be constructed and provided with visibility zones in accordance with the approved plan. Thereafter the visibility zones shall be kept permanently clear of any obstruction over 1.05m high.

- 4) Prior to the first occupation of the development, the existing accesses from the site to Oatlands Drive shall be permanently closed and any kerbs, verge, footway, fully reinstated.
- 5) Prior to the first occupation of the development, space shall be laid out within the site in accordance with the approved plans for vehicles and cycles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. All cycle parking shall be secure, covered and lit. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
- 6) Prior to the first occupation of the development, space shall be laid out in accordance with the approved plans for the storage of refuse within the development site. The storage facilities shall be retained and maintained thereafter.
- 7) Prior to the first occupation of the development, a full and detailed application for the Secured by Design award scheme shall be submitted to and approved in writing by the local planning authority in consultation with the Surrey Police Designing Out Crime Officers, setting out how the principles and practices of the Secured by Design Scheme are to be incorporated. The development shall be carried out in accordance with the agreed details.
- 8) Prior to first occupation of any of the buildings, measures shall be carried out in accordance with the mitigation, compensation and enhancements actions presented in the Conclusions and Recommendations in the Ecology Report by AA Environmental Limited (ref: 193355/JDT) dated 24/02/2020 and the Discussion and Recommendations in the Supplementary Bat Report by AA Environmental Limited (ref: 193355) dated November 2020. A soft felling approach shall be undertaken to the felling of any trees with low roost suitability under the watching brief of a licenced bat ecologist. The development offers opportunities to restore or enhance biodiversity measures to help offset localised harm to biodiversity caused by the development process. The development shall include provision of bird and bat boxes erected on or integral within the new buildings or on neighbouring trees.

Any trees identified for planting should be complimentary to those growing in adjacent and surrounding deciduous woodland identified as habitat of principal importance, using native species raised and grown only in the UK, suitable for site conditions and complimentary to surrounding natural habitat. Planting should focus on nectar-rich flowers and/or berries as these can also be of considerable value to wildlife.

- 9) Prior to the first occupation of the development, the windows labelled on the approved plan as obscurely glazed on shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (other glass suppliers are available) and only openable above

a height of 1.7m above the internal floor level of the room to which it serves. The windows shall be permanently retained in that condition thereafter.

- 10) Within six months of the date of this decision, a noise assessment for the substation shall be carried out in accordance with the noise criteria set out in DEFRA Guidance NANR 45. The report shall then be submitted to and approved in writing by the Local Planning Authority.

The assessment shall be carried out by a suitably qualified acoustic consultant/engineer and be undertaken in accordance with the NANR 45 Procedure for the Assessment of Low Frequency Noise Disturbance.

In the event that mitigation measures are required, then these must be submitted to and approved in writing by the Local Planning Authority within two months of the submission of the original noise assessment.

The approved mitigation measures shall then be implemented within one month of approval being granted and maintained thereafter.

- 11) The development shall be implemented in accordance with the approved drainage verification report as submitted through application 2023/3161 and retained and maintained thereafter.
- 12) The development shall be implemented in accordance with the approved material sampling verification report as submitted through application 2023/3103 and retained and maintained thereafter.
- 13) After the agreed tree protection measures have been installed in accordance with the approved plans, all tree protection measures shall be maintained for the course of the development works. The development thereafter shall be implemented in strict accordance with the approved details and method statements contained in the ARBORICULTURAL METHOD STATEMENT AND TREE PROTECTION STRATEGY 8-14 Oatlands Drive, Weybridge, Surrey, KT13 9JL Reference MJAC-21.5-AMS-01 Revision C 31 January 2022.
- 14) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of first occupation of any building for its permitted use, other than in accordance with the approved plans details, without the prior written approval of the local planning authority.
- 15) If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place before the end of the next available planting season and that tree shall be of such size and species as may be specified in writing by the local planning authority.
- 16) The development shall be implemented in accordance with the approved details as submitted through application 2022/2747. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out

in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The scheme shall be retained thereafter.

- 17) The development shall be implemented in accordance with the approved details of the balcony screens as submitted through application 2024/0726 and retained and maintained thereafter.
- 18) The design and structure of the development shall be of such a standard (BS 8233:2014) that it protects residents within it from existing external noise so that they are not exposed to levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night. The development shall be retained as such thereafter.
- 19) The development shall be implemented in accordance with the approved details of the Electric Charging Points as submitted through application 2022/2747 and retained and maintained thereafter.
- 20) The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment (FRA) LANMOR Consulting Ltd, 8-14 Oatlands Drive, Weybridge, November 2020, 191216/FRA/MK/RS/01 Rev B and the following mitigation measures detailed within the FRA:
 1. Finished floor levels are set no lower than 11.850 metres above Ordnance Datum (mAOD)
 2. No built development will be located within the 1% AEP plus 35% climate change flood extent.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

- 21) The approved scheme shall be fully implemented in accordance with the agreed Sensitive Lighting Management Plan and thereafter retained, in accordance with the approved details.
- 22) The flat roofs to the development hereby permitted shall not at any time be altered or adapted to form a balcony, roof garden or similar amenity area without the grant of a further specific permission from the local planning authority.
- 23) All tree planting shall be carried out in accordance with BS 8545:2014 and the approved detail provided through application reference 2022/1909. If within a period of 5 years from the date of the planting of any tree, that tree, or any planted in replacement for it, is removed, uprooted or destroyed

or dies, another tree of same size and species shall be planted at the same place, in the next available planting season or sooner. The development shall be completed in accordance with the approved details.

**** End of Schedule ****