



Appeal Decision

Site visit made on 9 October 2024

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/K3605/W/24/3338866

59 Medina Avenue, Esher, Surrey KT10 9TJ

- 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 Mr Dean Jarvis of Veda Homes against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/0490.
 - The development proposed is two detached two-storey dwellings with rooms in the roof space and a pair of two-storey semi-detached dwellings with rooms in the roof space with associated parking and landscaping, following demolition of the existing dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant sought to question the procedure as a result of the conclusion on viability. However, I am satisfied that the planning issues can be clearly understood from the appeal documents and there is no need to test this evidence by questioning. Furthermore, given my conclusions on character and appearance and living conditions of future occupiers, the written representation procedure is appropriate for this appeal.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the character and appearance of the area.
 - Whether or not the proposed development would make adequate provision for affordable housing
 - The effect on the living conditions of future occupiers with particular regard to refuse.
 - The effect on the living conditions of neighbouring occupiers with particular regard to light, outlook and any overbearing effect to 36 Medina Avenue, and privacy to 57 Medina Avenue.

Reasons

Character and Appearance

4. The appeal site is at the end of Medina Avenue where there is a turning circle. Dwellings are laid out to face towards this circle and their clearly identifiable

frontages are an important feature of the streetscene. This layout also results in wide rear gardens to these properties. Whilst the appearance of the buildings is somewhat varied and include bungalows and a part catslide roof, they share characteristics of being detached, fronting the street with clear spacing between properties particularly at first floor and above, and the two storey properties have broadly consistent eaves levels and heights. These features result in a regular pattern of development and make a positive contribution to the character and appearance of the area.

5. The proposed development would introduce two semi detached (dwellings C and D) and one detached dwelling (dwelling B) to the existing rear garden of no. 59. They would be two storeys in height with accommodation at roof level served by dormer windows. The proposed development would also replace the existing house with a dwelling fronting Medina Avenue (dwelling A), it would be narrower and taller than the existing dwelling and would be located with its two storey side elevation along the boundary with no. 36.
6. The positioning of dwelling A would result in a two storey side elevation up to the boundary, as well as a large gap between dwelling A and no 57. This would erode the spaciousness between this appeal site and no 35 and would undermine the regular spacing between the buildings in this area. Additionally dwelling A would be the tallest property in this part of the street and consequently it would emphasise this uncharacteristic irregularity and would be harmfully dominant. Dwellings B, C and D would not have a clear frontage within the streetscene. Furthermore, the proposed semi detached pair would also undermine the sense of spacing and separation between buildings which is an important part of this area's character.
7. In combination with its narrow proportions, Dwelling A would result in a highly conspicuous, visually jarring built form and Dwellings B, C and D would not have a clear frontage within the streetscene. In addition, the dwellings would be harmful to the spaciousness between buildings. Together these would erode the important features of this location and would unacceptably undermine the pattern of development in this area.
8. The dwellings at the rear would be seen from glimpsed views along the access road, however they would also be clearly visible from the surrounding residential plots. As such, this harm would be experienced.
9. My attention is drawn to other backland development¹, however these examples are all some distance from the appeal site and it has not been demonstrated that they share the characteristics described above. As such this does not alter my decision.
10. Consequently, the proposed development would be harmful to the character and appearance of the area. As such it would be contrary to Policy CS17 of the Core Strategy (2011) (CS) and Policies DM2 and DM10 of the Development Management Plan (2015) (DMP). Together these seek high quality design and require development on garden land must respect the character of the area, amongst other things.

¹ at 35 Couchmore Avenue (LPA ref 2012/1344), 63-65 Manor Road North (2014/2214) 85 and land rear of 77-83 Manor Road North (2019/0942), Land north west of 93-97 Manor Road North (2019/219)

Affordable Housing

11. Policy CS21 of the CS requires that, where viable, 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.
12. There is a significant shortfall in the delivery of affordable housing in this borough. I am provided with 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 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.
13. However, there is dispute between the main parties as to whether such a contribution would be viable. The appellant concludes that the scheme cannot viably provide any affordable housing, however the council's assessment is that the scheme should be subject to an affordable housing contribution.
14. The parties agree, for the purposes of this appeal, all points other than the Benchmark Land Value (BLV). In their appeal statement the appellant confirms that they are relying on the 'red book' analysis by a RICS accredited surveyor which provides the current market value of the property at £1million, used as the existing use value (EUV) resulting in a BLV of £1.2million. However, I am provided with alternative methods to assess the EUV from both parties including market evidence where both the appellant and the Council calculate a different EUV. As such, taking into account the evidence in this specific case, I am not satisfied that based on a single source of data of the assessment of market value, these figures represent the BLV of this site.
15. Whilst alternative EUVs have been put forward, a full viability assessment which includes the other inputs that have been agreed for the purposes of this appeal has not been submitted. As such I am not satisfied that the proposed development would not be viable and therefore a financial contribution towards affordable housing should be provided. I do not have any mechanism to secure any contribution towards such provision. Consequently, the scheme that I am presented with is unacceptable in relation to this main issue.
16. Therefore, the proposed development would not make adequate provision for affordable housing. As such it would be contrary to policy CS21 of the CS, the aims of which are set out above.

Living conditions – refuse

17. The development proposes a bin store which is 16m from the highway. It has not been demonstrated that refuse vehicles could enter and leave the site in a forward gear, and this distance is further than refuse collectors would access. Therefore, in practice, occupiers would be required to present their bins to the road on collection day. However, the road frontage of this site is entirely occupied by the access road and the car parking space for dwelling A. Therefore, on collection day bins would either block vehicle access to dwellings B, C and D or obstruct the car parking space for dwelling A. Either of these

arrangements would be unacceptable to the living conditions of these future occupiers.

18. Therefore, the proposed development would not provide appropriate living conditions for future occupiers with particular regard to refuse. Therefore, it would be contrary to policy DM8 of the DMP which requires that appropriate waste and recycling facilities must be provided.

Living conditions – existing occupiers

19. The proposed development would introduce a two storey side elevation of dwelling A on the boundary with no 36 and this would be likely to be visible in peripheral views. However no 36 is orientated at an angle away from this boundary and therefore the main outlook to no 36 would remain mainly open. Furthermore, due to this positioning these windows would be likely to receive adequate light, including from above the proposed dwelling. Dwelling A would be located towards the front of the plot with a large break between dwelling B, which is set in from the side boundary. The proposed houses would therefore adjoin only a small part of the length of the side garden area of no 36. Consequently, although there would be a greater height of development along the boundary, due to the orientation of the dwellings and their staggered footprint, the development would not be unacceptably overbearing.
20. 57 Medina Avenue has windows to main rooms to both the side and rear elevations. Due to the orientation of the adjoining properties and boundary treatment its garden is relatively private. The proposed first floor windows for Dwellings C and D would face towards this garden. However, they would serve a landing and a study which are not main rooms and, furthermore, would be located around 24m from the existing windows and would not directly face them. Views from ground floor windows could be limited by boundary treatment and side windows would serve bathrooms and therefore could be secured to be obscure glazed and fixed shut. Therefore, there would not be any harmful overlooking to this garden, perceived or otherwise.
21. Therefore, the proposed development would have an acceptable effect on the living conditions of neighbouring occupiers. Consequently, it would be in accordance with policies DM2 and DM10 of the DMP, in part, together these require protection of the amenity of adjoining occupiers including for development on garden land.

Planning Balance

22. The Council cannot demonstrate a 5 year supply of deliverable housing sites. Therefore, 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.
23. The proposed development would result in the social and economic benefits of the provision of four houses of a type for which there is an identified need, in an existing residential area. This would support the Government's aims to boost the supply of homes. This is further emphasised by the Written Ministerial Statement Building the homes we need (2024) and the proposed reforms to the NPPF and other changes to the planning system, and the National Planning Policy Framework: draft text for consultation. Albeit in the

case of the latter, this document 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 development these are important but modest benefits of the proposed development.

24. On the other hand, the proposed development would not address the needs of groups with specific housing requirements with regard to affordable housing. It would not achieve a high quality place, which is fundamental to what the planning and development process should achieve. Furthermore, it would not provide a high standard of amenity for future users. Together these multiple harms would be significant.
25. 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.

Conclusion

26. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given above the appeal should be dismissed.

H Miles

INSPECTOR