



Appeal Decision

Hearing held on 31 October 2024

Site visit made on 31 October 2024

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/K3605/W/24/3348505

42 Station Road, Stoke D'Abernon, Surrey KT11 3BN

- 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 G Peters against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/3266.
 - The development proposed is a rear dormer window and front rooflights to create studio flat and single-storey rear extension to existing commercial unit and re-arrangement of the external access stairs.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted, the Council has granted planning permission for a rear addition to the appeal building¹. This consists of a single storey extension to the ground floor commercial unit and the rearrangement of the staircase and accessway leading to the existing first floor flat. These works also form part of the present appeal scheme. Consequently, as these elements have been permitted and could be constructed, the only component of the appeal scheme which is in dispute is the studio flat proposed to the roof space, with its associated dormer, spiral staircase and balcony. I will consider the appeal on that basis.

Main Issues

3. The main issues are:
 - the effect of the proposed dormer and external staircase on the character and appearance of the host building and area,
 - the effect of the proposed balcony on the living conditions of the occupiers of the first floor flat, having regard to the impact of any loss of light,
 - whether or not the scheme would represent an acceptable form of development having regard to any flood risk and the provisions of the development plan and the National Planning Policy Framework (the Framework).
 - whether or not the development would make suitable provision for any requirements for affordable housing, and

¹ Application 2024/1937 granted on 24 September 2024.

- the effect of the development on the Thames Basin Heaths Special Protection Area (the SPA).

Reasons

Character and appearance

4. The appeal building is a mid-terrace, two storey property with a retail unit on the ground floor and a separate residential flat above. It forms part of a parade of similar buildings. From the front, the parade has a visual consistency with flats above the commercial units and with the reasonably long sweeping tiled roof forming a pleasant and characteristic feature.
5. The scheme to convert and extend the roof structure would incorporate a separate studio flat and this would include the addition of modest sized rooflights to the front roof slope. While the rooflights would be noticeable, their impact would be acceptable.
6. At the rear, the buildings have been much altered and extended at ground and first floor levels. There are an array of additions and extensions, many of functional design and appearance, and which have limited architectural quality. The appeal premises, for instance, have a modest sized single storey mainly flatted roof addition, and a timber clad and roofed staircase extension leading up to the first floor flat. These additions are set between a two storey flat roofed addition to the adjoining property and a single storey addition with balcony railings and prominent metal staircase on the other side.
7. These various additions to the rear of the parade are at ground and first floor and, despite their cluttered appearance, the roof form, with its distinctive pattern of chimneys, is largely unaltered. Changes to the roof are quite minor and include rooflights and a modest sized dormer to the southern, rear section. Overall, the roof form is one of the only elements of the rear of the parade that adds positively to this area.
8. The appeal scheme would add a sizeable dormer in a central location within the overall rear, slope of the roof. The dormer would extend up from the rear wall of the building, it would have a width that extended across parts of the adjoining chimneys and the flat roof would project up towards the ridge.
9. As a consequence of these features and extent, the dormer would be an unduly dominant and unsympathetic addition that would draw the eye and disrupt the plane of the roof and its distinctive form. The balcony and the top of the curving staircase would add to the bulk and clutter of additions towards and at this roof level. That the range of ground and first floor additions are of little architectural merit would not justify the extension of an unduly bulky and overly prominent addition at roof level.
10. The scheme would, therefore, not meet with the Framework requirement that development should be visually attractive as a result of good architecture and add to the overall quality of the area.
11. I appreciate that the appellant takes issue with the word contrived in the reason for refusal, however, I consider little of substance turns on this matter, and that the reason for refusal is generally well founded for the reasons explained.

12. Consequently, I conclude that the dormer would be an overly large and unduly dominant addition to this roof slope and, in conjunction with the stairs, would unacceptably harm the character and appearance of the host building and area. Accordingly, this element of the scheme would conflict with Policies CS10 and CS17 of the Elmbridge Core Strategy 2011 (the Core Strategy), Policy DM2 of the Elmbridge Local Plan Development Management Plan 2015 (the Local Plan), the Design and Character Supplementary Planning Document 2012 (the Design and Character SPD) and the Framework which, amongst other things, requires that proposals should preserve or enhance the character of the area with particular regard to appearance, scale, height and mass.

Living conditions

13. The first floor flat has a bedroom and a lounge with windows that face the front of the property. At the back, there is a bathroom and second bedroom. This second bedroom has a window that faces over the rear yard areas.
14. At the present time, to the side of this rear bedroom window there is the external covered staircase, which is reasonably close. This addition prevents views in that direction and adversely affects some light to the rear bedroom. There is also the deep soffit overhang just above the head of the first floor bedroom window that provides some shadow over the window and again affects some natural light to that room.
15. The scheme would remove the first floor extension that leads to the entrance door and also the soffit overhang. It would, however, involve the addition of the spiral staircase and the balcony, with as an addition to the balcony, a further pergola projection. The spiral staircase would be to the side of the first floor bedroom window but because of its generally open form would not especially detract from the light reaching the existing bedroom. The balcony would extend out about 1.1m and would have some shading effect. However, the proposed pergola would extend even further and I consider that the combination of balcony and pergola would adversely affect the natural light to the bedroom and unduly affect the amenities of the occupants of this habitable room.
16. However, the pergola could be excluded from the proposal by a planning condition in any approval. The balcony projection in isolation, when compared to the existing situation with the soffit and extension, even having regard to the position and form of the proposed spiral staircase, would not materially affect the light to the bedroom to such an extent that it would be unreasonable.
17. Consequently, to conclude, providing the pergola element of the scheme was excluded by a condition in any approval, the proposal would not adversely affect the living conditions of the occupiers of the first floor flat, having regard to the impact from any loss of light. The scheme, in this regard would comply with Policy DM2 of the Local Plan, the Design and Character SPD and the Framework which, notably in this case, requires development to protect the amenity of adjoining occupiers and be designed to provide adequate daylight and sunlight.

Flood risk

18. The Elmbridge Borough Council Level 1 Strategic Flood Risk Assessment (February 2019) (the SFRA) identifies the site within the Functional Flood Plain (Flood Zone 3b) in terms of fluvial flood risk. The water courses in the area are the River Mole, to the broadly west located within open countryside, and the Fairmile Ditch, which runs for a short section as an open channel on the other side of Station Road.
19. The appellant has submitted a number of documents to support the case that the development would be acceptable having regard to its flood impact. Both the Flood Risk Assessment (STM Environmental July 2023) (the STM Report) and the Technical Note (Water Environment Limited June 2024) (the Technical Note) model the expected flood water depths for different scenarios. Both these documents are consistent in their modelling analysis. They identify that there would be flooding to the front and rear of the appeal building, but that the existing ground floor level is sufficiently raised such that the commercial area on the ground floor in the building, including the existing rear ground floor extension, would not flood.
20. The proposed rear extension has been designed with voids under the structure and with the same finished floor level as the existing commercial unit. The size of the extension with its commercial use falls to be considered as minor development in terms of the Framework and Planning Practice Guidance. The Council raise no issue with this aspect of the works in relation to flood risk and it now benefits from planning permission. I find no reason to disagree.
21. The additional residential accommodation, in the form of the studio flat with dormer, would be confined to the roof space over the first floor flat and ground floor commercial unit, in a building which the modelling indicates would not flood. The spiral staircase and balcony would be beyond the original part of the building, but would be constructed in space above the footprint of the existing rear extension. This rear extension would be replaced but the space is presently excluded from the area that the modelling indicates would flood because of the finished floor level.
22. The overall access to the new studio flat would lead from Bray Road, along the joint driveway, up the joint staircase to the roof of the new extension and then up the spiral staircase. The access for the majority of its length would, therefore, be over land that the modelling indicates would be liable to flood.
23. The SFRA² sets out the approach to development in Flood Zone 3b in Elmbridge. This includes that there are areas of existing development in Flood Zone 3b that are prevented from flooding by the presence of existing infrastructure or solid buildings. In these circumstances, in these developed areas, the existing building footprints where it can be demonstrated that they exclude floodwater, will not be defined as Functional Floodplain and the planning requirements associated with Flood Zone 3b will not apply. Station Road, Stoke D'Abernon is specifically listed as one of the areas in this section of the SFRA where this approach shall apply.

² The Council explained at the hearing that a 2024 version of the SFRA had recently been published but in respect of the issues in this appeal and the approach to development in Flood Zone 3b the detail is the same as with the SFRA (2019).

24. I accept that the access to the studio flat is through an area that has been modelled to flood. However, the accommodation in the studio flat itself and the spiral staircase and balcony is above an existing built form including the existing extension, which the modelled evidence indicates should not flood because of its finished floor level. For these reasons, I consider that the approach and circumstances in the SFRA to not consider the planning requirements under Flood Zone 3b for the studio flat should apply. Consequently, the additional unit of accommodation should be considered to fall within Flood Zone 3a (high probability) for the purposes of flooding considerations.
25. Even if I was to consider the spiral staircase and balcony were within Flood Zone 3b, because the ground floor extension was to be removed and the new extension would incorporate flood storage capacity, in any case the additional living accommodation is wholly over the original building. In these circumstances, I am satisfied that the studio flat could still be considered for planning purposes as being located within Flood Zone 3a.
26. In these respects, I agree with the appellant that the relevant flood zone to consider the proposal against is 3a, although not for the reasons set out in the various reports. I also consider that in terms of flooding there is the potential impacts from both the River Mole and Fairmile Ditch and that fluvial and surface water flooding have the ability to interact such that both should be considered. Consequently, I am not satisfied that I should adopt the conclusion in the Technical Note that the surface water flood modelling should be used as a proxy for the potential for fluvial flooding.
27. In terms of assessing the suitability of the studio flat within Flood Zone 3a, the provision of this additional unit of residential accommodation would not fall within the minor development category. Consequently, this part of the proposal should be subject to the sequential test, and if passed, the exception test. I consider there is no substantive justification not to apply this approach. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. The Framework explains that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
28. The appellant's Sequential and Exception Test Report (18 September 2024) considers that there are no reasonably available sites at lower risk as it is explained that it is not within the appellant's gift or capability to offer up any alternative sites as the policy suggests. However, the Planning Practice Guidance explains what should be considered as a reasonably available site and this could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. It is further explained that such lower-risk sites do not need to be owned by the applicant to be considered reasonably available.
29. A single unit of accommodation in the form of a studio flat is not an unusual type of development and could be incorporated as a component in other residential schemes, or above or within other existing buildings across the area. I consider that the area of search to apply the sequential test should be the Borough Council area. The Land Availability Assessment 2023 details the development opportunities across the Borough and this includes an assessment

of the housing development potential for a long list of sites, including on land identified within Flood Zones 1 and 2.

30. Many of these sites appear to be reasonably available and, therefore, there are alternatives for the proposed single unit of accommodation on land that has a lower risk of flooding than the appeal site. In these circumstances, the case for the development of the studio flat, within Flood Zone 3a, has not been demonstrated in the terms of the sequential test requirements of the Framework and the Planning Practice Guidance. It is concluded that the sequential test is not passed and the scheme is unacceptable in terms of flood risk. There is, therefore, no need to go on and consider the exception test.
31. I have taken into account the letters from local residents, and the comments of those local residents at the hearing, that the site has not flooded. This evidence is supported by the SFRA map of historical flooding incidents which also confirms that the site has not flooded in the past. I accept that the flat, at roof level, would not flood in all the modelled scenarios. However, I attach the lack of previous flooding and the position of the development limited weight in seeking to justify the development as the Framework and Planning Practice Guidance set out the approach that should be taken. Areas around the site that may not have flooded in the past may do so in the future, especially when the effects of climate change are taken into account.
32. On the basis of all the flood risk evidence, the site is far from optimal. A further unit of accommodation should not be permitted where residents could be trapped by flood waters in a flooding event and which would place increased pressure on the emergency services at such a time.
33. In the light of the above analysis, I conclude that the provision of the studio flat would not represent an acceptable form of development having regard to the flood risk. The scheme in this respect would conflict with Policy CS26 of the Core Strategy, the Flooding Supplementary Planning Document, the SFRA and the Framework which collectively seek to locate development where the risk from flooding is minimised.

Affordable housing

34. Policy CS21 of the Core Strategy sets out the requirements for affordable housing. All types of residential development are required to make a contribution and this includes a financial contribution equivalent to the cost of 20% of the gross number of dwellings on sites of 1-4 dwellings.
35. The Framework states that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. However, I am satisfied by the submissions from the Council on this matter and that the relationship between general house prices and wage levels contributes to a significant housing affordability issue in the Borough. This supports the development plan requirements, as a starting point, for a contribution to the supply of affordable housing in all residential development proposals.
36. Importantly, Policy CS21 of the Core Strategy includes that in exceptional circumstances, where it is considered that the delivery of affordable housing in accordance with the policy is unviable, this can be demonstrated through a financial appraisal. This opportunity, to show when an affordable housing

contribution cannot be justified, means that the policy does not prevent development going ahead in these circumstances.

37. In this case, the scheme is a modest proposal that would deliver a small unit of residential accommodation that would be more affordable because of its size and nature. The accommodation would help to meet a much needed type of housing, for either rent or sale. However, the scheme would deliver an open market unit of accommodation and the application of Policy CS21 of the Core Strategy is justified.
38. It is explained that the scheme is poor in its viability and, amongst a range of details and arguments made in this respect, a cost and viability plan has been submitted. This includes comparable costs from other developments in the locality. While providing some context to the costs and viability, the figures do not appear to follow an industry or agreed standard. Furthermore, some costs are allocated to the studio flat which would also be borne jointly with the extension to the commercial unit. It also appears that most of the figures are provisional sums, and the notes indicate that construction value engineering would be required to try to reduce costs, while other costs, such as Community Infrastructure Levy payments, are not included. Consequently, I am not satisfied that the figures before me are sufficiently comprehensive, even when accepting that the level of details should be proportionate to the modest scale of the development, to demonstrate with suitable certainty a lack of viability of the scheme.
39. I appreciate that the appellant argues that if a detailed surveyor's report had been commissioned, with the resulting costs on top of all the other reports and application requirements, this would have made this modest scheme even more unviable. Nevertheless, the development plan starting point is that every development should make a contribution to affordable housing. The evidence does not provide sufficient certainty to demonstrate that the scheme would be unviable such that the exceptional circumstances to justify the lack of an affordable housing contribution have been met.
40. It would not be appropriate or reasonable to seek an affordable housing contribution by way of a planning condition. This is, in part, because the appellant argues it should not be required and also in the circumstances where the Planning Practice Guidance advises against such an approach.
41. Consequently, I conclude that, based on the information before me, the scheme would not make suitable provision for affordable housing so as to meet with the requirements of Policy CS21 of the Core Strategy and the Development Contributions Supplementary Planning Document (July 2020 – updated April 2021) (the Contributions SPD), for the reasons explained.

Thames Basin Heaths SPA

42. The Thames Basin Heaths SPA is an internationally important habitat for three rare species of ground nesting birds, the Dartford warbler, nightjar and woodlark. This heathland lies to the south of the Borough of Elmbridge. Policy CS13 of the Core Strategy sets out the policy approach for development that could affect the SPA. The supporting text to the policy explains that Natural England considers that the intensification of residential development up to a distance of 5km away from the SPA would result in a range of pressures,

including increased recreational activity with related disturbance within the SPA, with adverse effects on the protected habitat.

43. Policy CS13 of the Core Strategy establishes a 400m exclusion zone around the SPA in which mitigation measures are unlikely to be capable of protecting the integrity of the SPA. Between 400m and 5km from the SPA, the policy explains that mitigation must accompany new residential development. These measures, set out in the policy and detailed in the Contributions SPD, include the provision of Suitable Accessible Natural Greenspace which is delivered through the Community Infrastructure Levy, and a financial contribution towards Strategic Access Management and Monitoring (SAMM). The Contributions SPD explains that the financial contribution towards SAMM should be secured by a legal agreement prior to the determination of the application.
44. In this case, the site is within the 400m-5km zone of influence of the SPA and, in accordance with the policy, a mitigation payment for SAMM is required. As part of this appeal no completed legal agreement with the required obligation to pay the mitigation sum has been submitted.
45. I note the case made that because of the very small scale of the proposal, and its argued marginal development viability, together with the wider benefits from such housing, that these circumstances should outweigh the need for a SAMM payment. Furthermore, the appellant argues that, in any case, if it was decided a payment was required then this could be secured by a planning condition in any approval.
46. Occupant(s) of the additional unit of accommodation proposed as part of this appeal are likely to use open space in the area from time to time, including parts of the SPA, for recreational purposes. I consider that, even with the small scale of the proposal, there is the potential to lead to increased pressure on the SPA and, therefore, without the agreed mitigation, in combination with other developments, the occupation of the residential unit would likely have a significant and adverse effect on the integrity of the SPA. The Contributions SPD sets out the costed strategy for SAMM with a payment based on the size of each residential unit. This includes one bedroom units which have a lower payment compared to the larger residential units. Given the importance and legal requirements to protect the integrity of the SPA, notwithstanding the benefits with delivering new housing, I consider that there is no substantive justification for not providing the necessary mitigation.
47. Furthermore, there are not the exceptional circumstances, in terms of the approach set out in the Planning Practice Guidance, to justify a negatively worded planning condition to seek to secure the payment for SAMM. Without an obligation for the payment of SAMM as part of a legal agreement, there is not sufficient certainty that the mitigation would be secured.
48. It follows that I am unable to conclude that the proposal, either alone or in combination with other schemes, would not have a likely significant and adverse effect on the integrity of the Thames Basin Heaths SPA. Consequently, I conclude that the proposal would not meet with the legislative requirements of the Conservation of Habitats and Species Regulations 2017. The scheme would, therefore, also be in conflict with Policy CS13 of the Core Strategy and the Contributions SPD which seek, in this respect, to ensure that new residential development which is likely to have a significant effect on the ecological integrity of the Thames Basin Heaths SPA will be required to

demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects.

Planning Balance and Conclusion

49. The Council confirmed at the hearing that it has a housing land supply of about 2.4 years. This should be considered in relation to a Framework requirement of 4 years of supply because of the advanced stage of its replacement Local Plan. This is a very substantial shortfall in housing land supply. However, the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework, is disengaged because the impacts from flooding and on the Thames Heaths Basin SPA each provide a clear reason for refusing the development proposed.
50. Accordingly, the scheme should be considered under a normal planning balance and planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise³.
51. In terms of the benefits of the scheme, an additional unit of residential accommodation would be provided helping to address part of the very substantial shortfall in housing supply. This would accord with the intentions of the recent Written Ministerial Statement and draft Framework (and present Framework) which emphasise the need to boost the delivery of housing.
52. The studio flat would be a small and, therefore, more affordable unit of accommodation where the evidence indicates that this type of housing is in great demand. The site would be located within the built up area, make use of an existing space within a site that is already previously developed. The scheme would make efficient and effective use of the land in a location which is very sustainable with public transport options. There is a good bus service and the main line railway station is very close by. Occupants would have easy access on foot to the services in this parade of commercial premises and others nearby. Cycle storage would be provided to assist with occupants using this sustainable transport option.
53. There would be social and economic benefits to the local area from the construction and subsequent occupation of the development. The existing first floor flat would benefit from the external amenity space which would provide improved living conditions for these residents. The scheme would remove the covered staircase to the first floor flat resulting in benefits including in visual and fire safety terms.
54. Furthermore, the ground floor extension would provide improved storage space for the existing business and would, thereby, help provide for a more sustainable business going forward. The scheme would generate increases in local council tax and business rates, and the payment of Community Infrastructure Levy.
55. The scheme would be constructed to the appropriate modern standards and provide the existing flat and the proposed studio with good levels of insulation and energy efficiency for heating and lighting. No objections have been received to the scheme from local or other residents. Finally, I consider that

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

the appellant is genuinely interested in pursuing improvements to the quality of the site and providing an additional and more affordable unit of housing for a local person.

56. Taken together these would all be appreciable and worthwhile benefits. However, as the scheme is only modest in its size, and would include only a single additional unit of accommodation, the overall benefits should be attributed to have limited to moderate weight in favour of approval.
57. On the other hand, the dormer and staircase would harm the character and appearance of the host building and area. The proposal would introduce an additional unit of accommodation in a location that would not accord with the policy approach to reducing flood risk, the scheme would not make an appropriate contribution for affordable housing and future occupants would contribute to an unacceptable impact on the Thames Basin Heaths SPA. These are significant objections in their own right, but taken together they weigh very substantially against the proposal.
58. As a consequence, the scheme would conflict with the development plan when considered as a whole. The identified harms and related policy conflicts would not be outweighed by any material considerations, including the benefits of the scheme. The scheme should be determined in accordance with the development plan and I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Geoffrey Peters	Appellant
Mrs Helen Atkinson	
Mr Edward King	Local resident
Mr Graham Horder	Local resident

FOR THE LOCAL PLANNING AUTHORITY

Miss Carol-Ann O'Kane	Senior Planning Officer - Elmbridge Borough Council
Mr Peter Brooks	Area Team Leader - Elmbridge Borough Council
Mr Chris Patmore	Hydrology and SuDS Technical Director, RPS
Mrs Tamsin Jones	Hydrology and SuDS Consultant, RPS