



Appeal Decision

Site visit made on 20 November 2024

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2024

Appeal Ref: APP/K3605/W/24/3344569

White Herons, Fairmile Park Road, Cobham, Surrey KT11 2PP

- 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 Chris Pettie of Igloo Developments Cobham Ltd against the decision of Elmbridge Borough Council.
 - The application Ref is 2023/2543.
 - The development proposed is demolition of existing dwelling and garage building, and redevelopment to provide new homes with associated amenity space, landscaping, car and cycle parking.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Unilateral Undertaking has been submitted which includes mechanisms which seek to mitigate the effects of the proposed development on the Thames Basin Heaths Special Protection Area (TBHSPA). I will return to this matter later in this decision.
3. The appellant has submitted an appeal viability statement and an updated biodiversity net gain statement with their evidence. These do not change the scheme under consideration but provide detail in response to the Council's reasons for refusal. Furthermore, the Council has had the opportunity to respond to these documents during the appeal process, including with regard to any external consultants. For the reasons above, and in the circumstances of this case, the parties would not be prejudiced if I were to consider these documents, and I have taken them into account in this decision.

Main Issues

4. The main issues are:
 - The effect of the proposed development on the character and appearance of the area, including the effect on any non-designated heritage asset.
 - Whether the proposed development would make adequate provision for affordable housing.
 - Whether the proposed development would provide an appropriate housing mix with particular regard to unit sizes.
 - The effect of the proposed development on biodiversity.

Reasons

Character and Appearance

5. Fairmile Park Road is characterised by generous plots with large dwellings of varied styles and forms. This variety provides interest to the road and is a positive characteristic of this area. White Herons is a large house set in its own grounds in an arts and crafts style, different from its neighbours. It therefore makes a positive contribution to the character of the area in these respects.
6. There are examples of pairs of similar houses fronting Fairmile Park Road such as Thurlestone and Buckland House, and 1 and 2 The Knoll, albeit the latter are separated by a road. However, these are limited to pairs of dwellings only. The properties at 1-9 Lebanon Drive and those on The Knoll are also similar to one another. Although, these are located along separate roads which, due to the more modest plots and the pavement within its streetscene have a notably different character to Fairmile Park Road. These limited examples therefore do not undermine the prevailing interesting variety to properties along Fairmile Park Road.
7. The proposed development would demolish the existing building and introduce three pairs of semi-detached houses to this plot. The houses would be 9.5m tall, approximately 1.1m above the height of 2 The Knoll and 2m above 1 Lebanon Drive. Their materials, scale, massing and layout would all be very similar although the first floor bay window features would differ between the pairs.
8. These houses would be seen as a cluster of matching properties. Whilst the first floor bays would have different projections and materials, nevertheless the overriding features of the scale, massing, layout and overall appearance of all six dwellings are essentially the same as one another and pairs appear identical but handed. As such the proposed development clearly appears as a collection of almost uniform houses. Furthermore, the height of this group of properties are greater than those on the adjoining plots. Consequently, the scale and bulk proposed would result in the inappropriate appearance of the dwellings being harmfully prominent within this streetscene.
9. Changes have been made since a pre application enquiry was submitted, nevertheless for the reasons above the proposed development would harmfully undermine the varied character of this area and would be unacceptably dominant. This would result in significant harm to the character and appearance of this area.

Heritage

10. Local planning authorities may identify non-designated heritage assets as part of the decision-making process on planning applications. As such, even though the property has not been added to the local list, it is relevant to consider this matter.
11. Fairmile Park Road was built in around 1890 and White Herons (formerly Whinfield) was one of the seven properties that was built as part of its original construction, of which up to three remain. It has had subsequent additions including a garage outbuilding, two storey extensions and single storey additions, and its plot appears to have been subdivided. Therefore, although some original elevations remain, its integrity has been undermined. The

property is in an arts and crafts style, although I have no evidence that this is a particularly rare, distinctive or innovative example. The house was constructed for Henry Lannoy Cancellor who was a Barrister, author and set up the Boys Garden Colony institution, albeit his occupation does not provide tangible evidence of the link between the existing property and important national or local persons or events. The appeal property is therefore not of historic significance in these regards and, based on the particular circumstances of this case, the property is not a non designated heritage asset.

Summary

12. Consequently, the proposed development would not be harmful to heritage assets. As such, there would be no conflict with Policy DM12 of the Development Management Plan (2015) (DMP) which relates to heritage. Nevertheless, the lack of harm in this regard would not undermine the harm to the character and appearance of the area as set out above.
13. Therefore, the proposed development would be harmful to the character and appearance of the area. As such, in this regard, it would be contrary to Policies CS10 and CS17 of the Core Strategy (2011) (CS) and Policy DM2 of the DMP. Together these require high quality design which responds to local character including with regard to the area of Cobham.

Affordable Housing

14. Policy CS21 of the CS requires that, where viable, for this development 30% of the gross number of dwellings should be provided as affordable housing. 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. This is not proposed to change in the National Planning Policy Framework: draft text for consultation (draft Framework).
15. 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. On the other hand a short extract from the Inspectors comments on a draft policy in the emerging Local Plan has been submitted. I have no detail that the evidence before me is the same as that before the Local Plan Inspector, furthermore this appeal decision relates to this specific development rather than a development plan policy. Therefore, the circumstances of the Local Plan Inspector are clearly different to those before me now. Consequently, considering the evidence in this case, I conclude that 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.
16. However, there is dispute between the main parties as to whether such a provision of affordable housing would be viable in this case. 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. The main areas of dispute appear to be around build costs, the Benchmark Land Value (BLV) and Gross Development Value (GDV).

17. The Appellant has submitted a site specific costs report. This differs from the figures provided by BICS, however this is a site and scheme specific costs plan and in the absence of contradictory evidence I am content to rely on this figure.
18. The Council have adopted a BLV of £1.55million on the basis of the sale price of the site in 2021. The planning practice guidance (PPG) is clear that Market evidence can be used as a cross-check of BLV but should not be used in place of BLV. On the other hand, the appellant has provided a red book analysis which sets out a BLV of £1.7million. In the circumstances of this case, I am not satisfied that the Council's BLV would meet the requirements of the PPG and therefore I will consider the appellant's alternative, evidenced, figure.
19. Using the assumptions above, the appellant adopts a GDV of £6,500/m² which would make the scheme unviable. However, they have also tested the Council's suggested GDV of £6,726/m². In these circumstances, a loss would still be delivered where a 20% profit is modelled, although a surplus would be delivered under the 17.5% return scenario. As such the development is only able to provide affordable housing under the Council's GDV and with a 17.5% profit applied. The appellant also provides evidence that the development viability would be sensitive to build costs rises, or sales costs falls of 5-10%.
20. Consequently, given the scheme is unviable in all but one scenario of the sensitivity testing, and considering the effect of modest changes in build costs or sales values, in this particular case, based on the evidence before me now, I conclude that the scheme cannot viably provide affordable housing.
21. Therefore, the proposed development would make adequate provision for affordable housing. As such it would be in accordance with Policy CS21 of the CS, the aims of which are set out above.

Housing Mix

22. Policy CS19 of the CS requires that the Council seeks a mix of housing types and sizes across the Borough, and policy CS10 encourages small family units in Cobham, Oxshott, Stoke D'Abernon and Downside. The Assessment of Local Housing Needs March 2020 (LHNA) states that 10% of the market housing required is for 4+ bedroom homes and 20% as three-bedroom homes with an identified need for smaller homes. The Authority Monitoring Report shows that in the 2022/23 monitoring year 4 bedroom homes accounted for 17.9% of delivery and 3 bedroom homes accounted for 22.3% of delivery, albeit that some of these may be replacement dwellings.
23. The proposed houses are large three bedroom homes with generous bedrooms with dressing areas and en suites as well as a home office. However, these are not unreasonable inclusions in a family home and as such I have considered the appeal scheme on the basis of the plans, as three bedroom dwellings.
24. Whilst the development would not meet the greatest housing need in the borough, which is for smaller homes, this size of property would provide a contribution to the 3 bedroom market housing that is required. Furthermore, I am not provided with detailed evidence that six new 3 bedroom dwellings in this location would adversely affect community cohesion.

25. Therefore, the proposed development would provide an appropriate housing mix with particular regard to unit sizes. As such, it would be in accordance with Policies CS10 and CS19 of the CS, the aims of which are set out above.

Biodiversity

26. Together policy DM21 of the DMP and Policy CS15 of the CS require that development does not result in a net loss of biodiversity and where possible contributes to biodiversity net gain (BNG). There is also a national requirement of 10% BNG for this development.
27. The BNG calculator submitted with the application shows BNG of around 20%, with an updated version inclusive of previously felled trees on the site and photographs regarding the existence of hedgerows also showing around 20% BNG. There is dispute as to the detail provided in the baseline condition. Nevertheless, given the notable percentage increase of BNG over the 10% national requirement, and the areas of garden and communal garden which could provide habitat areas, I am satisfied that this could be achieved on the site and the proposed development would make a positive contribution to BNG.
28. Therefore, the proposed development would have an acceptable effect on biodiversity. As such, it would be in accordance with Policy DM21 of the DMP and Policy CS15 of the CS, the aims of which are set out above.

Other Matters

29. The Council cannot demonstrate a four or five year supply of deliverable housing sites, and the appellant states that it has a 2.4 year supply, whilst the Council states that it has a 3.1 year supply. The Written Ministerial Statement Building the homes we need (2024) (WMS), the Proposed reforms to the NPPF and other changes to the planning system, and the draft Framework sets out a new method, which would be likely to increase the housing need. However, it is unclear as to whether the draft Framework will be adopted in the form proposed. As such, I afford it limited weight. In any case the presumption in favour of sustainable development contained within paragraph 11 d) would be 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.
30. The proposed development would provide net gains for biodiversity and would result in the social and economic benefits associated with the provision of six new houses in a residential area. This would support the Government's aims to boost the supply of homes which is further emphasised by the WMS and the Draft Framework although I afford limited weight to the latter. Nevertheless, taking into account the scale of the development, this results in important but modest benefits.
31. I have not identified harm with regard to heritage or the proposed housing mix. The proposed development would also comply with policies relating to affordable housing, albeit no units or contribution would be provided. The lack of harm in these regards are neutral factors which do not weigh in favour of the development.

32. On the other hand, for the reasons set out above the proposed development would result in significant harm to the character and appearance of the area and would not create a high quality building or place, which is fundamental to what the planning process should achieve.
33. As such, even in the case of the lower housing land supply position advanced by the appellant, the 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.

Thames Basin Heaths Special Protection Area

34. The TBHSPA is a habitats site that has a high level of protection. It is designated due to the presence of breeding populations of birds. The Council has determined that, without any mitigation in place, in combination with other plans and projects there would be a significant effect on the interest features of the site from the proposed residential development. Notwithstanding this, there is no need to consider the implications of the proposal on the protected site because the scheme is unacceptable for other reasons.

Conclusion

35. 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