



Appeal Decision

Site visit made on 13 November 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/K3605/W/24/3340339

Land to the rear of 41 The Drive, Esher, KT10 8DH

- 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 Bluecrest Land Ltd against the decision of Elmbridge Borough Council.
 - The application Ref is 2022/2862.
 - The development proposed is erection of a three-bedroom dwelling with access, parking and private amenity space on land at the rear of the existing dwelling at 41 The Drive.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the application stage, the appellant sent revised plans to the Council which altered the internal layout. The Council refused to accept these and determined the proposal against the original drawings. However, the appellant wishes the appeal to be decided on the basis of the changes. These remove a guest bedroom from the basement and bedroom 3 from the first floor and alter a ground floor living room to bedroom 3.
3. The alterations would not fundamentally change the proposed development so that it would be substantially different. Furthermore, the Council and interested parties have had an opportunity to comment. Therefore, no prejudice would be caused in considering them as part of the appeal which is what I shall do. As a result, the proposal is for a 3-bedroom dwelling.
4. The Council maintains that evidence submitted after the application had been decided should not be accepted. This includes information relating to trees, ecology, viability and a revised flood risk assessment. However, this is not an attempt to evolve the scheme but rather to respond to the reasons for refusal. Moreover, the Council and others have had a chance to reply to it in their representations. As such, this further evidence will be taken into account.
5. It is contended that the appeal site extends onto land owned by other parties and that notice was not served on them. Ownership is a civil matter and the affected persons are aware of the application and the appeal. Whether the size of the site given on the application form is accurate is not a point to be settled in the decision. This will be made on the basis of the submitted plans.

Main Issues

6. These are:

- The effect of the proposed development on the character and appearance of the surrounding area;
- Whether the type of accommodation would meet the housing needs of the Borough;
- Whether living conditions for future occupiers would be satisfactory with particular reference to outdoor amenity space;
- Whether a sequential test is required and whether the occupiers of the proposed dwelling would be at risk of flooding.
- Whether there should be an affordable housing contribution;

Character and appearance

7. The appeal site comprises garden land within a very pleasant residential area. The houses are generally detached on good sized plots and set well back from the road – in many cases behind greenery along the frontage. The presence of mature street trees is another attractive feature. The long gardens on corner plots provide a spacious feel as noted by the Inspector in the appeal at 71 Grove Way (APP/K3605/W/20/3262447). However, the rows of dwellings are otherwise fairly closely spaced and laid out in a regimented fashion.
8. The proposed bungalow with roof accommodation would face onto Grove Way behind No 41. It would align with the neighbouring property to the north and so perpetuate the line of housing on that side of the road in a natural manner. Partly because of the intervening access, there would be a reasonable gap to the side of 50 Grove Way. The flank of the proposal would also be well separated from the rear of 41 The Drive so that it would not appear cramped. Moreover, the locally distinctive spaciousness that prevails at corner properties would be maintained.
9. The building would be very close to the rear boundary but this would not be discerned from the public domain. Whilst this relationship would be seen from within nearby gardens the effect on the overall character of the area would be insignificant.
10. The proposal would be lower than its immediate neighbour at No 50 and the majority of development in the vicinity is two-stories. However, bungalows and chalet bungalows are common features of many residential areas and so the proposed development would not appear awkward in conjunction with the adjoining house. Indeed, it would appear as a subordinate addition to the street scene which would add variety because of its smaller scale.
11. The design itself would be architecturally restrained and complementary materials could be used. All in all, the proposal would fit comfortably into its setting and would not detract from the existing qualities of the locality. As the character and appearance of the surrounding area would not be harmed there would be no conflict with Policies CS9 and CS17 of the Core Strategy or Policies DM2 and DM10 of the Development Management Plan. These aim to achieve high quality and well-designed development which integrates sensitively.

Housing needs

12. The Council accepts that development at a lower density than that specified in Core Strategy Policy CS17 is acceptable given the valued character of the area. However, Policy CS19 establishes that the Council will seek to secure a range of housing types and sizes to create inclusive and sustainable communities. This should reflect the most up-to-date Strategic Housing and Market Assessment in terms of the size and type of dwellings.
13. The Assessment of Local Housing Needs of 2020 recommends how the market element of new construction should be broken down of which 20% should be three-bedroomed units. It is obviously difficult to provide for a mix of house types in a scheme for a single dwelling. Moreover, Policy DM10 indicates that sites of 0.3 hectares or more should promote house types and sizes that meet the most up to date measure of local housing need. The appeal site is well below this figure.
14. The Council nevertheless contends that the overall need is for smaller units and the recommendation of the Assessment is that 70% of them should be two bedrooms or less. However, providing for more modest dwellings on the appeal site would be likely to conflict with the position taken on density. In any event, the Assessment is now a little dated and may not reflect the current position. Furthermore, there is no indication of whether the percentages sought for new house sizes are being achieved.
15. The Council's objection was based on a four-bedroom dwelling. The proposed three-bedroom property would contribute to the variety of housing in the Borough. There is insufficient evidence to show that there is such a surplus of family housing of this type that it should be resisted on policy grounds. The type of accommodation would therefore meet an identified housing need in the Borough and would not be at odds with Policy CS19.

Living conditions of future occupiers

16. The Supplementary Planning Document (SPD) on *Design and Character* refers to a minimum garden depth of 11m although this will depend on the character of the area and the type of development proposed. The amenity space to the rear of the property would only be 3.1m in depth and therefore of limited value as a usable space. Similar constraints apply to the narrow areas on either side of the proposal which would be likely to function as passageways. However, the SPD does not specify the location of gardens and an area with a depth of 10m would be provided at the front.
17. The National Planning Policy Framework seeks to create places with a high standard of amenity for future users. The assessment of this issue should be focussed on that outcome. In this respect, the main area would be very modest, especially for a family-sized dwelling and when compared to those nearby. Although the front garden could be enclosed by landscaping, it would be likely to be open to view across the driveway. In any event, a location next to the road would not afford future occupiers the degree of privacy, comfort and safety ordinarily expected. The rear garden of 41 The Drive is adjacent to Grove Way but it is much wider and therefore not comparable.
18. In short, the proposed external amenity space would be poorly located and inadequate in terms of size. Living conditions for future occupiers would

therefore be unsatisfactory. The proposal would not accord with Policy DM10 of the Development Management Plan. This expects new residential accommodation to offer an appropriate level of amenity, including gardens or outdoor space, commensurate with the type and location of housing proposed.

Sequential test and flood risk

19. The appeal site is in Flood Zone 2 so the proposed dwelling would be within an area with a medium probability of flooding. The Framework establishes that inappropriate development in such areas should be avoided by directing development away from areas at highest risk. As part of this approach, a sequential test should be applied to avoid, where possible, flood risk to people and property and to manage any residual risk. Policy CS26 on flooding also refers to the role of a sequential test.
20. The appellant considers that undertaking one is unnecessary for various reasons and no request to this effect was made during the application process. The flood risk assessment concludes that fluvial sources of flood risk from the River Thames and the secondary channel of the River Ember can be managed effectively. Furthermore, that the SUDs strategy would deal with surface water run-off. However, according to the Planning Practice Guidance (PPG) on *Flood risk and coastal change*, the sequential test needs to be satisfied even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere.
21. The Framework establishes that some minor development should not be subject to the sequential test but the examples given at footnote 60 do not include new single dwellings on windfall plots. Furthermore, this type of proposal is not included in the list of minor development in the PPG.
22. It may or may not be the case that the scope for reasonably available and appropriate alternative sites in Elmbridge is limited due to physical or policy constraints. However, that is a matter to be established by means of a sequential test.
23. It is maintained that the risk of both fluvial and surface water flooding is low despite the location within Flood Zone 2. However, for the purpose of deciding whether a sequential test is necessary, this designation is definitive.
24. None of the reasons put forward justify omitting the sequential test which should, therefore, have been undertaken. As a consequence, it has not been shown that the proposed dwelling could not be located in an area with a lower risk of flooding. The proposal would therefore be contrary to the aim of national policy which is to steer new development to such areas. In these circumstances, the Framework is clear that development should not be permitted. It would also conflict with the similar expectation in Policy CS26.

Affordable housing

25. On sites of between one and four dwellings and where viable, Core Strategy Policy CS21 requires a financial contribution towards affordable housing, equivalent to the cost of 20% of the gross number of dwellings. This equates to a figure of £68,567.
26. There is conflicting evidence on viability. The Council believes that the scheme would produce a surplus of almost £95,000 whilst the appellant calculates a

deficit of nearly £286,000. Different values are applied by the parties to a range of variables including gross development value, build costs, contingencies, profit and finance costs. There is also debate about the cost of constructing the basement and the length of the build programme.

27. According to the Financial Viability Report of March 2023 the proposal would have a total floor area of 274 sq m. The Council's Review of May 2023 refers to a basement of 115 sq m. The proposed dwelling would be in a desirable location and therefore the risk associated with the scheme does not warrant a higher allowance for profit or contingencies.
28. The appellant has provided details of bungalows on the market in the vicinity of the appeal site. The proposal is larger than any of those properties. However, the average price per sq m of those with three or more bedrooms indicates that the appellant's figure for gross development value is likely to be an under-estimate. Indeed, the Council's figure of £1,781,000 may also be on the low side as the proposal would be a new build with a basement which would be likely to add to its value.
29. For build costs the appellant suggests £3,062 per sq m plus around £4,000 per sq m for the basement based on a recent development in Wimbledon. However, applying these figures to the floor areas specified gives a lower total cost than that of £1,248,375 given in the calculation. On this basis, the Council's figure is likely to be nearer the mark.
30. Without definitively settling the difference between the overall residual and existing site values given by the parties, the appellant's findings should be approached with a degree of caution. Indeed, it has not been shown that the scheme would be unviable solely because of the need to make a contribution towards affordable housing in Elmbridge. The failure to do so would be contrary to Policy CS21 and is a further objection to the proposal.

Other Matters

31. Provided that the tree protection strategy is implemented, the arboricultural impact on the trees to be retained would be low so that no conflict with Development Management Plan Policy DM6 would arise. The Preliminary Ecological Assessment identifies that the site and surrounding trees have potential for nesting birds and high potential for foraging and commuting bats. Otherwise the ecological value is limited. Recommendations are made as to how biodiversity could be enhanced which could be the subject of a condition in line with Core Strategy Policy CS15 and Policy DM21.
32. Other objections have been raised in representations. However, these were covered in the Council's delegated report and there is no need to deal with them any further.

Material Considerations

33. The Council is only able to demonstrate a 3.6-year supply of deliverable housing sites. The proposal would deliver an extra unit within an existing residential area which would contribute to meeting the shortfall. The Framework highlights the important contribution that small sites can make in this respect and also supports windfall sites. Great weight should be given to the benefits of using suitable sites within existing settlements for homes.

34. Although not quantified the proposal would also bring about economic benefits during the construction period and as future occupiers could be expected to use local businesses. The small scale of the scheme means that the associated advantages would be modest. The ecological enhancements and any additional planting would also be of minor overall benefit.
35. The appellant refers to three cases in Flood Zone 2 where new homes have been accepted on vacant land in Esher. None of them set a precedent that has to be followed and they can all be distinguished from the proposed development. The two houses on the garage site in Blair Avenue are in a backland location whereas the appeal site fronts onto the road. Those built next to 81/83 Grove Way have decent-sized gardens to the rear which the proposal does not. The dwelling allowed on appeal in Blair Avenue appears to be in a very different setting to the appeal site.
36. These examples show that infill housing can be permitted where the requirements of development plan policy are met. However, that is not the case with the proposal and therefore they are only of very little weight in favour of the proposed development.

Final Balance

37. The supply of housing in Elmbridge is below Government expectations. However, the proposal would be within an area at risk of flooding and as the sequential test has not been passed this provides a clear reason to refuse the development proposed. Therefore, the presumption in favour of sustainable development set out at paragraph 11 d) of the Framework does not apply.
38. Nevertheless, the proposal would add to the housing stock in a small way. Other benefits associated with the scheme would not be of a great magnitude. There would be no harm to the character and appearance of the area and a three-bedroom property would meet an identified housing need.
39. However, living conditions for future occupiers would be poor because of the size and location of the proposed amenity space. They would also be at risk of flooding and the location of the dwelling in Flood Zone 2 has not been shown to be necessary following a sequential test. Finally, no contribution would be made towards affordable housing provision. These objections are of considerable force. Although the proposal would comply with certain relevant policies it would not accord with the development plan as a whole. Taken together, the material considerations in favour do not outweigh this finding.
40. Even if viability considerations meant that a contribution could not reasonably be made towards affordable housing due to fluctuating values, the objections identified in respect of living conditions and flooding would prevail over the benefits of the scheme.

Conclusion

41. For the reasons given above, the proposed development is unacceptable and the appeal should not succeed.

David Smith

INSPECTOR