



## Appeal Decision

Inquiry held on 8-10 and 15 January 2025

Site visit made on 8 January 2025

**by H Butcher BSc (Hons) MSc PGDip MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24<sup>th</sup> January 2025**

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**Appeal Ref: APP/K3605/W/24/3350737**

**Land at 1-5 Hillside, Portsmouth Road, Esher, Surrey, KT10 9LJ**

- 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 Beechcroft Developments Limited and Moore Place Developments Limited against the decision of Elmbridge Borough Council.
  - The application Ref is 2023/3173.
  - The development proposed is the erection of 38 no. use class C3 retirement homes along with vehicular and pedestrian access, internal roads, car parking, amenity space, landscaping, drainage, and other associated works and infrastructure including alteration of site levels (includes reapplying for 18 no. dwellings which already have planning permission under LPA ref. 2018/3678).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have used a postcode for the appeal site in the banner heading above which more accurately locates the appeal site than that used on the application form.
3. On 12 December 2024 the Government published a revised National Planning Policy Framework (The Framework). The main parties were able to address matters arising from this, both in writing prior to the Inquiry, and orally at the Inquiry itself.
4. During the course of the appeal amended plans were submitted. The amendments are minor in nature and all persons who should have been consulted have been given the opportunity to do so. The appeal has therefore been determined on the basis of the amended plans.
5. A signed and dated Section 106 Agreement has been submitted with the appeal and contains various obligations. However, it is not necessary for me to look at this in detail given I go on to find that the proposal is unacceptable for other reasons.

### Main Issues

6. The Council's third reason for refusal, which concerned the living conditions of future occupiers of the development, has now fallen away following the submission of further details. The Council's fourth reason for refusal which was due to a lack of a completed legal agreement to secure an off-site biodiversity

net gain has also now fallen away following the submission of a S106 Planning Agreement. It is not necessary therefore for me to take these matters further.

7. Heritage was not an issue between the main parties. The Council found no harm to designated heritage assets whereas the appellant accepted a degree of harm to a number of heritage assets in the vicinity of the appeal site. I have a statutory duty in considering whether to grant planning permission to have special regard to the desirability of preserving the setting of any listed building. I have also considered the impact of the development on the setting of Esher Conservation Area which is also material to this case. Consequently, I consider heritage is of fundamental importance in the determining of this appeal. In the interests of natural justice, I raised this matter proactively with the main parties at the Case Management Conference and during the course of the Inquiry, giving them the opportunity to comment specifically on the impact of the development on the respective heritage assets concerned at a round table session. No one would therefore be prejudiced by my consideration of this as a main issue.
8. The Council may have reneged on their second reason for refusal during the course of the Inquiry which related to the impact of the development on the living conditions of occupiers of neighbouring properties. Nevertheless, in light of representation received at the Inquiry and my site visit, I have included this as a main issue.
9. The main issues are therefore:
  - Whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
  - The effect of the development on Green Belt purposes;
  - The effect of the development on the setting of Clive House (Grade II Listed)<sup>1</sup>, the setting of the Lodge to Moore Place (Grade II listed)<sup>2</sup>, and the setting of Esher Conservation Area;
  - The effect of the development on the living conditions of occupiers of neighbouring properties having particular regard to matters of outlook and privacy; and,
  - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

## **Reasons**

### **Green Belt**

10. The appeal site is located on the edge of the town of Esher on the Portsmouth Road. The majority of the site falls within the Green Belt. The part of the site which fronts onto Portsmouth Road, however, which previously included a terrace of properties which have since been demolished, falls outside of the Green Belt.

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<sup>1</sup> List entry number 1191860

<sup>2</sup> List entry number 1191864

### ***Whether Inappropriate Development***

11. The parties broadly agree that the site is 'previously developed land' for the purposes of local and national Green Belt planning policy.
12. Policy DM17 of the Elmbridge Local Plan (LP) sets out the fundamental aims of the Green Belt, which are to prevent urban sprawl and to keep land within its designation permanently open. Inappropriate development will not be approved unless very special circumstances can be demonstrated.
13. This policy also outlines that the partial or complete redevelopment of previously developed sites will be considered in light of the size, height, type, layout, and impact of existing buildings, structures and hard standing, together with the degree of dispersal throughout the site of existing and proposed development.
14. Turning to the Framework, the fundamental aim of Green Belt policy remains to prevent urban sprawl by keeping land permanently open. Development in the Green Belt is inappropriate unless certain exceptions are met, and inappropriate development should not be approved except in very special circumstances.
15. Paragraph 154 g) of the Framework sets out that development which comprises the partial or complete redevelopment of previously developed land, which would not cause substantial harm to the openness of the Green Belt, may be considered 'not inappropriate development'.
16. With the above points in mind, I find a sufficiently high degree of consistency between Policy DM17 of the LP and the Framework such that the former should be afforded full weight.
17. The proposal is for two buildings; Hillside 1 and Hillside 2. Hillside 1 falls largely outside of the Green Belt occupying the part of the site which fronts onto Portsmouth Road and on a similar footprint to that of the former terrace 1-5 Hillside Road. The Hillside 1 building also benefits from an extant planning permission (Ref 2018/3678) albeit this was not restricted to specialist housing for older people as is the case in this appeal.
18. A key consideration, therefore, in determining whether the proposal would be inappropriate development is the effect of Hillside 2, which would be located entirely within the Green Belt, on the openness of the Green Belt. This requires a judgement based on the circumstances of the case.
19. To begin this assessment the history of the site is relevant. The site sits at the edge of the town of Esher and its corresponding conservation area which encompasses the town's historic core.
20. The earliest records show the frontage of the appeal site, where Hillside 1 is to be sited, was historically a public house from c. 1846<sup>3</sup> (the Mariners Inn and then later The Three Mariners c. 1874<sup>4</sup>). Around 1957 the public house was replaced with a building named 'Hillside' and then, in the 1970s, a terrace of five properties replaced this (1-5 Hillside). Whilst this group of terrace properties have recently been demolished, where Hillside 1 is to be sited has

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<sup>3</sup> CDA.40 Plate 3 1846 Tithe Map of Esher

<sup>4</sup> CDA.40 Plat 4 1874-1879 Ordnance Survey Map

historically always formed a continuation of historic development on the edge of Esher town.

21. The rear of the site where Hillside 2 is proposed has a very different history to the front. It once formed part of the grounds to Moore Place which was a large, detached house, evidently of some stature, as whilst it has now been demolished, the former entrance lodge to the house, which is Grade II listed, remains. Maps from 1874-1879<sup>5</sup> show landscaped gardens and a glass house on the rear part of the appeal site where Hillside 2 is proposed to be located. Later the rear of the site formed part of the grounds to Moore Place Hotel and golf course, and then later still Moore Place was demolished and replaced with a care home in a similar position, namely Moore Place Care Home. The rear of the appeal site now forms a redundant part of the adjacent golf course with the ancillary buildings associated with it now largely demolished.
22. The rear of the site where Hillside 2 is proposed has therefore historically always been largely open and free from development, apart from ancillary garden buildings, and, latterly, ancillary buildings associated with the golf course.
23. Hillside 2 would sit behind Hillside 1 in a tandem style. It would almost completely fill the width of the plot with three storeys of accommodation and a total height of c. 15m. The building would have a similar depth and width thereby forming a spatially and visually large and bulky building in an area which has historically been predominantly open. It would also largely block views from Portsmouth Road between Moore Place Care Home and Hillside 1 of the Green Belt, thereby substantially altering the visual and spatial openness of the Green Belt as appreciated from here at the edge of Esher Conservation Area. This is best demonstrated by the visualisation at CD.A33.
24. It is also of note that views from Clive House, which is adjacent to the appeal site on Portsmouth Road, and which is Grade II listed, and other properties in this area, would also experience a loss of spatial and visual openness of the Green Belt in private views. In addition to these concerns the site would also experience a significant increase in activity as a result of Hillside 2 which would further harm the openness of the rear of the site.
25. I therefore find that Hillside 2 would have a substantial impact on the openness of the Green Belt, in both spatial and visual terms. It would therefore conflict with Policy DM17 of the LP having regard to the size, layout, and impact of existing or previously existing buildings and structures on-site, together with the degree of dispersal through the site of the development. It would also fail to meet the exception outlined in para 154 g) of the Framework. Accordingly, Hillside 2 would constitute inappropriate development in the Green Belt.

### ***Effect on Green Belt Purposes***

26. The appeal site is largely constrained by existing development such that the proposal would not lead to the unrestricted sprawl of Esher. Whilst the proposal would reduce the Green Belt, and therefore technically reduce the gap between Esher and the neighbouring town of Hersham, there would be no discernible narrowing between the two, let alone merging. I therefore find no conflict with purposes a) and b) of the Green Belt.

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<sup>5</sup> CD.A40 Plate 4: 1874-1879 Ordnance Survey Map

27. Whilst both parties found some conflict with purpose c), which is to assist in safeguarding the countryside from encroachment, given the constrained nature of the site due to surrounding land uses, and its former uses, I find no material conflict with this purpose.
28. I turn now to purpose d) which is to preserve the setting and special character of historic towns. The historic core of the town of Esher is a designated conservation area and the appeal site is located on the edge of this. The parties agree the appeal site falls within the setting of Esher Conservation Area. Conservation areas are defined as areas of 'special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance'<sup>6</sup>. I therefore consider that Esher is a historic town in respect of purpose d). Both the Council and appellant argued that York and/or Chester were more worthy candidates for consideration under purpose d) of the Green Belt, but these are historic cities not towns, and in any event, such an argument does not undermine the historic interest of Esher which is clearly set out in the evidence before the Inquiry. The appellant, nevertheless, conceded that the proposal would conflict with purpose d) as their heritage witness found harm to the setting of the conservation area, as set out in their heritage evidence. I concur that there would be conflict with purpose d). It is useful, however, to analyse the degree of harm associated with this conflict.
29. A large part of the significance of Esher comes from its historic development as described in the Esher Conservation Area Character Appraisal and Management Proposals (CACA). Historically Esher became a principal coach stop on the London to Portsmouth road and this led it to flourish from the 16<sup>th</sup> to 18<sup>th</sup>-centuries. This was, in part, evidenced by a proliferation of large houses on the outskirts of the town, which included the former Moore Place.
30. This pattern of historic development is still discernible today. Although Moore Place has long since been demolished, Moore Place Care Home still gives the impression of a large house and its associated land, as it occupies a similar footprint and retains much of the land historically associated with Moore Place. The appeal site, which was formerly part of the formal gardens of Moore Place, still contributes to this surviving contextual relationship. Consequently, the appeal site contributes to an appreciation of the significance of Esher and its historic development.
31. Hillside 2 would undoubtedly disrupt any remaining contribution the appeal site makes to the significance of Esher Conservation Area by way of its historic connection with Moore Place and the part it played in telling the story of the historic development of the town. It would effectively sever the last link between the conservation area and its setting, in this location on the historic Portsmouth Road. I therefore find moderate harm to purpose d) of the Green Belt which is to preserve the setting and special character of historic towns.
32. I have had regard to the findings of the Council's Green Belt Boundary Reviews. However, these looked at larger parcels of land to the appeal site and are therefore not directly comparable. I also note the Council have considered removing the appeal site from the Green Belt, and a need, generally, to release Green Belt land for development in the Borough. However, these matters are not yet emerging policy and as such carry minimal weight.

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<sup>6</sup> Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990

## **Heritage**

33. For the same reasons set out above in respect of conflict with purpose d) of the Green Belt, which is to preserve the setting and special character of historic towns, I find harm to the setting of Esher Conservation Area.
34. It is agreed that the appeal site also falls within the setting of Clive House, a Grade II listed, mid-18<sup>th</sup>-century property. Clive House is located close to the former Moore Place on the Portsmouth Road. This is a significant location in terms of the historic development of Esher, as explored above, and Clive House forms part of this grouping of larger houses, on the edge of Esher, of that period. Clive House has a two-storey bow window to the rear which historically would have afforded views across its own gardens and across the former landscaped gardens belonging to Moore Place. The appeal site historically formed part of the landscaped gardens to Moore Place and has remained largely undeveloped. As a consequence, it contributes to the significance of Clive House as it provides a setting reminiscent of these large residences at the edge of Esher which formed during a period of growth for the town, and to which Clive House formed a part. The appeal site's contribution to the significance of Clive House through setting is, however, limited, as the extent of Clive House in terms of property and plot has been dramatically reduced over the years which has eroded much of its immediate setting.
35. The Lodge to Moore Place, which remains in-situ, is also Grade II listed. The appeal site, being partly located in the former gardens to Moore Place, falls within the Lodge's wider setting due to their historic functional connection. As previously described the largely open character of this part of the site is reminiscent of its previous use as a formal garden to Moore Place, which contributes to the significance of the Lodge, as it allows for some degree of appreciation of the layout, function, and status of the former Moore Place. However, the intervening development of Moore Place Care home, the golf course, and a rearrangement of the historic access, has significantly compromised the setting of the Lodge.
36. The effect of the development on the setting of Christ Church (Grade II) <sup>7</sup> was raised in evidence. However, it is my view that although the appeal site forms part of the wider historic townscape serving the church, and glimpses of the church spire are possible from the appeal site, it does not, of itself, contribute to the significance of the church or one's ability to appreciate its significance.
37. Taking the above points together I find harm to the setting of Esher Conservation Area and some minimal harm to the setting of both Clive House and the Lodge to Moore Place. It follows, that I find conflict with Policy DM12 of the LP, which, although not cited in any reason for refusal, is before me in the evidence. This policy requires development to protect, conserve, and enhance the Borough's historic environment. For the purposes of para 215 of the Framework, for the same reasons, I find the development would overall result in a moderate level of 'less than substantial harm' to the significance of designated heritage assets.

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<sup>7</sup> List entry number: 1188268

### ***Heritage Balance***

38. As directed in the Framework the harm I have found to the significance of designated heritage assets should be weighed against the public benefits of the proposal. These are as follows:
39. The Council are faced with a dramatic shortfall in housing, with at best, only 1.04 years of deliverable housing and at worst 0.78 years. A resolution to this situation is not due any time soon following setbacks with the Council's emerging plan. The provision of housing is therefore a clear benefit. It is, however, a relatively small development, even more so when the extant permission on site is taken into account. Nevertheless, added to this is the benefit of providing specialist housing for older persons for which there is a critical need, and which would also have the added benefit of unlocking market housing in the area. This is of particular benefit in Esher where there is an aging population. A small contribution towards affordable housing would also be provided.
40. The appeal site is in an accessible location with easy access to local bus services and within easy walking distance of local shops and services in Esher. The development would also utilise a brownfield site and provide a Biodiversity Net Gain.
41. Economic benefits would arise during the construction phase of the development, as well as ongoing economic benefits from local spending in the area and some employment opportunities at the appeal site. Again, these would be largely tempered by the existence of an extant permission. Care services would not be provided on site, rather, only some support to enable residents to live independently. This therefore reduces the weight I give to estimated NHS savings and savings on care home costs. For the same reason this would temper the health and wellbeing benefits for future residents.
42. The appellant proffers the benefit of an improvement to the street scene of Portsmouth Road and therefore the conservation area. However, as I have found harm to the setting of the conservation area in this location this point provides no positive weight to my balance. This benefit could, in any event, be realised through the extant permission on site, the implementation of which was not ruled out by the appellant in cross examination.
43. Taking the above points together I find the public benefits in this case to cumulatively be of moderate weight. Great weight should be given to the conservation of designated heritage assets. I therefore find in this case that the public benefits do not outweigh the heritage harm. I go on to weigh this heritage harm in my overall planning balance below.

### ***Living Conditions***

44. A substantial part of the north-east side boundary of the site forms the rear boundaries of 26 and 28 Clive Road. Clive Road dates from the 1920s and is a collection of residential properties designed by the Architect George Blair Imrie. They are each individually designed using a vernacular revival style, i.e., the design of the houses draws inspiration from a range of more historic and local vernacular styles of building, for example, from medieval and timber framed farmhouses to Queen Ann and Georgian houses. The result is an eclectic but nevertheless homogenous development which showcases traditional

- craftmanship as highlighted in the CACA (Clive Road being included in Esher Conservation Area).
45. The individuality of the house design of these properties is aptly demonstrated by 26 Clive Road which retains a great deal of its original character. It is in a farmhouse style and is designed in such a way that the primary living spaces such as the lounge, dining room, and bedrooms, all face to the rear or sides. The lounge, for example, is located on the rear southernmost corner and has windows serving it both on the side and rear elevations.
  46. The north-east elevation of Hillside 2 would be located close to the rear boundaries of 26 and 28 Clive Road, c. 2.8m – 3.4m as shown on the Proposed Site Plan<sup>8</sup>. It's closest point (2.8m) would fall on the boundary with No. 26. No. 26 would also experience the longest extent of the side elevation of Hillside 2 along its rear boundary. The rear garden of No. 26 is not deep, it being wider than it is deep, and approximately half of its rear boundary would be taken up by the side of Hillside 2. The appeal site is also located on higher land than No. 26, although no survey has been undertaken. Furthermore, Hillside 2 would comprise three storeys of development up to a height of c. 15m. Given all of the above the rear outlook of No. 26 would be significantly impacted in terms of a loss of outlook, or, to put it another way, the outlook from No. 26 would be dominated to a harmful degree by Hillside 2.
  47. The north-east elevation of Hillside 2, referred to above, would also include a large number of windows, balconies, and glazed doors serving approximately nine flats. Whilst direct overlooking for a number of these flats could be mitigated through the use of obscure glazing, secured by condition, there would remain three flats over the three floors (Flats 23, 30 and 37) which would have a single aspect over the rear gardens and elevations of Nos. 26 and 28. This would amount to an unacceptable degree of overlooking and unacceptable loss of privacy to the occupiers of No. 26, and, to a lesser degree, due to the position of Hillside 2, No. 28.
  48. The appellant largely relies on existing planting at Nos. 26 and 28, as well as additional planting, to mitigate the impact of the development on the living conditions of these neighbouring properties. However, landscaping cannot be relied upon to provide permanent and effective screening even in a conservation area. At best planting would filter views, but the overwhelming loss of outlook and level of overlooking would still be apparent. Noise from human activity on high balconies would only serve to exacerbate the loss of privacy.
  49. I note the appellant's point that to avoid the above harm would require, in their view, a substantial drop in the number of units in the context of a scheme already facing viability issues, but no detailed evidence to support this has been provided.
  50. Taking the above points together I find harm to the living conditions of occupiers of 26 and 28 Clive Road by reason of a loss of outlook and privacy. I therefore find conflict with Policy DM2 e) of the LP which requires development to take full account of the amenity of adjoining occupiers and to be designed to offer appropriate outlook and privacy. It notes that this is particularly important

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<sup>8</sup> CD.B2

when considering proposals for windows and balconies.

***Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal***

51. The development would constitute inappropriate development in the Green Belt contrary to the exception in 154 g) of the Framework because it would result in substantial harm to the openness of the Green Belt. I have also found moderate harm to purpose d) of the Green Belt purposes outlined at para 143 of the Framework, which is to preserve the setting and special character of historic towns. The Framework is clear that substantial weight should be given to any harm to the Green Belt.
52. I have also found, overall, a moderate level of 'less than substantial' harm to designated heritage assets which is not outweighed by the public benefits in this case. Great weight should be given to the conservation of designated heritage assets.
53. Furthermore, I have found harm to the living conditions of occupiers of 26 and 28 Clive Road in respect of a loss of outlook and privacy. I give this harm significant weight.
54. I have had regard to all of the other considerations in this case which include the public benefits previously considered in the heritage balance above. As set out therein I give these cumulative benefits moderate weight.
55. The appellant acknowledges that the scheme would not comply with the recently introduced Golden Rules at para 156 of the Framework which apply for major development involving the provision of housing on sites in the Green Belt subject to a planning application. In my view this weighs against the development. However, even if I were not to take this matter into account in my balance, the other considerations in this case do not clearly outweigh the harm.
56. The application of policies in the Framework that protect areas or assets of particular importance provide strong reasons for refusing this development, namely those policies which protect designated heritage assets and land designated as Green Belt. It is not necessary, therefore, for me to apply the tilted balance in this case.
57. Based on the harms I have found the proposal conflicts with the development plan as a whole. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration which in this case clearly indicates that planning permission should not be granted.

**Conclusion**

58. The appeal is dismissed.

*H Butcher*

INSPECTOR

## **APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Howard Leithead

He called:

Harvey Moodley BA (Hons) MA LRTPI

FOR THE APPELLANT:

Killian Garvey

He called:

Neil Tiley Assoc RTPI BSc (Hons)

Sebastian Tibenham RTPI MTCP

## **INTERESTED PERSONS WHO SPOKE AT THE INQUIRY**

Keith Allen - local resident

## **INQUIRY DOCUMENTS**

INQ 1 Appellant's opening submissions

INQ 2 Opening submissions on behalf of Elmbridge Borough Council

INQ 3 Updated Statement of Common Ground on Housing

INQ 4 Definitions of Older Person's Accommodation

INQ 5 Housing Standards

INQ 6 Plans related to Land North of Raleigh Drive, Claygate

INQ 7 Extract from Planning Policy Guidance on viability and the golden rules for Green Belt development

INQ 8 Final list of suggested conditions

INQ 9 S106 Agreement

INQ 10 Closing submissions on behalf of Elmbridge Borough Council

INQ 11 Appellant's Closing Submissions

INQ 12 Appellant's additional Closing Comments