
Appeal Decision

Site visit made on 1 May 2025

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2025

Appeal Ref: APP/K3605/W/24/3355577

Land north of 2 Littleheath Farm Cottage, Steels Lane, Oxshott, Surrey, KT22 0RX

- 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 Richard Evans against the decision of Elmbridge Borough Council.
 - The application Ref is 2024/0851.
 - The development proposed is conversion of existing detached outbuilding to create a self-contained 2 bedroom residential dwelling house with associated external alterations and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have been provided with a copy of correspondence between the main parties confirming the planning application was to be made in the name of Mr Richard Evans. The appeal proceeds on that basis.
3. A completed unilateral undertaking dated 6 December 2024 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) addressing the need for contributions with respect to affordable housing and mitigation of the effects of the proposed development on the Thames Basin Heath Special Protection Area has been submitted. Consequently, the Council no longer seeks to defend reasons for refusal 3 and 4. I will return to these matters in due course.

Main Issues

4. The main issues in this appeal are:
 - whether the proposal is subject to the mandatory requirements for biodiversity net gain, and if so, does it comply with them;
 - the effect of the proposal on the character and appearance of the area;
 - the effect on the living conditions of neighbouring occupiers

Reasons

Biodiversity Net Gain

5. It is firstly necessary to establish if the provisions of Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) (Schedule 7A) apply to the proposed development. The Biodiversity Gain Requirements (Exemptions) Regulations 2024 (Exemption Regulations) confirm at Regulation 3(1) that the biodiversity gain planning condition does not apply in relation to

planning permission for small development where the application was made before 2 April 2024. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) (DMPO) makes provision for the electronic submission of applications. Regulation 2(6) sets out that “Where the electronic communication is received by the recipient outside the recipient's business hours, it is taken to have been received on the next working day”.

6. The appellant has suggested that the use of ‘received’ in the DMPO is a different requirement to ‘made’. The issue of when a planning application is made has been considered by the Court of Appeal in *Camden*¹. It was held that “The date on which an application is made is the date of the earliest moment when the application is received by its intended recipient. So, I would hold that an application for planning permission is not made until it has been communicated to or received by the local planning authority to whom it is to be made”. This approach was recently confirmed as binding² in a decision which also considered whether Schedule 7A applied, albeit to a major development. Consequently, I consider there is no practical difference between the use of ‘made’ and ‘received’ in the Exemption Regulations and the DMPO.
7. Regulation 2(6) of the DMPO post-dates *Camden*, and so updates the approach to be taken. The emails submitted by the appellant are time stamped 19:37, 7:39pm and 7:40pm on April 1 2024. This is beyond the recipient’s business hours. Consequently, the application was made on April 2 2024 and so is subject to the mandatory requirements with respect to Biodiversity Net Gain.
8. Schedule 7A confirms at paragraph 6 that where activities have taken place on land after 30 January 2020 otherwise than in accordance with (relevant to this appeal) a planning permission which has lowered the biodiversity value of the site, then the pre-development biodiversity value is taken to be its biodiversity value immediately before the carrying on of the activities.
9. While there is some inaccuracy in the referencing used in the Council’s statement, the evidence before me is clear that planning permission for the garage was granted on 12 August 2020³. The Council considers this development has not been carried out in accordance with the approved plans. The appellant acknowledges there has been a ‘modest reduction in the width of patio doors’. While this difference may be modest, the development has not been carried out in accordance with the approved plans. Consequently, the pre-development biodiversity value of the onsite habitat would be that immediately before the construction of the garage.
10. The Planning Practice Guidance⁴ confirms that BNG will often be a material consideration, and it should be considered, where relevant, whether the biodiversity gain condition is capable of being discharged successfully. There is only limited evidence before me as to the biodiversity value of the site immediately before the construction of the garage. I therefore cannot be satisfied that the proposal would benefit from the de minimis exemption, or that it would be possible for the biodiversity net gain condition to be complied with.

¹ *Camden London Borough Council v ADC Estates Limited* (1991) 61P&CR 48

² *R. (on the application of Morris Homes (North) Ltd) v Bolton Council* [2025] EWHC 657 (Admin)

³ 2020/1121

⁴ Biodiversity net gain Paragraph: 002 Reference ID: 74-002-20240214

11. The appellant has submitted further information with respect to biodiversity net gain. However, this assumes that the current position on site is the correct starting point for assessing biodiversity net gain. For the reasons given above, I do not agree with this approach.
12. The application therefore fails to demonstrate that it would be exempt development or that the biodiversity gain condition could be met. I therefore cannot be satisfied that it would comply with the mandatory requirements. This is contrary to the requirements of Schedule 7A of the Town and Country Planning Act 1990 and with paragraph 187 of the Framework insofar as it requires decisions to contribute to and enhance the natural and local environment by providing at least a 10% net gain for biodiversity.

Character and Appearance

13. Oxshott is described in the Cobham, Stoke D'Abernon, Oxshott and Downside Companion Guide to Design and Character Supplementary Planning Document (SPD) (2012) as having 'a strong semi-rural village character, while the majority of housing is medium to large detached there is variation in scale with some single, but mostly two-storey housing'. This also acknowledges that given the variation in the area, future housing development could support higher densities. At my site visit, the semi-rural village character was conveyed by the generally spacious layout of the area, vegetated gardens and network of verges and open spaces.
14. Also at my site visit, I observed that development in the immediate surrounds of the appeal site is generally two storey and faces toward the road. However, the form of development varies considerably, with detached, semi-detached and terraced properties all readily apparent. The siting of buildings within their plots is varied. I do not consider that there is a strongly uniform pattern to development as a result. This view is bolstered by the range of appearances and materials in use.
15. The appeal site is set well back from the road, and the building is only visible in glimpsed views. There are a range of road layouts and consequent different layouts of residential development apparent in the streets off Steels Lane. While it is not typical of the immediate surrounds, or even the wider area along Steels Lane, for development to be located away from the main road along a narrow access, different does not automatically equate to harm.
16. Although the proposed dwelling would be on a modest plot, there would be sufficient private amenity space to allow for unencumbered sitting out and enjoyment by future occupiers. Its appearance would not be dissimilar to that of the property on the junction of Steels Lane and Clock House Mead. Given the semi-rural character of the village, variety in the appearance of dwellings, the discrete siting of the proposed dwelling and the reasonable sized plot on which it would be located, I consider that the proposal would have an acceptable effect on the character and appearance of the area.
17. As I consider the proposal to be acceptable on its own merits, there is no need for me to further assess the other sites referred to by the main parties. I acknowledge that my findings above are not in accordance with the findings of the Inspector on the previous decision⁵ at this site. However, I have reached my conclusions based

⁵ APP/K3605/W/22/3297001 dismissed 19 May 2023.

on what I observed at my site visit, my professional assessment and the evidence before me.

18. The proposal would have an acceptable effect on the character and appearance of the area. It would therefore be in accordance with Elmbridge Local Plan Development Management Plan (2015) (DMP) Policies DM2 and DM10 and Elmbridge Core Strategy (2011) (CS) Policies CS10 and CS17 which require development to be based on an understanding of local character, integrate with locally distinctive townscape and preserve the character of the area.

Living Conditions

19. The proposed dwelling would be sited to one side of a garage courtyard. Immediately adjacent to this are the gardens of properties on Steels Lane and Clock House Mead. The proposal would see the introduction of three dormer windows to the single storey building, serving the staircase and the two bedrooms.
20. Due to the position of the proposed dwelling, there would be a new relationship of overlooking to those properties from those windows. At my site visit, I was able to observe from within the proposed dwelling the relationship of overlooking to the rear gardens of the surrounding properties. Given the oblique angle, boundary structures and extent of development to the properties fronting onto Steels Lane, the degree of overlooking would not cause unacceptable harm to the enjoyment of those gardens and the privacy of occupiers within them.
21. Given the separation of the site to the rear gardens of the properties on Clock House Mead by the garages, and the length of those rear gardens, there also would not be an unacceptable loss of privacy from the degree of overlooking that would occur from the proposed dwelling.
22. The proposal would therefore have an acceptable effect on the living conditions of neighbouring occupiers. It would therefore be in accordance with DMP Policy DM2 which requires development to provide adequate privacy to adjoining occupiers.

Other Matters

23. The appeal site is within the zone of influence for the Thames Heath Basin Special Protection Area and Ramsar site which is subject to pressures from recreational disturbance. Had I been minded to allow the appeal, it would have been necessary to establish whether the proposal on its own or in combination with other projects would likely have significant environmental effects on the integrity of the European site and if the mitigation through the legal agreement had been appropriately secured. However, it has not been necessary for me to pursue this issue as a finding that the proposal would not have an adverse effect on the integrity of the European site, with or without any mitigation, would be at best a neutral matter.
24. There would be a benefit from the supply of an additional dwelling, and a further benefit from a contribution towards the delivery of affordable homes. There would also be economic benefits during the construction and occupation stages of the development. There would be increased natural surveillance of the area around the garages. I attach limited weight to these given the small scale of the proposal.

Planning Balance

25. It is not in dispute that the Council cannot demonstrate a five year supply of deliverable housing land. In such circumstances, paragraph 11d)ii of the Framework is engaged. This sets out that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, having regard to key policies.
26. The proposal would direct development to an appropriate location and, in principle, would make an effective use of land. There would be an undoubted benefit from the delivery of an additional dwelling in such a location and it would provide a smaller unit of accommodation, broadening housing choice. There would also be a contribution towards the delivery of affordable homes. There would be economic benefits during the construction and occupation stages of the development.
27. I am satisfied the proposed development would have an acceptable effect on the character and appearance of the area and on the living conditions of neighbouring occupiers. Suitable living conditions would be provided for future occupiers of the site, along with parking provision. Such matters are to be expected of any well designed development and so would be neutral in my assessment.
28. However, I cannot be satisfied that the proposal would be exempt from the mandatory requirements with respect to biodiversity net gain. Nor could I be sufficiently certain that appropriate provision could be achieved on site in the absence of sufficient information. Consequently, I find that the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal therefore does not benefit from the presumption in favour of sustainable development.

Conclusion

29. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations, including the Framework, of sufficient weight to indicate the decision should be taken otherwise. For the reasons given, I conclude that the appeal should be dismissed.

Jennifer Wallace

INSPECTOR