
Appeal Decision

Site visit made on 9 September 2025

by H Whitfield BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2025

Appeal Ref: APP/K3605/W/25/3367992

Land North of Ramli, Beech Close, Cobham KT11 2EN

- 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 Mercatura Developments Ltd against the decision of Elmbridge Borough Council.
 - The application Ref is 2024/2850.
 - The development proposed is the construction of a detached building of four apartments with associated access and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a detached building of four apartments with associated access and landscaping at Land North of Ramli, Beech Close, Cobham KT11 2EN in accordance with the terms of the application, Ref 2024/2850, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mercatura Developments Ltd against Elmbridge Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. The appeal is accompanied by a unilateral undertaking (the UU) pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended). The UU seeks to secure financial contributions towards Strategic Access Management and Monitoring (SAMM) mitigation in relation to the Thames Basin Heaths Special Protection Area (SPA). As the UU is completed, I have taken it into account in my consideration of the appeal and shall return to this matter later in the decision.
4. For the avoidance of doubt, the appellant amended the UU during the course of the appeal to omit clauses relating to an affordable housing contribution. This was in response to the Council's Statement of Case whereby it confirmed that following the determination of the application its approach to seeking affordable housing contributions (AH) for small sites had changed. This is due to several matters including the publication of the amended National Planning Policy Framework (the Framework) 2024; a review of housing monitoring information; and the conclusions of the Inspector in their Interim Findings Letter (11 September 2024) as part of the draft Local Plan Examination in Public in relation to the consistency of Policy CS21 of the Elmbridge Core Strategy (2011) (the Core Strategy) with the Framework and the effectiveness of this policy in delivering AH based on contributions from small sites/non-major developments since its adoption in 2011. The Council has confirmed that in light of these material considerations, it is no longer seeking a contribution

towards AH. I see no reason to come to a different conclusion on this matter and therefore shall consider it no further.

5. Interested parties have drawn my attention to potential inconsistencies on the plans. However, I am satisfied that the submitted plans along with the evidence before me is sufficiently robust in order to allow me to make a determination. For the avoidance of doubt, I have determined the appeal on the basis that the dormer windows would be gabled, and the dwelling would be excavated into the ground as shown on the submitted Site Sections.

Main Issue

6. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

7. The appeal site is located off Beech Close between the properties Ramli and Turners House. Beech Close is a private road within a predominately residential area which mostly contains large, detached, two-storey dwellings of generally individual designs and a mix of materials which provides variety in the street scene. Properties occupy set-back positions behind areas of off-road parking and have relatively generous rear gardens. Despite properties being located relatively close to one another and the area having a suburban feel, it also has a distinctly verdant and sylvan character due to hedged property boundaries, soft landscaped front gardens, pockets of trees and interspersed areas of woodland.
8. The appeal site comprises a broadly rectangular grassed parcel of land, enclosed by a combination of hedging and fencing and is understood to have formerly been part of the garden for the property Ramli to the south. The land has direct access off Beech Close and to the east is the rear garden of the property Desswood which contains some established trees. The site has a sloped gradient and decreases from Turners House towards Ramli and from Beech Close towards Desswood.
9. The appeal scheme proposes the construction of a detached building comprising four apartments set across two floors and into the roof space. The development would have the appearance of a single dwelling. Whilst it would contain some individualistic architectural features, the building has nevertheless been designed to broadly reflect the character and detailing of other properties in the area and would have a coherent and balanced appearance. The positioning of the building would be behind Ramli when viewed from Sandy Lane, however, as the property would address Beech Close it would not have the appearance of a typical back-land development.
10. The building would be wide and built form would occupy a greater proportion of the plot than some nearby properties. However, the scale of the building would not be disproportionate to surrounding properties and the separation distances between the side boundaries and neighbouring properties would reflect the relationships of other properties in the area. Thus, it would not appear out of character with the prevailing density of development or surrounding urban grain and would not amount to overdevelopment of the site. Moreover, notwithstanding the changing land levels and height of the building, the hipped roof would assist in reducing the massing and perceived width of the building, which would preserve the sense of spaciousness in the street scene and ensure it does not appear as a dominating form of development.

11. The building would be positioned closer towards Beech Close than others on the same side of the street. However, its positioning would not unacceptably contrast with the surrounding pattern of development and the proposed parking and garden area to the front would be commensurate in size to others in the vicinity. The incorporation of a soft landscaped front and side boundaries would also assist in reinforcing the area's verdant, green character and appearance. As a result, the development would preserve the street scene and successfully integrate with its surroundings.
12. I accept that the rear garden would be shallow and smaller than others on the Close. However, it would be predominately concealed from view by the building itself and the proposed front landscaping. It would also not be dissimilar to the rear garden proposed in the recent appeal scheme¹ at the site where the Inspector concluded that when glimpsed, the rear garden would be indistinguishable from the leafy backdrop created by the gardens behind. The Inspector noted that this, along with the fall of land across the site, would give the visual impression of space to the rear of the new building which is characteristic of properties along Beech Close and the wider area. I see no reason to come to a different conclusion.
13. Views of the proposed rear garden would likely be achievable from neighbouring properties. However, as there would be no wide ranging or public views, the limited depth would not result in such an effect so as to amount to harm to the character and appearance of the area. I acknowledge that the Elmbridge Local plan Design and Character Supplementary Planning Document (2012) (SPD) encourages a minimum garden depth of 11m in some instances, however this SPD has the status of guidance and not policy. The guidance also explains that this is dependent on the character of the area and type of development proposed. In this case the scale of the garden would not be harmful to the wider character and appearance of the area. Moreover, as space would be retained to the front and sides of the properties which would be similar to others in the street scene, the development would not appear cramped or contrived within its plot despite the shallow garden depth.
14. The Council has referred to the development being contrived in design terms. However, spatially and visually, the building would have an acceptable relationship with its boundaries, and its design would be in keeping with the varied styles of surrounding properties and the residential character of the area. In addition, whilst there would be an increase in the intensity of the use of the site and a degree of light spill from internal lighting, this would not be uncommon for this residential area or result in any harmful effects. The land would also be excavated to set the building into the ground and respond to the changing land levels across the site; however, this would not result in any significantly overengineered design features and would not result in any harmful effects either.
15. For the above reasons, I conclude that the development would not harm the character and appearance of the area. This complies with Policies CS10 and CS17 of the Core Strategy and Policies DM2 and DM10 of the Elmbridge Local Plan Development Management Plan (2015) (the DMP) which together and amongst other things seek to ensure that new development is well designed, integrates with surrounding development and respects and preserves the character of the area.

¹ Appeal Ref. APP/K3605/W/22/3310449 dated 4th December 2023

Other Matters

16. The apartment building would be set away from the boundaries of the site and proposes that upper floor windows would either be high-level and obscurely glazed or positioned to overlook areas which are already visible from the public realm. The exception would be the upper floor windows in the southern side elevation. However, the plans show these openings would be in excess of 21m away from the front elevation of Ramli and the land to its frontage which would prevent any unacceptable effects on privacy. Rooflights in the north and eastern elevations could also be conditioned to ensure they are obscure glazed and to restrict the opening height to prevent overlooking to the north and east. Subject to such conditions and given the relative positioning of the windows and the relationship of the building with Turners House to the north and Desswood to the south-east, there would be no overlooking effects on these properties or their gardens either. In the case Desswood, this is particularly given the building would be perpendicular to this neighbouring property and towards the rear portion of its garden.
17. The relative positioning of the building north of Ramli and Desswood would also limit any potential overshadowing effects. Whilst the building would project past the front elevation of Turners House which could result in a degree of shading, this is likely to be relatively limited and to the front of the neighbouring property, which is not the most sensitive part of its external garden space. As such, any shading of this space would not amount to an unacceptable effect on living conditions.
18. Notwithstanding the variation in land levels, whilst the building would be visible from Turners House, Desswood and Ramli, given their relative positioning to the proposed building, size of their plots and the visibility of existing adjacent dwellings, this would not unduly compromise their outlook or result in an imposing or overbearing effect to the detriment of their living conditions.
19. The Council has concluded that all of the apartments would be served by adequate internal and external amenity space and habitable rooms would be provided with acceptable outlook, privacy and access to natural light. I note that the first-floor windows on the northern side and rear elevation are proposed to be high-level and obscurely glazed. However, these would all serve non-habitable rooms apart from the window serving the kitchen of Unit 3, and in this case, this would not be the only window serving the room. As such, this would not compromise the internal living conditions of future occupiers, nor would the use of obscure glazing for the proposed rooflights, given these would serve non-habitable rooms and circulation areas. The use of obscure glazing would not result in harm to the overall appearance of the building or surrounding area either. Consequently, future occupiers would be provided with acceptable living conditions.
20. The on-site parking arrangement would comply with the relevant vehicle parking standards set out in the development plan and an area for cycle parking is also shown on the proposed site plan. Precise details of the secure cycle storage could also be controlled by condition. Interested parties have raised concerns in relation to the effect of on-street parking on access for residents and emergency vehicles and on the character and appearance of the area. However, the development would meet the Council's parking requirements and as Beech Close is a private road, it is not under the authority of the Highway Authority (HA). I note the previous Inspector concluded that it would be for the landowner to implement appropriate parking restrictions if on-street parking is deemed a problem and I see no reason to come to a different

conclusion in this regard, irrespective of whether the landowner is known to local residents or not. The HA do not raise any concerns in relation to the effects on highway capacity, condition or safety either and I have little evidence before me to come to a different conclusion.

21. Whilst trees may have been removed from the site prior to the submission of the planning application, I have no evidence before me that these were protected by Tree Preservation Order. Nevertheless, the development proposes additional tree planting and landscaping to support the enhancement of the site and an overall Biodiversity Net Gain (BNG) in excess of the 10% requirement. I have no substantive evidence before me that the conclusions of the BNG Report are inaccurate and note the Council has raised no concerns in this regard either. BNG would be secured by the general biodiversity gain condition which is deemed to apply to every planning permission granted where BNG is applicable and should not be duplicated by planning conditions. The condition is that the development may not be begun unless a Biodiversity Gain Plan has been submitted to the planning authority and they have approved the plan. I am satisfied that this is sufficient to ensure BNG would be delivered as proposed.
22. Comments refer to the scheme having been amended from a previous application to circumvent the affordable housing contribution required by the development. However, as set out in the preliminary matters of this decision, the Council has confirmed that they are no longer seeking an affordable housing contribution for this development based on various material considerations. This also aligns with the approach in the Framework in relation to non-major residential developments.
23. In addition to matters addressed under the main issue and set out above, I have also had regard to concerns raised in relation to several other matters. These include matters relating to drainage, the effects of excavation works, community cohesion, accessibility requirements and building regulations, the effects from noise, light pollution, planting of non-native landscaping and ability for future landscaping to establish, the effect on local ecology and biodiversity, potential future pressure for tree removal and the sustainability of the site in relation to accessibility to public transport, services and facilities. However, I have little detailed evidence before me that the proposal would be harmful or unacceptable in these regards, and I note the Council and relevant consultees have raised no concerns in relation to these matters either. As such, I see no reason to come to a different conclusion.
24. Furthermore, any future proposed developments or amendments to the proposal would be treated on their individual merits and circumstances at that time. Given my overall findings on this appeal, the fear of setting an undesirable precedent does not weigh against the proposal either.
25. I note that this appeal follows other refused decisions on this site. However, I have assessed this appeal on its own merits. Reference has also been made to inconsistencies with the recent appeal decision on the site. However, I note that the Inspector did not identify harm to the character and appearance of the area in this case either which is consistent with my findings. The Council is satisfied that the harm identified by the previous Inspector in respect of the provision of affordable housing and effect on the living conditions of future occupiers has been overcome and I see no reason to come to a different conclusion based on the evidence that is before me.

26. Interested parties have referred to an appeal decision² in which the Inspector found that harm to the character and appearance of the area and matters relating to biodiversity significantly and demonstrably outweighed the benefits of the scheme despite the engagement of paragraph 11(d) of the Framework due to the Council's five-year housing land supply position. However, I have found that this appeal scheme would not result in harm to the character and appearance of the area and thus would not be contrary to the development plan. As such, paragraph 11(d) is not engaged in this instance and therefore this appeal decision does not alter my findings.

Appropriate Assessment

27. The appeal site falls within the 5km zone of influence for the Thames Basin Heaths Special Protection Area (SPA), which is a European Site as defined by the Conservation of Habitats and Species Regulations 2017 (as amended). The SPA is a heathland that is designated for its network of important bird conservation sites and, in particular, its populations of internationally rare bird species such as the Dartford warbler, European nightjar and Woodlark.
28. The conservation objectives for this SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring the populations and distribution of the qualifying features (the three bird species) and the extent, distribution, structure and function of the habitats of the qualifying features and the supporting processes on which these habitats rely.
29. The principal pathways of impact on the SPA from developments relate to additional visitor and recreational disturbance. The proposal would result in 4 new dwellings and given the susceptibility and vulnerability of the qualifying features of the SPA to such uses, particularly when considered in combination with other local development, the proposal would have a likely significant effect on the SPA due to increased disturbance through recreational activity. I must therefore consider whether measures could be put in place to avoid or mitigate these impacts.
30. Policy CS13 of the Core Strategy requires proposals to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects on the SPA. Such measures are to be agreed with Natural England. The Council has a long-standing mitigation strategy which has been agreed in principle by Natural England which includes a combination of Strategic Access Management and Monitoring (SAMM) and the provision of Suitable Accessible Natural Greenspace. The latter is delivered through the Community Infrastructure Levy mechanism whereas the former is secured as a financial contribution by a legal agreement. The SAMM project includes a monitoring programme and access management element focusing on non-infrastructure measures such as wardening, leaflets and educational material.
31. The appellant has provided a signed UU which secures a financial contribution towards SAMM projects in line with the Development Contributions Supplementary Planning Document (July 2020 (updated 2021)) (the Development Contributions SPD). The Council has confirmed that the UU would secure this contribution, and on this basis, considers the appeal scheme would secure adequate mitigation against any likely significant effect on the SPA arising from the development.

² Appeal Ref. APP/K3605/W/25/3358867 dated 30th July 2025

32. Natural England has been consulted as part of this Appropriate Assessment and is content that the measures secured by the UU would mitigate the adverse effects associated with the proposed development and thereby relieve pressure on the SPA. As the competent authority, I am satisfied that the measures funded in this manner would secure and ensure the delivery of mitigation sufficient to address the harm likely to be caused by the development.
33. Taking account of the consultation response from Natural England, and the approach to the application of mitigation measures set out in the Thames Basin Heaths Special Protection Area Delivery Framework (2009) and Development Contributions SPD, I am satisfied that the financial contribution is necessary to make the proposed development acceptable in planning terms. The obligation would contribute towards the provision of SAMM and given the location of the appeal site within 5km of the protected site, the contribution is directly related to the appeal scheme. In addition, as it relates to a standard charge based on the scale and type of residential development proposed, I consider it to be fairly and reasonably related to the proposal in scale and kind. The UU therefore complies with the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 58 of the Framework.
34. For the above reasons, I therefore conclude that the proposal would not have an adverse effect on the integrity of the SPA. It follows that the proposal would comply with the Conservation of Habitats and Species Regulations 2017 (as amended) and Policy CS13 of the Core Strategy which requires adequate measures are put in place to avoid or mitigate any potential adverse effects on the SPA.

Conditions

35. The Council has suggested several conditions which I have considered in light of the advice in the Framework and Planning Practice Guidance. Where appropriate, I have adjusted the wording of the conditions to improve precision and enforceability. The parties have been provided with the opportunity to comment on the schedule of conditions, and I have taken into account any comments received.
36. In addition to the standard three-year time limit condition for implementation, I have imposed a condition that defines the approved plans in the interests of certainty.
37. In the interest of preserving the character and appearance of the area I have also imposed conditions relating to compliance with the approved materials, to require submission of details of the covered refuse store and secure cycle storage, implementation of the submitted landscaping scheme and to require the retention of the trees proposed to be retained. However, I have omitted the requirement for the cycle store to include specific requirements such as e-bike charging facilities as I have not been directed to any policy which stipulates this in the development plan and as such it would be unreasonable.
38. In order to mitigate the risk of harm to local ecology and wildlife, I have imposed a condition requiring compliance with the recommendations of the ecological technical note and compliance with the tree protection measures submitted. However, I have omitted reference to the BNG technical note as the general biodiversity gain condition is deemed to apply to every planning permission granted and should not be duplicated by planning conditions. I have not imposed the Council's suggested conditions requiring provision of a Landscape and Ecological Management Plan and Construction Environment Management Plan given the findings of the ecology

technical note was that the site is of low ecological value with no evidence of protected species being recorded and due to the scale of the proposed development such that the conditions would be unnecessary. Compliance with the recommendations of the technical note is considered to be sufficient to adequately protect ecology and biodiversity during construction.

39. To ensure on-site parking is delivered and to mitigate parking pressure on local roads I have imposed a condition requiring the delivery of the proposed car parking spaces prior to the occupation of the development. However, I have not imposed a condition to require the installation of electric vehicle charging points as this is covered by the Building Regulations.
40. A condition requiring the windows at first floor and the rooflights in the north and eastern elevations to be obscurely glazed and non-opening below 1.7 metres above the floor of the room in which they are installed has been imposed to protect the living conditions of neighbouring occupiers. However, I have amended the Council's suggested condition to omit reference to the windows on the southern elevation given the separation distance between these windows and the neighbouring property would be acceptable, as was concluded by the Council in its officer report. The Council suggested this condition could be worded as a compliance condition. However, I have required details to be submitted to ensure the condition is precise and reasonable.

Conclusion

41. For the reasons set out above, the appeal scheme is considered to accord with the development plan, when read as a whole. Material considerations do not indicate a decision should be taken other than in accordance with the development plan. I therefore conclude the appeal should be allowed.

H Whitfield

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos:
 - Site Location Plan Site Block Plan A20.006.L(PA)201 Rev. PA1
 - Proposed Site Plan A20.006.L(PA)210 Rev. PA1
 - Proposed Site Plan Site Dimensions A20.006.L(PA)211 Rev. PA1
 - Proposed Floor Plan Ground A20.006.L(PA)215 Rev. PA1
 - Proposed Floor Plan First A20.006.L(PA)216 Rev. PA1
 - Proposed Floor Plan Second A20.006.L(PA)217 Rev. PA1
 - Proposed Roof Plan A20.006.L(PA)218 Rev. PA1
 - Existing and Proposed Street Scenes A20.006.E(PA)220 Rev. PA1
 - Proposed Elevations West and South A20.006.E(PA)225 Rev. PA1
 - Proposed Elevations East and North A20.006.E(PA)226 Rev. PA1
 - Site Section 1 A20.006.S(PA)230 Rev. PA1
 - Site Section 2 A20.006.S(PA)231 Rev. PA1
- 3) The external surfaces of the development hereby permitted shall be constructed in accordance with the materials shown on plan no. A20.006.E(PA)225 Rev. PA1 and A20.006.E(PA)226 Rev. PA1.
- 4) No site clearance, preparatory work or development shall take place until all tree protection measures have been installed in the positions identified on the Tree Protection Plan at Appendix C of the BS 5937:2012 Tree Survey Arboricultural Impact Assessment, Tree Constraints Plan, Arboricultural Method Statement and Tree Protection Plan prepared by Advanced Tree Services, dated October 2024 (the ATS Report). The development thereafter shall be implemented in strict accordance with the approved details and method statements contained in the ATS Report for the duration of the preparatory and construction periods.
- 5) The building hereby permitted shall not be occupied until the windows at first floor in the north and east elevations and the rooflights in the north and east roof slopes have been fitted with obscured glazing, and no part of those windows/rooflights that are less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window/rooflight is installed and once installed the obscured glazing shall be retained thereafter.
- 6) No tree which is to be retained in accordance with the approved plans and particulars shall be cut down, uprooted, destroyed or damaged in any manner within 5 years from the date of first occupation of the building for its permitted use, other than in accordance with the approved plans and details. If any retained tree is cut down, uprooted, destroyed or dies another tree of a similar size and species shall be planted in the same place in the next available planting season.

- 7) The development hereby permitted shall not be occupied until a scheme for secure bicycle storage has been submitted to and approved in writing by the local planning authority. The scheme shall thereafter be carried out as approved prior to first occupation and retained thereafter.
- 8) The development hereby permitted shall not be occupied until a scheme for the covered refuse store has been submitted to and approved in writing by the local planning authority. The scheme shall thereafter be carried out as approved prior to first occupation and retained thereafter.
- 9) The development hereby permitted shall not be occupied until the vehicle parking spaces have been provided in accordance with drawing no A20.006.L(PA)210 Rev. PA1. Thereafter those spaces shall be retained for the parking of vehicles only.
- 10) All planting, seeding or turfing comprised in the approved details of landscaping (on drawing on L90-200 Rev. H 'Landscape strategy') shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All hard landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.
- 11) The development hereby permitted shall be carried out in accordance with the recommendations outlined in the Technical Note: Ecology prepared by AAe Environmental Consultants, Report Reference 213046, dated October 2024.

**** END OF SCHEDULE ****