



Appeal Decision

Site visit made on 20 October 2025

by C Housden BSc(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 NOVEMBER 2025

Appeal Ref: APP/K3605/W/25/3371451 110 Fairmile Lane, Cobham KT11 2BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by BMK Constructions Limited against the decision of Elmbridge Borough Council.
- The application ref 2025/0177, dated 22 January 2025, was refused by notice dated 7 April 2025.
- The application sought planning permission for detached two-storey building with rooms in the roof space consisting of 8 flats with additional access from Fairacres with associated parking and landscaping following demolition of existing garage without complying with conditions attached to planning permission ref 2018/3184, dated 23 October 2019.
- The conditions in dispute are:

Condition No 2 which states that:

The development hereby permitted shall be carried out in strict accordance with the following list of approved plans:

Loc 01 - Location Plan;

2923 PL06 - Proposed Street Scene; and

2923 PL07 Rev A - Comparative Layout, all received on 22/10/2018;

2923-PL08 - Proposed Bin Store received on 31/10/2018;

19 1617 TPP 001 Rev 2 - Tree Protection Plan received on 01/02/2019; and

2923 PL01 Rev B - Proposed Ground Floor Plan/Site Plan;

2923 PL02 Rev D - Proposed Site, First Floor, Second Floor Plans;

2923 PL03 Rev B - Proposed Front & Side Elevations; and

2923 PL04 Rev A - Proposed Rear Elevation & Sun Path, all received on 14/02/2019.

Condition No 8 which states that:

The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for 13 vehicles and 10 cycles to be parked and vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes. Cycle parking should be secure covered and lit.

- The reasons given for the conditions are:

Condition No 2: To ensure that the development is carried out in a satisfactory manner.

Condition No 8: In order that the development should not prejudice highway safety, the free flow of traffic nor cause inconvenience to other highway users in accordance with Policy DM7 of the Elmbridge Development Management Plan 2015.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning permission was originally granted at the site for a detached two storey building with roof accommodation containing eight flats, with associated landscaping and planting¹.
3. The appeal proposal involves a number of amendments to the development previously approved, which includes the reconfiguration of the unit mix following the change in the size of unit 7, reduction in the number of car parking spaces, relocation of the refuse store, increasing of the terrace space, revised landscaping, taller parapet of single storey side and rear wing, larger dormers and re-configuration of the spacing between them, a taller lift overrun, a new pergola situated to the rear and internal alterations.
4. The evidence before me shows that the dispute between the parties only relates to the proposed landscaping, single storey side wing and the refuse store. Based on my observations on site and the information before me, I have no reason to reach a different conclusion and therefore my decision will focus on these elements of the appeal.
5. From my visit it was clear that building works had been substantially completed and the building was at least partially occupied. I also observed that some of the proposed elements of the development had already been undertaken, which included the increased height of the parapet of the side wing, but did not include the proposed planting and refuse store.
6. In this regard, the appellant has referred to section 73 of the Town and Country Planning Act (the Act) in their appeal documentation. However, the evidence before me demonstrates that the conditions were breached before the planning application was made and therefore the relevant part of the act is section 73A which is reflected in the banner heading.
7. Amended plans have been submitted by the appellant alongside their appeal documentation. These plans include moving the bin store away from, and increasing the planting buffer with, 2 Fairacres (No 2), redesign of the refuse store to accommodate additional smaller sized bins and the relocation of the cycle store.
8. The proposed amendments would amount to fundamental changes to the scheme which would result in a different application to that considered by the Council. The appeal process should not be used to evolve a scheme² which accepting these plans would do. Furthermore, based on the evidence before me, I cannot be certain that accepting these amendments would not deprive those who were entitled to be consulted on the application of the opportunity to make any representations that they may have wanted to make on the application as amended, given the fundamental nature and extent of the changes proposed. Therefore, for these substantive and procedural reasons I have based my decision on the plans which were before the Council when the application was determined.

¹ LPA ref 2018/3184

² Procedural Guide: Planning appeals – England paragraph 16.1

9. Amended information has also been submitted which changes the proposed landscaping on the flank wall of the single storey wing from climbing jasmine plants to a green wall. As landscaping was proposed on this flank wall as part of the initial submission, the proposed green wall would not fundamentally change the development from what was originally under consideration by the Council. I am satisfied that there is no procedural or substantive reason not to accept the updated planting information relating to the flank wall. I have made my decision on this basis.

Main Issues

10. The main issues are the effect of varying the conditions on the:
- character and appearance of the host building and area;
 - adequacy of the refuse storage facilities, including locating the refuse facilities adjacent to the cycle storage area; and
 - living conditions of the occupiers of No 2 Fairacres, with specific regard to outlook.

Reasons

Character and appearance

11. The area is verdant in character with mature trees, hedgerow and green frontages set prominently throughout the streetscene. Properties are predominantly large and detached, although there are some smaller properties situated on Fairacres. The appeal site comprises a large, detached building fronting onto Fairmile Lane with the building return, including a rear vehicular access, set along Fairacres.
12. The appeal building includes a single storey side wing with the flank wall set directly adjacent to the pavement of Fairacres. The wing includes a parapet, hipped roof and dormer. Whilst a side wing was originally approved, it was of a reduced height compared to what has been built and is proposed by the development before me. The proposed wing, as built, is of an unduly prominent height in relation to its location set directly adjacent to Fairacres. It would result in imposing bulk and mass which appeared as intrusive to the character and appearance of the host building and wider area.
13. Whilst the parapet wall is proposed at the same height as the previously dismissed³ appeal, details of a proposed green wall accompany this appeal. This sets out that it would have its own irrigation system and could be in bloom from the day of installation so there would be no lead-in time compared to other landscaping systems which would take time for the planting to mature to achieve full coverage.
14. Whilst the green wall would provide a verdant exterior to the flank wall, it would not address the fundamental issue of the excessive bulk, mass and height of the built form in comparison to the immediately adjacent street and host building. Despite the proposed green wall, the excessive height of the wing would still be readily perceptible from and harmful to the streetscene and host building. Therefore, the

³ Appeal ref APP/K3605/W/24/3344193

proposal would result in harm to the character and appearance of the host building and area.

15. The inspector of the previous appeal considered that due to a lack of information before them, they could not rely on the imposition of a condition to secure the greening of the flank wall, although it was noted by them that such a landscaping scheme could soften its appearance and help to integrate the development into the verdant surroundings.
16. Now with the benefit of specific landscaping evidence before me, a material difference between the two appeals, I do not consider that the green wall would mitigate the harm to the character and appearance of the host building and area for the reasons given relating to the height and associated bulk and mass of the built form.
17. With regard to the bin store, it would be single storey in stature with a green roof set into the appeal site and away from the streetscene. I am satisfied that it would appear in keeping with the character and appearance of the area and would have very limited prominence within it. With regard to the effect of the refuse store on the character and appearance of the area, I am satisfied that the submitted information has overcome the concerns of the previous inspector.
18. Nevertheless, I have found that the increased height to the parapet results in harm to the character and appearance of the host building and area which would not be mitigated by the proposed green wall. This would carry considerable weight against the development. The appeal proposal would therefore conflict with Policy CS17 of the Elmbridge Core Strategy (2011) (CS) and Policy DM2 of the Development Management Plan (2015) (DMP). These policies, amongst other matters, seek to ensure development is of a high quality that integrates sensitively with the locally distinctive townscape.

Refuse provision

19. The evidence shows that the refuse store would have sufficient capacity to comply with the Council's guidance. However, the evidence shows that the gate situated between the communal space and parking forecourt would be too small to fit the proposed larger bins through and therefore the development would not make appropriate or practical refuse provisions.
20. Furthermore, the location of the refuse store is proposed directly adjacent to the cycle store. The Elmbridge Design Code (2024) (EDC) sets out that cycle parking should be situated away from features which may deter use, such as bin stores. The proposed close proximity of the refuse store to the cycle store would undermine the cycle stores desirability to future occupiers owing to sharing the same corner of the site with their refuse. The proposed refuse store would therefore result in an unattractive location that would not encourage the use of the cycle parking. Whilst I note the effect of the proposed siting of the refuse store on the cycle store was not raised as an issue in the previous appeal, the Council's adoption of the EDC represents a material change in circumstances between the two appeals.
21. The proposed refuse storage facilities would therefore be inadequate in terms of provision and siting, resulting in considerable weight against the proposal. The development would conflict with Policy DM8 of the DMP. This policy, amongst

other matters, seeks to ensure that appropriate refuse facilities are provided, including ensuring that they are accessible. The development would also conflict with the guidance contained within the EDC for the reasons given.

Living conditions

22. The siting of the refuse store is proposed adjacent to the boundary with No 2. A narrow strip of soft landscaping is proposed to separate the refuse store from the shared boundary.
23. No 2 is a single storey dwelling with its patio and seating area situated directly adjacent to the bin store on the other side of the boundary. The elevations of the refuse store show that it would be a single storey timber structure with a flat green roof. The structure itself would not be overly physically imposing. However, even with the green roof, its appearance would clearly be that of a bin store which would result in a harmful outlook to the occupiers of No 2 having such a structure set in such close proximity to their private outdoor seating area. Whilst there would be intervening vegetation between the bin store and No 2, it would nevertheless allow for glimpses of the store through the foliage, where the harm to outlook would still be perceptible. The vegetation would therefore not mitigate or otherwise justify the harm that I have identified.
24. Whilst further information has been provided with this appeal in an attempt to overcome the concerns of the previous inspector relating to a lack of information, harm would nevertheless occur for the reasons that I have given.
25. The proposal would therefore result in harm to the outlook of No 2 which would carry significant weight against the proposal. The Council has referred to conflict with Policy DM8 of the DMP in its associated reason for refusal. However, visual amenity, as referred to in this policy, refers to character and appearance rather than outlook in the context of living conditions. I have not been provided with a specific policy of the development plan relating to living conditions. Nevertheless, the harm that I have identified would conflict with paragraph 135(f) of the National Planning Policy Framework, which sets out that decisions should ensure that places are created which have a high standard of amenity for existing users.

Other Matters

26. The evidence shows the appeal site falls within the 5km Buffer Zone of the Thames Basin Heath Special Protection Area. Regulation 63(1) of the Habitats Regulations states an Appropriate Assessment is required where the competent authority is minded to give consent for the proposal. Since I am dismissing the appeal for other reasons, I do not need to discuss this matter further.
27. The green wall would provide benefits including improvements to air quality, biodiversity and thermal insulation to the property. However, these benefits have not been quantified, and in any case, given the small scale of the proposal these benefits would carry very limited weight in favour of the development. These other matters would not outweigh the harms identified.

Conclusion

28. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

Therefore, I conclude that for the reasons given above the appeal should be dismissed.

C Housden

INSPECTOR