



Appeal Decision

Site visit made on 21 November 2025

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th November 2025

Appeal Ref: APP/K3605/W/25/3371813

40 Fairmile Lane, Cobham, Surrey KT11 2DQ

- 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 Jamie Roberts against the decision of Elmbridge Borough Council.
 - The application Ref is 2024/1825.
 - The development proposed is described as 'development comprising 2 detached two-storey buildings with rooms in the roofspace containing 14 flats together with associated car parking and cycle storage, soft and hard landscaping works following demolition of existing dwelling, detached garage and outbuilding'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Unilateral Undertaking has been submitted with the appeal, dated 5th March 2025 (the UU). An amended site plan has also been submitted with the appeal which includes alterations to the car parking areas, cycle and refuse storage. Together these do not comprise substantial changes and I am satisfied that procedural unfairness would not be caused by my accepting that drawing. Accordingly, I have taken the amended site plan and the UU into account in determining the appeal.

Main Issues

3. As a result of the amended drawing and exchange of appeal documents, some of the issues raised within the reasons for refusal are no longer in dispute between the main parties. The Council confirm that the proposed car parking spaces now meet the required standards and it accepts the appellant's affordable housing position. The Council have also confirmed that the UU adequately addresses effects on the Thames Basin Special Protection Area (SPA). As these are no longer matters in dispute between the main parties, I have not dealt with them as main issues of the appeal.
4. Accordingly, the main issues are the effects of the proposed development on:
 - the character and appearance of the area, including effects on trees, and;
 - the living conditions of occupants of no.34 Fairmile Lane, with particular regard to privacy.

Reasons

Character and Appearance

5. The area surrounding the appeal site comprises predominantly detached properties of varying design set within spacious plots, set back from the road often behind mature trees and hedgerows. There are examples nearby of small cul-de-sacs and development behind the main building line. Those properties similarly maintain generous and verdant plots where the properties at the back are visible only in glimpses from the road. Together, spacious plot sizes, spaces around the buildings, and mature landscaping contribute positively to the character and appearance of the area and provide its distinctiveness. As a result of the openness at the front of the appeal site and the presence of mature trees and hedgerows, both in front of and behind no.40, the appeal site contributes positively to the established local character.
6. The appellant accepts that Block A would be approximately 1.55m taller than no.42 Fairmile Lane and 2.3m taller than no.34 to the south, which is set on lower ground. While the eaves level of Block A would be of similar height to others in the area, its roof level adds significant additional bulk to the top of the building, particularly given the scale of the proposed dormers and the balconies and balustrades which surround them. While there are other properties nearby with accommodation in the roofslopes, these are served predominantly by visually subordinate dormers and windows, including those at 110 Fairmile Lane and 1 Green Lane evidenced by the appellant. In combination with the building's width, the bulk and massing of Block A would be significant, giving it undue visual prominence. While there is variation in the design and bulk of buildings in the surrounding area, for the reasons set out above, the massing of Block A would appear in stark contrast to those which surround it. The modern development of Crown Gables Close (Audley Village) does not set a precedent for development of this scale, since those buildings form a visually distinct group.
7. Block B would have a lesser width, maintaining feelings of space to its southern side and more modest proportions. However, the same concerns apply to the treatment of the roof level which accentuate its high level bulk, in conflict with other properties in the area. Views of Block B are likely to be restricted due to its position, however given the raised ground levels at the back of the site, views of the roof from the street cannot be ruled out and there is not substantive evidence on this matter. Should they occur, views of the roof would similarly give Block B visual prominence and accentuate the site's conflict with the established local character.
8. The proposed front parking spaces and turning areas, refuse and cycle stores would also heavily dilute feelings of spaciousness at the front of the site, particularly when in use. This would accentuate the intensity of the site's uses and would cause further conflict with the established character of the area. While the existing building has a large hard surfaced area, this provides a less formal parking arrangement and serves only a single property. As such its use and visual effects are notably different to the proposed.
9. While the front boundary would provide some screening, it would extend across only part of the frontage and could not be reasonably relied upon to screen the site to a specified height in perpetuity. The visual prominence of Block A and the necessary paraphernalia to the front of the site would in any event remain visible from the street around the access and beneath the canopies of the trees, particularly given their raised position.

Character and Appearance- Trees

10. Turning to the effects on trees, I have been provided with a copy of a Tree Preservation Order which relates to several trees to the front and rear of the existing building. I observed those trees at the front of the site have large canopies which in part overhang the street and those further back within the plot can be appreciated from the road given their height above the existing building. The appellant finds those on the site to be Category A and B trees¹ with life expectancies of at least 40 or 20 years. Based on the findings of my site visit, I agree that they are mature species that contribute to the established character of Fairmile Lane and provide significant visual amenity.
11. Despite amendments to the site layout and the recently approved driveway works, the proposal would still entail incursions into the RPAs of the protected trees, albeit occupying a small proportion of the RPAs. As well as new hard surfaces, excavation into the ground would be necessary to facilitate the hand dug fence posts of the bin store and the new planting around the front bin store and the extension of the hedgerow at the front of the site. In addition, soil compaction would be increased in those areas to varying degrees, in particular from the new parking spaces in the RPAs. While the bin store at the front of the site is now shown to be temporary and for use only on collection days, I am not convinced that this could reasonably be secured as part of any planning permission and that it would not have more frequent use.
12. Furthermore, given the intensity of the site's layout, where much of the site needs to be used for access, car parking, and outdoor amenity spaces, there is likely to be significant additional pressure for pruning or felling of the protected trees in the future. Falling material, including foliage and/or fruit, would likely cause disturbance or inconvenience to future occupants and could give rise to safety issues. While the Council would ultimately have control over applications to prune the trees, given the nature of these potential issues, it is not apparent that all future applications could reasonably be resisted. Pressure for pruning would be particularly pertinent for the trees with canopies that extend over parking spaces, and for the evergreen tree T009² given the proximity of its canopy to the windows of the main habitable spaces of units AG.02, A1.02 and A2.02 where it could create dark conditions and restrict outlook.
13. While the proposed incursions into the RPAs alone would amount to a low impact, taken together with the effects arising from the intensive use of the appeal site, the appeal scheme could seriously undermine the health of the trees on the site and their longevity. This would affect a significant number of protected trees on the site and the effects would be long lasting.
14. It is proposed that works of soil decompaction and enhancement are undertaken, which could improve the tree's growing conditions. However, it is not apparent that this would provide appropriate mitigation for the above effects. I note that the co-existence of mature trees with parking areas and gardens is common in the surrounding area. However, on other more spacious sites the conflict and pressure for pruning is likely to be far less. The appellant has evidenced other structures installed close to trees in the surrounding area, however I do not have details of their circumstances and cannot be satisfied that they are the same as those here.

¹ Using BS 5837:2012 assessment methodology

² As annotated on Tree Constraints Plan ref UA/TCP/1

Given the various solutions relating to construction arrangements on the site discussed by the appellant, on balance, I have no strong reason to doubt that an acceptable construction solution could reasonably be achieved.

Character and Appearance- Conclusion

15. For the reasons set out, the proposal would cause unacceptable harm to the character and appearance of the area. This would arise from the combination of the scale and bulk of Block A, the dominance of the associated paraphernalia at the front of the site and the long term effects on important trees. Consequently, the spacious and verdant character of the site would be substantially lost. The proposal would conflict with policies DM2 and DM10 of the Elmbridge Development Management Plan 2015 (the DMP) and policies CS10 and CS17 of the Elmbridge Core Strategy 2011 (the CS), which together require development to respect and integrate sensitively with the local character. The proposal would also conflict with Policy CS14 of the CS which includes that important trees should be safeguarded.
16. DMP Policy DM6 allows for the loss or damage to trees that make a significant contribution to the character or amenity of the area only in exceptional circumstances where the benefits would outweigh the loss. The assessment of the scheme's benefits is set out below in the Planning Balance section of this decision. Having regard to the scale of those benefits, I do not consider the exceptional circumstances exist. Accordingly the proposal would also conflict with DM6.

Living Conditions of Neighbouring Occupiers

17. The proposal would include a significant number of windows in the side elevation of Block A across the ground and first floor levels plus two windows within the roof level. Those windows would serve predominantly bedrooms as their only source of outlook and there is a reasonable likelihood of future occupants enjoying views from those windows. That outlook would be towards No.34 to the south.
18. No.34 is a detached property with some windows in its side elevation and a private garden which extends to the rear, including a patio at the back of the house. Given the enclosure of no.34 I consider there to be a reasonable expectation of privacy to those facing windows and patio. No.34 is separated from the appeal site by an access track, as well as two lengths of hedgerow either side of it. There is also a single storey brick outbuilding on the boundary of no.34. In combination these factors currently restrict intervisibility between the two sites.
19. Given these attributes together with the proposed new access drive, future overlooking from Block A towards no.34 would be heavily obscured at the ground floor level. In order to prevent overlooking from the side windows of the upper floors, the proposal would rely heavily on the retention of the existing tall conifer hedge, which currently exceeds the eaves height of the existing property. It is unclear whether this boundary hedgerow would fall entirely within the appellant's control, as parts of it are shown outside the red line boundary. In any event, it is not clear that planning permission could reasonably ensure the hedge be maintained at its existing height and thickness in perpetuity. There would be very restricted space in which to provide any replacement planting capable of providing effective screening at the upper levels. Therefore, overlooking from the upper floor side windows and a loss of privacy to no.34 would occur.

20. The appellant would accept a condition to obscure some of the side windows. However, this would involve obscuring the sole source of outlook from many bedrooms of the proposed units and, in the case of unit A1.03 this would involve all its bedrooms. Having regard to these factors, I am not convinced that this would create acceptable living conditions for future occupants of the proposed development.
21. While there are some side windows to the existing building facing towards no.34, these are few and are secondary windows to a bedroom and a bathroom forming part of a much larger single unit. The appeal scheme would therefore have very different effects. I appreciate the effects on no.34 may not have formed a concern under an earlier application, however that does not provide assurances that the effects of this appeal scheme should be accepted.
22. In conclusion on this main issue, the proposal would cause a harmful loss of privacy to the occupants of no.34 Fairmile Lane. The proposal would conflict with policies DM2 and DM10 of the DMP which include the need for new development to protect the amenity of adjoining occupiers.

Other Matters

23. As above, the Council accept that the proposed parking spaces are now of an acceptable size. The main parties also agree that the scheme cannot make a contribution towards affordable housing given the viability testing which was subject to an independent review. As they are not in dispute, I have not considered these matters further and for the benefit of the planning balance below these are treated as neutral matters, rather than benefits.
24. The appeal site is within the 5km buffer zone of the Thames Basin Heaths SPA, which is an internationally important habitat for breeding species of European nightjar, woodlark and Dartford warbler. I note the comments of the main parties and the financial contributions towards mitigation which would be secured by the UU if planning permission were granted. However, as the appeal is being dismissed for other reasons, it is not necessary to carry out an appropriate assessment in full. For the purposes of the planning balance below, however, I have assumed this matter is capable of resolution.
25. I am aware of the other concerns raised by interested parties which I have not addressed above, in particular relating to highway safety and the living conditions of the occupants of other adjoining properties. I have not addressed these in further detail here since they would not alter the outcome of the appeal.
26. The proposal has been revised following refusal of an earlier application for planning permission³ and the Council acknowledge the scheme is improved in a number of ways. However, this does not provide a reason to alter the above judgements or provide a justification for the effects of the appeal scheme.

Planning Balance

27. Both main parties agree the Council cannot demonstrate a five year land supply for housing and that the provisions of paragraph 11d) of the National Planning Policy Framework (the Framework) are relevant to the appeal. As the application of policies in the Framework that protect areas or assets of particular importance

³ 2022/3547

do not provide a strong reason for refusing the development proposed, the proposal falls to be considered under paragraph 11d)ii.

28. The adverse impacts of granting planning permission would be the harm to the character and appearance of the area including effects on important trees, and harm to the living conditions of the neighbouring occupants. Those harms would conflict with policies in paragraphs 129, 135 and 139 of the Framework. These policies include that development should: make efficient use of land but take into account the desirability of maintaining an area's prevailing character and setting and securing attractive and healthy places; require development to be sympathetic to local character and create places with a high standard of amenity for existing occupiers, and; that development which is not well designed should be refused, especially where it fails to reflect local design policies. In addition to those key policies referenced in the footnote to paragraph 11d)ii, given the above concerns for the future health of the protected trees, the proposal would also conflict with paragraph 136 of the Framework insofar as it states that existing trees should be retained wherever possible. The effects of both harms would be significant and long lasting and, taken together, they attract very significant weight.
29. Turning to the benefits, the proposal would provide a net increase of 13 homes on the site. Using the Council's lower figure, it has a housing land supply of just 0.9 years, which is an acute shortfall. There is a significant difference in the figures of housing need given by the main parties, ranging from 1,562 dwellings per annum from the Council and a lesser need of 653 stated by the appellant. I understand the emerging Local Plan was withdrawn from examination earlier this year and there is no certainty as to how long the shortfall will persist or how it will be addressed. Based on the evidence, I accept the likelihood that sites in low density areas such as this will have a role to play in meeting the housing requirement.
30. Even if the Council's figures showing a more acute need are used, the proposed contribution of 13 net additional homes from this appeal would make only a modest contribution to the housing requirement. Nonetheless, the size and mix of the proposed units would adhere to the identified local need. I understand the site to be on the Council's Brownfield Land Register and the Framework acknowledges the important contribution which sites of this size can make to meeting the housing requirement of an area.
31. The new homes would be in a built-up area and with good accessibility to existing services and facilities including some public transport, promoting sustainable travel in line with paragraphs 110 and 115 of the Framework. In addition, the proposal would include sustainable technologies, be capable of delivering biodiversity net gain and would give rise to local finance in the form of a CIL contribution and the new homes bonus. There would also be some economic benefits associated with the construction process, albeit for a temporary period, and on going expenditure into the local economy by future occupants.
32. While the Framework supports the efficient use of land in paragraph 129, as above, I have found conflict with that paragraph when read as a whole, given it includes the need to take into account the desirability of maintaining an area's prevailing character and setting. The efficient use of land here does not therefore add weight in favour of the development.

33. Where the proposal has been found to be acceptable in other respects, including where dispute was resolved on some of the reasons for refusal, these are similarly neutral matters rather than weighing in favour of the development. I understand the site was allocated for 13 dwellings under the emerging local plan. However, since this has now been withdrawn I give this very limited weight. Reference is also made to traffic calming measures, however it is not clear how these would be secured or the likelihood of them being delivered, and I similarly give this very limited weight.
34. Taken together, given the scale of the proposal and the extent of the benefits, these attract moderate weight. Therefore, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when considered against the policies in the Framework as a whole, and having particular regard to the key policies referenced in paragraph 11d)ii. The proposal would not therefore benefit from the presumption in favour of sustainable development in the Framework.

Conclusion

35. The proposal would conflict with the development plan and there are not material considerations of sufficient weight, including approaches in the Framework, which indicate that a decision should be made other than in accordance with it. The appeal is therefore dismissed.

C Shearing

INSPECTOR