



Appeal Decision

Site visit made on 16 March 2026

by **J E Jolly BA (Hons) MA MSc MCIH MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 MARCH 2026

Appeal Ref: APP/K3605/W/25/3376496

Heathdene, 21 Heath Rd, Weybridge, Surrey KT13 8TF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr Agace (Heathdene (Weybridge) Residents Company Ltd) against the decision of Elmbridge Borough Council.
- The application Ref is 2024/2819.
- The development proposed is for the demolition of existing block of flats and replacement with larger 34-unit residential building.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with all matters reserved. As such, it is accepted practice to determine the appeal by treating the submitted plans and details provided as indicative, which show what may, not necessarily what will be constructed. Nevertheless, it has been brought to my attention that as the submitted drawings were not marked as 'illustrative' as required by the national Planning Policy Guidance (PPG) the drawings must be assessed as being part of the development. However, the Court of Appeal¹ has determined in cases where all matters are reserved that any plans will be illustrative without further need for confirmation. Moreover, the appellant has made it clear in his statement of case that the drawings in this appeal have been submitted for illustrative purposes only. I have proceeded accordingly.
3. It is noted that the Council has withdrawn its draft version of the new Elmbridge Local Plan 2037 and consider that the Policies contained within it carry no weight. As such, I acknowledge that the Council has relied up on the Policies given on its decision notice, which form part of the extant Local Plan.

Main Issues

4. The main issues in this appeal are the effect of the proposal on:
 - the character and appearance of the area,
 - the nearby trees,
 - the provision of affordable housing,
 - whether the development would secure Biodiversity Net Gain (BNG); and,
 - the Thames Basin Special Protection Area (SAP).

¹ Crystal Property (London) Ltd v Secretary of State & LB Hackney EWCA Civ 1265 (2016)

Reasons

Character and appearance

5. The appeal site can be accessed from both Heath Road and Curzon Road, where the two-storey appeal property known as 'Heathdene' can be found. 'Heathdene' is an older style, 'H' shaped apartment building of 8 separate dwellings with a parking and garage area that is set back from the highway behind a wrap-around garden. The host garden has a number of mature trees and shrubs which combine with the trees and hedgerows of the neighbouring dwellings on either side to create a verdant sense of spaciousness in the immediate surrounding area. The wider area is characterised by a variety of detached and semi-detached dwellings and apartment blocks that have gardens to the front and rear. The proposal is to demolish the host dwelling and to construct a 3-storey apartment building with basement level parking for up to 34 dwellings.
6. The appeal site is located in an established residential area where the principle of development is accepted. However, as a consequence of its overall footprint, including a hardstanding for parking, notwithstanding that some parking spaces would be provided within a basement area, the submitted drawings show that, the extent of the apartment scheme proposed would cover a large proportion of the appeal site and hence be cramped on the space available. Moreover, the bulky proposal would be highly prominent along Curzon Road and at odds with the wider surrounding area, which is typified by lower density-built form that is set back from the highway behind garden spaces. The development would also be incongruous with the dwellings lining Heath Road, which are set on ample garden plots punctuated by generous verdant gaps. Therefore, in this specific location, I conclude that the proposal would be of a density that would result in a cramped form of development and be incongruous with the character and appearance of the verdant spaciousness of the surrounding area.
7. It follows then, that the proposal would harm the character and appearance of the area and be contrary to Policy CS17 of the Elmbridge Core Strategy (2011) (CS), Policy DM2 of the Elmbridge Local Plan (Development Management Plan) (2015) (LP), as supported by the Elmbridge Design Code (2024) (EDC), which say, amongst other things, that all development proposals must be based on an understanding of local character.

Trees

8. The appeal property has a number of mature trees in addition to those seen in the neighbouring residential gardens. Although the onus is on the appellant to do so, an arboricultural survey has not been submitted in support of the scheme. However, following my site inspection, I am satisfied that the existing trees on or adjacent to the site could be safeguarded during and after construction of the scheme by the imposition of a suitable condition at the reserved matters stage, when details of the scheme in relation to the well-being of the trees would be more meaningful.
9. Hence, subject to condition, in respect of the effect of the development on the surrounding trees, the proposal would accord with Policy CS14 of the CS and, Policy DM6 of the LP, which require that development should adequately protect existing trees including their root systems prior to, during and after construction.

Affordable Housing

10. The Council's CS is clear that residential development in the Borough that exceeds 15 units attracts either a financial contribution, or 50% of the gross number of dwellings proposed as affordable housing. The appellant does not dispute this and has liaised with the Council with the purpose of agreeing a viable 'on-site' contribution for the scheme that could be formalised through a S106 agreement and/or a viability assessment that is acceptable to the Council.
11. However, a legal agreement has not been submitted, and a viability statement is yet to be agreed by the Council. Consequently, a lack of certainty as to the required affordable housing provision remains.
12. I have considered whether this matter could be resolved by the imposition of a 'Grampian' condition². However, while the appellant contends this is 'common practice', as no exceptional circumstances have been provided by the appellant and the uncertainty surrounding provision of an acceptable agreement has not been resolved, a negatively worded condition is not appropriate in this case.
13. It follows then, that the proposal would be contrary to the requirements of Policy CS21 of the CS, as supported by the Development Contributions Supplementary Planning Document (2020), which is clear that the Council will require provision of affordable housing, where viable, 40% of the gross number of dwellings on sites of 15 dwellings or more.

BNG

14. Biodiversity Net Gain (BNG) is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. Unless an exemption applies, planning permission is deemed to have been granted subject to the condition that the biodiversity objective of delivering at least a 10% increase in biodiversity value is met. If an exemption is claimed, a planning application must provide a statement setting out why an exemption applies. No such statement has been provided. Therefore, the appellant is obliged to provide minimum baseline information about the site's biodiversity, which has also not been forthcoming.
15. Although the PPG states that it is generally inappropriate to refuse an application on the grounds that the biodiversity gain objective will not be met, it is necessary to consider if the BNG condition is capable of being successfully discharged.
16. As such, insufficient information has been provided and as BNG is a statutory requirement, this is a matter of principal importance in this case and failure to comply is a fundamental flaw of the proposal as I cannot be satisfied that the BNG requirement would be secured.
17. In conclusion, the proposed development would be required to and would fail to make provision for BNG having regard to the BNG exemptions. Therefore, taking a precautionary approach, the proposal would not meet the aims of Policy DM21 of the LP and Policy CS15 of the CS, which say that new development will be expected to preserve, manage and where possible enhance existing habitats, protected species and biodiversity features.

² Grampian Regional Council v Aberdeen CC (1983) P&CR 633

SPA

18. The appeal site is located in the SPA and is therefore, subject to the Habitat Regulations which protect it. If I had come to a different conclusion, it would have been necessary for me as a competent authority to undertake an 'Appropriate Assessment' and the likely effectiveness of any mitigation measures or the acceptability of any financial contribution in respect of that mitigation.
19. However, as I have found that the proposal would not be acceptable for other reasons, and therefore planning permission is to be refused, it is not necessary for me to consider the above matters or their form and acceptability to the Council any further in this case.

Other Matters and Planning Balance

20. My attention has been brought to nearby locally listed buildings. The Council concluded that their significance would not be adversely affected by the proposed development. I see no reason to disagree.
21. The Council cannot demonstrate a 5-year Housing Land Supply (HLS). As such, Paragraph 11(d) of the Framework is therefore of relevance and the 'tilted balance' engaged.
22. The economic benefits of the proposal include the construction work associated with the scheme and the use of local services by future occupiers. As the construction work would be short-term, the use of local services relatively small scale and any Home Bonus payments an expected planning requirement, I give these combined benefits limited weight.
23. There would also be some environmental benefits related to the possible landscaping and BNG gains associated with the residential scheme. In addition, the site is previously developed land within an existing settlement that is near to a train station. However, as some of these benefits would be a statutory requirement I afford this little weight.
24. In respect of the social benefits related to the proposal, the National Planning Policy Framework (the Framework) is clear that Government objectives include an emphasis on housing delivery with the aim of exceeding national housing targets. Paragraph 73 of the Framework also recognises that small sites can make an important contribution to meeting the housing requirement of an area. In this case there would be a net gain of up to 26 dwellings, including a proportion of affordable homes, some of which would be available for first time buyers seeking smaller properties. However, even though smaller homes are an identified need in the Borough, as the scheme would provide a relatively low contribution to the Council's overall HLS, I attribute the social benefits of the scheme no more than moderate weight.
25. Therefore, given my findings on the main issues above, I conclude, even when considered in combination, the economic, environmental and social benefits of the residential scheme do not significantly and demonstrably outweigh the harm I have found.

Conclusions

26. Whilst I have found in favour of the appellant on the second main issue, this does not justify the harm identified in the remaining main issues that is not outweighed by the combined benefits of the scheme.
27. For the reasons given above I conclude that the appeal should be dismissed.

J E Jolly

INSPECTOR