



# MONTAGU EVANS TALKS...

## BEAUTY AND CHARACTER AT APPEAL

BY DR CHRIS MIELE

On 28 September our client's appeal against the refusal of planning permission for a residential led development comprising 78 dwellings and commercial space close to Hampton Court Palace was allowed.

### THE FACTS

The site is occupied by a commercial development, and part of a strip of land lying between Hampton Court Way (the A309) and the railway line from Waterloo. After a long period of pre-application discussion with officers of Elmbridge District Council, we submitted a full application which was recommended for approval but refused in response to local objections which raised concerns, amongst other things, that the proposal was out of character with the area.

The scheme was for a contemporary-styled development, which drew on some traditional forms (pitched roofs and dormers). The local design review panel was supportive. The site was accepted to be in the setting of Hampton Court Palace, but Historic England made no objection. The site was accessible, close to bus routes, Hampton Court Station, a local centre and public open space.

The appeal was by means of written representations, and during the Inspector's consideration of the case, the Government published the revised National Planning Policy Framework (NPPF) (July 2021). This Framework includes significant changes to the design section reflecting the recommendations of the Building Better, Building Beautiful Commission. An important change in the drafting of the Framework design policies was the substitution of the word 'beauty' for 'good design'. The Inspector invited the parties to make representations on the new policy wording, which we did and specifically on the meaning of the word beauty in relation to concepts of local character.

The principle of the land use was accepted. It was also accepted that the Council could not demonstrate a Five Year Housing Land Supply (5YHLS). On the Appellant's behalf we maintained that the tilted balance was engaged because there was no harm to any of the sensitive land identified in 11 d) of the NPPF.

### THE ISSUES FEATURING IN THE DECISION

The Inspector identified six main issues, but for us, advising the Appellant and preparing expert statements, there were two win-lose points.

- The first was whether the proposals (for a relatively dense, contemporary styled development) harmed the character and appearance of the surrounding residential areas, which comprised traditionally designed suburban housing dating from the late Victorian to post-WWII periods.
- The second was whether the proposals caused harm to the significance of the Palace including its landscape. This was critical, since if the Inspector disagreed with our analysis, and identified harm to this asset, then the tilted balance would not be engaged.

### DISCUSSION OF THE ISSUES: CHARACTER, APPEARANCE AND BEAUTY

The LPA and local residents invited the Inspector to dismiss the Appeal on the basis that the proposals had no obvious direct resemblance to traditional suburban housing. The density proposed naturally exceeded the surrounding densities.

The Council and the third parties relied on a local policy promoting contextual design. That policy was supported by a design and character study documenting the residential suburban character of Elmbridge Borough. Local residents made their case emphatic by asserting that the character of the proposals was akin to something found in London.

The Inspector placed little weight on the character Supplementary Planning Document (SPD) because 'the appeal site does not form a cohesive part of the relevant character area. Being set apart, there was no need to apply the design principles in that SPD. He concluded (paragraph 20): 'Because of the visually isolated nature of the site, any design [for a new building] has few design cues to follow and would have very little effect on local character'. For that reason, allegations of harm by reason of the development resembling dense schemes in central London was deemed to be without merit.



He considered the weight to be given to a favourable review from Design SE, noting that Framework 133 'indicates that local planning authorities should have regard to any recommendations made by design review panels'. Whilst accepting that such reviews cannot be determinative, he found 'they can be given significant weight', albeit that weight should be tempered where a panel had not reviewed the final scheme (which was the case here). See paragraph 17.

Overall, he found that the proposals met the terms of Framework 130 because they were visually attractive, albeit he did not think that one aspect of the development, the south elevation, was 'beautiful'. Our submitted note on the July 2021 Framework revisions invited the Inspector to interpret the word 'beauty' as used in the new policy as a cognate for 'well designed' reflecting the advice in the National Design Guide, and so it was applied here.

## HISTORIC ENVIRONMENT

The Inspector also considered Historic England's (HE) response to the application and noted they raised 'no objection'. He interpreted this to mean they identified no harm, because 'If [HE] had felt there was any harm it would have been expected to have said so'. On the facts of this case, and mindful of their response, he gave their position considerable weight, and his finding was against the views of the Gardens Trust which had objected on the basis the proposals intruded in the 'rural setting' of the Palace. See paragraphs 39 and 40.

A significant consideration in the case was the role of intervening tree cover, between the Privy Garden and the site, and across a local park. This cover effectively eliminated any inter-visibility. Objectors argued that because the trees were not in the control of the Appellant, they could not be relied on.

The Inspector did not agree, indicating that 'If this area of woodland were to be lost the effect on the setting of Hampton Court Palace would not be just from this proposal but from many other existing buildings. The effect of these buildings would be no greater than any other in that event.' See paragraphs 42 and 43.

## THE BALANCE

As against the identified lack of beauty in one elevation, the Inspector set the provision of 78 dwellings on previously developed land, with a mix tilted to smaller properties for which there was an identified need, as well as the provision of B1 floorspace. He gave these aspects of the scheme significant weight in social and economic terms. See paragraph 51.

Other asserted benefits received no particular weight – for example including a policy compliant level of affordable housing and other aspects of the scheme which he thought were only what a well-considered development should provide. See paragraphs 52 to 56.

## FINAL COMMENTS

The decision is most helpful in relation to its findings on the first issue, character and appearance, and the meaning of 'beauty' in a policy context.

There are many brownfield sites in sustainable locations, capable of supporting higher residential densities than what one finds in the local area, particularly in suburban areas of London and satellite areas in the SE of England.

The Inspector here applied a 'character based approach', accepting that the particular characteristics of the site in relation to surrounding land, meant that a form of development departing from the prevailing character could be acceptable. In the face of that evidence, a published characterisation study was of no real weight.

The decision demonstrates the benefit of careful characterisation, including through visual impact analysis, in the process of design-led optimisation.

## TALK TO ONE OF THE TEAM



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