

Appeal Decision

Site visit made on 9 November 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 November 2016

Appeal Ref: APP/K3605/W/16/3156265

Charters, Cavendish Road, Weybridge, Surrey KT13 0JN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr D Houghton against the decision of Elmbridge Borough Council.
 - The application Ref 2016/0813, dated 9 March 2016, was refused by notice dated 5 August 2016.
 - The development proposed is a pair of semi-detached houses, one three storey with basement and integral garage and one two storey house with basement and new access from Egerton Road following demolition of existing house.
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Decision

1. The appeal is dismissed.

Procedural matter

2. I have taken the description of development from the appeal form as it most comprehensively reflects the proposal and is also the description used on the Council's decision notice.

Application for costs

3. An application for costs was made by Mr D Houghton against Elmbridge Borough Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues in this appeal are (i) whether the proposal makes adequate provision for affordable housing; and (ii) its effects on the Thames Basin Heaths Special Protection Area (SPA).

Reasons

Affordable housing

5. Policy CS21 of the Elmbridge Core Strategy (2011) (CS) requires new residential development to make provision for affordable housing in support of the Council's aim to deliver at least 1150 affordable homes by 2026. For proposals comprising 1-4 dwellings, the Council seeks a financial contribution equivalent to the cost of 20% of the gross number of units. This would be secured by a planning obligation, ring fenced and spent on off-site provision.
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6. The money collected goes into the Enabling Fund and the available evidence tells me that this has directly contributed towards the provision of 56 affordable homes between April 2011 and March 2016, whilst also being used to support the better use of the borough's existing housing stock. This seems to me to be a pragmatic and effective approach as part of the overall delivery of affordable homes envisaged by Policy CS21.
7. It is clear from the supporting text to Policy CS21, that house prices in Elmbridge are significantly above regional and national averages and that affordability is an issue even for those on above average incomes. It also indicates that the threshold¹ for the provision of affordable housing in the previous development plan was not delivering affordable housing as a proportion of the overall number of homes built.
8. Paragraphs 47 and 50 of the National Planning Policy Framework (the Framework) set out requirements for local planning authorities to meet the full, objectively assessed needs for market and affordable housing and where they have identified that affordable housing is needed, set policies for meeting this on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified.
9. For the above reasons, I consider the Council's approach, set out in Policy CS21, to be consistent with the Framework and it therefore remains the starting point for my decision in respect of affordable housing. I have, however, had regard to whether there are any material considerations that indicate otherwise.
10. The Written Ministerial Statement² of 28 November 2014 (WMS) provides such a material consideration and attracts considerable weight. The WMS sets out the government's intention to prevent affordable housing and tariff style contributions from placing a disproportionate burden on small-scale developers and the consequent adverse effects this has on overall housing supply. The WMS has been translated into updated Planning Practice Guidance (PPG), which states that contributions should not be sought for sites of 10-units or less.
11. Taking this into account, although I have found Policy CS21 to be consistent with the Framework, it conflicts with the WMS and PPG affordable housing threshold. Consequently, national policy indicates that affordable housing should not be required below the stated threshold and there is a presumption that this policy should be followed. Even though the WMS post-dates the CS, the Council argues that the local circumstances are such that an exception to national policy is necessary and that I should weigh this against the identified policy conflict. Given that a relevant policy should not be applied rigidly or exclusively when material considerations indicate that an exception may be necessary, I share the Council's view.
12. The Council has submitted a statement³ in response to the WMS, which sets out to justify its approach to the delivery of affordable housing and which updates the evidence underpinning Policy CS21. The statement highlights that median house prices in the Borough are some of the highest in the country -

¹ 15 dwellings before which a requirement for affordable housing was triggered in residential developments

² House of Commons: Written Ministerial Statement (HCWS50) 28 November 2014

³ *Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the consideration of house prices, affordability and the significance of small sites in Elmbridge in relation to the Government's position*

more than double the national average, and that they have seen a steep rise in recent years, particularly in comparison to neighbouring authority areas. Furthermore, as of June 2015, the lowest quartile incomes were 21.5 times lower than the lowest quartile house prices in the Borough. Overall, the available evidence indicates that Elmbridge is the 4th most difficult place in the country to get a step onto the property ladder

13. The Council accepts the situation in Elmbridge is not unique and this has been highlighted by the appellant. However, even taking into account that a similar situation might occur elsewhere in the country, it does not mean that it is widespread. Nevertheless, regardless of this, it appears to me that there is a specific and acute problem to address in Elmbridge with regard to the availability of affordable housing and the delivery of at least 1150 such homes by 2026.
14. Between 2011 and 2015 there were 116 permissions related to schemes of 1 to 4 homes. Of these, 90% paid the total affordable housing contribution with a small percentage paying a reduced amount and 1 scheme paying nothing at all. It is therefore clear that small sites are making a significant contribution towards affordable housing delivery in Elmbridge and that the Council takes a flexible approach where the payment of the full contribution would make a scheme unviable. This approach accords with Framework paragraph 205, which states that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.
15. I have no substantive evidence before me to suggest that the application of Policy CS21 is placing an unreasonable or disproportionate burden on developers of small-scale schemes. Moreover, the appellant has not provided anything that leads me to conclude that viability is an issue in this case.
16. To conclude on this main issue, given the acute and pressing need for affordable housing in the Borough and the important contribution of small-scale schemes in its delivery, I do not consider that the WMS outweighs the development plan in this instance. I consider the affordable housing contribution sought satisfies the 3 tests⁴ in Regulation 122(2) of the Community Infrastructure Regulations 2010 (the CIL Regulations) and have determined the appeal in accordance with the development plan. Consequently, as there is no executed planning obligation before me that would make adequate provision for affordable housing, the proposal thereby runs counter to Policy CS21 and the Council's Developer Contributions Supplementary Planning Document (2012) (SPD).
17. My findings, above, are consistent with the Inspector's decision in relation to an appeal⁵ for a proposal at Claygate, also within Elmbridge Borough. It is important to note that this decision post-dates the legal opinions of both parties submitted in relation to the current appeal and is a material consideration to which I attach substantial weight.

⁴ Necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related to it in scale and kind

⁵ Ref. APP/K3605/W/16/3146699

SPA

18. There is no dispute between the parties in respect of the provision of a financial contribution to Strategic Access Management Measures (SAMB) to mitigate the effects of the proposed development on the Thames Basin Heaths SPA.
19. Having reviewed the evidence, I am satisfied that the contribution of £1,803 as set out in the submitted Unilateral Undertaking (UU) meets the tests of the Regulations 122(2) and 123 of the CIL Regulations. I note the Council's concerns relating to the date of the register of title. However, this has been rectified by the appellant and I consider the UU to be an effective mechanism for mitigating the effects of the proposal on the SPA in accordance with CS Policy CS13 and the Developer Contributions SPD.

Conclusion

20. Whilst I have found that the proposal would not result in harm to the Thames Basin Heaths SPA, it would not make adequate provision for affordable housing.
21. For the above reasons and having had regard to all other matters raised, the appeal does not succeed.

Hayden Baugh-Jones

Inspector