
Appeal Decision

Site visit made on 7 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: 25th November 2016

Appeal Ref: APP/K3605/W/16/3156943

29 Burwood Park Road, Hersham, Walton-on-Thames KT12 5LH

- 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 Runnymede Homes (Developments) Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2016/0122, dated 13 January 2016, was refused by notice dated 27 May 2016.
 - The development proposed is 4 detached 2 storey houses with integral garages, plots 1 and 3 with rooms on the roof and dormer windows.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The description of development given in the heading above is the one that appears on the Council's decision notice and is given on the appeal form.

Main Issue

3. The main issue in this appeal is the effect of the proposal on a protected Corsican Pine.

Reasons

4. The Corsican Pine is a mature specimen located towards the appeal site's northern boundary. The tree is protected by Tree Preservation Order EL 06/11 and lies within a mature and verdant residential area. Whilst there are many other mature trees in the general surroundings of the appeal site, many of which are also protected, the Pine is a stand out feature due to its evergreen nature and position relative to Burwood Park Road. The tree can be seen from a number of public vantage points and it therefore makes a very significant contribution to the area's character and appearance.
5. The appeal proposal comprises the demolition of an existing property, on what is an uncharacteristically large plot, to facilitate the erection of four substantial detached houses. A previous scheme on the site was refused by the Council and dismissed at appeal¹ and whilst I do not have the full details of the Inspector's decision before me, it is clear that the proposal was rejected on the basis of the effects on the Pine resulting from its relationship to plot 1.

¹ Ref. APP/K3605/W/15/3130075

6. Notwithstanding that the current proposal is materially different to the scheme considered by the previous Inspector, the Pine would still have a close relationship to the property forming plot 1 and I observed a large amount of dropped cones and needles, some of which had fallen beyond the extent of the tree's canopy. It therefore seems likely to me that a substantial amount of debris would fall on the proposed driveway given its proximity to the Pine.
7. Moreover, the appellant's Arboricultural Assessment² that details the tree's canopy spread and which is reflected on the submitted plans, is dated January 2016. Given that there has been a growing season since the document's preparation and taking this into account with my own observations on site, I cannot be certain that the figures presented are still accurate. Consequently, the relationship between the Pine and the proposed dwelling may not, in reality, reflect what is shown on the submitted plans.
8. The height and position of the Pine relative to the front of the dwelling would cast a significant amount of shade, which would exacerbate the shade cast in front of the dwelling due to its orientation on the site. I note the appellant's comments regarding the use of the proposed study and one of the first floor bedrooms. However, a study might be used for long periods, particularly in the event that an occupant worked from home and thus comprises a habitable room requiring a good amount of natural light. Furthermore, the proximity of the tree's canopy would give it a dominant appearance and there would be a sense of it being almost directly outside the bedroom window.
9. Whilst none of this necessarily means that the removal of the tree would be justified and the Council could refuse any application for works to the Pine, BS 5837:2012 – Trees in relation to design, demolition and construction advises that the perceptions of future occupiers can lead to pressure for inappropriate tree works, including removal, which the Council would have difficulty in resisting. In addition to this, I note that the tree is estimated to be about 20m tall and given that this species can reach twice that height, it therefore has the potential for further significant growth. This would inevitably bring the tree's canopy into closer proximity to the house and the driveway, bringing with it the likely requirement for frequent remedial pruning. In my view, this would result in an adverse, long term effect on the shape and balance of the protected Pine.
10. Whilst I accept that potential purchasers of the property would be aware of the tree's presence and its protected status, it cannot be a given that they would fully appreciate the likely extent of its future growth. I recognise this does not necessarily guarantee that applications for works to the Pine would be forthcoming. However, debris dropping on parked cars, the proximity of the canopy to the building's roof and the effects on the amount of light reaching the front of the property are likely to lead to considerable pressure being put on the Council for works, including felling that would ultimately have an adverse effect on the character and appearance of the area. Consequently, I consider there would be inadequate space between the Pine and the dwelling to allow for the tree's ultimate height and canopy spread or for the avoidance of seasonal nuisance.
11. I note that the previous Inspector did not consider the effects of the type I have referred to above, to be sufficient grounds for withholding permission. However, the submitted plans show that although the driveway to plot 1 and

² Broad Oak Tree Consultants Limited Revised Arboricultural Implications Assessment dated 12 January 2016

the dwelling itself would mostly be outside the identified Root Protection Area (RPA) of the Pine there would nonetheless be some incursion into it from the edge of the driveway and parts of the dwelling.

12. I am mindful that a number of outbuildings and areas of hardstanding currently sited under the tree's canopy would be removed as part of the proposal, which would generally benefit the Pine. I also recognise that the areas of RPA incursion would be on areas within the site where there are clear indications that the ground has been disturbed for the purposes of fruit and vegetable growing. However, the site has clearly not been used for such purposes for some time and the tree's roots may now have penetrated into these areas. I note that no soil analysis has been undertaken or trial holes dug to establish the precise extent of the existing below ground conditions.
13. When all of the above is taken into account, I consider that it points to an overall un-harmonious relationship between the protected Pine and proposed plot 1 that would harm the long term retention of this significant and important tree.

Other matters

Affordable housing

14. The appellant has submitted a Unilateral Undertaking (UU) that makes provision for a financial contribution of £171, 922.13 towards affordable housing. However, I must have regard to the Written Ministerial Statement³ of 28 November 2014 (WMS), which 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. In light of this, I have firstly assessed whether an obligation remains necessary and, if it does, whether any benefits therefrom outweigh the harm I have identified in relation to the main issue. I turn to these matters now.
15. 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.
16. 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.
17. 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

³ House of Commons: Written Ministerial Statement (HCWS50) 28 November 2014

indicates that the threshold⁴ 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.

18. 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.
19. 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. However, the WMS provides a material consideration that attracts considerable weight.
20. 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. However, given that a relevant policy should not be applied rigidly or exclusively when material considerations indicate that an exception may be necessary, for the reasons set out below, I share the Council's view that even though the WMS post-dates the CS, the local circumstances are such that an exception to national policy is justified.
21. The Council has submitted a statement⁵ 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 - 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. It therefore 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.
22. 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 only 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,

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

⁵ *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*

wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

23. 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 tests⁶ 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, the obligation provided by means of the UU accords with Policy CS21 and the Council's Developer Contributions Supplementary Planning Document (2012) (SPD).
24. My findings, above, are consistent with the Inspector's decision in relation to an appeal⁷ for a proposal at Claygate, also within Elmbridge Borough. This is a material consideration to which I attach substantial weight.
25. Having been given the opportunity to comment on the need for the obligation in light of the WMS and PPG, the appellant has not sought to contest the Council's evidence. The affordable housing contribution that the UU would secure therefore constitutes a benefit of the appeal scheme that I have weighed in the overall planning balance. However, the principle of a development on the site has already been established by the previous appeal decision and my findings of harm in relation to the protected Corsican Pine do not preclude a scheme from coming forward on the site. Consequently, whilst the affordable housing contribution would be considerable, I take the view that it would not outweigh the harm identified in respect of the main issue.
26. On a final matter, the appellant has put to me that the proposal would add to the general availability of housing in the area in accordance with CS Policy CS2. I do not disagree and consider the proposal represents a more efficient use of the land. However, this is not sufficient in itself or in combination with the benefits of the planning obligation, to lead me away from my overall conclusion.

Conclusion

27. For the above reasons and having had regard to all other matters raised, including those by interested parties, the appeal does not succeed.

Hayden Baugh-Jones

Inspector

⁶ 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

⁷ Ref. APP/K3605/W/16/3146699