
Appeal Decision

Site visit made on 17 January 2017

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 2 February 2017

Appeal Ref: APP/K3605/W/16/3159613

Kings Yard, Kings Road, Long Ditton, Surbiton KT6 5JE

- 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 Berbridge against the decision of Elmbridge Borough Council.
 - The application Ref 2016/1709, dated 23 May 2016, was refused by notice dated 22 August 2016.
 - The development proposed is one pair of two-storey, semi-detached houses following demolition of existing office building set in builder's yard.
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Decision

1. The appeal is dismissed.

Main Issue

2. This is whether the proposed development should provide a financial contribution to affordable housing.

Reasons

3. Because of the absence of any contribution to provide affordable housing, the Council refused the application. The appellant has not offered any financial appraisal of the proposal to suggest that the contribution sought by the Council would make the scheme unviable, but refers to the Court of Appeal judgment¹ of 11 May 2016 in respect of a challenge to the Written Ministerial Statement² of 28 November 2014 (WMS). The WMS stated that *'for sites of 10 units or less....affordable housing and tariff style contributions should not be sought'*, and the Court upheld that this should be considered as national planning policy defining the specific circumstances where contributions for affordable housing planning obligations should not be sought from small scale development. The Planning Practice Guidance has been amended to reflect the judgment.
4. My determination, as required under section 38(6) of the Planning and Compulsory Purchase Act 2004, and unless material considerations indicate otherwise, must be in accordance with the development plan, in which Policy CS21 of the Elmbridge Core Strategy 2011 is relevant to the issue in this appeal. It sets out the Council's aim to provide at least 1,150 affordable homes between 2011 and 2026, by requiring all proposals where there will be a net increase in dwellings to contribute to the provision of affordable housing.

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

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

In residential development of between 1 and 4 dwellings it requires a financial contribution to affordable housing, equivalent to the cost of 20% of the gross number of dwellings, which it seeks by a legal agreement.

5. There is nothing to suggest that Policy CS21 is inconsistent with the National Planning Policy Framework (the Framework), which it predates, or that it should be accorded less weight. Indeed, the Framework sets out that where local planning authorities have identified that affordable housing is needed, they should set policies for meeting this need (paragraph 50, bullet 3), which is what the Council has done. Its statement describes an acute problem of housing affordability in the Borough, to the extent that in 2015, the lowest quartile incomes in Elmbridge were 21.5 times below the lowest quartile house prices, making it the least affordable authority for first time buyers outside London.
6. Moreover, since the Core Strategy's adoption, 50% of homes built have been on sites of less than 10 units. From 2011 to 2016, 56 affordable homes were built in the Borough and a further 132 were provided by funding schemes for downsizing and re-letting. The contributions from small sites have made a significant contribution to the pressing need for the Council to meet its aim in Policy CS21 to provide affordable homes. There is no evidence that suggests the requirements of Policy CS21 are placing an unreasonable burden on developers or rendering developments unviable, and the Council's statement demonstrates that the policy is sufficiently flexible to take account of different market conditions.
7. I appreciate the intention of the WMS was to ensure that financial contributions should not become a disproportionate burden to small developers and thereby frustrate housing supply; it is a material consideration to which I attach great weight. However, it does not, given the circumstances of this proposal for small, infill redevelopment and the acute and substantial need for affordable housing in the Borough, and the significance of small sites in achieving the aim of Policy CS21, outweigh the development plan. Accordingly, the need for the contribution sought by the Council arises from the proposal and satisfies the tests in Regulation 122(2) of the Community Infrastructure Regulations 2010 and paragraph 204 of the Framework.
8. The appellant draws my attention to an appeal decision³ in June 2016 for 9 dwellings in Elmbridge in which the Inspector attributed greater weight to the WMS than Policy CS21, and concluded that a contribution to affordable housing was unnecessary. However, the Council refers to three, more recent appeal decisions⁴ in July, October, and November 2016 concerning schemes for less than 4 dwellings in the Borough, which concluded to the contrary. My findings above are consistent with the most recent decisions by Inspectors in like cases, in which I find the determination of this case in a like manner is a material consideration to which I attach substantial weight.
9. For the reasons above, I conclude that the proposed development should provide a financial contribution to affordable housing, the absence of which would place the proposal in conflict with Policy CS21.

³ Appeal Ref: APP/K3605/W/16/3142140 June 2016

⁴ Appeal Ref: APP/K3605/W/16/3146699 July 2016

Appeal Ref: APP/K3605/W/16/3154395 October 2016

Appeal Ref: APP/K3605/W/16/3156943 November 2016

Other Matters

10. Whilst I have considered concerns from neighbours which include access for emergency vehicles to the development, highway safety, and overlooking, given my findings on the main issue above, these have not led me to a different overall conclusion.

Conclusion

11. While the development would provide a benefit of two houses to local housing supply in accordance with paragraph 47 of the Framework which anticipates a significant boost to the supply of housing, this is outweighed by the lack of any contribution to affordable housing, which would be in conflict with the development plan. For the reasons given above, and taking account of all matters raised, I conclude that the appeal should be dismissed.

Patrick Whelan

INSPECTOR