
Appeal Decision

Site visit made on 6 February 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 03 March 2017

Appeal Ref: APP/K3605/W/16/3161462
18 Springfield Lane, Weybridge KT13 8AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr S Steen of Birchwood Homes Limited against the decision of Elmbridge Borough Council.
 - The application Ref 2016/1047, dated 30 March 2016, was approved on 15 July 2016 and planning permission was granted subject to conditions.
 - The development permitted is detached two storey building with rooms in the roof space, comprising a social club at ground floor level and four flats following partial demolition of existing building (Outline application for access, appearance, layout and scale).
 - The conditions in dispute are No 12 and 13 which state that:
 - 12) A full asbestos survey must be carried out prior to demolition of the building and a report submitted to the Local Planning Authority. If asbestos is identified, a safe working method for asbestos removal from the buildings to be demolished, must be submitted to the Environmental Heath and Licensing Division of the Council prior to works commencing to ensure no release of asbestos fibres to air.
 - 13) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
 - The reasons given for the conditions are:
 - 12) To ensure that the proposed activities at the development will not cause pollution of the environment or harm to human health in accordance with the National Planning Policy Framework and policy DM5 of the Council's Development Management Plan of 2015.
 - 13) In order to ensure that the development does not adversely impact upon buried archaeological evidence in accordance with policy DM12 of the Development Management Plan of 2015 and the National Planning Policy Framework 2012.
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Decision

1. The appeal is allowed and the planning permission Ref 2016/1047 for a detached two storey building with rooms in the roof space, comprising a social club at ground floor level and four flats following the partial demolition of the existing building (Outline application for access, appearance, layout and scale) at 18 Springfield Lane, Weybridge KT13 8AW granted on 15 July 2016 by Elmbridge Borough Council, is varied by deleting condition 12 and deleting condition 13 and substituting that condition with the following condition:
 - 13) No development other than the removal of existing structures above ground level shall take place until a scheme of archaeological investigation has been submitted to and approved in writing by the local
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planning authority. Development involving below ground level works shall be implemented in accordance with the approved scheme of archaeological investigation.

Background and Main Issues

2. Of the conditions imposed on the planning permission this appeal seeks the deletion of condition 12 (asbestos survey) and the variation of condition 13 (archaeological investigation). The variation to condition 13 sought would enable above ground level works to be undertaken prior to the details for the archaeological investigation being approved by the Council.
3. The main issues are whether: condition 12 is relevant to planning and necessary in the interests of the prevention of pollution or harm to public health; and condition 13 is reasonable and necessary, having regard to the archaeological interest of the area.

Reasons

Condition 12 – asbestos survey

4. The reason for condition 12's imposition concerns the avoidance of pollution of the environment and the protection of human health. This condition's imposition arises from the 'precautionary' advice provided by the Council's environmental health department.
5. The appellant has submitted that no evidence has been provided demonstrating that asbestos is present in the structures to be demolished. It has also been submitted that the demolition contractor would be required to undertake its works '... under the current regulations which impose a legal duty to manage asbestos'.
6. The Council has not disputed the appellant's view that there would be a requirement under other legislation to manage asbestos during the construction phase of this development. On the available evidence I have no reason to believe that the appellant's explanation of the regulations relating to the management of asbestos is incorrect.
7. In relation to the use of planning conditions the Planning Practice Guidance (the PPG) advises that 'Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways' consent)¹. The available evidence indicates that other legislative controls are available to address the management of asbestos and I therefore conclude that condition 12's imposition amounts to the duplication of a control that is available outside the planning legislation. Condition 12 is therefore not relevant to planning and is unnecessary, having regard to the tests for imposing conditions referred to in paragraph 206 of the National Planning Policy Framework (the Framework) and the PPG².
8. Given the abovementioned conclusion I find it appropriate for the planning permission to be granted without condition 12's imposition and that the deletion of this condition would not conflict with Policy DM5 of the Elmbridge Local Plan Development Management Plan of 2015 (the DMP) or

¹ Table of Key questions appended to Paragraph: 004 Reference ID: 21a-004-20140306

² Paragraph 003 Reference ID: 21a-003-20140306 and Paragraph: 004 Reference ID: 21a-004-20140306

paragraphs 120 and 122 of the Framework. That is because both the need to establish whether or not the site is subject to contamination arising from the presence of asbestos and the need to provide remediation for asbestos, if it is present, are matters controlled by non-planning legislation.

Condition 13 - archaeology

9. The reason for condition 13's imposition is to ensure that the development does not adversely impact on any buried archaeological evidence. This condition's imposition was recommended by Surrey County Council's heritage conservation team, given the site's location within an 'area of high archaeological potential'.
10. There is no dispute that condition 13 is needed and given the site's location within an area of archaeological potential I consider this condition is necessary. The appellant's concern with condition 13 relates to the timing of the submission of the details required for its discharge. Condition 13 precludes the commencement of any development until a programme of archaeological work (investigation) has been approved by the Council. This condition therefore prohibits any above ground level works, such as the demolition of the building above the level of its foundations. Condition 13 is a pre-commencement condition and Regulation 35 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that clear and precise reasoning is given as to why any pre-commencement condition is necessary.
11. The reason for condition 13's imposition does not explain why any above ground level works should be precluded until the scheme of archaeological investigation has been approved by the Council. I consider that above ground level activities, such as demolition works, could be undertaken without the integrity of any buried archaeology being disturbed and the Council has not provided any evidence to the contrary.
12. I therefore conclude that condition 13 should be varied to enable above ground level works to be undertaken prior to the details for the scheme of archaeological investigation being submitted to and approved by the Council. That variation to condition 13 would accord with Policy DM12 of the DMP and section 12 (Conserving and enhancing the historic environment) of the Framework because it would still be possible for the site's archaeological significance to be assessed in association with the implementation of the development.

Conclusions

13. For the reasons given above I conclude that condition 12 should be deleted and that condition 13 should be varied to enable above ground level works to be undertaken in advance of a scheme of archaeological investigation being submitted to and approved by the Council.

Grahame Gould

INSPECTOR