
Appeal Decision

Site visits made on 6 and 15 February 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 21st April 2017

Appeal Ref: APP/K3605/W/16/3163555

Land at 72 Portmore Park Road, Weybridge KT13 8HG

- 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 Nick Daley of Concept Developments against the decision of Elmbridge Borough Council.
 - The application Ref 2016/2871, dated 26 August 2016, was refused by notice dated 3 November 2016.
 - The development proposed is the erection of 4 flats.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the development would make adequate provision for affordable housing.

Reasons

3. The development would involve the construction of a three storey block, which would accommodate four flats, and it would be situated within the side garden of 72 Portmore Park Road (No 72). Planning permission for an identical development was granted permission by the Council under file reference 2016/1462 on 22 July 2016 (the extant permission). In connection with the extant permission the appellant has entered into an agreement, under Section 106 of the Act, obligating it to make a financial contribution towards the provision of off-site affordable housing. No such obligation has been entered into in association with the appealed application.
 4. In the absence of the appellant agreeing to make an affordable housing contribution the appealed application was refused permission because of conflict with Policy CS21 of the Elmbridge Core Strategy of 2011 (the Core Strategy) and the related Developer Contributions Supplementary Planning Document of 2012. Policy CS21 aims to provide 1,150 affordable homes between 2011 and 2026 through a combination of on and off development site provision. For residential schemes of between one and four dwellings (smaller site schemes) Policy CS21 seeks financial contributions from developers, equivalent to the cost of 20% of the gross number of dwellings to be built, for the provision of off-site affordable housing.
 5. There is no dispute that the current scheme conflicts with Policy CS21 because of the absence of a contribution. However, the Government has
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introduced thresholds, relevant to a location such as No 72, whereby for schemes of ten dwellings or less or which have a floorspace of less than 1,000 square metres, affordable housing contributions should not be sought. This national policy was introduced by a Written Ministerial Statement (WMS) on 28 November 2014 and the Planning Practice Guidance (the PPG) was revised to take account of the WMS. The WMS explains, amongst other things, that the purpose of exempting smaller scale developments from the need to contribute towards the provision of affordable housing is to ‘... tackle the disproportionate burden of developer contributions on small-scale developers ...’. The WMS was subsequently subject to a legal challenge, however, the Court of Appeal found in the Government’s favour on 11 May 2016¹ and the provisions of the WMS and the PPG² have been reinstated.

6. Planning law requires that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise³ and Policy CS21 of the Core Strategy is therefore the starting point for the determination of this appeal. However, I consider that the Government’s policy relating to the circumstances when affordable contributions should or should not be sought, as stated in the WMS and the PPG, is a material planning consideration of great weight that I must also have regard to.
7. The Council has not submitted an appeal statement. However, it is clear from the Council’s officer report and a statement that the Council has prepared relating to the WMS⁴ (the WMS note), both of which can be taken to represent the Council’s position on the appeal and to which the appellant has had the opportunity to respond, that it considers that contributions for affordable homes from smaller site schemes should continue to be sought under Policy CS21. That is because the Council considers that there is a continuing need for affordable homes to be provided, given affordability issues for first time home owners in Elmbridge. The Council’s WMS note further explains smaller site schemes, as a source of funding for affordable housing, are particularly important because of the limited availability of larger development sites in Elmbridge.
8. The content of the Council’s WMS Note suggests that there is an on-going need for affordable housing to be provided in Elmbridge. Given that need, for a non-Policy CS21 compliant scheme to be viewed as being acceptable there would need to be a material consideration of great weight to justify a departure from Policy CS21 being made. Applying the WMS’s ten units or less threshold is a material consideration that might warrant such a departure. However, the Court of Appeal’s judgement relating to the WMS has clearly established that its policy measures should not automatically be applied without regard being paid to the full circumstances of any given case, including the provisions of development plan policies.
9. The appellant contends this development should be exempted from any requirement to make an affordable housing contribution because of the

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

² Paragraph: 031 Reference ID: 23b-031-20161116

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

⁴ Included as Appendix 5 to the appellant’s appeal statement

provisions of the WMS. However, the appellant has not sought to argue that there is any issue with this development's viability and thus a need to tackle a disproportionate burden connected with the making of an affordable housing contribution. In that regard it is significant that the appellant entered into a Section 106 agreement obligating it to make an affordable housing contribution in connection with the scheme subject to the extant permission, a permission that postdates the WMS's reinstatement.

10. There was only around one month between the extant permission being granted and the second application being submitted to the Council. Given the immediacy of those events, were there any underlying viability concerns then I would have expected them to have been addressed either prior to the extant permission being granted or as part of the second application's submission. The appellant has offered no evidence to suggest that what it was promoting originally was not viable and I therefore consider that it is eminently reasonable to assume that that original proposal, including the Section 106 commitment, would represent a viable scheme in the developer's view. The available evidence does not demonstrate that this development needs to be exempted from the requirement to make an affordable housing contribution.
11. The appellant contends that the Council cannot currently demonstrate a five year supply of deliverable housing sites (HLS) and, because Policy CS21 is a relevant policy for the supply of housing, that it should not be considered as being up-to-date for the purposes of paragraph 49 of the Framework. However, even if I was to accept that there is currently no HLS, were this appeal to be successful that would not alter the HLS position in the Council's area. That is because there is an extant permission for a development of four dwellings at this site, which the available evidence suggests is deliverable.
12. I therefore conclude that this development would inadequately provide for affordable housing in the absence of an affordable housing contribution being made. That inadequacy would give rise to an unacceptable conflict with Policy CS21 of the Core Strategy. Given the on-going need for affordable housing referred to in the Council's WMS note I consider that Policy CS21 is consistent with the parts of the Framework that promote the provision of affordable housing, most particularly paragraphs 7, 17 (the third core planning principle), 47 and 50 (the third bullet point). The absence of an affordable housing contribution would therefore give rise to conflict with the previously mentioned paragraphs in the Framework.
13. I recognise that my conclusion with respect to this issue is a different one to that which has arisen in the determination of the appeals drawn to my attention by the appellant. I do not have all the information relevant to these other appeals and cannot, on the information before me, reconcile the apparent differences in the approaches that have been taken. However, each decision is dependent on the evidence presented and the conclusion I have reached is based on the evidence before me.

Conclusion

14. For the reasons given above the appeal is dismissed.

Grahame Gould

INSPECTOR