
Appeal Decision

Site visit made on 13 February 2017

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

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

Decision date: 11th May 2017

Appeal Ref: APP/K3605/W/16/3163557

Princes Cottages, Leatherhead Road, Oxshott KT22 0EX

- 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 Ms Andrea Larter against the decision of Elmbridge Borough Council.
 - The application Ref 2016/2230, dated 7 July 2016, was refused by notice dated 25 October 2016.
 - The development proposed is demolition of pair of cottages and erection of four semi-detached houses.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of pair of cottages and erection of four semi-detached houses at Princes Cottages, Leatherhead Road, Oxshott KT22 0EX in accordance with the terms of the application, Ref 2016/2230, dated 7 July 2016, subject to the conditions set out in the Schedule to this decision.

Application for costs

2. An application for costs was made by Ms Andrea Larter against Elmbridge Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether the financial contribution sought by the Council towards affordable housing is reasonable and necessary to make the proposal acceptable in planning terms.

Reasons

4. The proposal would result in a net increase of two dwellings following the demolition of the pair of semi-detached houses currently on the site.
 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. The Council's Developer Contributions Supplementary Planning Document (2012) (SPD) sets out amongst other things, the Council's approach to seeking affordable housing contributions. In respect of affordable housing, the SPD
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- hangs off Policy CS21. The appellant is unwilling to provide a planning obligation.
6. 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.
 7. Paragraph 50 of the National Planning Policy Framework (the Framework) says that where local planning authorities have identified that affordable housing is needed, they should set policies for meeting this on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified. In this respect, the Council's approach set out in Policy CS21 appears to be generally consistent with paragraph 50 of the Framework.
 8. However, paragraph 47 of the Framework says that to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed need (OAN) for market and affordable housing in the housing market area. Further, they should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their requirements.
 9. The housing numbers in the CS (set out in Policy CS2) are based on a Strategic Housing Market Assessment that pre-dates the Framework and on figures derived from the now revoked Regional Spatial Strategy. Accordingly, I cannot ignore the fact that they do not reflect the housing needs identified in the latest Housing Market Assessment (2016)² (SHMA), which identifies an OAN of 474 dwellings per year, which is more than double the CS target of 225 dwellings per year. Although this does not necessarily mean that the new OAN figures will be directly transposed into development plan policy, because they must be indicative of current need, the 2016 SHMA attracts significant weight. I therefore consider that Policy CS21 pulls against the Framework when taken as a whole and whilst the development plan remains the starting point for my decision, I give Policy CS21 limited weight.
 10. In addition to this, the Written Ministerial Statement³ of 28 November 2014 (WMS) provides a material consideration that 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 development on sites comprising 10-units or less.
 11. Taking this into account, Policy CS21 is also inconsistent 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.

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

² Kingston Upon Thames and North East Surrey Authorities Strategic Housing Market Assessment (2016)

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

12. The Council has produced a statement⁴ in response to the WMS, which seeks to justify its approach to the delivery of affordable housing and which updates the evidence underpinning the affordable housing requirements of 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. I have no reason to doubt any of this and accept that there is a specific and acute problem to address in Elmbridge with regard to the availability of affordable housing and its delivery over the plan period to 2026.
13. Nevertheless, in light of the empirical evidence before me and the limited weight carried by Policy CS21, I do not consider that the relevant provisions of the development plan outweigh the Framework requirement to boost significantly the supply of housing, which is given support by the objectives of the WMS and PPG. This justifies a decision being made other than in accordance with the development plan and the SPD. Accordingly, a planning obligation in respect of affordable housing is not reasonable or necessary to make the development acceptable in planning terms.
14. I am aware that there have been a number of appeal decisions within Elmbridge Borough that have dealt with the issue of affordable housing provision. In particular, I note that there is some divergence of opinion set out therein. However, whilst these decisions are material considerations, I have made my decision in light of the particular circumstances of this case and on the basis of the evidence before me.

Conditions

15. I have specified the relevant drawings as this provides certainty. In order to ensure the appearance of the development is satisfactory an external materials condition is necessary. A condition is imposed requiring the installation of obscure glazing to some of the first floor windows in order to protect mutual privacy of neighbouring and future occupiers. I have imposed a number of related conditions with regard to the retention and protection of existing trees. These conditions are based on those suggested by the Council but in amended form in the interests of brevity and compliance with the Framework and PPG.

Conclusion

16. For the above reasons and having had regard to all other matters raised, the appeal succeeds.

Hayden Baugh-Jones

Inspector

⁴ *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*

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Survey Drawing No PC2 P1; Site Plan etc Drawing No PC2 P2 Rev B; The Houses, Drawing No PC2 P3 Rev B; Houses C & D (Plans Only) Drawing No PC2 P4; Tree Protection Plan Drawing No TPP/APA/AP/2016/114.
- 3) No development above slab floor level shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) The buildings hereby permitted shall not be occupied until the windows at first floor on the side elevations have been fitted with obscured glazing, and no part of that/those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 5) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) has been carried out in accordance with Drawing No TPP/APA/AP/2016/114 and the appropriate working methods (the arboricultural method statement) in accordance with the Arboricultural report by APArboriculture dated 6 July 2016 Reference APA/AP/2016/114. The arboricultural method statement shall be adhered to for the duration of any site clearance, preparatory work and construction works and until all plant, machinery and other materials have been removed from the site.
- 6) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the occupation of the buildings for their permitted use, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority.
- 7) If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority.

In this condition and in conditions 5 and 6, "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.