The Planning Inspectorate

Appeal Decision

Site visit made on 17 May 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 30th May 2017

Appeal Ref: APP/K3605/W/17/3167461
Claremont House, 34 Molesey Park Road, Hersham, Walton-on-Thames KT12 4RQ

- 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 M Schwartz of Northedge Limited against the decision of Elmbridge Borough Council.
- The application Ref 2016/2280, dated 11 July 2016, was refused by notice dated 12 December 2016.
- The development proposed is the replacement of existing roof structure to form six, one bedroom flats and courtyard garden, complete with shared ground level garden, refuse and recycling stores and cycle storage.

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 new roof for Claremont House (No 34) to accommodate six, one bedroom flats. The ground floor of No 34 is in commercial occupation, while its first floor is occupied as eight flats.

4. Policy CS21 of the Elmbridge Core Strategy of 2011 (the Core Strategy) and the related Developer Contributions Supplementary Planning Document of 2012 (the SPD) address affordable housing provision. Policy CS21 aims to provide 1,150 affordable homes between 2011 and 2026 via a combination of on and off development site provision. For residential schemes of between six and fourteen dwellings (smaller site schemes) to be compliant with Policy CS21 the level of affordable housing provision should be 30% of the gross number of dwellings within a development. The SPD advises that for a scheme of six dwellings the provision of affordable housing should take the form of one on-site unit, with a financial contribution being required for off-site provision equivalent to 0.8 of a dwelling.

5. For this development to be compliant with Policy CS21 and the SPD the appellant has indicated that the financial contribution would need to be £71,194.22, based on an anticipated sales value of £200,000 for each of the

new flats. The appellant has not entered into a Section 106 agreement or unilateral undertaking obligating it to provide an affordable housing unit on-site and to make the aforementioned financial contribution. There is therefore conflict with Policy CS21.

6. However, the Government has introduced thresholds, relevant to a location such as No 34, 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 2016[1] and the provisions of the WMS and the PPG[2] have been reinstated.

7. Planning law requires that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise[3] 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.

8. The Council has prepared a note relating to the WMS[4] (the WMS note), in which it explains that it considers that affordable housing units and contributions for affordable homes from smaller site schemes should continue to be sought under Policy CS21. That is because the Council considers there is a continuing need for affordable homes to be provided, given affordability issues for first time home owners in Elmbridge, with the average and lower quartile house prices respectively being stated to be £700,000 and £285,000 in 2015. The Council's WMS note further explains smaller site schemes, as a source for securing affordable housing provision, are particularly important because of the limited availability of larger development sites in Elmbridge.

9. 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 concerning the WMS has clearly established that this policy measure should not automatically be applied without regard being paid to the full circumstances of any given case, including the provisions of development plan policies.

[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

10. The appellant contends this development should be exempted from any requirement to make an affordable housing contribution because of the provisions of the WMS. However, the appellant has not provided any viability evidence demonstrating that meeting the requirements of Policy CS21 and paying the mandatory Community Infrastructure Levy contribution of £38,000 would place a disproportionate burden on this development. The appellant's case instead focuses on what the proposed flats might sell for without any evidence being submitted relating to the development's costs (land, construction, finance etc). With respect to the provision of the on-site affordable dwelling the appellant has expressly stated that '… the loss of one unit is not welcomed for reasons other than viability' with the concern about its provision being how it could be managed in isolation by a registered social landlord[5].

11. In support of its case the appellant also contends that the selling prices for the flats would make them more affordable than other properties in Elmbridge. While the asking prices for the flats might well be lower than other dwellings in Elmbridge, in the absence of a planning obligation all of the flats within the development could only be considered as being open market dwellings. I consider the evidence before me has not demonstrated that there is a need to tackle a disproportionate burden relating to the making of an affordable housing contribution. An exemption from Policy CS21's requirements has therefore not been demonstrated to be necessary.

12. I therefore conclude that this development would inadequately provide for affordable housing in the absence of a contribution for such housing 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 National Planning Policy Framework (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 Framework's previously mentioned paragraphs.

13. I recognise that my conclusion with respect to this issue is a different one to that which has arisen in the determination of a number 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. While I have taken account of the WMS, in the particular circumstances of this case it does not outweigh the conflict with the development plan that I have identified. The appeal is therefore dismissed.

Grahame Gould

INSPECTOR

[5] Paragraphs 3.62 and 3.63 of the appellant's appeal statement