
Appeal Decision

Site visit made on 21 March 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 13 June 2017

Appeal Ref: APP/K3605/W/16/3165031

Land to the rear of 47-49 Bridge Road, East Molesey KT8 9ER

- 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 Clandon Property Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2016/1555, dated 12 May 2016, was refused by notice dated 9 November 2016.
 - The development proposed is the demolition of a single storey workshop and the erection of a bespoke designed 2 bedroom mews house.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Following the submission of the planning application and prior to the Council reaching a decision, revised plans were submitted on 1 September 2016. The Council has confirmed that these plans were subject to a public re-consultation exercise. I will deal with the appeal on the basis of those plans that the Council considered when refusing the planning application.

Main Issues

3. The effect of the development on the living conditions of the occupiers of adjoining properties, with particular regard to outlook and light, and whether there would be adequate provision for affordable housing.

Reasons

Living conditions

4. The appeal site is located along a narrow access road that leads along the back of the properties which front onto Bridge Road. The road provides access to residential and commercial properties.
 5. The proposal would involve the demolition of an existing single storey building and the removal of adjoining hard-surfaced area which is also the pedestrian access to the first floor flats behind. Pedestrian access is gained via a metal staircase which leads up to the back of the flats. These flats are above ground floor commercial premises that front onto Bridge Road and the flat roofs of the ground floor premises also provide some external space for residents.
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6. The replacement building would be a 3 storey dwelling. This would fill much of the existing space between and above the roof of the current single storey building. This open space provides the rear windows of the flats and also the roof top external space with an open aspect between the 2 high buildings of the Coach House and No 53 Bridge Road. This is at a point along the road that is more open than elsewhere given the position close to the entrance of the car-park opposite the site. The flat roof at the time of my visit had various domestic items stored on it such as bicycles and chairs. It is not clear whether or not that this can be used as an amenity area but it is the main approach to the flats and it has a pleasant open feel which gives a sense of relief from the otherwise tight-knit development nearby.
7. The highest point of the mews house would be 1m below the top of the Coach House, according to the appellant but higher than the existing roof of No 53 on the other side. The roof design would leave some space around the highest part of the dwelling. However, most of the space between the Coach House and No 53 at first floor and roof levels would be in-filled. The pedestrian link through to the flats would be covered over in part.
8. Furthermore where the staircase climbs up to the flats, the high building would substantially enclose the space between the appeal site and the flats. This would give residents of the flats a hemmed in feeling when approaching their homes. There are windows within the rear elevations of flats at Nos 45 and 47. Some of these windows serve bathrooms and toilets. However, there are also habitable rooms from which the outlook would be substantially changed. The window within No 47 at first floor level, which the Daylight and Sunlight Assessment confirms serves a bedsitting room, would be particularly affected by this additional enclosure. Other windows, particularly those at second floor level would be less affected given their higher position.
9. Although the gap between the back of the proposed building would be greater than the existing gap between the flats at No 45 and the Coach House, the mews house would create a more claustrophobic feel for occupants of the flats at Nos 45 and 47. Those flats have a dual aspect also with windows facing towards Bridge Road but the development would not only affect the occupants when inside the flats but also in the space which is the primary access point. The position of the mews house would be similar as the existing relationship of the 2 storey building at No 53 Bridge Road which adjoins the site and the properties parallel with that. However, any similarities in that case do not justify compromising the living conditions of the neighbours here.
10. At my site visit, I saw the first floor window that had already been installed in the side of the Coach House facing towards the site as well as the large window within the roof level of that building that has replaced a narrower window. There has been some doubt over the lawfulness of those windows but the Council is satisfied that they were a lawful commencement of a planning permission for works to that building. The appellant revised the scheme as a consequence and the plans show a 0.3m gap between the side wall of the Coach House which includes those windows and the proposed dwelling.
11. I visited the Coach House and saw that the first floor window which serves a landing area. The higher window had not been completely installed at the time of my visit although the aperture was in place but covered with a tarpaulin which will eventually allow light at the top of a stair-well. The Daylight and

Sunlight Assessment post-dates those changes to the Coach House but does not refer to these windows. Given the position of the mews house relative to the first floor windows in the Coach House, natural daylight as well as direct sunlight would be reduced. However, this would affect an area which is not a habitable room. The accommodation in the roof space has open glazed windows in one side and obscure glazed windows on the other. It was a light and airy space even with the tarpaulin still in place. Thus on the basis of the evidence before me, the development would not lead to unacceptable harm to living conditions within that dwelling.

12. The Daylight and Sunlight Assessment indicates that there would not be harmful impacts due to any loss of daylight or direct sunlight reaching the nearby flats. There would be no windows in the rear elevation and no loss of privacy. However, in relation to the first main issue the proposal would have a harmful impact upon the living conditions of the occupiers of adjoining properties to the rear. This would not comply with Policy CS17 of the Elmbridge Core Strategy (CS), adopted July 2011 and Policy DM2 of the Elmbridge Local Plan, Development Management Plan adopted April 2015. The proposal would also not comply with the requirement in paragraph 17 of the National Planning Policy Framework (the Framework) to secure a good standard of amenity for all existing and future occupants of land and buildings.

Affordable housing

13. The Council considers that the development should qualify for a contribution towards the provision of affordable housing. The appellant has not submitted a planning obligation to provide any financial contribution but there is agreement between the main parties that the development would be viable and still provide a £25,000 contribution for these purposes. The area of disagreement is whether an up-lift above this amount should also be included in the circumstances that 'rights of light' compensation is not required following development. I have to consider whether the suggested requirement for such a financial contribution would meet the tests within the Community Infrastructure Regulations 2010 (CIL tests) and policy tests within the Framework.
14. CS Policy CS21 requires affordable housing to be provided on site for schemes of 5 dwellings or more. For schemes proposing 1 to 4 dwellings, a financial contribution towards provision elsewhere is required where the development is viable, equivalent to the cost of 20% of the gross number of dwellings. This is part of the Council's stated aim for the delivery of affordable homes between 2011-2026. The policy also aims to target a mix of affordable housing and housing types, sizes and tenures according to up dated evidence. This is broadly consistent with paragraph 50 of the Framework. The lack of a planning obligation submitted in this case means that the development would not comply with CS Policy CS21.
15. Paragraph 7.35 of the CS acknowledges that maximising the amount of affordable housing to be delivered is due to the very high level of housing need relative to the overall housing supply. This is based upon figures available at the time of preparing the CS which was adopted in July 2011, prior to the publication of the Framework. The Council's Developer Contributions Supplementary Planning Document as provided is dated February 2012. This

indicates that Elmbridge had a shortfall of affordable housing units although that is based upon the Strategic Housing Market Assessment from 2008.

16. The Written Ministerial Statement (WMS) of 28 November 2014, as reflected in the Planning Practice Guidance (PPG), sets out specific circumstances when contributions for affordable housing contributions should not be sought. This includes small scale developments of 10 units or less. The Council's updated evidence, referenced in the officer report, and which the appellant has had the opportunity to comment upon, includes their June 2016 "Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit" (the Elmbridge WMS Update). That sets out that there remains a need for affordable homes in particular for first time buyers. In addition average (median) house prices are exceptionally high in the Borough.
17. Furthermore, the Council has evidence from the emerging Strategic Housing Market Assessment that rents are high through the housing market area and that the private rented market does not satisfactorily provide for affordable housing needs either. The Elmbridge WMS Update also explains that smaller site schemes are important as a source of funding as there is a limited availability of larger sites in the Borough. Therefore the Council consider that contributions for smaller sites should continue to be sought.
18. CS Policy CS21 is the starting point for considering this main issue and it is clearly not complied with due to the lack of a planning obligation. In that light the WMS and PPG are weighty considerations. However, there is no dispute over the viability of the scheme or that a contribution toward affordable housing would be a disproportionate burden. Whilst finely balanced, given the level of evidenced local need and the consistency of CS Policy CS21 with the aims of the Framework, in delivering affordable housing, I find the development, given the particular circumstances as set out, would be unacceptable due to this deficiency.
19. In addition, I have considered the variable element of the costs in respect of the 'rights to light' compensation which would be payable. According to the appellant's evidence up to £45,000 less costs may be incurred although the appellant is already offering more than the £17,000 their viability report indicated would be viable in this case. It is not clear from the submitted evidence on what basis the Council considers that £25,000 should be the minimum contribution. However it would be reasonable to require a further uplift through a suitably worded clause within a planning obligation to reflect the possible varying costs over the course of the lifetime of a planning permission.
20. Given the outcome of the appeal, it is unnecessary for me to reach a conclusion on what the precise contribution should be. However in relation to this main issue, a financial contribution towards affordable housing would be reasonable and necessary to make the proposal acceptable in planning terms. In the absence of a planning obligation to secure this, the development would not comply with CS Policy CS21 or paragraph 50 of the Framework.

Other Matters

21. The mews house would be a high structure. It would not look out of place along the tightly enclosed rear lane. The existing structures on the site

including the flat roof workshop are much smaller scale than the buildings nearby and are not prominent within the street. I do not consider that they look unsightly but are maybe in need of some maintenance. The replacement of these by the mews house would respect the mews style of development elsewhere. The proposal would preserve the character and appearance of the East Molesey (Kent Town) Conservation Area. I do not consider that it would involve an enhancement and so this is a neutral effect.

22. Reference is made to anti-social behaviour being attracted to the site at the moment but there is limited evidence for this. There may be some further security measures within the more enclosed access to the flats. The development would not increase security issues but they would not be improved.
23. There would be financial advantages from the New Homes Bonus and Community Infrastructure Levy. Given the proposal is for a single dwelling, they would have limited weight. The site is very accessible to a range of services where there would not be a reliance on private vehicle use. It is also previously developed land. An additional dwelling in this location would be a benefit in terms of the housing needs and this also adds limited weight.

Conclusion

24. The other matters do not outweigh my conclusion on the main issues. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

Andy Harwood

INSPECTOR