
Appeal Decision

Site visit made on 11 January 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 16th June 2017

Appeal Ref: APP/K3605/W/16/3160470

Land to the rear of 255-259 Hersham Road, Hersham, Walton-on-Thames KT12 5PZ

- 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 S Merchant, Pendragon Development Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2015/2176, dated 2 June 2015, was refused by notice dated 8 April 2016.
 - The development proposed was originally described as the "formation of 2 x pairs of semi-detached two storey dwellings, 2 with attached garages on the land to the rear of 255-259 Hersham Road".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr S Merchant, Pendragon Development Ltd against Elmbridge Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether or not the proposed development would make adequate provision for affordable housing.

Reasons

4. There is an extant planning permission on the appeal site for an identical proposal under planning application reference 2016/3009. This was granted in December 2016, subsequent to the refusal of the appeal application. I understand the only difference between the two proposals is that a Unilateral Undertaking was provided by the appellant which included a £45,000 contribution toward off-site affordable housing. This was agreed following negotiation over the viability of the scheme.
 5. The Council therefore has no objections to the principle or details of the proposal. Their only objection is that Elmbridge Core Strategy (2011)(CS) Policy CS21 requires a financial contribution toward off-site affordable housing (AH) that has not been provided. This policy seeks to deliver at least 1150 affordable homes by 2026. In terms of sites of 1-4 dwellings, a financial contribution to the cost of 20% of the gross number of dwellings would be
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required. The failure to provide such a contribution results in a clear conflict with policy and planning law requires that applications must be determined in accordance with the development plan, unless material considerations indicate otherwise¹.

6. The Council has acknowledged that while it can meet the housing target set out in the CS, this does not reflect the most up-to-date assessment of local needs as set out in their Strategic Housing Market Assessment (SHMA). As a result, they have confirmed they cannot demonstrate a five year supply of deliverable housing land as required by paragraph 47 of the National Planning Policy Framework (the Framework). Policies relevant to the supply of housing cannot therefore be considered up-to-date² and the fourth bullet point of paragraph 14 of the Framework is triggered. This states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework as a whole.
7. In addition to this, the appellant does not consider a contribution should be required following the Written Ministerial Statement of 28 November 2014 (WMS) and subsequent Court of Appeal judgement³. The resulting change to the Planning Practice Guidance⁴ (PPG) states that contributions should not be sought from developments of 10 dwellings or less and which have a combined maximum floorspace of no more than 1000 square metres.
8. The five year supply situation and the WMS/PPG constitute significant material considerations that must be weighed against the requirements of the development plan. There is some dispute between the parties as to the weight that should continue to be given to Policy CS21 in light of the recent Supreme Court judgement⁵ on the operation of paragraphs 14 and 49 of the Framework. However, this judgment makes it clear that the development plan remains the starting point for decisions and that the weight given to policies will be a matter of judgement that is dependent, to an extent, on their effect on meeting the aims of paragraph 47. This ruling does not conflict with that of the Court of Appeal in terms the weight that should be given to the WMS or having regard to the individual circumstances of each case, including the provisions of the development plan.
9. The Council recognises there is conflict with the WMS and PPG, but has confirmed that it wishes to continue to apply Policy CS21 in light of local circumstances. The Council has provided evidence⁶ which demonstrates that Elmbridge has significantly higher than average house prices and particular issues with affordability. The evidence suggests that this area is the fourth most difficult place to get onto the property ladder in England. It also illustrates that small sites make up a significant proportion of development coming forward in the district and there are constraints within the district which make the identification and delivery of larger sites more difficult. They argue

¹ Section 38(6) of the Town and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

² See Paragraph 49 of the Framework.

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

⁴ Paragraph 031.

⁵ Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37

⁶ Statement on the Written Ministerial Statement on the Exemption of small sites from planning contributions and the Vacant Building Credit (June 2016).

that such contributions have not had a negative impact on overall delivery and that where there are issues of viability, the policy allows for a negotiation to take place. The fact that the majority of liable small sites have been able to make the full contribution is indicative that the policy is not inherently unviable and I see no reason why I should conclude it has impeded delivery more generally.

10. In addition to this, the SHMA continues to identify a significant need for affordable housing. Whilst this data has not yet been tested at Examination and does not constitute a target, it still serves to support the view that there is a high and continuing level of need for affordable housing in Elmbridge which the policy can help meet. Paragraph 47 of the Framework still expects Councils to meet their affordable housing needs. In this respect, Policy CS21 remains broadly consistent with the Framework. Moreover, it reflects the approach advocated in paragraph 50 of the Framework which states that where local 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.
11. While the appellant is critical of the Council's position on the availability of larger sites, he has not provided substantive evidence of a supply of larger sites that could meet affordable housing needs or demonstrated that small sites are not an important element of the supply moving forward. As such, I have seen nothing that would lead me to conclude the Council's evidence in relation to the significant and on-going need for affordable housing in the borough is not robust.
12. In addition, no evidence has been provided which suggests that the extant permission is not viable or that in dismissing this appeal it would not be implemented. Therefore, the operation of Policy CS21 would not affect the number of dwellings coming forward or the contribution the site would make to any shortfall in housing delivery. I recognise that neither the WMS nor PPG require a viability assessment to be provided to be exempt from contributions. However, I am mindful that the WMS states that its purpose is to reduce the burden on developers and increase delivery. In this case, Policy CS21 would not restrict delivery and thus would not conflict with either the objectives of the WMS or paragraph 47. I consider this to be a material consideration of significant weight.
13. In not providing a financial contribution, the development would not therefore make adequate provision for the delivery of affordable housing in conflict with the provisions of CS Policy CS21. It would also conflict with paragraphs 47 and 50 of the Framework which seek, amongst other things, to secure the delivery of affordable housing.
14. The delivery of four dwellings is recognised. However, the benefits of these would not be lost in the event of the appeal being dismissed owing to the existence of the viable extent permission. The proposal itself would provide no benefits over and above those of the extant permission. In such circumstances, the harm resulting from a lack of an affordable housing contribution would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal does not represent sustainable development.

15. I have taken account all the appeal decisions put to me by both parties and have noted that Inspectors have come to different conclusions on this issue. While recognising the importance of consistency in the planning system, I have nevertheless determined the appeal on the basis of the evidence before me and its own merits.
16. The appellant has suggested that the case and evidence before the Inspectors for appeals APP/K3605/W/16/3163555 (appeal 1) and APP/K3605/W/16/3163557 (appeal 2) was similar to that before me. However, in appeal 2 the Inspector gave weight to the need to boost significantly the supply of housing as required by the Framework. In the case before me, there would be no such boost as there is a deliverable and extant permission on the site which would deliver the same number of dwellings.
17. The appeal before me better reflects the circumstances of appeal 1. The Inspector in that case gave weight to the existence of a viable extant planning permission. I have seen nothing in that decision that would lead me to believe that insufficient weight was given to the overall housing supply or that the ruling of the Supreme Court would have any direct bearing on the outcome. It is clear that the requirements of the WMS and PPG were considered and, in the specific circumstances of the appeal, did not outweigh the requirements of the CS. My decision is consistent with this approach.

Conclusion

18. I find that in the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan. For these reasons, I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR