

Appeal Decision

Site visit made on 19 June 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 12 July 2017

Appeal Ref: APP/K3605/W/17/3170237

13A Station Avenue, Walton-on-Thames KT12 1NF

- 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 John Proctor of Proctor & Co. Architecture against the decision of Elmbridge Borough Council.
 - The application Ref 2016/3204, dated 29 September 2016, was refused by notice dated 6 December 2016.
 - The development proposed is new build three storey construction of 3/4 Bed 4 Person Unit on an accessible site facing Station Avenue, with associated car parking, cycle parking, hard and soft landscaping, refuse storage and fencing.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site address above is taken from the application form. However, a more accurate description would be land adjacent to 13A Station Avenue.

Main Issues

3. The main issues in this case are:
 - a) whether a financial contribution is necessary towards affordable housing in the Borough; and
 - b) the effect of the proposal on the character and appearance of the surrounding area, with particular regard to the likely long-term effect on the protected oak tree within the site.

Reasons

Affordable housing

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. This must form the starting point for my assessment.
 5. As part of the Council's strategy to deliver at least 1150 affordable homes between 2011 and 2026, Policy CS21 of the Elmbridge Core Strategy (2011) (ECS) requires residential schemes of 1-4 dwellings to make a financial
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- contribution equivalent to the cost of 20% of the gross number of dwellings on the site. The policy pre-dates the National Planning Policy Framework (the Framework) but it is nonetheless consistent with Government policy to address the full and objectively assessed need for market and affordable housing.
6. The Court of Appeal judgment¹ of 11 May 2016 had the effect of reinstating the Written Ministerial Statement (WMS) of 28 November 2014 as a material consideration in decision-making. This stated that affordable housing contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres. The WMS has subsequently been translated into the Planning Practice Guidance (PPG). Together they represent the Government's most up-to-date position. I have attached them significant weight.
 7. I have also taken into consideration other evidence presented on the matter, notably the statement from the Council setting out the acute affordability issues being experienced in the Elmbridge housing market, and the important role of small sites in delivering affordable homes in the Borough. The evidence is robust and convincingly demonstrates how the Council's housing strategy would be undermined by a persistent failure to seek contributions from small schemes.
 8. The stated intention of the WMS was to tackle the disproportionate burden of developer contributions on small-scale and self-build developers. However, there is no substantive evidence before me to indicate that Policy CS21 is preventing small sites from coming forward within Elmbridge. Moreover, it seems to me that the Council is adopting a pragmatic approach by relaxing contribution requirements where this is justified on viability grounds.
 9. The appellant in this case argues that a contribution of approximately £50,000 would be disproportionate in the context of a development that would cost in the region of £450,000 to self-build (including the land cost). It is put to me that the figure is neither fair nor reasonable. Yet there is no substantive evidence to persuade me that an affordable housing contribution would make the proposed development unviable, or that it would prevent the scheme from coming forward. The contribution may be locked into the value of the property until the owner comes to sell, but that in itself is not sufficient reason to waive the requirement. That the appellant and his family are intending to self-build and occupy the dwelling themselves does not alter my view on this point.
 10. Although I have noted the appeal decisions which have been presented by both parties in support of their case, it is an established principle that each case should turn on its merits with the decision-maker having the discretion to attach the appropriate amount of weight to each factor. S38(6) dictates that development plan policy should not be applied rigidly where other material considerations are in play. Conversely however, decision-makers are not required to follow the WMS and PPG position simply because it post-dates the development plan, without taking account of local circumstances.
 11. Overall, whilst I have given significant weight to the WMS and PPG and the Government's support for custom and self-build homes, the evidence presented by the Council leads me to conclude that the development plan is not outweighed by other material considerations in this particular case. An affordable housing

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

contribution in line with the Elmbridge Local Plan Developer Contributions Supplementary Planning Document (2012) is therefore reasonable and necessary and would satisfy the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 204 of the Framework. The absence of a planning obligation to secure the monies brings the scheme into conflict with Policy CS21 of the ECS.

Character and appearance

12. The appeal site lies on the south side of Station Avenue, backing onto a railway line. It is sandwiched between the garage belonging to No 13A Station Avenue and the well-wooded finger of land which extends eastwards towards Walton Station. Part of the site was formerly occupied by a building, the concrete slab of which still remains, whilst the remainder has the appearance of scrubland. A mature oak tree occupies a position in the north-east corner of the site adjacent to the road. This specimen is protected by a Tree Preservation Order which also covers other trees on neighbouring land. There is no dispute that the oak tree is of high amenity value.
13. The Council accepts, based on the arboricultural report put forward by the appellant, that the proposed development could take place without causing unacceptable damage to tree roots. However, it remains concerned that the proximity of the dwelling to the oak tree could give rise to pressure to lop or fell the tree, to the detriment of the character and appearance of the area.
14. The proposal is to reduce the oak prior to any development taking place. The works to rebalance the crown would improve the appearance of the tree whilst at the same time achieving sufficient clearance between the canopy and the fabric of the new dwelling. There is no reason why these works could not be carried out on a cyclical basis to maintain an acceptable relationship between the protected tree and the appeal scheme.
15. The likelihood of future occupiers wishing to carry out additional, potentially undesirable, works to the tree will depend upon the quality of living conditions within the garden and also within the property itself. To this end, the appellant has commissioned a daylight and sunlight assessment which shows that for all rooms natural daylight would exceed the minimum threshold set out in the relevant British standard, with sunlight in habitable rooms also being in excess of target levels.
16. Furthermore, the assessment indicates that over half of the garden would receive more than the minimum recommended two hours sunlight on the March equinox. In practice, other parts of the garden that are modelled as being in shade would receive dappled sunlight at certain times of year. Given that the property would benefit from a large second floor roof terrace with high levels of direct sunlight, future occupants would have a good choice of external amenity spaces.
17. Having regard to the results of the assessment, which has been carried out to a professional standard and in accordance with the relevant guidelines, I am confident that the development would provide acceptable living conditions for future occupiers. Whilst there can be no guarantee that those residents would not seek to fell or reduce the protected tree, the Council would retain control over any tree works and would have reasonable grounds to resist an application.

18. Local residents have raised concerns regarding the design of the dwelling, albeit this is not identified as a reason for refusal. Government policy within the Framework explains that planning decisions should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is proper to seek to promote or reinforce local distinctiveness, but given the mix of architectural styles along this stretch of Station Avenue, I do not consider that the contemporary timber clad building would be harmful to the street scene. Whilst I agree with neighbours that a more natural coloration for the cladding may be softer and less imposing, a planning condition could be used to secure further details.
19. To conclude, the proposal would not prejudice the health or long term amenity value of the tree and it would not cause material harm to the character or appearance of the area. Consequently, there would be no conflict with Policies CS3 and CS17 of the ECS, or Policies DM2 and DM6 of the Elmbridge Local Plan Development Management Plan (2015), insofar as they seek to ensure that development proposals respond to the positive features of individual locations by retaining existing trees that make a significant contribution to the character or amenity of the area.

Other Matters

20. I have not been supplied with details of the road accidents referred to by one local resident. Nevertheless, I am not persuaded by the argument that the development's location on a bend would make it a distraction for drivers. There is no compelling evidence to support dismissal of the appeal on highway safety grounds.
21. Concerns are raised regarding the effect of the scheme on a disused badger sett within the site. The status of the sett would need to be monitored in the event of the development going ahead. However, its existence would not constitute a reason to withhold planning permission.

Planning balance and conclusion

22. I have found that the proposal would not cause material harm to the character or appearance of the area. However, this does not negate the conflict with Policy CS21 of the ECS. Other material considerations do not outweigh this conflict.
23. Although the Council is unable to demonstrate a five-year supply of deliverable housing sites, measured against the Borough's objectively assessed need, the harm arising from the failure to secure a contribution towards affordable housing would significantly and demonstrably outweigh the benefits of delivering a self-build dwelling in this location.
24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should fail.

Robert Parker

INSPECTOR