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# Appeal Decision

Site visit made on 6 February 2017

**by Grahame Gould BA MPhil MRTPI**

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

**Decision date: 24<sup>th</sup> July 2017**

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**Appeal Ref: APP/K3605/W/16/3163928**

**8 High Street, Walton-on-Thames, Surrey KT12 1DA**

- 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 Digwa of Lingate Limited against the decision of Elmbridge Borough Council.
  - The application Ref 2015/2059, dated 23 May 2015, was refused by notice dated 7 September 2016.
  - The development proposed is described as 'creation of three new flats on the main and rear flat roofs'.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. In determining another appeal in the Council's area, with the same single main issue as concerns this case, I have become aware of six allowed appeals<sup>1</sup> relating to schemes in the Council's area, for which different conclusions in terms of the application of local and national planning policy, have been arrived at when compared with the three appeal decisions<sup>2</sup> that the Council has referred to in support of its case. I therefore considered it appropriate to give the appellant and the Council the opportunity to comment on the six allowed appeal decisions and I have had regard to the comments that have subsequently been received from the parties.

## Main Issue

3. The main issue is whether the development would make adequate provision for affordable housing.

## Reasons

4. The development would involve the construction of a second floor addition at the front of the premises (No 8) and a first floor addition to the rear and those additions would accommodate three, two bedroom flats.
5. The appealed application was refused because the appellant was not agreeable to the making of an affordable housing contribution in line with the requirements of Policy CS21 of the Elmbridge Core Strategy of 2011 (the Core

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<sup>1</sup> APP/K3605/W/15/3129629, APP/K3605/W/15/3132227, APP/K3605/W/16/3142140, APP/K3605/W/16/3150995, APP/K3605/W/16/3149477 and APP/K3605/W/16/3151802

<sup>2</sup> APP/K3605/W/15/3146699, APP/K3605/W/16/3156943 and APP/K3605/W/16/3154395

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Strategy) and the Council's related Developer Contributions Supplementary Planning Document of 2012. Policy CS21 aims to provide 1,150 affordable homes between 2011 and 2026 through a combination of on and off development site provision. For residential schemes of between one and four dwellings (smaller site schemes) Policy CS21 seeks financial contributions from developers, equivalent to the cost of 20% of the gross number of dwellings to be built, as a means of securing the provision of off-site affordable housing. The parties agree that for this scheme to be fully compliant with Policy CS21 a contribution of around £55,000 would need to be secured by an obligation made under Section 106 of the Act.

6. However, the appellant has submitted that an affordable housing contribution should not be sought because of issues with the scheme's viability and the Government's policy relating to the collection of such contributions. The Government has introduced thresholds, relevant to a location such as No 8, whereby for schemes of ten dwellings or less or which have a floor area 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 for 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<sup>3</sup> and the provisions of the WMS and the PPG<sup>4</sup> have been reinstated.
7. Notwithstanding the national policy position the Council remains of the view that affordable housing contributions should continue to be sought from smaller site schemes and the Council's stance is explained in two statements it has prepared concerning the WMS's reinstatement. The first of these statements<sup>5</sup> (WMS note 1) was prepared in June 2016, while the second one (WMS note 2)<sup>6</sup> is an updating note prepared in February 2017. WMS note 1 explains there is a continuing need for affordable homes to be provided, given affordability issues for first time home owners in Elmbridge. WMS note 1 further advises that in the period between the Core Strategy's adoption in July 2011 and June 2016 Policy CS21 has secured contributions totalling £6.89 million from smaller site schemes, while 373 affordable homes have been secured through direct on-site delivery. The Council contends that smaller site schemes, as a source of funding for affordable housing, are particularly important because of the limited availability of larger development sites.
8. The content of the Council's WMS Notes 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

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<sup>3</sup> Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

<sup>4</sup> Paragraph: 031 Reference ID: 23b-031-20161116

<sup>5</sup> Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit (June 2016)

<sup>6</sup> Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit (Update February 2017)

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

9. Planning law requires that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise 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.
10. It is the appellant's case that being required to make an affordable housing contribution would adversely affect this development's viability and that it should therefore be exempted from meeting the requirements of Policy CS21. For a non-viable scheme being exempted from making an affordable housing contribution would reduce the financial burden on it, which would be in line with the WMS's intentions.
11. With respect to this development's viability there is significant disagreement between the parties with regard to both the scheme's anticipated gross development value (GDV) and its costs. The appellant's viability evidence has been presented by a chartered quantity surveyor, with construction management experience, who I presume has first-hand knowledge of the site. By contrast the Council's viability evidence has been presented by a consultant who undertook a 'desk top exercise' and therefore does not have first-hand knowledge of No 8's physical relationship with the neighbouring premises.
12. For the appellant it has been submitted, in particular, that accessing the site during the construction phase would be difficult and because of that the works would take longer and cost more, factors that would not necessarily be fully accounted for in costings derived from the Building Cost Information Service (BCIS) database. During the course of my site visit I saw No 8's siting relative to the neighbouring properties and I consider that siting has the potential to significantly impact on how the works area could be accessed. I therefore consider, as the appellant's viability appraisal has been prepared with first-hand knowledge of the site, that its assessment of the scheme's construction costs are likely to be more reliable than the Council's appraisal of this aspect of the scheme.
13. With respect to the construction costs element of the appellant's appraisal I, however, have reservations about the legitimacy of including a sum for professional/design fees. That is because at paragraph 5.1.1 of the appellant's consultant's report it is stated that the construction cost of £2,000 per square metre (sqm) originating from contractors quotes is inclusive of design fees, with the £2,000 sqm sum stated as being in line with a BCIS derived figure. The inclusion of a separate design fee entry in the appellant's appraisal was queried by the Council's consultant when it reviewed the appellant's appraisal. However, no response was made to that query when

the appellant submitted further evidence prior to the application's determination. For the appellant there is also some inconsistency with respect to the commentary on what a reasonable level of profit would be, with it being stated at paragraph 4.1.7 that a profit level of 15% should be considered, while at paragraph 5.6.1 the appellant's consultant refers to setting the profit level at 20% and that is the level that has been included in the spreadsheet appraisals. There is therefore some potential for the scheme's costs to have been over estimated in the viability assessment undertaken for the appellant.

14. However, the greatest level of disagreement has revolved around establishing the anticipated GDV for this scheme. That disagreement largely arises because of the limited comparable data that is available, with reliance being placed on asking price information. Given the acknowledged limitations of the direct comparability of the asking price data that was used, the appellant's consultant has sought to argue that deductions should be applied to the asking prices, to allow for the proposed flats being above a bank and not having on-site parking or outdoor living space.
15. I have reservations about the weight that can be attached to the asking price discounts that have been put forward on the appellant's behalf, given that the Council's consultant has referred to them as being arbitrary. In circumstances such as this I would have expected the appellant to have obtained written marketing advice from local agents, as I have seen in connection with other appeals I have determined, as a means of better deriving what the scheme's GDV could reasonably be expected to be. I therefore consider that the appellant's GDV evidence cannot be relied on. On the available evidence I am therefore not persuaded that it has been demonstrated that the making of an affordable housing contribution, in accordance with Policy CS21 of the Core Strategy, would amount to a disproportionate burden for this development.
16. I therefore conclude that the development would inadequately provide for affordable housing in the absence of an affordable housing contribution being made. That absence would give rise to an unacceptable conflict with Policy CS21.
17. I recognise that my conclusion with respect to this issue is a different one to that which has arisen in the determination of this issue in respect of a number of appeals in the Council's area. 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 viability evidence before me.

## **Conclusion**

18. On the basis of the viability evidence before me I conclude that the appeal should be dismissed.

*Grahame Gould*

INSPECTOR