



Appeal Decision

Site visit made on 11 July 2017

by David Cliff BA Hons MSc MRTPI

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

Decision date: 1st August 2017

Appeal Ref: APP/K3605/W/17/3170332
28-30 High Street, Weybridge KT13 8AB

- 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 H2 Investments Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2016/2822, dated 26 August 2016, was refused by notice dated 21 October 2016.
 - The development proposed is alterations to upper floors of existing residential floor space to create 3 no. one bedroom apartments and associated parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) Whether the proposal makes appropriate provision for affordable housing including whether a financial contribution is required in this case,
 - ii) The effect upon the living conditions of neighbouring properties with particular regard to outlook,
 - iii) Whether the proposal would provide a satisfactory residential living environment for the future occupiers of Flat 1 of the proposed development.

Reasons

Affordable Housing

3. Policy CS21 of the Core Strategy seeks a financial contribution equivalent to the cost of 20% of the gross number of dwellings on sites of 1-4 dwellings. The supporting text to this policy and the Council's Developer Contributions Supplementary Planning Document 2012 (SPD) states that in exceptional circumstances where it is considered that the delivery of affordable housing in accordance with the policy is unviable, this must be demonstrated through the submission of a financial appraisal. The supporting text and SPD also require that the applicant pays for an independent review of the information submitted and that if the Council is satisfied that affordable housing cannot be provided in accordance with the policy, it will seek to negotiate alternative provision.

4. The appellant has not challenged the general policy basis seeking a financial contribution towards affordable housing for this proposal. Rather the appellant considers that such a contribution would not be viable for the proposed development in this case. I have given considerable weight to the Written Ministerial Statement regarding affordable housing and smaller developments. However, taking account of the evidence provided by the Council regarding affordability levels in the Borough, the significant contribution made by small sites towards affordable housing and the other recent appeal decisions provided, I consider that the development plan carries greater weight on this matter in this instance.
5. The appellant provided a viability appraisal with the planning application concluding that a 10.8% profit could be achieved with no affordable housing provision. Subsequently, an updated viability appraisal was provided with the appeal concluding that a 12.5% profit could be achieved with no affordable housing. The appellant consequently argues that the scheme would be unviable if any affordable housing contribution were to be made.
6. The Council considers that a profit return of 10.8% would be sufficient to provide for an affordable housing contribution. However, I am not comfortable with its justification of this. This is because the appeal decision¹ it refers to relates to an application to modify a planning obligation where the Inspector considered that as most matters were certain following the substantial completion of the development, there was no longer an identified risk. The Inspector in that instance was therefore satisfied that a lower profit return would be appropriate.
7. Nevertheless, whilst a higher profit return would appear to be appropriate in the appeal before me, there has been no independent assessment carried out of either viability appraisal provided by the appellant. This is in spite of the stipulation in the SPD that requires the applicant to pay for an independent review of the information submitted. Whilst the appellant states that the Council has not requested an independent viability assessment to be undertaken, the requirement in the SPD and supporting text to the policy is clear. It is not clear from the evidence as to the reasons why an independent viability assessment has not been paid for and carried out in this case. Without such an assessment, and having regard to the requirements of policy CS21 and the SPD, I do not have the certainty and guarantee necessary to reassure me that the viability appraisals provided by the appellant are completely accurate in all respects.
8. In the circumstances described above, I cannot be sure that the proposed development, which includes no provision for affordable housing, would satisfactorily accord with the affordable housing requirements of policy CS21 and the Developer Contributions SPD. Where viable, an affordable housing contribution would be 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 evidence before me leads me to conclude that the development plan is not outweighed by other considerations in this case. Given the need for affordable housing in the Borough, this weighs significantly against the proposal.

¹ APP/K3605/S/15/3006997

Neighbouring living conditions

9. The proposal includes a side facing dormer window extension above the existing rear projecting element of the appeal premises. The neighbouring flats at 24a High Street contain windows at first floor level in their rear and side facing elevations adjacent to the proposed development. One of the windows in the facing side elevation is obscure glazed.
10. Taking account of its substantial size, the proposed dormer window would be clearly visible from both the clear glazed windows and from the outdoor amenity spaces serving the flats. Nevertheless, whilst the dormer extension would appear as being visually assertive in views from these windows and amenity spaces, in the context of the existing building, I do not consider that it would appear as unacceptably overbearing in appearance.
11. The second floor neighbouring windows are at a higher level. The dormer window would not raise the overall height of the roof to which it would be attached. Consequently, the effect upon the outlook from the second floor windows would be limited and no harmful impacts would result to the living conditions of the occupiers in this respect.
12. The side facing window in the proposed dormer extension would be obscure glazed to prevent overlooking. Although there would be an increase in people passing the adjacent amenity areas and windows of the neighbouring properties, I do not consider that such an increase would be so significant to result in any unacceptable impacts on the privacy of neighbouring occupiers. Similarly, any increase in noise and disturbance from the creation of the additional flats is not likely to be of such significance to result in any harm to neighbouring living conditions.
13. Concerns have also been raised regarding the risk of crime and fire safety implications. Nevertheless there is no convincing evidence before me that any significant harm is likely to arise in either respect.
14. I am satisfied therefore that the proposed development would not result in any significant harm to the living conditions of the occupiers of the neighbouring properties. It would accord with the relevant amenity aims of, policy DM2 of the Elmbridge Development Management Plan 2015, policies CS4 and CS17 of the Elmbridge Core Strategy 2011 and the National Planning Policy Framework (the Framework).

Living environment for future occupiers

15. The access to the proposed flats would be immediately adjacent to a bedroom window. This would lead to residents passing in very close proximity to this window with the potential for clear views into the bedroom. However, the level of activity likely in connection with the other two one-bedroom flats would be minimal. Furthermore, the occupier(s) of the bedroom would have the option of closing the curtains or blind to the bedroom where privacy is required. As such, whilst I acknowledge that the arrangement is not a perfect one, I do not consider that it would result in any significant impacts upon the privacy of the future occupiers of the proposed development.
16. The proposed development would provide for a satisfactory residential living environment for the future occupiers of the flats, in accordance with the

relevant amenity aims of policies DM2 and DM10 of the Elmbridge Development Management Plan 2015 and the Framework.

Planning Balance and Conclusion

17. The Council acknowledges that it does not have a five year land supply to meet identified housing needs. Therefore paragraph 49 of the Framework requires that relevant policies for the supply of housing should not be considered up-to-date. Paragraph 14 of the Framework states that where the development plan is out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or there are specific policies in the Framework which indicate that development should be restricted.
18. The Council's Strategic Housing Market Assessment (October 2016) identifies a pressing need for affordable housing to which I have attached considerable weight. Whilst I have found that the development would safeguard the living conditions of neighbouring residents and provide for a satisfactory living environment for future residents, I have found harm arising from the lack of provision for affordable housing. This is the overriding harm and leads me to conclude that the development is contrary to the development plan when read as a whole. Policy CS21 of the Core Strategy is generally consistent with paragraph 50 of the Framework in seeking to meet an identified affordable housing need and there is no compelling evidence before me that it is restricting the supply of housing. I have therefore attached considerable weight to this policy.
19. The scheme would provide a total of three one-bedroomed flats, replacing an existing flat. The benefit to the local supply of housing would therefore only be a modest one.
20. In this case, the adverse impact of granting permission that I have identified would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. Therefore, overall the proposal would not represent sustainable development.
21. Having had regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cliff

INSPECTOR