
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/17/3174279
Wessex, South Road, Weybridge KT13 9DZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Samantha Payton-Sayer against the decision of Elmbridge Borough Council.
 - The application Ref 2016/3250, dated 4 October 2016, was refused by notice dated 30 January 2017.
 - The development proposed is demolition of existing detached two storey dwelling and construction of eight flats over three storeys including a storey in the roof space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline with access, layout and scale to be considered in detail as part of the application. Detailed matters concerning external appearance and landscaping are reserved for future consideration. The submitted plans include drawings showing the external appearance of the development but, other than how these drawings relate to scale, I have treated such details as being only indicative or illustrative given that external appearance is a matter reserved for future consideration.
3. During the course of the appeal, the appellant as part of its planning statement has provided revised floor layout information. These do not alter the size or footprint of the building proposed and the Council has had the opportunity to comment on this additional information through its planning statement. I do not consider that any party has been prejudiced by the submission of this additional information which I have taken into account in my consideration of the appeal.

Main Issues

4. The main issues are:
 - i) The effect of the proposed development upon the character and appearance of the area,
 - ii) Whether the proposal makes appropriate provision for affordable housing,

- iii) The effect of the proposed development upon the integrity of the Thames Basin Heaths Special Protection Area,
- iv) The potential effect of the proposal upon protected species,
- v) Whether the proposal would safeguard the living conditions of the occupiers of the neighbouring residential property at South Lodge with particular regard to light and outlook,
- vi) Whether the proposal would provide for a satisfactory residential living environment for future occupiers of the development.

Reasons

Character and appearance

5. The site is located in close proximity and to the rear of a parade of commercial premises along the Queens Road shopping frontage. Whilst buildings along the first part of South Road comprise both commercial and residential uses, the road further on becomes more residential in character. The existing two storey dwelling sits comfortably within its curtilage, with the existing landscaping in the garden making a positive contribution to its setting.
6. The proposed replacement building would occupy a large area of the curtilage, significantly exceeding that of the existing dwellinghouse. It would also protrude considerably closer to the front site boundary. The dwellinghouse to the north (South Lodge) and other buildings in the vicinity of the site are also located close to the footpath and road. However, the combination of the siting of the buildings close to the front of the site and the scale and massing of the front projecting element, incorporating a large front gable, would result in it appearing as unacceptably intrusive and out of keeping within the streetscene.
7. Furthermore, given the extensive footprint of the proposed development, along with its overall scale and massing and close proximity to the south west boundary of the site, the building would appear as being excessively cramped and visually dominant within its plot. Although large buildings of considerable massing are located to the south fronting Queens Road (including those with additional habitable rooms lit by the roof lights), these front on to the main road which has a different character and built appearance to the prevailing form of buildings along South Road. Whilst the appellant has sought to reduce the scale of parts of the proposed building including the north eastern wing, this does not satisfactorily mitigate against the harm that I have identified would arise from the building as a whole.
8. I acknowledge that the Elmbridge Design and Character Supplementary Planning Document 2012 (EDCSPD) envisages scope for the replacement of houses with flatted developments. However, it is the size and massing of the proposed development that is my concern in this case, not the use in principle of the proposed building for flats.
9. The proposed development would therefore result in significant harm to the character and appearance of the area. It would be contrary to the relevant design aims of policies CS4 and CS17 of the Elmbridge Core Strategy 2011, policy DM2 of the Elmbridge Development Management Plan 2015, the EDCSPD and the National Planning Policy Framework (the Framework).

Affordable Housing

10. Policy CS21 of the Core Strategy requires that development resulting in the net gain of 6-14 residential units should make provision for affordable housing. No such provision has been made in the appeal proposal. Whilst the appellant states that affordable housing provision would make the scheme unviable no detailed appraisal has been provided to justify such a position and therefore I have given such viability arguments minimal weight. The proposal is therefore contrary to the development plan in this regard.
11. The Council's evidence shows that there is a very serious affordability problem within the Borough. Whereas income levels may be higher than average, there is no persuasive evidence to suggest that this should prevent the Council making appropriate provision for affordable housing. The Council's evidence indicates that small sites make a significant contribution to housing supply and that the completion rate from larger sites of more than 10 units is low. There is consequently reliance on small sites to meet local affordable housing need with there currently being a large deficit of affordable homes in the Borough.
12. Planning applications must be decided in accordance with the development plan unless material considerations indicate otherwise. I have had regard to the relevant Written Ministerial Statement (WMS) and Planning Practice Guidance (PPG) as a material consideration to which I attach considerable importance and weight. I also acknowledge the aims of national policy to reduce the burden on small-scale developers by removing the requirement for affordable housing and tariff style contributions on smaller developments.
13. Nevertheless, in this case it appears clear that the Borough has a very pressing need for affordable housing and is dependent on contributions from smaller developments in order to meet this need. Furthermore, no evidence has been made to demonstrate that the contribution required by the development plan policies in this case would make the scheme unviable.
14. The Council's evidence indicates that smaller developments are still coming forward on a range of sites in spite of its affordable housing requirements, with a significant number of contributions being secured. I do not consider it has been proven that the application of policy CS21 is placing an unreasonable or disproportionate burden on developers of small scale schemes.
15. I consider that policy CS21 is consistent with the aims of Paragraphs 47 and 50 of the Framework, which require local planning authorities to meet the full, objectively assessed needs for market and affordable housing and where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified.
16. I have given very significant weight to the acute need for affordable housing in the borough and the reliance on smaller sites to meet such a need. In this case, I consider that the local circumstances in this case outweigh the relevant parts of the WMS and PPG. From the evidence before me, the need for the affordable housing contribution sought by the Council arises from the development and satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Regulations 2010.

17. The appellant argues that the continued application of the Council's affordable housing policy excludes smaller housebuilders from the Borough. However, from the evidence before me, it is not clear that this is this case. Nor am I persuaded that there is any clear evidence to suggest that requiring a contribution would have any significant implications for the supply of housing in the Borough.
18. My attention is drawn by the appellant to other previous appeal decisions where Inspectors have considered the WMS to outweigh the affordable housing provisions of the development plan. Two of these relate to schemes in different Council areas where local circumstances are unlikely to be identical to the appeal before me. The other appeal decision was for a scheme in Elmbridge. Nevertheless the Council has also provided a number of subsequent decisions where Inspectors have conclude that the WMS, whilst carrying considerable weight, does not outweigh the development plan with regard to affordable housing. My findings, which are based on the evidence before me, are consistent with these later decisions.
19. I conclude on this issue that the proposal would be contrary to relevant affordable housing provisions of policy CS21 of the Elmbridge Core Strategy and the Developer Contributions SPD 2012. I do not consider that the relevant material considerations outweigh the conflict with the development plan in this case.

Special Protection Area

20. There is disagreement between the main parties as to whether or not the site is located within 5km of the Wisley Heath Thames Basin Heaths Special Protection Area (SPA). The Council states it is, on which basis a financial contribution towards Strategic Access Management and Monitoring (SAMM) would be required to mitigate the impact of the additional residential occupancy with the buffer zone. As the applicant considers the site is not within the buffer zone, no provision has been made to secure the financial contribution sought by the Council.
21. The appellant has provided evidence using *Gmaps-Radius* seeking to demonstrate the site is just outside of the 5km zone along with a map in connection with a previous planning application at 91 Queens Road. The Council, however, has provided a map which shows the 5km zone to pass through the site. From the evidence provided by either party it is not possible to be conclusive given the differences. However, I also have had regard to the consultation response from Natural England (NE) which states the site is within 5km of the SPA and therefore mitigation is required. I have given this consultation response significant weight as a NE is a statutory consultee providing expert advice on the natural environment.
22. Whilst no SAMM contribution was sought for the recent application at the nearby site at 91 Queens Road, the Council considers that this was an omission although the appellant considers that the Council had the opportunity to require the contribution. Regardless of this, I must determine the appeal proposal before me on the basis of its own merits.
23. From the evidence before me this matter is not entirely conclusive. Consequently, acting in accordance with the precautionary principle, I cannot

be satisfied that the proposal in combination with other developments would not have the potential to adversely affect the integrity of the SPA.

24. Therefore, in the absence of any appropriate mitigation being secured, the proposed development would not accord with the relevant habitats protection aims of policy CS13 of the Elmbridge Core Strategy, the Developer Contributions Supplementary Planning Document and the Framework.

Protected species

25. The Council is concerned that there is a lack of information provided with the application to demonstrate that there would be no adverse impact upon any protected species.
26. The appellant has not provided an ecological survey of the site but states that there are no opportunities for any bat roosts taking account of the age of the trees on the site and the condition of the existing building. However, from my observations at my site visit it is not possible to properly ascertain whether or not there is a reasonable likelihood of any protected species being present and without any more detailed evidence before me, including any ecological survey of the site, I cannot rule out bats utilising any part of the existing building which is to be demolished. Whilst a condition providing mitigation could be imposed in the event of the appeal being allowed, it is firstly necessary to reasonably establish whether any protected species are present.
27. From the evidence before me, I cannot therefore be satisfied that there would be no reasonable likelihood of protected species being present. The proposed development would therefore not accord with the relevant ecological protection and enhancement aims of policy CS15 of the Elmbridge Core Strategy, policy DM21 of the Elmbridge Development Management Plan and the Framework.

Neighbouring living conditions

28. The Council's concerns in this respect relate to the effect of the proposed development upon the occupants of South Lodge, located adjacent to the northern boundary of the appeal site.
29. South Lodge has its main garden and amenity area to the south of the house and there are several windows in its southern elevation. The facing elevations of the proposed development, particularly the upper floors, would be clearly visible from both the adjacent garden area and the facing windows of South Lodge. It is also likely that there would be some loss of sun light, particularly to parts of the garden area nearest its southern boundary. However, I consider the separation distance to be sufficient to prevent any unacceptable or harmful impacts in terms of outlook, overshadowing or the loss of sunlight.
30. I am satisfied that the proposed development would not result in any significant harm to the living conditions of the occupiers of South Lodge. It would satisfactorily accord with the relevant amenity aims of policies CS4 and CS17 of the Elmbridge Core Strategy, policy DM2 of the Elmbridge Development Management Plan and the Framework.

Residential living environment

31. As layout and scale are being considered as part of this application, I consider that matters relating to the residential living conditions of future occupiers of

the development are material matters to be considered at this stage. Whilst matters such as the position of windows could be dealt with as part of any future reserved matters application, matters regarding the size and form of the proposed flats would be influenced by both the scale and layout of the proposals, both of which are matters of detail to be considered at this stage.

32. Flats 1 and 2 would be located at ground floor level with habitable room windows in close proximity to South Road (for flat 2) and an internal footpath (for flat 1). The living room to flat 1, however, could have separate windows as indicated on the submitted drawings facing towards a private patio garden. The drawings provided indicate that flat 2 would have a small amenity area to the front of it. I do not therefore consider that any significant harm would result in this regard.
33. The bedrooms for three of the flats are indicated to be lit by roof lights. Whilst this would provide for only a limited outlook, given the rooms are bedrooms, I do not consider that this would significantly reduce the quality of overall living accommodation provided in these units. These flats would not solely be lit by roof lights as standard windows are shown to be provided for the main living rooms. Furthermore the levels of light received through the use of roof lights should be adequate for the rooms concerned.
34. Taking into account the revised floor layout plans provided by the appellant, the floor area of the proposed flats generally accord with the Nationally Described Space Standard (NDSS). The ceiling heights of flats 7 and 8 would fall, to a limited degree, below the NDSS criteria for 75% of the gross internal area to be at least 2.3m. However, taking account of the additional information provided by the appellant on this matter, I do not consider the shortfall for either flat to be significant in this case.
35. Taken as a whole, I consider that the proposed development would provide for a satisfactory standard of living accommodation for future residents. It would generally accord with the relevant residential quality requirements of policies CS1 and CS2 of the Elmbridge Core Strategy, policy DM10 of the Elmbridge Development Management Plan, the EDCSPD and the Framework.

Other matters

36. The appellant refers to the Elmbridge Local Plan: Strategic Consultations issued by the Council in December 2016 which sets out the Council's preferred strategy for accommodating new development. As this is a consultation document it only carries minimal weight in my consideration of this appeal. Reference is also made to the Government's Housing White Paper 2017. However, whilst recognising the need to make full and effective use of urban sites suitable for housing this does not override the application of current development plan policies seeking to avoid harmful impacts from development.

Planning Balance and Conclusion

37. 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 to be 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.

38. 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 in terms of the character and appearance of the area, affordable housing, the SPA and protected species. This harm is overriding and leads me to conclude that the development is contrary to the development plan when read as a whole. With regards to policy CS21 of the Core Strategy, there is not any compelling evidence before me to suggest that this is acting as a barrier towards the provision of housing in the Borough. The development plan policies highlighted above in relation to those matters where I have found harm are generally consistent with the Framework and I have given them substantial weight.
39. The scheme would provide a total of eight flats, replacing an existing dwelling house. I have given moderate weight to the boost that would result to the local housing supply.
40. In the context of paragraph 14 of the Framework, the harm I have identified in relation to the SPA is a matter which indicates that development should be restricted. Even, should I have agreed with the appellant's case on the SPA issue, the other adverse impacts 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.
41. Consequently, having had regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cliff

INSPECTOR