The Planning Inspectorate

Appeal Decision

Site visit made on 17 May 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 4th August 2017

Appeal Ref: APP/K3605/W/17/3166743
70 Baker Street, Weybridge KT13 8AL

- 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 Hayden Hewitt Properties 2016 Limited against the decision of Elmbridge Borough Council.
- The application Ref 2016/3339, dated 11 October 2016, was refused by notice dated 23 December 2016.
- The development proposed is described as 'two storey extension with rooms in the roof containing 5 no. flats and insertion of 3 no. dormer windows on the front elevation identical to those already approved under 2006/1056 which is an extant consent'.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline form and the development would involve the construction of a two storey rear extension, with roof level accommodation, to provide five flats. Matters relating to access, appearance, layout and scale being for determination, while landscaping is reserved for future consideration.

3. The appellant has obtained 'prior approval' for the conversion of the existing two storey, office building into six flats. The appellant has confirmed that the prior approval scheme would be implemented in conjunction with the appeal development. In determining this appeal, most particularly in respect of the consideration of the second and third main issues (affordable housing and parking provision), I have had regard to the appellant's ultimate intention to provide eleven flats at the site.

4. At the 'final comments' stage, and in connection with the third reason for refusal[1] the appellant submitted viability evidence for the first time. That viability information was significant new evidence and my consideration of it, when ordinarily the Council and third parties would not have had the opportunity to comment on it, could have caused prejudice. The Council and third parties have therefore been given the opportunity to comment on the appellant's viability evidence. In response to the Council's comments on the viability evidence the appellant has submitted a unilateral undertaking (UU), pursuant to Section 106 of the Act. The UU would obligate the appellant to

[1] Absence of a Section 106 agreement or a unilateral undertaking to secure the payment of an affordable housing contribution

make an affordable housing contribution of £20,000. I shall return to the viability evidence and the UU in my reasoning below.

5. The rear access to the appeal site comprises land in the ownership of a third party, Balfour Road Properties Limited (Balfour), and when the appeal was submitted notice under Section 65 of the Act was served on Balfour. The Section 65 notice was subsequently withdrawn and the appellant has acknowledged that the notice's withdrawal was an error. That was because while the main body of the site, 70 Baker Street (No 70) was acquired by the appellant in December 2016, the part in Balfour's ownership was not part of the acquisition. The appellant therefore re-served a Section 65 notice on Balfour on 27 April 2017. I am content that for the purposes of the determination of this appeal Balfour has not been prejudiced by any deficiencies there have been in relation to the appellant's service of notices under Section 65.

Main Issues

6. The main issues are:

- the effect of the development on the living conditions for its occupiers, with particular regard to internal space;
- whether the development would make adequate provision for affordable housing; and
- whether the development would make adequate provision for on-site parking.

Reasons

Living conditions for the occupiers of the development

7. The appeal scheme would involve the provision of four one bedroom flats and one two bedroom flat. The floorplans appended to the appellant's viability report show that each of the one bedroom flats would have a gross internal floor area (GIA) of 46.77 square metres (sq.m). Policy DM10 of the Elmbridge Development Management Plan of 2015 (the DMP) states that new housing will be expected to '… offer an appropriate standard of living, internally and externally. Minimum space standards will be applied to all new housing development (including conversions) in line with the table below unless these are superseded by nationally applicable standards, in which case, the nationally described space standards will apply'.

8. For the purposes of Policy DM10 one person flats should have a minimum GIA of 37 sq.m, while one bedroom, two person flats should have a minimum GIA of 50 sq.m. The aforementioned minimum dwellings sizes are consistent with those of the national 'Technical housing standards – nationally described space standard' of March 2015 (the THS). The appellant contends that the one bedroom flats should be considered as being for single person occupation because that is stated in the submitted design and access statement (DaAS). However, for the purposes of land use planning it would not be possible to limit the occupancy of the flats to a specific number of occupiers. I therefore consider that the DaAS's wording would be no guarantee that the one bedroom flats would only be occupied by one person.

9. For the purposes of the THS the bedrooms of the one bedroom flats would not only have GIAs significantly exceeding the minimum of 7.5 sq.m for a one bedspace, single bedroom but their areas would also be in excess of the minimum of 11.5 sq.m for double bedrooms. If the bedroom sizes are considered purely in terms of their floor areas, and the furniture layouts shown on the application drawings are disregarded, I consider it reasonable for the one bedroom flats to be viewed as being capable of being occupied by two people. On that basis the relevant minimum local and national standard for a two person dwelling is 50 sq.m and the one bedroom flats would not meet that standard.

10. The appellant has referred to a planning permission[2] granted by the Council on 5 April 2016 for a scheme of eleven flats concerning 'The Grotto' for which one bedroom flats, capable of accommodating double beds, have been permitted with floor areas of less than 50 sq.m. I do not know the full circumstances that gave rise to The Grotto permission being granted and I therefore do not know whether any 'specific need' considerations, as allowed for under the provisions of Policy DM10, were applied. In any event I am required to consider the appeal scheme on its own merits and that is what I have done.

11. For the reasons stated above I conclude that the development would provide harmful living conditions for its occupiers because of the inadequacy of the internal space. That inadequacy gives rise to conflict with Policy DM10 of the DMP, the NTS and paragraph 17 (the fourth core planning principle) of the National Planning Policy Framework (the Framework). That is because the development would provide an inappropriate standard of internal living for its occupiers.

12. The first reason for refusal cites conflict with Policy DM2 the DMP. However, as Policy DM2 does not address internal space provision, I consider it is not relevant to the consideration of this main issue.

Affordable Housing

13. Policy CS21 of the Elmbridge Core Strategy of 2011 (the Core Strategy) and the related Developer Contributions Supplementary Planning Document of 2012 (the SPD) address affordable housing provision. Policy CS21 aims to provide 1,150 affordable homes between 2011 and 2026 through a combination of on and off site provision. To be compliant with Policy CS21 the appeal scheme would need to provide one affordable flat.

14. However, the Government has introduced thresholds, relevant to a location such as No 70, whereby for schemes of ten dwellings or less or which have a floorspace of less than 1,000 sq.m, affordable housing 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 of exempting smaller scale developments from the need to contribute to affordable housing provision is to '… tackle the disproportionate burden of developer contributions on small-scale developers …'. The WMS was subsequently subject to a legal challenge,

[2] Application 2015/4527

however, the Court of Appeal found in the Government's favour on 11 May 2016[3] and the WMS and the PPG[4] have been reinstated.

15. Planning law requires that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise[5] 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 housing 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.

16. Notwithstanding the national policy position the Council remains of the view that affordable housing should continue to be provided in association with schemes of ten dwellings or less. The Council's stance is explained in a statement it has prepared concerning the WMS's reinstatement[6] (the WMS note). The WMS note explains there is a continuing need for affordable homes to be provided, given affordability issues for first time home owners in Elmbridge. The Council contends that smaller site schemes, as a source for delivering affordable housing, are particularly important because of the limited availability of larger development sites in its area.

17. The content of the Council's WMS note sets out the Council's justification for continuing to seek affordable housing from smaller sites and does not purport to be new policy. Given the need for affordable housing in the Council's area, for a non-policy compliant scheme to be viewed as being acceptable there would need to be a material consideration of great weight to justify a departure from Policy CS21 being made. Applying the WMS's provisions is a material consideration that might warrant such a departure. However, the Court of Appeal's judgement concerning the WMS has clearly established that this policy measure should not automatically be applied without regard being paid to the full circumstances of any given case, including the requirements of development plan policies.

18. The appellant's originally made case was that this development should, as a matter of right, be exempted from any requirement to deliver affordable housing because of the WMS's provisions. However, during the life of this appeal the appellant's case has evolved into one that seeks to demonstrate that the development would be unviable, necessitating an exception being made from meeting the full requirements of Policy CS21.

19. The Council has instructed a consultant to review the appellant's viability case and the consultant has questioned the appropriateness of the purchase price paid by the appellant to acquire the site. That is because the viability appraisal undertaken on the appellant's behalf shows the site's residual site/land value (RLV) falling well below the submitted benchmark land value of £1.35 million (which also equates to the site's purchase price on

[3] Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441
[4] Paragraph: 031 Reference ID: 23b-031-20161116
[5] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990
[6] Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit (June 2016)

12 December 2016[7]), when regard is paid to the anticipated gross development value (GDV) for eleven flats, the construction costs and the expected profit level.

20. The Council's consultant has inferred that the acquisition cost was too high, with the sum paid possibly being equivalent to the market value for the existing office use, something that has not been disputed by appellant. I am sympathetic to the Council's suggestion that the acquisition price was too high, because the appellant's evidence suggests that at the point of No 70's acquisition profit of 7.2% was anticipated, a level significantly below the stated benchmark of 20%.

21. The appellant has sought to justify the purchase price, as being an appropriate benchmark, by comparing it with one sold property and the asking prices for other properties. However, the applicability of the appellant's comparables evidence has been questioned by the Council's consultant and I am sympathetic to that view. That is because the comparables evidence concerns premises in towns other than Weybridge and those comparables, with the exception of the one sold property, relate to asking prices. It may well be that the purchase prices actually achieved for the unsold comparable premises will be lower than their asking prices.

22. The PPG in providing guidance on land values for the purposes of decision taking indicates that for all cases land or site values should: reflect policy requirements and planning obligations; provide a competitive return to willing developers and landowners; and 'be informed by comparable market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise'[8].

23. For the reasons given above I have reservations as to whether the price paid for the site is representative of the 'market norm' and took account of Policy CS21's requirements, given that No 70's purchase was completed, on an unconditional basis, prior to the appealed application's determination. The available evidence does not persuade me that the price paid for the site should be taken as being an appropriate benchmark.

24. With respect to the calculation of the GDV for the appellant, it appears that an arithmetic error has been made with respect to the anticipated sales values for some of the flats. That is because the anticipated sales values per sq.m for the 'penthouse' flat and five of the smaller flats having been transposed. That error has deflated the GDV by around £175,000 and will have had a knock on effect for the RLV.

25. With respect to the development's construction costs, a further arithmetic error has been identified by the Council. The Council has also taken some issue with the Building Cost Information Service upper quartile cost figure that has been applied, suggesting that the chosen figure has not been justified in preference to the application of a median figure. Correcting the arithmetic error and applying the median figure both generate a higher RLV.

26. The Council's consultant has presented various appraisals correcting the arithmetic errors and making adjustments to various cost inputs. The fifth

[7] The acquisition date quoted in paragraph 3.1.7 of the review of viability undertaken on the Council's behalf by the Dixon Searle Partnership
[8] Paragraph: 023 Reference ID: 10-023-20140306

and final of those appraisals (appraisal V5) shows the RLV improving to £1,390,675, around £40,000 above the submitted benchmark land value. Appraisal V5 allows for developer profit at 17.5%, a level more than double that which the appellant appears to have accepted would be yielded when acquiring No 70.

27. I consider that the viability evidence available to me has demonstrated that the position is not as pessimistic as portrayed on the appellant's behalf, not least because of the arithmetic errors that have arisen. I also consider it has not been demonstrated that the appellant did not pay too much for the site. If the acquisition costs have been excessive then I consider that would be a self-inflicted cost burden, weighing against a full exception to the requirements of Policy CS21 being made through the straight application of the WMS's provisions.

28. The appellant has submitted its UU as a compromise. However, the £20,000 contribution that has been offered has not been justified, with it simply representing half of the £40,000 difference between the RLV identified in appraisal V5 and the £1.35 million purchase price. I consider there are unresolved concerns about accepting the purchase price as the market norm value for No 70. An eleven flat scheme also appears capable of yielding a profit level significantly above the 7.2% accepted by the appellant when acquiring No 70. The figures included in appraisal V5 suggest that if the profit level was set somewhere between 7.2% and 17.5% an affordable housing contribution in excess of £40,000 could be sustainable.

29. I therefore consider that the available evidence demonstrates that an affordable housing contribution of £20,000 is not the maximum figure the appeal development could withstand. I therefore find it has not been demonstrated that meeting the requirements of Policy CS21 would be a disproportionate burden for the appeal development.

30. I therefore conclude that with a contribution of £20,000 the appeal development would inadequately provide for affordable housing. That inadequacy would give rise to an unacceptable conflict with Policy CS21.

31. I recognise that my conclusion with respect to this issue is a different one to that which has arisen in the determination of a number of other 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 on this issue is based on the evidence before me.

Parking

32. Three on-site parking spaces would be available to the occupiers of the eleven flats that would arise from the conversion and extension of No 70. Secure bicycle storage would also be included in the development. Policy DM7 of the DMP states that parking provision '… should be appropriate to the development and not result in an increase in on-street parking stress that would be detrimental to the amenities of local residents. In such instances, a minimum provision of one space per residential unit will be required'. I consider that Policy DM7 is consistent with paragraph 39 of the Framework

because it allows for parking provision to be considered on the basis of it being appropriate to the relevant development.

33. Baker Street is subject to on-street parking restrictions with a residents' permit scheme operating, with free one hour on-street parking being available to non-permit holders between 09:00 and 18:00 on Mondays through to Saturdays. Other nearby streets, for example Springfield Meadows and Hillcrest are also subject to a similar parking regime. The operation of a residents' permit parking scheme is indicative of Baker Street and nearby streets being subject to parking stress, which is unsurprising given the proximity of the town centre. The fee paying Baker Street public car park (the public car park) is situated immediately to the rear of No 70 and would offer some scope for meeting the parking needs of the occupiers of the development. However, I understand from Balfour's appeal representations that no resident or season ticket parking is available in the public car park.

34. No 70 is generally well located relative to the services and facilities available in the town centre, however, the nearest railway station is around a mile from No 70. I consider that the degree of access to bus and rail services and the availability of secure bicycle storage would be insufficient to act as deterrents to car ownership amongst the occupiers of eleven flats at No 70. While the 'snapshot' parking surveys[9] undertaken on the appellant's behalf suggest that there could well be capacity for the development's occupiers to make use of on-street parking and the public car park overnight, there could well be an issue as to where the occupiers would park their vehicles at other times. It is therefore likely that day time, on-street, overflow parking, arising from the flats at No 70 would occur, via the use of permits. Any such parking would have the potential to displace other residents seeking to park in the area.

35. The provision of three parking spaces would fall a long way short of the minimum provision of one space per flat. I consider that it has not been demonstrated that three on-site parking spaces would be sufficient to meet the parking needs of the occupiers of eleven flats at No 70. The additional demand for on-street parking could therefore cause parking displacement in the area, to the detriment of the living conditions of other residents of the area. It has been submitted that there has been an inconsistency in how the Council has assessed the need for on-site car parking for the schemes at No 70 and The Grotto. Without all of the background information relating to The Grotto application I am unable to comment further and I have considered this issue using the evidence available to me.

36. I therefore conclude that the appeal development would make inadequate provision for on-site parking, resulting in unacceptable conflict with Policy DM7 of the DMP.

Other Matters

37. Concern has been raised that the development could give rise to a loss of privacy to the rear of No 72. However, I consider that the siting of the development's windows relative to No 72, and the resulting obliqueness of the views, would mean that no unacceptable overlooking of No 72's rear extension or back garden would arise.

[9] 14th (evening) and 15th (morning) March 2017

Conclusion

38. I have found that the development would provide inadequate living conditions for its occupiers and levels of on-site parking. The development would also make inadequate provision for affordable housing. Those inadequacies could not be addressed by the imposition of reasonable planning conditions.

39. I therefore conclude that the appeal should be dismissed.

Grahame Gould

INSPECTOR