
Appeal Decision

Site visit made on 25 July 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 17th August 2017

Appeal Ref: APP/K3605/W/17/3170775

Land north-west of 39 Lovelace Road, Long Ditton, Surbiton, Surrey, KT6 6NZ.

- 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 Ember Estates Ltd. against the decision of Elmbridge Borough Council.
 - The application Ref. 2016/3783, dated 8 November 2016, was refused by notice dated 21 February 2017.
 - The development proposed is the erection of a detached two storey house with associated garden and parking area.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the residential development proposed should also contribute to the wider provision for affordable housing taking into account the policy of the development plan, national guidance and Ministerial advice.

Reasons

Background

3. The appeal site comprises part of the garden of No.39 Lovelace Road which lies in a generally residential area and contains a number of mature trees, both indigenous and conifers. There is also a mature tree in a neighbouring garden to the east which partly overhangs the site. The rear garden extends northwards to Beechwood Close and this street also has its own frontage of development with mainly two storey properties to the west and a single storey property (No.3) to the east of the appeal site. It is proposed to sub-divide the garden and build a new two storey three bedroom house facing Beechwood Close with a parking area in front of the property.
4. The appeal site has an extensive planning history related to proposals for the erection of a dwelling on the site. These proposals culminated in the refusal of an application for a single dwelling on the site under ref. 2015/1268. A subsequent appeal APP/K3605/W/3131407 was dismissed in December 2015 solely on the basis of the absence of a mechanism for

securing a financial contribution towards off-site affordable housing. A subsequent application for a two storey house was approved by the Council subject to a unilateral undertaking with a contribution of £54,508 for affordable housing. The current application makes minor changes to the details of the scheme for a house but does not contain any mechanism for making a financial contribution.

5. The street scene elevation on drawing 2083/P500 shows that the proposed house is appropriate in the street scene and takes into account the relationship with the neighbouring bungalow No.3, which has a conservatory on the elevation facing the appeal site. The sole main issue is whether the form of residential development proposed should make a financial contribution towards the provision of affordable housing off-site.

Policy context and housing land supply

6. The development plan for the area includes the Council's Core Strategy adopted in 2011 and the Development Management Development Plan Document (DPD) adopted in 2015.
7. In terms of housing land supply, the Council accepts that at the moment it cannot demonstrate a five year supply of deliverable new housing sites in accordance with the requirements of paragraph 47 of the National Planning Policy Framework (the Framework). Therefore, paragraph 49 and the final bullet point of paragraph 14 of the Framework are engaged in this case.

Provision for affordable housing

8. Policy CS21 of the Core Strategy deals with affordable housing and indicates, amongst other aspects, that for new housing development of between 1 and 4 dwellings a financial contribution equivalent to the cost of 20% of the gross number of dwellings will be sought for the provision of new affordable housing off-site. However, in this case the appellant has not put forward any formal mechanism to make such a contribution. Therefore, as it stands the proposal is contrary to the provisions of the development plan and planning legislation indicates that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
9. The appellant's agent refers to the Written Ministerial Statement (WMS)¹ as reasoned justification for not making the financial contribution. The WMS indicates, in summary, that in order to free-up the planning system and reduce disproportionate burdens on small-scale developers, affordable housing contributions should not be sought from developments of 10 housing units or less (subject to other specific factors that do not apply here) . Although successfully challenged in the High Court in July 2015, after which the previous appeal decision to dismiss the appeal was made, the Court of Appeal subsequently upheld the government's challenge to that legal decision in May 2016. Further, paragraph 31 of the national Planning Practice Guidance (PPG) was amended in November 2016 to reflect the WMS. Therefore the WMS and the current guidance in the PPG are material considerations in the appeal.

¹ As issued by the Minister of State for Communities and Local Government on the 28 November 2014

10. The critical issue is whether the more recent WMS and formal national guidance outweigh the conflict of the proposal with the provisions of the development plan. In support of their side of the conflict both the appellant and the Council refer to appeal decisions on this issue where differing conclusions have been reached.
11. The Council's own evidence refers to and recognises this conflict but places weight on the local social and housing circumstances where it is clear that there is an acute problem with the affordability of housing in the Borough and a very pressing social need for the Council to achieve its aim of delivering at least 1150 affordable homes by 2026. The Council has set out evidence of the importance of small sites, i.e. less than 10 units, in achieving both market and affordable housing. The evidence submitted demonstrates a high reliance on these small sites and the related affordable housing contributions to enable the delivery of affordable housing across the Borough. Further, the recent evidence published in the updated Strategic Housing Market Assessment (SHMA) in October 2016 established that there remains a need for affordable housing of 332 units per year. The acute housing need is therefore ongoing.
12. Even though the Core Strategy was adopted prior to the Framework it appears to me that it seeks to ensure that development takes place to meet the full objectively assessed housing needs in accordance with paragraph 47 of the Framework. Also the housing needs described and the special provision for affordable housing, including contributions for off-site provision, has been robustly justified in accordance with the policy contained in paragraph 50 of the Framework. As such the weight to be afforded to Policy CT21 is not diminished by any lack of consistency with paragraph 50. On the evidence before me I have only given moderate weight to the engagement of paragraph 49 of the Framework.
13. Although paragraph 49 is engaged because of the lack of a five year housing land supply, Policy CT21 has not been shown by the appellant to have had a significant limiting effect on the supply of housing. Moreover, the Council refer to the generally restricting effect of recognised constraints on the district such as the extent of green belt, as contained in the footnote to paragraph 14 of the Framework, which otherwise restrict the supply of housing in the borough. The Council therefore sees Policy CS21 as one which enables rather than restricts housing supply.
14. Overall I find that Policy CT21 carries full weight as part of the development plan and it broadly accords with the government's current formal policy set out in the Framework when this is read as a whole. I also find that the requirement for a contribution through an appropriate obligation satisfies the three tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

Planning Balance

15. I understand that the various changes to the legal status of the Ministerial policy on the payment of contributions for affordable housing related to a small scale development has caused delay and uncertainty for the appellant in relation to the proposal for this site. However, these factors in themselves do not carry significant weight in the planning balance. Further, the appellant has not argued or shown that the level of contribution likely to

be appropriate in this case has rendered the proposed scheme unviable, although I acknowledge the appellant's general comments about viability assessments as set out in his agent's final comments.

16. Even though I give substantial weight to the WMS and I acknowledge current national PPG guidance, I find that this material consideration and the general position on freeing up small scale development opportunities, does not outweigh the clear conflict of the proposal with Policy CT21 in the development plan which also accords with the Framework overall in facilitating sustainable development and meeting the clearly established and specific local need for securing affordable housing as part of any new residential development put forward.
17. Considered in the context of paragraph 14 of the Framework, this conflict with the development plan and the Framework overall amount to significant adverse impacts and these are not outweighed by the other considerations which apply in this case.

Conclusion

18. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR