
Appeal Decision

Site visit made on 20 June 2017

by Rory MacLeod BA MRTPI

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

Decision date: 18 August 2017

Appeal Ref: APP/K3605/W/17/3167270

Plot 4, Embercourt Road, Thames Ditton, Surrey KT7 0LQ

- 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 Ms Kim Moore against the decision of Elmbridge Borough Council.
 - The application Ref 2016/2576, dated 4 July 2016, was refused by notice dated 3 November 2016.
 - The development proposed is the erection of one two storey house with rooms in the roof space and associated hardstanding and landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) the effect of the development on the character and appearance of the area, particularly when viewed from Hampton Court Way, and
 - (b) whether a financial contribution is necessary towards the provision of affordable housing having regard to local and national planning policies.

Reasons

Character and appearance

3. The appeal relates to land on the site previously known as 31 Embercourt Road in which three detached houses have been constructed, following the grant of planning permission to application 2013/4654. Two houses front Embercourt Road and the third is set behind in a backland position. These align with four detached houses recently constructed on the adjacent site to the east, two fronting the road and two located to the rear. It is proposed to build a detached two storey house with rooms in the roof space to the west of the backland house on land referred to as plot 4.
4. Hampton Court Way is a busy classified road with grass verges to both sides and has a roundabout junction with Embercourt Road to the north-west of the site. The grass verges increase in width on the approaches to the roundabout and have trees planted along their length. To the south of the site Hampton Court Way is bounded by a laurel hedge and a line of poplar trees along the boundary to the open sports grounds of Esher College. Trees have been

retained along the site frontage and western side boundary and some of these are the subject of Tree Preservation Order EL:10/13. Collectively these all contribute to the spacious and verdant character and appearance of the surrounding area.

5. The new house would be separated from the flank wall of the adjacent backland dwelling (on plot 3) by some 2 metres. It would have a similar height, design and layout to the other houses on the site. The siting of the house would require the removal of a protected oak tree; the approved landscape plan for the permission for the three houses shows the oak to be relocated to the south western corner of plot 4, close to the boundaries with Hampton Court Way and Esher College. The house would share the vehicular access serving plot 3 and would have three parking spaces on open land to its west side.
6. Planning permission has previously been refused and dismissed at appeal¹ in 2012 to two schemes for the development of 6 houses on the whole site, including 4 at the back of the site. The Inspector at that time concluded that both proposals would be "dominant and intrusive when viewed from Hampton Court Way". The houses closest to Hampton Court Way would have been constructed on land that had been declared surplus to requirements for road widening and which had been added to the original curtilage. This land has been referred to as "the paddock" in previous decisions, but does not have any protected status; nonetheless it has been regarded as notably contributing to the openness and greenery of Hampton Court Way.
7. Whereas the separation distance between the western boundary of the site to Hampton Court Way and the nearest dwelling would have been approximately 3.2m on the previous appeal schemes, a minimum separation of 11.4m is shown on the site plan for the current proposal. This is substantially greater and also better reflects the separation distances between the flank walls of dwellings and Hampton Court Way on all sides of the quadrant formed from the roundabout at the junction with Embercourt Road.
8. The three houses constructed to date are large buildings and can be seen from various positions along Hampton Court Way, particularly to the north of the site, although these views are interrupted by street trees and trees on site. The proposed house would be no closer to the western boundary than that on plot 2 and in my opinion would not be unduly conspicuous in the street scene. The trees and hedge bounding the sports grounds to Esher College would screen long distance views of the building from the south. The house on plot 4 would be seen from various positions from the north, but these views would be interrupted by trees, particularly those in the grass verges to Hampton Court Way. The house would not appear unduly close to the site boundary in relation to other buildings in the surrounding area and would not disrupt the open verdant character that I have described. Moreover, the proposal includes supplementary planting along the western and southern site boundaries which over time would further assist to assimilate the building into this character.
9. Policy DM10 of the Elmbridge Local Plan Development Management Plan 2015 (DMP) specifies various requirements in relation to housing including the need for housing on garden land to respect the character of the area. The need for development to be based on an understanding of local character is reinforced

¹ Appeal references APP/K3605/A/11/2161667 and APP/K3605/A/11/2161668

by Policy DM2 of the DMP (Design and Amenity) and by Policies CS17 (Local Character, Density and Design) of the Elmbridge Core Strategy 2011 (ECS). These also point to the relevant character assessment companion guide to the Elmbridge Design and Character Supplementary Planning Document 2012 (SPD). The site is within the Sub Character Area DHW08: Weston Green Environs; this identifies the eastern side of Hampton Court Way as being characterised by a continuous line of building fronting an open space. Furthermore, that throughout this sub-area houses are rarely more than two storey and are a mix of semi-detached and detached properties, set back in front gardens with off street parking and semi-mature to mature boundaries. Policy CS8 (Thames Ditton, Long Ditton, Hinchley Wood and Weston Green) of the ECS also provides guidance for development within this locality.

10. The proposed house would have a greater height and width compared to the individual houses dismissed in the appeal schemes, but its height and mass would relate well to the other houses on the site. When combined with the house on plot 3, the mass of development would be significantly less than that of the four house scheme dismissed on appeal and there would be a much greater separation to the boundary with Hampton Court Way. To my mind, the proposal would not appear visually overbearing or over dominant when viewed from Hampton Court Way. Nor would it unduly obstruct open views across Esher College Sports Grounds; it would be seen as part of a new line of detached houses backing on to the sports grounds. Whilst the parking spaces would require a hardstanding to be located within the open 'paddock' area, this would be screened by boundary fencing. I consider that any intensification of vehicle movement would not be significant and would not impact on the verdant character and appearance of the area.
11. Several local residents have submitted representations, mainly objecting to the proposal, referring to the two appeal decisions for 6 houses and to a refusal by the Council to a 4 house scheme (2012/3645). Concerns expressed include excessive density, an overbearing nature in the street scene and loss of views over the open playing fields. I have noted these concerns but my findings have been made in the light of the particular circumstances of this proposal and on the basis of the evidence before me.
12. In relation to the first issue my conclusion is that the proposal would be in keeping with the evolving character of development on this side of Embercourt Road and that it would not have a detrimental effect on the spacious verdant character and appearance of the area, including the views from Hampton Court Way. As such, I find no conflict with the adopted development plan policies or with the local SPD.

Whether a contribution to affordable housing is necessary

13. Policy CS21 of the Elmbridge Core Strategy 2011 states that the Council will seek the provision of affordable housing from new residential development where viable to meet a recognised need. On sites of 1-4 dwellings, this will comprise a financial contribution equivalent to the cost of 20% of the gross number of dwellings. The Elmbridge Developer Contributions Supplementary Planning Document (2012) sets out the Council's approach to securing such funding through planning obligations. Only one dwelling is proposed on the appeal site but Policy CS21 is nonetheless relevant in view of the threshold on 1-4 dwellings. As part of the development plan Policy CS21 is the starting

point for examining the second main issue, but needs to be weighed against other material considerations in accordance with the requirements of Paragraph 196 of the National Planning Policy Framework (the Framework).

14. The Written Ministerial Statement (WMS) of 28 November 2014 states that "Due to the disproportionate burden of developer contributions on small-scale developers, for sites of 10-units or less, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought." A High Court judgement on 31 July 2015 found the policy expressed through the WMS to be unlawful and quashed the relevant parts of Planning Practice Guidance (PPG). However, following an appeal to the Court of Appeal on 11 May 2016, the WMS has been reaffirmed as lawful policy and PPG has been updated to reflect this. The WMS and PPG are material considerations to which considerable weight should be attached as the most up to date statements of national planning policy on this issue.
15. There is therefore a conflict between the requirements of Policy CS21 and the WMS and PPG. National policy indicates that affordable housing should not be required below the stated thresholds in the interests of boosting overall housing supply, whereas Policy CS21 places a particular emphasis on affordable housing provision. The weight to be attached to both sides of this conflict is a matter for the decision taker. The Council's approach to resolve this is to consider on a case by case basis whether local circumstances with regard to affordable housing and the nature of the development sites in the Borough are sufficient to warrant the application of policy CS21 or whether greater weight should be attached to the WMS. The Council have justified their stance through the preparation of a statement² dated June 2016 which updates the evidence requiring affordable housing provision set out in Policy CS21. A second statement³ was produced in February 2017 to comment on the success of the Council's approach in relation to the Government's small site exemption.
16. The policy has a target to deliver 1150 affordable homes by 2026. Between the adoption of the Core Strategy in 2011 and preparation of the June 2016 statement, the policy has supported the delivery of 373 affordable homes through on-site delivery and the raising of £6.89m from contributions towards off site provision. The policy has been successful but the need for affordable housing remains. The June 2016 statement shows that house prices in Elmbridge continue to be significantly above regional and national averages and that affordability remains an issue even for those on above average incomes. The private rented market does not offer a ready alternative due to high rental levels. Data shows that Elmbridge is the 4th most difficult place in England to get onto the housing ladder. The need for affordable housing is acute and the application of Policy CS21 has helped to meet that need.
17. The statement also shows the importance of small sites in contributing to the provision of both market and affordable housing. Between 2011 and June 2016, 50% of the total net amount of homes built has been delivered on sites of fewer than 10 units, representing 91% of all housing permissions over the review period. This shows that these small sites have formed a significant

² Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit (June 2016)

³ Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit (Update – February 2017)

- proportion of development in Elmbridge and that they contribute substantially to the provision of both market and affordable housing.
18. Paragraph 47 of the Framework requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area. The Council's June 2016 statement provides evidence to support the continued relevance of Policy CS21 in relation to the supply of affordable housing. When taken together with Paragraph 50 of the Framework, which requires local planning authorities to plan for and deliver a wide choice of high quality homes including affordable housing where the need is identified, I find Policy CS21 to be consistent with the requirements of the Framework.
 19. Paragraph 50 of the Framework also stipulates that where the need for affordable housing has been identified that off-site provision, or a financial contribution of broadly equivalent value, should be robustly justified and the agreed approach to contribute to the objective of creating mixed and balanced communities. This requirement is reflected in Paragraph 7.35 of the supporting text to Policy CS21 which states that the target number of affordable homes takes account of viability to ensure that the targets set are realistic, deliverable and do not compromise delivery of the overall housing target.
 20. The Council's June 2016 and February 2017 statements confirm the use of viability assessments on all developments where applicants consider the contributions make the development unviable, enabling contributions to be reduced or waived as appropriate. The February 2017 statement shows that since PPG was amended on 19 May 2016 and up to 25 November 2016 that 25 out of a total of 36 applications were granted for developments on sites of between 1 and 4 units, and that in 24 of these schemes, the applicant has signed a unilateral undertaking agreeing to pay either the total amount of affordable housing required or a reduced amount following a viability assessment.
 21. This affirms the importance of small sites, such as the appeal site, in bringing forward contributions towards affordable housing provision and that in general such contributions have not significantly impacted upon the viability of these schemes. In relation to the appeal proposal, no evidence has been presented to me to demonstrate that the payment of a contribution would be disproportionate or burdensome so as to affect the scheme's viability.
 22. The appellant has not offered to make a planning obligation in relation to an affordable housing payment. Rather my attention has been drawn to the WMS and revisions to PPG. The appellant points out that these do not provide any mechanism to have regard to local circumstances or to apply discretion. Furthermore, that in the light of these documents that Policy CS21 should be regarded as out of date and effectively superseded. However, Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires that planning applications be determined in accordance with the statutory development plan unless material consideration indicates otherwise. Policy CS21 has to be weighed in the balance against these other material considerations, notwithstanding the fact that the Core Strategy predates the Framework, WMS and updates to PPG. The Council's June 2016 and February 2017 statements provide empirical and up to date evidence to support the continued relevance and expediency of the requirements of Policy CS21.

23. The WMS and PPG are clearly material considerations to which significant weight should be attached in taking decisions. There is a presumption that national policy should be followed and that in many circumstance would outweigh development plan policy placing expediency on affordable housing provision. However, having regard to the evidence before me that affirms the acute shortage of affordable housing in Elmbridge and the particular contribution that small sites make towards its provision, in accordance with Policy CS21, I conclude in this instance that the objectives of the WMS and PPG do not outweigh the requirements of the policy.
24. Accordingly, an obligation in respect of affordable housing is necessary in this instance. I am satisfied that such an obligation would satisfy the tests set for an obligation in paragraph 204 of the Framework. No unilateral undertaking has been submitted to enable such a payment to be made. The appeal therefore fails on this issue. I have made my decision on this issue based firmly on the particular circumstances of this appeal and in relation to the evidence before me.

Conclusion

25. I have concluded that the development would not have an adverse effect on the character and appearance of the area and that the appearance of the site when viewed from Hampton Court Way would be acceptable. However, having regard to local and national planning policies I conclude that a financial contribution towards the provision of affordable housing is necessary in this instance. In the absence of a planning obligation to enable that payment to be made, the appeal has to be dismissed.

Rory MacLeod

INSPECTOR