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## Appeal Decision

Site visit made on 13 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**

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**Appeal Ref: APP/K3605/W/17/3169210**

**Car park site, rear of Bridge Road, East Molesey, Surrey KT8 9ER**

- 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 Glen House Estates Ltd against the decision of Elmbridge Borough Council.
  - The application Ref 2016/3977, dated 2 December 2016, was refused by notice dated 1 February 2017.
  - The development proposed is construction of a building containing 4 no. two bedroom flats with associated hard and soft landscaping following the demolition of the existing garages on the site.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether or not a financial contribution towards the provision of affordable housing is warranted having regard to local and national planning policy considerations.

### Reasons

3. The appeal relates to the redevelopment of a private car par and a block of three single storey garages. Access to the site is via a narrow service road linking Palace Road with Wolsey Road to the rear of shop units at 29-63 Bridge Road. The site is adjacent to the defined Local Centre of East Molesey and part of it falls within Flood Zone 2.
4. It is proposed to construct a two storey building comprising four flats on the main car park site with four parking spaces to replace the garage block and soft landscaped areas to the rear and side. Planning permission has previously been granted for this development in November 2016 under reference 2016/1698. The appeal proposal differs from the approved application in that no financial contribution or on-site provision towards affordable housing has been offered and there is an update to the previous flood risk assessment. The approved application included a unilateral undertaking to secure a financial contribution to affordable housing amounting to £113,351.14.
5. The contribution arose from the requirements of Policy CS21 of the Elmbridge Core Strategy 2011. This states that the Council aims to deliver at least 1150 affordable homes by 2026. Provision of affordable housing is to be sought

from new residential development, where viable. In relation to sites of 1 – 4 dwellings, this would be a financial contribution equivalent to the cost of 20% of the gross number of units. A planning obligation is the mechanism by which payment is to be secured and used for off-site provision. Details on the Council's approach to securing such funding is set out in the Elmbridge Developer Contributions Supplementary Planning Document (2012) (SPD).

6. Paragraph 196 of the National Planning Policy Framework (the Framework) affirms that the planning system is plan led and that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Policy CS21 is therefore the starting point for my decision but needs to be weighed against other factors.
7. 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." Planning Practice Guidance (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.
8. As such, there is a conflict between Policy CS21 and the WMS & PPG. National policy indicates that affordable housing should not be required below the stated thresholds in the interests of boosting overall housing supply with a presumption that this policy should be followed 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. To resolve this conflict, the Council considers 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 statement<sup>1</sup> in June 2016 which provides supplementary evidence to support the requirement for affordable housing provision set out in Policy CS21. A second statement<sup>2</sup> was produced in February 2017 to update the Council's approach.
9. 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 statement also shows the importance of small sites in contributing to housing provision. Between the adoption of the Core Strategy in 2011 and June 2016, 919 market and affordable units have been delivered on sites of less than 10 units. This represents 50% of the total net amount of homes built during that period and 91% of all housing applications given permission.
10. 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 and February 2017 statements provide evidence to

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<sup>1</sup> Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit (June 2016).

<sup>2</sup> Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit (Update - February 2017).

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.

11. 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.
12. The Council's June 2016 and February 2017 statements refer to the use of viability assessments on all developments where the applicants consider the contributions to make the development unviable. This enables the Council to reduce or waive any contribution on the basis of viability. The June 2016 statement shows that between 2011 and the end of July 2015, 116 permissions were granted for developments on sites of between 1 and 4 units. In 90% of these schemes, the developer has paid the total amount of affordable housing required. In other schemes, the developer has paid a reduced financial contribution and in one scheme the financial contribution has been waived entirely. 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. In 24 of these schemes, applicants have signed unilateral undertakings agreeing to pay either the total amount of affordable housing required or a reduced amount following a viability assessment.
13. This affirms the importance of small sites, such as the appeal site, in bringing forward contributions towards affordable housing provision. The Council's two statements indicate that in general such contributions have not been disproportionate and 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 affect the scheme's viability. Conversely, as recently as November 2016, planning permission has been granted to the same development with the inclusion of an obligation towards affordable housing provision.
14. The appellant has drawn my attention to the WMS and revisions to PPG and points out that these do not refer to any caveats relating to local circumstances justifying a different approach. The WMS was put forward to tackle the 'disproportionate burden of developer contributions', but nothing has been submitted to show that the contribution previously agreed is disproportionate or that circumstances have since changed. The appellant asserts that in the light of the WMS and PPG updates that Policy CS21 should be disregarded as not up to date. 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 considerations indicate 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, the WMS and updates to PPG.

15. The appellant argues that the Council's June 2016 Statement should not be afforded significant weight as it is not a Supplementary Planning Document nor part of the development plan and has not been the subject of any formal examination or consultation. To my mind, the Council's June 2016 Statement is not a new or formal expression of policy but does provide empirical and up to date evidence to support the continued relevance and expediency of the requirements of Policy CS21.
16. The appeal parties have brought to my attention several recent appeal decisions within Elmbridge on the issue of affordable housing provision. There is a divergence of opinion expressed within these decisions, and in some cases the issue of affordable housing contributions is examined only briefly. I have had regard to all decisions referred to me as material considerations. However, I have made my decision based firmly on the particular circumstances of this appeal and in relation to the evidence before me.
17. The WMS and PPG are clearly material considerations to which considerable weight should be attached in taking decisions, and in many circumstances would outweigh requirements for affordable housing provision in a development plan. However, Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. I have found Policy CS21 to be consistent with the Framework and that it should also attract considerable weight. Having regard to the evidence before me that affirms the acute shortage of affordable housing in Elmbridge and the contribution that small sites make towards affordable housing provision, in accordance with Policy CS21, I conclude in this instance that the requirements of the development plan outweigh the objectives of the WMS and PPG. Accordingly, an obligation in respect of affordable housing is reasonable in this instance.
18. I have had regard to paragraph 204 of the Framework and conclude that an obligation towards affordable housing would satisfy the relevant tests. It is necessary, having regard to the primacy of the development plan, directly related to the development as the proposal is for housing and I have no evidence to indicate changed circumstances since November 2016 when the Council and developer completed an obligation that would have been fairly and reasonably related in scale and kind to the development.

### **Other Matters**

19. The Council has not raised any objection to the additional information submitted in the Flood Risk Assessment as part of the proposal and indeed has granted permission to this development with relevant planning conditions. I have no reason to disagree with their findings on this issue.
20. I have noted the representations submitted against the proposal by some local residents and businesses in relation to several other issues. These include the loss of parking, inadequate proposed parking, pedestrian and vehicular access via a narrow and poorly lit access road, disturbance during building works and afterwards, loss of privacy, loss of vegetation and an adverse effect on the character of the conservation area. The site is also within the East Molesey (Kent Town) Conservation Area. However, under the extant permission it was accepted this layout and building design would preserve the character and appearance of the conservation area. Mindful of this, and noting the absence of any material changes in circumstance since then, this is a view I share. I

am aware that all these issues have been accepted as part of the extant permission and given this I see no reason to find otherwise in this instance.

**Conclusion**

21. For the reasons set out above and having regard to all other matters raised, I conclude that a financial contribution towards the provision of affordable housing is warranted having regard to local and national planning policy considerations. In the absence of such an obligation the appeal should be dismissed.

*Rory MacLeod*

INSPECTOR