
Appeal Decisions

Site visit made on 1 August 2017

by Alex Hutson MATP CMLI MArborA

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

Decision date: 29 August 2017

Appeal A Ref: APP/P3610/W/17/3175032

Land off Mill Road, Epsom KT17 4AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Loganberry Limited against the decision of Epsom & Ewell Borough Council.
 - The application Ref 16/00752/REM, dated 18 August 2016, was refused by notice dated 9 November 2016.
 - The application sought planning permission for 'proposed student accommodation (77 units) contained within 9 buildings (units over three levels) and associated parking, bicycle spaces and landscaping' without complying with a condition attached to planning permission Ref 14/01784/FUL, dated 12 November 2015.
 - The condition in dispute is No 11 which states that: The development shall be used for residential student accommodation only and for no other purpose.
 - The reason given for the condition is: To ensure a satisfactory form of use of the premises as required by Policy CS5 of the Core Strategy (2007).
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Appeal B Ref: APP/P3610/W/17/3175035

Land off Mill Road, Epsom KT17 4AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Loganberry Limited and Renaissance Investments Limited against the decision of Epsom & Ewell Borough Council.
 - The application Ref 16/01674/REM, dated 14 February 2017, was refused by notice dated 13 April 2017.
 - The application sought planning permission for 'proposed student accommodation (77 units) contained within 9 buildings (units over three levels) and associated parking, bicycle spaces and landscaping' without complying with a condition attached to planning permission Ref 14/01784/FUL, dated 12 November 2015.
 - The condition in dispute is No 11 which states that: The development shall be used for residential student accommodation only and for no other purpose.
 - The reason given for the condition is: To ensure a satisfactory form of use of the premises as required by Policy CS5 of the Core Strategy (2007).
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Decision

1. The appeals are invalid.

Reasons

2. The consented use of the development is for residential student accommodation. This falls outside any of the use classes within the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order) and is therefore a Sui-Generis use. Condition 11 states that '*The development shall be used for residential student accommodation only and for no other purpose*'. The proposals seek to vary Condition 11 to widen the use of parts of the consented development to include residential Houses in Multiple Occupation (HMO) accommodation for students and/or other persons. The residential HMO accommodation would also fall outside any use class under the Order so would also be a Sui Generis use. The appellant has also submitted revised plans to increase parking provision. However, the variation of Condition 24, which requires development to be carried out in accordance with the approved plans, has not been sought.
3. Planning Practice Guidance (PPG) sets out that a condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used. The PPG also sets out that where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted. I have allowed the main parties the opportunity to comment on these matters and have taken any comments into consideration. Such matters were also raised by a number of interested parties.
4. I note the appellant's references to the definition of HMOs under Schedule 14 of the Housing Act 2004 and the Houses in Multiple Occupation (Specified Education Establishments) (England) Regulations 2016. However, the planning consent is specifically for student accommodation and that is what the original application sought. It is therefore my view that the proposed variation of Condition 11 under both appeals would equate to a material change of use that would make the development substantially different from the consented scheme. In addition, the revised plans under both appeals would materially alter the parking layout. I consider that such modifications would be fundamental and substantial.
5. As such, the proposed changes lie outside the scope of section 73 of the Town and Country Planning Act (1990) and a new planning application and planning permission would be required to make these changes. I recognise that this is not the outcome that the appellant sought. However, the PPG is clear on these matters and, thus, it is reasonable for me to come to this conclusion.
6. In light of the above, I consider the appeals to be invalid. This is notwithstanding that the Council registered the applications and considered them on their merits. Given the invalidity of the appeals, there is no need for me to consider the planning merits of the proposals.

Alex Hutson

INSPECTOR