The Planning Inspectorate

Appeal Decision

Site visit made on 5 December 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 08 January 2018

Appeal Ref: APP/K3605/W/17/3179815
Childs Play Centre, Manor Road, Walton-on-Thames KT12 2PH

- 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 Ashgrove Homes Ltd against the decision of Elmbridge Borough Council.
- The application Ref 2017/0568, dated 20 February 2017, was refused by notice dated 16 June 2017.
- The development proposed is the erection of 8 dwellings with associated works following demolition of the existing buildings.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In support of the appeal the appellant has submitted an ecological appraisal which concludes that there is no evidence of bats on site and that there is negligible potential for the existing buildings to support roosting bats. The Council therefore acknowledge that the proposal would not result in harm to protected species and that its third reason for refusal is satisfied. On the basis of the evidence before me, I find no reason to take a contrary position.

Main Issues

3. The main issues are:

   - the effect of the proposed development on the character and appearance of the area;
   - the effect of the development on the living conditions of the occupiers of Nos 7 - 10 Stonebank and No 11 Sullivan's Close with particular reference to outlook; and
   - whether it is necessary that the proposal secures an affordable housing provision.

Reasons

Character and appearance

4. The appeal site comprises a vacant former Childs Play Centre located within an established residential area. The site is generally flat and accommodates the remains of a number of buildings and structures.

5. I accept that the proposed level of density for the site as a whole would be acceptable but it does not necessarily follow that each aspect of the layout is acceptable or appropriate to its context. In this case, although the precise building line would vary, a linear form of development would continue running through central spine of the site, despite it significantly narrowing towards its northern end. Consequently, the space between the front and rear of plots 7 and 8 is less than that afforded to plots 1-6. The dwelling at plot 8 in particular would positioned close to the western boundary of the site and even closer to the eastern boundary.

6. As a result, they would appear cramped and shoehorned into this narrow section of the site and out of keeping and at odds with the more comfortable arrangement proposed for the remainder of the site and the predominant pattern of development in this area. In these circumstances, the proposal would create a visually discordant form of development that would fail to satisfactorily integrate with its context, causing material harm to the character and appearance of the surrounding area.

7. I note that the Council state that the proposed layout and scale to the front of the development achieves a standard of design that is sensitive to the character of the area and which respects existing residential plots and frontage sizes and space about buildings. The Council also state that the design and appearance of the houses would be in keeping with the visual characteristics of the area. Based on the evidence before me and my own observations on site, I agree.

8. Nevertheless, I have found that the proposals for plots 7 and 8 would be harmful to the character and appearance of the area, and in overall terms would be contrary to Policy DM2 of the Elmbridge Local Plan Development Management Plan (DMP), Policy CS17 of the Elmbridge Core Strategy (CS) and to the Council's Design and Character Supplementary Planning Document Companion Guide: Claygate. These state, amongst other things, that new development will be required to deliver high quality and inclusive sustainable design, which maximises the efficient use of urban land whilst responding to the positive features of individual locations, integrating sensitively with the locally distinctive townscape, landscape, and heritage assets. The proposal would also be contrary to paragraph 61 of the National Planning Policy Framework (the Framework) which states that planning decisions should address the integration of new development into the built environment.

9. The Council's reason for refusal also refers to DMP Policy DM10, which I consider to have limited relevance to this main issue.

Living conditions

10. Due to the positioning of plot 8 in the narrowest part of the site, the front elevation would be positioned in close proximity to the eastern boundary of the appeal site and the garden areas of the terrace block at Nos 7-10 Stonebank. As a largely vacant site, I accept its development will of course result in a visual change to the occupants of surrounding dwellings. I also accept that plots 7 and 8 have been orientated to avoid direct overlooking. However, given their substantial height and close proximity, they would result in an overbearing and oppressive feature that would dominate the outlook from the garden area of Nos 7 and 8 Stonebank in particular.

11. The Council also refer to an overbearing impact on the garden area of No 11 Sullivan's Reach, which is set at a lower level than the appeal site. Due to the height of the existing boundary wall to the rear of this garden, which the plans show would be retained, I do not consider the harm to the outlook from this property would be as significant as that for the properties referred to at Stonebank, nevertheless, it would be material and add to those concerns.

12. As above, I accept that the overall density of the site would be acceptable but again it does not necessarily follow that the relationship with surrounding dwellings would also be acceptable. In this case I have found that it would not. Moreover, outlook is clearly a valid material planning consideration and the harm I have identified would be sufficient in its own right to warrant withholding planning permission. It follows therefore, having regard to my findings on this issue and character and appearance that I do not consider the Council's first two reasons for refusal to be irrational or unjustified as suggested.

13. Although paragraph 17 of the Framework encourages effective use of previously developed land, it also states that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. In this case, the proposed layout has not struck an acceptable balance between these aspects.

14. I therefore conclude on this main issue that the proposal would result in unacceptable harm to the living conditions of the occupants of neighbouring dwellings and as such would be contrary to DMP Policy DM2 and paragraph 17 of the Framework. These seek, amongst other matters, to protect the amenity of adjoining occupiers.

15. The Council's second reason for refusal also refers to DMP Policy DM10. However, this appears to be primarily focused on the living standards provided by the development itself, rather than the effects on the living conditions of existing neighbouring occupants, thereby limiting its relevance to this main issue.

Affordable housing

16. The appellant's statement of case makes reference to CS Policy 22, which relates to gypsies, travellers and travelling showpeople. As such it is not directly relevant to this main issue. I have therefore assumed the intention was to reference CS Policy CS 21, which requires the provision of affordable housing as part of residential developments and aims to deliver at least 1150 affordable homes by 2026. In respect of this policy, the Council refer to the requirement that development resulting in the gain of 1-4 residential units should provide a financial contribution equivalent to the cost of 20% of the gross number of dwellings on site as affordable housing. However, the appeal proposal is for eight dwellings, thereby falling within the 6-14 dwelling range for which a provision of 30% affordable housing is required, with the expectation that such provision is made on-site.

17. This policy is broadly consistent with paragraphs 47 and 50 of the Framework, which require local planning authorities to meet the full, objectively assessed needs for market and affordable housing and, where they have identified that affordable housing is needed, set policies for meeting this need, which can include financial contributions if they are robustly justified.

18. As required by planning law[1], my determination of this appeal must be made in accordance with the development plan, unless material considerations indicate otherwise. A material consideration of considerable importance and weight in this instance is the Written Ministerial Statement (WMS) of the 28 November 2014, which amounts to national planning policy defining the specific circumstances in which affordable housing and tariff-style contributions should not be sought from residential development. This includes developments of 10 dwellings or less and which have a combined maximum floor space of no more than 1,000m². The intention of the WMS is to ensure that financial contributions do not become a disproportionate burden for small scale developers and thus frustrate housing supply. Although the WMS was subsequently subject to a legal challenge, the Court of Appeal found in the Government's favour on 11 May 2016[2] and the provisions of the WMS and the Planning Practice Guidance (PPG) have been reinstated.

19. Consequently there is a conflict between the national threshold relating to the provision of affordable housing in the WMS and the PPG and the local thresholds set out in CS Policy CS 21. This is recognised by the Council in its Statement[3] of June 2016, which confirms that the Council wishes to continue to apply CS Policy CS 21 as part of its decision making process.

20. In support of its position, the Statement provides evidence which demonstrates that Elmbridge has significantly higher than average house prices and significant problems with affordability. The evidence suggests that this area is the fourth most difficult place to get onto the property ladder in England. It further illustrates that small sites make up a significant proportion of development coming forward in the Borough, largely owing to the specific constraints within the same. In addition, the Kingston and North Surrey Strategic Housing Market Assessment (SHMA) 2016 also continues to identify a significant need for affordable housing which the policy can help meet.

21. I appreciate that the Statement itself is not a development plan policy and may not have been subject to public examination. Nevertheless, the evidence is persuasive and in my judgement provides cogent reasoning as to why the Council is continuing to apply the thresholds of CS Policy CS 21 rather than the WMS in the particular circumstances of the Borough. Moreover, the Court of Appeal's judgement relating to the WMS has established that its policy measures should not automatically be applied without regard being paid to the full circumstances of any given case, including the provisions of development plan policies.

22. As noted, the underlying objective of the WMS is to remove the burden to small scale developers in order to increase delivery. However, the evidence provided by the Council is that the application of CS Policy CS 21 has not impacted negatively on development coming forward on small sites. The application of Policy CS 21 allows for negotiation to take place where viability is a concern, enabling the Council to reduce or waive contributions on this basis. Nevertheless, the Council's Statement indicates that the majority of

[1] Section 38(6) of the Town and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.
[2] Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441
[3] Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the Vacant Building Credit

permissions granted have been subject to full contributions. This suggests that the policy is not inherently unviable and is not impeding delivery.

23. I recognise that neither the WMS nor the PPG require a viability assessment to be provided to be exempt from contributions. Nevertheless, in this case, no evidence has been provided to demonstrate that meeting the requirements of CS Policy CS 21 would render the scheme unviable or place a disproportionate burden on this development, or that the underlying objectives of the WMS would be undermined.

24. As stated above, I have found CS Policy CS 21 to be broadly consistent with the Framework and therefore I have attached considerable weight to it. Moreover, whilst I attach great weight to the WMS and the PPG, it is evident that the delivery of affordable housing in the Borough involves special difficulties over and above those likely to be encountered in most other areas and contributions from small schemes, such as that proposed, contribute significantly to the ability of the Council to meet its requirements for affordable housing.

25. I therefore conclude on the basis of the evidence before me that there are particular circumstances to suggest that Policy CS21 should outweigh the WMS in this instance and that it is necessary that the proposal secures affordable housing provision. In the absence of such provision the proposal is contrary to CS Policy CS 21 and the Council's Developer Contributions Supplementary Planning Document.

26. The appellant has drawn my attention to three appeal decisions[4] in the Borough in which the Inspector attributed greater weight to the WMS than Policy CS 21, and concluded that a contribution to affordable housing was unnecessary. However, the Council has referred me to a number of other decisions in the Borough which conclude to the contrary, four[5] of which are more recent than those provided by the appellant. My findings above are largely consistent with these most recent decisions. Nevertheless, whilst recognising that Inspectors have come to different conclusions on this issue and the importance of consistency in the planning system, I have determined the appeal on its own merits and on the basis of the evidence before me.

Other matters

27. I acknowledge that the Council do not raise concern regarding loss of privacy, car parking or highway safety. However the lack of harm is a neutral matter in the planning balance and therefore cannot weigh in favour of the appeal proposal.

Planning Balance and Conclusion

28. The Council acknowledge that through the current Core strategy it cannot meet the objectively assessed housing needs (OAHN) identified in the SHMA 2016 and that it does not currently have a five year supply of land when assessed against its OAHN. In such circumstances, Paragraph 49 of the Framework dictates that policies relevant to the supply of housing cannot be considered up-to-date, thereby triggering the fourth bullet point of paragraph 14 of the

[4] Appeal References: APP/K3605/W/3164019; APP/K3605/W/16/3142140 and APP/K3605/W/16/3149477
[5] Appeal References: APP/K3605/W/16/3160470; APP/K3605/W/16/3161055; APP/K3605/W/16/3165031 and APP/K3605/W/17/3167461

Framework. This states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework as a whole.

29. I recognise that the appeal proposal would make a material contribution to housing supply and would make use of previously developed land in a sustainable location. These are matters which weigh significantly in favour of the appeal proposal. However, in the absence of evidence which demonstrates that a policy compliant provision of affordable housing would render the development unviable, I cannot be certain that this benefit could not be achieved with the additional benefit of an affordable housing provision.

30. Therefore, even if I accept that CS Policy CS 21 is a policy relevant to the supply of housing, the harm resulting from a lack of an affordable housing contribution in the particular circumstances I have identified, would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole. This position is reinforced by the harm I have found to the character and appearance of the area and to the living conditions of neighbouring occupants and the resultant conflict with relevant development plan policy. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal does not represent sustainable development.

31. For these reasons, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR