
Appeal Decision

Site visit made on 6 November 2017

by S Jones MA DipLP

an Inspector appointed by the Secretary of State

Decision date: 31st January 2018

Appeal Ref: APP/K3605/W/17/3180413
Rear of 1 Park Road, East Molesey KT8 9LD

- 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 Mr James Hickman representing Ember Estates Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2017/0436, dated 8 February 2017, was refused by notice dated 12 April 2017.
 - The development proposed is erection of a detached chalet bungalow.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Elmbridge Borough Council against Ember Estates Ltd. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposed development would make adequate provision for affordable housing.

Reasons

4. The appeal site lies behind a row of terraces in a largely residential area opposite a Veterinary Practice close to the town centre. It was formerly a builders yard and has security gates to the entrance to the site.
5. One new detached 3 bedroom chalet bungalow with gardens and parking roughly 139m² in area would be built on the site. In principal, new dwellings on sites of 1-4 dwellings would contribute a payment worth 20% of value of the number of proposed dwellings as an affordable housing contribution (AHC) towards offsite provision in the Borough under Policy CS21 of the Elmbridge Core Strategy 2012 and the Developer Contributions Supplementary Planning Document. The appellant did not submit a s106 agreement or other means of securing that contribution and the application was refused for that reason. Equally the appellant did not provide a financial appraisal supporting the issue of viability at that stage.
6. Consequently, it falls to me to consider the matter in the appeal instead. No s106 was provided with the appeal, but the appellant provided a financial appraisal with the appeal and stated that the AHC required would make the

overall scheme financially unviable because costs would outweigh profit. The Council considered the financial appraisal produced in the appeal and queried whether in view of such tight margins the development would realistically be pursued. It queried if some of the stated costs were necessarily justified. The Council submitted evidence with the appeal that indicated that a contribution would be supported.

7. The appellant responded to that by submitting a revised set of figures showing a net sale price of £737025 minus purchase cost and build cost of £638318. The appellant suggests that an AHC of 20% would be unfeasible based on the revised figures and would equate to a deficit. The appellant also relies on the fact that the government via a Written Ministerial Statement (WMS) dated 28 November 2014 and a revised Planning Practice Guidance (PPG) stated that contributions would not be required from developments of fewer than 10 units with a total floorspace of less than 1000m². This change was confirmed in May 2016 following a Court of Appeal case. The WMS and the PPG therefore postdate the Elmbridge development plan, and their intention was to ensure a disproportionate burden of contributions did not fall on small builders. The appellant stated that by building only one dwelling a disproportionate burden would fall upon him with regard to AHC because of the methods by which it is calculated, and problems guaranteeing the final sale price arising from a volatile housing market.
8. There are therefore two matters to be addressed: firstly whether the AHC should be sought in this case, and secondly whether such a contribution is reasonable in terms of viability.
9. Under Policy CS21 it is explained that the Council was previously under-delivering affordable housing because there were very few developments within its boundaries above the 15 dwelling trigger for AHC, and the new policy aimed to redress that. Therefore small sites were a very important part of housing provision in the Borough, and of AHC provision. This approach reflected the emphasis on affordable housing provision made at paragraphs 47-50 of the National Planning Policy Framework (the Framework) where local authorities are required to meet the assessed need for housing, including affordable housing. Policies must be set to meet housing need, including a robust justification for any offsite contributions for affordable housing referred to under paragraph 50. The Framework is a further material consideration.
10. As referred to in the Officers Report, the Council responded to the government guidance by producing a Statement dated June 2016 (updated in February 2017) justifying the continued requirement for contributions to affordable housing from small scale developments for particular reasons relating to the Borough. Amongst others, these consisted of the exceptional difficulty in affording housing in the Borough compared to the rest of the country outside London, and its consistent reliance on small sites and AHC to secure ongoing housing supply.
11. Whilst it is clear that the starting point for my consideration of the appeal is the development plan, the WMS and the PPG are very important material considerations. Weighing up the development plan, government guidance and all other material considerations, I must have regard to the fact that the Councils justification for continuing to require AHC from small developments follows the approach in the Framework. It also appears the policy of requiring

AHC is not proven to be having a detrimental effect on small builders in the area and that small schemes are still regularly coming forward. Therefore this would not compromise the intention of the WMS and PPG. Consequently for the particular reasons applicable in this case, I consider that on balance the local plan priorities mean it would be appropriate in principle for this development to make some level of contribution in order for the Council to respond to identified acute affordable housing need.

12. Furthermore, I am not satisfied that based on the evidence before me that requiring AHC would make the scheme unviable. It appears more likely than not that some measure of AHC could reasonably be payable from this development. Furthermore, the supplementary text to the policy states financial viability is taken into consideration and makes clear that alternatives may be negotiated if an AHC cannot be provided in full under the terms of the policy.
13. Therefore, notwithstanding the differences in the calculations and estimates between the appellant and the Council, it is clear from Policy CS21 and the Developer Contributions Supplementary Planning Document that some flexibility is allowed with regard to the final amount payable from any specific development provided a justification for adjusting it is forthcoming. To say that 20% would be excessive does not equate to saying that nil contribution would be the alternative. A scheme could be completely exempt from the policy requirement if there were particular circumstances in the case which supported that, or contributions could be reduced. This flexibility would address the appellant's concerns with regard to any eventual level of AHC.
14. Other applications and appeals have been raised, particularly Appeals Ref: 3146699, 3150955, 3154395, 3156265, and 3156943. I have taken account of them, in particular their approaches to national and local policy but must note that I do not have all the details of those cases or their calculations of AHC before me in this appeal. Having said that, several of those appeals concluded that an AHC would be appropriate even though the specific development in question was classed as small. Considered on a case by case basis, each appeal would turn on its own facts.
15. Based on the evidence before me, in this particular case as set out above I conclude that the development would not make adequate provision for offsite affordable housing. Therefore the development would conflict with Policy CS21 of the Elmbridge Core Strategy and the Developer Contributions Supplementary Planning Document and the Framework, which together aim to provide for increased housing levels including affordable housing.

Conclusion

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

S Jones

INSPECTOR