
Appeal Decision

Site visit made on 24 January 2018

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2018

Appeal Ref: APP/K3605/W/17/3188704

17 High Pine Close, Weybridge KT13 9EB

- 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 David Howe against the decision of Elmbridge Borough Council.
 - The application Ref 2017/2086, dated 28 June 2017, was refused by notice dated 1 September 2017.
 - The development proposed is erection of a new 3 bedroom single storey dwelling with rooms in the roof space.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant, when lodging his appeal, referred to the Council having failed to determine the application within the prescribed period. However, I now understand that the decision was issued within the required timescale.

Main Issues

3. The main issues are:
 - 1) Whether the proposal would provide for a suitable means of access for refuse vehicles and, if not, the effect on the service of regular waste refuse collection;
 - 2) Whether the footpath/accessway would represent a safe means of access for pedestrians, cyclists and motorists, and also the effect of the use of the access on the living conditions of neighbouring occupiers;
 - 3) The effect of the proposal on the character and appearance of the surrounding area; and
 - 4) Whether a financial contribution towards affordable housing provision is necessary to make the proposal acceptable.

Reasons

Refuse vehicle access and collection

4. On this particular issue the local highway authority, Surrey County Council, raised no objection to the proposal in terms of highway safety, but did draw attention to the narrowness of the accessway from York Road and indicated

that the width is not suitable for emergency vehicles. Nonetheless, fire safety, as an example, is controllable under other primary legislation rather than through the Planning Acts.

5. The accessway is an unmade track, and an adopted public footpath. Where it meets the York Road footway it is approximately 2.85m in width, although this widens slightly, further back. At a recess of some 54m, or midway between York Road and High Pine Close, lie the rear boundaries of both the York Road and High Pine Close properties and the accessway spurs off in two directions utilising the narrow tracts of land between these. Some domestic garages and outbuildings are evident along these spurs, but this also marks the limit of access for four wheeled motor vehicles. The ingress/egress point into the appeal site would be created at this location. Beyond this point the accessway runs as a footpath to the side of 17 High Pine Close directly towards this street and is only suitable for pedestrians and cyclists.
6. The Council's Environmental Services section raised an objection to the proposal in the consideration that this access would not be suitable for waste collection vehicles. In this regard the Council's document on refuse issues 'Guidance for Developers' (GFD) mentions that as collection vehicles need to be able to park close to the storage area, access roads need to be a minimum of 4m in width. In addition, the distance to the proposed new dwelling would exceed the Council's guidelines as to the distances refuse workers are expected to wheel bins during collection and, in illustration, the advice provided was that arrangements would be needed for bins to be presented no more than 10m from York Road or High Pine Close. However, due to the considerably greater distances involved in this instance it was not felt reasonable to expect occupiers to wheel bins from their storage area to either York Road or High Pine Close.
7. Subsequent to the appeal the issue of refuse collection for the proposed dwelling has been subject of lengthy representations from both main parties. The Council has commented that, under S46 of the Environmental Protection Act, Councils are able to require a location where bins should be placed for emptying. Ideally, this should be the front boundary of the property adjacent to the public footway but, if this cannot be met, an exception can be made for a 10m walking distance from the waste collection lorry to the location where the bins are presented for emptying. It is indicated that the 10m distance is considered best practice amongst Councils.
8. The consultation response set out in the Council's Written Statement for this appeal shows that although the Environmental Services section acknowledges that the proposal is an exceptional case it was not considered reasonable to expect the refuse collection crews to walk up to 54m from York Road or 43m from High Pine Close to empty the bins.
9. In response the appellant has referred to the Council's GFD which he considers assists his case. However, under the sub-heading 'Vehicle Access' the document specifies that access pathways from the storage area to the collection point (where the refuse collection vehicle stops) need to be within a 10m distance. The appellant, however, comments that he can find no evidence to support the claim that this distance represents common best practice.
10. Further, the appellant comments that a distance of 43m should not be considered excessive given the experience of a previous proposal for four new

dwellings at 28-34 Sugden Road, Thames Ditton (ref 2015/4561) in the Elmbridge Borough area where a similar issue arose yet planning permission was granted by the Council. Here, it would appear that, during the course of the application the site plan, as originally proposed, was amended to provide a small area of hardstanding as a communal collection point for the refuse bins for the two dwellings furthest from the street. The other two dwellings had their refuse bins stored accessibly within their respective curtilages. The distinct difference in this previous case to that of the current appeal proposal was that a vehicle tracking diagram, submitted by the applicant, had demonstrated that the accessway would be suitable for use by refuse collection vehicles, and that the bins would be collected at distances within the Council's requisite 10m distance from the back of the refuse vehicle. On this basis, no objections were raised on this particular matter.

11. The appellant refers also to a second case within the Elmbridge Borough area (ref 2010/0953) in which the Council granted planning permission for a change of use from offices to four houses. He indicates that this case also had access issues but, save for the site plan I have not been provided with any further details. Besides, each case has its own particular circumstances and is decided on the basis of its individual planning merits and/or impacts, and these would need to be balanced out in the planning assessment. As such, it is difficult to draw parallels between proposals for development.
12. Given the disagreement between the main parties on this issue I have referred to the Department of Transport's publication 'Manual for Streets', which provides technical guidance on highway related issues. This document indicates that, for an accessway to be used by refuse collection lorries, a minimum width of 5m is recommended. Specifically, though, paragraph 6.8.9 of the document refers to Schedule 1, Part H of the Building Regulations (2000) which defines locations for the storage and collection of waste. Key points within are that residents should not be required to carry waste more than 30 m to the storage point and that waste collection vehicles should be able to get to within 25 m of the storage point. However, 'Waste Management in buildings – Code of practice (BS 5906: 2005) does recommend slightly shorter distances. Also, it indicates that the collector should not move containers for a distance of more than 15m. This applies to both residents and waste collection operatives.
13. Although there are certain discrepancies in the above guidance compared to the Council's standards these do not support the appellant's case. Taking all the above factors into account I am satisfied that the Council's concerns as to the issue of refuse collection is well founded and, given the advice within the government document, Manual for Streets and also the Code of practice referred to, the proposal does not comply with recognised guidance.
14. On this main issue I conclude that the proposal would not provide for a suitable means of access for refuse vehicles and, given the distances involved between the proposed dwelling and the public highway, it would not make for a satisfactory arrangement for the regular collection of waste refuse. The proposal would thereby materially conflict with the aims and requirements of Policy DM7 of the Council's Development Management Plan (DMP).

Safety of access and living conditions

15. As regards whether the use of the public footpath by pedestrians and other vehicles could be safely accommodated the appellant has submitted the

findings of a survey which indicates the incidence of usage of the footpath by pedestrians and cyclists, recorded over a single continuous period of three days late last year. The findings suggest that its use is somewhat limited. I am also mindful of the observations made on my site visit, the presence of domestic garages at the accessway's halfway point and that certain private motor vehicles will occasionally pass along it involving movements to and from York Road.

16. In this context I consider that the additional movements arising from the proposed single dwelling would not be so significant as to either unacceptably impact on pedestrian or cyclist users or be perceptible to neighbouring occupiers in terms of having an adverse effect on their living conditions. Indeed, the Council's case report suggests this to be the case yet the wording of the corresponding reason for refusal indicates that, as the appellant has not demonstrated that the proposed access is appropriate in size and design to accommodate vehicles and pedestrians safely, the principle of developing this piece of garden land is unacceptable.
17. The above stance appears to conflate two separate issues. Accordingly, I have drawn a clear distinction between the matter of refuse collection and the general use of the footpath or accessway. The local highway authority did not raise objection to the proposal on this basis and, in the absence of compelling information otherwise, I see no reason to disagree with this approach.
18. On this issue I conclude that the proposal would not be harmful to the safety of pedestrians, cyclists and motorists in their use of the footpath or accessway, nor would the proposal be harmful to the living conditions of neighbouring occupiers. As such, there would be no material conflict with the objectives of DMP Policy DM10.

Character and appearance

19. The proposal would involve the subdivision of a substantial residential plot and the creation of a separate and independent planning unit which would accommodate a new two-storey dwellinghouse. To facilitate the proposal the donor property would lose a section of its rear garden.
20. The site is located within the Oatlands Park York Road and Oatlands Chase Environs character area as defined in the Weybridge companion guide to the Council's Design and Character Supplementary Planning Document. This sets out the character area's residential character and it being predominantly made up of twentieth century two-storey houses on medium to large plots. Further, the document, in setting out opportunities for this character area, notes that any new development is likely to take the form of the subdivision of large plots. I consider the proposal to be a case in point.
21. Both High Pine Close and York Road contain dwellings of markedly different appearance and character but in this particular instance the Council has raised objections to the proposed dwelling's design and scale and its position to the rear of the dwellings in High Pine Close, and considers that the proposal would result in an incongruous form of development.
22. The Council acknowledges that there are some smaller, more comparable plots to the appeal site in the wider area, and the appellant has provided examples of such, but it comments that there no rear garden infill developments in the

area. Residential gardens do not constitute brownfield sites nor previously developed land but the development of garden land such as this is not necessarily prohibited providing that the proposal is compliant with other relevant policies.

23. In this connection although DMP Policy DM2 and Policy CS17 of the Council's Core Strategy, adopted in 2011, require that new development should be based on an understanding of local character it also has objectives as to achieving high quality design and I consider that the proposed dwelling would satisfy this, displaying also an appropriate and acceptable appearance. Further, details of sustainable construction have also been provided, and the Council has raised no objection to the proposal in terms of either the internal or external space to be provided for its future occupiers. The remaining garden area for No 17 would also remain generous in provision.
24. Whilst I note the proposal's backland nature it would not be unacceptably harmful when measured against the wider local character. Such development should not be automatically disqualified and the proposal's design merits, on balance, weigh in the proposal's favour. The circumstances are unusual and the proposal has only been put forward due to its particular location and proximity to the accessway. Further, I am also drawn to a requirement of DMP Policy DM10 which, in addressing backland development, indicates that the means of access should be appropriate in size and design to accommodate vehicles and pedestrians safely and to prevent harm to the amenities of neighbouring occupiers. Save for refuse vehicles, which would not attempt to use the accessway due to its limited width, I have found that the means of access to and from the dwelling itself, given its existing usage, would be acceptable.
25. On this issue I conclude that the proposal would not be harmful to the character and appearance of the surrounding area and the objectives of DMP Policies DM2, DM10 and CS Policy CS17 would not be compromised. Similarly, the proposal would not be in material conflict with relevant advice in the National Planning Policy Framework (the Framework), particularly with reference to paragraph 65 thereto.

Financial contribution

26. CS Policy CS21 requires the provision of affordable housing as part of residential developments. In the case of residential proposals comprising 1-4 dwellings a financial contribution is sought and this should be equivalent to the cost of 20% of the gross number of dwellings on site as affordable housing. The contribution would be secured by a planning obligation, ring fenced and then spent on off-site delivery.
27. In this particular instance, the appellant has not provided any such contribution and the Council has raised an objection in this regard. No viability assessment was submitted and it is thereby assumed that the said contribution would not affect the viability of the scheme.
28. The reasons behind the Council's approach are set out in the supporting text to Policy CS21, which explains that the East Surrey Strategic Housing Market Assessment 2008 (SHMA) found that house prices in Elmbridge are significantly above regional and national averages. A new SHMA, published by the Council in 2016, demonstrates that there is a significant need not only for housing in general but specifically affordable homes, within the Borough. As such, I

- consider the approach in Policy CS21 to be consistent with paragraphs 47 and 50 of the Framework which requires local planning authorities to meet the full, objectively assessed needs for market and affordable housing.
29. The Court of Appeal's judgement of May 2016 reinstated and gave legal effect to the Written Ministerial Statement (WMS) of November 2014 which states that affordable housing and tariff style planning obligations should not be sought from developments of 10 units or less. At this point the government's Planning Practice Guidance (PPG) was updated, accordingly. The intention of this is to prevent a disproportionate burden on small scale developments.
30. The PPG post-dates the CS's adoption and is a weighty material consideration. Nonetheless, the effect of the WMS is not to reduce the weight that should be given to the development plan nor to outweigh relevant policies therefrom. The primacy of the development plan remains in that planning applications must be decided in accordance with the development plan unless material considerations indicate otherwise.
31. In June 2016 Elmbridge Council prepared a Statement in response to the WMS, in which it explains that it considers that affordable housing units and contributions for affordable homes from smaller site schemes should continue to be sought under Policy CS21. That is because the Council considers there is a continuing need for affordable homes to be provided, given affordability issues for first time home owners in Elmbridge. The Council's Statement comments that smaller site schemes, as a source for securing affordable housing provision, are particularly important in the Borough because of the limited availability of larger development sites.
32. Given the stated need, for a scheme contrary to Policy CS21 to be viewed as acceptable there would need to be a material consideration of great weight to justify a departure from Policy CS21 being made. Applying the WMS's ten units or less threshold is a material consideration that might warrant such a departure. However, the Court of Appeal's judgement concerning the WMS has clearly established that this policy measure should not automatically be applied without regard being paid to the full circumstances of any given case, including the provisions of any development plan policies. I have found no such material considerations in this case to warrant any departure.
33. The Council has submitted a whole series of appeal decision letters in support of its case and I have had regard to the approach taken by the respective Inspectors. In its Statement of Case the Council refers specifically to a recent appeal (*Ref APP/K3605/W/16/3146699*) where the Inspector, in considering that Policy CS21 was consistent with relevant advice within the National Planning Policy Framework (the Framework), was also of the view that small sites make a significant contribution towards the delivery of affordable housing in Elmbridge Borough. Further, there was no substantive evidence to suggest that the requirements of Policy CS21 are placing an unreasonable or disproportionate burden on developers.
34. I have reached my conclusions on this issue on the basis of the evidence provided to me. Should the Council have previously chosen to waive financial contributions required by way of Policy CS21 on certain cases then that was a matter for the Council in its role as decision maker. Whilst I have regard to these matters it is not within my remit to revisit nor comment on the merits, or otherwise, on planning applications previously made to the Council.

35. The appellant appears to take issue with the Council's contribution charge which, he says, favours the development of mansions rather than the type of housing which is required. However, the methodology used by the Council and its formula for calculating the level of contribution for small sites such as this is set out in the Council's Supplementary Planning Guidance, 'Developer Contributions' which was adopted by the Council in April 2012 for use in applications for development. Accordingly, this is a well established document having been used for such purposes for the past six years.
36. In this instance, from the information before me, I consider that the WMS is outweighed by Policy CS21 and, as such, I conclude that the provision of an affordable housing contribution is necessary to make the proposal acceptable, is directly related to the development and is fairly and reasonably related in scale and kind to the development. Consequently, it would satisfy the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 204 of the Framework.

Other matters

37. The appellant has referred to the Council's written response to the pre-application enquiry made whereby drawings involving a proposed additional dwelling at the site were submitted for comment. In its response letter, dated 11 December 2015, the issue of refuse collection was not raised. It does indicate that the proposed dwelling's design may be considered acceptable, although commenting that further details would be required to assess this. Specifically, it also refers to Policy CS21 and the requirement of a financial contribution.
38. The Council is not bound by the advice given at the pre-application stage and the letter explains that this advice represents the informal opinion of a planning officer. Notwithstanding, therefore, the letter being silent on refuse collection, which was a matter dealt with by formal consultation upon the planning application being submitted, I consider that the letter did deal with the issues directly related to specific planning matters and would appear to have addressed the level of detail provided at that time.

Conclusions

39. I have found the proposal to be acceptable in terms of its effect on the character and appearance of the area and also the access arrangements to the appeal site for the purposes of pedestrians, cyclists and private motor vehicles. However, this is significantly outweighed by the implications arising from the failure to demonstrate a satisfactory arrangement for the collection of waste refuse and also the failure to provide the requisite financial contribution in respect of off-site affordable housing.
40. For the above reasons, and having had regard to all matters raised, the appeal does not succeed.

Timothy C King

INSPECTOR