The Planning Inspectorate

Appeal Decision

Site visit made on 28 June 2019

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2019

Appeal Ref: APP/K3605/W/19/3226542
35 New Road, Esher KT10 9NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Ms Caroline Tighe against Elmbridge Borough Council.
- The application Ref 2018/3272 was dated 29 October 2018.
- The development proposed is the demolition of the existing building at 35 New Road and erection of a new residential building to contain 6 residential dwellings as well as a single dwelling house with supporting car and cycle parking, refuse and recycling storage.

Decision

1. The appeal is dismissed and planning permission for the demolition of the existing building at 35 New Road and erection of a new residential building to contain 6 residential dwellings as well as a single dwelling house with supporting car and cycle parking, refuse and recycling storage is refused.

Procedural matters

2. The Council has confirmed that had it been in a position to determine the application, then planning permission would have been refused for the following reasons:

   1. The proposal, due to proposed extent of hardstanding and parking areas, would result in harm to and pressure to fell TPO trees that have an important contribution to the character of the street scene and area. As a result, the proposal would result in harm to the character and appearance of the street scene and area, contrary to policies CS9 and CS17 of the Core Strategy 2011 and policies DM2 and DM6 of the Development Management Plan 2015.

   2. The proposed flats, due to the position of the side facing kitchen/living room window in flat 6, would result in overlooking to the rear private garden of number 37 New Road, to the extent that it would be harmful to their residential amenity. As a result, the proposal would be contrary to Policy CS17 of the Core Strategy 2011, Policy DM2 of the Development Management Plan 2015 and the Design and Character SPD 2012.

   3. In the absence of satisfactory information being submitted, it cannot be ascertained that the proposed basement would not impact groundwater flows to the extent that they result in flooding or other impacts and whether these can be mitigated. As a result, the proposal would be contrary to policy CS26 of the Core Strategy 2011 and the Elmbridge Flood Risk SPD.

4. The proposal would, by reason of the lack of a satisfactory completed Unilateral Undertaking in relation to the provision of affordable housing, would fail to provide the necessary provision of affordable housing contrary to Policy CS21 of the Core Strategy 2011 and the Developer Contributions Supplementary Planning Document 2012."

3. The appellant has submitted a Planning Obligation, dated 17 May 2019, in the form of a Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990, as amended. The UU seeks to make a financial contribution towards affordable housing. However, the UU before me does not include full registered title details or a plan that identifies the land to which the planning obligation relates. While some of these details have been provided in the appeal submissions, they do not form part of the UU. Consequently, the UU is incomplete and so I am unable to attach any weight to it.

4. On 19 February 2019, the Government published its Housing Delivery Test (HDT) results alongside an updated revised National Planning Policy Framework (the Framework). The HDT outcome for the Council indicates that the delivery has been below the requirement over the last 3 years. The Council also accepts that it cannot demonstrate a 5-year supply of deliverable housing sites. The HDT results do not alter that position. The main parties have had the opportunity to address the issue of housing land supply and the Framework through the appeal process.

Main issues

5. The main issues are:

- whether the proposal makes adequate provision for affordable housing;
- the effect of the proposed development on the character and appearance of the local area with particular regard to trees;
- the effect of the proposed development on flood risk; and
- the effect of the proposal on the living conditions of the occupiers of 37 New Road with reference to privacy.

Reasons

Affordable housing

6. The Council has produced cogent evidence of the pressing need for affordable housing in the District with reference to the findings of the Kingston and North East Surrey Strategic Housing Market Assessment (2016) (SHMA). In response, Policy CS21 of the Elmbridge Core Strategy (CS) requires that residential development on sites of 6-14 dwellings provide 30% of the gross number of dwellings on-site as affordable homes, where viable. This policy adds that an alternative to on-site provision may be appropriate in exceptional circumstances.

7. CS Policy CS21 is consistent with the Framework, which requires 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 on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified.

8. On the evidence before me, it appears that the need to provide affordable homes sought by the Council arises from the development and it satisfies the 3 tests in Regulation 122(2) of the CIL Regulations 2010. While the appellant has indicated a willingness to make a financial contribution towards affordable housing, there is no firm commitment to do so because the submitted planning obligation is incomplete. Therefore, the proposal fails to make adequate provision for affordable homes and so it is contrary to CS Policy CS21. Significant harm would as a result be caused.

Character and appearance

9. The site comprises a detached house set back from the road within a good-sized plot in a predominantly residential area. There are trees within the site that are protected by a Tree Preservation Order. Some of the protected trees together with other specimens form distinctive clusters close to and along part of the site's highway frontage. When in leaf, the interconnecting canopies of these trees would accentuate their grouping. These trees significantly add to the visual character of the local area by giving an attractive verdant quality to the local street scene and by visually softening the existing built form. This positive contribution is readily evident from numerous public vantage points along New Road as it curves around the site.

10. Given the potential effect of the proposal on trees, the appellant has sought specialist advice and has submitted an arboricultural method statement (AMS), dated April 2019, which includes a tree survey, tree protection plan (TPP) and an arboricultural impact assessment. These assessments have been prepared in accordance with the appropriate British Standard. The scheme has also been refined in the light of feedback from the Council particularly with regard to the position and extent of new hard surface areas within the site.

11. The TPP shows that the proposal would encroach into the root protection areas (RPAs) of several retained trees, all of which are graded as high quality with a good life expectancy. Of the protected trees, it is a Beech (No 1 on the TPP) and London Plane (No 2) that would be most affected in this way. There would also be modest incursions into the RPAs of an Oak tree (No 9), which the Council considers has credentials to be regarded as a veteran, and a Scots Pine (No 10). Even so, with appropriate measures in place and secured by condition, I am satisfied that the trees to be retained could be adequately protected during the construction phase of the new development.

12. These groupings would also be close to the driveways, vehicle parking spaces and the bin store that would serve future occupiers. Pressure to prune these and other trees may result given the nuisance and perceived risks to safety for users of these outdoor areas from the fall of leaves, pinecones and needles, deadwood and sap. As these trees grow so may the demand to carry out remedial works to them. Accordingly, over time there is an increased risk that the health and longevity of the retained protected trees would be diminished and their important contribution to the local area noticeably reduced if the new development were to proceed. That reduction could be significant because it might involve the loss of deterioration of higher value trees (category A or B) and an Oak tree that due to its age, height and condition could be of exceptional value.

13. While the entrance to the driveways would not change, the proposed hard surface areas for vehicle circulation, parking and bin stores, and the effects of

the retained trees on the use of these outdoor areas, would. Some trees are protected. Even so, the pressure to lop, top or even remove these trees in the longer term may be difficult for the Council to resist. In mitigation, replacement trees could be planted. However, these new trees would take some considerable time to sufficiently mature to alleviate the harm that would arise from the diminished contribution or even the loss of the existing trees.

14. On the second main issue, I conclude that the proposed development would significantly harm the character and appearance of the local area through the risk to the health and longevity of some trees to be retained. As such, it conflicts with CS Policies CS9 and CS17 and Policies DM2 and DM6 of the Elmbridge Local Plan Development Management Plan (DMP). These policies aim to ensure that new development respects and is sensitive to the character and appearance of the surrounding area and those features that contribute to local distinctiveness. It would also be at odds with the Council's *Design and Character* Supplementary Planning Document (SPD), which includes guiding principles for development and highlights the importance of respecting the site's context.

Flood risk

15. Although the site is located within an area of low flood risk, it is also identified as being within an area of ground water vulnerability. This particular designation is important because flood risk can occur from water that is in the ground as well as from rivers and surface water.

16. Substantial works are proposed below ground level to provide vehicle parking and rooms for plant and storage. However, few details have been provided of the implications, if any, of these subterranean works on ground water and the flood risks that might result. While the Council appears not to have formally requested information on this matter, the onus is also on the applicant to demonstrate that the proposal would not increase the risk of flooding in an area that is vulnerable to ground water. Although this issue is also dealt with by other regulatory authorties, the Framework makes clear that in deciding planning applications, local planning authorities should ensure that development does not increase flood risk. From the evidence before me, and given the extent of the below ground works proposed, I am unable to conclude that that would be the case here.

17. As such, the proposal is contrary to CS Policy CS26 and the Council's *Flood Risk Supplementary Planning Document*, which aim to ensure that the risk from flooding is minimised and does not increase the risk of flooding elsewhere. I attribute moderate weight to the harm caused.

Living conditions

18. The elevated position of the second floor window that would serve the kitchen and lounge of new flat 6 would be likely to allow a greater level of overlooking towards the rear garden of the adjacent property, which is No 37, than would be likely from the windows of the existing dwelling. However, such views would be mainly towards the back of the adjacent house, with those of its back garden at a more acute angle. In my experience, some overlooking of this type is often a characteristic of adjacent residential properties in built-up areas. Taken together, I find that the overlooking possible from the new flat window

of flat 6 would not be so great as to unduly harm the neighbours' enjoyment of their rear garden due to an unacceptable loss of privacy.

19. Consequently, the living conditions of the occupiers of No 37 would not be materially reduced. As such, the appeal scheme does not conflict with CS Policy CS17, DMP Policy DM2 or the Council's SPD insofar as they aim to safeguard residential amenity.

Planning balance

20. The Council is currently unable to demonstrate a 5-year supply of deliverable housing sites. As a result, paragraph 11 d) of the Framework in engaged. This states, amongst other things, that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

21. In this case, the proposal would positively contribute towards the supply of housing and provide smaller residential units for which there is an acute need, which is acknowledged in the SHMA. These considerations carry considerable weight in support of the appeal. The appeal scheme would make an efficient use of land. There would also be some economic benefits from the sale of materials during the construction phase and from spending by future occupiers. These considerations all weigh in support of the proposal.

22. On the other hand, the Framework notes that developments should respond to local character; add to the overall quality of the area; and provide a high standard of amenity. The proposal would not adhere to these key policies. Furthermore, the appeal scheme would not secure adequate provision for affordable homes or minimise the risk from flooding.

Other matters

23. Reference is also made to two other recent developments at 3 and 33 New Road although I have assessed the proposal on its own merits, as I am required to do.

24. No objection is raised in relation to potential noise, waste storage, highways or the living conditions of future occupiers, with which I would agree. These matters do not outweigh the significant harm that I have identified.

25. The appellant is deeply critical of the Council's handling of the planning application and has provided a detailed account of the various interactions with Officers and the difficulties and costs that in her opinion have resulted. The appellant also feels aggrieved and considers that some objections were not raised until late in the day despite ample opportunities to do so beforehand especially at the pre-application stage. It is also suggested that the grounds of objection identified after the date at which the Officer's report should have been completed should be put to one side. However, the appeal process provides an opportunity for the case to be independently and fairly assessed having allowed all interested parties to explain their position and respond to the comments of others. The appellant also makes very serious allegations of discrimination, bullying and blackmail against the Council, all of which are beyond the remit of this appeal.

26. Interested parties raise several additional objections to the proposal including precedent, density, wildlife, highway safety, shared access arrangements, vehicle parking and the type and scale of the proposed development. These are all important matters and I have taken into account all of the evidence before me. However, given my findings on the first three main issues, these are not matters on which my decision has turned.

Conclusion

27. When assessed against the policies in this Framework taken as a whole, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the appeal scheme. Therefore, the proposal does not benefit from the presumption in favour of sustainable development, which means that the Framework does not indicate a decision other than in accordance with the development plan.

28. For the reasons set out above, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR