



Appeal Decision

Site visit made on 26 June 2019

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Appeal Ref: APP/K3605/W/19/3225092 36 Stoke Road, Cobham KT11 3BD

- 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 Queenshill against the decision of Elmbridge Borough Council.
 - The application Ref 2018/2408, dated 3 August 2018, was refused by notice dated 4 January 2019.
 - The development proposed is demolition of the existing building and erection of two pairs of semi-detached dwellings comprising four residential units with associated external amenity space, parking and refuse storage.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The first reason for refusal in the Council's decision dated 4 January 2019, cites Policy DM10 of the Elmbridge Development Plan (2015). During the appeal the Council confirmed that this policy is not relevant to the proposal. I concur with the explanation provided by the Council and proceed on this basis.
3. A completed Unilateral Undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted by the appellant during the appeal. This includes obligations for financial contributions of £99,602 towards affordable housing and £3,814 towards mitigation measures in respect of the effects of the development on the Thames Basins Heaths Special Protection Area (SPA). I will return to this later in my decision.

Main Issues

4. The main issues are whether the proposed development makes effective and efficient use of the site with regard to housing density and mix; whether a financial contribution towards affordable housing provision is necessary to make the proposal acceptable.; and, the effects of the proposed development on the SPA.

Reasons

Effective and efficient use of the site

5. The appeal site comprises a detached, unoccupied dwelling within a substantial plot. A Church is located immediately to the east of the site and there are apartments blocks nearby along Stoke Road and its junctions with Pendenza and Fairmile Lane. The remaining area largely comprises detached dwellings of

various designs and scales, within a range of plot sizes. Consistent with the Council's Design and Character Supplementary Planning Document, the area is one of larger houses and flatted developments.

6. Policy CS17 of the Elmbridge Core Strategy, 2011 (CS) requires a minimum density of 30 dwellings per hectare (dph) in order to contribute to the Council's overall target of 40 dph. In exceptional circumstances, where overriding harm to the valued character of the area would occur as a result of the application of the minimum density threshold, this policy allows development at a lower density, which maximises the efficient use of land. The aims of this policy are broadly consistent with the National Planning Policy Framework ('the Framework')¹. The main parties are agreed that the proposal would not harm the character of the area. Nonetheless, the proposed density of about 22 dph, although higher than the extant arrangement, would fall short of the minimum policy requirement.
7. In support of the proposed density, the appellant has referred to the Council's Design and Character Supplementary Planning Document Companion Guide: Cobham, Oxshott, Stoke D'Abernon and Downside. This describes the character of the sub-area, South of Stoke Road, as a general mix of housing type and layout. Although it states that some parts of this sub-area could potentially achieve higher densities than other parts of the settlement, it does not preclude high density development at the site.
8. Relying on the Elmbridge's Annual Monitoring Report-2017/18 and the submitted Housing Density Survey (HDS) the appellant asserts that the area has an average density significantly lower than the Borough's minimum requirement for 30 dph, and that a higher density than 22 dph would harm the character of the area. However, these average density figures do not provide an accurate assessment of the site's development potential. Indeed, the HDS highlights the range of densities in the area. In particular, the apartment blocks nearby on plots of a comparable size to the site, illustrate that the area accommodates higher density developments which contribute to its character.
9. I am aware that a scheme for 10 flats at the site received negative feedback at pre-application stage. On the basis of this single scheme and the above observations, I am not persuaded that the site cannot support a higher density than the appeal scheme without harming the character of the area.
10. Turning to housing mix, through Policy CS19 of the CS the Council seeks to secure a range of housing types and sizes on developments across the Borough in order to create inclusive and sustainable communities reflecting the most up to date Strategic Housing Market Assessment (SHMA) in terms of the size and type of dwellings.
11. The latest SHMA² indicates that the greater need is for 1, 2 and 3-bedroom homes (99%) with just 1% being for 4+ bedroom homes. Moreover, the Council's evidence³ illustrates that proportionally there is an under-supply of smaller dwellings. Although the proposal would add variety in terms of introducing semi-detached houses, it is exclusively for 4-bed dwellings and therefore does not reflect the requirements of the SHMA.

¹ Paragraphs 122 and 123

² Strategic Housing Market Assessment for Kingston upon Thames and North east Surrey Authorities, 2016

³ Authority Monitoring Report 2017/2018

12. The appellant has referred to a number of approved schemes within the Borough, along with appeal decisions relating to developments elsewhere. These highlight that decision makers considered various factors in determining those schemes. In this case, based on the submitted evidence and the foregoing reasons, factors such as prevailing density, the character of the area and the need to meet housing supply are not substantive enough or constitute exceptional circumstances, which outweigh the need to make effective and efficient use of the site.
13. Consequently, in direct conflict with Policies CS17 and CS19 of the CS the proposed development fails to make effective and efficient use of the site with regard to housing density and mix.
14. Accordingly, I also find conflict with paragraph 122(a) of the Framework which indicates that decisions should support development that makes efficient use of land taking into account the identified need for different types of housing. Moreover, as the Council cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 123 of the Framework indicates that where there is a shortage of land for meeting identified housing needs, plans should contain policies to meet as much of the identified need for housing as possible.

Affordable Housing

15. Whilst the appellant contests the need for affordable housing, in principle and on grounds of financial viability, as already stated the UU includes an obligation for an affordable housing contribution (AHC).
16. Planning law requires that decisions should be made in accordance with the development plan unless material considerations indicate otherwise⁴. Policy CS21 of the CS aims to provide at least 1150 affordable homes between 2011 and 2026, by requiring all proposals where there will be a net increase in dwellings to contribute to the provision of affordable housing. In residential development of between 1 and 4 dwellings it requires a financial contribution to affordable housing, equivalent to the cost of 20% of the gross number of dwellings, which it seeks to secure by a legal agreement, subject to viability.
17. Paragraph 63 of the Framework postdates the CS and says that affordable housing should not be sought for residential developments that are not major developments, which it defines as 10 or more homes or sites with areas of 0.5ha or greater. This requirement is repeated in the Planning Practice Guidance (PPG) and is consistent with the Written Ministerial Statement, 28 November 2014 (WMS).
18. However, the Council's evidence describes how house prices in Elmbridge are significantly above regional and national averages, and how given the affordability issues for first-time buyers, there is an acute and substantial need for affordable housing. Further, the contributions from small sites have made a significant contribution to the provision of affordable homes. The Council also refers to paragraph 59 of the Framework which says that it is important that the needs of groups with specific housing requirements are addressed.
19. I appreciate the intention of Paragraph 63 of the Framework, the PPG and the WMS, is to ensure that financial contributions should not become a

⁴ Section 38(6) of the Town and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

- disproportionate burden to small developers and thereby frustrate housing supply; it is a material consideration to which I attach great weight. However, it does not, in the circumstances of this proposal, and given the acute and substantial need for affordable housing in the Borough, and the significance of small sites in achieving the aim of CS Policy CS21, outweigh the substantial weight I attach to the local evidence of affordable housing need provided by the Council, and the Development Plan.
20. Irrespective of the above, in support of a nil contribution towards affordable housing, the appellant has submitted financial viability information⁵. This was reviewed on behalf of the Council by David Searle Partnership (DSP).
 21. The principal area of dispute between the main parties is the site's Benchmark Land Value (BLV). The appellant's calculations show a BLV of £1,405,331 and a surplus of £13,362. Whereas DSP identify a BLV of £1,104,554, with a surplus of £342,334.
 22. The appellant's revised BLV is an aggregate value, calculated in two halves, the value of the existing dwelling being one half, and the other being that of the garden land, on the assumption that the latter could accommodate an additional dwelling.
 23. Although the appellant's value of the dwelling has been derived from properties sold in the area, most of these are 4-bed properties and are therefore not comparable to the appeal property which is a two-bed chalet bungalow. Also, I have no evidence to support the appellant's suggestion that chalet bungalows command a premium. Similarly, based on the prices of two smaller units, I am not persuaded by the appellant's assertion that smaller dwellings sell at higher £/m² values than larger dwellings.
 24. Furthermore, the PPG is clear that an 'Existing Use Value plus' approach is used to determining the BLV. This is the current use value of a site plus a reasonable incentive for a land owner to bring forward land for development while allowing a sufficient contribution to fully comply with policy requirements. Although it acknowledges that 'Alternative Use Value' may be informative in establishing BLV, the circumstances in which it would realistically apply are limited to uses which have an existing implementable permission. In this case, there is no certainty that a proposal for an additional dwelling at the site would accord with the Development Plan.
 25. Drawing on the above factors, and in light of the review work undertaken by DSP⁶, I find that the appellant's BLV calculations are not clearly substantiated which leads me to doubt the financial viability information. Further, the DSP review demonstrates that a fully policy compliant contribution towards affordable housing would be viable.
 26. Based on the foregoing reasons, I conclude that a financial contribution towards affordable housing provision is necessary to make the proposal acceptable. Further, the evidence submitted does not adequately demonstrate that the proposed scheme would not be viable if it included a contribution for the delivery of affordable housing.

⁵ Affordable Housing Financial Viability Analysis for Queenshill by S106M and S106 response to DSP review by S106M

⁶ Review of Applicant Submitted Viability Position 36 Stoke Road, Cobham KT11 3BD, October 2018 (DSP18029JA) and Council's e-mail to appellant's consultants dated 21 November 2018.

27. Notwithstanding the above, The AHC in the UU meets the requirements of Policy CS21 of the CS. On the basis of which, the AHC is necessary in the interests of the Council's housing strategy, and directly related and proportional to the scale of development proposed. Therefore, it satisfies the tests set out in regulation 122(2) of the Community Infrastructure Levy Regulations and Paragraph 56 of the Framework.

Thames Basin Heath Special Protection Area (SPA)

28. The site is within 5km of the SPA. SPA's are protected by the Conservation of Habitats and Species Regulations 2010 (as amended). In order for development to be acceptable, these regulations require it to demonstrate that it will have no likely significant effect on the SPA, either alone or in combination with other proposals. If it cannot, measures must be proposed to remove the impact, or the proposal should be refused.
29. It would appear that the Council considered that the development would result in harm to the SPA in the absence of mitigation measures, although there is nothing before me to demonstrate that it undertook a project specific Appropriate Assessment (AA) in respect of the development.
30. The Court of Justice of the European Union⁷ held that the decision maker must consider mitigation measures intended to avoid or reduce the harmful effects on a protected site within the framework of an AA, rather than at the screening stage. This responsibility now falls to me as the competent authority. Whilst based on the submitted UU the Council accepts that the Strategic Access Management and Monitoring contribution of £3814 is in compliance with Policy CS13 and the Council's Developer Contributions Supplementary Planning Document, insufficient evidence has been submitted with the appeal to permit me to undertake the AA and assess the adequacy and effectiveness of the proposed mitigation. Therefore, I cannot be certain that the proposal would not be harmful to the SPA.
31. Had the proposal been acceptable in other respects, the Council would have been invited to submit the necessary evidence in relation to the SPA and its mitigation strategy. Accordingly, based on the foregoing reasons, I am unable to conclude that the proposal would comply with Policy CS13 of the CS, which amongst other things requires that adequate measures are put in place to avoid or mitigate any potential adverse impacts on the SPA.

Planning Balance

32. The Council is currently unable to demonstrate a 5-year supply of deliverable housing sites. However, as I am not certain that the proposal would not be harmful to the SPA, this provides a clear reason for refusing the development proposed. Therefore, having regard to Footnote 6⁸, the presumption in favour of sustainable development, under Paragraph 11 of the Framework does not apply.
33. Even if I had concluded that the proposal would not be harmful to the SPA, this would be a neutral factor in the overall balance. The proposal would add to the supply of housing and more significantly would contribute towards affordable housing provision in accordance with Policy CS21 of the CS. The new dwellings

⁷ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

⁸ Paragraph 11d) (i) of the National Planning Policy Framework

would also support the vitality of the area. These would be social benefits of the scheme. Economic benefits of the proposal would include the creation of construction jobs during the build period, increased spending locally by the new households, along with generating other financial receipts. Considering the sustainability measures to be incorporated in to the development and its design, along with the accessible location of the site, it would bring some environmental benefits.

34. Nonetheless, given the modest extent of the scheme (3 additional dwellings) such benefits would be limited, and the adverse impacts of failing to make effective and efficient use of the site with regard to housing density and mix would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In particular, given its strong support to making effective and efficient use of land to increase the supply of housing.

Conclusion

35. For the above reasons and taking into account all other matters raised, the appeal is dismissed.

M Aqbal
INSPECTOR