
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: 3 October 2019

Appeal Ref: APP/K3605/W/19/3225103

Land to east of 82 Island Farm Road, West Molesey KT8 2LQ

- 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 Murray Laird against the decision of Elmbridge Borough Council.
 - The application Ref 2018/2523, dated 15 August 2018, was refused by notice dated 5 December 2018.
 - The development proposed is residential development of 5 flats.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. During the course of the appeal the appellant submitted a Financial Viability Appraisal (FVA). This did not form part of the planning application (Ref 2018/2523). Nevertheless, it is part of the appellant's case at appeal and the Council has been given the opportunity to comment on this. Although the FVA was prepared for a current planning application¹ at the appeal site, based on the evidence submitted by the main parties, the proposal subject of this application is near identical to the appeal scheme. The FVA is therefore a relevant consideration and I have proceeded on this basis.

Main Issue

3. The main issue is whether affordable housing provision is necessary to make the proposal acceptable.

Reasons

4. Planning law requires that decisions should be made in accordance with the development plan unless material considerations indicate otherwise². Policy CS21 of the Elmbridge Core Strategy, 2011 (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 developments of 5 dwellings it requires 20% of the gross number of dwellings to be affordable and provided on site, which it

¹ Ref: 2019/0575

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

seeks to secure by a legal agreement, subject to viability. In this case, no affordable housing provision is being provided.

5. Paragraph 63 of the National Planning Policy Framework ('the Framework'), which postdates the CS 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.
6. 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, that the contributions from small sites have made a significant contribution to the provision of affordable homes.
7. The appellant asserts that because the Council cannot currently demonstrate a five-year supply of deliverable housing sites (HLS) that the Council's housing policies, including Policy CS21 of the CS, should be treated as being out of date, with regard to Paragraph 11 of the Framework.
8. Under Paragraph 11 of the Framework planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole. Paragraph 3 of the Framework highlights that it should be read as a whole (including its footnotes and annexes). In that regard there are policies within the context of the Framework as a whole, that support the provision of affordable housing, as part of boosting the overall supply of housing³, addressing the needs of groups with specific housing requirements⁴ and meeting an identified need for affordable housing⁵. These provisions are not independent of Paragraph 63 or vice versa.
9. 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 disproportionate burden to small developers and thereby frustrate housing supply; it is a material consideration to which I attach great weight. However, there is no substantive evidence before me to suggest that the requirements of Policy CS21 of the CS are placing an unreasonable or disproportionate burden on developers. Moreover, 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.
10. Irrespective of the above, the FVA based on a 100% market scheme on the site produces a negative residual land value (£-49,343), which after deduction of the Benchmark Land Value (BLV) of £329,057 leaves a deficit of -£378,400, taking into account all costs and factoring in a Community Infrastructure Levy (CIL) payment of £70,332 and developer's profit at 20% on Gross Domestic Value. The FVA concludes that before allowing for any affordable housing the

³ Paragraph 59

⁴ Paragraph 61

⁵ Paragraph 62

actual profit that the developers will earn from this development is negative (£-88,400). On the basis of the FVA, the appellant concludes that it is not viable for the appeal scheme to provide affordable housing.

11. However, the Council disputes the FVA based on a review of this undertaken by its independent consultants. In particular, an integral component in calculating the BLV is the Existing Use Value (EUV). This is the value of the land in its existing use together with the right to implement any development for which there are policy compliant extant planning consents, including realistic deemed consents.
12. The appellant's EUV of £329,057 has been calculated on an equivalent value per hectare, derived from a site⁶ elsewhere in the Borough without planning permission. However, on the submitted evidence it is unclear if the two sites share the same existing use. Further, based on the existing use, the Council's Independent Consultants consider the BLV to be £118,450. The lack of clarity and considerable disparity over the BLV calculations, leads me to doubt the conclusiveness of the FVA.
13. Based on the foregoing reasons and in light of Policy CS21 of the CS, I conclude that a contribution towards affordable housing provision is necessary to make the proposal acceptable. Accordingly, the requirement for affordable housing 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.
14. Furthermore, on the basis of the FVA I am unable to conclude that the lack of affordable housing provision is compliant with Policy CS21 of the CS. Therefore, the scheme makes an inadequate provision for affordable housing in conflict with this policy. I attach substantial weight to this given the local situation for this type of housing.

Other Matters

15. Previously, in determining an application⁷ for 5 flats at the appeal site the Council chose to waive financial contributions required by way of Policy CS21 of the CS on the basis of the WMS and the PPG. Whilst I have had regard to this it is not within my remit to revisit nor comment on the merits, or otherwise, on decisions previously taken by the Council. Moreover, I have reached my conclusions on the main issue on the basis of the evidence provided to me in this appeal.
16. Due to limited evidence and the urgent need for affordable housing in the Borough, the appellant's suggestion that the delivery of more housing over time will increase supply and would be expected to reduce price and thereby improve affordability, does not alter my findings on the main issue.

Planning Balance and Conclusion

17. The proposal would result in the development of a small site for housing, which could be commenced within the year, for which there is some support in the

⁶ 85 Manor Road North, KT10 0AB

⁷ Ref: 2014/4340

Framework. However, as the proposal is for five dwellings it would make only a modest contribution towards the housing shortfall locally and so the economic and social benefits of the proposal carry only moderate weight in favour. On the other hand, the Framework places emphasis on the provision of affordable housing. Due to the absence of an affordable housing provision for the appeal scheme, there would be an inadequate delivery for this form of housing in the Council's area, for which there is an acute and substantial need, to which I attach substantial weight. Consequently, the inadequate provision for affordable housing would amount to harm that would demonstrably outweigh the development's benefits. I therefore conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR