
Appeal Decision

Site visit made on 30 October 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

Appeal Ref: APP/K3605/W/19/3229005

Paddocks Corner, Oatlands Chase, Weybridge, Surrey KT13 9RH

- 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 Ivory Homes against the decision of Elmbridge Borough Council.
 - The application Ref 2018/3533, dated 19 November 2018, was refused by notice dated 8 February 2019.
 - The development proposed is described as erection of 4 houses with associated facilities (revision to consent 2016/3808).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The proposal is for a development similar to that of an extant permission for the redevelopment of the site to provide a terrace of 4 two-storey houses with rooms in the roofspace, dormer windows, basements and integral garages¹. The changes relate mainly to alterations to the roofline and front elevation, matters that are not objected to by the Council. The roofline to the house on plot 1 would be reduced in height by about 1m, with the previously proposed front gable replaced by a front dormer window. Front gables would be introduced to the centre terrace houses on plots 2 and 3. The extant permission represents a fallback if the appeal is dismissed.

Main Issues

3. The main issues are, having regard to the extant permission and to local and national planning policies, whether
 - (a) the proposal would make an efficient use of land by reason of the housing type proposed, and
 - (b) there is a requirement for a contribution towards affordable housing.

Reasons

Efficient use of land

4. The appeal relates to the redevelopment of a detached two storey dwelling on a corner plot to provide a terrace of 4 houses. A vehicular access on to Oatlands Chase would be closed with access to 4 front garden parking spaces

¹ Planning permission 2016/3808 dated 4 July 2017

being provided via a modified access on to the return road, The Paddocks. The plans show that each house would have an integral garage, a bedroom with 'en suite' at first floor level, 2 bedrooms at second floor level served by either dormer or gable windows and a 4th bedroom at basement level as part of an 'Au Pair Suite'.

5. According to the Council's calculations the proposal would result in an increase in density from 10 dwellings per hectare (dph) to 40 dph. The Council's report comments that the amendments compared to the extant permission "*add further interest to the front elevation along Oatlands Chase and reduces the overall bulk of the building at Plot 1*". The more intensive nature of the proposal compared with the existing building and the impact of the design and massing of the building now proposed would be in accordance with Paragraph 117 of the National Planning Policy Framework that promotes "*an effective use of land in meeting the need for homes and other uses while safeguarding and improving the environment*".
6. The Council's concerns relate to a perceived need for more smaller units rather than the 4-bedroom units proposed arising from their data². The Council has produced two advice notes³ to support this contention. These are not adopted policy themselves but reference Policy CS19 of the Elmbridge Core Strategy (2011) (ECS). This seeks to secure a range of housing types and sizes on developments across the Borough in order to create inclusive and sustainable communities, and to resist an overconcentration of any one type of dwelling if this is considered to have the potential to adversely affect community cohesion.
7. Another relevant consideration is that the Council cannot currently demonstrate a five year supply of housing land. The Council claims that it is therefore seeking to maximise the development potential of each site coming forward to promote the efficient use of land. It references recent appeal decisions⁴ that support its stance on resisting schemes for 4 or more bedroom dwellings and promoting the efficient use of land through encouragement of smaller units.
8. However, the circumstances at the appeal site differ from these appeal decisions in that there is an extant permission for a comparable development of only 4-bedroom terraced houses at the site. This could be implemented as a fallback in the event of the appeal being dismissed. This is a material consideration as there is a greater than theoretical possibility that the extant permission could be implemented. The schemes would be similar in relation to the housing type of 4 bedroom units and in relation to the impact of the building on the character and appearance of the area. The two schemes have much in common but the weight to be ascribed to the proposal also depends on an examination of differences in benefits and disbenefits compared with the extant permission. The extant permission would have the benefit of a contribution towards affordable housing which would offset to a degree the mismatch between the large units proposed and current perceived housing need in Elmbridge. The fallback would thereby be a more favourable development, and this reduces the weight that the proposal attracts.

² Strategic Housing Market Assessment (SHMA) for Kingston Upon Thames and North East Surrey (2016) and the Elmbridge Annual Monitoring Report (2017/2018)

³ Development Management Advice Note 1: Understanding Housing Need and Development Management Advice Note 2: Optimising Development Land both dated September 2018

⁴ APP/K3605/W/18/3218253, Appeal Ref: APP/K3605/W/19/3222420 and Appeal Ref: APP/K3605/W/18/3218070

9. Any conflict with Policy CS19 at the time of the extant permission would not have been so great as to withhold permission at that time. However, the Council has produced later evidence to indicate a conflict with that policy now. In this respect the proposal would not make an efficient use of the land in accordance with Paragraph 122 of the Framework which requires planning decisions to take into account the identified need for different types of housing and the availability of land for accommodating it.

Affordable housing

10. Paragraph 122 also refers to the relevance of local market conditions and viability. The extant permission is accompanied by a Unilateral Undertaking for the payment of £154,061.90 towards the provision of affordable housing in Elmbridge in accordance with the Council's Developer Contribution SPD. The appellant wishes to challenge the reasonableness of this payment firstly on the grounds of national planning policy and secondly in relation to viability.
11. Paragraph 63 of the Framework states "*Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas*". The proposal is not a major development in that it is for less than 10 units, and the site is not in a rural area. The Framework is a material consideration and clearly postdates Policy CS21 of the ECS upon which the Council is relying in seeking a contribution.
12. Nonetheless, Section 38(6) of the Planning and Compulsory Purchase Act (2004) confirms that the starting point for any decision is the Development Plan unless material considerations indicate otherwise. Whilst therefore there is tension between Policy CS21 and Paragraph 63, other parts of the Framework are more supportive of the Council's stance. Paragraph 59 requires that the needs of groups with specific housing requirements are addressed and Paragraphs 61 and 62 recognise the importance of delivering affordable housing where this is an identified need, as is the case at Elmbridge.
13. The Council has set out evidence in a Statement dated November 2018⁵ that confirms the acute need for affordable housing in Elmbridge, partly driven by particularly high house prices. The Statement also indicates the importance of non-major developments on small sites such as the appeal site in contributing to the affordable housing supply. This amounted to 46% of units approved over the period 2011-2018. Policy CS21 includes provision of assessment of viability on a case by case basis so that the requirement for affordable housing provision should not unduly burden development.
14. The Council's stance has also been supported in several appeal decisions referred to the Council, though as the appellant points out, not by all Inspectors. Each case must be considered on its individual planning merits.
15. In relation to planning policy, having regard to all relevant considerations, it is my judgement that the particular circumstances and ongoing requirement for affordable housing in Elmbridge are such that development plan Policy CS21 outweighs the general limitations on affordable housing contributions set out at Paragraph 63 of the Framework.

⁵ Statement on the Government's National Planning Policy Framework (NPPF) (2018) – Affordable Housing Provision on Small Sites

16. In respect of viability, the appellant has submitted an affordable housing viability report dated October 2018. This indicates a negative viability position and that there would be no surplus to support an affordable housing payment. The report states at paragraph 2.9 *"The viability pressure on this site is due to the relatively high existing use value derived from the large property on the site and the costs of development and particularly the basement construction."* Evidence is provided of the high sale price of comparable dwellings in the area leading to an estimated equivalent value of £1,354,300 for the existing dwelling and an adopted benchmark land value of £1,625,000 for the purpose of the assessment. At paragraph 4.15, an allowance of £135,233 is made for the basement works which extend to about 285 square metres.
17. The Council has not commented on the viability report as the appellant has chosen not to pay its requested fee to arrange an independent assessment of its findings. There is no evidence before me to challenge the assumptions on viability set out in the appellant's report. Whilst it is clear that the value of the existing dwelling is high due to its size and the expensive nature of dwellings in the locality, the anticipated sale values of the proposed houses should also be relatively high reflecting local market circumstances. But it is also clear that the construction of a basement to the full footprint of the building to a storey depth would add significantly to development costs. Such excavations may be expedient on sloping ground where changes in natural ground levels help to create an additional storey, but the appeal site is relatively flat.
18. I am not persuaded that it is necessary to include such extensive excavations for the efficient development of the site. Moreover, the excavations would increase the size of each house and the resultant number of bedrooms to levels beyond the demonstrated greatest need in Elmbridge. A development involving smaller units would not be out of character on the site given the mixed character of development in the immediate area including flats on the opposite side of Oatlands Chase and mixed house sizes in The Paddocks. It has not been demonstrated that a development of smaller units with more limited excavations would not be viable. Furthermore, such a development may enable a contribution towards affordable housing could be made in accordance with Policy CS21.
19. The appellant asserts the viability report demonstrates that the scheme is unviable with an affordable housing contribution, yet the appellant's appeal statement refers to the extant permission (with such a contribution) as a credible 'fallback' situation in the event that an alternative planning permission is not achieved. My finding in relation to the viability of the proposal is that it has not been demonstrated firstly that the extent of basement excavations proposed is necessary for the efficient the development of the site and secondly that these excavations would not add a disproportionate burden to development costs. The Council's requested contribution to affordable housing is therefore warranted.

Planning Balance

20. The Framework is clear that where the Council is unable to identify a 5-year supply of housing land, as in this case, then the policies most important for determining the application are considered out-of-date. This does not mean overriding weight should be given to the delivery of housing, but that the weight to be given to the development plan policies must be assessed, and

permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

21. The proposal has the benefit of providing housing in an area where there is an acknowledged shortfall, albeit this is a relatively small scheme. However, the weight that I can give to that benefit must be assessed against the policies of the Framework, which, while they seek to significantly boost the supply of housing, also seek that such development makes efficient use of land. The pressure on housing land and the clearly identified need for smaller units than the 4-bed units proposed has puts this scheme in conflict with both local and national policy. The benefit of additional housing therefore attracts only moderate weight. Economic benefits would accrue during construction and in relation to the local economy, but these attract only limited weight due to the scale of the scheme.
22. Set against these benefits is the evidence which details the lack of need for larger units and the identified conflict with Policy CS19. This policy seeks to set out an appropriate mix, type and size of housing which, in my view, is entirely consistent with the Framework. The lack of a contribution towards affordable housing, for which there is a clearly identified need in Elmbridge, is also a disbenefit compared to the extant permission and conflicts with Policy CS21. Although these policies must be considered out-of-date, they retain significant weight in the planning balance in relation to the continued relevance of the issues they raise.
23. I have noted the concerns of local people regarding the density of the proposal and the potential for increased traffic at the site, but I have no reason to disagree with the Council's findings on these issues.

Conclusion

24. I have considered the benefits of the scheme but have also found harm regarding the failure to deliver a suitable type and size of housing contrary to identified need. The absence of a contribution towards affordable housing also weighs against the scheme and in comparison with the extant permission. The identified harm significantly and demonstrably outweighs the benefits I have found, and the scheme cannot be considered sustainable development that accords with the Framework or the development plan as a whole.
25. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Rory MacLeod

INSPECTOR