



Appeal Decision

Site visit made on 16 December 2019

by Paul Thompson, DipTRP, MAUD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2020

Appeal Ref: APP/K3605/W/19/3236851

2 Beauchamp Road, East Molesey, KT8 0PA

- 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 Anthony Taylor (Octagon Developments Ltd.) against the decision of Elmbridge Borough Council.
 - The application Ref: 2019/1255 dated 3 May 2019, was refused by notice dated 17 July 2019.
 - The development proposed is for the erection of four detached houses with rooms in roof and integral garages following demolition of existing house and garage. All residential use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The first reason for refusal on the Decision Notice refers to Policy DM10 of the Elmbridge Local Plan Development Management Plan (Adopted April 2015) (DMP). Paragraph (a) of the policy requires that housing development on sites of 0.3 hectares or more should promote house types and sizes that make most efficient use of land and meet the most up to date measure of local housing need, whilst reflecting the character of the area. However, in this instance, the area of the appeal site equates to 0.23 hectares. On this basis, Policy DM10(a) of the DMP does not apply to this appeal. I have therefore determined the appeal on this basis.
3. The first reason for refusal also references an earlier version of the National Planning Policy Framework (the Framework), which was revised in February 2019, prior to the receipt of the application. I have therefore taken the current Framework into account as part of the determination of this appeal. I am satisfied that the revisions do not alter the policies upon which this appeal turns and no parties will have been prejudiced by my doing so.
4. The second reason for refusal on the Decision Notice relates to the absence of a contribution towards the provision of affordable housing, the requirement for which is set out in Policy CS21 of the Elmbridge Core Strategy (Adopted July 2011) (CS) and the Developer Contributions Supplementary Planning Document (February 2012). The appellant has submitted a signed and dated unilateral undertaking which secures a contribution of £222,705.07 towards the provision of affordable housing¹ within the Borough of Elmbridge. The Council

¹ As defined by Annex 2 in the Framework.

advise that this addresses the second reason for refusal, which they no longer wish to pursue. This is taken into account in the reasoning of my decision below.

Main Issues

5. The main issues are whether the development would make efficient use of the land in respect of the proposed dwelling sizes and density of development.

Reasons

Dwelling size

6. In order to create inclusive and sustainable communities, Policy CS19 of the CS requires new development to provide a range of housing types and sizes, which reflect the most up-to-date Strategic Housing Market Assessment (SHMA). The policy states that proposals with an over concentration of any one type of dwelling will be resisted, if this is considered to have the potential to adversely affect community cohesion.
7. The 2016 SHMA indicates that the primary need in the Borough is for 1, 2 and 3-bedroom homes, which amounts to 99% of the need. Homes with 4+bedrooms would make up only 1% of the required need. It is clear from the Council's Development Management Advice Notes 1 and 2 (both September 2018) that there has previously been an excess of homes provided with four or more bedrooms in the Borough and the 1% target for 4+bedroom homes has already been exceeded. Therefore, the continued oversupply of larger homes could further exacerbate the availability of the homes that are of greatest need in the Borough.
8. The proposed development is for homes with four or more bedrooms, but there is no substantive evidence before me that homes with fewer bedrooms could not be accommodated within the site and the valued character of the area protected, as required by Policy DM10(d) of the DMP. Similarly, I appreciate that the provision of larger homes in an area predominated by large properties would not in itself be harmful to community cohesion, but equally there is no substantive evidence before me to suggest that altering the mass of the proposal to homes with fewer bedrooms would result in such harm.
9. In light of the above, I conclude that the proposed development would not make efficient use of the land in respect of the size of the proposed dwellings. Hence, the proposal would not accord with Policy CS19 of the CS. It would also 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.

Density of the development

10. The residential area within which the appeal site is situated is formed of large attractive detached and semi-detached houses of two and three storeys, closely spaced but set back from the street in large plots. The boundaries of plots are predominantly defined by mature planting which results in a verdant character to the street scene.
11. The appeal site is situated on the southern side of Beauchamp Road with a frontage to Spencer Road. The existing large detached house within the site is

- therefore highly prominent. It is elaborate in its detailing and typical of properties within the locale. Whilst there is evidence of dwellings being altered, extended, replaced or plots redeveloped with a greater quantity of housing, this has not offended the character or appearance of the area.
12. Policy CS17 of the CS has a dual purpose of promoting the best use of land and protecting the Borough's green spaces. Accordingly, the policy seeks to achieve an overall housing density target of 40 dwellings per hectare (dph) in the Borough but a minimum density of 30 dph. The aim being to increase the supply of housing in the Borough using the most efficient means available. This is particularly important given that the Council has a shortfall in its supply and the sites coming forward for development are predominantly small in size.
 13. Although the policy allows for a lower density of development within exempted areas², the appeal site is not situated within one. Nonetheless, the policy also suggests that, in exceptional circumstances, development elsewhere at a lower density may be acceptable where overriding harm to the valued character of area would occur as a result of the application of the minimum density threshold. In such circumstances, development should still maximise the efficient use of land.
 14. This approach is not inconsistent with paragraphs 122 and 123 of the Framework, which require that development that makes efficient use of land, taking into account, amongst other things, the desirability of maintaining an area's prevailing character and setting (including residential gardens). The Framework suggests that this is achieved through the use of a range of densities in planning policies that reflect the accessibility and potential of different areas. Moreover, Policy DM10(d)(i) of the DMP refers to housing development on garden land and requires schemes to respect the character of the area.
 15. The Council has calculated the density of the proposed development to be 17.2 dph, which is significantly below the minimum density sought under Policy CS17 of the CS. The main parties have not provided an alternative scheme for the site which would meet the required density and other considerations, but equally I have not been referred to development within the context of the site, which has successfully accommodated a greater density.
 16. The proposed houses would be set closer together than those neighbouring, and I note that the Council has not raised concern with respect to the layout or appearance of the proposed development. In particular, the spacing and position of the proposed houses within the site or their scale in the context of neighbouring houses.
 17. Given the distinctive character and appearance of the area, which is determined, in part, by the features identified above, a higher density of development would be at odds with the established grain of development in the surrounding area. In addition, a greater extent of development within the site may also be harmful to neighbouring occupiers, particularly as third parties have raised concern regarding the implications of the density of the appeal proposal.

² St George's Hill Estate, Burwood Park and the Crown Estate, Oxshott.

18. I therefore conclude that the density of the proposed development would maximise the efficient use of land and amount to the exceptional circumstances of Policy CS17 of the CS where a lower density of development would be appropriate. Hence, the proposal would accord with Policy DM10(d)(i) of the DMP and Policy CS17 of the CS. The proposal would also accord with paragraphs 122(d) and 123 of the Framework, which I have referred to above; and paragraph 127(c) of the Framework, as the proposal would be sympathetic to local character, including the surrounding built environment, while not preventing change (such as increased densities).

Other Matters

19. The unilateral undertaking facilitating a financial contribution towards affordable housing has been accepted by the Council as addressing their second reason for refusal and the appellant does not object to its requirement. Notwithstanding this, were I to allow the appeal, I would still need to consider such an obligation against the regulatory tests of 122 of the CIL Regulations. Unless there is another material planning consideration which suggests that permission should be granted, as I have determined to dismiss the appeal on the grounds set out above, I need not address this matter further here, including the appeal decisions in the Borough provided in four bundles with the Council's Statement.
20. I have had regard to the appeals in the Borough to which I have been referred³, in so far as they are relevant to the current appeal but the full circumstances behind the majority of the appeals are not before me, so I am unable to make any meaningful comparisons. I have, however, arrived at a similar conclusion to the Inspector for the appeal at 10 Woodland Grove, Weybridge⁴ in respect of the second main issue but concluded differently in respect of the first main issue. Moreover, in that regard, the approach to my decision more closely follows that applied by the Inspector for the appeal at 93 to 97 Manor Road North, Esher⁵. That appeal scheme was for a development of a similar scale to that before me. Nevertheless, I have determined the appeal on its own individual merits.
21. The appellant has referred to the Council's pre-application advice provided for the site, particularly the nature of the advice and the decision taken having regard to that advice. This is not a matter for me to consider as part of this appeal and I have considered the individual merits of the appeal scheme in relation to the relevant planning policies and evidence before me.

Planning Balance

22. Paragraph 47 of the Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
23. The development plan for the area comprises the CS and the DMP, both which predate the current Framework. However, paragraph 213 of the Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the

³ APP/K3605/W/18/3218253 (7 Embercourt Road) and APP/K3605/W/17/3179354 (89 West End Lane, Esher).

⁴ APP/K3605/W/18/3218745 (10 Woodland Grove, Weybridge).

⁵ APP/K3605/W/18/3218070 (93 to 97 Manor Road North, Esher).

Framework. Due weight should be given to them according to their consistency with the Framework. In my decision, I have already found that the policies of the development plan relevant to the consideration of the appeal have consistencies with those of the Framework.

24. Notwithstanding the above, the Council has confirmed that their available housing supply in the Borough does not meet the five years required by paragraph 73 of the Framework. In light of this, the current development plan policies most important for determining the application are out-of-date. In such circumstances the normal planning balance does not apply, and the 'tilted balance' is engaged. This requires that permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (paragraph 11(d)(ii) of the Framework).
25. In the context of paragraphs 59 and 68 of the Framework, I note the contribution that would be made to the supply of housing by this small site, particularly as it could be built-out relatively quickly. There is no threshold for the assignment of weight to the quantum of residential development and the proposal would deliver three additional houses, each with four or more bedrooms. However, in doing so, the proposal would not contribute to a mix of housing that would meet the identified needs of the Borough, in conflict with Policy CS19 of the CS. The contribution to the supply of housing that would be needed in the Borough would therefore be limited in its extent, so I afford this benefit limited weight.
26. Some economic benefits would arise from, for example, employment and procurement of materials during the construction period and the application of the New Homes Bonus and Community Infrastructure Levy. Furthermore, in accordance with Policy CS21 of the CS, the appellant has signed a unilateral undertaking to make a financial contribution to the provision of affordable housing in the Borough. The proposal would be close to Hampton Court Railway Station, which would provide connections to London, and services and facilities that would be supported by expenditure from occupants of the proposed houses. I also note that the existing house, which is said to have low insulation values, would be replaced with energy efficient houses that would conserve energy, comply with the requirements for climate neutral homes and be designed to be inclusive in terms of their access and layout. However, given the extent of the proposal, such benefits would be limited in scale and kind, and consequently carry moderate weight.
27. The lack of harm associated with all other matters, including in terms of the principle of residential development, the risk of flooding, the provision of site drainage, highway safety and access, the living conditions of neighbouring occupiers and those of the proposed development, and the effect on trees within the site, would neither weigh for nor against the appeal scheme.
28. Whether or not garden land falls within the definition of Previously Developed Land is inconsequential in this case, as the relevant policies of the development plan and the Framework do not preclude its development. Although the proposal would make more efficient use of the site than the existing house and would maintain the area's prevailing character in doing so, the sizes of the dwellings that would be provided would not be effective in meeting the identified need for housing in the Borough. Therefore, the proposal would not

make efficient use of land, which would be a significant detrimental effect associated with the proposed development.

29. Having regard to the above, I consider that the adverse impacts of the proposal upon the identified housing need in the Borough would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. There is therefore nothing to justify a conclusion that the proposal should be considered other than in accordance with the development plan.

Conclusion

30. While I have not found harm in relation to the density of the development, I have identified adverse effects in relation to the size of the proposed dwellings and the housing need in the Borough. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR