The Planning Inspectorate

Appeal Decision

Site visit made on 2 September 2020

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2020

Appeal Ref: APP/K3605/W/20/3247061
Land to the south of Halfpenny Cottage, West End Lane, Esher KT10 8LF

- 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 Rachel Gee against the decision of Elmbridge Borough Council.
- The application Ref 2019/1688, dated 8 July 2019, was refused by notice dated 20 September 2019.
- The development proposed is described as "New build two storey detached house".

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Rachel Gee against Elmbridge Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are whether or not i) adequate visibility can be provided and maintained for the proposed access, and ii) the proposal would provide appropriate contributions towards the provision of affordable housing.

Reasons

Adequate visibility

4. The appeal site is an area of land to the rear of Halfpenny Cottage and Chequers, both of which are accessed from West End Lane. Other houses to the south of the appeal site and throughout the village are also accessed from West End Lane. An existing path links the appeal site to the road, but is on a different alignment to the proposed access and not suitable for vehicular use.

5. The proposed access would cross Common Land (CL) which is in the ownership of Elmbridge Borough Council. As a result, their consent as landowner would be required both to construct the access, and to provide and maintain the visibility splays necessary to satisfy the requirements of the County Highway Authority (CHA). Having visited the site and seen both the location of the proposed access and the nature of the road it accesses in terms of usage, geometry and visibility, I consider that the requirement for these splays is reasonable and necessary, and I am not persuaded otherwise by the evidence before me.

6. It appears from the evidence of the Council that the part of it responsible for the maintenance of verges, splays and drainage ditches would not be willing or able to grant permission for the creation of the proposed access or the

maintenance required for the splays, separate to their other maintenance responsibilities. Although the Council is both the landowner and the local planning authority, there is nothing in the evidence before me to suggest that the grant of planning permission by one part of the Council would necessarily alter the decision of another part of it in exercising a separate function.

7. As such, I do not consider it inconsistent with the Council's role as local planning authority for another arm of the Council to suggest that it would be unable to grant permission for a new access as proposed in the appeal scheme.

8. The appellant states that it would be unreasonable for the Council not to allow a new access in this location, given the existing path and draws parallels between the appeal scheme and other recent developments nearby. However, as I have noted above, the existing path does not appear to be used by vehicles, nor is it on the same alignment or section of CL as the proposed access. In addition, the example of other nearby development relates to development served by an existing access, not a new one as in this case.

9. I note the comments from the appellant that there appear to be informal arrangements elsewhere in the village, relating to grass cutting and vegetation control, and the suggestion that similar arrangements could be made for the appeal site in the future. No specific further details or proposals have been provided, and I do not consider that such arrangements could properly be dealt with by condition. Whilst such informal arrangements may exist elsewhere, I do not consider that as a result, I am not required to have certainty that appropriate access and visibility can be provided for this proposal in this case, in light of the requirements of the CHA.

10. As a result, I do not have the certainty I require in order to be satisfied that the required visibility splays could be both provided and maintained as required by the CHA. The appellant suggests that paragraph 109 of the National Planning Policy Framework (the Framework) precludes refusal of the application. However, if the visibility splays cannot be provided and maintained in line with the requirements of the CHA, then there would be an unacceptable impact on highway safety.

11. As a result, on the basis of the information before me, I consider that adequate visibility cannot be provided and maintained for the proposed access. The proposal would therefore be contrary to Policy DM7 of the Elmbridge Local Plan Development Management Plan April 2015. This policy seeks, amongst other things to ensure that the layout and siting of accesses is acceptable in terms of safety and that accesses are safe and convenient for pedestrians, cyclists and motorists.

Affordable Housing

12. A signed unilateral undertaking (UU) has been submitted, which provides for the payment of a sum towards affordable housing in line with Policy CS21 of the Elmbridge Core Strategy 2011. I have considered whether the UU meets the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. On the basis of the evidence before me, I am satisfied that the UU is necessary to make the development acceptable in planning terms, directly relates to the development and is fairly related in scale and kind to the development. In this respect, the proposal could therefore comply with Policy CS21 of the Elmbridge Core Strategy 2011.

Other Matters

13. I have paid special attention to the desirability of preserving or enhancing the character or appearance of the West End Conservation Area (the CA), in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also paid special regard to the desirability of preserving the setting of the nearby listed buildings, in accordance with the statutory duty set out in Section 66(1) of the Act.

14. In light of the size, form and materials of the appeal proposal, as well as its spatial relationship to the wider area and neighbouring properties, I consider that its effect on the CA would be neutral, so it would preserve the character and appearance of the CA. For the same reasons, I am satisfied that the proposal would not cause harm to the setting of the nearby listed buildings.

15. I note that the Council as local planning authority is satisfied that any effects on the natural environment are, or could be made, acceptable through the imposition of a condition. However, the Council as landowner remains concerned over the potential effects of the proposed on the cohesion and overall purpose of the SSSI. As I have found against the proposal for the reasons set out above, I have not pursued this matter further.

Planning Balance

16. The appellant has highlighted the requirement for new housing in the area and that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. As such, the provisions of the Framework at paragraph 11d) apply.

17. Notwithstanding the benefits of the proposal suggested by the appellant, I have found that there is significant conflict with the development plan in terms of the harm which the proposal would cause with regard to ensuring that the layout and siting of the access would be acceptable in terms of safety and convenience. The development plan is consistent with the Framework in this regard, so I find that the proposal also conflicts with the Framework.

18. Therefore, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of a single dwelling, when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development in the Framework does not therefore apply in this case and there are no other material considerations that indicate a decision should be taken other than in accordance with the development plan.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

S Dean

INSPECTOR