



Appeal Decision

Site visit made on 27 October 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/K3605/W/20/3253785

6 Thrupps Lane, Hersham, Walton-on-Thames, KT12 4NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by CJFox Developments against Elmbridge Borough Council.
 - The application Ref 2020/0017, is dated 20 December 2019
 - The development proposed is demolition of an existing five bedroom, two-storey, detached dwellinghouse and the construction of five three storey, three bedroom terraced houses.
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Decision

1. The appeal is dismissed and planning permission for demolition of an existing five bedroom, two-storey, detached dwellinghouse and the construction of five three storey, three bedroom terraced houses, is refused.

Procedural Matters

2. This appeal is against the failure to give notice of a decision within the prescribed timescale. The Council have confirmed that, had it made a decision, it would have refused planning permission and provided two putative reasons for refusal with its statement of case. Firstly, that the proposal fails to make provision for affordable housing, and secondly that insufficient survey information has been provided in relation to impacts on protected species.
3. Regarding affordable housing, the appellant originally proposed that a contribution towards affordable housing would be made. This was made clear in the Design and Access Statement. Consultation was carried out on the basis of these documents, and there was a lot of public interest with a significant number of public consultation responses generated.
4. In submitting the appeal the appellant sought to change this position, maintaining that no affordable housing would now be provided. In support of this position, reference was made to a Financial Viability Assessment (FVA). However, this represents a significant change to the proposal. It is an established principle that what is considered at appeal should essentially be the proposal that was considered by the local planning authority. I cannot be certain that interested parties were aware of this change and its significance, at the time of the appeal. Their interests would be prejudiced, were the information to be taken in-to account. On this matter, the appeal must proceed based on the proposal as was originally submitted, including the position on affordable housing set out in the design and access statement.

5. It appears that the Council have now accepted and considered an FVA on a revised scheme which it is currently considering. However, this is a new planning application process, with associated consultation requirements, which must run its own course. The fact that the Council may have taken a different stance on the contested matters in this revised application is of no relevance to this appeal.
6. The appellant provided an Ecological Appraisal in response to the Council's second putative reason for refusal. This is technical survey information that does not significantly change the scheme. It can be taken into account without prejudicing the interests of any parties.

Application for costs

7. An application for costs was made by Elmbridge Borough Council against CJFox Developments. A counter claim for costs was subsequently made by CJFox Developments against Elmbridge Borough Council. These applications will be the subject of separate Decisions, once the written exchanges have been concluded.

Main Issues

8. The main issues in this appeal are whether or not an affordable housing contribution is necessary to make the development acceptable in planning terms; and the effect on biodiversity, including protected species.

Reasons

Affordable Housing

9. Policy CS21 of the Elmbridge Core Strategy (2011) requires that, on sites of 5 dwellings, 20% of the gross number of dwellings on site should be provided as affordable housing. This position is also reflected, and elaborated on in more detail, in the Elmbridge Developer Contributions Supplementary Planning Document (2012) ("Developer Contributions SPD"), published by the Council.
10. The position that affordable housing is required on small schemes in the Borough, in line with the development plan, has previously been supported at appeal on a significant number of occasions. The Council provide extensive written evidence in support of its position, in this respect. The appellant does not dispute the relevance of policy CS21 of the Core Strategy to the proposal. As noted previously, it was originally indicated that such provision would be made.
11. Policy CS21 does allow viability to be considered when calculating the amount of affordable housing necessary. However, as discussed previously, the argument that it is not viable to provide affordable housing was not advanced at the time of the submission of the original planning application. Whilst it is asserted that the economic situation has changed since the original submission of the planning application, particularly in light of the COVID-19 pandemic, this is not in itself a sufficient justification to depart from the position set out in the development plan, in relation to affordable housing.
12. As such, on the evidence before me I conclude that an affordable housing contribution is necessary for the proposal to comply with the development plan, on this particular issue. In the absence of any method of securing this, the

proposal conflicts with policy CS21 of the Core Strategy which requires affordable housing to be provided where new residential development of this size is proposed, together with the Developers Contribution SPD which shares similar objectives.

Protected Species

13. The Council argue that, given the demolition of the existing building and extent of vegetation that would be lost because of this development, there is a risk of harm to protected species. In particular, it is argued that the nature of the roof of the building to be demolished with its void areas and tiles mean that there is a reasonable likelihood that it is inhabited by bats.
14. The Ecological appraisal submitted by the appellant in response confirms that there is an active bat roost in the building, but further survey work is recommended to establish the full extent of the position. In the absence of this it is not possible to fully establish the extent to which bats would be affected by the proposed development. It is important that such surveys take place prior to any decision as without such data it is not possible to form a judgement on whether mitigation measures would be effective in making the proposal acceptable. This issue relates to the acceptability in principle of the proposal and cannot be addressed through planning conditions.
15. Consequently, there is a risk of significant harm to biodiversity, including protected species, through the loss of this bat roost. The proposal conflicts with policy CS15 of the Core Strategy and policy DM21 of the Elmbridge Development Management Plan (2015) which, amongst other things, seeks to preserve protected species.

Development Plan – Conclusion

16. There is support for the proposal in other parts of the development plan, primarily policies which support the provision of additional housing in existing built up areas as would be the case here. However, these considerations do not outweigh the more significant conflict with the development plan on the two main issues cited above. The proposal therefore conflicts with the development plan, when it is considered as a whole.

Planning Balance

17. The Council concede in the appeal statement¹ that it cannot demonstrate a 5-year housing land supply. As the proposal involves the provision of housing, the tilted balance, as set out in paragraph 11 (d) of the National Planning Policy Framework (the Framework) is engaged. In this context, the proposal would provide four additional houses beyond the one currently on the site. Whilst the proposal does not provide affordable housing, it would still help boost the supply of housing which is an important policy objective set out in the Framework. However, the proposal would result in the risk of significant harm to biodiversity, and therefore conflicts with policies in the Framework which seek to avoid this. I attach significant weight to the harm that would arise, in consequence. Overall, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development does not therefore apply.

¹ Paragraph 2.13 of appeal statement

Other Matters

18. It is not part of my remit in deciding this appeal to comment on concerns about the Council's procedures for validating planning applications.
19. There are objections to the proposal, raising other concerns to those discussed above. However, as the appeal is failing on the main issues of dispute, it is not necessary to address these points.

Conclusion

20. The proposal conflicts with the development plan, when it is considered as a whole, and there are no other considerations that outweigh this finding. The appeal should be dismissed.

Neil Holdsworth

INSPECTOR