The Planning Inspectorate

Appeal Decision

Hearing Held on 9 March 2021

Site visit made on 10 March 2021

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2021

Appeal Ref: APP/K3605/W/20/3248698
Land to the rear of 83 and 85 High Street, Esher, Surrey KT10 9QA

- 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 Mrs C Svendsen (Blackrock European Investment Fund) against the decision of Elmbridge Borough Council.
- The application Ref 2015/4179, dated 17 November 2015, was refused by notice dated 11 September 2019.
- The development proposed is a row of 8 two storey terraced houses with rooms in the roof space, dormer windows, basement, ancillary parking and landscaping following demolition of existing rear extension at 85 High Street.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether there is a requirement for a contribution towards the provision of affordable housing.

Applications for costs

3. Applications for costs were made by the appellant against the Council and by the Council against the appellant. These applications are the subject of separate Costs Decisions.

Reasons

4. Policy CS21 of the Elmbridge Core Strategy July 2011 (the Core Strategy) requires residential developments of 6 to 14 dwellings to provide 30% of the gross number of dwellings as affordable housing, where viable.

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration and post-dates Core Strategy Policy CS21.

6. Paragraph 63 of the Framework states that the provision of affordable housing should not be sought for residential developments that are not major developments (defined as 10 or more homes or sites of 0.5ha or greater), other than in designated rural areas. This requirement is reiterated in the Planning Practice Guidance and reflects the Written Ministerial Statement of

28 November 2014 (the WMS). The WMS indicates that this is due to the disproportionate burden of developer contributions on small scale developers and is intended to help increase housing supply. I have had regard to this as a significant material consideration. The proposal is not a major development and the appeal site is not in a designated rural area.

7. Nevertheless, the Council's affordable housing statement[1] (AH Statement) identifies that house prices in Elmbridge are significantly above regional and national averages, and this has resulted in an acute need for affordable housing in the Borough. The Council's Assessment of Local Housing Needs dated March 2020 shows an annual affordable housing need of 269 dwellings. Furthermore, the evidence explains the important role of small sites in contributing to the supply of affordable housing. It shows that 46% of the units approved during the period 2011-2018 were on small sites.

8. Policy CS21 allows for the submission of a viability appraisal where the applicant considers that the delivery of affordable housing in accordance with the policy is unviable. It therefore provides flexibility and enables viability to be assessed on a case-by-case basis. In this regard, I do not find that contributions collected on small sites have placed a disproportionate burden on developers. Furthermore, whilst I note the shortfall in the overall supply of housing in the Borough, as discussed below, there is nothing before me to show that Policy CS21 has contributed to this.

9. The appellant raised concerns at the Hearing that the Council's AH Statement does not explain how contributions towards the provision of affordable housing have been spent, and it is not clear how many applications contributed and the value of those contributions. Paragraph 10.2 of the AH Statement sets out that financial contributions collected are held in the Council's Affordable Housing Enabling Fund. Table 6 provides a summary of affordable housing delivery supported by financial contributions between 1 April 2011 to 31 March 2018, including an additional supply of 68 dwellings. The information before me indicates that the Council has used the financial contributions to support the delivery of affordable housing and there is no substantive evidence to demonstrate otherwise.

10. The parties have drawn my attention to various appeal decisions in Elmbridge Borough regarding affordable housing. Of the appeals submitted by the appellant, only the 14 Burwood Road, Hersham case[2] relates to the weight to be given to Policy CS21. The Inspector acknowledged that there have been a number of appeal decisions within Elmbridge that have dealt with the issue of affordable housing and there has been some divergence of opinion. He found in that case that the provisions of Policy CS21 would not outweigh the Framework requirement to boost significantly the supply of housing. I do not know the extent of the evidence that was before that Inspector, and while this decision is a material consideration, I have nevertheless determined the appeal scheme on its merits having regard to the evidence before me.

11. I acknowledge that there is tension between Core Strategy Policy CS21 and Paragraph 63 of the Framework, however the requirement for affordable housing is supported, in this case, by other Framework policies that seek to

[1] Statement on the Government's National Planning Policy Framework (NPPF) (2018) – Affordable Housing Provision on Small Sites November 2018
[2] Appeal reference: APP/K3605/W/16/3164019

address the needs of groups with specific housing requirements[3] and meet an identified need for affordable housing[4]. Having regard to the evidence of local affordable housing need, I find that the restrictions on affordable housing contributions set out in Paragraph 63 of the Framework would not outweigh Policy CS21.

12. In respect of Policy CS21, the appellant has submitted a financial viability appraisal (FVA) with the appeal, prepared by S106 Management dated 10 March 2020. It shows a Benchmark Land Value of the appeal site of £960,000 and a Residual Land Value (Gross Development Value minus all costs, including 20% developer's profit) of £557,073, which results in a deficit of £402,927. As the Residual Land Value is below the Benchmark Land Value, the appellant indicates that the proposed development cannot provide a contribution towards the provision of affordable housing.

13. The figures supplied by the appellant were updated in the Statement of Common Ground dated 18 February 2021, which shows a lower Residual Land Value of £237,491, resulting in a deficit of £722,509. This is primarily due to a reduction in Gross Development Value from £5,599,728 (£6,306 per square metre (sqm)) to £5,200,000 (£5,855 per sqm).

14. The Council has submitted a financial viability review[5] (FVR) of the appellant's FVA, which was prepared by its consultant, Dixon Searle Partnership. This disputes several of the inputs into the viability spreadsheet, including Benchmark Land Value, Gross Development Value, Build Costs, Developer's Profit, and Finance Costs.

15. In respect of the Benchmark Land Value (BLV), the appeal site includes a single storey rear extension to the rear of a shop unit at No 85 High Street, which would be demolished as part of the proposal, and an informal rear parking area ancillary to the commercial units at Nos 83 and 85 High Street. The parties agreed at the Hearing that the rear extension is currently used for ancillary retail and storage space. The existing shop units within the 2 storey buildings at Nos 83 and 85 would be retained.

16. The appellant's Valuation Report, prepared by Sneller Commercial dated 13 June 2018, values the rear extension of No 85 High Street at £340 per square foot (sq ft). It states that the net internal area is 123.5 square metres (sqm) (around 1329 sq ft), giving a value of £452,000. This is primarily based on an identified comparable property at The New Barn in Thames Ditton, which is an office that was stated to be under offer at a price of £295 per sq ft. The Valuation Report comments that it provides a similar amount of floorspace and is tucked behind other properties with no road frontage. It states that Esher is considered a more desirable area than Thames Ditton for commercial occupiers and the valuation takes account of the current condition of the rear extension.

17. I observed that the existing rear extension at No 85 High Street is a tired, utilitarian structure set to the rear of the built frontage. There are few window openings and the flat roof appeared to be in a state of disrepair, as indicated by the plastic sheeting on the roof which is held in place by bricks. The evidence before me indicates that the valuation of the rear extension is based

[3] Paragraph 59.
[4] Paragraphs 61 and 62.
[5] Review of Applicant Submitted Viability Position dated May 2020 (DSP20029NE) prepared by Dixon Searle Partnership.

on its use as an office and not its existing use as an ancillary retail/storage area. Works would evidently be needed to convert the extension to an independent commercial unit and update it to a satisfactory standard.

18. The Planning Practice Guidance (the PPG) states[6] that for the purposes of viability assessment, alternative use value (AUV) refers to the value of land for uses other than its existing use. Where it is assumed that an existing use will be refurbished or redeveloped, this will be considered as an AUV when establishing BLV. Furthermore, it states that where AUV is used this should be supported by evidence of the costs and values of the alternative use to justify the land value. Valuation based on AUV includes the premium to the landowner.

19. The Council adopts a value of £295 per sq ft for the rear extension, which does not diverge significantly from the FVR. Given the location of the appeal site adjacent to other commercial uses in Esher High Street, I do not consider the appellant's valuation of £340 per sq ft to be unreasonable. Whilst I note that the building at Unit 5 The New Barn is more modern, it is isolated from other commercial uses and is not as accessible to facilities and services. I have also had regard to the nearby former Natwest Bank at No 60 High Street, which is shown in the Valuation Report to be a larger premises of around 2,405 sq ft, with a value of £343 per sq ft. Whilst this premises has a greater street presence and is more attractive, it is unclear whether the £/sq ft value includes the basement, which may temper its value.

20. At £340 per sq ft, this would give the rear extension a value of approximately £452,000. However, I note that the FVA does not include the costs of converting the extension into an independent commercial unit, which should be included in any valuation based on AUV. As the valuation is based on AUV, a landowner premium should not be applied.

21. The appellant's Valuation Report indicates that 26 car parking spaces could be accommodated on the site at £13,500 per parking space, which results in a valuation of £350,000. The Council's FVR disputes that 26 parking spaces could be accommodated and suggests that 12 to 14 spaces would be more feasible as it would allow access and turning space. Of these, it is submitted that at least 4 to 6 spaces would be required to be allocated to the rear extension (if changed to an independent commercial unit) and the existing retail premises at Nos 83 and 85 High Street.

22. The appellant submitted a plan prior to the Hearing to suggest how a lower figure of 21 car parking spaces could be accommodated on the site. The land consists of a raised area on the south-western side, which includes a degraded tarmac surface. There is an embankment that runs through the middle of the site and the land to the north and east is on a lower level. The appellant initially said that the land could be kept in its existing condition. The Council raised concerns regarding the accessibility of the row spaces along the north-eastern and south-western boundaries due to their proximity to the embankment.

23. To provide sufficient manoeuvring space from a row of parking spaces, an un-obstructed distance of 6 metres in front of the spaces is usually required. In this case, the distance between the row of 6 spaces adjacent to the north-

[6] Paragraph: 017 Reference ID: 10-017-20190509

eastern boundary and the embankment would be significantly less than 6 metres. At my site visit, I observed that the land here is currently grassed and the spaces shown on the plan would not be accessible. There are similar problems in relation to the row of spaces to the south-west as most of them would be within 6 metres of the embankment. As such, based on the configuration shown on the submitted plan, it is evident that the site in its current condition could accommodate far fewer than 21 accessible parking spaces.

24. The appellant stated later in the Hearing that works could be carried out to level the site, and so a commercial car park should be treated as AUV. The Council confirmed that there is a right of access to the appeal site from the adjoining Berguette public car park.

25. There is nothing to indicate that car parking on the land is currently anything other than an informal arrangement ancillary to the small commercial units at Nos 83 and 85 High Street. Based on the information before me, it appears that a formal commercial car park providing 21 parking spaces and used independently from the use of Nos 83 and 85 High Street would require an application for planning permission.

26. The PPG states[7] that if applying alternative uses when establishing BLV, these should be limited to those uses which would fully comply with up to date development plan policies. The land does not benefit from planning permission for an independent commercial car park. It is in a sensitive location directly to the rear of the Grade II Listed buildings at Nos 83 and 85 High Street and within the Esher Conservation Area, and there is limited information regarding the precise layout of the car park and the full extent of works that would be required. Consequently, I cannot be certain that such a use would fully comply with up to date development plan policies and could be implemented. Furthermore, the FVA does not include details of the costs associated with implementing the alternative use.

27. Having regard to the work that would be needed to level the site and provide hard-surfacing and drainage, this could be a sizeable sum. The Valuation Report indicates that a parking space would have a capital value of £13,500 and so 26 parking spaces would be valued in the region of £350,000. At the Hearing, the appellant put forward a higher figure of £420,000 based on 21 parking spaces at £20,000 per space. Given the uncertainty as to whether a commercial car park could be implemented and the costs associated with this, I consider that both valuations are too high. Based on the evidence before me, I prefer the Council's valuation of around £135,000.

28. The AUV of the site, consisting of £452,000 for the rear extension and £135,000 for the parking spaces, results in a total BLV of approximately £587,000. This is substantially below the figure of £960,000 shown in the FVA.

29. Regarding Gross Development Value (GDV), the appellant's FVA sets out an average sales value of £6,242 per sqm for re-sale properties within 1 mile of the appeal site, and the Council's FVR identifies a similar average figure of around £6,265 per sqm. This does not include comparable new build properties due to a lack of examples locally.

[7] Paragraph: 017 Reference ID: 10-017-20190509

30. In the Statement of Common Ground, the appellant indicates a sales value for the proposed dwellings of £5,855 per sqm (£650,000 per dwelling), which is lower than the figure of £6,306 (£700,000 per dwelling) shown in the FVA. The Council's FVR suggests a sales value of £6,757 per sqm (£750,000 per dwelling).

31. All the proposed dwellings would be 2-bedroom and have accommodation on 4 floors. The ground floor would consist of a kitchen and lounge, the first floor would consist of a large master bedroom and en-suite, and the second floor would comprise a smaller bedroom and en-suite. The dwellings would also have a large basement, which is labelled on the proposed floor plan as a media room.

32. At the Hearing, the parties agreed that nearby streets in Park Road, Park Square, Wolsey Road and Wolsey Grove are most relevant in terms of comparable examples to the proposed development. The appellant indicated that the nature of the nearby examples is such that they provide 'lateral living' i.e. that the accommodation is spread over the ground and first floors, providing a greater sales value. Several factors were referred to which would limit the market for the proposed dwellings and restrict their value. This includes that the proposed dwellings would provide 'vertical' living as the accommodation is situated on 4 floors, the garden sizes are modest, the circulation space required for the staircase cuts into the internal floor area, the headroom in the second floor bedroom is restricted, and the basement is not served by windows and this floorspace attracts less value.

33. No cross-section drawings are shown and so the extent to which headroom in the second floor bedroom is restricted is unclear. Nevertheless, I agree with the appellant that the other factors referred to above would lessen the £ per sqm value of the proposed dwellings compared to the average for properties in the area.

34. Nevertheless, whilst the proposed dwellings would not have a value as high as the Council's figure of £6,757 per sqm, I do not consider that it would be as low as the appellant's updated figure of £5,855 per sqm. In my view, the new build premium would offset the factors referred to above and bring the proposed dwellings to a £ per sqm value in the region of the average value in the locality. As such, I find that the appellant's original sales value of around £6,300 per sqm, as indicated in the FVA, would be a reasonable figure. This would give a sales value in the region of £700,000 per property.

35. In respect of build costs, the appellant submitted a Budget Estimate of Costs[8] dated November 2016 (Costs Estimate), and the FVA has applied an inflation rate of 10.4% for the intervening period until March 2020 (stated to be based on the BCIS general cost index). The Council has had the appellant's Costs Estimate reviewed by Martin Warren Associates (MWA) in 2020, which concludes that the overall costs are not unreasonable for the description of proposed works. However, the Council affirms that an inflation allowance should not apply.

36. The Council's appeal statement comments that the Costs Estimate in 2016 was significantly higher than both the upper quartile and median RICS Building Cost Information Service database (BCIS) figures at that time. The appellant

[8] Prepared by David R Parker MRICS BSc Hons Chartered Quantity Surveyor

highlighted at the Hearing that BCIS data is not a useful guide in this case because of site specific considerations, including the provision of basements and constrained working areas. Be that as it may, the Costs Estimate shows that the basement and foundations would cost £464,900 before contingencies, and so the basement would add significantly to development costs. It has already been established that basement floor space would be of less £ per sqm value than ground floor accommodation. The proposed basements are large, particularly for the annotated purpose as a 'media room'. Accordingly, I am not convinced that such large excavations would be an efficient development of the site. A scheme including smaller or no basements would considerably reduce construction costs and be likely to improve financial viability.

37. The PPG states[9] that potential risk is accounted for in the assumed return for developers at the plan making stage. It describes an assumption of 15-20% of GDV as a suitable return to developers for the purpose of plan making but gives no specific advice on acceptable returns in decision-making on individual development schemes. In this regard, I consider that the return to the developer should take account of the level of risk of the proposal. In this case, the appellant's FVA shows a developer's profit of 20%, whereas the Council's FVR indicates that a lower return of 15% or 17.5% would be more reasonable.

38. Although the appellant suggested at the Hearing that the COVID-19 pandemic and the United Kingdom's exit from the European Union might have an effect on the viability of the development, there is insufficient evidence before me that this would be the case. The proposal relates to a small site at the centre of a vibrant, attractive settlement. The small-scale development would be constructed relatively quickly over a period of 12 months and returns to the developer can reasonably be expected to follow shortly thereafter. Therefore, the proposal would be less vulnerable to any change in economic outlook than a larger development built over a longer period.

39. Accordingly, I consider that the proposal carries a moderate level of risk and so the appellant's figure of 20% for developer's profit is not justified. In this case, I find that a figure of 17.5% would provide an acceptable return to the developer and enable the development to be delivered. This conclusion is supported by the appellant's FVA, which, having regard to the projected deficit, indicates that they would be willing to develop the site for an actual return of 12.8%.

40. The finance costs shown in the appellant's FVA consists of an interest rate of 7%, plus £50,000 for bank arrangement fees, and miscellaneous bank lending fees of £20,000. The Council's FVR indicates that the finance costs should comprise an interest rate of 6.5%, including all ancillary fees. The appellant stated during the Hearing that they would agree to the finance costs set out by the Council.

41. Drawing the above factors together, having regard to my findings on Benchmark Land Value, Gross Development Value, Build Costs and Developer's Profit, I am not persuaded that the appellant's evidence provides a sound basis for concluding that the proposal cannot support a contribution towards the provision of affordable housing. In the absence of such a contribution, the proposal would conflict with Policy CS21 of the Core Strategy.

[9] Paragraph: 018 Reference ID: 10-018-20190509

Other matters

42. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, states that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be had to the desirability of preserving the building or its setting. Furthermore, Section 72(1) of the same Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

43. Paragraph 193 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Nos 83 and 85 High Street are Grade II listed buildings constructed in the early 18th Century. The buildings are of two storeys and the pitched roofs include small flat-roofed dormers and prominent chimney stacks. The bow windows at No 85 and square bay windows at No 83 are 20th Century alterations that provide display areas for the ground floor shop units. The buildings are viewed alongside a variety of commercial buildings in the historic core of the Esher Conservation Area, and it is from the thoroughfare of High Street that the architectural and historical significance of the buildings is most appreciated.

44. The proposal would be located to the rear of the listed buildings and so there would be no views from High Street. Whilst it would be visible from the public car park to the rear, the proposed terrace would replace a large, utilitarian 20th Century single storey extension at No 85 High Street. The design of the proposed building would provide an acceptable appearance and its height and scale would not appear dominant in relation to the listed buildings. Consequently, the proposal would preserve the setting of the listed buildings and the character and appearance of the Esher Conservation Area.

Planning Balance

45. The information before me indicates that the Council cannot demonstrate a deliverable 5 year housing land supply. The parties agreed at the Hearing that the Council has a housing supply of 3.96 years, which is a significant shortfall. Furthermore, the 2020 Housing Delivery Test results published 19 January 2021 show that the Council has a measurement of just 58% of homes delivered against its requirement over the previous 3 years. In these circumstances, the most important policies for determining the application are out-of-date in accordance with footnote 7 of the Framework. Paragraph 11(d) ii of the Framework is therefore engaged.

46. The Framework does not prescribe the weight that should be given to any conflict with the most important policies, and this is a matter for the decision-maker. The Court of Appeal judgement in Gladman Developments Limited v SSHCLG, Corby BC and Uttlesford DC [2021] EWCA Civ 104 confirmed that decision-makers are not legally bound to disregard policies of the development plan when applying the tilted balance.

47. The proposed dwellings would be in an accessible location and would make a contribution towards addressing the substantial shortfall in housing land supply. Small sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly, as indicated in paragraph 68 of the Framework.

48. The proposal would also bring temporary economic benefit from the construction process, and the long-term economic benefit from the boost to local services from the new residents. These factors weigh in favour of the proposal, but the benefits would be modest due to the small scale of the scheme.

49. Set against the above benefits, the proposal would fail to contribute towards the supply of affordable housing, for which there is a significant identified need in Elmbridge, and it would therefore conflict with Policy CS21 of the Core Strategy. Whilst there is tension between Policy CS21 and Paragraph 63 of the Framework, the requirement for affordable housing is supported, in this case, by other Framework policies that seek to address the needs of groups with specific housing requirements and meet an identified need for affordable housing. Given the evidence of local affordable housing need, I attach significant weight to the conflict with Policy CS21.

50. Consequently, I find that the identified adverse effect arising from the absence of affordable housing provision would significantly and demonstrably outweigh the benefits outlined above, when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

51. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

C Osgathorp

INSPECTOR

APPEARANCES

For the Appellant	
Mr Chris Dent ARB MRTPI	CDA
Mr David Steen	Director of Birchwood Homes Ltd
Mr Robin Furby	Director of Section106 Management Ltd
Mr Tim Firth	Director of Jackson-Stops Weybridge
For the Council	
Mr Jack Trendall BA (Hons) MA	Senior Planning Officer
Mr Nick Molyneux BA (Hons) MCIH	Senior Viability Consultant for Dixon Searle Partnership
Ms Emily Hatch LLB (Hons)	Consultant, Dixon Searle Partnership

Documents submitted during the Hearing:

List of sold house prices in Park Road