



Appeal Decision

Site visit made on 13 May 2021

by R. Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/K3605/W/20/3254012

Land northeast of 70 to 79 Berkeley Court, Weybridge KT13 9HY

- 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 Lancaster Homes (Weybridge) Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2019/2414, dated 30 August 2019, was refused by notice dated 1 May 2020.
 - The development proposed is a terrace of 3 storey houses with rear balconies, basements and access from Berkeley Court.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether there is a requirement for an affordable housing contribution.

Reasons

3. Policy CS21 of the Elmbridge Core Strategy (2011) requires, for proposals of 1-4 dwellings, a financial contribution for affordable housing equivalent to 20% of the gross number of dwellings, where viable. This position is reflected in the more recent *Elmbridge Developer Contributions Supplementary Planning Document (2020)*. Paragraph 63 of the National Planning Policy Framework (the Framework) states that affordable housing contributions should not be sought for residential developments that are not major developments, other than in designated rural areas. In this case, the appeal proposal is for 3 no. three-storey houses and is not a major development in that it is less than 10 dwellings, nor is Weybridge a designated rural area. The Framework post-dates Policy CS21 and is a material consideration to be afforded significant weight.
4. The case made on behalf of the appellant is that Policy CS21 should be considered out of date and that its application is responsible, at least in part, for the Council failing to meet its housing delivery targets. The Council's justification for continuing to apply Policy CS21 is set out in its *Statement on the Government's National Planning Policy Framework (NPPF) (2018) – Affordable Housing Provision on Small Sites, November 2018* (the Statement). This demonstrates that, driven by particularly high house prices, affordability remains an issue in Elmbridge and there is an acute shortage of affordable housing. It also shows that small sites have made an important contribution to

the delivery of housing in the Borough, with an average 46% of units approved comprising schemes of 1-9 units (gross) between August 2011 and July 2018. The appellant argues that the weight to be afforded to the Statement is diminished as a consequence of the 'tilted balance' of paragraph 11(d) of the Framework and because it relies on out-dated or unsubstantiated figures and statements.

5. There is more recent evidence before me to demonstrate that there is an acute need for affordable housing in the Borough and that the shortage of affordable homes identified in the Statement is ongoing. The Council's latest *Assessment of Local Housing Needs (March 2020)* (ALHN) estimates that 399 households could not afford to pay market entry threshold cost and therefore need affordable housing. After taking account of the supply of affordable housing from relets, the net level of affordable need is still estimated as 269 units per annum. This is derived from both a newly arising need (newly formed households and existing households falling into need) and a backlog need which, itself, equates to 72 dwellings per annum. The Council's most recent *Annual Monitoring Report* showed that for the period 2019/2020, 126 new affordable homes were completed. Whilst this is an increase from the 57 completed the previous year, it nonetheless falls far short of the need identified in the ALHN and the backlog need will therefore continue to increase.
6. I have seen no substantive evidence from the appellant that the failure to meet housing targets is because Policy CS21 has placed an undue financial burden on developers or that there is a disproportionate effect on small schemes.
7. Based on the evidence before me, I am therefore satisfied that the Council is justified in seeking an affordable housing contribution (subject to viability) and that the ongoing requirement for affordable housing in Elmbridge is such that Policy CS21 outweighs the general limitations on affordable housing at paragraph 63 of the Framework.
8. The requirement for affordable housing to be sought from small schemes in the Borough has previously been supported by Inspectors in a number of appeal decisions submitted in evidence by the Council. I accept that not all Inspectors have supported this position, but I have considered this case on its merits and on the recent evidence before me. Consequently, the appeal decisions provided by the appellant do not alter my conclusions on the justification for seeking an affordable housing contribution from this site.
9. In respect of viability, the appellant has submitted an affordable housing viability report dated March 2020 which sets out a 'compromise position'. This indicates a Residual Land Value of -£48,895 which, compared against the assumed Benchmark Land Value, is stated to produce a deficit of -£249,577 leaving no surplus to support an affordable housing contribution.
10. The only area of dispute between the parties in this 'compromise position' is the approach and cost related to the release of rights associated with 66 leaseholders of the adjacent building at Berkeley Court over the appeal site. The appellant's evidence is that the actual cost of each Deed of Release would be £8,030 which gives a total cost of buying the rights of £529,980. Examples of the Deeds of Release provided in the appellant's evidence confirm the figure of £8,030 per leasehold interest. This payment is considered to provide the minimum incentive to persuade the existing leaseholders to release the land for development and to compensate for a reduction in the value of their properties

associated with the loss of part of a communal area. This has been accepted by the Council's advisor as an 'abnormal cost,' but the cost attributed to it differs between the parties by around £381k. Despite the appellant's evidence, the Council's advisors do not agree that this is an abnormal cost to be judged independently from the Residual or Benchmark Land Value (BLV) appraisal.

11. The guidance at paragraph 57 of the Framework is that all viability assessments should reflect the recommended approach in national planning guidance. The Planning Practice Guidance (PPG) advises that abnormal costs should be taken into account when defining BLV. It further outlines that those factors to be considered to establish BLV are the existing use value, allowance for a premium to landowners and the implication of abnormal costs.
12. The Council's advisor relies on the judgement of *Tameres (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd [2007]* that the size of the compensation (to remedy a loss of rights) should not be so large that the development would not have taken place had such a sum been payable, and a third share of the development profit would be a common-sense approach. On this basis, the Council's Viability Appraisal included £148,760 which would be a third of the calculated developer profit. This equates to £2,254 per leaseholder. I have been provided with no comparative evidence to determine whether this, or the appellants higher figure, 'feels right' to compensate for the loss of communal gardens. However, irrespective of the level, consistent with the PPG, this should have been accounted for in the appraisal of the BLV.
13. The BLV of the site is estimated by the parties as between £200,682 and £300,000. I recognise that these figures fall below the total cost incurred by the appellant to secure the Deeds of Release. However, the appellant refers in the evidence to the length of time that it has taken to agree and complete the Deeds of Release so will have been aware of the expectations of the leaseholders when entering into a purchase agreement for the site. I also note that the Deeds of Release were completed after planning permission was granted for an earlier, identical scheme (ref. 2018/2316) whereby an affordable housing contribution was agreed. The Council's position and expectations in respect of affordable housing for a scheme of this size on this site would have been well known and should, therefore, have been accounted for in the cost of the land, or in the negotiations with the leaseholders.
14. On the evidence before me, I am not therefore satisfied that the known abnormal cost of the Deeds of Release is sufficient justification for not making a financial contribution for affordable housing. Consequently, there would be a conflict with Policy CS21 of the Elmbridge Core Strategy (2011).

Planning Balance

15. The Council cannot currently demonstrate a 5-year housing land supply. The Housing Delivery Test (2019) also indicates that the delivery of housing has been below the housing requirement over the past three years. As the proposal involves the provision of housing, the tilted balance, as set out in paragraph 11 (d) of the Framework is engaged. This requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

16. In this context, the proposal would provide three additional houses which would make a modest contribution towards the deficit in housing land supply. I afford this modest weight. In relation to adverse impacts, I find the harm arising due to the absence of an affordable housing contribution to be significant because of the established and compelling need in the Borough. Taking these matters together, 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. Consequently, the proposal would not be sustainable development for which the Framework indicates a presumption in favour.

Conclusion

17. For the reasons given above, I conclude the appeal should be dismissed.

R. Jones

INSPECTOR