
Appeal Decision

Site visit made on 27 July 2021

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 23rd August 2021

Appeal Ref: APP/K3605/W/20/ 3254697

Willow Cottage, Ridgeway Close, Oxshott, Leatherhead KT22 0LQ

- 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 Paul Binney (Stately Homes Limited) against the decision of Elmbridge Borough Council.
 - The application Ref 2019/2416, dated 18 July 2019, was refused by notice dated 12 May 2020.
 - The development proposed is demolition of existing dwelling and the construction of five three bedroom detached houses.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and the construction of five three bedroom detached houses at Willow Cottage, Ridgeway Close, Oxshott, Leatherhead, KT22 0LQ in accordance with the terms of the application Ref 2019/2416, dated 18 July 2019 and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Paul Binney (Stately Homes Limited) against Elmbridge Borough Council. This application is the subject of a separate Decision.

Main issue

3. The main issue is whether or not the proposed development makes adequate contribution towards affordable housing provision.

Reasons

4. The proposed development makes no specific affordable housing provision. As such, it is inconsistent with Policy CS21 of the Elmbridge Core Strategy (Core Strategy) insofar as the policy requires a 20% provision for a development of this scale. Policy CS21 is, however, subject to consideration of financial viability where a case is made.
5. I have carefully considered the Appellant's viability appraisal that was submitted with the planning application. This concludes that the proposal cannot viably provide any contribution towards affordable housing.

6. The Appellant's evidence was subject to independent review on behalf of the Council (the Appraisal Review). I note this review concluded that the overall approach to assessing viability undertaken by the Appellant appeared to be appropriate. There were however some differences of opinion on some of the assumptions, including the required profit level and build costs. The outcome of sensitivity testing as part of the Appraisal Review produced a conclusion that the proposal is sufficiently viable to support an affordable housing contribution of £103,000.
7. The evidence appears to indicate that the Council accepted that a financial contribution in lieu of on site provision was appropriate. However, they felt that the £103,000 contribution offered by the Appellant was insufficient. As a matter of general principle, in considering the findings of an independent review into financial viability the Council are not duty bound to accept all its findings.
8. However, in this instance, the Council's explanation as to why a £103,000 contribution is not appropriate, and a £229,307 contribution is more so, lacks evidential depth. This includes justification for their judgements in relation to risk levels. Their view that a lower profit level would be more appropriate when regard is paid to national guidance is also not explained in sufficient depth.
9. Notwithstanding the Appellant's further viability evidence, and the lack of substantive comment on it by the Council, the Appraisal Review is a reasonable critique of the Appellant's viability evidence. This includes the conclusion that the proposal is capable of supporting an affordable housing contribution of around the amount specified
10. A certified and duly executed Unilateral Undertaking has been submitted under section 106 of the Town and Country Planning Act 1990 (s106). The s106 specifies an affordable housing contribution of £103,000. Given the requirements of Policy CS21 and the evidence relating to the contribution, I am satisfied that the s106 would meet the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the National Planning Policy Framework (the Framework) and can therefore be taken into account.
11. The Council acknowledge that paragraph 64 of the Framework says that affordable housing should not be sought for residential schemes that are not major developments. As such, CS21 is inconsistent with the Framework in this respect. In addition, given the age of the Core Strategy, it cannot be said with full confidence that the policy basis remains appropriate.
12. Nevertheless, I acknowledge that existing policies should not be considered out of date simply because they predate the Framework. Considering all the evidence on this matter, I do not conclude that Policy CS21 should be found out of date and therefore not applied fully.
13. Overall, the proposed development makes adequate contribution towards affordable housing provision. Consequently, there is no conflict with Policy CS21 of the Core Strategy, which requires 20% affordable housing provision, subject to considerations of financial viability where a case is made.

Other Matters

14. I have paid regard to comments raised by other interested parties, made both during and in the run up to the determination of the planning application and in response to this appeal. Comments relating to the Council's reasons for refusal are discussed above. Some of the other issues raised can be adequately managed through the use of conditions, as discussed below. This includes conditions relating to flood risks, drainage, managing the construction impacts of the development, and biodiversity.
15. The proposed development would accord with policies in the Core Strategy that guide the location and density of new housing development, in particular Policy CS17. In terms of the effect on the character and appearance of the area, the proposal would result in a greater degree of built presence within the surroundings which would naturally have an effect on the character of the area. However, the scale of development (along with the plot sizes for each dwelling) would be consistent with what is evident in the surroundings. The design of the houses would also be appropriate to the context. Conditions governing detailed design and landscaping would assist in assimilating the development into the surroundings. Overall, the effects on the character and appearance of the area would be acceptable.
16. The location of the proposed dwellings in relation to neighbouring properties would be such that the effect in terms of impacts on natural light and enclosure would be acceptable. The residential use and scale of development would also be such that impacts relating to issues such as noise and light pollution would be acceptable. The proposal would create some opportunities for mutual overlooking, in particular between upper floor windows and garden spaces. However, such impacts would be consistent with what might be expected in a suburban location and would not be of a level of severity that would justify withholding planning permission. A condition relating to obscured glazing of some of the windows would help to further manage the impacts.
17. It is noted that the proposal would result in the loss of a number of trees. Considering the arboricultural evidence, the specimens identified for removal are individually of low value. Notwithstanding this, they currently collectively provide greenery that contributes towards the character and appearance of the area. However, suitable mitigation could be provided through additional tree planting, although there would be short term effects whilst new planting becomes established. This, along with measures relating to the retention and protection of other trees on site during the building works could be the subject of conditions.
18. The Appellant's evidence appropriately considers issues linked to biodiversity and acknowledges the presence of nearby woodland. Conditions are proposed below in the interests of preserving and enhancing protected species and biodiversity. Further, a good quality landscaping scheme required under the suggested conditions can take wildlife beneficial design into account, including measures to improve connectivity with surrounding habitats.
19. The proposed vehicular access arrangements would be appropriate for a development of this scale, with suitable provision also made for off street parking and space for the turning of vehicles. Overall, given the relatively small uplift in the number of dwellings on site, the highways effects relating to the proposal would be acceptable.

20. The matters relating to land ownership and rights of way are beyond the remit of the planning system. Other matters raised have been considered but do not effect my conclusions on the main issues. Concerns relating to the handling of the planning application are best addressed by the Council, using the appropriate procedure.

Conditions

21. I will consider conditions by reference to the numbering in the attached schedule.
22. Condition (2) is necessary in the interests of certainty.
23. Condition (3) is necessary in order to ensure a satisfactory standard of external appearance.
24. Condition (4) is necessary to maintain the living conditions of those living nearby.
25. Conditions (5) and (6) are necessary in the interests of highway safety and maintaining the living conditions of those living nearby. Condition (6) needs to be a pre-commencement condition as the measures need to be in place from the start of development in order to appropriately manage the risks to highway safety and living conditions.
26. Conditions (7), (8), (9), (10), (11), (12) are necessary in order to ensure that appropriate tree protection and mitigation measures are in place and that a satisfactory standard of landscaping is delivered. Conditions (7), (8), and (11) need to be pre-commencement conditions as the measures need to be in place from the start of development and the conditions include requirements that could not easily be retro fitted effectively.
27. Condition (13) is necessary in the interests of preserving and enhancing protected species and biodiversity.
28. Condition (14) is necessary in order to ensure appropriate management of flood risks and ensuring adequate drainage. Condition (14) needs to be a pre-commencement condition as any necessary mitigation measures may be hard to retrofit at a later point.
29. Condition (15) is necessary in the interests of promoting more sustainable travel choices.

Conclusion

30. For the above reasons and having regard to all other matters, I conclude that the appeal should be allowed.

D.R. McCreery

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in strict accordance with the plans and other particulars that make up the application. This includes the following plans: 1814.P502, 1814.P503, 1814.P504, 1814.P505, 1814.P506, 1814.P507, 1814.P509 and TPP-01 Rev B received on 30th August 2019, 1814.P500a received on 17th September 2019, 1814.P501 Rev. A and 1814.P601 received on 5th November 2019, 1814.P520 received on 3rd December 2019, 1814.P602 received on 12th March 2020
3. The materials used on the external faces of the dwellings hereby approved shall be in the following materials - brickwork and render for the walls, clay tiles for the roofs, painted timber for the windows and doors or such other materials as may be approved in writing by the Local Planning Authority. The dwellings should be retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.
4. Prior to the first occupation of the development the above ground floor windows on the side elevations of the dwellings shall be glazed with obscure glass that accords with level three obscurity as shown on the Pilkington textured glass privacy levels (other glass suppliers are available) and only openable above a height of 1.7m above the internal floor level of the room to which it serves, unless otherwise agreed in writing by the Local Planning Authority. The windows shall be retained in that condition thereafter unless otherwise agreed in writing by the Local Planning Authority.
5. The development hereby approved shall not be first occupied until space has been laid out within the site in accordance with the approved plans for vehicles and cycles to be parked and for the loading and unloading of vehicles and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the [parking / servicing / turning areas shall be retained and maintained for their designated purposes.
6. Prior to commencement of development a construction transport management plan shall be agreed in writing with the Local Planning Authority. The plan shall include details of: (a) parking for vehicles of site personnel, operatives and visitors (b) loading and unloading of plant and materials (c) storage of plant and materials (d) programme of works (including measures for traffic management) (e) provision of boundary hoarding behind any visibility zones (f) hgv deliveries and hours of operation (g) vehicle routing (h) measures to prevent the deposit of materials on the highway (i) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused (j) on-site turning for construction vehicles has been submitted to and approved in writing by the local planning authority. The development shall be carried out

in accordance with the approved plan unless otherwise agreed in writing by the Local Planning Authority.

7. Prior to commencement of development an Arboricultural Method Statement shall be agreed in writing with the Local Planning Authority. The Statement shall include details of : a) ground protection and that it is robust. b) Trees along perimeter that will be indirectly affected by ongoing construction activity, and that they will have soil nutrient injection during the landscape works. c) Tree protection measures, including that during landscaping no machinery except turf cutters can be used within RPAs and that no compaction of the ground will occur. d) Site visits to be twice a month to check fencing as fig 1 BS5837 scaffold framework remains in place throughout the development. The development thereafter shall be implemented in accordance with the approved Statement unless otherwise agreed in writing with the Local Planning Authority.
8. No development including groundworks and demolition shall take place and no equipment, machinery or materials shall be brought onto the site for the purposes of the development until a pre-commencement meeting has been held on site and attended by a suitable qualified arboriculturist, representative from the Local Planning Authority and the site manager/foreman. To agree working procedures and the precise position of the approved tree protection measures or/and that all tree protection measures have been installed in accordance with all documentation submitted (including the Arboricultural Method Statement pursuant to condition 7. The tree protection measures shall be maintained for the course of the development works. To arrange a pre-commencement meeting please email tplan@elmbridge.gov.uk with the application reference and contact details.
9. After the agreed tree protection measures have been installed in accordance with the approved plans and other details, all tree protection measures shall be maintained for the course of the development works. The development thereafter shall be implemented in strict accordance with the approved details and method statements contained in Arbor Cultural AC.2019.236 16/07/2019.
10. All existing trees, hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the proposed development. a) no retained tree, hedge or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars. Any pruning shall be carried out in accordance with British Standard 3998: 2010 (tree work) and in accordance with any approved supplied arboricultural information. b) if any retained tree, hedge or hedgerow is removed, uprooted or destroyed or dies, another tree, hedge or hedgerow of similar

size and species shall be planted at the same place, in the next available planting season or sooner.

11. Prior to commencement of development full details of all proposed tree planting shall be submitted to and approved in writing by the Local Planning Authority. Details are to include species, sizes, locations, planting pit design, supports, and guards or other protective measures to be used. Details shall also include planting times and maintenance schedules for aftercare to ensure good establishment. If within a period of 5 years from the date of the planting of any tree, that tree, or any planted in replacement for it, is removed, uprooted or destroyed or dies, another tree of same size and species shall be planted at the same place, in the next available planting season or sooner. The development shall be completed in accordance with the approved details.
12. Prior to the commencement of any works above slab level full details of both hard and soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. This scheme shall include: a) a statement setting out the design objectives and how these will be delivered; b) earthworks showing existing and proposed finished levels or contours; c) means of enclosure and retaining structures; d) boundary treatment(s); e) schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; f) tree species, sizes, locations, planting pit design, supports, and guards or other protective measures; g) vehicle parking layouts; h) other vehicle and pedestrian access and circulation areas; i) hard surfacing materials; k) proposed and existing functional services above and below ground [e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant]. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied and shall be retained as such unless otherwise agreed in writing with the Local Planning Authority.
13. The development shall be carried out in accordance with the conclusions and recommendations in Bat Emergence and Daytime Potential Report including any biodiversity enhancements by Darwin Ecology dated July 2019.
14. Prior to commencement of development a flood risk assessment and a surface water drainage strategy, to include mitigation measures shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details and shall be retained as such unless other agreed in writing with the Local Planning Authority.

15. The development hereby approved shall not be occupied unless and until at least two of the available parking spaces are provided with a fast charge socket (current minimum requirement: 7kw Mode 3 with Type 2 connector - 230 v AC 32 amp single phase dedicated supply) in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.