



Appeal Decision

Site visit made on 17 May 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2022

Appeal Ref: APP/K3605/W/21/3286004

14 Mole Road, Hersham, Walton-on-Thames KT12 4LU

- 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 & Mrs S & M Patel against the decision of Elmbridge Borough Council.
 - The application Ref 2021/2542, dated 8 July 2021, was refused by notice dated 8 October 2021.
 - The development proposed is erection of three bedroom house on land adjacent to No 14.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council, amongst other reasons, refused the application due to the absence of a signed legal agreement to secure a financial contribution towards the provision of off-site affordable housing. The appellant's Design and Access Statement has referred to the requirements of the development plan for an affordable housing contribution, while a Liability Calculation Sheet confirming the proposal's floor area was provided. This information implied, on the part of the applicant, that an affordable housing contribution would be required, while there was no clear indication that the Council's affordable housing position would be challenged through a financial appraisal.
3. The appeal submission has been accompanied by a Financial Viability Appraisal (FVA) indicating that a monetary contribution towards off-site affordable housing provision is unviable. There was no suggestion of this position during the application stage, therefore it represents a significant change to the proposal.
4. I have no evidence that the FVA has been subject to public consultation, and it did not form the basis of the Council's decision. Accepting the revised information may prejudice the interests of the interested parties were the information to be taken in-to account. Furthermore, it is not for the appeal procedure to advance proposals. This is best achieved through the submission of revised planning applications. As such, I have proceeded to determine the appeal on the basis of the information on which the Council made its decision.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area;

- the effect of the proposal on the living conditions of No 14 Mole Road (No 14), with specific reference to light and outlook; and
- whether or not an affordable housing contribution is necessary to make the proposed development acceptable in planning terms.

Reasons

Character and appearance

6. The appeal site comprises the side garden area of No 14, one of a pair of semi-detached dwellings. The street is characterised by a mix of detached, semi-detached and terrace houses. Their proportions and external appearance are largely consistent. Properties follow an even front building line that is set back from the road, while gardens or driveways occupy the intervening space. Moreover, there are consistent and regular gaps between the dwellings lining the street. Taking these characteristics into account, the street has a spacious and well-ordered appearance that makes a positive contribution to the area's character.
7. The proposed dwelling would occupy most of the plot's width leaving only a narrow gap between the side boundary and the flank wall of No 14. Because of this close relationship, the proposed dwelling would appear squeezed onto the site in a manner that would conflict with the prevailing arrangement and spacing between dwellings in the area. Moreover, the proposal's projection beyond the neighbouring front building line of No 14, along with its taller ridge height would appear strident and out of kilter with the proportions and neat layout of the pair of semis at Nos 13 and 14.
8. Given the height difference and the more advanced siting, between the proposal and No 14 it would not lead to an obvious "terracing effect" in the way the Council describes. Nevertheless, this would not overcome my concerns regarding the proposal's unacceptable proximity to Nos 13 and 14 and the erosion of space between dwellings in the street.
9. The proposal would have a very deep and bulky roof profile that would incorporate a flat roof section at the top. This would contrast markedly with the shallower roof spans of the dwellings at No 14, 15 and 16 Mole Road, which also taper and reduce in mass towards their respective ridgelines. Given the gap created by the existing access lane to the south of the appeal site, the proposal's discordant mass, depth and bulky roof profile in context with other dwellings would be highly visible in the street and result in visual harm to the street scene in general.
10. I conclude that the proposed development would cause material harm to the character and appearance of the area contrary to the requirements of Policy DM2 of the Development Management Plan 2015 (DMP), Policy CS17 of the Elmbridge Core Strategy (July 2011) (Core Strategy) and the Design and Character Supplementary Planning Document 2012 (SPD). These require, amongst other things, for proposals to preserve or enhance the character of the area with particular regard to appearance, scale, height and the prevailing pattern of development, while having a high-quality design that integrates sensitively with the prevailing townscape. The proposal would also be contrary to the National Planning Policy Framework (Framework) which requires development proposals to be sympathetic to local character.

Affordable housing

11. Policy CS21 of the Core Strategy requires that for this development a financial contribution equivalent to the cost of 20% of the gross number of dwellings should be provided. This position is also reflected, and elaborated on in more detail, in the Elmbridge Developer Contributions Supplementary Planning Document (2020) ("Developer Contributions SPD"), published by the Council. However, the policy pre-dates the Framework which states that affordable housing should not be sought for residential developments that are not major developments.
12. The Council has provided me with substantive evidence that there is an acute need for affordable housing in the Borough, the importance of small sites in delivering this, and that these requirements do not place a disproportionate burden on developers. The appellant does not dispute the relevance of Policy CS21 of the Core Strategy to the proposal. Therefore, based on this specific local evidence, the Framework's provisions, do not outweigh the development plan in this instance.
13. 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.
14. The appellant suggests that the Council did not give the opportunity to examine viability within the determination period of the application, so an FVA was prepared to support the appeal. However, the terms of the policy are clear in that an FVA should be provided at the application stage. Moreover, I have no specific information of how the Council prevented the submission of those details during the application. Therefore, it is not considered to be unreasonable to reject the additional information submitted by the appellant in this case.
15. In light of the above, I conclude that an affordable housing contribution is necessary for the proposal to comply with the development plan, on this main issue. In the absence of any method of securing this, the proposal conflicts with Policy CS21 of the Core Strategy which requires an affordable housing contribution to be provided where new residential development of this size is proposed, together with the Developers Contribution SPD which shares similar objectives.

Living conditions

16. The proposed dwelling would project significantly beyond the main back wall of No 14 and given its scale and immediacy to that property's garden there would be a material loss of light and an unacceptable loss of outlook upon the living conditions of its occupiers.
17. The appellant agrees that the proposal would be harmful in this respect. However, reference has been made to a part two storey, part single storey rear extension approved by the Council¹ (the approved extension) at No 14, that would, in the appellant's view, overcome the harm which I have identified.

¹ Local Planning Authority Approval Ref

18. Taking a closer look at those approved drawings, the two-storey part of the extension would line up with the back wall of the proposed dwelling, ensuring there would be no undue projection or loss of outlook experienced from No 14's garden. A first-floor side bedroom window in the approved extension would face the flank wall of the proposal, resulting in some loss of light and outlook. Yet, there is also a rear window serving that room which would not be unacceptably encroached upon by the proposal.
19. It was noted during my site visit, that construction work on the approved extension has commenced, with footings cut and the rear wall of the existing dwelling demolished.
20. For me to be satisfied that there would be no unacceptable effect on No 14's living conditions I would need to be certain that the approved extension is completed prior to work commencing on the proposed dwelling. Otherwise, I cannot be certain there would be no loss of amenity incurred. In this regard, a "Grampian" style condition would ensure that the works are complete. This type of condition is worded in a negative form by prohibiting development authorised by the planning permission until a specified action has been taken. The Planning Practice Guidance (PPG) advises that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission².
21. The Council has concerns that such a condition would not meet the tests outlined in the PPG and the Framework, in that the extension at No 14 would not relate to the development being sought. Moreover, it considers that completing the approved extension would potentially have an impact upon the financial deliverability of the proposed development within the 3 years.
22. Despite these concerns work on the approved extension, which does not appear to be a complex construction project, has commenced, while No 14 is included within the appeal site and in the ownership of the appellant. These factors would ensure that there would be a realistic prospect of works being completed within the timescale I would give, in the event the appeal was successful. Moreover, there is no compelling financial evidence from the Council to suggest that constructing the dwelling within the standard timescale and following completion of the approved extension would be unviable. Accordingly, I consider that a Grampian style condition would be acceptable in this case and overcome the harm I have identified.
23. In conclusion, the proposal would have an acceptable effect on the living conditions of No 14 with specific reference to light and outlook. It would accord with Policy DM2 of the DMP and the SPD where they require proposals to protect the amenity of adjoining occupiers in terms of outlook and daylight.

Planning Balance

24. The Council cannot demonstrate a 5 year supply of deliverable housing sites. Consequently Paragraph 11 d) of the Framework is engaged.
25. The proposed development would result in the social and economic benefits associated with the provision of one dwelling. This would contribute to the government's target to significantly boost the supply of homes. Yet, the provision of one additional unit would have minor benefits.

² Paragraph: 009 Reference ID: 21a-009-20140306, Use of Planning Conditions, Planning Practice Guidance

26. The Framework seeks to promote good design by ensuring that development is visually attractive as a result of good architecture, layout and appropriate and effective landscaping. The scheme would not comply with this objective as it would result in permanent harm to the character and appearance of the area. In addition, it would fail to meet the Council's affordable housing objectives. Consequently, the adverse impacts of the proposal would significantly and demonstrably outweigh the minor benefits, when assessed against the policies in the Framework as a whole.

Conclusion

27. I have found that there would be no unacceptable effect on the living conditions of neighbouring occupiers. However, the proposal would not accord with the development plan in other respects and there are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed.

RE Jones

INSPECTOR