



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: 22 June 2022

Appeal Ref: APP/K3605/W/21/3288195

142 High Street, Esher, Surrey KT10 9QY

- 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 Stonegate Homes (Esher) Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2021/1488, dated 19 April 2021, was refused by notice dated 12 November 2021.
 - The development proposed is conversion of existing property into 6 apartments. Works to include external changes to provide new windows and doors.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for Costs was made by Stonegate Homes against the decision of Elmbridge Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. During the determination of the application amended drawings were submitted which sought to address the concerns of the Council had in respect of the living conditions of future occupiers. The Council considered that these did not overcome their concerns and proceeded to determine the application on the original plans.
4. Although submitted to the Council prior to issuing the Decision Notice, I have no evidence that the plans have been subject to public consultation, and they did not form the basis of the Council's decision. Given the nature of the public objections, accepting these revised plans, which includes enlarged and new window openings, may prejudice the interests of the interested parties. 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 plans on which the Council made its decision.
5. The refusal reasons cited the lack of a completed legal agreement to secure affordable housing at the site. A draft S.106 agreement was provided during the course of the appeal with an obligation to provide two affordable units as part of the proposal. The Council was given the opportunity to provide comments on the submitted legal agreement.

Main Issues

6. The main issues are:

- whether future occupiers would be likely to experience acceptable living conditions with particular reference to outlook, privacy and light; and
- whether the proposal makes adequate provision toward infrastructure, with particular reference to affordable housing.

Reasons

Living conditions

7. The appeal site comprises part of a former office building located close to Esher Town Centre. It is proposed to subdivide the building into 6 self-contained flats.
8. Bedroom 1 at Unit 3 would be served by one window placed close to the corner of the room with an easterly orientation. The window would be somewhat enclosed by the immediacy of a projecting privacy screen serving the adjacent Unit 4 flat, and the close proximity of the neighbouring building to the east, No 53 Wolsey Road (No 53). Those adjacent structures would leave only a narrow area for occupiers to obtain an outlook, while leaving occupiers feeling unduly surrounded by neighbouring structures and buildings. Moreover, the window's modest width and positioning at the corner of the bedroom would result in a poor distribution of light entering the space. The effect of this, together with the poor outlook would result in a gloomy and uninviting room that would impair the living standards of future occupiers.
9. The appellant indicates that the outlook from the room would be improved by the addition of a green roof at No 53. However, I do not have any details of that scheme's appearance, whether it has been approved by the Council, or indeed implemented.
10. The lower level of Unit 6 contains a study that would have a single window opening looking onto Wolsey Road. On the opposite side of the road there is a tall and thick line of trees that would reduce the level of natural light entering the room, particularly during summer months. Furthermore, there would be limited light entering the study from the other windows in the flat given the arrangement and layout of the unit. The window's modest scale relative to the size of the study would also limit the quality of the outlook within the room. Accordingly, on account of the restricted outlook and low levels of natural light entering Unit 6's study, future occupiers would be subject to harmful and unsatisfactory living conditions.
11. It is possible that the concerns outlined above could be overcome by the provision of additional windows or the widening of existing openings, and I note an attempt to do this in the amended drawings submitted during the application stage. But for the reasons indicated above I have not assessed those drawings as part of this appeal.

12. The proposed ground floor Unit 1 would have its bedroom window and partially enclosed winter garden overlooking a small private car park. The car park has around 4 spaces and serves a nearby office, therefore comings and goings are likely to be low and intermittent, such that they would not cause any material harm to future occupiers of Unit 1 in terms of noise and disturbance.
13. It is acknowledged that there would be a lack of defensible space between Unit 1 and the parking area, while users of the car park could look into the flat. The prospect of this could be significantly reduced by the provision, of balustrading or some low-level landscaping, as suggested by the appellant. This would sufficiently obscure any direct views from the car park towards the unit's windows and provide adequate levels of privacy for future occupiers. A planning condition could secure those features and would be reasonable and necessary in this respect. I am mindful that similar proposals were included in the amended drawings submitted at the application stage and would alter the appearance of the scheme. However, I am satisfied that the interests of future occupiers and those adjoining would not be prejudiced by the addition of those boundary features. Accordingly, the proposal, insofar, as it relates to Unit 1, would not harm the living conditions of future occupiers, with respect to privacy.
14. Notwithstanding my findings on Unit 1, the proposed development would result in unsatisfactory living conditions for future occupiers of Units 3 and 6, with particular reference to outlook and light. It would fail to accord with Policies DM2 and DM10 of the Development Management Plan 2015, the Council's Design and Character Supplementary Planning Document and the National Planning Policy Framework (Framework) (paragraph 130 f)). These seek, amongst other things, for proposals to protect the amenity of existing and future occupiers, while offering residents an appropriate level of light and outlook.

Affordable housing

15. Policy CS21 of the Elmbridge Core Strategy (July 2011) (Core Strategy) requires that development resulting in the net gain of 6-14 dwellings to provide 30% of the gross number of dwellings on site as affordable dwellings. 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 most recent Framework which states that affordable housing should not be sought for residential developments that are not major developments.
16. 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.

17. The proposed scheme accords with the principle of the policy as 2 out of the 6 units (33%) would be provided as affordable rent dwellings. The two affordable rent dwellings would meet an identified need for this type of tenure. The appellant has submitted a draft planning obligation. The undertaking covenants that the tenure of those properties shall be for affordable housing. This would ensure they remain in that tenure to meet local housing need and affordability in the locality. This would also ensure the properties do not become open market dwellings in a location that would not be supported by the Council's housing strategy.
18. Notwithstanding this, the planning obligation is undated and has not been signed by the appellant or the Council. I also note from the evidence that it does not include, amongst other things, plans of the building and the land which the obligation relates to, is uncertain on the future management of the units, and includes some minor drafting errors. Even though the broad contents of the legal agreement appear acceptable, there is insufficient clarity insofar as it cannot be relied upon to secure the provision of affordable housing. The proposal would therefore fail to accord with Policy CS21 as there would be no certainty that affordable housing, envisaged by that policy, would be delivered.
19. It is acknowledged that the appellant would be prepared to make changes to the legal agreement in order to make it acceptable, while I note the attempts to engage with the Council. Yet, as I have found against the development in other respects, it is not necessary for me to pursue the appellant to amend and submit a completed planning obligation.
20. Therefore, in the absence of a completed planning obligation to secure affordable housing at the site, the proposal would fail to make adequate contributions towards local infrastructure. Therefore, it would conflict with the aims of Policies CS21 of the Core Strategy and the Developer Contributions SPD.

Planning Balance

21. The Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently Paragraph 11 d) of the Framework is engaged.
22. The proposed development would result in the social and economic benefits associated with the provision of six dwelling units. This would contribute to the government's target to significantly boost the supply of homes. In addition, the proposal would result in an efficient re-use of the building in an accessible town centre location very close to services and public transport connections. The provision of six additional units would therefore have moderate benefits.
23. The proposal would also include two affordable dwelling units and address the need for that tenure of housing in the Borough. However, I can only give limited weight to those benefits in the absence of a completed legal agreement.
24. The Framework seeks to create places which promote health and well-being, with a high standard of amenity for existing and future users. The

scheme would not comply with this objective as it would result in unsatisfactory living conditions for future occupiers. Consequently, the adverse impacts of the proposal would significantly and demonstrably outweigh the moderate benefits associated with the provision of six new units, when assessed against the policies in the Framework as a whole.

Conclusion

25. I have found that there would be unacceptable effects on the living conditions of neighbouring occupiers. Moreover, it would not accord with the development plan 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