



Appeal Decision

Site visit made on 5 July 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th August 2022

Appeal Ref: APP/K3605/W/22/3291046

**Land NW of Campbell Cottage and 1 Beacon Mews, South Road,
Weybridge, Surrey KT13 9DZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Petra Spittle against the decision of Elmbridge Borough Council.
 - The application Ref 2020/3213, dated 23 November 2020, was refused by notice dated 22 September 2021.
 - The development proposed is the construction of a 2 storey detached building to create 4 No 1 bedroom apartments with bin and cycle storage and associated amenity.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with approval sought for matters of access, appearance, layout and scale. Details of landscaping are reserved for future approval. I have determined this appeal accordingly. In addition, a Unilateral Undertaking (UU) has been submitted with the appeal. I shall return to this later.
3. I have had regard to a previous appeal decision at the appeal site¹. Whilst one of the main issues is similar, I have determined this appeal on its own merits and based on all of the evidence before me, which includes a parking survey.

Main Issues

4. The main issues are a) the effect of the proposed development on the living conditions of local residents, with specific regard to demand for parking; and b) whether the proposed development would make appropriate provision for affordable housing.

Reasons

Living Conditions

5. The main parties do not disagree that the appeal scheme would need to provide four parking spaces, equating to one space per one-bedroom unit. The proposed development does not include any off-street parking provision. I note that the site is within an accessible location, however it cannot be considered

¹ Appeal Ref: APP/K3605/W/20/3262414

to be within a town centre in which zero parking provision might be appropriate.

6. Local residents and the Council suggest that the locality suffers from on-street parking stress. This correlates with my observations during my site visit, where I observed that the limited amount of on-street parking spaces on South Road were occupied. These spaces are subject to parking permit restrictions and the remainder of South Road is restricted by double yellow lines. Similarly, the nearest stretch of Queens Road is restricted in terms of time limit spaces along one side and double yellow lines along the other.
7. The findings of the appellants parking survey also indicates that the unrestricted parking on nearby roads also suffers from high levels of parking stress. Whilst the coronavirus pandemic may have affected the results of the survey, there is nothing else before me to suggest that they are an inaccurate reflection of the current situation.
8. Had the proposal included any parking spaces within the appeal site and the subsequent effect this may have on the character and appearance of the area is not a matter for me to consider. Additionally, there are no guarantees that the removal of the dropped kerb contiguous with the appeal site would result in additional on-street parking spaces.
9. As such, the lack of on-site provision of parking within this proposal would contribute to additional pressure on on-street capacity in an area of high parking stress and additional demands for parking permits which would result in the reduction of what appears to be a limited source of spaces. The personal stress associated with the need to find spaces and accommodate existing and potential future vehicles on the highway has the potential to be detrimental to the living conditions of local residents.
10. The appellant has submitted a UU which includes an obligation which seeks to provide a car club bay. Providing the car club could be appropriately implemented, managed and made available to future occupiers this would likely reduce the pressure for on-street parking. I shall return to this matter later. Furthermore, although not originally proposed through the appeal development, I note the appellants agreement to the Council's suggested condition which would exclude the proposed properties from obtaining parking permits, an arrangement which was considered in a nearby appeal².
11. Taking all the above into consideration, and subject to a planning obligation in respect of the proposed car club which would be necessary to make the development acceptable in planning terms, the proposal could accord with Policy DM7 of the Elmbridge Local Plan Development Management Plan (April 2015) (the DMP) which seeks to ensure that the proposed parking provision should be appropriate to the development and not result in an increase in on-street parking stress that would be detrimental to the amenities of local residents.

Affordable Housing

12. Policy CS21 of the Elmbridge Core Strategy (July 2011) (the CS) requires a financial contribution equivalent to the cost of 20% of the gross number of dwellings on site of 1-4 dwellings. This conflicts with the National Planning

² Appeal Ref: APP/K3605/W/19/3240173

Policy Framework (the Framework), which states at paragraph 64 that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer).

13. The Council's Statement on Affordable Housing Provision on Small Sites (update) (October 2021) was prepared in response to this conflicting approach. It sets out the pressing need for affordable housing within the borough, highlighting the ongoing requirement for affordable housing, exceptionally high house prices in the borough compared to other parts of England and high affordability ratio. It also notes the important contributions that small sites have made to the overall delivery of homes in the borough along with the total loss of financial contributions and number of homes as a result of the higher threshold as set out in the Framework.
14. The purpose of paragraph 64 of the Framework is to ensure that financial contributions do not prevent or significantly hinder housing from coming forward on small sites or to disproportionately burden smaller developers. There is nothing before me to indicate that the lower threshold for affordable housing as adopted in Policy CS21 of the CS is frustrating housing supply and indeed the Council appears to have been flexible in terms of waiving or reducing the affordable housing requirements for numerous applications. Moreover, the Framework as a whole places significant weight on boosting the supply of homes and meeting the needs of groups with specific housing requirements.
15. All in all, the evidence is up-to-date and persuades me that there are sufficient local circumstances which indicate that the requirement for a contribution towards affordable housing as set out in Policy CS21 of the CS is justified.
16. During the course of the appeal, the appellant provided information³ to demonstrate that the proposal would not be financially viable if it were subject to the affordable housing contribution (the FVA). As such, the contributions to affordable housing are not included within the UU that I have seen.
17. I note that the contributions included in the FVA do not correlate with the Council's figure. Moreover, this information was not before the Council when it made its decision and I note its concerns regarding the requirement for the appellant to pay for a review. Annex M.2.1 of The Procedural Guide, Planning appeals – England (March 2020) states that the appeal process should not be used to evolve a scheme and it is important that what is considered by me is essentially what was considered by the local planning authority, and on which interested people's views were sought.
18. It is suggested that the submission of the FVA closer to the date of decision of this appeal would make it more up to date than if it were submitted during the course of the planning application, as it would take into account changed economic circumstances. I acknowledge that many variables can influence viability and that these can change quickly. Regardless, the onus is on the appellant to demonstrate whether particular circumstances justify a viability assessment at the planning application stage.

³ S106 Management, Financial Viability Appraisal, 21st December 2021

19. Taking all the above into consideration, along with the principles established by Wheatcroft⁴, to consider the new information provided with this appeal or to be agreed at a later date would unacceptably prejudice those who should have been consulted. Accordingly, I have no option but to find that the proposal fails to make appropriate provision for affordable housing and for this reason it would conflict with Policy CS21 of the CS, the aims of which I have set out. Given my findings above regarding the relationship of this policy and the Framework, I afford substantial weight to the proposal's conflict with this policy. In reaching a view on this issue I have also paid regard to the Council's Development Contributions Supplementary Planning Document (July 2020) in regard to affordable housing contributions.
20. Policy DM7 of the DMP is included within the Council's decision notice in respect of this main issue however this relates to access and parking. As such, I do not feel it relates to the substance of the main issue.

Planning Obligation

21. The appellant has submitted a UU under section 106 of the Town and Country Planning Act 1990 (as amended) which includes a number of obligations and contributions to come into effect if planning permission is granted. I have considered these in light of the provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, which are also reflected at paragraph 57 of the Framework.
22. In addition to the lack of affordable housing contributions within the UU, there are also limitations with regards to the implementation of the car club, notably when and where along Queens Road the car club bay could be installed.
23. Regardless of these matters however, I also have some concerns with the legality of the obligation itself. Recital B notes that the applicant, along with the landowner, is registered as the owner of the application site, however this conflicts with the submitted title absolute. As such, the UU fails to correctly identify the applicant's interest in the land. Additionally, the UU does not clearly refer to the relevant planning application and the application site address included at Schedule 1 has a spelling error. These shortcomings result in the UU being incomplete thus it cannot take effect. I have not pursued these matters further with the main parties given the other concerns I have with the UU, specifically in regard to the lack of affordable housing provision.

Other Matters

24. The appeal site is located within the 5km buffer zone of the Thames Basin Heaths Special Protection Area (the SPA). Policy CS13 of the CS sets out that new residential development which is likely to have a significant effect on the ecological integrity of the SPA will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects. Such measures must be agreed with Natural England.
25. The Councils evidence suggests that an Appropriate Assessment (AA) has been undertaken although I have not been provided with a copy and it is not clear whether Natural England has been consulted. Nevertheless, as the competent authority, it is for me to determine whether the proposal is likely to have a

⁴ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

- significant effect on the SPA, following which I would have to carry out an AA at which stage any mitigation measures could be taken into account.
26. Notwithstanding this however, as noted, the appellant has indicated their willingness to mitigate against the effects on the SPA through financial contributions as secured in the UU. The Council has raised no concerns with the financial contribution towards a Strategic Access Management and Monitoring contribution (SAMM) within the UU. However, notwithstanding the UU, there is no need to consider the implications of the proposal on the protected site as the scheme is unacceptable for other reasons.
27. The appellant suggests that the proposal would complete the gap in this part of the frontage along South Road. Whilst I agree, and note the Council has not raised concern with the design, the appeal site is in a good condition and does not detract from the area. As such, this is a neutral matter.
28. The Council cannot demonstrate a five-year supply of deliverable housing sites and the appellant has suggested that the Council's Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. In these circumstances, paragraph 11 d) of the Framework is engaged. This states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (which footnote 8 states includes, for applications involving the provision of housing, where the local planning authority cannot identify a 5-year supply of deliverable housing sites), permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
29. I do not know the full extent of the housing shortfall. Nevertheless, the proposal would make a contribution to the deficit albeit this would be to a limited extent due to the small scale of the proposal. There would also be economic and social benefits during the construction of the development and on subsequent occupation. Collectively I afford these benefits limited weight. Even if the shortfall was large, this position would elevate the weight to be afforded to the benefits to no more than moderate at best.
30. Set against this however, the proposal would fail to make a contribution to affordable housing and for which there is an identified need. I ascribe this matter substantial weight. Thus, the adverse impact of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The scheme would not therefore be sustainable development for which the presumption in favour applies.

Conclusion

31. The proposal conflicts with the development plan and there are no material considerations, including the Framework, which indicate a decision should be made other than in accordance with it. Therefore, the appeal should be dismissed.

H Ellison
INSPECTOR