
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: 16 August 2022

Appeal Ref: APP/K3605/W/21/3286858

Land to the north west of Campbell Cottage & 1 Beacon Mews, South Road, Weybridge 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 G Hewitt against the decision of Elmbridge Borough Council.
 - The application Ref 2020/3188, dated 23 November 2020, was refused by notice dated 1 October 2021.
 - The development proposed is the erection of a two storey detached building to provide offices for the visually impaired – Class (E(g)(i)).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Ms G Hewitt against Elmbridge Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The planning application was submitted in outline form with approval sought for access, appearance, layout and scale. Landscaping is reserved for future consideration. I have determined this appeal accordingly.
4. I have had regard to a previous appeal decision at the appeal site¹. Although the subject matter is somewhat similar, both appeals vary with regards to the proposed end users. I have therefore determined this appeal on its own merits and based on all of the evidence before me.

Main Issue

5. The effect of the proposal on the living conditions of local residents, with particular regard to demand for on-street parking.

Reasons

6. The appeal site is a parcel of land on South Road, which is a predominantly residential street located behind the main commercial thoroughfare of Queens Road. Adjacent to the appeal site, along one side of South Road, there is a short stretch of on-street parking spaces, which are controlled via a parking permit scheme operating from Monday to Saturday between the hours of 0900 and 1800. At the time of my site visit I observed that all of the limited spaces

¹ Appeal Ref: APP/K3605/W/20/3262414

were occupied. The remainder of South Road is restricted by double yellow lines. There are also parking restrictions, in the form of yellow lines and time restricted parking bays along Queens Road.

7. Whilst just a snapshot in time, my observations appear to correlate with the concerns from the Council and local residents that there is a high level of on-street parking stress in the immediate area and that spaces are at a premium. The proposal does not include any off-street parking provision thus would generate demand for spaces which are relied on by local residents, through applications for parking permits.
8. However, the appellant has indicated that the proposal would be for use by visually impaired or blind office users who cannot drive. As such, it is suggested that the proposal would not generate any demand for on-street parking.
9. Although the site appears to be in an accessible location, close to public transport, office users may nevertheless be assisted by people who drive and thus require places to park. The proposed building could be serviced, managed and visited by non-visually impaired persons and there may be deliveries to the site, all of which would generate an increased demand for parking somewhere close by.
10. The evidence before me is also unclear on the full degree of visual impairments and the connection between them and whether or not all persons with such conditions are precluded from obtaining a driving licence. It would be for the Driver and Vehicle Licensing Agency to determine whether or not someone qualifies for a driving licence. Those with certain sight impairments may indeed be capable of holding a driving licence yet may choose not to apply. It is unclear how this arrangement could be satisfactorily addressed in relation to the appeal proposal.
11. The appellant has indicated that restricting the final users of the proposal could be secured through a unilateral undertaking. This would be necessary to make the development acceptable. However, I have not been provided with such a mechanism within the appeal timetable. The onus is on the appellant to do so. As such, I cannot therefore determine whether the final users could be appropriately controlled which would therefore likely limit the demand for on-street parking.
12. The Planning Practice Guidance (the PPG) advises that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases². Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.
13. In terms of restricting the end users through a condition, the PPG goes on to state that where consideration is given to using a negatively worded condition of this sort, it is important that the local planning authority discusses with the

² Paragraph: 010 Reference ID: 21a-010-20190723

applicant before planning permission is granted the need for a planning obligation or other agreement and the appropriateness of using a condition. The heads of terms or principal terms need to be agreed prior to planning permission being granted to ensure that the test of necessity is met and in the interests of transparency. I note that terms were not provided and thus not agreed with the Council.

14. Therefore, given the nuances and uncertainty I have found above regarding the range of visual impairments and the relationship with driving licences, I am concerned that the use of a condition to restrict final users would not be sufficiently precise and thus not enforceable. It would therefore fail to meet the 6 tests outlined in the National Planning Policy Framework.
15. This is unlike the use of conditions to restrict the age of occupants of residential developments or to restrict the use of a development to an existing business, as it has been suggested has occurred at an approval on Queens Road, which can be clearly defined.
16. Although the Council's highway consultee has raised no concern with the proposal, this relates to highway safety and is on the proviso that it would be a 'no car' development. As noted, there is no mechanism before me to secure this. I acknowledge that the proposal would see the removal of the dropped kerb contiguous with the appeal site however there is no guarantee that this stretch would be given over to additional on-street parking spaces or whether the double yellow lines would remain.
17. Accordingly, the proposal fails to demonstrate that it would not result in a harmful effect on the living conditions of local residents through the raised level of stress that can be caused by the increased demand for parking on nearby roads. It would be contrary to Policy DM7 of the Elmbridge Local Plan, Development Management Plan (April 2015) 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.

Other Matters

18. I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Relevant protected characteristics include a person's disability.
19. However, based on the information before me, I am not persuaded that the proposal could be secured for persons who are blind or visually impaired. Furthermore, dismissal of the appeal would not limit the availability of office space for such groups. Having regard to the legitimate and well-established policy aims of protecting the living conditions of local residents, the dismissal of the appeal would therefore be proportionate and necessary.
20. The evidence suggests that the site falls within the Thames Basin Heath Special Protection Area however given my conclusion on the main issue there is no need for me to pursue this matter further.

21. The development would infill a small gap in an otherwise continuous street scene however the appeal site is not in a state of disrepair and does not therefore detract from the character and appearance of the area. Accordingly, this is a neutral matter.

Conclusion

22. The proposal would result in economic benefits during construction and on subsequent occupation. The proposal would also provide office space for blind or visually impaired persons, for which the appellant indicates there is a local need, albeit this need has not been evidenced. Collectively, I afford these benefits limited weight, taking into account also the small scale and restricted nature of the proposal.
23. The development would harm the living conditions of local residents, harm which would lead to conflict with the development plan as a whole. There are no material considerations which indicate a decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

H Ellison
INSPECTOR