Appeal Decision

Site visit made on 31 October 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Appeal Ref: APP/K3605/W/21/3285067
Fairmile Farm Cottage, Denby Road, Cobham, KT11 1JY

- 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 and Mrs Ridsdale against the decision of Elmbridge Borough Council.
- The application Ref 2021/0114, dated 12 January 2021, was refused by notice dated 16 July 2021.
- The development proposed is conversion of existing garage and gym in to a two-bedroom separate dwelling with private garden using the existing access road.

Decision

1. The appeal is allowed and planning permission is granted for the conversion of existing garage and gym in to a two-bedroom separate dwelling with private garden using the existing access road at Fairmile Farm Cottage, Denby Road, Cobham, KT11 1JY, in accordance with the terms of application Ref 2021/0114, dated 13 January 2021, subject to the conditions set out in the attached schedule and Unilateral Undertaking dated 21 September 2021.

Applications for costs

2. An application for cost was made by Mr Neil Ridsdale against Elmbridge Borough Council. That application is the subject of a separate decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. I have had regard to the revised Framework in reaching my decision.

Main Issues

4. The main issues raised in respect of the appeal are: -

   a) The delivery of affordable housing; and

   b) The effect of the proposal on Thames Basin Heath Special Protection Area (SPA).

Reasons

Affordable housing

5. Policy CS21 of the Elmbridge Core Strategy (Core Strategy) 2011 requires new residential development to make provision for affordable housing in support of the Council’s aim to deliver at least 1150 affordable homes between 2011 and

2026. For proposals comprising 1-4 dwellings, the Council seeks a financial contribution equivalent to the cost of 20% of the gross number of dwellings.

6. The Council advises that there is a significant need for affordable housing locally. The supporting text to Policy CS21 indicates that house prices in Elmbridge are significantly above regional and national averages and that affordability is an issue even for those on above average incomes. It also notes that there has been an historic under delivery of affordable housing. I note also that the Council has spent money from its enabling fund to deliver affordable housing in the borough and that recent assessments continue to show a need to deliver affordable housing.

7. Paragraphs 64 and 65 of the Framework set out requirements for local planning authorities to meet the full, objective assessed needs of market and affordable housing and where they have identified that affordable housing is needed, set policies for meeting this on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified.

8. For the above reasons I consider the policy approach to affordable housing as set out in Policy CS21 of the Core Strategy to be consistent with the Framework and it therefore remains the starting point for my decision in respect of affordable housing. However, the Written Ministerial Statement of 28 November 2014 (WMS) is also a material consideration and attracts considerable weight.

9. The WMS sets out the Government's intention to prevent affordable housing and tariff style contributions from placing a disproportionate burden on small-scale developers and the consequent adverse effects this has on overall housing supply. The WMS has been translated into updated Planning Practice Guidance (PPG) that states that contributions should not be sought for sites of 10-units or less. Whilst I have found Policy CS21 to be consistent with the Framework, it conflicts with the WMS and PPG affordable housing threshold.

10. The applellants have submitted a viability appraisal with the planning submission indicating that at a 17.5% profit level the proposed scheme is not capable of supporting obligations. On the basis of the viability appraisal the development would result in a deficit of -£15,881. However, the Council have commissioned their own assessment in respect of viability and, in applying a reduced Benchmark Land Value (BLV), have established that this would make the scheme viable. There is disagreement between parties with regard to the BLV figure. The Council's advisers have assumed a BLV based on valuing the existing use of a warehouse in a commercial area and discounted by 50%.

11. The local planning authority's adviser contends that the building is not currently in residential use and given an extant planning permission that has yet to be implemented to convert the garage to living space, the existing use cannot be considered as residential for the purposes of BLV. In the adviser's view, as the site is not residential a reasonable assumption could be made that the premises could be used for storage and that the garage cannot benefit from full residential value. However, the appellants argue that the existing outbuilding at the site is an outbuilding within the curtilage of the existing dwellinghouse that has been used as a garage and gym and for uses ancillary to the existing dwellinghouse. As such, the use of the building is residential and should be valued accordingly and contends that the existing use value assumed by the Council's advisers is not appropriate.

12. The Planning Practice Guidance sets out that alternative uses can be used in establishing BLV. Whilst the local planning authority's adviser say the building is not currently in residential use, there is no substantive evidence before me that would suggest that it has in the past been put to a commercial use or used for storage or any other use beyond a domestic garage ancillary to the dwelling. Furthermore, the description of development pertaining to the planning permission does not indicate the garage to be a commercial garage.

13. The outbuilding is situated within the grounds of Fairmile Farm Cottage and within close proximity to the house and within its associated garden. In considering alternative uses, the outbuilding, being within the residential garden, would be unlikely to be suitable or appropriate for a commercial use or storage. I see no substantive reason why the suitability of the site for other alternative uses to potentially have taken place could not be considered when appraising the likely past or potential previous use of a site for BLV purposes. Therefore, I do not consider the local planning authority's adviser's approach in this particular case, by assuming a commercial use of this site, to be a reasonable approach given the context of the existing site and the outbuilding.

14. The appellants have established the value of residential garages/outbuildings for the purposes of the viability appraisal that supports their application. I have no substantive reason before me that might lead me to conclude that the valuation reached would also be incorrect. As such, the scheme does not demonstrate that it would be able to deliver affordable housing as the appellant's financial appraisal does not indicate that this could be achieved.

15. The supporting text to Policy CS21 of the Core Strategy sets out that a financial appraisal should be submitted alongside a planning application where the delivery of affordable housing may be subject to viability. I have found that the viability does not demonstrate that the proposed development, in this case, would be able to deliver affordable housing. For those above reasons, the proposal would not materially conflict with Policy CS21 of the Core Strategy and the Development Contributions Supplementary Planning Document (SPD) 2020 (updated 2021).

SPA

16. The Council have identified that the appeal site is located within the 400m-5km buffer zone of the SPA which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017.

17. The April 2018 judgement (*People Over Wind v Coillte Teoranta*, ref C-323/17) ruling determined that the development cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of mitigation measures agreed between Natural England and the Council.

18. The SPA site is protected and subject to statutory protection to ensure that the site contributes to achieving the aims of the Wild Birds Directive to ensure that the integrity of the site is maintained or restored as appropriate for birds (qualifying features). Recreational activity by way of increasing the number of visitors could lead to disturbance to the ground-nesting birds for which the SPA is designated. Also increased population could prevent the appropriate management of the habitats, erode the surface of the SPA and affect the soil quality as a result of dog fouling. New households in the buffer zone would

increase recreational disturbance, which has the potential to negatively affect birds and could cause a decline in their numbers.

19. I agree that the proposed development has the potential to increase disturbance to birds upon the SPA through increased recreation pressure from additional households. Adequate mitigation clearly could not be provided on-site. I, therefore, must consider whether measures could be put in place to avoid or mitigate the impact of the pressure arising from the proposed development on the SPA and the effectiveness of any proposed measures.

20. The mitigation strategy seeks to ensure that access management implemented in one area does not simply displace visitors onto another part of the SPA, therefore, it is identified that it is necessary to take a strategic approach to visitor access management. The Strategic Access Management and Monitoring (SAMM) comprises a programme of strategic visitor access management measures. This involves, amongst other things, providing wardening services and an education programme, monitoring visitor usage and number of birds on the SPA.

21. Policy CS13 of the Core Strategy requires the monitoring of the effectiveness of avoidance and mitigation measures and to monitor visitor pressure on the SPA in order to mitigate against the in-combination effect of new development, through the pathway of recreational pressure of the SPA. A tariff has been developed and will be applied to new housing according to the number of dwellings built within the buffer zone.

22. This tariff will be funded by development contributions and collected across 11 affected authorities and provided for in perpetuity. It is co-ordinated through the joint Strategic Partnership Board by Natural England with Hampshire Council fulfilling the role of Treasurer. The charge collected is pooled with other SPA affected local authorities for strategic allocation. The Council transfers SAMM monies every quarter to Hampshire County Council for strategic allocation. Contribution also can be used to fund the staffing costs for monitoring and administration either within the Borough Council or by a joint body to oversee parts or all of the work, which includes surveys to check visitor numbers to the SPA.

23. The Council have confirmed that the proposed financial contribution to mitigate the effect on the SPA is sufficient to avoid an adverse impact on the integrity of the European Site arising from the proposed development. The Council have sought comments from Natural England and included them as part of a package of SPA related information provided as part of this appeal. For development within the buffer zone Natural England also indicates that a financial contribution to the SAMM Strategy is required.

24. I consider that in order to mitigate the impact of increased recreational disturbance created by the new household proposed by the planning application, a financial contribution to the SAMM Strategy is necessary. The mitigation measures to be implemented within the SPA from collection of the standard SAMM tariff would ensure that these impacts will not be significant in the long-term. The appellants have provided a Unilateral Undertaking to ensure this payment. The Council have had sight of the Unilateral Undertaking and advised that the local planning authority have no comment to make. The Unilateral Undertaking would mitigate the impact of the development upon negatively affected birds.

25. I conclude that the proposed development does provide appropriate mitigation to ensure that it does not, in combination with other development, have an adverse effect on the SPA. Therefore, the proposal would not conflict with Policy CS13 of the Core Strategy and and the Development Contributions Supplementary Planning Document which provides a policy framework for managing the potentially adverse risk that the net increase in development would have upon the SPA.

Conditions

26. The Council have provided a list of suggested conditions. I have considered the conditions provided by the Council in light of paragraph 56 of the Framework and the advice in the Planning Practice Guidance.

27. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans. A condition requiring electric vehicle charging is required to ensure highway safety. In the interest of the visual appearance of the area a landscaping scheme is necessary.

28. The Council considers that the removal of Class A, AA, B, or E of Schedule 2 Part 1 of the Town and Country (General Permitted Development) (England) Order 2015 permitted development rights would be appropriate. It is not entirely clear what the Council seek to achieve by removing such permitted development rights or what harm might occur to the future occupiers or adjoining occupiers if such permitted development rights were implemented at the property. I refer to the advice in the Planning Practice Guidance which states that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. I do not consider there to be exceptional circumstances here.

Conclusion

29. For the reasons set out above, and subject to the conditions listed and Unilateral Undertaking dated 21 September 2021, this appeal should be allowed.

Nicola Davies

INSPECTOR

SCHEDULE

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 following list of approved plans: FF/04 submitted on 13th January 2021; and FF/01 and FF/02 submitted on 8th February 2021.

3. The development hereby permitted shall not be occupied until the dwelling is provided with a fast charge socket (current minimum requirements - 7 kw Mode 3 with Type 2 connector - 230v AC 32 Amp single phase dedicated supply) and thereafter retained and maintained as required for the charging of vehicles.

4. Prior to first occupation of the dwelling hereby permitted written details and plans of the following 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) positions, height, species, design, materials and type of boundary treatment(s)
   b) hard surfacing materials
   c) secure and covered cycle storage; and d) refuse/recycling bin storage and collection.

   Development shall be carried out in accordance with the approved details and shall thereafter be maintained as approved.

End of Schedule