

Appeal Decision

Site visit made on 11 May 2023

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2023

Appeal Ref: APP/K3605/W/22/3294520

17 High Pine Close, Weybridge KT13 9EB

- 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 David Howe & Mrs Ruth Howe against the decision of Elmbridge Borough Council.
 - The application, Ref. 2021/0712, dated 28 February 2021 was refused by notice dated 20 December 2021.
 - The development proposed is the erection of a new 3 bedroom single storey dwelling with rooms in the roof space.
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Application for Costs

1. An application for costs was made by Mr David Howe and Mrs Ruth Howe against Elmbridge Borough Council. This is the subject of a separate decision.

Decision

2. The appeal is dismissed.

Main Issue

3. The main issue is whether a financial contribution towards affordable housing provision is necessary to make the proposal acceptable.

Reasons

4. The Council's Notice of Refusal refers to an absence of a completed legal agreement to secure the provision of affordable housing as required by Policy CS21 of the Elmbridge Core Strategy 2011 and the Council's Development Contributions Supplementary Planning Document 2020 ('the SPD').
 5. The officer's report explains that the planning history of the site includes two previous applications that had the same single reason for refusal as this appeal. These were application ref. 2108/1557 and application ref. 2019/2814. Both applications were the subject of a dismissed appeal, with the respective decisions APP/K3605/W/18/3219358 dated 22 August 2019 and APP/K3605/W/20/3251155 dated 30 November 2020. These provide a context for the circumstances of this case, but I see no need for the repetition of the details.
 6. In this current appeal, it is explained for the appellants that whilst the principle of the application of Policy CS21 is not contested, this is contingent on the development scheme being viable. The appellants' consultants consider that in this instance the appeal scheme would not be able to support an affordable
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housing contribution, whereas the Council's own consultants do not share this view.

7. In this regard I note the officer's report refers to the Council's advisors initially indicating that a particular sum would be appropriate, but following further negotiations with the appellant's representatives conceded that a figure of only about a quarter of this amount would be acceptable.
8. It seems to me that the level of that contribution as quoted would be so modest in comparison with the other costs of the development that in itself it would be unlikely to be a determining factor as to whether the project would be viable. In these circumstances and noting the reluctance of the Council's consultants to accept that a 'robust case' has been demonstrated for precluding an affordable housing contribution, I see no justification for the absence of a legal agreement, or in the alternative a Unilateral Undertaking. Such an agreement or Undertaking would address the issue of a contribution but would be subject to the outcome of the Late Review Mechanism ('LRM') as set out in the SPD, the carrying out of which would form part of the terms of the agreement.
9. As the officer's report points out, the appellants/developer would not be committed to making a particular, or indeed any, financial contribution unless the LRM established sufficient viability assessed for the most part on actual as opposed to projected figures. I also consider that the agreement could make provision for adjudication or audit by an expert third party in the event of continued disagreement between the Council's and appellant's consultants. Such an agreement would have the dual advantage of providing a fair return for the appellants and the developer, whilst at the same time safeguarding the public interest by retaining the possibility of a contribution to affordable housing on the basis already supported by the Inspectors in the earlier appeals at this site.
10. The appellants' evidence seeks to demonstrate that the appeal scheme 'would not be viable' and therefore does not warrant an application of the LRM. However, the submitted viability assessment is based on a number of assumptions, which in my view lack sufficient explanation and clarification, particularly taking into account the Council's position on viability. And bearing in mind that this is no less than the fourth appeal in which the payment of a contribution has been resisted, I consider it reasonable to attach significant weight to the differing and arguably more objective opinion of another qualified valuer in the form of the Council's independent consultant.
11. On the main issue I therefore conclude that in the absence of corroborative evidence from the Council's consultant that a financial contribution towards affordable housing is unnecessary in this case, it would be inappropriate for the appeal to be allowed and permission granted.

Other Matters

12. The application was the subject of a large number of objections on a variety of matters. These were summarised in the officer's report and I have had regard to them in making my decision. The report has assessed the proposal in the light of the revisions made in the National Planning Policy Framework 2021 ('the Framework') and in paragraphs 37 to 53 has reviewed the proposed

development's acceptability or otherwise with regard to a wide range of considerations.

13. In the light of the conclusions reached and also noting that the acceptability of the principle of the site's development has already been decided by previous Inspectors, nothing I have seen or read leads me to reject the development on the basis of matters outside the scope of the main issue.

Planning Balance

14. The Council acknowledges that it is unable to currently demonstrate a five-year supply of deliverable housing sites as required by the Framework. Accordingly, paragraph 11(d) of the Framework is engaged. This stipulates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
15. The appeal scheme would provide a new 3 bedroom dwelling towards the housing supply and would provide some economic and employment benefits during its construction. However, the absence of a contribution towards affordable housing in a Borough where there is ample evidence of an acute need and the supply is largely dependent on small sites would cause substantial harm. I consider that this would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. In these circumstances the scheme's failure to comply with Core Strategy Policy CS21 and the SPD precludes a grant of permission.

Conclusion

16. For the reasons explained and having had regard to all other matters raised, the appeal is dismissed.

Martin Andrews

INSPECTOR