



Appeal Decision

Site visit made on 13 September 2023

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Appeal Ref: APP/K3605/W/23/3315205

1 Holtwood Road, Oxshott, Leatherhead KT22 0QL

- 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 N Davis against the decision of Elmbridge Borough Council.
- The application Ref 2022/2338, dated 25 July 2022, was refused by notice dated 13 December 2022.
- The development proposed is erection of 4 pairs of semi-detached houses with rooms in the roof space, associated parking and cycle store following demolition of the existing house and garage.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are:
 - Whether or not the proposal would make adequate provision for affordable housing; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Affordable Housing

3. Policy CS21 of the Elmbridge Core Strategy (2011) (Core Strategy) requires 30% of the gross number of dwellings on sites of 6-14 dwellings to be affordable housing, where viable. It is set out in the supporting text that where affordable housing is provided on any site, the Council will seek to ensure that provision is maintained in perpetuity, normally by means of a legal agreement i.e. Section 106 agreement, for the benefit of those groups requiring access to such housing. As the proposal would result in a net gain of seven dwellings, Policy CS21 requires it to provide two on-site affordable housing units and a financial contribution.
4. This policy approach is not fully consistent with Paragraph 64 of the National Planning Policy Framework (the Framework), which states that provision of affordable housing should not be sought for residential developments that are not major developments¹, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). Elmbridge Borough is not a designated rural area. However, the evidence before me demonstrates there to

¹ For housing, development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.

be significant need in the Borough for affordable housing and a necessary reliance on small sites to meet this need. Also, the Council has undertaken a viability assessment to show that affordable housing contributions would not place an unreasonable and disproportionate burden on sites with fewer than ten units.

5. There are therefore exceptional circumstances in terms of affordability and housing need in Elmbridge Borough that justify the approach taken by Policy CS21 of the Core Strategy. Given this, despite conflict with the Framework, I am satisfied that the need for an affordable housing contribution would meet the three tests set out in paragraph 57 of the Framework.
6. It is agreed between the parties that, in this case, a financial contribution of £214,000 would be an acceptable affordable housing contribution. While this contribution would not be policy compliant, I note that the Council's Independent Assessors reviewed the scheme and found that it was not capable of making a policy compliant contribution. As the contribution is not policy compliant, the Development Contributions Supplementary Planning Document (2020) (SPD) requires the development to be subject to an early and late-stage review mechanism.
7. A Section 106 Legal Agreement has been submitted as part of the appeal to secure the agreed financial contribution, as well as the early and late-stage review mechanisms. However, although the Council consider the Section 106 Legal Agreement to be acceptable, the Council has not signed it and the copy provided has not been certified as a true copy.
8. The Procedural Guide: Planning appeals – England requires the appellant, in cases such as this appeal, to submit an executed and certified copy of any planning obligations no later than 7 weeks from the start date. It explains that the Inspector will not delay the issue of a decision to wait for an obligation to be executed unless there are very exceptional circumstances. I am not aware of any very exceptional circumstances in this case.
9. Moreover, I also have some concerns about the document itself. For example, the plan stated to be annexed at Schedule 2 is not included, the definition of Late Stage Review Date appears to be incomplete, and the Cap is stated as £0. I am therefore not convinced that the proposed arrangements for managing the affordable housing are adequate, particularly the review mechanisms. Nonetheless, given the Section 106 Agreement is not fully executed or certified, it is fundamentally flawed. I have therefore not sought further explanation regarding these concerns.
10. Accordingly, the proposal would fail to make an appropriate contribution towards affordable housing to meet the needs of Elmbridge Borough. It would therefore conflict with Policy CS21 of the Core Strategy and the Development Contributions SPD.

Character and Appearance

11. Holtwood Road and the surrounding area is made up predominantly of detached houses on large plots. Most houses are set back from the highway and mature trees in front and rear gardens together with soft front boundary treatments in the form of hedges, and grass verges flanking the carriageway, give the road, and wider area, a verdant and spacious character.

12. The proposal would comprise four sets of semi-detached houses, two sets positioned on the front of the site and the other two sets positioned behind them towards the rear of the site. This type of backland arrangement is not a common feature of the wider area. However, in this case, the pattern of development, reflects the positioning of the neighbouring properties. The two sets of houses at the front of the site are set back a similar distance to the neighbouring property, Baddington House, and the two sets of houses towards the rear of the site are set back a similar distance to the neighbouring development at Langdon Grange. Given this, the proposal would not appear incongruous within the existing pattern of development.
13. The proposed dwellings would be a comparable height to the neighbouring properties, Baddington House and Langdon Grange, as well as other houses in the wider area. I appreciate that the difference in the height between the proposed dwellings and the previously refused application² at the appeal site could be considered minimal. Nevertheless, I must assess the height of the dwellings as part of the appeal before me and, given the similarities between the heights of the proposed dwellings and the surrounding properties, I am not of the view that they would be excessive nor that the proposal would not sit comfortably or integrate well with the surrounding area due to this.
14. I appreciate that a detailed street scene would have been a useful tool in understanding the composition and bulk of the proposal as a whole and its effect on the street scene. Nonetheless, the existing frontage hedge is relatively tall and dense and, other than a small amount of it that would be removed to widen the existing access, most would be retained. This would partly restrict views of the proposal from Holtwood Road, with the exception of views taken from the site entrance. In my view this hedge is highly likely to remain in a similar form for aesthetics and consistency with local character.
15. Notwithstanding this, even if the proposed dwellings would be noticeable as a group from Holtwood Road, the distance between the sets of dwellings at the front and rear of the site, change in ground level, difference in their external materials, and their positioning at an angle to one another, would break up their bulk as a group. The proposed dwellings would have generous spacing around them and the gaps between the dwellings would be appreciable, preserving the spacious character of the wider area.
16. Furthermore, there are larger and bulkier developments in the immediate area and, although these may be flatted developments comprising a single building rather than several houses, they still form part of the character and appearance of the area.
17. Accordingly, for the reasons above, the proposal would not harm the character and appearance of the area. It would accord with Policies CS10 and CS17 of the Core Strategy, Policy DM2 of the Elmbridge Local Plan Development Management Plan and the Elmbridge Local Plan Design and Character Supplementary Planning Document (2012). These seek to ensure that all new development is well designed and integrates with and enhances local character.

² Planning application reference: 2021/4160

Other Matters

18. The proposal would provide a net increase of seven dwellings in an accessible location close to public transport and facilities, which would contribute towards the Borough's housing supply. The Council cannot demonstrate a five-year supply of deliverable housing sites. I understand from the evidence before me that its current five-year housing land supply figure is between 3.13 and 4.36 years, which shows there to be a significant to moderate shortfall in supply. The provision of any additional housing would therefore carry significant weight and the seven dwellings in this case would make a worthy contribution to the Borough's housing supply.
19. The proposal would also have moderate social and economic benefits resulting from the construction of the new dwellings and their subsequent occupation, as future occupants would be likely to contribute to the viability of local services and facilities.

Planning Balance and Conclusion

20. Given the shortfall in housing supply, paragraph 11d) falls to be considered. In this case permission should be withheld only where the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits. In that context I have reasoned that the proposal would be acceptable in terms of its effect on the character and appearance of the area.
21. However, this absence of harm neither outweighs nor addresses the harm I have identified as a result of the proposal failing to make an appropriate contribution towards affordable housing to meet the needs of Elmbridge Borough. In this regard, the proposal would conflict with Policy CS21 of the Core Strategy and the Development Contributions SPD, and overall would conflict with the development plan read as a whole.
22. Although Policy CS21 is not fully consistent with the Framework there are exceptional circumstances in terms of affordability and housing need in Elmbridge Borough that justify its approach and thus the adverse impact of the proposal carries substantial weight in this regard. Furthermore, both parties agree that there is a need to provide an affordable housing contribution and this harm is entirely avoidable as it could be addressed by an appropriately worded, certified, and executed Section 106 Agreement.
23. Overall, while the Framework seeks to significantly boost the supply of homes, it identifies an important part of this to be addressing the needs of groups with specific housing requirements, including those who require affordable housing. Consequently, when the proposal is assessed against the policies in the Framework taken as a whole, the adverse impact of the proposal outweighs the benefits I have identified above. The proposal would not, therefore, benefit from the presumption in favour of sustainable development.
24. For the reasons above, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

Hannah Guest INSPECTOR