
Appeal Decision

Site visit made on 4 March 2024

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/K3605/W/23/3332678

123 Walton Road, East Molesey, Surrey KT8 0DT

- 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 Dominic Manser against the decision of Elmbridge Borough Council.
 - The application Ref 2022/1966, dated 3 August 2022, was refused by notice dated 5 July 2023.
 - The development proposed is the construction of 7no. one bedroom residential units following demolition of existing commercial workshops, offices and storage buildings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Elmbridge Borough Council against Dominic Manser. This application is the subject of a separate Decision.

Procedural Matter

3. The description of the proposal on the application form varies from that on the decision notice. That on the application form adequately describes the proposal and I have considered it on that basis whilst noting the intention to provide cycle parking, a bin store and landscaping.

Main Issues

4. The first main issue is whether the loss of a non-strategic employment site is justified. The second is whether the proposal would represent a form of design on the site that would have any unacceptable impact on the living conditions of future occupiers. The third is whether the proposal would comply with development plan policy which seeks to steer new development away from areas at the highest risk of flooding. The fourth is whether the proposal should be liable for a contribution towards affordable housing.

Reasons

Loss of non-strategic employment site

5. The Council appears to accept that demand for some types of employment sites have changed and are continuing to change. The evidence is limited in respect of this main issue. I have been supplied with correspondence dating from October 2023 from Franklin Commercial who state that they have been

actively marketing the property since May 2022 without success. The site therefore does appear to have been marketed for a reasonable period of time.

6. However, the information presented in this respect is limited and lacks some basic data such as details of the asking price, whether any reductions have been considered and details of any enquiries made about the site.
7. Therefore, without this information it is not possible to come to the conclusion on the basis of the evidence before me that there is no longer a requirement for the non-strategic employment site given the limited marketing data supplied which does not include reference to details including the price at which the site has been marketed. The proposal would subsequently conflict with Policy DM11 of the Elmbridge Local Plan Development Management Plan (2015) (ELP) which requires this information to be provided.

Design and living conditions

8. I accept that this site is constrained which would inevitably make its development for a different use more difficult. Nonetheless, the openings to the bedrooms of the ground floor units would be set a very short distance from the boundaries of the site.
9. Those boundaries post development would be likely to be formed of reasonably robust structures with a height of substance to protect privacy between this and adjoining sites. Those openings would therefore be likely to offer only very limited outlook to future occupiers and I am mindful that window openings on the units would otherwise be limited. Although those openings would be large, it is likely that daylight to those rooms would be limited due to the proposed arrangement.
10. The design of the proposal would therefore be cramped and likely to result in a significant adverse impact on the living conditions of future occupiers. The proposal would subsequently conflict with policies DM2 and DM10 of the ELP as well as Policy CS17 of the Elmbridge Core Strategy (2011) (CS) which amongst other things require development of high quality design and residential accommodation that offers residents an appropriate level of outlook.

Flood Risk

11. The appeal site falls within Flood Zone 2. The proposal is for more vulnerable development. Policy CS26 of the CS amongst other things states that development must be located to ensure that the risk of flooding is minimised. The more recent SPD¹ confirms that development outside of Flood Zone 1 will be subject to the sequential test.
12. The Framework² advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk and advocates the sequential approach with regard to flood risk. The proposal is a type of development which should be subject to the Sequential Test with regard to Flood Risk and this does not appear to have been undertaken.
13. The overall aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding, and development should not be permitted if

¹ Elmbridge Borough Council Flood Risk Supplementary Planning Document May 2016.

² National Planning Policy Framework 2023.

there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. This is regardless of various mitigation measures detailed within the Flood Risk Assessment³.

14. To conclude on this matter, it has not been demonstrated that the Sequential Test has been applied as required by the development plan and the Framework and it is not known whether there are any available alternative sites at lower risk of flooding. There is therefore conflict with Policy CS26 of the CS, the SPD and the Framework which all aim to steer development to areas at lowest risk of flooding.

Affordable housing

15. There is nothing within the evidence to suggest that the site should not be in principle liable for a contribution towards affordable housing. However, the appellant has produced detailed evidence which suggests that the development cannot viably provide a contribution towards affordable housing. Regardless of the reason for not doing so, the Council has offered no evidence which would lead me to any other conclusion.
16. Therefore, on the basis of the evidence before me, the scheme would not be viable if offering contributions towards affordable housing. Subsequently there would be no conflict with Policy CS21 of the CS which indicates that affordable housing will be required, where viable.

Other Matters

17. Even if there were a shortage in the supply of deliverable housing sites, the application of Framework policies relating to flood risk would provide a clear reason for refusing the development proposed. Therefore, paragraph 11 (d) of the Framework would not be engaged in terms of supporting the proposal in any event. Policy CS23 of the CS does not appear to have been put before me.

Planning Balance and Conclusion

18. The proposal would not be out of keeping with local character in terms of its appearance and would make use of an existing urban site in a sustainable location and would draw some support from other ELP and CS policy.
19. The proposal would contribute towards housing supply and provide homes at the lower end of the market for which the Council indicate there is a need. However, those benefits do not outweigh the harm that would arise from the scheme.
20. The application of Framework policies relating to flood risk provides a clear reason for refusing the development proposed. This matter weighs against the proposal.
21. The proposal would conflict with the development plan and there are no material considerations which indicate a decision should be made otherwise than in accordance with it. The appeal is therefore dismissed.

T Burnham

INSPECTOR

³ Flood Risk Assessment – Ambiantal Environmental Assessment – January 2022.