

Appeal Decision

Site visit made on 23 September 2024

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Appeal Ref: APP/K3605/Q/23/3331140

Land south of 17-19 Church Street, Weybridge, Surrey KT13 8DE

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) against a refusal to modify a planning obligation.
 - The appeal is made by Ashwood Investment and Development Ltd against the decision of Elmbridge Borough Council.
 - The development to which the planning obligation relates is detached part four/part three/part single storey building comprising 7 flats with associated bin and cycle stores.
 - The planning obligation, dated 19 September 2016 and subsequent modification dated 31 May 2022, was made between Elmbridge Borough Council and Ashwood Investment and Development Ltd.
 - The application Ref 2023/0078, dated 5 January 2023, was refused by notice dated 3 April 2023.
 - The application sought to have the planning obligation modified as follows: to provide the two affordable rent units as First Homes (Discount Market Sale).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the obligation continues to serve a useful purpose and would continue to serve that purpose equally well if it had effect subject to the modifications specified in the application.

Reasons

3. Planning permission was granted in 2017 for a new building comprising 7 flats. The associated planning obligation required that 2 of the flats be provided as affordable units in the form of affordable rented units via a Registered Provider in accordance with Policy CS21 of the Elmbridge Core Strategy 2011 (the Core Strategy). In 2022 the planning obligation was amended so that the 2 affordable units would be located elsewhere in the building.

4. A planning appeal regarding an application to modify the planning obligation to allow an offsite contribution in lieu of on-site provision of the affordable units was recently dismissed¹.
5. The Core Strategy still forms part of the development plan for the district. Policy CS21 requires that 30% of the gross number of dwellings on sites of 6-14 dwellings be delivered as affordable. In 2021 the revised National Planning Policy Framework (the Framework) stated that the provision of affordable housing should not be sought for residential developments that are not major development, other than in designated rural areas, creating a conflict with the local policy. This continues to be the case through further iterations of the Framework.
6. Policy CS21 was subject to consultation and scrutiny and the provision of affordable housing is also subject to viability considerations on a site by site basis as well as being underpinned by viability studies itself.
7. Monitoring has demonstrated that there is and continues to be a significant under delivery of affordable housing within the Borough. Without the ability to seek the delivery of affordable housing on small sites, the Council would significantly limit its capacity to deliver such housing, given the high number of small sites that receive planning permission. The deliverability of such schemes remains dependant on viability.
8. I am satisfied therefore that given the significant under delivery of affordable housing in the District, the planning obligation continues to serve a useful purpose thorough the delivery of two affordable units in accordance with the development plan.
9. The Council's concern lies in the potential for the loss of the affordable housing element as First Homes are required to be marketed as such for a fixed period of time, after which if the units have not sold then they would be allowed to be sold at market value, hence being lost as affordable units.
10. The appellant has demonstrated, and the Inspector on the previous appeal accepted, that there are no local registered providers that would be interested in taking on two flats within a seven unit scheme. However, they both considered that the company Landspeed Homes could provide the units, albeit the planning obligation would need to be modified to enable Landspeed to provide the units as it is not a Registered Provider. I understand that Landspeed Homes has expressed an interest in these two affordable units by submitting a formal offer.
11. The appellant also points out that as the two units cannot be delivered in accordance with the obligation then three market houses are also restricted from being sold as the obligation states that no more than 50% of the market housing shall be in occupation all of the affordable houses have been constructed and made available for occupation and the affordable housing has been transferred into the ownership of the Registered Provider. As the development is complete, then three market properties remain vacant.
12. I note that the appellant considers the reliance on Landspeed, by the Council, as unacceptable due to them being a private company as opposed to

¹ APP/K3605/Q/23/3315907 (the previous appeal)

a not for profit registered provider. Nevertheless, I do not see this as a barrier to the provision of affordable housing.

13. The Council's Assessment of Housing Needs 2020 (the AHN), concludes that 71% of demand for affordable housing is for rented affordable tenures and 29% for intermediate tenancies which could include elements of home ownership. There is no doubt therefore that the existing obligation serves a useful purpose. However, the concept of First Homes was introduced in 2021 after the AHN. They were enshrined in the Framework as a form of affordable housing with a requirement that they be sold at a discount of at least 20% below market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

14. I note the Council's comments regarding the potential for the loss of the affordable units if they cannot be sold as First Homes and revert to market housing. However, this could be addressed in the planning obligation through the requirement to market the property as a First Home for a certain period of time and then for the Council to review the evidence of appropriate marketing before being allowed to revert to an alternative form of tenure.

15. Consequently, it seems to me that a planning obligation that would secure First Homes in perpetuity would, equally serve a useful purpose given that they are an accepted form of affordable housing. However, although the deed of modification includes various definitions, the main bulk of operative provisions to deliver the affordable housing units as First Homes are missing. In particular, to secure the First Homes in perpetuity there would need to be a mechanism which requires a charge to be included on the title documents of the dwellings, securing them as First Homes on future disposals. Without this, there is no way of ensuring that the First Homes would be retained as such going forward. Therefore, even if the deed had been signed by the Council, it would not ensure that First Homes would be delivered in perpetuity and therefore serve the purpose of the original legal agreement equally well.

16. Taking all factors into account, I find that the planning obligation would continue to serve a useful purpose, and that this purpose would be served equally as well subject to the modifications sought. Nevertheless the lack of an appropriate deed of variation to appropriately secure First Homes as affordable Homes means that the appeal must be dismissed.

Conclusion

17. The appeal is dismissed.

Zoe Raygen

INSPECTOR