
Appeal Decision

Site visit made on 18 July 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 August 2016

Appeal Ref: APP/K3605/W/16/3146699
26 The Avenue, Claygate, Esher, Surrey KT10 0RY

- 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 G Bray against the decision of Elmbridge Borough Council.
 - The application Ref 2015/3640, dated 1 October 2015, was refused by notice dated 16 December 2015.
 - The development proposed is the removal of a double garage and the erection of a single storey detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Both the Council and appellant were afforded an opportunity to provide further comments on whether the recent Court of Appeal judgement¹, and the subsequent amendments to the National Planning Practice Guidance (PPG) relating to affordable housing contributions², has any implications or bearing on the appeal. I have taken the further comments received into consideration.

Main Issues

3. The main issues in this appeal are:
 - Whether or not the proposed development would make adequate provision for affordable housing; and
 - The effect of the proposal upon the character and appearance of the area.

Reasons

Affordable Housing

4. Policy CS21 of the Elmbridge Core Strategy July 2011 (CS) requires the provision of affordable housing as part of residential developments and aims to deliver at least 1150 affordable homes by 2026. In the case of residential proposals comprising 1 - 4 dwellings, a financial contribution towards affordable housing is sought and this should be equivalent to the cost of 20%

¹ *West Berkshire District Council and Reading Borough Council v. Secretary of State for Communities and Local Government* [2016]

² See Paragraph 031 ID: 23b-031020160519 of the PPG

- of the gross number of dwellings. The contribution would be secured by a planning obligation, ring fenced and then spent on off-site delivery.
5. The reasons behind this approach are set out in the supporting text to Policy CS21, which explains that the East Surrey Strategic Housing Market Assessment 2008 found that house prices in Elmbridge are significantly above regional and national averages. The supporting text also indicates that the threshold³ for the provision of affordable housing in the previous development plan was failing to deliver a level of affordable housing that was proportionate to overall housing delivery.
 6. As such, I consider the approach in Policy CS21 to be consistent with Paragraphs 47 and 50 of the National Planning Policy Framework (the Framework), which require local planning authorities to meet the full, objectively assessed needs for market and affordable housing and where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified. The application should be determined in accordance with the development plan unless there are material considerations which indicate otherwise.
 7. A material consideration of considerable importance and weight in this instance is the Written Ministerial Statement⁴ (WMS) of the 28 November 2014. The WMS states that *'for sites of 10-units or less...affordable housing and tariff style contributions should not be sought'*. The intention of the WMS is to ensure that financial contributions do not become a disproportionate burden for small scale developers and thus frustrate housing supply. This statement has been translated into national planning guidance in Paragraph 031 of the PPG. As such, there is a conflict between the national threshold relating to the provision of affordable housing in the WMS and the PPG and the local thresholds set out in Policy CS21 of the CS, which I have found consistent with the Framework.
 8. The effect of the national policy in the WMS is that it would normally be inappropriate to require any affordable housing below the thresholds stated. Nevertheless, whilst there is a presumption that a policy such as a WMS should be followed, especially as it postdates the CS, it is also important to acknowledge that a policy that is relevant to the matter in hand should not be applied rigidly or exclusively when material considerations may indicate an exception may be necessary. I therefore share the view of the Council that it is for the decision taker to weigh any conflict between relevant policies in light of material considerations, including local circumstances.
 9. The Council have provided a statement⁵ updating the evidence in the CS and providing further justification for its approach in Policy CS21. The contents of the statement are not disputed by the appellant. This statement explains that median house prices in the Borough are exceptionally high and are amongst some of the highest in the country. The available evidence suggests that house prices in Elmbridge are rising higher than neighbouring authority areas and that the affordability ratio is now 21.5 times the average lower quartile net

³ 15 dwellings before which affordable housing provision was triggered in residential developments

⁴ House of Commons: Written Statement (HCWS50) 28 November 2014

⁵ *Statement on the Written Ministerial Statement on the exemption of small sites from planning contributions and the consideration of house prices, affordability and the significance of small sites in Elmbridge in relation to the Government's position.*

- income, placing Elmbridge as the least affordable authority in England outside of London. There is a similar trend in the rental market.
10. It is therefore apparent to me that there is an acute problem with the affordability of housing in the Borough and therefore a pressing need for the Council to achieve its aim of delivering at least 1150 affordable homes by 2026.
 11. The statement submitted by the Council also states that in 2015/16 a high number of planning permissions for housing fell below the 10 homes threshold set out in the WMS. These permissions are assisting the Council in delivering affordable homes and financial contributions towards affordable housing. It is therefore conceivable that without the overall contribution towards affordable housing delivery made by smaller sites, the Council will struggle to meet its target for the delivery of affordable housing.
 12. Of the 116 permissions between 2011 and 2015, which related to schemes of between 1 and 4 homes, 90% have paid the total affordable housing contribution with 11 schemes paying a reduced contribution and 1 paying no contribution. This demonstrates that small sites are making a significant contribution towards the delivery of affordable housing in the Borough. Moreover, I have seen no substantive evidence that demonstrates the requirements of Policy CS21 are consistently placing an unreasonable or disproportionate burden on developers, such as schemes not coming forward or being rendered as unviable. When this has happened, a reduced contribution or no contribution has been agreed by the Council.
 13. As a consequence, whilst the WMS carries considerable weight, I do not consider it outweighs the development plan in this instance given the acute and substantial need for affordable housing in the Borough and the importance of delivery through small sites towards this.
 14. Consequently, on the basis of the evidence before me, it appears that the need for the contribution sought by the Council arises from the development and satisfies the 3 tests⁶ in Regulation 122(2) of the Community Infrastructure Regulations 2010. Accordingly, the proposal should be determined in line with the development plan. Whilst the developer initially indicated a willingness to provide the financial contribution towards affordable housing through a planning obligation, this offer has been subsequently withdrawn⁷ and thus no obligation is before me.
 15. As such, the proposal fails to adhere to Policy CS21. I therefore conclude that in the absence of a planning obligation the proposal would not make adequate provision for affordable housing contrary to Policy CS21 of the CS, a policy I have already found to be consistent with the Framework.

The effect on character and appearance

16. The appeal site encompasses a detached house and garden on a relatively large corner plot located at the junction between The Avenue and Meadow Road. There is a hipped roof garage to the side of the property and beyond this a gap between the garage and the western boundary of the appeal site.

⁶ Necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development

⁷ Email of the 18 July 2016

The property to the west, on the opposite side of Meadow Road, also has a side garden fronting onto Meadow Road. These side gardens in combination provide the junction with a spacious quality that makes a significant contribution to the character and appearance of the area, especially when viewed from Meadow Road looking north towards the junction with The Avenue.

17. The appeal scheme follows a previous application which was refused by the Council and dismissed following an appeal⁸. The scheme is for a detached single storey house with an integral garage. It would be broadly sited in the position of the existing garage, which would be demolished. However, the proposed dwelling would be located closer to Meadow Road than the existing garage. It would nevertheless be lower with a hipped roof design and fenestration that would emulate the existing style of the houses in the area.
18. The Council have not raised concerns with the form or style of the proposed dwelling nor the resulting plot size or the diminutive dimensions of the proposed bungalow relative to surrounding houses. It has however indicated a concern with the proposed siting of the bungalow, opining that it would be in closer proximity to the western side boundary of the appeal site than the existing garage and that this would result in it being visually dominant and thus harmful to the spacious character and appearance of the area.
19. The proposed dwelling would encroach into and noticeably diminish the existing gap to the side of the existing garage, especially when viewed from Meadow Road. However, and on balance, the overall scale of the proposed dwelling would be relatively small with a low profile to the roof. This would ensure the dwelling would not be unduly prominent or dominant in the street scene of either Meadow Road or The Avenue. Furthermore, I am satisfied that sufficient space would still be available around the building to provide some landscaping to soften views of the proposed dwelling. Moreover, given the low profile proposed, it would also be possible to see around and above the bungalow and through to The Avenue. This would preserve an existing element of the spacious character of the junction when viewed from Meadow Road.
20. In this respect, I share the view of the appellant that the previous Inspector in considering the 2013 appeal appeared to be concerned by the combined effect of the height, bulk and proximity of the proposed house to the Meadow Road boundary. The current scheme proposes a dwelling of a significantly reduced height and bulk compared to the appeal scheme and thus the harmful combined effect found by the previous Inspector would not materialise. As such, the effect of the current appeal scheme on the character of the area would be materially different to that of the dismissed appeal scheme.
21. In reaching the above view I have had regard to the Council's Design and Character Supplementary Planning Document 2012 (Companion Guide: Claygate) submitted with its appeal documentation. However, I have not been directed to any particular section of this document by the Council and have not identified any conflict between the appeal scheme and the SPD. As such, it does not lead me to a different conclusion on this main issue.
22. I therefore conclude that the proposal would preserve the character and appearance of the area. It would therefore adhere to Policies CS11 and CS17 of the CS, which are consistent with Paragraph 58 of the Framework, and Policy

⁸ Appeal reference: APP/K3605/A/13/2193779

DM2 of the Elmbridge Development Management Plan 2015. These policies together seek to secure developments that are of a high quality by integrating sensitively with the locally distinctive townscape.

Conclusion

23. I have found that the proposal would preserve the character and appearance of the area but this is not sufficient to outweigh the conflict I have identified with Policy CS21. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR