



Appeal Decision

Hearing held on 13 March 2013

Site visit made on 13 March 2013

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 25 March 2013

Appeal Ref: APP/K3605/A/12/2180683

Weybridge House, Queens Road, Weybridge, Surrey KT13 0AP

- 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 Banner Homes Southern Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2012/0434, dated 31 January 2012, was refused by notice dated 24 July 2012.
 - The development proposed is residential development comprising 17 apartments and 4 houses following demolition of Weybridge House.
-

Application for costs

1. At the Hearing an application for costs was made by Banner Homes Southern Ltd against Elmbridge Borough Council. This application is the subject of a separate Decision.

Procedural Matters

2. For clarity and consistency I use the description of development as expressed on the Council's decision notice and the corrected local authority appeal reference K3605 to give the correct long reference APP/K3605/A/12/2180683 used in subsequent correspondence but not on the original appeal form.
3. A unilateral undertaking dated 18 July 2012 was submitted with the application. This provides for financial contributions of a little under £86,500 in respect of a range of matters including: an Access Management Contribution (for Strategic Access Management and Monitoring or SAMM) in respect of the Thames Basin Heaths Special Protection Area Interim Management Strategy; infrastructure contributions in respect of educational, environmental and community facilities; and a contribution to 'SANGS' (Suitable Accessible Natural Greenspace).

Decision

4. The appeal is allowed and planning permission is granted for residential development comprising 17 apartments and 4 houses following demolition of Weybridge House at Weybridge House, Queens Road, Weybridge, Surrey KT13 0AP in accordance with the terms of the application, Ref 2012/0434, dated 31 January 2012, subject to the conditions set out in the Annex hereto.

Main Issue

5. The main issue in this case is whether or not the proposed development may reasonably be expected to include or provide for any affordable housing.

Reasons

Background to appeal

6. The appeal site is a block of 16 apartments constructed on a prominent corner site fronting Queens Road in the 1960s or early 1970s and is very much a product of its time, albeit of no recognised architectural merit. The quality of development on the road in this location is generally high with a variety of properties and redeveloped sites in sylvan settings, resulting in a high quality residential environment.
7. There is an extant permission to create 8 additional apartments (with no affordable element) by extension to the block, essentially the addition of a pitched roof and rear extension which would increase its overall mass.
8. Although the proposed development would include 4 houses, in addition to the 17 apartments, this would create a net increase of only 5 residential units over and above the 16 apartments owned by 3 individual occupiers and a variety of landlords. I understand that the necessary contracts have been entered into with these parties by the appellant to secure possession of the block. I have no evidence to confirm or suggest that the appellant's incentivisation costs are materially different from those assumed in the various 'toolkit' viability appraisals that have been undertaken, i.e. a premium of around 15% over market value.
9. Since last July the Council has made substantial progress in establishing a charging regime under the auspices of the Community Infrastructure Levy Regulations 2010. This regime will apply as relevant to all planning permissions granted in Elmbridge after 1 April 2013. In adopting the Community Infrastructure Levy (CIL) Charging Schedule the Council has ruled out the possibility of discretionary exemptions, a situation that could potentially lead to significant additional contributions being required from the proposed development at issue, the difference having been calculated by the appellant as approaching £175,000. The proposals were formulated on the basis of expected contributions to mitigate impact of the order of those previously provided for in the unilateral undertaking.
10. The principle of redevelopment of the block is not contested by the Council and nor is the specific form of redevelopment proposed in this instance, which the officer's report concludes would be a satisfactory form of development. Having visited the site and its environs I have no reason to disagree with that conclusion as far as the character and appearance of the area is concerned. Indeed, the proposed development displays a quality of approach commensurate with that of elements of the surrounding area and I consider it would have a positive impact on the street scene and in that sense would accord with the core principle of the National Planning Policy Framework ('the Framework') that planning should be a creative exercise in finding ways to enhance and improve the places in which people live their lives.

Relevant policy

11. Aside from the context provided by the Framework at national level, relevant policy includes various saved policies of the Replacement Elmbridge Borough Local Plan to the extent that they remain consistent with the intentions of the former document. Of specific relevance to the main issue in this case, however, is policy CS21 of the Council's Core Strategy, adopted in 2011.
12. Policy CS21 reflects the Council's priority to deliver affordable housing in the borough and, consistent with the intentions of the Framework, prioritises its delivery on-site. The Council's policy provides that on-site provision will be expected on sites of 5 or more dwellings and that only in exceptional circumstance would delivery off-site be contemplated as an alternative. Sites of 15 or more dwellings will be required to deliver affordable units at a rate of 40% of the gross provision which, in the case of the development proposed in this case, would amount to 8 units.
13. Importantly, however, the policy is caveated by the proviso that affordable housing can only be delivered as an element of otherwise open market housing schemes where it is viable to do so. The policy in my view is consistent with the intentions of the Framework in that it promotes affordable housing as part of the delivery of a wide choice of high quality homes and the creation of sustainable, inclusive and mixed communities whilst being sufficiently flexible to take account of changing market conditions over time. The explanation to the policy recognises the importance of viability in stating that... *"developers and landowners are expected to consider the overall cost of development, including the required planning obligations and any abnormal costs, prior to negotiating the sale or purchase of land or the acquisition or sale of an option."*
14. The explanation goes on to say... *"In the exceptional circumstances where it is considered that the delivery of affordable housing in accordance with the policy is unviable, this must be demonstrated through the submission of a financial appraisal alongside a planning application."* It adds that... *"If the Council is satisfied that affordable housing cannot be provided in accordance with the policy, it will seek to negotiate alternative provision."*
15. The Council's approach to developer contributions and the provision of affordable housing is elaborated in the Supplementary Planning Document (SPD) *Developer Contributions*, adopted in April 2012. Amongst other things, this document anticipates the introduction of the CIL regime that will be applicable to infrastructure contributions but not to affordable housing or SMM.

Affordable Housing: The Main Issue

16. The proposed development would occupy a broadly similar footprint to the existing block of apartments whilst substituting soft landscaping for the garage court to the rear and providing basement parking for the 21 proposed dwellings. It would be constructed to a high standard and the units of accommodation would be relatively spacious, prompting the assertion from the Council that this would render all units unsuitable for affordable provision. However, it seems to me that the issue turns not so much on the specific size of individual units as on the global costs of the development relative to expected sales proceeds, as the viability or otherwise of the development in the form proposed cannot logically be considered in any other way.

17. Moreover, the Council did not identify any policy that would require a larger development of smaller units more cheaply constructed on this site that might potentially address the point. I therefore take the proposed development as I find it and note that the Council, in accordance with its normal practice, appointed its own experts to scrutinise the viability appraisal proffered by the appellant at the time the application was submitted. Those experts were not called upon by the Council to explain their conclusions at the Hearing or present evidence to suggest that their original views might for some reason have been tempered by subsequent changing circumstances or policy requirements.
18. The parties agreed that the Homes and Communities Agency (HCA) 'toolkit' deployed was an appropriate methodology and I have no reason to doubt that. Further, the Council did not dispute the appropriateness of the methodology subsequently deployed by the appellant for the purposes of the appeal, which is broadly the same HCA model appropriately updated.
19. In response to my question the Council confirmed that the key potentially influential variables to be fed into the appraisals, deploying the tool kit methodology, were primarily the assumptions as to contributions to infrastructure and SAMM, existing use value, incentives to existing owners and developer's profit. It is axiomatic that, unless the latter is anticipated to be adequate, the development simply would not take place.
20. There are of course other variables such as construction costs, but no information was adduced to suggest that these have been fundamentally misrepresented in the appraisals. I examine the key assumptions below.
21. *Existing Use Value, Incentives to Existing Owners and Developer's Profit:* Development is an activity that carries substantial risks in the best of circumstances and, in my experience, developers generally seek a return of 15-20%, ideally more, to reflect that fact. Funding is generally contingent on reasonable assurance of anticipated returns of that order and market conditions are known to be difficult at present. The HCA toolkit default value for the developer's profit element in an appraisal is 17.5%. The original appraisal submitted for scrutiny by the Council in respect of a scheme with 8 affordable dwellings deployed a developer's profit of 17.5% in respect of the open market units but a lesser profit of 6% in respect of the affordable units and produced a substantial negative difference, in excess of £1.8M, between the existing use value of the site and the anticipated value of the completed scheme, clearly indicating non-viability. The equivalent exercise based on 100% open market housing produced a negative difference of around £110,000 indicating, at best, marginal viability, if a reduced profit were to be taken. The more recent appraisals by GL Hearn, deploying the same profit margins (but varying other factors) produced a residual land value of circa £2,589,144 relative to an increased target of £4,926,000 or a negative difference of around £2.34M for a scheme including 8 affordable units, whereas the equivalent 'toolkit' appraisal for 100% market housing produced a negative difference of around £1.78M.
22. The stark differences in the case of the calculation of residual value in the most recent appraisal for 100% market housing and the original appraisal is accounted for by the research based view that the assumed acquisition figures for the existing flats were too low and that the assumed sales values for the proposed dwellings, at £438psf, were too optimistic. A figure of £381psf is

considered to be to more realistic. In response to my question on the matter it seems that the higher figure would be more representative of the quieter residential environment away from the main road and it seems that generally agents are currently unable to demonstrate consistently that prices in excess of £400 psf are achievable in the area.¹ Equally, whilst the evidence of sales values within Weybridge House² is limited, the actual price for which a 2 bedroom flat was sold was £250,000 back in 2008, whilst a 3 bedroom flat was sold for as little as £192,000 in 2010, albeit this is understood to have been a forced sale to an existing landlord. However, it does seem reasonable, on the basis of the evidence from the agents encompassed by the G L Hearn research, to now assume values of £250,000 upwards for a two bedroom flat and £280,000 for a 3 bedroom flat within the existing block, as opposed to the suggested values of £235,000 and £265,000 used for the original appraisal.³

23. The other assumptions used in the original viability appraisal are held by G L Hearn to be reasonable but the net effect is that the profitability of the proposed development would be under pressure "from both ends", that is higher acquisition costs and lower achievable sales prices than originally assumed, albeit that the acquisition costs may in practice now be more certain, dependent on the terms of contracts to buy. No specific information on these matters to counter the appellant's evidence was adduced by the Council notwithstanding its view that the original price estimates from Aston Mead in the pre-application viability report were unduly optimistic.
24. Whatever the reality of the outcomes in practice it seems clear that the pressure on the developer's profit can only be downward from the 17.5% used in the toolkit appraisals and it was explained on behalf of the appellant company that, whilst it was not required to achieve the 20% normally required for full funding, because it would put some of its own resources in, the risks associated with the proposed development, not least in view of the great uncertainty concerning achievable sales prices, would preclude reliance on an assumed profit of 16.5% suggested by the Council as a means of releasing money for affordable provision.
25. What is certain is that the situation is relatively inelastic as far as existing use value is concerned in that it is jointly and severally owned by landlords and owner occupiers who will either require re-housing at least as satisfactorily or who will wish, as a minimum, not to lose out financially in any way. In that sense, it seems to me, the starting point is very different from the situation that might prevail, for example, on a greenfield or disused site land where the grant of a residential permission could dramatically enhance value net of development costs, thereby facilitating the factoring in of the Council's affordable housing requirements as it advocates in its SPD at paragraph 4.1.
26. Incentivisation to sell must almost inevitably feature heavily in the costs equation of a development such as this and I have no reason to consider the 15% uplift deployed by the appellant in its original appraisal to be anything other than conservative, whilst there is no contention that the £50,000 predicted for acquisition of the Freehold Reversion of the flats is in any sense inappropriate. The Council's contention that 15% is more than is required to incentivise existing owners is not substantiated by any form of evidence.

¹ Appendix H to appellant's statement

² Doc 2

³ Figures from Aston Mead in Pre-application viability report

27. *Infrastructure contributions*: It is clear from the Council's SPD and its statement that the infrastructure contributions provided for along with the SAMM are considered to be proportionate, directly related to the proposed development and necessary for its approval. This is not disputed by the appellant and, insofar as they are derived from formulae for pooled contributions according to established and formally adopted policy originating in the development plan, I have no reason to disagree with that position. There is, on that basis, no room for manoeuvre as far as the provisions of the planning obligation are concerned.
28. Bearing all of the above in mind, it is in my estimation evident that the proposed scheme is on the margins of viability, even for 100% market housing, with consequentially little if any scope to extract additional profit that could be deployed to facilitate either one or more affordable units on-site or a contribution to affordable provision elsewhere (a technique, I was told, that has only been deployed to date in the case of smaller developments where on-site provision is not a requirement of policy).
29. I acknowledge that paragraph 4.6 of the Council's SPD indicates that, where non-viability is demonstrated when the Council's normal range of requirements are factored in, there are elements of these, including affordable housing contributions, that may be regarded as negotiable. However, in this case, having studied the available evidence and heard the arguments presented by the parties, I am satisfied that the risks associated with delivering the scheme are such that it could not support any significant form of reduced contribution in that regard. The development simply would not proceed. Moreover, bearing in mind the circumstances of the site and the limited scope for significantly increasing the volume of the proposed replacement building (with potential economies of scale) whilst at the same time working within the environmental constraints of the established surroundings and the normal commercial requirement that the scheme as a whole should produce at least an acceptable return, I have no reason to place weight on the Council's assertion that the scheme design has been engineered to preclude affordable housing.
30. In any event, in this case the appellant made early contact with the Council⁴ with a view to the 'open book' approach advocated by paragraph 4.2 of its SPD, which amongst other things acknowledges the HCA appraisal guide input of 17.5–20% of Gross Development Value in respect of profitability assumptions. I am also conscious that the independent review commissioned by the Council from its independent expert advisers, pursuant to paragraph 4.3, endorsed the approach deployed and the conclusions of the original viability assessment that ensued. The Council has had the clearest reasoned advice⁵ that the scheme would not support any significant contribution to affordable housing because it is barely viable at a return acceptable to a developer (albeit one which acknowledges its preparedness to contemplate notably low margins.) I have been provided with no cogent evidence to belie the overall veracity of that advice.
31. For the above reasons I conclude that, general policy intentions and priorities notwithstanding, in this case it would not be reasonable to expect the proposed development to include or provide for any affordable housing, a scenario expressly and realistically anticipated on occasion by policy CS21.

⁴ Email of 25/11/11 @16:45 included as Appendix B to appellant's statement

⁵ Report commissioned from Dixon Searle LLP March 2012

Conditions and the planning obligation

32. The Council suggests a number of conditions (SC). SC1 is the standard time condition and SC2 provides for the approval of specified plans as is necessary for the avoidance of doubt and in the interests of good planning. It would not be necessary to specify the site survey drawing in this context and accordance with the Arboricultural Method Statement and the Arboricultural Implications Statement is not appropriate in the context of an approved plan list. However, the submitted documents would inform the discharge of conditions such as SC13 and SC14, both of which relate to trees and which, combined for economy and with some adjustment to more closely accord with the requirements of Circular 11/95 *The Use of Conditions in Planning Permissions*, and to avoid the duplication of statutory protection afforded by the extant tree preservation order, would be necessary and appropriate in scope.
33. SC3 is a standard, necessary, form of condition regarding materials whereas SC4 would require adjustment for precision and the intention that it should only require what is needed to adequately protect the privacy of occupiers of Warbeck House. On that basis, given the existence of robust boundary treatment, the condition would be needed at first, second floor and third floor levels and is better framed in terms of a design and specification of obscure glazed windows to be approved by the Council. SC5 would effectively remove permitted development rights in respect of the proposed houses but is aimed at the potential insertion of windows in the flats, which do not enjoy such rights. It is not, therefore, necessary.
34. SC6 is directed at hard landscaping including the surface materials of the roadways, external parking areas and driveways and would be necessary. The Council agreed that SC7, governing the setting out of the site, would be unnecessary as the development would have to accord with the approved plans in any event. SC8 is generally speaking a necessary form of condition to ensure the establishment of soft landscaping but the need to undertake all arboricultural work prior to the commencement of development is not justified.
35. In respect of SC9 it is not necessary to require maintenance of the vehicular access to Queen's Road as this is integral to the functionality of the development and any alternative would require planning permission. SC10 is a necessary safeguard to prevent occupation of the proposed development without adequate parking.
36. SC11 and SC12 would appropriately be combined in a single condition requiring approval of a construction method statement which I also consider, bearing in mind the proximity of surrounding residential property, should encompass hours of working; a point endorsed by the parties.
37. The unilateral undertaking is concerned with the potential impacts of the additional households in accordance with standard formulae for pooled contributions published by the Council, whose statement describes in more detail how the contributions would be deployed in the local area so as to mitigate impact that is directly attributable to them. I am satisfied that the relevant tests would be met. Moreover, the additional households would be within 5km of the Special Protection Area and in my estimation would potentially have an adverse impact on its ecology, thereby justifying refusal of planning permission in the absence of the SANGS and SAMM contributions. These contributions are also provided for by the undertaking.

Other matters

38. Residents of the adjacent apartments in Warbeck House raise concerns in respect of loss of light, outlook and privacy bearing in mind the increased height, bulk and proximity of the proposed apartment block and windows in its western elevation. Certain design changes at application stage have been incorporated to address the matter of privacy and, as previously noted, I am satisfied that specific measures to secure this can be secured by condition to prevent unacceptable loss of privacy as a consequence of retaining widows on that elevation in an amended form at first, second and third floor levels.
39. I visited Warbeck House and noted the layout of the apartments. Those I was given access to on the first floor have secondary windows to habitable rooms facing the proposed development, complementary to the principal windows on the front and rear elevations to Warbeck House. There is no doubt that the outlook from these secondary windows would be significantly changed by the increased height and depth of the replacement block which would also be closer to Warbeck House. However, the reduced intervening space would still create adequate separation even though the height of the new block would be increased. Bearing in mind also the manner in which the third floor of the proposed block has been designed to reduce its bulk, I do not consider the block would be unacceptably overbearing in the outlook of residents of Warbeck house or that it would the diminish light and sunlight available through their windows to such a degree that refusal of planning permission would be justified.
40. The relationship between the proposed development and the properties named 'Dragons' and 'Kyalami' to the south would remain acceptable in all respects in view of the distance that would remain between the new block and those properties. Moreover, the proposed replacement of the existing garage court with soft landscaping would improve the appearance of the intervening space and the potential for screening with significant vegetation.

Overall conclusion

41. I have taken all other matters raised by the parties into account but none are sufficient to alter the overall balance of my conclusion that, for the reasons given above, the appeal should be allowed.

Keith Manning

Inspector

Annex: Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan; Site Layout Plan PL.01 Rev J; Basement Plan PL.02 Rev C; Ground Floor Plan PL.03 Rev A; First Floor Plan PL.04 Rev D; Second Floor Plan PL.05 Rev D; Third Floor Plan PL.06 Rev C; Elevation Sheet 1 of 2 PL.07 Rev D; Elevation Sheet 2 of 2 PL.08 Rev E; Existing and Proposed Street Scene PL.09; Setting Out Dimensions PL.10 Rev G; Landscape Proposals BAN17894-11D; and Tree Protection Plan BAN17894-03c.

- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Before the first occupation of the apartments hereby permitted the first, second and third floor windows on the west facing side elevation as shown on Drawing No. PL.07 Rev D shall be constructed and fitted with obscured glass in accordance with a design and specification to be submitted to and approved in writing by the local planning authority and shall be permanently retained in that approved form.
- 5) No development shall take place until full details of hard landscape works including the surface materials of the pathways, access driveways and external parking areas have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) The soft landscaping works shall be carried out in accordance with the approved Drawing No BAN17894-11D prior to the first occupation of any part of the development hereby approved or in accordance with a timetable otherwise submitted to and approved by the local planning authority in writing. Any trees or plants which within a period of 5 years from the commencement of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 7) No part of the development hereby approved shall be occupied until the access to Queens Road shown on Drawing No PL.01 Rev J has been constructed as approved.
- 8) No part of the development hereby approved shall be occupied until the parking spaces for cars and bicycles have been constructed in accordance with the approved details and those spaces shall thereafter be retained for those designated purposes.
- 9) 'Retained tree' for the purposes of this condition means an existing tree or hedge which is to be retained in accordance with the approved plans and particulars. No development shall take place until the advance measures for the protection of retained trees detailed in the Arboriculture Method Statement BAN17894, as updated 14/06/2012, and on Drawing No. BAN17894-03c have been confirmed in writing by the local planning authority to have been fully and satisfactorily implemented. The development shall thereafter be carried out in accordance with all the measures for tree protection during construction detailed in that statement, including the phasing, monitoring and supervision of operations. Other than in accordance with written approval from the local planning authority the temporary measures required for the protection of the retained trees shall be maintained in situ and not moved or removed until all construction has finished and equipment, materials and machinery have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and nor shall any fires be started or tipping, refuelling, disposal of solvents or cement mixing take place within the fenced areas. No excavations, changes in ground level or vehicular access shall take place

within the fenced areas other than in accordance with details submitted to and approved in writing by the local planning authority. No retained tree shall be pruned other than in accordance with the approved Arboriculture Method Statement or the prevailing relevant British Standard as appropriate and, where this requires arboricultural supervision by or on behalf of the local planning authority, the work shall not be carried out unsupervised.

10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
- ii) loading and unloading of plant and materials
- iii) storage of plant and materials used in constructing the development
- iv) the erection and maintenance of security hoarding
- v) wheel washing facilities
- vi) measures to control the emission of dust and dirt during construction
- vii) the hours during which construction work may be carried out
- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works

* * *

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mr P White BA (Hons) DipTP MRTPI	Director, Genesis Town Planning
Mr S Forrester	Planning Manager, Banner Homes
Mr B Rea BSc (Hons) MLE MRICS	Affordable Housing Director, G L Hearn
Mr A Penell	Affordable Housing Director, Banner Homes
Mr D Klitgaard	Area Land Director, Banner Homes

FOR THE LOCAL PLANNING AUTHORITY:

Mr E Chetwynd-Stapylton BSc (Hons) DipTP DipSurv	Case Officer
Mr C Waters BA (Hons) PGDip Councillor B Fairclough	Housing Strategy and Enabling Manager Ward Councillor, St George's Ward

INTERESTED PERSONS:

Mr T Mancini	Local resident
Mrs L Keitch	Local resident
Ms A Kearney	Local resident
Mr R Goodfellow	Local resident
Mr S Merchant	Local resident

DOCUMENTS

- 1 Community Infrastructure Levy Charging Schedule, Elmbridge BC
- 2 Extract from Nethouseprices website re Queens Road May 2007 – April 2011
- 3 Appellant's counter response re costs application