



Appeal Decision

Site visit made on 11 June 2013

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 1 July 2013

Appeal Ref: APP/K3605/A/13/2192327

The Surveyor, Island Farm Road, West Molesey, Surrey, KT8 2LQ

- 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 Pentagon Homes (Southern) Ltd against the decision of Elmbridge Borough Council.
 - The application Ref 2012/2031, dated 1 June 2012, was refused by notice dated 27 December 2012.
 - The development proposed is demolition of existing public house and the erection of two buildings providing 20 flats with associated amenity space and 20 car parking spaces.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing public house and the erection of two buildings providing 20 flats with associated amenity space and 20 car parking spaces at The Surveyor, Island Farm Road, West Molesey, Surrey, KT8 2LQ in accordance with the terms of the application, Ref 2012/2031, dated 1 June 2012, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Notwithstanding the Council's description of development in the delegated report and decision notice as an application to vary a condition on permission reference 2011/7242, the application which is the subject of this appeal was for free-standing full planning permission and that is how I have dealt with the appeal.
 3. The appeal scheme is identical to that approved under reference 2011/7242 except in respect of the proposed financial contributions towards infrastructure and the provision of on-site affordable housing. The earlier permission was subject to a planning obligation covering both matters. The current scheme initially sought to reduce the amount of affordable housing from eight units to five units and the Council determined the application on that basis. However, the Council has subsequently adopted its Community Infrastructure Levy (CIL) charging schedule. As the development includes residential units, the financial contributions towards infrastructure are now covered by the charging schedule and therefore could not be included in any planning obligation.
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4. The appellant also argues that, since the amount payable under the CIL charging schedule would be greater than the financial contribution towards infrastructure required under the previous planning obligation, it would no longer be viable for the development to make any provision for affordable housing. Consequently, the appellant does not propose any affordable housing or to enter into a planning obligation. I have framed the main issues accordingly.

Main Issues

5. The main issues in this case are (i) whether sufficient information has been provided to allow a proper assessment of the viability of the scheme and (ii) what provision the development should make for affordable housing.

Reasons

6. Elmbridge Core Strategy (CS) policy CS21 requires all residential proposals of 15 units or more to provide on-site affordable housing at a rate of 40% of the gross number of dwellings, where viable. The National Planning Policy Framework (the Framework) advises that, where a need for affordable housing has been identified, development plans should set policies for meeting that need on site (paragraph 50). It also advises that decision takers should give careful attention to viability and costs, including requirements for affordable housing and infrastructure, in order to ensure that the development is deliverable (paragraph 173).
7. A Financial Viability Appraisal (FVA) was submitted with the application which provides reasonably full information on the key variables to be considered in the assessment of the scheme's viability. A review of the FVA by external consultants on behalf of the Council found that the original FVA did not misrepresent the viability of the scheme. Nevertheless, it did find that additional scope existed for the development to contribute towards affordable housing and that there were a number of key areas which the Council could potentially explore with the then applicant. Following a number of exchanges of correspondence, a revised FVA, which sought to address the concerns of the Council and its consultants, was submitted. Among other things, the revised submission included a bespoke cost plan for the scheme. There is nothing to indicate that the Council, or its consultants, requested further clarification of the revised submission before the application was determined.
8. The officer's delegated report refers to unspecified outstanding queries on the revised submission, but only details one matter regarding the consistency of the floor areas used in the FVA and the cost plan. This matter was addressed in a further FVA submitted with the appellant's appeal statement. That version of the FVA also takes into account the effects of the CIL charge on the viability of the scheme. The adoption of the charging schedule after the application was determined is a material change in circumstances and I consider it reasonable for the appellant to amend the proposal in response.
9. The Council's appeal statement provides no substantive evidence on the viability or otherwise of the scheme or the effect on it of the adoption of the CIL charging schedule. Nor has it taken the opportunity to provide final comments on the appellant's statement or the appeal FVA. Whilst the Council has queried some of the variables used in the appellant's FVAs, it has not

questioned their scope or methodology. Taken as a whole, I consider that the information provided by the appellant is sufficient to allow a proper assessment to be made of the viability of the scheme.

10. The appeal FVA sets a viability benchmark for the development at a level which had previously been agreed by the Council's consultants. The residual land value is calculated to be some £86,000 below this benchmark, even when the scheme makes no provision for affordable housing. It seems to me that, in the absence of any evidence from the Council which might quantify the effect on viability of its outstanding concerns, this level of deficit is a reasonably robust indication that the scheme would not be viable were it to include any affordable housing provision.
11. As such, I consider that the proposed omission of affordable housing would comply with CS policy CS21 which requires viability to be taken into account in determining the amount of affordable housing to be provided in residential schemes. It would also accord with paragraphs 50 and 173 of the Framework which, taken together, have a similar aim.
12. The decision notice also refers to Replacement Elmbridge Local Plan policy LER4 which deals with the provision of outdoor playing space and facilities and CS policy CS28 and Supplementary Planning Guidance on the delivery of infrastructure through developer contributions. However, these matters have been overtaken by the adoption of the CIL charging schedule. Therefore, and having regard also to my conclusion on affordable housing, the absence of a planning obligation would be consistent with the tests set out at paragraph 204 of the Framework. The decision notice also refers to policy LF10 of the South East Plan. This plan has subsequently been revoked.
13. It is a matter for the developer to decide whether to pursue the scheme even though it appears not to be viable. The officer's delegated report notes the short amount of time which passed, and the lack of changes in market conditions and policy, since the scheme was originally approved. However, the Framework advises that proposals that accord with the development plan should be approved without delay.

Other Matters

14. Concern has been expressed locally regarding the need for more flats in the area, a preference to retain a public house or social club use and the density of the proposed development. However, the principle of developing the site in the manner currently proposed has already been established by permission reference 2011/7242. That permission is extant and could be implemented whether or not this appeal is allowed.

Conditions

15. The Council has suggested a list of conditions. With amendments for clarity, I find that they meet the tests set out in Circular 11/95. A condition specifying the approved plans is necessary for the avoidance of doubt and in the interests of proper planning. A condition requiring samples of external materials is required to safeguard the character and appearance of the area, as are conditions to secure the approval and implementation of a landscaping scheme. In the absence of detailed information on the application plans relating the

- proposed ground or building heights to recognised datum level, a condition specifying the maximum height of the buildings is required for the same reason.
16. Conditions controlling the details of the new vehicular access, the stopping up of the existing site access and the provision and retention of parking and turning areas are required in the interests of highway safety. A condition to control the implementation of an approved method construction statement is also necessary for this reason.
 17. The Council has suggested a condition requiring the provision of a balcony screen in accordance with the approved plans. I have not been provided with evidence on the need for this screen and its location and details are not clear from the approved plans. Nevertheless, I recognise that the proposed flats are located reasonably close to the dwellings in Fleet Close. Therefore, in the interests of safeguarding the living conditions of neighbouring occupiers, I will impose a condition requiring details of the balcony screening to be approved prior to occupation and thereafter implemented and retained.
 18. A condition requiring the development to meet Code for Sustainable Homes criteria for energy use is required in order to accord with local and national policy objectives on the sustainable use of energy.

Conclusion

19. For the reasons outlined above, the appeal should be allowed.

Simon Warder

INSPECTOR

**Schedule of conditions attached to
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The Surveyor, Island Farm Road, West Molesey, Surrey, KT8 2LQ**

- 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: SUR11/P/01; SUR11/P/02; SUR11/P/03; SUR11/P/04; SUR11/P/05; SUR11/P/07; SUR11/P/08; SUR11/P/09; SUR11/P/10 and SUR11/P/11.
- 3) Prior to the commencement of development, samples of the proposed external materials shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved samples.
- 4) No development shall take place until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. This scheme shall include indications of all hard surfaces, walls, fences, access features, the existing trees and hedges to be retained, together with the new planting to be carried out, and details of the measures to be taken to protect existing features during the construction of the development.

- 5) All hard and soft landscaping works shall be carried out in accordance with the approved details. Arboricultural work to existing trees shall be carried out prior to the commencement of any other development; otherwise all remaining landscaping work and new planting shall be carried out prior to the occupation of any part of the development or in accordance with a timetable to be agreed in writing with the Local Planning Authority. Any trees or plants which, within a period of five years of the commencement of any works in pursuance of the development die, are removed, or become seriously damaged or diseased, shall be replaced as soon as practicable with others of similar size and species, following consultation with the Local Planning Authority.
 - 6) The highest part of the development hereby permitted shall not exceed 9.5 metres in height measured from the highest point of the immediate adjoining ground level. Unapproved artificial alteration of the ground level will not be accepted as demonstration of compliance with this condition.
 - 7) The development hereby permitted shall not be occupied until the proposed vehicular access to Island Farm Road been constructed and provided with the visibility zones in accordance with the approved plans and thereafter maintained with the zones kept permanently clear of any obstruction above 800mm measured from the level of the adjoining carriageway.
 - 8) The development hereby permitted shall not be occupied until the existing access to the site from Island Farm Road been closed with full height kerbs and the footway fully reinstated by the appellant in materials to match the existing surface.
 - 9) The development hereby permitted shall not be occupied until space has been laid out within the site in accordance with the approved plans for cars/cycles to be parked. The parking/turning area shall be used and retained exclusively for its designated purposes.
 - 10) No development shall take place until a Construction Method Statement, to include details of (a) parking for vehicles of site personnel, operatives and visitors; (b) loading and unloading of plant and materials; (c) storage of plant and materials; (d) provision of boundary hoarding; has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction period.
 - 11) The development hereby permitted shall not be occupied until details of balcony screening have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and the screening permanently maintained thereafter.
 - 12) No development shall take place until a report detailing how the proposal would meet level 4 of the Code for Sustainable Homes Criteria on Energy has been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved report.
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