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## Appeal Decision

Site visit made on 9 March 2021

**by M Shrigley BSc (Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 March 2021**

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**Appeal Ref: APP/K3605/W/20/3259759**

**85 Queens Road, Weybridge KT13 9UQ**

- 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 G Hewitt against the decision of Elmbridge Borough Council.
  - The application Ref 2020/0265, dated 31 January 2020, was refused by notice dated 25 August 2020.
  - The development proposed is an extension and change of use of part of ground floor to provide 1no. 1-bed apartment and change of use on the 1st & 2nd floor to provide 4no. 1-bed apartments.
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### Decision

1. The appeal is dismissed.

### Application for costs

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

### Procedural Matters

3. I acknowledge that there are three separate appeals subject to determination on the same appeal property, which are all referred to in the submitted evidence. However, they also encompass different applicants and appellants. In that context, I have determined this appeal decision on its own merits.
4. The Council's Decision Notice refers to a single reason for refusal relating to the impact of car parking on residential living conditions. However, an additional issue arises from a Unilateral Undertaking (UU) in which a previously agreed affordable housing contribution payment is now omitted. The Council highlights policy conflict in the absence of affordable housing provision, but also to the fact that the viability appraisal evidenced should not be considered at all. That said, the Council and other parties have had an opportunity to comment on the viability statement. As such I see no reason not to accept the documents as part of the appellant's bundle, when applying the Wheatcroft Principles. The circumstances are therefore also reflected in the main issues to my decision.

### Main Issues

5. The main issues are:
  - (i) The effect of the development on the living conditions of occupiers of surrounding properties having regard to car parking provision; and

- (ii) Whether affordable housing provision is warranted.

## **Reasons**

### *Living conditions*

6. The appeal property is located on a high street featuring a range of commercial uses at ground floor level. The immediate vicinity of the appeal property on Queens Road has short stay parking restrictions. Further along the street there are other parking controls in the form of double yellow lines.
7. To the rear of the appeal building lies South Road where I also observed the existence of parking restrictions including double yellow lines and a Controlled Parking Zone (CPZ). Several properties along South Road do not have independent off-road parking. Considering the narrow width of the carriageway as well as parked vehicles there is limited space for two vehicles to pass travelling in opposite directions along significant stretches of the road. At my site visit I could also see that there was unrestricted parking along York Road and Princes Road up taken on both sides of the carriageway, close to existing private driveways.
8. I note the scope to use electric bikes with planned storage provision are referred to within the evidence as an alternative to car use. I also acknowledge there would be options to use public transportation, to cycle, or to walk to services by future occupiers of the flats. Nonetheless, the range of services available in the immediate vicinity is comparable to a local centre rather than large town centre or a city. Therefore, whilst there are realistic alternatives to car use, I do not find it to be a location where all residents would be able to completely rely on non-car modes of travel.
9. Considering the transportation options available there would still be no guarantees that future occupants of the flats would not have individual car ownership. I have no cause to assume occupiers would not want to have access to a car for day to day living needs including employment. I have considered the potential use of planning controls, but these would not successfully overcome the issue of car ownership. I do not find a condition seeking such a restriction would be enforceable when applying the relevant tests. There would also be visitor trips, servicing and deliveries associated to the new flats. As a result, I find that there is likely to be a significant uplift in parking pressure arising from the development on nearby local roads.
10. In the absence of any off-road provision to serve the developments own needs, the scheme would very likely exacerbate parking problems in surrounding streets where there is evidence of substantial parking stress. The effect would be detrimental to the living conditions of existing residents in the area, as well as for future occupiers of the units. It would be a continuous source of aggravation for residents who own a car and want to park close to their home in a location where car parking is not readily available. The Council do not provide me any reasoning why a restriction to CPZ permit applications would not be a feasible solution. Nevertheless, there is insufficient evidence before me that an amendment to the existing CPZ permit system would alleviate parking stress or be appropriate when measured against the relevant tests for planning conditions.

11. The appellant makes the case that the increase in residential accommodation is acceptable with zero parking and is broadly in line with other decisions taken locally. This includes a large residential care home on the opposite side of the road to the appeal property. I am also referred to a variety of appeal and local decisions in support of the appellant's arguments including appeal cases: APP/K3605/19/240173 and APP/K3065/W/16/3164019; as well as the flats consented under planning application 2015/0320. However, I do not have the full details of those schemes to draw any direct comparison with the appeal before me. In any event, I have determined the appeal on its own merits.
12. Furthermore, I note there are third party representations to the current appeal scheme voicing parking difficulty concerns, considered alongside those other nearby decisions. Residents surveys are also referred to by the Council highlighting local parking problems. In this context, there is a tipping point where parking issues can result in substantial harm to existing living conditions. Factoring nearby decisions and other development in the immediate vicinity of the appeal property the new units would unduly exacerbate existing parking pressures.
13. I therefore find that the proposed development would be harmful to residential living conditions through increased parking pressures on nearby local roads. It would conflict with Policy DM7 b) of the Elmbridge Local Plan Development Management Plan April 2015 which seeks that the proposed parking provision should be appropriate to the development and not result in an increase in on-street parking stress that would be detrimental to the amenities of local residents. It would also conflict with Paragraph 127 points (a) and (f) of the National Planning Policy Framework (the Framework) which combined seek that decisions should ensure that developments will function well and offer a high standard of amenity.

#### *Affordable housing provision*

14. Policy CS21 of the Elmbridge Core Strategy 2011 (ECS) requires that development resulting in the net gain of between 1-4 residential units make a suitable contribution to affordable housing provision within the Borough. During the planning application process the Council accepted that a UU involving a financial contribution of £84,456.36 would enable the scheme to make a satisfactory contribution to local affordable housing provision.
15. The basis of that requirement is now disputed. The appellant draws my attention to: the Written Ministerial Statement (WMS) dated 28th November 2014; a judgment<sup>1</sup>; the appeal decision reference APP/K3605/W/19/3226776; Planning Practice Guidance; and arguments that Policy CS21 of the ECS is ineffective and out of date.
16. Bringing those points together, the development plan requirement is still linked to alleviating an ongoing need for affordable housing in the Borough. Even if I did give Policy CS21 little weight it still seeks to secure affordable housing where there is a demonstrated ongoing need. The local rationale applied to alleviate an affordable housing shortfall is still important and therefore carries substantial weight in my decision. There is no substantive evidence that the principle of seeking affordable housing as a commuted sum would not meet

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<sup>1</sup> SoS vs West Berkshire/Reading Council {2016} EWCA Civ 441

relevant legal tests or would not be able to be used for ensuring the successful delivery of affordable homes.

17. In tandem with those areas of dispute viability information has also been provided making the case that the scheme would not be able to support a commuted sum payment triggered by the ECS. It does support the conclusion that the original commuted sum would prevent a reasonable level of developer return, considering the advice of the Council's SPD which allows for some flexibility. The Council also concur the development would not be viable with an affordable housing contribution following the sanctioning of an independent assessment.
18. I accept that the viability information did not feature in the original planning application determination. But even if I were to discount the viability information, the most recent UU (superseding the previous one) still involves no off-site affordable housing commuted sum or an agreed on-site provision. Either way, there would be no affordable housing provided or contributions to successfully deliver affordable housing elsewhere arising from the scheme.
19. As a result, the development would conflict with Policy CS21 of the ECS which seeks to ensure there is affordable housing provision in the district. In finding such conflict I also acknowledge that overly burdensome financial requirements can stifle new development. This is successfully demonstrated by the appellant's viability information. Because of those circumstances I accept that if the scheme were to be allowed it would be on the basis it would not be able to support affordable housing provision. Accordingly, in that context the harm to overarching local affordable housing delivery strategy would be limited.

*Other considerations*

20. I have carefully considered a variety of other additional points raised by the appellant. I acknowledge that the Council is not able to demonstrate it has a 5-year housing land supply. The evidence submitted suggests there has been a consistent underperformance in housing delivery and is confirmed in the annual Housing Delivery Tests (HDT). The 2019 figures released in February 2020 indicate a delivery of 58% of housing requirements expected.
21. The appellant makes the case that there is a local need for additional one bed flats which would be met by the scheme as well as contributing to the efficient use of land. I accept that the scheme would support the efficient use of land and would increase housing supply and choice in a location with good levels of accessibility to local services.
22. I have had regard to permitted development rights for the property. However, there is nothing conclusive to suggest that the potential uptake of such rights would lead to either a comparable, or a greater, adverse impact than the appeal development. Furthermore, there is nothing conclusive demonstrating the existing lawful use of the property would have similar parking impacts when compared to the new flats.
23. Policy DM7 is referred to by the appellant as being out of date owing to its age and not reflecting a modal shift in transportation supported by the Framework. I disagree. Sufficient parking to complement residential uses and the general function of the area are reasonable and, in my judgement, important planning

considerations. I do not find sufficient evidence exists to afford anything other than full weight to the policy.

24. I accept that decreased vehicle use can lead to lower levels of air pollution but there is no strong evidence the appeal scheme would contribute to air quality betterment. This is because of the lack of guarantees in relation to individual car ownership.
25. The main parties agree that the site is within the zone of influence of the Thames Basin Heaths Special Protection Area (SPA). The SPA is protected as a European Site and is therefore subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. As a result, a financial contribution for Strategic Access Management Monitoring (SAMM) is required to ensure the effects of the scheme are properly mitigated against. This is a common approach to dealing with such issues and in line with local strategy. I have no cause to conclude it would not be a feasible or successful mechanism of dealing with the statutory obligations concerning the SPA. A UU has been submitted aiming to provide a financial contribution of £2056 towards SAMM.
26. I am referred to a judgement<sup>2</sup> concerning the application of the tilted balance in the context of a housing supply shortfall. Whilst I acknowledge that judgment, my overall conclusion is based on the individual merits of the specific appeal case before me. Therefore, I attribute limited weight to it. Moreover, I appreciate that there is officer support for the scheme identified in the Council's submitted Committee Report. However, references to that do not bind my assessment of identifying any potential harm.

### **Planning Balance and Conclusion**

27. In the absence of a five-year housing land supply paragraph 11d of the Framework is engaged. Five additional units would in part address an identified need for smaller unit accommodation and contribute to the Council's five-year housing land supply. I afford considerable weight to the social and economic benefits this would bring. However, because of the already acute parking stress levels in the locality and for the reasons I have already given, I am satisfied that the harm to living conditions caused would be of an extent, that it would significantly and demonstrably outweigh the benefits of the scheme. Thus, it would not amount to sustainable development.
28. I have found there would be conflict with the Council's development plan in relation to increased parking stresses which would lead to substantial harm. There are no other material considerations which lead me to the conclusion that the scheme should be supported when applying the content of the Framework, and the development plan taken as a whole.
29. For the reasons given above the appeal does not succeed.

*M Shrigley*  
INSPECTOR

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<sup>2</sup> referred in the evidence as Gladman Developments Ltd [2020] EWHC 518 (Admin)