
Appeal Decision

Site visit made on 9 May 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 18 May 2017

Appeal Ref: APP/Z5630/W/16/3165508

40 Villiers Road, Kingston upon Thames KT1 3AR

- 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 Astindale Projects Ltd against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 16/12494/FUL, dated 11 May 2016, was refused by notice dated 30 November 2016.
 - The development proposed is the redevelopment of the site to provide a 3 storey building accommodating 6 apartments comprising 1 x 3 bed and 5 x 2 bed units with parking and access from Villiers Road.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have used the description of development from the Council's refusal notice as this accurately describes the appeal proposal.

Main Issues

3. The main issues are (i) the effect of the loss of the existing on-site family dwelling and whether or not adequate family dwelling accommodation would be provided on site; (ii) the effect of the loss of the existing on-site employment floorspace; (iii) whether or not the occupiers of the proposed flats would have adequate private and communal on-site amenity space; (iv) the effect of the proposal upon the character and appearance of the area; (v) the effect of the proposal upon bats; (vi) whether or not the proposal would be acceptable in terms of flood risks and (vii) the effect of the proposal upon the living conditions of the occupiers of properties on Herbert Road in terms of privacy.

Reasons

Site and Proposal

4. The appeal site comprises a two storey part brick part render three bedroom house with an attached single storey storage building which was last used in 2015 for the storage of bathroom equipment. The existing buildings are set well back from Villiers Road when compared to other buildings such as the gable fronted Kingston National Spiritualist Church which is immediately to the south of the site. Along the northern boundary of the site is the Hogsmill River
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and to the west are the rear gardens of the semi-detached properties on Herbert Road.

5. It is proposed to demolish the existing buildings on the site and to erect a three storey building with a 26 metre long frontage facing onto the river. The building would provide six flats and would include a mixture of materials including a slate roof, brickwork at lower sections of wall, silver/grey composite board trim, white render and composite cladding panels to projecting bays. The building would have a gabled elevation facing Villiers Road and vehicular/pedestrian access would be between the proposed building and the Kingston National Spiritual Church which would lead to a bin store, a six space car park, cycle store and communal amenity space area to the side/rear of the building.

Family Dwellings

6. The proposal would include the loss of a three bedroom dwelling and the erection of a building which would accommodate 1 three bedroom flat and 5 two bedroom flats. Policy DM 13 (b) of the adopted Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy 2012 (CS) states that the Council will expect proposals for new residential development to *"incorporate a mix of unit sizes and types and provide a minimum of 30% of dwellings as 3 or more bedroom units, unless it can be robustly demonstrated that this would be unsuitable or unviable"*. In this case, the proposal would include one residential unit (i.e. just over 16%) which would not meet the above requirement. Therefore, the proposal would not accord with Policy DM13 of the CS.
7. The appellant states that the two bedroom flats could be classed as family housing and that there is a relatively minor shortfall in the 30% requirement. Furthermore, they contend that there are already a number of family houses in the area. However, Policy DM 14 of the CS states *that "the Council will resist the loss of existing accommodation (of all types) and, in particular, dwellings which are suitable for family accommodation"*. I acknowledge that there is a vacant B8 unit attached to the existing dwelling house. However, not all B8 uses would be incompatible with the continued residential use of the property. In this regard, I am satisfied that the dwelling remains suitable for use as family accommodation. The proposal would result in the loss of a family dwelling and so would not accord with Policy DM 14.
8. I have not been provided with any compelling evidence to indicate that the overall scheme would be unviable or unsuitable if more 3 (or more) bedroom units were to be provided on the site. In addition, I attach limited weight to the appellant's claim that there are a number of family dwellings in the area as the aforementioned policies do not require this to be taken into account. Furthermore, and accepting that the reasoned justification to Policy DM 14 of the CS is not in itself policy, it nonetheless states *"a high proportion of recent residential schemes have been in the form of 1 and 2 bed flatted developments, raising concerns about the availability of family housing. Furthermore, the Boroughs strategic Housing Market Assessment (SHMA) identified a significant requirement for family housing over the lifetime of the Core Strategy"*.

9. For the reasons outlined above, I conclude that the proposal would not accord with the housing choice and mix aims of Policies DM 13 and DM 14 of the CS and Policy 3.8 of the London Plan 2016.

Employment

10. According to the appellant, the single storey building on the site was last used in 2015 for the storage of bathroom fittings. On the evidence before me, the property has been used for B8 purposes for quite some time. Policy DM17 (E) of the CS states that employment sites such as this will be protected for employment uses to meet business needs and to provide employment. The policy goes on to say that *"alternative uses will not be acceptable within areas A-E above unless it has been demonstrated by sound evidence and rigorous marketing over a number of years (up to two years) that there is no quantitative or qualitative need for a range of employment uses"*.
11. The proposal includes the loss of the B8 employment use and its replacement with residential development. I have carefully considered the comments made by the appellant's commercial agents (Bonsors) who suggest that there is no prospect of achieving a sale or letting of the building for employment purposes. However, I have not been provided with any reason to indicate why the building could not be improved and/or remodelled prior to being marketed or why the building could not reasonably be used in its current form at least from a storage point of view. I accept that the site is surrounded by residential properties, but this does not mean that all employment uses would be incompatible. Furthermore, and in any event, the policy requires that the market should be tested for up to two years. I have not been provided with any details of rigorous marketing and hence I do not have any objective evidence that there is not a quantitative or qualitative need for re-use of the building for employment purposes.
12. For the reasons outlined above, I conclude that the proposal would not accord with the employment aims of Policies CS11 and DM17 of the CS and Policy 4.4 of the London Plan 2016.

Living Conditions - Amenity Space

13. The appeal proposal includes a private communal amenity garden which would measure about 52.5 square metres and all but four of the flats would have private amenity space. Policy Guidance 13 of the adopted Royal Borough Kingston Upon Thames Residential Design SPD (SPD) states that new flats should have 10 square metres of private amenity space plus 1 square metre per additional occupant. In this case, the proposal does not accord with Policy Guidance 13 of the SPD as some of the flats would have no private amenity space.
14. Policy Guidance 14 of the SPD states that 50 square metres of communal amenity space should be provided *"plus where less than 10 sqm private amenity space is provided per flat, the shortfall in provision should be added to communal amenity space"*. The aforementioned shortfall in private amenity space has not been added to the required 50 square metres of communal amenity space. The appellant states that as there is public amenity space within close walking distance of the site (i.e. Fairfield Recreation Ground) on-site private and communal amenity space requirements should be relaxed. However, the aforementioned policies do not permit such a relaxation and, in

any event, on site private and communal amenity space provides a function that is not always interchangeable with that offered by public open space.

15. For the reasons outlined above, I conclude that the proposal would not accord with the amenity space aims of Policy DM 13 of the CS; Policy 3.5 of the London Plan 2016 and Policy Guidance 13 and 14 of the SPD.

Character and Appearance

16. The site is identified in the Borough Character Area Study as falling within an area requiring enhancement to re-inforce identity. In some respects, the proposal would be advantageous in that it would seek to introduce a more common building line along Villiers Road. This is because the proposed building would be positioned close to the road frontage, as is the case for the adjacent Kingston National Spiritualist Church. Furthermore, the proposal provides an opportunity to remove a relatively unattractive use class B8 building which can be seen from both the main road and against Hogsmill River.
17. The provision of a three storey building would not in itself cause harm to the character and appearance of the area. I reach this conclusion taking into account the height of development at Stewart House which is next to the aforementioned church. However, the site is prominent in the landscape and includes both road and river frontages. Whilst the appellant has attempted to break up the elevations of the building by using different materials, owing to the length, bulk and proximity of the elevation fronting the river, I consider that it would appear dominant and severe when viewed from the foot bridge. In this case, the use of such a variety of materials would detract from the prevailing theme in the locality which is that of a mixture of the use of brick and render materials.
18. I acknowledge that there is existing development on the site, but the scale, siting and sense of space around such buildings ensures that there is a soft and essentially more open edge to the boundary with the river. This is generally a characteristic which is repeated along the rest of the river edge in the immediate locality. Consequently, if the proposal were to be allowed it would cause substantial harm to this distinctive character and appearance.
19. My above concerns are compounded by the fact that the part of the proposed building which would front Villiers Road would include a very narrow and incongruous gable elevation. I understand why this design solution has been chosen, in so far that it would facilitate vehicular access into the proposed rear/side car park, but nonetheless it would look out of place in a road where building frontages are generally much wider. In addition, the provision of a bin storage/collection area relatively close to the site entrance would be unacceptably conspicuous. Taking this into account, coupled with the parking of cars, I consider that the overall appearance of the site would be one which appeared very cramped. In fact, and apart from the proposed communal amenity space which would be sited in the far north west corner of the site, there would be very limited opportunity to introduce soft landscaping on the site. In my view, the result would be a very hard environment imparting a character of cluttered congestion on the constrained plot.
20. Whilst the proposed cycle storage space would be acceptable in quantitative terms, I agree with the Council that positioning it behind a proposed car

parking space would make it difficult to use and that this could discourage cycling. This is an important issue both in terms of practicality, but also as the Council has concluded that the site as a PTAL score of 1b (i.e. poor).

21. For the collective reasons outlined above, I conclude the proposal would cause significant harm to the character and appearance of the area. Therefore, the proposed development would not accord with the design aims of Policies CS8, DM10 and DM11 of the CS, the SPD and Policies 7.4 and 7.6 of the London Plan 2016.

Bats

22. The site was re-visited by the appellant's ecologist on 8 December 2016 which post-dates the Council's refusal notice. The purpose of the re-assessment was to further inspect the building for bat presence. I have therefore taken into account the appellant's Low Impact Ecological Impact Assessment Report Rev A dated 12 December 2016.
23. On the evidence that is before me, including two separate site visits by the appellant's Ecologist (14 September 2016 and 8 December 2016), I do not consider that there is a reasonable likelihood that the existing buildings on the site are being used by bats. I reach this conclusion on the basis that the buildings are unlikely to be used for roosting purposes because neither the appellant's surveys of the building, or my own site inspection, revealed any evidence of any cracks or entrance points into the buildings.
24. The Council consider that the appellant should have provided emergence surveys which would indicate the extent of bat activity (including species) both on the site and adjacent to Hogsmill River. They contend that without this, it is not possible to determine the overall effect of the development upon bats. However, the evidence before me suggests that there are not any protected species on the site. Whilst the adjacent Hogsmill River may be used by bats for foraging purposes, I have not been provided with any compelling evidence to indicate why the proposal would have an adverse effect in terms of the use of the river for such purposes. Any adverse impacts upon foraging bats from lighting could be dealt with by planning condition.
25. In conclusion, whilst the appellant has not submitted emergence surveys, I am nonetheless satisfied that I do have enough evidence to conclude that subject to the imposition of a planning condition, the proposal would not cause significant harm to matters of biodiversity. Therefore, the proposal would accord with the biodiversity aims of Policies CS3 and DM6 of the CS, Policy 7.19 of the London Plan 2016 and the National Planning Policy Framework.

Flood Risks

26. The appellant has submitted an amended flood risk assessment as part of the appeal. It is understood that this was sent to the Local Planning Authority prior to the determination of the planning application, but the Council's decision was based on an earlier version of the flood risk assessment. Therefore, I have obtained additional comments from both the Local Planning Authority and the Environment Agency about this matter. The Local Planning Authority provided me with additional comments from the Environmental Agency (EA) on 4 April 2017 which I have taken into account.

27. Whilst the site does currently include existing development, I agree with the Environment Agency that given the relative proposed increase in the number of residential units on the site the development would lead to an increase in risk in flood risk terms.
28. The appellant proposes to raise the finished floor levels of the ground floor to provide a 900mm freeboard on top of the 1% AEP level. I have no reason to disagree with the view of the EA that this would be acceptable in terms of the resilience of the development to flooding. I note the concerns raised by the EA about the effect of the development upon the river wall, but this would be a matter that could be addressed by means of the need for a separate environmental permit and/or a planning condition.
29. Notwithstanding the above, I consider that insufficient topography/defence details have been submitted to show that the site would not flood from areas other than the immediately adjacent river. Consequently, I cannot be satisfied that the site would not be inundated in a 1:20 flood event. Furthermore, detailed information has not been provided in terms of how the development would compensate for the 11 cubic metres loss in floodplain storage. Consequently, I do not have adequate information to demonstrate that the proposal would not increase flood risk off site through a loss of flood storage.
30. Finally, I do not consider that in flood risk terms the application has been the subject of a robust sequential test. Hence, I cannot be certain that it would not be possible for the development to be located in an area with a lower probability of flooding.
31. For the above reasons, I conclude that I do not have enough information to demonstrate that the proposal would not give rise to unacceptable flood risks. Therefore, the development would not accord with the flood risk aims of the National Planning Policy Framework, the National Planning Practice Guidance, Policy DM4 of the CS and Policy 5.12 of the London Plan 2016.

Living Conditions - Privacy

32. I have considered the relationship of the proposed scheme with neighbouring properties including the scale of the development, position and type of windows, and the separation distances involved. Taking these factors into account, I do not consider that the proposal would cause material harm to the living conditions of the occupiers of surrounding buildings and uses.
33. I acknowledge that the proposed first floor rear terrace would lead to some overlooking of gardens on Herbert Road. However, the appellant has suggested that they would provide a 1.8 metre balustrade fitted with opaque glass. I am satisfied that this would suitably mitigate any harmful impacts and that this is therefore a matter which could be dealt with by planning condition. I note concerns raised by the Council about the effect of such a screen upon the occupiers of the associated proposed flat, but subject to careful design and the use of privacy glass, I do not consider that such a structure would give rise to a material loss of outlook or light for future occupants.
34. For the above reason, and subject to the imposition of a planning condition, I conclude that the proposal would accord with the residential amenity aims of Policy DM10 of the CS.

Other Matters

35. I have taken into account representations made by other interested parties. Many of the comments made have already been addressed in the reasoning above.
36. The appellant has commented that owing to the appearance of the B8 unit, and its use, it would negatively affect the sale of the dwelling. I do not have any direct marketing evidence to demonstrate that it has not been possible to sell (or indeed rent) the house and I do not know why it would not be possible to make improvements to the B8 building.
37. I acknowledge that the proposal would have the effect of removing the B8 building on the site which does not make a positive contribution to the street-scene in architectural terms. However, this does obviate the need for any replacement development to be well designed. I have concluded that the proposal would not represent good design and this harm outweighs the visual benefits associated with the loss of the B8 building.
38. There are no other matters raised which would outweigh my overall conclusion on the main issues.

Conclusion

39. Whilst the proposal would be acceptable in respect of its effects upon the privacy of the occupiers of neighbouring properties and biodiversity, significant harm would be caused to the character and appearance of the area and to the mix and choice of residential accommodation in the Borough. Furthermore, inadequate private and communal amenity space would be provided on site and insufficient information has been submitted to demonstrate that the proposal would not give rise to unacceptable flood risks. These are matters of overriding concern and for these reasons, and taking into account all other matters raised, I conclude that as whole the proposal would not accord with the development plan for the area. Therefore, the appeal is dismissed.

Daniel Hartley

INSPECTOR