

Appeal Decision

Site visit made on 20 March 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 13 June 2017

Appeal Ref: APP/L5810/W/16/3165243

105 Church Road, Richmond TW10 6LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by London & District Limited against the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/3026/FUL, is dated 26 July 2016.
 - The development proposed is the erection of a two storey dwelling on land to rear of 105 Church Road; relocation of car parking to the forecourt and a new crossover onto Church Road.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by London & District Limited against the Council of the London Borough of Richmond-upon-Thames. This application is the subject of a separate Decision.

Procedural Matters

3. I understand that the emerging Local Plan has been published in its '*Publication version for public consultation*' stage but I have not been made aware of the exact stage it has reached, the extent of any outstanding objections or whether the policies concerned will be considered consistent with the National Planning Policy Framework (the Framework). Consequently, in accordance with paragraph 216 of the Framework I give it very limited weight.
4. A signed and dated Unilateral Undertaking (UU) has been submitted in order to address the Council's third reason for refusal which relates to the provision of affordable housing. I shall return to this matter below.

Main Issues

5. The Council did not reach a decision within the prescribed period on a planning application for the proposal now before me. However, as part of the Council's Statement of Case putative refusal reasons have been set out, had a decision been able to be reached.
 6. Having regard to the above therefore, I consider the main issues to be the effect of the proposed development on:
 - The living conditions of existing occupiers of neighbouring properties, with particular reference to outlook and privacy;
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- The living conditions of future occupiers of the proposed dwelling, with particular reference to external amenity space;
- The character and appearance of the surrounding area;
- Highway safety; and
- Whether the proposal makes adequate provision for affordable housing.

Reasons

Living Conditions – Existing Occupiers

7. There are a number of windows on the rear elevation of 105 Church Road that look directly out across the site of the proposed dwelling, including four (one each at ground, first, second and third floor levels) that are set within a four storey flat roofed rear extension. Although the site of the proposed dwelling is broadly level, ground levels nonetheless appear to be built up slightly relative to the rear of No. 105 such that there is a slightly sunken path that follows the perimeter of the rear elevation. As a consequence, the ground floor windows at the rear appear low relative to ground levels within the site.
8. The two storey gable elevation of the proposed dwelling would be sited within approximately 6 metres of the windows at the rear of No. 105. Moreover, the distance between the rear and gable faces of the respective buildings would be split by a boundary enclosure which, the plans¹ suggest, would be a brick wall to 'match / mimic' those of neighbouring dwellings. The boundaries of the western portion of the site bounding No. 107, 6 Royston Road and the Royston Road frontage are currently marked by a substantial brick walls, supplemented in places with wooden trellis.
9. The layout of the site would be such that it would fail to achieve this. Whilst the existing outlook from these windows, and particularly those at ground and first floor, is across an untidy area used for car parking it is at least relatively open. The proposed development would introduce a substantial and significant two storey gable elevation approximately 6 metres from these windows whereas the Council's adopted Supplementary Planning Document 'Residential Development Standards' (SPDRDS) seeks separation distances of 13.5 metres between principal windows that face towards a wall without windows.
10. The introduction of a substantial boundary structure in the intervening space would also add to the imposing and overbearing presence of the proposed dwelling's gable elevation upon the outlook from the rear of properties at No. 105. This would, I conclude, result in substantial harm to the outlook from the rear ground and first floor windows. This would be harmful to the living conditions of existing occupiers of these properties, contrary to policies DM DC1, DM DC5, DM HO2 and DM HO4 of the Local Development Framework: Development Management Plan (DMP). Together these policies seek to ensure that all new development, including infill development, must have regard to, amongst other matters, adequate separation between and spaces around buildings, and the protection of adjoining properties from unreasonable visual intrusion.

¹ Drwg No: 1296 412C

11. The second of the Council's refusal reasons refers to the '*unacceptable overlooking and loss of privacy to neighbouring residential premises*'. However, not only does the refusal reason fail to specify exactly which premises suffer from the suggested overlooking or loss of privacy, the Council's statement of case in any event concludes that overlooking would not be so great as to warrant refusal.
12. I agree. There would be no windows on the gable elevations of the proposed dwelling to face towards either the rear of No. 105, or the side of No. 6, whilst any outlook from the rear of the proposed dwelling would be at an oblique angle across the rear corner of the garden at the side and rear of No. 6. Such inter-visibility is commonplace in densely built-up areas and I can identify no harm arising from the proposed layout and relationship. An absence of harm in this respect is not sufficient however to outweigh the harm that I have identified above.

Living Conditions – Future Occupiers

13. The land around the proposed dwelling would be enclosed by a mix of substantial brick boundary walls. As a consequence, the proposal would provide sufficiently private outdoor amenity space at both the front and rear of the dwelling, something that cannot always be achieved on infill sites such as this.
14. However, whilst that may be so, the amount of outdoor amenity space that would be provided would fall significantly short of the requirements set out in the SPDRDS. The proposed level of provision, at 45 square metres, represents approximately two thirds of the minimum requirement that the Council would expect to see. This, to my mind, is not 'slightly below' the Council's recommended standards, as the appellant suggests, but would instead represent a significant shortfall.
15. I acknowledge that convenient, easy and close access to parks and public gardens can provide facilities that would offset a shortfall in provision on-site and in-curtilage outdoor amenity space. However, the proposed dwelling would be of a size, type and layout that would be capable of occupation by a family unit. The SPDRDS states² that such dwelling units should have direct and easy access to a good sized private garden. Although the proposal would have direct and easy access to the proposed outdoor amenity spaces, which would be private, the level of provision would not be of a good size.
16. I have been referred to a number of parks within walking distance as providing suitable access to outdoor amenity and recreation space but I note that they involve crossing a number of busy roads. They would not, however, provide a suitable alternative to the shortfall of provision within the proposal. It has also been suggested that the level of proposed provision would be similar to that provided at 'many of the neighbouring properties' but no evidence has been put forward to substantiate such a claim, nor is it clear which properties are being referred to.
17. In any event, I conclude that the level of provision falls sufficiently, and significantly, short of the recommended level of provision for outdoor space required by the SPDRDS to provide the quality housing standard and design

² Paragraph 4.1.2

sought by DMP policies DM DC1 and DM HO4 seeks. The proposal would also fail to achieve one of the Framework's core planning principles of securing a good standard of amenity for future occupiers of land and buildings.

Character and Appearance

18. DMP policy DM HO3 deals specifically with backland development and sets out a general presumption against the loss of back gardens due to the need to maintain local character, amenity space and biodiversity. Although backland development is described in the supporting text to this policy as involving the loss of garden land, and particularly back gardens, I accept that the site could equally, having regard to the provisions of DM HO2, be described as an infill site. It is clear however that it is used extensively for car parking and at the time of my site visit appeared not to provide a particularly pleasant or usable amenity space.
19. I have already considered the effect of the siting of the proposed dwelling and the spacing between it and the rear of No. 105 above, in respect of living conditions. However, both policies DM HO2 and DM HO3 refer to the importance of local character and context and of the spaces around and between buildings. In the case of the appeal site, the relationship between the proposed dwelling and the existing building at No. 105 would be significantly more cramped than those between other buildings on Royston Road and the larger properties that front Church Road and Mount Ararat Road. In those cases, buildings are either absent and retain a green buffer between the opposing elevations of dwelling or, where buildings are present (such as the single storey garage block on the opposite side of Royston Road), they are of a sufficiently limited scale and height so as to retain visual breathing space around the larger buildings
20. I also saw that there were similarly important visual breathing spaces between development on The Vineyard and Dynevor Road and the rear elevations of properties on Church Road and Mount Ararat Road. In much the same way that the rear of the appeal site affords views towards the sylvan backdrop of rear gardens to the south of the site, similar gaps are evident elsewhere in the surrounding area and are consistent features that contribute to the pleasant verdant visual buffers around and between buildings on intersecting streets.
21. The proposed dwelling would however introduce a significant and incongruous form into an area that, whilst of limited amenity or biodiversity value, nonetheless contributes to the setting of No. 105 and to the overall character and appearance of the surrounding area. The views towards the sylvan backdrop within the adjacent garden plots, and which form a key component of the surrounding area's layout, would be significantly eroded by the proposed dwelling and the sense of spaciousness afforded by the gaps between properties on the respective streets would be lost.
22. Turning to the Church Road frontage, the existing forecourt area at the front and northern side of No. 105 is extensively surfaced with paving slabs, is largely featureless and contributes little to the setting of the property or to the character and appearance of the surrounding area. So too the low brick wall enclosing the forecourt on its northern and eastern sides which sits incongruously at odds with the prevailing form of boundary treatments along Church Road and contributes equally little to the setting, character and appearance of the existing building.

23. I agree that the introduction of more appropriate pavements, the reinstatement of a higher boundary wall to reflect the prevailing form of such walls in the surrounding area and the incorporation of areas of planting would combine to enhance the appearance of this area. That weighs in support of the proposal. However, the corollary of this is the provision of four car parking spaces within the forecourt and the creation of a sufficiently wide opening in the reinstated wall to allow access to and egress from these parking spaces. This would, in my judgement, over-ride the positive aspects of the proposal noted above.
24. I acknowledge that there are other properties with parking areas at the front of the houses. However, I saw that these were limited, particularly to the south of No. 105 on the western side of Church Road. Where they do exist they do not dominate those properties to the extent that the proposed layout would in this instance. Thus, with regard to the proposed dwelling, I conclude that the proposal would result in an incongruously cramped form of the development that would cause harm to the setting of No. 105, and to the character and appearance of the surrounding area. The relocation of car parking to the forecourt area at the front of No. 105 would dominate the principal elevation of No. 105 and the setting of the building. The proposal would therefore fail to protect or enhance the setting of a Building of Townscape Merit, a non-designated heritage asset, and the character and appearance of the St Matthias Conservation Area. This would be contrary to DMP policies DM HO2, DM HO3 and DM DC1.
25. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to give special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Although the Council conclude that the proposal would cause harm to the character and appearance of the Conservation Area, and to the setting of No. 105, a Building of Townscape Merit (BTM), it is not clear whether they consider this harm to be substantial or less than substantial. However, I conclude that that harm would be less than substantial.
26. Nonetheless, the Framework states that any harm to a designated heritage asset should require clear and convincing justification and that the harm should be weighed against any public benefits of the proposal. The effect of a proposal on the significance of a non-designated heritage asset should also be taken into account, in a balanced judgement that has regard to the scale of any harm or loss and the significance of the asset.
27. The proposal would provide an additional dwelling to meet the Borough's housing needs, something that both parties are in agreement on and which weighs positively in support of the proposal. However, whilst there are elements of the proposal that would have wider public benefits, such as the removal of the existing paving and boundary wall at the front and side of No. 105, this would be offset by the harmful nature of the proposed replacements. Similarly, with regard to the proposed dwelling, whilst elements of its design are reflective of features found on houses in the surrounding area, the scale, siting and layout of the proposed dwelling and its relationship with No. 105 in particular, are such that such public benefits as exist are not sufficient to outweigh the harm that I have identified.

Highway Safety

28. Reference is made in the appellant's submissions to restrictions to be placed upon future residents of No. 105 regarding their ability to apply for parking permits within the controlled parking zones (CPZs) in the vicinity of the application site. However, I have not been provided with any evidence of a mechanism to secure these restrictions and so cannot be certain that this would be achievable.
29. In any event, the appellant acknowledges that there is nothing to prevent occupants of all 12 apartments within No. 105 having a car and seeking to park within the existing car parking area. Although it is suggested that only four or five vehicles park within the existing car parking area, without the certainty of control over access to parking spaces, the proposed parking area of only four car parking spaces would provide little flexibility for current levels of usage.
30. I have not been presented with an appropriate mechanism to restrict access to parking permits within the CPZs and so I conclude that it has not been adequately demonstrated that the proposal would not result in an increase in parking stress in any area already subject to the provisions of CPZs and where demand for parking is also acknowledged as already being high. I have already concluded that the creation of a car parking area at the front of No. 105 in the manner proposed would be harmful to the character and appearance of the Conservation Area and the setting of the BTM. That the proposed layout would also fail to provide adequate car parking provision in an area of parking stress compounds this harm, and I conclude that the proposal would be detrimental to local parking conditions, the free flow of traffic and highway safety contrary to DMP policies TP6 and TP8.
31. I note that the Council also consider that the parking and access layout in respect of the proposed dwelling would not be acceptable, having regard to the provisions of the 'Front Garden and Other off Street Parking Standards' Supplementary Planning Document (SPD). However, I am satisfied that matters relating to the dimensions and positioning of the two proposed spaces and the location and swing of the entrance gates could, had the appeal been successful, be satisfactorily addressed within the scope of hard and soft landscaping and boundary treatment conditions.
32. I note too that access to the proposed dwelling would not be at 90° to Royston Road. It would, however, largely utilise an existing point of access. I am satisfied that the appellant has satisfactorily demonstrated that there has been no record of collisions in the vicinity of the appeal site and that visibility splays would exceed those of nearby points of access on Royston Road. The proposed access from Church Road into the forecourt area would achieve visibility splays appropriate to the measured road speeds and it has not been demonstrated that access into, or manoeuvring within, this area would be prejudicial to highway safety, notwithstanding the provisions of the SPD. Whilst these factors have some weight in favour of the proposal, they are not sufficient to outweigh the harm in respect of the likely implications of displaced parking demand, and in respect of the other main issues, that I have identified above.

Affordable Housing

33. DMP policy DM HO6 states that on sites capable of accommodating less than ten units, a financial contribution towards affordable housing commensurate with the scale of development will be required. Policy CP15 of the London Borough of Richmond upon Thames Local Development Framework: Core

Strategy (CS) indicates that some form of contribution towards affordable housing will be expected on all new housing sites.

34. However, the Court of Appeal issued judgment in the case of Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441 on 11 May 2016. This confirmed that the policies in the Written Ministerial Statement of 28 November 2014 (WMS) relating to contributions towards affordable housing and tariff-style planning obligations on small scale development should be treated as a material consideration in the determination of appeals. The WMS, together with revisions to Planning Practice Guidance (the Guidance) to incorporate this judgement, states that there are specific circumstances in which contributions for affordable housing should not be sought, making specific reference to developments of 10 units or less where contributions should not be sought.
35. I note that the Council's Cabinet adopted policy LP36 of the emerging Local Plan for development management purposes. It is, as set out above however, at a relatively early stage of the plan preparation process and leads me to attach only limited weight to its provisions. I note too, the resolution of the Council's Cabinet to continue to seek contributions towards affordable housing provision through continued implementation of DMP policy DM HO6. I have also considered the Council's evidence that affordable housing need within the Borough remains substantial and that small sites make a significant contribution to housing supply and their continued approach to seeking affordable housing contributions.
36. The approach set out within the WMS, which is reiterated in the Planning Practice Guidance (PPG), provides clarification on national policy and is to be read alongside the Framework. The development plan, which is comprised of the CS and the DMP, has statutory status under Section 38(6) of the Town and Country Planning Act 1990 but the WMS is a material consideration of more recent date. It is therefore a significant and more recent expression of Government policy on affordable housing contributions from small sites than the development plan, and is a material consideration in the determination of this appeal to which I give significant weight.
37. Although the appellant has submitted a signed and dated UU that makes provision for a financial contribution towards affordable housing, it nonetheless remains a point of dispute as to whether the proposed development should make a contribution towards the provision of affordable housing in the area. However, in light of the above I conclude that a contribution towards affordable housing is not required. As such, the signed and dated UU submitted by the appellant to secure such a contribution is not necessary to make the proposal acceptable in planning terms. Whilst the proposal would be in conflict with the development plan in this respect, it would not be so with national policy expressed in the WMS and the Guidance.

Other Matters

38. Objectors have raised a number of further concerns including the effect of the proposed development on light, outlook and views from other nearby properties, including but not restricted to, from the rear of 107 Church Road and 4 Royston Road. However, I note that these matters did not form part of the Council's putative reasons for refusal and I have not been provided with

compelling evidence to persuade me to reach a different conclusion. As a consequence they have not been determinative in this instance.

Conclusion

39. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR