



Appeal Decisions

Hearing Held on 4 September 2019

Site visit made on 4 and 5 September 2019

by J Wilson BA Hons BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 4th November 2019

Appeal A Ref: APP/Z5630/W/18/3218944

Norbiton Hall, Birkenhead Avenue, Kingston Upon Thames KT2 6RR

- 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 Park City Ltd against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 18/12523/FUL, dated 15 June 2018, was refused by notice dated 21 September 2018.
 - The development proposed is the conversion of existing roof void within Blocks A, B and C to provide 18 no. residential dwellings, comprising 12 no. one bedroom units and 6 no. two bedroom units, together with individual rear dormer windows and inset roof terraces, associated cycle parking and landscaping.
-

Appeal B Ref: APP/Z5630/W/18/3218946

Norbiton Hall, Birkenhead Avenue, Kingston Upon Thames KT2 6RR

- 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 Park City Ltd against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 18/12522/FUL, dated 15 June 2018, was refused by notice dated 21 September 2018.
 - The development proposed is the conversion of existing roof void within Blocks A, B and C to provide 18 no. residential dwellings, comprising 12 no. one bedroom units and 6 no. two bedroom units, together with front and rear dormer windows and inset roof terraces, associated cycle parking and landscaping.
-

Decisions

1. Both Appeal A and Appeal B are dismissed.

Preliminary Matters

2. An updated revised National Planning Policy Framework (the Framework) was published on 19 February 2019. In addition, the 2018 Housing Delivery Test Results were published on the same date. The main parties were given the opportunity to comment on these documents and in reaching my decision I have had regard to them, where relevant.
3. At the hearing the status of plans with the suffix revision B was sought. These plans were not referred to in the decision notice however the Council confirmed that they had been considered by the Council and their absence from the decision notice was in error. This is a matter to which I will return.

4. Both appeal schemes are for 12 flats, the principal differences between the schemes are the extent and number of openings. Appeal A includes alterations to incorporate rear dormers and inset roof terraces and Appeal B includes front and rear dormers together with roof terraces. Both schemes would incorporate staircase extensions, enlarging the roof above each of the main stairwells.

Applications for Costs

5. Applications for costs were made by Park City Ltd at the hearing in respect of both Appeals A and B. These applications are the subject of separate Decisions.

Background and Main Issues

6. The Council cannot at this time demonstrate a five-year housing land supply and this matter is not in dispute between the parties. Accordingly, paragraph 11 d of the Framework is engaged. Therefore, I must consider whether the policies that protect assets of particular importance provide reasons for refusing the development; or whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when taken against the policies in the Framework when read as a whole.
7. An agreed Statement of Common Ground (SOCG) was submitted shortly before the hearing which confirmed agreement on factual and policy matters. It also confirmed that the parties had reached agreement that the provision of onsite affordable housing would not be appropriate. Nevertheless, there remained disagreement on all five issues to which the reasons for refusal relate including the level of contribution which would be appropriate towards affordable housing provision. In the light of these factors the main issues are the effect of the development on:
 - the character and appearance of the area and on the non-designated heritage asset;
 - the living conditions of the future occupants in respect of the standard of accommodation;
 - the provision and mix of 3 bed units of accommodation in the area;
 - the extent of the contribution to offsite provision of affordable housing; and
 - parking and highway safety.

Reasons

Character and appearance

8. Evidence indicates that the history of the Norbiton Hall site can be traced back to the early 1300's when it formed part of a large historic estate. The current buildings date from the early 1930s and were built specifically for affordable residential accommodation. The three buildings, two horseshoe shaped and the third a curved block hugging the frontage from London Road round into Birkenhead Avenue, were described in the original sales particulars as innovative in their design and facilities, reflecting a refined architectural style and which make an impact on the street scene. They were reported to have been inspired by prestigious buildings of the time and were, at the time of their construction, said to stand out against a typical low-rise historic townscape.

9. The present context differs considerably with modern buildings located close to the site. Immediately adjacent on London Road is a taller office block at Clarendon House. Even in this context the appeal buildings are prominent in the street scene with relatively uniform architectural detailing and simple unbroken roof slopes, save for more formal architectural detailing above the staircases particularly to the London Road frontage. The Council included Norbiton Hall in their local list as buildings of townscape merit for their group value and for the unique contribution that they make to the townscape. As such they are a non-designated heritage asset. I saw that the buildings are prominent from outside the site and from longer range views including when approaching from Norbiton Railway station along Coombe Road.
10. The development would involve the construction of additional flats within the roof space of the existing mansion blocks. A series of dormer windows and rooflights as well as the insertion of inverted dormers cut into the roof space to provide external amenity space for the units would be created. Access in each scheme would be by way of upwards extension of the existing stairwells.
11. Both proposals would make significant change the existing simple original and unaltered roof form, where the only dominant features are regularly spaced chimneys. Whilst the elevations of the buildings are not visible in their entirety, they are important in the street scape. The alterations would introduce numerous features for which there are no identifiable local reference points and would create a cluttered appearance to the roof scape. In this context, I do not subscribe to the appellants view that the alterations would result in negligible physical impact to only one part of the building, nor would the alterations effectively match the existing detail of the buildings.
12. Whilst some unsympathetic window replacement has taken place in parts of the Norbiton Hall complex these changes do not lessen the overall prominence of the buildings in the street scene, much of which can be attributed to the architectural rhythm of the buildings. Similarly, the fact that the buildings are located in an area which has been the subject of a great deal of alteration does not devalue the contribution which the Norbiton Hall buildings make to the townscape and the local area; indeed, the buildings were listed as of townscape merit within their existing rather than their historic context.
13. The addition of extensive alteration and additions to the roof by way of staircase extensions, dormer windows, inverted terraces and rooflights would compromise the simple appearance of the buildings and would represent wholesale, competing and conflicting elements on the roof which would be inconsistent with the architectural simplicity of the building. Such alterations would harm the significance of the buildings which are of townscape merit and which are a non-designated heritage asset.
14. Consequently, the proposal would conflict with: Policies DM 10, DM 11 and DM 12 of the Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy (2012) (CS); to Policy 7.4 of the London Plan¹ and to the aims of the Framework. These policies together seek to ensure that essential elements which contribute to the character and local distinctiveness of a street should be respected maintained or enhanced, that heritage assets should be preserved or enhanced and that good design should be achieved.

¹ Full title – The London Plan – The Spatial Development Strategy for London Consolidated with Alterations since 2011 (2016) (the London Plan)

Living conditions

15. Policy 3.5 of the London Plan seeks to ensure that new developments provide adequate internal space for future occupants which are functional and fit for purpose and compliant with the standards set out in the Mayor of London's Housing Supplementary Planning Guidance (the SPG), and in accordance with the national 'Technical housing standards – nationally described space standards' of 2015 (the THS).
16. The agents clarified to the Council that the one bedroomed units were to be considered as single person units and provided a schedule to this effect, plans were also updated with the annotation in the revision B layouts referred to in paragraph 3 above altering the nomenclature of the units from one bedroom two person units to one bedroom one person units; a change that the appellants argued corrected an earlier error. However, the alteration has a significant impact in that it would effectively adjust the minimum requirement when applying the THS. As the layouts clearly indicate double bedrooms and have floor areas of more than 11.5 m², I have, in accordance with the THS, at paragraph 10d, interpreted the units to be one bedroom two person units with a minimum requirement of 50m² floorspace. The consequence of this is that all 12 one bedroomed units are below the minimum size threshold.
17. The appellants asserted in their evidence that it is necessary to holistically evaluate the quality of the units rather than just quantitatively. Nonetheless at the hearing it was accepted by the appellants that the flats would not meet the minimum standards. They further argued that the space was the optimum that could be accommodated in the roof space representing a positive re-use of space and that the units had been designed to: work with the existing staircases; to respect the character of the building; to work with doors and windows logically located in the structure and to provide a beneficial use for an under-utilised part of the building whilst at the same time providing appropriate access and means of escape.
18. These intentions are noted but they do not diminish the deficiencies in accommodation when measured against the minimum THS particularly where bedroom and living areas would have compromised ceiling heights in a vast majority of the units. These deficiencies in the provision of internal space would not be mitigated by the creation of external amenity space as the THS standards relates to internal space. The hearing heard that accommodation should be measured against the whole standard and that it is inappropriate to divorce one element of the standard from another. It is clear to me that the technical standards and the SPG together seek to ensure that high quality accommodation is provided in all new dwellings and the scheme is deficient against those minimum standards.
19. Therefore, the development conflicts with Policies DM 10 and DM 13 of the CS; Policy 3.5 of the London Plan and to the aims of the Framework. These policies state that housing developments should be of the highest quality internally and externally in order to protect and enhance London's residential environment and to provide high standards of amenity for future occupiers.

Mix of family units

20. Policy DM 13 (b) of the 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 only single and two bedroomed units and would therefore conflict with Policy DM 13 of the CS.

21. Of the existing 192 flats at Norbiton Hall around 15% are 3 bed units with the remainder studio, one or two bedroomed units. At the hearing the appellants did not dispute the need in the locality for three bedroomed units nor did they take issue with the provision of larger units for sharers. The appellants argued that larger units, on what would be the fifth level (fourth floor) of the building, would be unsuitable accommodation for family units given there is no lift access. It was also argued that larger units would not be possible due to the arrangement of chimney stacks however the layout clearly shows that these are offset to the ridge and would not preclude the division of the upper floor space in alternative configurations. The appellants have also argued that local agents have found that 3-bed units had proved difficult to let to families due to the lack of a lift. That may be so, but the agent's letter does confirm that the only market available would be to sharers rather than families.
22. Mention was made to the fact that this is not a town centre site. However, Policy DM 13 does not distinguish the location of a site in relation to the quality and mix of provision other than to say that sites particularly suited to family housing should provide above 30% of dwellings as 3 bed or above.
23. The Council highlighted a recent appeal decision² which underpinned the need for 3 bedroomed units concluding that the Strategic Housing Market Assessment (SHMA) indicated that 70% of the dwellings required to meet the objectively assessed need (OAN) in the period to 2025 in the area is for units of 3 bedrooms or above and this would also include accommodation for sharers.
24. These factors do not individually or in combination provide compelling evidence to indicate that the scheme would be unviable or unsuitable if it were to include 3-bedroom units and I have no substantive evidence before me to demonstrate that the appellants have fully tested the provision of three bed units.
25. Consequently, the scheme would not accord with the aims of Policy DM 13 of the CS; the requirements of the Framework nor the need as identified in the SHMA. The policies seek to ensure that the housing quality and mix support sustainable communities and the SHMA indicates the nature and type of need required in this area.

Affordable housing

26. It is common ground that the Development Plan through Policy DM 15 would require the proposal to contribute towards the provision of affordable housing. Notwithstanding the wording of the policy it is also common ground between the parties that provision should be by way of a financial contribution towards off-site provision. It is the extent of the contribution which is in dispute.
27. In the statement of case the viability statement provided by the appellants argued that the scheme would be non-viable with a deficit of £197,756 and therefore unable to support any affordable housing contribution in addition to the £130,671 Community Infrastructure Levy which would be delivered by the scheme.

² APP/Z5630/W/19/3223667

28. Discussion at the hearing centred on the viability of the overall proposal and on rates of return. Of importance to the viability were allowances for Existing Use Value (EUV) which the Council argued should not be included, the appellants alternatively stating that a nominal storage value for the roof space of £100,000 would be appropriate. The Council drew attention to the Mayors Supplementary Planning Guidance on Homes for Londoners Affordable housing and Viability 2017 which together with the Planning Practice Guidance give context to this issue. Though no specific guidance is given on vacant roof spaces these documents make it clear that alternative use value (AUV) should be used for refurbishment or redevelopment. As this scheme would be neither the figures included in the assessment are to be treated with some caution. Moreover, the likelihood of the roof space generating a value of £100,000 attributable to the sale to existing residents for secure storage is, in my view, very low. Equally unlikely is the generation of assumed rent of £17k for letting the roof space as storage accommodation.
29. Nonetheless, at the hearing a new legal agreement was presented which included a contribution of £25,000 towards off site affordable housing provision payable prior to the first occupation of the development. In discussion the appellants advised that the £25k contribution would represent one half per cent of the profit margin of the scheme and would be achieved by taking a lower profit margin for the development.
30. In contrast the Councils' independent assessment estimated that the scheme could deliver almost four times the £25k contribution based on the figures supplied. The appellants argued that when all allowances had been incorporated including those relating to ground rent a profit level of 18.5% would be achieved and a surplus of £21K would be generated. This had been rounded to £25k. However, on the basis of the evidence and the numerous assumptions which have been made I am not persuaded that the figure advanced by the appellants stems from a robust approach such that the figure could be regarded as an appropriate contribution in the context of the development plan policy or by paragraph 62 of the Framework.
31. In this regard the proposal would conflict with Policy DM 15 of the CS and to the aims of the Framework. These together seek to ensure that the delivery of affordable housing is maximised and that where off-site contributions are warranted, they are at an appropriate level and robustly justified.

Parking and Highway safety

32. The proposal would not provide any additional car parking spaces though additional provision would be made for cycle storage. The appellants argue that the site is a sustainable location with good access to transport and to the town and with an excellent PTAL³ rating and additional parking is not therefore desirable.
33. A draft unilateral undertaking (UU) had been provided with the appeal which intended to ensure that occupiers of the flats would be unable to acquire parking provision on the site and would not be able to apply for local parking permits. In response to the Councils' evidence which indicated that this was unachievable, the restrictions through a UU were removed. Nonetheless the appellants also said that if the Council had been willing then agreement could

³ PTAL – public transport accessibility level

have been reached with the Council to use their alternative powers to achieve restrictions which would have been enforceable. That may be so, however as the application now stands those agreements are not in place and I have to make a decision on the basis of nil parking provision.

34. I visited the site in the early morning and early evening and whilst there were some on street parking spaces available on Birkenhead Avenue parking spaces on the site were full and manoeuvrability around the site was restricted by the extent of parked cars within the complex. So much so, that cars were forced to reverse out onto the highway. I recognise that additional cycle storage provision would be made and that this would be a benefit however it would not overcome the lack of provision of parking spaces to serve the new development. Additional units on the site would, in my view, lead to additional pressure for parking provision in an already congested area or would displace existing occupiers on-street thereby increasing the risk to highway and pedestrian safety and nil parking provision would as a result be unacceptable.
35. Consequently, the development would conflict with Policies DM 9 and DM 10 of the CS and Policy 6.13 of the London Plan and to the Sustainable Transport SPD which together seek to ensure that adequate parking provision is made for new developments in the interests of highway and pedestrian safety.
36. In reaching this conclusion I have had regard to the experience outlined by local representors who attested to the limitations of the existing provision and the fact that parking restrictions within the site are rarely enforced. However, I saw on my visit that almost all the vehicles parked within the confines of the site displayed parking permits for this area and these comments do not alter my findings in relation to the need for an element of parking provision to be made.

Planning Balance

37. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I must also take into account the provisions of paragraph 11d of the Framework given the current five-year housing land supply position in the Borough.
38. I note the sustainable location of the appeal site and the contribution the proposal would make towards boosting the supply of housing in the area which would be a clear benefit. Economic benefit would be derived from the construction phase of the proposal and modest benefit from the proposed affordable housing contribution. However, I have concluded that the extent of the contribution proposed is not fully justified and therefore not 'appropriate'⁴ in respect of either appeal. Whilst these benefits are of importance, they would be relatively modest in their extent.
39. The Council in their reason for refusal highlight that the harm to character would not be outweighed by any public benefit. However, the Framework test of public benefit refers to designated heritage assets under paragraph 196 of the Framework rather than non-designated heritage assets as detailed in

⁴ Appropriate in terms of paragraph 62 of the Framework

paragraph 197 and as such the public benefit test is incorrectly referred to and I have not applied it here.

40. Nonetheless, the Framework does make it clear that a balanced judgement is required when considering the impact of development on non-designated heritage assets. Equally wider benefits must be balanced against any harm in order to determine if they would constitute material considerations which would indicate a decision other than in accordance with the development plan. In both these appeals, the combination of: harm to the character of buildings of townscape merit which are included in a local list; the extent of the deficiency of the size of the units when measured against the THS; the harm caused by the lack of 3 bedroomed units to meet local needs identified in the SHMA; the lack of an appropriate financial contribution in respect of offsite affordable housing provision and increased pressure on street parking which would present additional risk to highway safety, would, when taken together, significantly and demonstrably outweigh the benefits of the scheme. As such, on the evidence before me there is insufficient justification to warrant a decision other than in accordance with the development plan and consequently both appeals fail.
41. In reaching my conclusion I have had regard to the fact that there is no issue in principle with the creation of additional units on the site rather the manner in which they are proposed to be achieved.

Other Matters

42. Reference was made in evidence to the emerging new London Plan, whilst this plan is progressing the conclusion of this process is still some months away and limited weight can be afforded to it.
43. I note that the appeal scheme is a resubmission and may have been reduced in scale from a previous submission. However, that in itself does not make the appeal scheme acceptable and I have reached my decision in relation to each of the appeals on the basis of their own merits.
44. The appellants argue that the proposals seek to make the best use of a highly efficient and sustainable brownfield site. However, this site is in active residential use accommodating 192 existing units of accommodation and the proposal involves the creation of additional units over and above that number. Whilst the use of the space may be regarded as optimum by the appellants if the scheme did not proceed the building would remain in active use.
45. Mention is also made of the encouragement given in consultation documents for upward extensions reflecting the lack of available land for development in London. Reference is also made to paragraph 118 of the Framework regarding upward extension where such would be consistent with the height of neighbouring properties and the overall street scene. That paragraph also goes on to refer to compliance with local design policies and standards which I have found not to be the case here. As such this does not alter my findings.
46. My attention has been drawn to a number of other appeals⁵ which discussed amongst other things developer profit levels. I do not have full details of these appeals and I cannot be sure that the schemes are comparable to these appeal proposals and as such I afford them little weight.

⁵ Appeal refs App/A5840/S/15/3121484, APP/P5870/W/16/1359137 and APP/N3020/S/16/3154302

47. Representations were made to the hearing from residents and owners of tenanted flats in the Norbiton Hall complex. Several expressed concern that existing residents contribute to a significant fund which is required to replace the existing roof and that these funds would effectively be contributing to the cost of the development. Such refurbishment costs from the existing residents to the roof were reported to be significantly higher than the costs of roof works as set out in the viability report. Whilst I understand that this is a cause of frustration to existing residents who also advised the hearing that they had recently been required to fund the upgrading of the existing stairwells to meet modern safety regulations these are not matters which have influenced my decision in relation to the main issues.
48. Similarly, representations were made to the hearing about residents' concerns relating to the potential displacement of existing water tanks within the roof space and the implications for the provision of water supplies to the existing flats including hot water which is provided by a central boiler system. Additionally, the capacity of the existing drainage and sewage system was said to regularly cause problems for residents. These points are noted however they are not planning matters which affect the outcome of either appeal.
49. I note that the appellants assert that they have made repeated efforts to present a solution for an underutilised part of the building and that the Council did not have any objection in principle to the use of the building for residential purposes. Whilst the appellants may have been frustrated by not being able to agree a suitable scheme given that there was no objection in principle from the Council the way this is achieved and the effect it would have on the building are material considerations. In any event, the approach of the Council to the pre-application discussions are not a matter for me in relation to these appeals which I have determined on their individual merits. Such pre-application discussions are carried out on a without prejudice basis and do not outweigh the harms which I have identified in relation to the main issues.
50. The Council took issue at the hearing with the UU arguing that the signatories were deficient and that it had not been executed properly. As the appeal is failing for the reasons outlined it is not necessary for me to comment further on this matter.

Conclusion

51. For the reasons given above both Appeal A and Appeal B are dismissed.

Janet Wilson

INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Huw James	ECE Planning
Mark Sanderson	Heritage Advisory
Rony Braimbridge	Landmark Architecture 6
Nick Bignall	Turner Morum

FOR THE LOCAL PLANNING AUTHORITY

Harsha Bundia	Planning Officer
Barry Lomax	Kingston Urban Planning

INTERESTED PERSONS

Sarah Filleul	Resident
Martin Dow	Owner of Flat in Norbiton Hall
David Bartholomew	Resident
Paul Clark	Leaseholder Norbiton Hall

Documents submitted at the hearing

From the Appellants

Document 1 – Scheme 1 Unilateral Undertaking Appeal A
Document 2 – Scheme 2 Unilateral Undertaking Appeal B

From the Council

Document 3 – Appeal decision dated 28/08/19 APP/Z5630/W/19/3223667