



Appeal Decision

Site visit made on 29 September 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/Z5630/W/20/3250554

Flats 114-116 Surbiton Court Mews, St Andrews Square, Surbiton KT6 4EE

- 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 Mr and Mrs M Tamsitt against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 19/01259/FUL, dated 10 May 2019, was refused by notice dated 9 March 2020.
 - The development proposed is the addition of 5 No new self-contained flats and modification of existing flats following the demolition of 2 No garages and single storey studio (formerly garage).
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Decision

1. The appeal is allowed and planning permission is granted for the addition of 5 No new self-contained flats and modification of existing flats following the demolition of 2 No garages and single storey studio (formerly garage) at Flats 114-116 Surbiton Court Mews, St Andrews Square, Surbiton KT6 4EE, in accordance with the terms of the application, Ref 19/01259/FUL, dated 10 May 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. The refusal reasons cited the lack of a completed legal agreement to preclude future occupants of the proposed development from obtaining car parking permits within the surrounding controlled parking zone. A completed S.106 was provided during the course of the appeal with an obligation that restricts the obtaining of parking permits. The Council has raised no objection to its contents and therefore, I consider this matter has been addressed.
3. A further refusal reason referred to the insufficient provision of cycle parking spaces for the proposed development. However, the Council now accepts that this concern could be overcome by a condition. Consequently, I consider that this matter has also been addressed.

Main Issues

4. The main issues relating to the appeal are:
 - (i) the effect of the proposed development on the living conditions, of occupiers of Nos 20, 22 and 24 The Mall and Surbiton Court, with particular reference to privacy.

- (ii) the effect of the proposed parking arrangement on the safety of vehicular and pedestrian traffic on the surrounding road network, and
- (iii) whether or not the proposed development incorporates a mix of unit sizes to meet the identified housing needs of the Borough.

Reasons

Living Conditions

5. The appeal site comprises a two-storey flat roof building containing three flats, located within the grounds of a large apartment complex known as Surbiton Court. The rear of the appeal building faces the private gardens of properties fronting The Mall. The proposed development would extend the building and include a new third storey, while the number of flats would increase from three to eight.
6. The new first floor rear bedroom window would directly face the garden of No 22 The Mall (No 22), while also obliquely orientated towards the adjoining property gardens of Nos 20 and 24 The Mall (No 20 and No 24). There is an existing first floor window facing the garden area and windows of Nos 20-24 that is closer than the proposed first floor bedroom window, as that part of the building is located closer to the boundary with those neighbouring properties.
7. The Council and third parties have expressed concern that the proposed rear windows do not meet Supplementary Planning Document guidelines on separation distances. However, the shortfall in this instance would be very marginal, while the deep gardens of Nos 20, 22 and 24 along with the existing and proposed boundary landscaping would filter views from the new first floor window ensuring no unacceptable loss of privacy to those occupiers. A further first floor window is proposed on the rear elevation, yet, this would be obscure glazed. Overlooking from proposed ground floor windows can be overcome by the provision of boundary fencing.
8. The proposed second floor front balcony would be located a short distance away from first and second floor windows of flats within Surbiton Mews. The proximity of the balcony would allow future occupiers of the proposed Flat 8 to unacceptably overlook those neighbouring windows and therefore harm the privacy of occupiers. Yet this impact could be overcome by the installation of privacy screens at either end of the balcony, which would considerably diminish the views towards Surbiton Court to ensure the privacy of neighbouring occupiers would be unharmed.
9. A third party has indicated that there is a condition on a previous planning consent at the site which limits the provision of new windows in the north elevation facing The Mall. Nevertheless, no details of that earlier consent or the specific terms of the condition referred to have been presented, and therefore I am unable to pursue this matter further.
10. Reference has been made to a breach of an existing condition at the appeal building relating to the use of the roof of the garage. This would be a matter for the Council to investigate separately under their enforcement powers.
11. Consequently, in light of the above, the proposed development would have an acceptable effect upon the living conditions of occupiers of Nos 20, 22 and 24 The Mall and Surbiton Court in respect of privacy. There would be no conflict

with Policies CS8 and DM10 of the Royal Borough of Kingston Upon Thames Core Strategy – Local Development Framework, adopted April 2012 (the LDF). These require, amongst other things, that development proposals relate well to their surroundings and have regard to the amenities of neighbours including privacy. The proposal would also comply with Policy 7.6 of the London Plan, 2016, where it requires proposals to not cause unacceptable harm in relation to privacy.

Highway Safety

12. Vehicular access into the grounds of Surbiton Court and the appeal site is derived off Portsmouth Road to the west and St. Andrew Square to the east. I noted during my site visit signage within the grounds of Surbiton Court, directing from which public road the specific flats should access their parking spaces from. The signage also indicated that the complex's internal roads were private and for residents use only.
13. A one-way system, utilising the appellant's right of way, is proposed to access the parking spaces at the site by entering from St Andrews Square and leaving via Portsmouth Road. The three proposed parking spaces to the north west of the appeal building would be sited parallel to the access road and are acceptable in size. A vehicle tracking drawing shows that these can be accessed without any complication through a reversing manoeuvre into the space, while leaving the space in a forward gear in the direction of Portsmouth Road. The access road adjacent to the proposed parking spaces is narrow, however, its alignment and width would allow for sufficient room to carry out the parking manoeuvre, without any complication.
14. Although the Council and interested parties have questioned the feasibility of accessing the proposed parking spaces to the north west of the appeal building, the gated entrance is wide enough to allow cars to enter and pass through from the direction of St Andrews Square. Moreover, the appellant has a pedestrian and vehicular right of way to use this access. A condition which requires details of parking management and a one-way system to access the proposed spaces, could be imposed in order to regulate in-and-out movements.
15. There are local concerns that vehicles accessing the proposed spaces could pose a highway safety risk to others using the access road. But, due to the alignment of the road and proximity to buildings and grass verges, it is likely that vehicles entering and leaving the appeal site would do so at low speeds and with caution, such that there would be a mutual awareness of other road users. Consequently, there would not be any harmful conflict.
16. Furthermore, the number of pedestrian and cycle movements along the internal roads are likely to be low as it forms part of a private development where only a small number of movements by residents would be expected throughout the day. The Council and third parties have referred to the internal roads of the complex being used by walkers and cyclists as a more direct route to local shops and services. However, the signage at the entrances to Surbiton Court indicate that access is limited to residents only. Moreover, during my mid-morning site visit, whilst only a snapshot in time, I did not observe any pedestrians or cyclists travelling along the internal access road adjacent to the proposed parking spaces.

17. There is already a parking space and a garage in use to the north west of the appeal building. There is no evidence before me that shows that manoeuvres carried out by vehicles using these existing parking spaces have resulted in any conflict with pedestrian and vehicular traffic or caused any highway safety concerns along the access road.
18. The appeal site's inaccessibility to service and delivery vehicles has been raised. I note the narrow-gated entrance that leads into Surbiton Court from St Andrews Square and the restricted width of the roads within the complex could limit the movements of larger delivery and service vehicles. Although there are apparent limitations, I do not find this a significantly harmful aspect of the scheme and consider that alternative arrangements could be made by future residents prior to goods being delivered and likewise for service vehicles. Furthermore, the Council's technical highways advisers raised no impact in relation to this issue.
19. In concluding on this matter, the proposed parking arrangement would have an acceptable effect on the safety of vehicular and pedestrian traffic on the surrounding road network. It would accord with Policies CS7, DM9 and DM10 of the LDF, where they require proposals not to compromise highway safety and to ensure road safety through traffic management measures.

Housing Mix

20. Policy DM13 of the LDF states that in order to ensure housing is of high quality and the most appropriate type, the Council will expect proposals for new residential development to, amongst other things, incorporate a mix of unit sizes and types and provide a minimum of 30% of dwellings as 3 or more bedroom units.
21. Whilst there has been some reconfiguration of the existing building to create one of the 3-bed flats, the scheme essentially results in an uplift of 5 new units, and when expressed as a percentage of the additional dwellings being provided the two proposed 3-bed units would represent a provision of 40% which exceeds the minimum 30% required by Policy DM13. Moreover, there are currently no 3-bed units at the appeal site, therefore this new provision of family sized units represents a positive aspect of the scheme.
22. In their appeal statement the Council refers to the proposal as eight entirely new dwellings, and on that basis, they considered that the provision of the two 3-bed units was below the 30% required by Policy DM13, and therefore contrary to that policy. Yet, it is clear that there are currently 3 existing dwellings. Moreover, without being directed towards any specific definition or guidance on what constitutes a new dwelling, or whether remodelling existing dwellings forms part of new housing supply, I have assessed the proposal on the basis that there would be 5 new dwellings. Therefore, the proposal meets the minimum requirement for 3-bed dwellings.
23. The evidence referred to by the Council¹ indicates that one-bedroom housing units represent just 6% of the total housing requirement for the Borough, while the requirement for 3-bed dwellings amounts to 43% as a proportion of the housing need. It is acknowledged that the proposed development would provide more 1-bed units, nevertheless, no compelling evidence has been

¹ Strategic Housing Market Assessment for Kingston Upon Thames and North East Surrey Authorities, June 2016

presented that indicates that the 1-bed units proposed would exceed the Borough's housing need within the timeframe outlined in the housing assessment.

24. The proposed development, therefore, incorporates a mix of unit sizes to meet the identified housing needs of the Borough. It complies with Policy DM13 of the LDF, the requirements of which have been referred to above.
25. Although not specifically referenced in the refusal reasons, the Council's appeal statement refers to Policy DM14 of the LDF, Policy 3.8 of the London Plan 2016 and Policy H10 of the Intend to Publish London Plan 2019. The proposed development would comply with these, in so far as they require new housing to consist of a range of types and sizes, while also ensuring no loss of housing, in particular family accommodation.

Other Matters

26. The Council accepts that it cannot demonstrate a five-year supply of deliverable housing sites, but, they have not provided any specific details on the extent of the current shortfall. Nevertheless, I have determined that the proposed development accords with the development plan, and the policies referred to above are consistent with the National Planning Policy Framework (the Framework). Additionally, the proposal would increase the Council's housing supply through a range of dwelling types and be located in an accessible location that would support local shops, services and transport infrastructure. It would therefore be consistent with the Framework's economic and social objectives (paragraph 8) in achieving sustainable development.
27. The appeal site lies adjacent but not within the St. Andrews Square Conservation Area (SASCA), which derives its special character from the Victorian housing built in the Gothic and Italiante styles. This is typified by the adjacent street frontage which terminates at No 15 St Andrews Square, a short distance from the appeal site. The appeal proposal would be set back from that frontage and be screened by existing mature trees so that it would not be immediately apparent when viewed from St. Andrews Square. Consequently, the proposed development would not harm the setting of the adjacent SASCA.
28. Construction of the proposed development would cause some disruption, but this would be temporary and could be mitigated. As this could be addressed by the imposition of an appropriate condition, I will return to this matter later.
29. The Council's refusal reasons have referred to the lack of cycle parking within the site, however, they have since accepted that this can be addressed by a planning condition. Furthermore, the submitted drawings and my assessment on site indicate that there would be sufficient area within the proposed amenity space for the parking and storage of cycles required for the proposed development.
30. There is concern that the additional occupiers of the proposed flats would place unacceptable pressure on the provision of existing local services and amenities within Surbiton. Yet there is no specific or detailed evidence indicating what this effect would be and therefore this matter has not been considered in any detail.
31. There are concerns in respect to the lack of proposed amenity space for future occupiers, high density and the impact on the living conditions of the end

property on St Andrews Square. No objection was raised in respect of these matters in the Council's Officer report or refusal notice and I have no reason to disagree on these matters.

Section 106 Agreement

32. The proposed number of parking spaces at the appeal site falls short of the Council's requirements, which, in their view, could lead to residents parking on the surrounding streets which are already subject to parking stress. The Council considers that a legal agreement preventing future occupants of the proposed development from obtaining on-street parking permits would overcome their concerns. At the time of the determination of the application such an agreement was not forthcoming. However, such a document is now presented as part of the appeal papers and the signed and dated agreement prevents future residents from obtaining a parking permit. Through preventing this the agreement renders the development acceptable in planning terms. It is also related to the site, and is proportionate, as it seeks to do no more than is necessary to achieve the above. On this basis, the agreement accords with the criteria of Regulation 122 of the CIL and with paragraph 56 of the Framework. I can therefore reasonably take it into account.

Conditions

33. The conditions put forward by the Council have been considered against the requirements of the National Planning Practice Guidance and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance. Agreement on the pre-commencement conditions and those not suggested by the Council has been sought from the appellant.
34. A time limit condition relating to the commencement of development has been attached, while a condition requiring that the development is completed in accordance with the approved plans and arboriculture report has been included for clarity.
35. A condition is imposed in relation to a construction method statement (CMS). This is considered necessary in the interest of highway safety and nearby living conditions. It would also require details of construction hours to be agreed to prevent working at anti-social hours. The appellant has proposed enhancement measures in terms of biodiversity in the interests of local habitat. Given that both of these conditions relate to works that are likely to start at the early stages of the development, agreement of the details are required prior to its commencement. I have not considered it necessary to include method statements on how the proposal would be built in the CMS as this information falls outside the scope of the permission.
36. A condition relating to external material finishes is necessary in the interests of the character and appearance of the appeal building and surrounding area. A condition requiring approval of the surfaces used for vehicle parking is required in the interests of surface water management at the site. To ensure energy and water efficiency a condition regarding water use and CO2 emissions is required. Cycle storage is conditioned to facilitate sustainable transport options. In order to ensure that bin storage and recycling facilities are adequate and appropriately sited it is necessary that details are approved prior to occupation.

A landscaping condition is required in the interests of character and appearance and to enhance neighbour privacy along the site boundary.

37. A condition requiring parking management details, to include directional details for vehicles accessing the site is necessary to prevent conflict between pedestrian and vehicular traffic. I note the concern regarding the implementation of directional signage outside of the appeal site, however, this could be located within its boundaries while still being visible to vehicles entering Surbiton Court.
38. Although not suggested by the Council, a condition requiring obscure glazed privacy screens at the balcony of Flat 8 is necessary to safeguard neighbouring occupiers from harmful overlooking.
39. Conditions have been imposed restricting the placing of windows in upper floors of the appeal building and the use of flat roof areas as balconies or roof gardens. These are considered necessary to ensure the privacy of nearby residential occupiers is protected.

Conclusion

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found that the appeal scheme would accord with an up-to date development plan.
41. For the reasons given above, and subject to the signed and dated S106 legal agreement and the conditions in the schedule below, the appeal should be allowed.

R. E. Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development shall be carried out in accordance with the following approved plans: PWP/702: 05(1) Rev D; 06(1) Rev G(2); 07(1) Rev F(2); 08 (1) Rev F; 09(1) Rev E; 10(1) Rev E, 12 Rev A and the Arboriculture Impact Assessment & Method Statement authored by Trevor Heaps (dated 28th January 2019).
3. No development shall take place until a scheme to enhance the nature conservation interest of the site has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development.
4. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - a. Proposals for loading/unloading materials, site storage, methods of waste disposal and construction hours;
 - b. Proposals for the management of construction traffic and vehicles including: routes in and out of site; deliveries/collections; directional signage; parking. The route to and away from site for muck away and vehicles with materials;
 - c. Whether it is anticipated that statutory undertaker connections will be required into the site;
 - d. Measures for the laying of dust, suppression of noise and abatement of other nuisance arising from development works;
 - e. Location of all ancillary site buildings;
 - f. Means of enclosure of the site; and
 - g. Wheel washing equipment.
5. Flat 8 hereby permitted shall not be occupied until privacy screens to a height of 1.7m above the finished floor level have been fitted with obscured glazing and installed on the north west and south east sides of the balcony relating to Flat 8. Details of the privacy screens and type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the privacy screens are installed. Once installed they shall be retained thereafter.
6. Prior to the commencement of any development above foundation level, a sample of the facing materials to be utilised in the development to which this permission relates shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details.
7. No part of the development shall be occupied until evidence showing that the development has achieved at least a 19% improvement in CO2 emissions versus Part L of the Building Regulations and internal water usage rates of no greater than 105L per person per day have been submitted to and approved in writing by the local planning authority.

8. No part of the development shall be occupied until details of landscaping and planting works have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in the first planting and seeding seasons following the occupation of the flats or the completion of development, whichever is sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
9. No part of the development shall be occupied until details of bin storage and recycling facilities have been submitted to and approved in writing by the local planning authority. The development shall be maintained in accordance with the approved details.
10. No part of the development shall be occupied until details showing the provision at the site of secure parking facilities for a minimum of 11 bicycles have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the bicycle parking facilities have been implemented in accordance with the approved scheme. These facilities shall thereafter be kept available for the parking of bicycles in association with the development at all times.
11. No part of the development shall be occupied until details of drainage and surfaces relating to the car parking areas shown on drawing no. 10(1) Rev E are submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and shall thereafter be kept available for the parking of vehicles at all times.
12. No part of the development shall be occupied until details of a car park management plan showing how the vehicle parking areas will be accessed and controlled, including details of any signage required to direct pedestrians and vehicles, are submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
13. The flat roof areas of the development to which this permission relates shall not be used as a roof garden, balcony, seating area or other similar amenity area, and shall not be accessed except for the purpose of maintenance or in the case of emergency.
14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no windows or other openings (other than those expressly authorised by this permission) shall be inserted at first floor level or above in the north-eastern or south-eastern elevations.

*****End of Schedule*****