



Appeal Decision

Site visit made on 02 June 2023

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st July 2023

Appeal Ref: APP/Z5630/W/22/3306014

36 Cox Lane, Chessington, Kingston Upon Thames, KT9 1DE

- 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 Ivan Khomych against the decision of Royal Borough of Kingston Upon Thames Council.
 - The application Ref 22/00910/FUL, dated 17 March 2022, was refused by notice dated 27 April 2022.
 - The development proposed is 'Erection of one-bedroom two storey dwellinghouse with associated landscaping (following demolition of existing detached garage'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development was amended following submission of the application; I have utilised the amended description, which better reflects the nature of the development proposed.
3. The site address given on the application form omitted the word 'Chessington', whereas the address given on the appeal form omitted the words 'Kingston Upon Thames'. The Council's decision notice repeated the words 'Kingston Upon Thames' twice. For the avoidance of doubt, I have included both of these words in the site description.
4. At the time of my visit works were underway to the host dwelling and the demolition of the garage building was already underway. It is not clear whether this relates to a separate permission.

Main Issues

5. The main issues are:
 - Whether the principle of residential development in this location is acceptable,
 - The effect of the proposal on the character and appearance of the site and surrounding area,
 - Whether the proposal would provide acceptable living conditions for future occupants of the development,
 - The effect of the proposal on the highway safety; and,

- The effect of the proposal on trees.

Reasons

Principle of development

6. The appeal scheme seeks to demolish the existing garage to the flank of the existing semi-detached dwelling and construct a new two-storey, one-bedroom dwelling in its place, thereby subdividing the existing plot. This would result in the gain of a single two-person dwelling towards local housing need.
7. The parties agree that the principle of housing development in this location is supported by the relevant housing policies of the Development Plan. In any case, the parties also acknowledge that there is an undersupply of deliverable housing land; the Council's February 2022 monitoring document states a 2.32 year's supply for the period between 01 April 2021 and 31 March 2026. This is a substantial unmet need. The relevant development plan policies for the supply of housing are to be regarded as out-of-date and the 'tilted balance'¹ in favour of sustainable development applies.
8. As such, the appeal scheme would comply with the relevant policies of the development plan, and in any case, the 'tilted balance' applies in favour of sustainable development. The issue therefore turns on whether the appeal proposal constitutes sustainable development in accordance with the 'tilted' planning balance.

Character and appearance

9. The appeal site comprises the land to the flank of a semi-detached dwelling within Cox Lane. The part of Cox Lane upon which the appeal site is situated is an 'off shoot' of the main Cox Lane in the form of a crescent which runs parallel with it, but which is visually separated from it by a variance in ground level and by an intervening wide verge and mature vegetation. The main Cox Lane has a mixed industrial, commercial and residential character, whereas the crescent element is predominantly residential and comprises of semi-detached dwellings of the same form, type and scale. The crescent element of Cox Lane is closer in character and form to the planned housing estate which it abuts and forms part of, or at least, is contemporaneous with.
10. The crescent element of Cox Lane and the rest of the housing estate appears uniform in building type, size and layout. The urban grain of the estate is looser than its surroundings, yet it appears ordered and regular within street scenes, despite there being variance in plot sizes to the rear of the properties due to the irregular course of the roads which they front. The surrounding area is not subject to any designations and is somewhat utilitarian in appearance, however, the sense of ordered spaciousness, regularity and uniform scale and architectural detailing of the dwellings creates a strong sense of place and positively contributes to the character of the area.
11. The appeal site would subdivide an existing plot and would interrupt the regularity of the street scene thereby failing to reflect the existing urban grain. Whilst the appeal proposal seeks to optimise the capacity of the site and make an efficient use of land by replacing an existing disused garage which is too small to be fit for purpose, the resulting dwelling and plot would be entirely

¹ National Planning Policy Framework (the Framework) paragraph 11 and FN8.

disproportionate to the surrounding built context. This would create an appreciably cramped appearance within a prominent part of the street scene, which would be exacerbated by the incongruous architectural style of the dwelling, its ground level, its contrived footprint shape and its uncomfortably close relationship with the adjacent dwelling which would overbear it.

12. The Appellant contends that since the proposed development would meet with the private internal and outside space standards in accordance with policy D6 of the London Plan (LP), adopted 2021, it therefore follows that the site and dwelling cannot be 'cramped'. However, these standards relate to the provision of a minimum standard living conditions apply London-wide, reflecting the Nationally Designated Space Standards (NDSS), and these requirements do not address local character.
13. As such, the appeal proposal conflicts with policy D3 of the LP and policies CS8 and DM10 of the Local Development Framework Core Strategy (CS), adopted 2012, and the National Planning Policy Framework. These policies seek, amongst other things, to optimise site capacities via a design-led approach so to protect and recognise local suburban character through high quality architectural and urban design which relates well to its surroundings, including; prevailing density, scale, street hierarchy, building types, proportions and so on.

Living Conditions

14. Policy D6 of the LP and policies DM10 and DM13 of the CS require development to be of a high-quality design which creates comfortable and functional living accommodation which is fit for purpose. The parties concur that the appeal proposal would meet the quantitative requirements of these policies.
15. The qualitative nature of the living conditions are also a relevant consideration. In particular, the Council cites the single-aspect nature of several of the rooms in the proposed dwelling and the levels of daylight and sunlight.
16. In respect of single-aspect, the Appellant argues that there is no requirement for dual-aspect rooms. Policy D6 of the LP does, however, note that single aspect dwellings are more difficult to ventilate naturally and should be avoided. It further requires that any single-aspect development must demonstrably provide adequate passive ventilation, privacy and daylight and that the orientation enhances amenity, including views.
17. The main living accommodation of the proposal would be situated on the first floor and would be open plan. It would have a front elevation window serving the kitchen area, glazed wall or doors serving the living/ dining space and a rooflight above. As such, there would be sufficient ventilation of this area.
18. The accompanying Daylight and Sunlight Report provides little detail and demonstrable expertise in the field of daylight and sunlight. It appears to demonstrate an adequate penetration of daylight to the main living area in plan form. However, the development would be closely surrounded by massive built form and the Report identifies that the development would be in shadow for large portions of the day during winter months. This would be exacerbated by the northern orientation of many of the windows. The seasonal variation is not addressed in the floor plans within the Report and it is reasonable to assume

that this overshadowing would affect the penetration of daylight during the autumn and winter months.

19. The bedroom and office space would be within a basement and it would be served only by angled rooflights in single aspect. This would create a challenge for adequate ventilation. The Report shows these rooms as having a relatively low level of light penetration (in what appears to be the best-case scenario), and it does not fully detail how this would look in the winter months.
20. Moreover, the outlook from the glazed rear elevation in the main living space would be greatly limited by the orientation of the rear elevation and the boundary angle of the outdoor space. The bedroom and office space below would have no outwards outlook and would provide only an upwards glimpse.
21. As such, the appeal proposal would provide poor quality living conditions for future occupants of the development in terms of daylight and sunlight and particularly in respect of outlook, contrary to policies DM10 and DM13 of the CS and D6 of the LP, as well as related guidance. These policies seek, amongst other things, development which provides high standards of design, having regard to the amenities of occupants including outlook and sunlight/ daylight.

Highway Safety

22. The appeal proposal would retain a single car parking space for the existing dwelling, and as such, the new dwelling would have no on-site car parking.
23. As the area has a low PTAL rating of 2, the LP maximum standards would allow for 0.75 cars per dwelling and thus the proposal is for car-free development. Ordinarily car free development must be secured by way of a legal agreement to prevent future occupiers of development from applying for on-street parking permits in Controlled Parking Zones (CPZ). No such legal agreement has been provided in this case.
24. However, whilst the Council maintains that the area is subject to some parking stress due to nearby commercial and industrial land uses, it has not imposed a CPZ. It therefore does not follow that the parking stress in the area is at a level which could pose a risk to highway safety now or following the addition extra on-street parking of a vehicle or vehicles to serve the proposed development. Any future arising risk would be addressed via a CPZ, however, I consider that a legal agreement or planning condition contingent on a possible CPZ in the future would not meet the relevant policy or legal requirements in these particular circumstances.
25. The potential for on-street parking would, however, not align with the aims of the relevant policies of modal shift towards sustainable modes of transport and there is potential for on-street parking above the maximum standards. This could not be adequately addressed by an enforceable planning condition which would meet the relevant legal and policy tests.
26. The appeal proposal would therefore be neutral in respect of policy CS7 of the CS and policy T6 of the LP. These policies seek to restrict car parking in line with existing and future public transport accessibility and connectivity in the interests of sustainable travel and highway safety.

Trees

27. A tree scheduled dated February 2022 was submitted in support of the scheme. This shows that two trees would be proximate to the development. T1, a pine tree in good condition, would be 14 metres away from the development area and is unlikely to be affected by the development.
28. T2, a pear tree, in fair good condition, would be within 5 metres of the development and would be likely affected by the development. This fruit tree is modest in size and prominence and makes little contribution to the character and appearance of the area. It is not subject to any Tree Preservation Orders. It would not be of any particular detriment to local character if this tree were not to be retained.
29. In any case, had the appeal been allowed I am satisfied that a condition requiring tree protection details would have sufficiently dealt with this issue. The appeal proposal would therefore comply with LP policy G7 and CS policy DM10 in this respect.

Conclusions and planning balance

30. The appeal scheme would conflict with the relevant policies of the development plan when taken as a whole.
31. There is a significant unmet housing need to which the appeal scheme would make a very small contribution towards this need whilst making efficient use of the land and maximising its output, which weighs in favour of the scheme whilst output.
32. However, the appeal scheme would be of a poor quality of design which would be detrimental to the character and appearance of the area. Moreover, the quality of living accommodation would fall short of the expected standard of living conditions, which erodes the weight to be given to the modest contribution the scheme would make to the unmet housing need, as any such accommodation must be of an adequate standard.
33. Therefore, on balance, the appeal scheme would not amount to sustainable development and the adverse impact of allowing the appeal would significantly and demonstrably outweigh the benefits of doing so, when taken against the Framework as a whole. The appeal is accordingly dismissed.

Kim Langford Tejrar

INSPECTOR