



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: 03 August 2023

Appeal Ref: APP/Z5630/W/22/3312203
286-288 Ewell Road, Surbiton KT6 7AQ

- 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 B Jaman against the decision of Royal Borough of Kingston Upon Thames Council.
 - The application Ref 22/02687/FUL, dated 17 August 2022, was refused by notice dated 13 October 2022.
 - The development proposed is 'Partial demolition of existing rear extension in Class E (restaurant) use and the erection of a single storey rear extension to form a 2 bed flat, retaining 40m² Class E floorspace, including the installation of a bin store on the front forecourt and cycle store to rear'
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the principle of residential development in this location is acceptable; specifically, in relation to the loss of employment space,
 - Whether the proposal would provide acceptable living conditions for future occupants of the development
 - The effect of the proposal on highway safety in relation to the provision of vehicle parking spaces; and,
 - Whether the proposal makes adequate provision for refuse and recycling storage.

Reasons

Principle of development

3. The existing ground floor use of the building is as a restaurant, although the property does not appear to be occupied. The appeal scheme seeks to demolish a rear ground floor extension which currently accommodates the commercial kitchen for the site and construct a single storey rear extension to create a residential flat.
4. The proposal is that the existing restaurant seating / bar area to be retained in commercial use and the planning unit thus subdivided from front and rear. The

- existing rear access would also serve the upper floors of the building which have a separate planning permission for conversion into residential flats.
5. The parties agree that the principle of housing development in Surbiton town centre 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 'titled balance'¹ in favour of sustainable development applies.
 6. Although part of the commercial unit would be retained, the loss of the commercial kitchen would neutralise the use of the unit as a restaurant of its current scale and type; which could affect the future viability of the remaining commercial unit and thus result in the total loss of commercial space currently provided by the existing site. The Council cites Policy DM17 in its reasons for refusal, which seeks to protect all employment land and premises in various locations, including Surbiton. The policy aims to do this by retaining existing supply in employment use and only releasing that which is surplus to requirements or otherwise has been subject to a marketing exercise to demonstrate that land is no longer required or viable in employment use.
 7. There has been no marketing of the proposed whole space for commercial uses, nor the subdivided space in support of the appeal scheme. During my visit, I noted that the space is in a poor state of repair (particularly the commercial kitchen which the scheme proposes to demolish). Whether this is a result of deliberate neglect or lack of investment, this calls into question the viability of the site as a restaurant.
 8. The Appellant argues that the policies seeking to protect employment land are out of date because they were adopted prior to the September 2010 amendments to Town and Country Planning (Use Classes) Order 1987 (UCO). These amendments revoked the previous use classes A- D and created a new, broader, 'commercial, business and service' class E. Since the policies do not specifically refer to particular use classes and the aim of the policies to retain employment land is clear, I do not consider these policies are out of date simply by virtue of the amendments to the UCO.
 9. However, the policy does not define 'employment land' by any particular use class or other means, nor is this defined in the CS glossary or the Glossary of the Framework. Other similar policies in the CS and the London Plan (LP), adopted 2021, seek to protect locally orientated office provision and to preserve existing viable office floor space capacity whilst releasing surplus to other uses including residential use. Whilst restaurants (depending on their type) would previously have fallen into different use classes than offices, now all fall within the new Class E. It does not automatically follow that a restaurant is now to be considered as 'employment land'. There is no evidence before me to suggest that restaurants are or were counted towards the employment land supply to be protected within the meaning and aims of the policies. Nor has any evidence been submitted to establish the current need or supply to support the Council's application of the policy.

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

10. Although it must be acknowledged that a future change of use from restaurant to office use may be permitted development², I have assessed the scheme based on the proposal as it is before me.
11. For these reasons, I find that the principle of residential development in this location is acceptable according to the relevant housing policies (which may be considered out of date) and in any case, policy DM17 does not appear to apply to the appeal scheme in the context of the Development Plan as a whole and the specific evidence before me.

Living conditions

12. The residential accommodation for the proposed unit would be primarily contained within a ground floor rear extension. The parties acknowledge that it would meet the required minimum space standards.
13. The existing rear yard is narrow and deep and is bound on either side by high boundary walls. The layout and scale of the proposed unit would reflect this, resulting in predominantly single aspect rooms with limited outlook across the narrow remaining amenity space towards a high boundary. Whilst rooflights would contribute towards the levels of daylight and sunlight in the unit, they would not adequately overcome the lack of cross ventilation nor outlook.
14. Moreover, whilst the outdoor space would meet the necessary quantum, it would be a narrow and cramped area surrounded by overbearing built form and thus would provide low quality amenity space.
15. The proposal would therefore conflict with policy D3 of the LP and policies CS8, CS9 and DM10 of the CS, as well as the Framework. These policies seek, amongst other things high-quality design which creates comfortable and functional living accommodation which is fit for purpose.

Highway safety

16. The appeal site is in a local high-street, with a PTAL rating of 3. It is reasonably well located for sustainable modes of travel, and it is thus proposed that the development be car-free. The appeal is supported by a unilateral undertaking (UU) which would prevent future occupiers from obtaining parking permits for on-street parking. This would avoid any undue congestion or parking pressure.
17. The scheme would therefore accord with policy 4 of the LP and policies DM9 and DM10 of the CS. These policies seek, among other things, to encourage sustainable modes of travel and restrict car parking in line with accessibility and connectivity.

Refuse and recycling

18. The refuse and recycling facilities for the approved conversion scheme would no longer be provided to the rear of the property were the appeal scheme to go ahead; as the appeal scheme would occupy this space. As such, the appeal scheme proposes to provide refuse and recycling space for all the residential units, including the proposed new unit, to the front of the property. This would require a bin store directly abutting the pavement on the high street. This bin store would be accessible to all units and sufficient in scale to enclose the bins securely.

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

19. However, it would require a substantial structure to accommodate 6 bin bays. Whilst the structure would be constructed in slatted timber and have a 'green roof', it would nonetheless appear incongruous and intrusive in its position forward of the existing high street building line and it would further exacerbate the overall cramped nature of the development.
20. The scheme would therefore conflict with policies CS8, CS9 and DM10 of the CS, and policies D3 and T5 of the LP. These seek, among other things, high quality design which has regard to the public realm and which makes sufficient provision for waste and recycling.

Conclusions and planning balance

21. The appeal scheme would conflict with the relevant policies of the development plan when taken as a whole. There is a significant unmet housing need to which the appeal scheme would make a modest contribution, which weighs in favour of the scheme.
22. However, 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.
23. The scheme would also either have an adverse impact on the character and appearance of the area or otherwise fail to make sufficient provision for waste and recycling.
24. 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