
Appeal Decision

Site visit made on 15 August 2023

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 1 September 2023

Appeal Ref: APP/Z5630/W/22/3307209

141 London Road, Kingston Upon Thames KT2 6NH

- 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 Silverspoon Acquisitions Ltd against the decision of Royal Borough of Kingston upon Thames.
 - The application Ref 21/03726/FUL, dated 22 November 2021, was refused by notice dated 21 March 2022.
 - The development proposed is the demolition of the existing building to allow for redevelopment of the site to provide a commercial space (Class E) to the front part of the ground floor with residential units (Class C3) behind and above, total 5no 1 x 3Bed, 1 x 2Bed, 2 x 1bed and 1x studio all with private amenity space and cycle storage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site currently comprises a Class E shop unit along with a 1-bed ground floor flat, a 2-bed flat to the first floor and a studio flat to the second floor. The Council has questioned the lawful use of the residential flats.
3. For the avoidance of doubt, I have considered the appeal on the basis of the information before me. Any future application or action relating to the current residential use would be unaffected by my determination of this appeal.

Main Issues

4. The main issues are the effects of the proposed development upon:
 - (a) the significance of the Grade II Listed Vine House and the character and appearance of the area;
 - (b) employment provision in the Borough;
 - (c) the living conditions of future and neighbouring occupants in respect of outlook, daylight and noise;
 - (d) highway safety; and,
 - (e) flood risk.

Reasons

Heritage/ Character and Appearance

5. The appeal property directly adjoins No 143 London Road, which is a Grade II listed building which, built in the early 18th Century, originally was a house, which was later converted to a business use. It is a 5-bay 2-storey brick building which is flanked by lower 2-bay, 2-storey brick wings with tiled roofs and timber glazing bar sash windows.
6. As noted in the listing description and based on the photographic evidence, Vine House has been subject to much change, including from a house with a substantial frontage and ornate boundary walls and railings, to commercial shopfronts as part of the high street around the 1930s. The current frontage has later been reconstructed to reflect the original ground floor fenestration arrangements. To the rear are large modern extensions with uPVC windows and crown roofs.
7. Vine House has significance in terms of its architectural interest as a fine classical early 18th Century house, with its form, fabric and architectural features. It also derives historic significance from that period as well as through its change into a business premises as the town centre expanded.
8. The appeal property is attached to the western flank wing of No 143 and is 2-storey with a modern shopfront to the ground floor and replacement glazing bar sash windows to the first floor. It has a raised parapet with tiled pitched roof behind. The remainder of the building is made up of separate rear wings, which includes a 3-storey rear set back with a tiled roof. The building has been altered and extended with windows block up, and the addition of a rear fire escape as well as the modern storage areas to the rear. It has long been used as a retail premises, including a former post office.
9. The existing shopfront to No 141 is overtly modern and has poor quality detailing, and the side elevation is visible with its alterations and additions. However, when viewed in the street scene, the appeal property and No 143 read together. No 141 is experienced as a further flanked extension which is sympathetic in its form and character to the listed building. This relationship is important and positively contributes to the setting of Vine House.
10. The development would demolish the appeal building and would replace it with a 1-3 storey building. To London Road, the development would be 2-storey in height with a flat roof behind a raised parapet. The development would be built in London stock brick to match the existing and incorporate a shopfront to the ground floor elevation and uPVC windows with flat arched headers above.
11. A third storey would be set back around 1.8m from the front elevation. The existing tall element would be replaced with a similar hipped roof building in slate. A date stone depicting 'The Old Post Office' would also be incorporated. The same window/header treatment would be followed in the rest of the proposed development. The remainder of the development would then step down into 2 storey and single storey elements. Courtyard areas would be created using the existing boundary wall at ground floor level and glazed screens to the upper floors.
12. While some effort has been taken to replicate the existing built form, particularly to the frontage, I consider that the proposals would constitute a

poor facsimile for what is there. The proposed use of uPVC windows would be incongruous to the listed building which has traditional timber sash windows and the proportions of the window headers would be visually jarring. The shopfront is annotated as being traditionally designed but has only very basic detailing.

13. The development would also be overly bulky in appearance and would have a dominating effect. In particular, the step back from the frontage of the third floor would also be marginal and its bulk would visually compete with the roofscape of the listed building.
14. The bulky appearance would also be experienced when viewing the side elevation, in spite of efforts to reduce its massing with the different scale blocks. The glazed screens to the upper floors of the terraces would be overtly modern and also draw the eye to the general bulk.
15. Some of the detailing could be controlled by condition, however there are a number of key elements which would be poorly executed and may go beyond the scope of what would be reasonable to condition. The overall proposal would not represent a design which would preserve the significance of the listed building, as derived from its setting. For the same reasons, there would also be related harm to the character and appearance of the area.
16. Much of the case made by the appellant relates to the poor-quality alterations to Vine House. While the development would screen this in part, the presence of existing harm should not justify further harm to this listed building by virtue of development within its setting. The legal test is to pay special regard to preserving the building or its setting or any features of special architectural or historic interest which it possesses.¹
17. Overall, the development would cause harm to the adjacent Grade II listed building and to the character and appearance of the area. The proposals would conflict with London Plan 2021 (LP) Policies D3 and HC1 which seek to preserve or enhance heritage assets and control cumulative impacts from incremental change. The development would also conflict with Policies CS8, DM10 and DM12 of the Kingston Core Strategy 2012 (CS) which, taken together, seek to respect special interest through consideration of form, scale, layout, and detailed design.
18. In accordance with paragraph 202 of the Framework, the harm is quantified as less than substantial. I will assess the other main issues before coming to my overall heritage and planning balance against the public benefits as required.

Employment Provision

19. The current class E shop unit is around 71 square metres (sqm) in size. To the rear of the site is a covered yard and storage area for the shop which is around 73sqm. The existing unit is occupied by a business who use the floor space and the storage area.
20. The site is located in a Locally Significant Industrial Site (LSIS) which is an area-based designation in the CS. LP Policy E4 seeks to maintain land in such areas to meet current and future demands for industrial and related functions. Policy E7 reflects similar, requiring the retention and enhancement of industrial

¹ As set out in s66(1) of The Planning (Listed Building and Conservation Areas) Act 1990

capacity. CS Policy DM17 also seeks to protect all employment land, including within a LSIS.

21. A retail unit of around 72sqm would be incorporated to the ground floor unit at the site, presenting to the roadside frontage. This would broadly reflect the current extant retail offer. However, the proposals would not incorporate any storage for the retail unit and there would be a loss of around 73sqm.
22. The development plan policies do not prohibit the loss of employment land, but it must be justified. No detailed evidence was provided by the appellant in respect of the use of the site and demands in the area as part of the LSIS designation or as part of a review of employment land in general.
23. The appellant considers the LSIS designation be out of date given the prevalence of residential accommodation in the area. They have provided examples of other consents being granted in the vicinity. Limited information is before me in respect of those examples, however they all appear to date from some time ago. The LSIS designation is still in place through the development plan but even if this designation were found to be out of date, the proposed development would not meet the policy test in any case in terms of the general loss of part of the commercial space.
24. As previously identified, the site has been in a longstanding retail use, based on the submitted historic photographs. The retail function would continue to compliment the wider LSIS, but the loss of around half of the floorspace afforded by the storage is not justified. Accordingly, the development would conflict with the LP and CS policies E4, E7 and DM17.

Living Conditions

Outlook, daylight and sunlight

25. The site is bounded by a tall brick wall which separates the appeal property from the neighbouring commercial premises, to the west of the site. To the rear there is a sports centre building associated with the Tiffin School. To the east the site is bounded by the rear extensions to 143 London Road.
26. Outdoor amenity space would be created serving the flats through the development of courtyard/terraced areas. To the ground floor these would be bounded by the existing boundary wall and to the upper floors these would have obscure glazed screening which would be around 180mm in height and 1100mm in height for the studio flat.
27. The submitted daylight report demonstrates that internal daylight levels to the ground floor flat (flat 1) would meet the relevant standards.
28. However, I consider that the outlook would be particularly poor from flat 1. Bedrooms 2 & 3 would have glazed patio doors which would look out onto a linear courtyard of 9.3sqm with the tall boundary wall around only 1500mm away which would give a significantly constrained outlook. The patio doors serving bedroom 1 would look out onto a 17sqm courtyard garden but again the enclosure afforded by the boundary walls and the rear sports centre building would again give rise to a confined and hemmed in effect.
29. Flat two would occupy the front portion of the first floor. This would be served by a terraced area of around 10sqm which would be adjacent to a void area at

no 143. Bedroom two would look out onto this internal courtyard area. Again, the outlook from this habitable room would be curbed.

30. I accept that this is a busy town centre location and the built-up nature of it is to be expected. But even so, the site-specific circumstances here would, in my view, give rise to poor outlook and a harmful standard of residential amenity for future occupants.
31. The development would therefore conflict with LP Policy D6 and CS Policy DM10 which seek to secure appropriate quality of development and have regard to amenities of occupants and neighbours including in terms of outlook.

Noise

32. Adjacent to the site is a commercial garage premises, which is currently occupied by Kwik Fit. This business has advertised opening hours of 0830-1800 Monday-Friday, 0830-1700 Saturday and 1000-1600 on Sunday. I saw at my site visit that the business was well used and there were a number of comings and goings, as well as vehicles being worked on and parked in the outdoor forecourt. Although only a snap-shot in time, at my visit the noise from these premises was audible from the appeal site.
33. Paragraph 187 of the Framework deals with the effective integration of new development and existing businesses, so that unreasonable restrictions are not placed on an existing use arising from a new development. The 'agent of change' principle applies where there is the potential for a significant adverse effect.
34. Planning practice guidance² (PPG) states that there is a need to clearly identify the effects of existing businesses that may cause a nuisance and the likelihood that they could have a significant adverse effect on new residents/users. It advises that the agent of change will need to take into account not only the current activities that may cause a nuisance, but also those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made. The agent of change will also need to define clearly the mitigation being proposed to address any potential significant adverse effects that are identified.
35. LP Policy D12 and E7 reflects the agent of change principles. CS policy DM10 also includes a need to have regard to the amenities of occupants and neighbours, including in terms of noise and disturbance.
36. There is no noise survey before me. It is therefore impossible for me to assess whether the noise (and other related issues) from the neighbouring site is likely to be a concern. This would be in terms of whether there would be a significant adverse effect and if so, whether that could be adequately mitigated. I accept that the site is located in a busy town centre environment but conversely that might increase sensitivity. I simply have no evidence before me on this issue to allow for an informed judgement.
37. While the appellant states that the Kwik Fit opening hours are limited, I have no information as to whether the planning use at the site is limited to those hours or whether this is just something that the current occupiers have chosen to do. I also note that there is self-contained residential accommodation above

² Reference ID 30-009-20190722

the Kwik Fit premises, but this appears to have been approved in 1992. The agent of change is a tool brought in under the most recent iterations of the Framework because of conflicts between extant and new developments arising in the past. Again, there is no evidence before me to allow me to understand whether this permitted use has given rise to any noise complaints or not. The presence of this accommodation would not justify the current appeal proposals in this regard.

38. Again, the appellant argues that the LSIS is out of date. However, the agent of change principles would apply here regardless of this designation. In light of the adjacent use and without any evidence to the contrary I am not able to be satisfied that the future occupants would not be exposed to significant levels of noise, nor that permitting such a use could compromise the extant use at the neighbouring site and I must apply a precautionary approach. The lack of consideration of agent of change principles in itself gives rise to policy conflict in respect of LP Policies D12 and E7, CS Policy DM10 and paragraph 187 of the Framework.

Highway Safety

39. The appeal site is located in an area which has excellent access to public transport with a PTAL rating of 6a. The locality is also well serviced by shops and other services and facilities. The site is located within a controlled parking zone (CPZ) and accordingly, no onsite car parking provision would be made as the development is proposed to be car free.
40. There is no dispute that such a restriction is necessary however, to deliver a car-free development a mechanism is required to ensure that anyone living there, other than a Blue Badge holder, would not be eligible to apply for a residents parking permit.
41. The appellant considers that it would be appropriate to restrict this through the imposition of a planning condition. The appellants suggested wording of such a condition begins with:
- "Occupiers of the residential development hereby approved shall not be entitled to a Residents Parking Permit or Visitors Parking Permit to allow the parking of a motor car within the Controlled Parking Zone (CPZ)....."*³
42. However, such a condition would not be enforceable as it seeks to restrict access to occupants from applying for a permit. This cannot be directly controlled through planning legislation because it does not relate to the use of the land.
43. Typically, car-free housing developments are restricted through the submission of a planning obligation, however none is before me. While I accept that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition,⁴ Planning Practice Guidance⁵ (PPG) is clear that the use of a negatively worded condition should only be used in exceptional circumstances. Accordingly, while it is possible to

³ As quoted from page 11 of the appellant's Statement of Case

⁴ As set out in paragraph 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 55 of the Framework.

⁵ Reference ID 21a-010-20190723

impose a negatively worded condition to secure an obligation there are no exceptional circumstances before me to justify the imposition.

44. Without an obligation, the development would be likely to give rise to significant highways effects through increased parking stress and inconvenience to the wider neighbourhood from additional demand should the development occur. The proposals would also conflict with Policy T6 and T6.1 of the LP and CS Policies DM9 and DM10, together which require car free developments in PTAL 6a areas and ensure that highway safety is not adversely affected.

Flood Risk

45. Before me are two documents generated by the Environment Agency (EA) with regard to the flood risk status of the appeal property. The EA flood risk maps submitted by the appellant⁶ states that the selected location is in Flood Zone 1, whereas the EA map submitted by the Council⁷ states that the selected location is in Flood Zone 2. In the latter areas, a flood risk assessment (FRA) would be required. None was submitted as part of the application.
46. Having reviewed the maps, both show a small part of land to the front of the existing building to be in Flood Zone 2, a matter which the appellant acknowledges. The difference appears in the two documents appears to be related to the inputted co-ordinates with a slight variation in the easting figure.
47. I can understand the position of both parties based on the evidence they obtained from the EA. However, given that it is agreed that a very small part of the site is in Flood Zone 2, ideally a FRA would have been submitted, as part of good planning practice. However, the submitted Design and Access Statement does reference the sources of flooding and identifies flood resilience measures which could have been secured by condition.
48. Effectively this outlines measures which any FRA would have done. Based upon these measures, which could be secured by condition, I find that the development would effectively address and manage flood risk at the site for the protection of future users. There would be no conflict with LP Policy S12 and CS Policy DM4 which seek to limit flood risk.

Heritage and Planning Balance

49. I have found harm to setting of a listed building and the character and appearance of the area as well as in respect of employment provision, living conditions (both in terms of outlook and noise) and in respect of highway safety. I have found no harm in respect of flood risk.
50. Public benefits put forward by the appellant relate to the provision of residential accommodation in an area of need. However, taken together, the above heritage harm, along with the other harms I have identified provide a clear reason for refusing the development proposed, in accordance with paragraph 11 of the Framework.

⁶ Appendix 1 to the appellant's Statement of Case

⁷ Appendix 14 to the Council's Statement of Case

Conclusion

51. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

C Searson

INSPECTOR