



Appeal Decision

Site visit made on 15 August 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal Ref: APP/Z5630/W/23/3315614

311 Malden Road, New Malden, Kingston Upon Thames KT3 6AH

- 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 Ervin Bejko (Albel Investment Ltd) against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 22/03106/FUL, dated 29 September 2022, was refused by notice dated 8 December 2022.
 - The development proposed is described as 'the creation of a new two storey 4 bed house within the rear garden of 311 Malden Road and Holmsley Close'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above I have used the description of the proposed development as it appeared on the application form. The appeal site is addressed as 311 Malden Road, but the proposed access would be to Holmsley Close.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area,
 - whether satisfactory living conditions would be provided for future occupiers of the proposed dwelling, having particular regard to privacy, and
 - the effect of the proposal on living conditions for occupiers of neighbouring dwellings, having particular regard to its effect on outlook from 311 Malden Road and 1 Holmsley Close.

Reasons

Character and Appearance

4. The appeal site is in a largely residential area characterised by semi-detached dwellings of typical suburban appearance. These are laid out in a regular pattern, behind modest front gardens and driveways. Lateral separation between each pair of dwellings is relatively limited, but they have larger gardens to the rear. Cat-slide roofs are a distinctive feature, often incorporating a dormer window or first floor extension.

5. Corner plots, including the appeal site, are generally set perpendicular to one frontage, with their rear gardens adjoining the adjacent street. This layout opens up views into the garden land to the rear, which in turn introduces a sense of space into the street scene, counter-balancing the otherwise continuously built-up frontages.
6. The proposed dwelling would have a comparable footprint to the surrounding dwellings and would incorporate typical local materials and design features such as the distinctive cat-slide roof. However, it would be a detached dwelling, occupying much of the rear portion of the existing corner plot. Although the site area would be comparable to some neighbouring plots, the site layout and orientation of the dwelling would differ. Due to the limited depth of the site, there would be particularly minimal space along the rear, southern boundary and much of the private amenity space, including the parking area, would of necessity be located to either side of the dwelling.
7. Due to the lack of space around the dwelling, the development would look cramped, particularly to the rear. This would not be characteristic of the established street scene or typical treatment of corner plots. The proposal would erode any meaningful sense of space at the street corner. Therefore, the cramped appearance of the development would be detrimental to the suburban character of the surrounding area.
8. For the above reasons, I conclude that the proposal would have a harmful effect on the character and appearance of the area. It would conflict with relevant requirements of Policies CS8 and DM10 of the Council's Core Strategy¹ 2012 and Policy D3 of the London Plan 2021. These policies, amongst other things, protect the primarily suburban character of the Borough, including the contribution made by existing private gardens, and require that elements which contribute to character and local distinctiveness, including plot widths, format and spaces between buildings, should be respected, maintained or enhanced.

Living Conditions for Future Occupiers

9. According to the plans, the proposed dwelling would be sited just under 15 metres from the rear elevation of the donor dwelling. As such, the proposed separation distance is significantly below the 21 metres which the Council's statement says is normally sought between facing windows of habitable rooms.
10. During my site visit, I noted that there is now only a single first floor window in the rear elevation of the donor dwelling, not two windows as shown on the application drawings. However, the remaining first floor window is a good sized opening, which provides a clear outlook from an upstairs bedroom/workroom. This remaining window would overlook a large proportion of the proposed garden, including the patio area which is indicated next to the main living/dining area. The substantial patio doors would enable views into the main living/dining area of the proposed dwelling.
11. While it is not unusual for first floor windows to overlook neighbouring gardens in a suburban area, the effect on privacy is typically mitigated by maintaining a greater separation distance than is proposed in this case and/or arranging dwellings side by side, to minimise close-range views into adjacent rooms. In this case, due to the non-typical layout and orientation of the proposed

¹ Royal Borough of Kingston Upon Thames Core Strategy adopted April 2012

development, a high proportion of the proposed garden and ground floor accommodation would be overlooked at close quarters. The affected areas would be particularly sensitive to loss of privacy, since they include the main living space and the adjacent patio.

12. Although the first floor window also overlooks the neighbouring garden to the south, it does not provide the same close-quarter view into neighbouring living space or such a comprehensive view over the garden.
13. For the above reasons, I conclude that the proposal would not provide satisfactory living conditions for future occupiers of the proposed dwelling, having particular regard to privacy. It would therefore conflict with relevant aspects of Policies DM10 and DM13 of the Core Strategy and Policy D6 of the London Plan. These policies, amongst other things, require that new dwellings accord with good design standards and have regard to the amenities of future occupants, including in terms of privacy.

Living Conditions of Neighbouring Occupiers

14. Given the limited separation distance noted above, the proposed dwelling would be conspicuous in the outlook from the donor dwelling. However, the outlook from the rear of 311 Malden Road already encompasses several surrounding dwellings, albeit at a somewhat greater distance. The proposed dwelling would be separated from the donor dwelling by the two intervening garden areas and the evidence does not indicate any unacceptable loss of daylight or sunlight. In these circumstances, while the proposed dwelling would be clearly visible, it would not feel unreasonably enclosing or overbearing. Therefore, its effect on the outlook from the rear of the donor dwelling would not unacceptably harm living conditions for the occupiers.
15. The proposed dwelling would also be conspicuous in the outlook from 1 Holmsley Close. Two side-facing dormer window openings on this adjacent dwelling face directly into the appeal site. They appear to be clear glazed without visible blinds or privacy screens, unlike some of the equivalent side-facing windows on similar properties nearby. However, the main outlook from 1 Holmsley Close is to the front and rear, so the effect on outlook for the occupiers would be restricted to a limited proportion of the internal accommodation.
16. The proposed lateral separation is similar to that between other properties on Holmsley Close, many of which have side-facing windows in a similar relationship. The proposed elevation facing 1 Holmsley Close would be broken up into three main elements, including the cat slide roof which would reduce the overall bulk at the front of the dwelling and the tile hung gable which would be relatively limited in width. Taking all these factors into consideration, I find that the proposed dwelling would not be harmfully overbearing or intrusive in the outlook from this adjoining dwelling.
17. For the above reasons, I conclude that the proposal would not be unacceptably harmful to living conditions for occupiers of neighbouring dwellings, having particular regard to its effect on outlook from 311 Malden Road and 1 Holmsley Close. As such, this aspect of the proposal would not conflict with relevant requirements of Core Strategy Policies CS8 and DM10 or London Plan Policy D3. Amongst other things, these policies require that new dwellings avoid harm

to the amenities of neighbouring occupiers, including with regard to loss of outlook and avoidance of visual intrusion.

18. The third reason for refusal also refers to Policy DM12 of the Core Strategy, which relates to development in Conservation Areas and affecting heritage assets. Since the proposed site is not within a Conservation Area or otherwise subject to heritage constraints, I have given this policy very limited weight.

Other Matters

19. My attention has been drawn to a one bedroom dwelling for which planning permission has been granted nearby in Holmsley Close. I saw that this part-completed development is a modest single storey bungalow with a very low, hipped roof. It does not have a comparable scale to the proposed four bedroom, two storey dwelling and its relationship with surrounding gardens is also different. As such, there are material differences between this proposed development and the appeal proposal, which I have considered on its own merits.
20. I acknowledge that the proposed development was modified following a pre-application enquiry, in an effort to address the Council's concerns. However, the parties disagree as to the effectiveness of those modifications or whether all the relevant issues were raised prior to submission of the application. In any case, any advice offered by the Council prior to submission of the application is advisory in nature and not binding on the Council's consideration of the application, taking account of all matters raised at that stage, including by interested parties.
21. The Council's Officer Report confirms that the Council lacked a five year supply of housing land at the time of determining the application and I have been provided with no updated evidence to the contrary.
22. This shortfall in housing land supply means that the development plan policies which are most important for determining the application are deemed to be out of date². However, the relevant development plan policies remain substantially consistent with the National Planning Policy Framework (the Framework) when read as a whole, particularly in terms of its focus on the desirability of maintaining an area's prevailing character and setting, including residential gardens (paragraph 124) and providing a high standard of amenity for future users (paragraph 130). On that basis, I attribute significant weight to the harm I have identified to the character and appearance of the area and living conditions for future occupiers, as well as to the consequent conflict with the development plan.
23. The proposal would make more efficient use of a small site and could be delivered quickly. However, the Framework's support for more efficient use of land and delivery of housing on small sites is not at the expense of ensuring that all development is well designed.
24. The site is relatively well located to take advantage of local services and facilities nearby, including railway stations within a feasible walking distance. However, since the proposed development is for a single dwelling, its contribution to the shortfall in housing land supply would be inherently limited, as would any associated contribution to the local economy. Taking all these

² NPPF paragraph 11(d), footnote 8.

factors into consideration, I have given the proposed provision of a single dwelling in this location modest weight.

25. Absence of heritage designations or tree preservation orders and compliance with relevant standards for internal space, parking and refuse disposal are neutral factors, as is the site's location within Flood Zone 1, indicating low risk of fluvial flooding.
26. Given the above, the benefits associated with the proposed development are very modest in scale and consequently carry modest weight. Set against those benefits are the harm I have identified to the character and appearance of the area and the living conditions of future occupiers, and the associated conflict with the development plan, to which I have given significant weight. I therefore conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As a result, the proposal does not benefit from the presumption in favour of sustainable development, as articulated in paragraph 11 of the Framework.
27. I have noted that occupiers of neighbouring properties raised additional concerns, including other aspects of the effect on living conditions, and that this included occupiers of properties not specifically identified in the Council's reasons for refusal. However, since I am dismissing the appeal for the reasons set out above, there is no need for me to address these further matters in detail at this stage.

Conclusion

28. For the reasons given above, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR