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## Appeal Decisions

Site visit made on 30 October 2023

**by Les Greenwood MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 November 2023**

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### **Appeal A Ref: APP/Z5630/W/23/3320974**

#### **The Cottage, 14 Lime Grove, New Malden, Kingston upon Thames KT3 3TW**

- 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 P Khakharia against the decision of the Council of the Royal Borough of Kingston upon Thames.
  - The application Ref 23/00527/FUL, dated 26 February 2023, was refused by notice dated 24 April 2023.
  - The development proposed is demolition of existing house and rear outbuildings and erection of a new front building and new rear building housing a mix of 1 replacement and 7 new dwellings with associated parking, bins and cycle provision.
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### **Appeal B Ref: APP/Z5630/W/23/3325612**

#### **The Cottage, 14 Lime Grove, New Malden, Kingston upon Thames KT3 3TW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr P Khakharia against the decision of the Council of the Royal Borough of Kingston upon Thames.
  - The application Ref 23/01272/OUT, dated 8 May 2023, was refused by notice dated 6 July 2023.
  - The development proposed is demolition of existing house and rear outbuildings and erection of a new front building and new rear building housing a mix of 1 replacement and 6 new dwellings with associated parking, bins and cycle provision (landscaping reserved).
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## **Decisions**

1. The appeals are dismissed.

## **Preliminary matter**

2. Both appeal proposals include the demolition of the existing house and its replacement with a 3-storey block of 6 flats at the front of the site (3 x 3 bedroom and 3 x 1 bedroom). Appeal A proposes a 2-storey block of 2 studio flats at the back of the site, while Appeal B proposes a single 2-bedroom house at the back, with 1 of the 2 storeys below ground level. Whilst Appeal A relates to a full planning application, Appeal B relates to an outline planning application, with only landscaping reserved for later determination. Matters of access, appearance, layout and scale are all submitted as details for consideration as part of Appeal B.

## **Main Issues**

3. The main issues applying to both appeals are:
  - i) The effects of the proposals on the character and appearance of this part of Lime Grove.
  - ii) The living conditions of future occupiers of the development, in terms of outdoor garden/amenity space.
  - iii) The living conditions of occupiers of the nearby flats at Kavanaugh Court and of the development itself, with particular regard to privacy; and
  - iv) The safety of highway users.
4. In addition, the following main issue applies to Appeal A only:
  - v) The safety from fire of future occupiers of the development.

## **Reasons**

### *Character and appearance*

5. Lime Grove is a mainly residential street containing a mix of building types, with a 3-storey block of flats and a single storey primary school to either side of the appeal site. The long plots have in places been developed with deep plan buildings or with a separate building to the rear. The proposed replacement of the existing 2 storey house with a deeper plan 3 storey block of flats would fit reasonably well within this context. The use of a mansard roof for the top floor of the main block would help to minimise the bulk and massing of the building. The proposed design contains enough detailing and modulation to help the block-like form of the frontage building blend comfortably into the varied street scene.
6. The Council's concern is about the proposals at the back of the site. Both versions of the backland structure would, however, be modest in scale with simple contemporary detailing appropriate to their position. They would only be glimpsed in views from the street. Although Lime Grove was originally developed with rows of frontage buildings, the historic character has evolved to encompass development in depth. The appeal site is large enough to accommodate either of these buildings without appearing cramped or overdeveloped. The communal green space in the middle of the site would maintain a satisfactory level of spaciousness.
7. I conclude that neither of the proposals would harm the character or appearance of this part of Lime Grove. They accord in this respect with policy D3 of The London Plan (TLP) of 2021, policies CS8 and DM10 of the Council's Core Strategy (CS) of 2012, Policy Guidance 24 of the *Residential Design Supplementary Planning Document (SPD)* of 2013 and Paragraph 130 of the National Planning Policy Framework (the Framework), which require high standards of design that respond to local distinctiveness.

### *Living conditions – outdoor amenity space*

8. Framework paragraph 130 also confirms that one element of good design is to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for users. Footnotes in this section of the Framework refer to the use of the National Design Guide (NDG)

and the document *Building for a Healthy Life* (BHL). H2 of the NDG advises that shared external spaces should be high quality, convenient and function well. BHL encourages the provision of private outdoor amenity space such as semi-private garden spaces for ground floor flats and balconies and terraces for those above ground floor level.

9. In line with this Government policy and guidance, CS policy DM10(h) requires the provision of adequate private and/or communal external amenity space. SPD Policy Guidance 13 sets a minimum of 10 sqm of private external space per flat, plus 1 sqm per additional occupant. This is a higher standard than is set out in TLP policy D6, but that policy does allow for this approach.
10. The proposals do not include any significant private balcony or outdoor terrace space for the 4 upper floor frontage flats, including 2 x 3-bedroom family sized flats. While some private external space for each flat is highly preferable, I accept that this could be adequately compensated for by the provision of sufficient, good quality, conveniently accessible communal space. The proposals do include a good-sized communal garden space in the middle of the site, well in excess of the standard set out in SPD Policy Guidance 14, and this could be landscaped to a good standard.
11. The key for both of these appeals, therefore, is whether the proposed communal space would also be conveniently accessible. To reach the garden space, occupiers of the upper floor flats in the frontage building would have to use the internal stairs, exit the front door, walk around the front of the building and negotiate the long, narrow side passage. I have little doubt that this would be inconvenient for many, especially those with mobility difficulties or with responsibility for small children and would discourage use of the garden space. In these circumstances, the proposed communal space would not be conveniently accessible and would not adequately compensate for the lack of significant private external space for the flats.
12. The appellant has submitted 4 examples of flats developments where similar access arrangements have been approved, either by the Council or at appeal<sup>1</sup>. All of these were approved before the July 2021 version of the Framework<sup>2</sup> was published, with its reference to the NDG. The 2 applications approved by the Council had their main accesses to the side, so that occupiers would not have to negotiate such a long or public route to get to the communal garden space. The 2 appeal decisions related to layouts that were much more similar to the current appeal proposals. I do not, however, know the full circumstances of those cases. Whilst I recognise the desirability of deciding like proposals in a like manner, I consider these new proposals in light of their own circumstances and current policy, including reference to the Framework's evolving emphasis on good design.
13. I also note the appellant's arguments that introducing balconies would be out of character for the area and that introducing a more direct link to the communal garden would reduce the amount of accommodation. I do not, however, have any such proposals in front of me and cannot prejudge them. I consider these appeal schemes on their own merits.

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<sup>1</sup> APP/Z5630/W/19/3241782 (1 April 2020) and APP/Z5630/W/20/3260562 (28 May 2021).

<sup>2</sup> Now replaced without relevant changes by the September 2023 Framework.

14. I conclude that the proposals would not provide adequate living conditions for future occupiers, in terms of the provision of conveniently accessible outdoor garden/amenity space. They therefore conflict with the above-mentioned policies and guidance.

*Living conditions – privacy etc*

15. Only the application in Appeal A was refused for this reason, but relevant points have also been raised by objectors in respect of Appeal B. I therefore consider this issue in relation to both appeals.
16. The buildings proposed to the rear would have small areas of glazing facing towards the rear windows of the flats at Kavanaugh Court next door and the new frontage flats. The only larger windows, in Appeal A, would be set back into the rear building, farther from neighbours. Overall, the proposed glazing is sufficiently minimal and well enough separated from neighbouring flats, both existing and proposed, that the impact on privacy would not be significant.
17. Turning to the other issues raised by objectors, the location of the proposals would reasonably minimise any loss of daylight or direct sunlight to neighbouring properties. Any noise from the occupiers of the new flats should be within the normal range for a residential neighbourhood. The inevitable disturbances from construction would be short term and could be addressed through planning condition(s) if permission were to be granted.
18. I conclude that the proposals would not materially affect the living conditions of neighbouring residents or the future occupiers of the development, in terms of impacts on privacy, outlook, sunlight/daylight, noise and disturbance. The proposals accord in this respect with TLP policy D3, CS policy DM10 and policy Guidance 16 of the SPD, which aim to ensure that development has regard to the amenities of occupants and neighbours.

*Highway safety*

19. Although only the application in Appeal B was refused due to concerns about this issue, much the same considerations apply to both proposals. I therefore consider this issue in relation to both appeals.
20. I saw at my site visit that there is a strong demand for on-street parking on Lime Grove, which leaves room for a single lane of traffic only. Just down from the appeal site a narrowing has been installed as a traffic calming device on the approach to the primary school. Traffic speeds therefore appear to be low. No 14 has a single on-site parking space to the front. This would be doubled to 2 spaces in the proposals, with the new perpendicular space also accessed direct from the street.
21. The provision of only 2 spaces generally accords with the maximum parking standard of 1.5 spaces per house set out in policy T6 of TLP, but it is also important that sufficient spaces are provided to avoid prejudice to highway safety.
22. The Council agrees that the 2 spaces would be sufficient in this highly accessible location, if the appellant enters into a planning obligation to restrict the issuing of on-street car parking permits to future residents. Late in the appeal process the appellant submitted a pair of completed Unilateral

Undertakings, 1 for each appeal, to deal with this requirement. Due to my other conclusions on these appeals, I have not asked the Council for comments on these Undertakings, but it does appear that they would deal with this particular matter so that the amount of parking proposed would be satisfactory.

23. The Council's main concern is about the proposed new access including removal of a pavement bollard. It considers that this would result in unacceptable harm to pedestrian safety, because the bollards have been put in place to ensure pedestrian safety in proximity to the neighbouring primary school. Perpendicular accesses like this are, however, common near to schools and the Council has not put forward any specific reasoning to justify the need for this particular bollard. On street parking is allowed on this side of the street, helping to separate pedestrians from the main flow of traffic. The new access could be provided with adequate visibility so that drivers and pedestrians should be able to see each other and avoid collisions.
24. I conclude that, subject to confirmation of the acceptability and enforceability of the Unilateral Undertakings (which I have not sought, as outlined above), the proposals would not prejudice highway safety. They would accord in this respect with TLP policy T4, CS policy DM8 and the Framework, which aim to ensure that developments do not compromise highway safety and that safe and suitable access is provided.

*Fire safety (Appeal A only)*

25. The Council's concern on this issue is that the submitted Fire Strategy for Appeal A is insufficient in its content, specifically with regards to means of evacuation and the access and suitability for firefighting equipment. The Council's report for the Appeal B application, however, confirms that a revised Fire Strategy submitted with that application adequately deals with these matters. The schemes are very similar in relation to this issue so this matter could now be dealt with by an appropriate planning condition.
26. I conclude that, subject to an appropriate planning condition regarding implementation of an approved Fire Strategy, the proposal in Appeal A would not prejudice the safety of future occupiers of the development from potential fires, in accordance with the safety objectives of TLP policy D12.

*Other matters*

27. I have considered all other matters raised, including in the comments of local residents. A family house would be lost but would be replaced in part by 3-bedroom flats that could also be suitable for families if satisfactory outdoor amenity space was provided. Landscaping, including fencing and replacement tree planting, could be secured through planning condition(s). Some minor overlooking of the school grounds is not unacceptable. Finally, any private land disputes are outside the scope of this decision.

*Planning balance and conclusions*

28. The Council accepts that it cannot demonstrate a five-year supply of deliverable housing sites as required by the Framework. The evidence before me shows a substantial shortfall in supply. This brings into effect the

presumption in favour of sustainable development set out in paragraph 11 of the Framework. The local development plan policies most relevant to determining the application are therefore considered to be out-of-date.

Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

29. These proposals for a net increase of 6 or 7 dwellings would bring noteworthy benefits in line with Framework and development plan policies. They would boost local housing supply and make efficient use of a sustainably located small site near to services, facilities and public transport links. I give these matters significant weight in favour of the proposal.
30. Even taking these points into account and noting my favourable conclusions on 4 of the 5 key issues, however, my concerns in relation to the issue of external garden space are sufficiently compelling for me to conclude that the adverse impacts of the proposals would significantly and demonstrably outweigh the benefits. The proposals would not, therefore, be for sustainable development in the wider sense set out in Section 2 of the Framework and the appeals do not succeed.

*Les Greenwood*

INSPECTOR