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# Appeal Decision

Site visit made on 14 December 2023

**by A Hickey MA MRTPI**

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

**Decision date: 8 January 2024**

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**Appeal Ref: APP/Z5630/W/23/3321938**

**49 Lower Kings Road, Kingston Upon Thames KT2 5JA**

- 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 Lytton Homes (No.1) Limited against the decision of the Council of the Royal Borough of Kingston Upon Thames.
  - The application Ref 21/03890/FUL, dated 25 November 2021, was refused by notice dated 23 January 2023.
  - The development proposed is conversion of vacant nursery to provide 6no. high quality residential units.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The description of development cited in the planning application form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. In the interests of clarity, I rely upon the description as included in the application form for the purposes of the heading above.
3. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
4. The fourth reason for refusal set out in the Council's decision notice related to no mechanism being provided with regard to on-street car parking permits in a Controlled Parking Zone. A signed and completed Unilateral Undertaking was submitted as part of the appeal process. The Council has confirmed in its statement of case that following its submission, there is no longer any objection in this regard. I have therefore dealt with the appeal on that basis.

## Main Issues

5. The main issues are:
  - the effect of the proposal on the character and appearance of the area;
  - the suitability of the development in terms of flood risk;
  - whether the proposal would provide satisfactory living conditions for the future occupiers with regard to outlook and private amenity space; and
  - whether the proposal would make adequate provision for cycle parking.

## Reasons

### *Character and appearance*

6. The appeal property is a vacant detached building within a predominantly residential area. Buildings here are typically modest detached and semi-detached properties set back from the road with front gardens. In many cases, these gardens have been removed and replaced with parking spaces. This does not, however, alter the consistent low-level open boundary frontages that are partially broken up by planting, which provides a pleasant character and uniformity to the area.
7. Due to the size, height and location to the front of the prevailing building line, the proposed bin and cycle stores structures would be visually prominent when viewed from public vantages within Lower Kings Road close to the appeal site. Furthermore, when seen in combination with cars parked in the bays and short-stay cycle parking, the development would erode the more distinctive open low-level front garden areas found on this side of the road, which would be harmful to the character and appearance of the area.
8. A degree of softening would be provided through timber construction and sedum roofs. The materials would also be low maintenance. However, the stores would remain clearly visible in closer views given their size and proximity to site boundaries, and this is therefore insufficient to negate the identified harm.
9. The external alterations to the building, in regard to character and appearance, has not drawn objection from the Council and are not referenced within the reason for refusal. Given the variety of the surrounding built form that is visible from many public vantage points, including dormers, and arrangements of rear elevations in the area, I have no reason to disagree.
10. For the above reasons, I conclude that the proposed development would result in harm to the character and appearance of the area. Accordingly, the proposal would conflict with Policy DM10 of the Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy (CS) and Policy D3 of The London Plan (LP). These seek, amongst other things, to ensure high quality design in development and to protect the character and appearance of the area. It would also be contrary to the design guidance set out in the Council's Residential Design Supplementary Planning Document (RSPD). This seeks, amongst other things, cycle and waste storage to be integral to the design of development generally and be sited sensitively, well screened and appropriately landscaped so as to preserve and enhance the character of the street scene.

### *Flood risk*

11. CS Policy DM4 requires all new development in Flood Zone 2 to be accompanied by a Flood Risk Assessment. The appeal site is within Flood Zone 2, as confirmed by the appellant's Flood Risk Assessment (FRA)<sup>1</sup>. Policy D11 of the LP states that development proposals should maximise building resilience and minimise potential physical risks, including those arising as a result of flooding. Policy SI 12 of the LP states that proposals should ensure flood risk is minimised and mitigated and that residual risk is addressed.

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<sup>1</sup> Flood Risk Assessment, prepared by Lustre Consulting dated November 2021

12. The Framework and Planning Practice Guidance (PPG) provide advice on when the Sequential Test does not need to be applied. As the proposal would be for a change of use, a Sequential Test assessment is not required. PPG<sup>2</sup> does however, state it is for the applicant (in this case, the appellant) to show that the change of use meets the objectives of the Framework on flood risk. PPG further states that changes of use can increase the vulnerability of the development or result in occupation or use by people who are more vulnerable than the previous occupants/users to risks from flooding.
13. I acknowledge that the appellant has sought to work collaboratively with the Council and that there are constraints associated with converting the existing building. The FRA and supporting statement<sup>3</sup> propose a range of flood-resilient construction methods, including a 70mm raise in floor height at ground floor level, which would be solid with a raised waterproof membrane and closing air vents. Additionally, demountable flood barriers would also be provided.
14. An emergency plan could be conditioned alongside future occupiers making use of the Environment Agency's (EA) flood alert system. However, there is no substantive evidence, beyond the need to accommodate the proposed number of flats, that consideration has been given to the layout of the building to locate the most vulnerable aspects of development in areas of lowest flood risk. Additionally, there is little evidence provided that as part of the conversion works floor level alterations could not be further increased to maximise the building's resilience as part of the conversion works. In the absence of such details there is no convincing evidence to show that such works would result in a detrimental impact on the standard of accommodation for future occupiers.
15. Furthermore, I cannot be sure, based on the limited details, that the proposed mitigation measures, including demountable flood barriers, would not result in flooding elsewhere or that they can be accommodated on-site given the bike and bin stores.
16. The appellant has drawn reference to an approved development at 34 Portsmouth Road (Ref: 22/01923/FUL). While I do not have full details of the scheme, it was for the demolition of existing buildings and not conversion. While closer to the flooding source, the Council contend the finished floor levels were set 300mm above the design flood level, in accordance with EA standing advice. Moreover, I have not been provided with the specific details of the development with regard to flood risk, and therefore, I cannot draw any direct comparison that weighs in favour of the proposal.
17. I acknowledge the appellant's comments that the Lead Local Flood Officer has not commented on the appeal scheme or that any additional consultation with the EA was undertaken. However, the Council have provided reasoned justification for their position on flood risk.
18. For the reasons above, the proposal has not demonstrated it would not have an unacceptable and harmful effect with respect to flood risk or that it would maximise building resilience and minimise potential physical risks. The proposal therefore conflicts with CS Policy DM4 and LP Policies D11 and SI 12. It would also conflict with the provisions of the Framework for similar reasons.

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<sup>2</sup> Paragraph: 052 Reference ID: 7-052-20220825

<sup>3</sup> Flood Risk – Planning Statement, prepared by whitby wood dated 28 November 2022

### *Living conditions*

19. I am mindful that in urban locations, housing can be much denser. However, while adequate levels of light would reach studio flats three and four, the outlook from within these flats would be constricted by overlooking the car parking and bin and cycle stores. The addition of narrow vertical windows in the projecting bays would not overcome this as windows facing the street also overlook either a bin or cycle store area. The use of a sedum roof on these storage areas would not offer sufficient visual relief to overcome this lack of outlook.
20. Furthermore, the windows on the opposite side of the projecting bays and bedroom windows of flats three and four would be similarly constricted due to the close proximity and height of the adjacent properties and surrounding boundary treatments. As a result, outlook from within these flats would be severely restricted.
21. The proposal would include adequate outdoor amenity space to the rear for flats one and two. Flats one to four would also have access to a small courtyard area sited adjacent to the neighbouring properties, with no amenity space being provided for the other remaining flats.
22. Policy D6 of the LP requires a minimum of 5sqm of private outdoor space for each 1-2 person dwelling. CS Policy DM 10 refers to the RSPD, which states that new flats should have 10 square metres of private amenity space plus 1 square metre per additional occupant. In this case, the proposal does not accord with LP Policy D6 or Policy Guidance 13 of the RSPD, as some of the flats would have no private amenity space.
23. With the exception of flats one and two, for other flats that did benefit from the outdoor amenity area, this would be very small, cramped and enclosed, with limited space to accommodate typical private outdoor activities. This would be exacerbated by its limited width, which would greatly limit the use that it could be put to, therefore not providing satisfactory private outdoor amenity space. While access to Lower Ham Play Garden and Canbury Community Garden would be appreciated by future occupiers, this would not mitigate the inadequate outdoor amenity space provision.
24. In reaching this conclusion I have had regard to potential overlooking should balconies have been incorporated into the development. Nonetheless, this does not overcome or justify the lack of and unsuitable provision of private outdoor space for future occupiers of flats three to six.
25. The proposed alterations to the building and layout would see bedroom windows for flats one and two sited in close proximity to the adjacent properties on either side. In this instance, a short gap between the boundary and adjacent dwelling would be, in my view, sufficient to allow adequate natural light and outlook into and out from these rooms, particularly as the bedrooms are likely to be used less frequently.
26. For the reasons above, the proposed development would not result in a harmful effect on outlook from flats one and two. Nevertheless, it would not provide appropriate living conditions for all future occupiers with regard to outlook and private outdoor amenity space. It would therefore conflict with Policy D6 of the LP, Policy DM 10 of the CS and the design guidance set out in the Council's

RSPD. Together these seek, amongst other things, that new development provides adequate levels of outlook and private outside space. In addition, it would be contrary to the Framework, where it seeks to achieve a high standard of amenity for future users.

### *Cycle parking*

27. CS policy DM8 supports the use of sustainable modes of transport, prioritising the needs of cyclists and pedestrians. Policy T5 of the London Plan sets out the requirement for the provision of bicycle storage spaces per dwelling to help create a healthy environment in which people choose to cycle.
28. In view of my findings above with regard to the effect of the proposal on the character and appearance of the area, the proposed cycle store would be unsuitably located. In the absence of substantive evidence to demonstrate otherwise, I cannot conclude that the required cycle storage provided at the front of the building could be placed elsewhere on site without the need to reconfigure the layout and design of the scheme. As such, it would not be appropriate to attach a condition to allow details to be provided for the cycle store arrangement. Therefore, the proposal would fail to accord with the LP Policy T5 and CS Policy DM8.

### **Other Matters**

29. The presumption in favour of sustainable development, as set out by paragraph 11 of the Framework, is a relevant consideration as 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 supply of 2.3 years worth of sites, which is a substantial shortfall.
30. However, I have found that the proposal would conflict with the Framework's policies relating to flood risk, and these policies provide a clear reason for refusing the development proposed. Consequently, the proposal does not benefit from the presumption in favour of sustainable development and, moreover, the Framework does not indicate that permission should be granted.
31. The development would nonetheless offer potential benefits. These include bringing a building back into use and providing six new units to the Council's housing stock which meet the national space standards. Thereby boosting the supply of housing provision in an area where occupiers will have access to services and facilities.
32. It would also have economic benefits through employment opportunities during the construction phase of the development, and spending in the local area by future occupants. I have attached some weight to these factors. However, given the modest scale of the development, the weight attributable to these matters is moderate and is not sufficient to outweigh the significant detrimental harms that I have identified and the conflict with the policies I have referred to.
33. Whilst pre-application advice was sought and provided, it was not wholly supportive of the development then proposed. Although subsequent amendments may have been made to the scheme, I have found that the development proposed would be unacceptable for the reasons above. Moreover, there is no cogent evidence before me to demonstrate the Council have not approached consideration of the scheme in a positive or creative way.

## **Conclusion**

34. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harms and associated development plan conflict.
35. Therefore, I conclude the appeal should be dismissed.

*A Hickey*

INSPECTOR