



Appeal Decision

Site visit made on 19 February 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2024

Appeal Ref: APP/Z5630/W/23/3325628

Alric House, Alric Avenue, New Malden, Kingston Upon Thames KT3 4JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Gary Waghorn against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/00631/FUL.
 - The development proposed is the demolition of existing roof structure and erection of new mansard roof with dormer window to form 2No. 2Bed 3Person Flats.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing roof structure and erection of new mansard roof with dormer windows to form 2no. two-bedroom flats at Alric House, Alric Avenue, New Malden, Kingston Upon Thames KT3 4JJ in accordance with the terms of the application, Ref 23/00631/FUL, dated 7 March 2023, subject to the schedule of conditions attached at the end of this decision.

Preliminary Matters

2. The description of development in the decision above is taken from the Council's notice of decision, also used in the appellant's appeal form, as this most accurately describes the proposed development.
3. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes albeit that the numbering of paragraphs has changed. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.
4. An undated and unsigned Unilateral Undertaking (the UU) from Alan John Fitzgerald to the London Borough of Kingston Upon Thames in regard to car-free housing has been provided. I shall return to the UU later in my decision.
5. There have been 2 no. plans submitted with the appeal showing; a section plan to show the proposed ceiling height within the flats; and a section plan of a proposed bike store. The Council and other interested parties have had the opportunity to comment on that information, I am satisfied there would be no unfairness to any interested party by accepting this information. Consequently, the appeal will be determined on this basis.

Main Issues

6. The main issues are:

- Whether there is adequate secure cycle parking provision;
- Highway safety, with particular regard to parking and whether it is necessary and reasonable for the proposed development to be car-free; and,
- The effect of the proposed development upon the living conditions of future occupiers, with particular regard to the ceiling height of the proposed flats.

Reasons

Secure cycle parking provision

7. The appeal site is in a well-connected area near to New Malden Railway Station, with bus stops nearby on Coombe Road, it has a PTAL rating of 3.
8. In accordance with Policy T5 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (the LP) and its accompanying Table 3.1, there is a requirement for 2 no. cycle parking spaces for each of the proposed new flats. Policy T5 further states where it is not possible to secure the required cycle parking spaces within residential developments, Boroughs should work with developers to propose alternative solutions to meet this objective, and refers to solutions such as conveniently located on-street cycle parking facilities, such as cycle hangars.
9. The proposed Bike Store Section plan shows a cycle stand in the entrance lobby at ground floor, which would provide 2 no. secure cycle parking spaces (one to either side). In addition, the floor plans also show 2 no. spaces on the proposed private amenity spaces for each flat. I share the Council's concern that they could reduce the size of the private amenity space and create accessibility problems taking cycles up and down flights of stairs within the building. Whilst some occupiers may choose to store their cycles in the private amenity space, others may not. Taking this into account, the use of the private amenity for secure cycle parking is not a reasonable expectation, as such there is a shortfall of 2 no. secure cycle parking spaces.
10. I am not aware of any proposals from the Council for alternative secure cycle parking solutions. The appellant has referred to the use of a shared cycle hangar, said to be some 10 minutes' walk from the appeal site. However, that seems too far to expect occupiers to walk to obtain their bicycle. On my site inspection, I saw that there were numerous secure cycle parking stands at different points along both sides of Coombe Road, between the appeal site and to the opposite side of New Malden Station, all very near to the appeal site. These spaces combined, provided at least 70 no. cycle parking spaces, and although only a snapshot in time there was plenty of availability at all these different cycle parking locations. This is an important material consideration in respect of cycle parking provision.
11. I therefore conclude that whilst the proposal would provide 2 no. secure cycle parking spaces, there would be a shortfall of 2 no. spaces, which are not capable of being provided within the proposed residential development, and

there would be a degree of conflict with Policy T5 of the LP that would require 4 no. secure cycle parking spaces for this proposed development of 2 no. flats. However, as an important material consideration, there are plenty of secure cycle parking spaces available nearby on Coombe Road, which, if necessary, should be capable of mitigating this shortfall in secure cycle parking provision.

Highway safety and car-free development

12. It is necessary for me to consider the obligations contained within the UU against the three tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regs.) and paragraph 57 of the Framework, both of which require obligations to be necessary to make the development acceptable, related to the proposed development, and in scale and kind to it.
13. It is acknowledged that Policy T6 of the LP states that car-free development is the starting point for all new development in well-connected areas. The proposed development does not include any off-street parking. Policy T6 further states that the absence of parking controls should not be a barrier to new development and Boroughs should look to introduce these wherever necessary, to allow existing residents to maintain safe and efficient use of their streets. Whilst the Council has said a planning obligation is necessary to ensure the proposed development is car-free, if they introduce a Controlled Parking Zone (CPZ) in the future, there is no evidence before me of any intention or advanced plans to introduce such a CPZ in this area.
14. Although there are parking restrictions near to the appeal site along Coombe Road, the appeal site's frontage onto Alric Avenue is not within a CPZ. There is unrestricted on-street parking available on Alric Avenue, which is a relatively wide road. There are also on-street parking spaces on its neighbouring roads, including Hoppingwood Avenue, Orchard Avenue, and Roseberry Avenue. Whilst only a snapshot in time, I saw on my site inspection that there were available on-street parking spaces on these roads. At present, there are no restrictions to prevent occupiers of the proposed development parking on Alric Avenue or its neighbouring roads.
15. Consequently, requiring a planning obligation to prevent parking in a CPZ that currently does not exist, or that I have any firm evidence will exist soon, serves no purpose at present, and would not prevent on-street parking by occupiers of the proposed development. As such a car free development obligation is not necessary to make the development acceptable.
16. The appellant's Transport Statement (TS) estimates based on car ownership in the locality, that the proposed development would typically create a parking demand of 1 additional parking space. The appellant's TS includes a parking demand survey, this found that of the 131 possible on-street parking spaces within 200 metres of the appeal site, they were occupied at 75.6% and 74.8% on two different nights in May 2022. The parking demand information indicates that there is a strong likelihood of available parking spaces locally to meet the parking demand from occupiers of the proposed development, without causing unacceptable parking stress. In view of this, and my own site observations the proposal is unlikely to unacceptably increase on-street car parking pressure or lead to inconsiderate parking, nor do I have any evidence to substantiate that such parking would cause unacceptable congestion in surrounding streets or be harmful to highway safety.

17. I therefore conclude that notwithstanding that the UU is undated and unsigned, a car-free development obligation would not be necessary to make the development acceptable, neither would it meet the relevant statutory tests within Regulation 122(2) of the CIL Regs. and paragraph 57 of the Framework. In addition, the proposed development, without car-free development restrictions would be consistent with Policy T6 of the LP, and Policy DM10 of Royal Borough of Kingston Upon Thames Local Development Framework, Planning for the Future, Core Strategy, adopted April 2012 (CS), which amongst other things, states car parking in areas with a PTAL 3 rating is provided based on maximum and not minimum parking spaces, and that regard is had to local traffic conditions and highway safety. In addition, the proposal would not conflict with paragraph 115 of the Framework, which states development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
18. The Council referred to what is now paragraph 111 of the Framework, this refers to the considerations when setting new parking standards for developments. I did not find this to be directly determinate on this main issue.

Living conditions – future occupiers

19. Policy D6 of the LP requires a minimum floor to ceiling height of 2.5 metres for 75% of the gross internal floor area for all new dwellings. The appellant has submitted with their appeal an annotated Section Drawing showing the ceiling height to be mostly 2.5 metres. Furthermore, the appellant has said their proposed floor plan has highlighted in blue the areas with a floor to ceiling height of 2.5 metres, which covers the vast majority of the floor area of each new flat, apart from some very limited areas near to the front and sides of the flats, to account for the sloping roof. The Council has not disputed this floor to ceiling height information that has been submitted with the appeal, and I see no reason to disagree with its measurements.
20. I therefore conclude that the proposed development would have satisfactory living conditions for future occupiers and satisfy Policy D6 of the LP and Policy DM10 of the CS, that amongst other things, require the minimum floor to ceiling height must be at least 2.5 metres for at least 75% of the gross internal floor area of each dwelling and incorporate the principles of good design and that regard is had to the amenity of occupants of new developments.

Other Matters

21. An objection has referred to possible damp ingress within the existing property. Be that as it may, that does not relate to the planning merits of the proposed development before me. In terms of the objection regarding potential noise and disturbance, a condition is imposed to restrict the hours of construction and deliveries at the appeal site, to protect the living conditions of neighbouring occupiers. It is noted that concern has been raised about how the construction works could make it difficult to find new tenants for the property. However, I have no substantive evidence to support this comment, and such construction works would be temporary.
22. The proposed extension to the building would be relatively modest in terms of its overall height and scale, it would relate well to the form and appearance of the existing building, as such I find the proposal would relate well to the

character and appearance of the area. The proposed new flats would be directly above existing flats, and there would be adequate separation to other neighbouring occupiers, as such I did not find there would be unacceptable privacy effects for neighbouring occupiers.

Conditions

23. I have imposed a standard implementation condition, along with a condition listing the approved plans to provide certainty over what has been approved. A condition regarding external materials is also necessary to protect the appearance of the area to ensure matching external materials to the host property, and to conform with those materials specified on the Application Form.
24. To protect the living conditions of neighbouring occupiers from potential noise and disturbance from construction works a condition is necessary to limit working hours and delivery times. To ensure the submitted refuse facilities are provided, which the Council has stated are acceptable, I have imposed a condition requiring adherence to the submitted refuse details shown on the approved plans.
25. In light of my findings above, a condition is necessary to ensure the provision of 1 no. secure cycle parking spaces for each flat within the ground floor lobby area (1 no. space to either side of the bike stand) as shown on the Bike Store Section drawing. This condition and the approved plans condition specifically excludes the requirement for the cycle parking to be provided within the private amenity space for the reasons outlined above.
26. The Council has suggested a condition requiring the submission of a Fire Safety Strategy to meet the highest standards of fire safety. The appeal site fronts Alric Avenue and there is an access point to one of its sides providing vehicular access beyond the rear of the site, as such fire appliances should be able to park close to the appeal site. However, fire safety, including means of escape, would be covered by building regulations and to condition this, in view of the scale of the proposal, would be unreasonable and duplicate other regulatory regimes of control. Furthermore, I have not been provided with any substantive evidence of why this condition is necessary, nor has there been adequate justification from policies within the development plan to justify such a condition as necessary in this case.

Conclusion

27. For the reasons outlined above, the appeal is allowed.

A Hunter

INSPECTOR

Schedule of Conditions

- (1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- (2) The development hereby permitted shall be carried out in accordance with the following submitted plans: Drawing No's; P2-P9194-OS; P2-P9164-PR00 Rev. A; P2-P9164-PR01 Rev. A; P2-P9164-PR02 Rev. A (excluding the cycle storage areas on the private amenity spaces); P2-P9164-PR03 Rev. A; P2-9164-PR05; and P2-9164-PR06.
- (3) The external materials to be used on the development hereby approved shall match those on the existing property and accord with the external materials specified on the Application Form, namely; dormer sides to have lead covering dormer cheeks; roof to be red clay tiles to match Alric House; and windows to have white uPVC frames to match Alric House.
- (4) During the construction phase of the development, no works or delivery of any construction materials or equipment to the appeal site (in relation to the approved development) shall take place on site outside of the following hours: 08:00 to 18:00 Monday to Friday, and 08:00 to 13:00 on Saturdays. No such works or deliveries shall take place on Sundays or Bank Holidays.
- (5) Prior to the first occupation of the development hereby approved, refuse storage facilities shall be provided in accordance with details specified on drawing no. P2-P9164-PR01 Rev. A. The refuse storage facilities shall be retained in perpetuity in accordance with the approved details.
- (6) Notwithstanding drawing no. P2-P9164-PR02 Rev. A that shows cycle storage areas on the private amenity spaces, prior to the first occupation of the development hereby approved, a cycle stand providing 2 no. secure cycle parking spaces shall be provided in the ground floor entrance lobby in accordance with the details shown on drawing no. P2-9164-PR06 (Bike Store Section Plan), providing 1 no. secure cycle space for each of the flats the subject of this permission. These secure cycle parking spaces shall be retained thereafter for their intended purpose.