



Appeal Decision

Site visit made on 14 February 2024

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024

Appeal Ref: APP/Z5630/W/23/3324702

38 Clarence Street, Kingston Upon Thames, KT1 1NR

- 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 38 Clarence Holdings against the decision of the Royal Borough of Kingston Upon Thames
 - The application Ref 23/00258/FUL, dated 31 January 2023, was refused by notice dated 28 April 2023.
 - The development proposed is construction of a single storey extension at roof level comprising 5 no. self-contained residential flats (Use Class C3), including provision of new residential access, cycle parking and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government published a revised Framework in December 2023, replacing the previous version dating from September 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issues of this case are largely unchanged. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.
3. The appeal submission includes additional evidence which was not before the Council at the time of its decision. This includes a Flood Risk Assessment Technical Note, an Updated Fire Strategy Concept Report and accompanying Design Note, and updated drawings which include amendments to the cycle and bin stores and final escape exit and which provide detail on fire safety measures including the provision of an evacuation lift.
4. The appeal submission also includes additional information relating to the outlook from the flats, the quality of the entrance and arrival to the proposal and a proposed entrance lighting strategy. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
5. I have considered this additional information taking into consideration the principles established by the Courts in *Holborn Studios Ltd*¹. In this case, the additional information provides further evidence in relation to the Council's reasons for refusal, rather than significant amendments to the proposal. For

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

this reason, I consider that there would be no prejudice to any party and I have therefore determined the appeal on the basis of this additional information.

6. The appellant submitted a Unilateral Undertaking (UU) dated 17 January 2024. I have not sought further comments from the Council on the UU but have had regard to it in my decision.

Main Issues

7. The main issues in this appeal are:

- whether the proposal represents an acceptable form of development having regard to its flood zone location and the provisions of the development plan;
- whether or not the proposal makes adequate provision for family housing, taking account of the relevant policies of the development plan, the location of the site and the housing needs of the borough;
- the effect of the proposals on the character and appearance of the area, including the effect on the significance and character of 40c Clarence Street;
- the effect of the proposal on the living conditions of future occupiers of the proposal with particular regard to the provision of communal amenity space, and outlook in the event of future development at the adjoining site;
- whether the proposal would provide future occupiers with adequate living conditions having regard to the design and location of the main residential entrance;
- the effect of the proposed car parking provision on highway safety; and
- whether the proposal can demonstrate compliance with fire safety standards.

Reasons

Flooding

8. The submitted Flood Risk Assessment (FRA) identifies the appeal site being within Flood Zone 2 (FZ2) which has a medium probability of flood risk. Residential uses, insofar as they relate to FZ2 areas, are categorised as 'more vulnerable' as per Annex 3 of the Framework. Paragraph 168 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding i.e. the Sequential Test.
9. The Sequential Test is necessary to determine whether any other sites would be available to meet the need for development of this nature, outside of areas most at risk of flooding. Only where there are no reasonably available sites in Flood Zone 1 should the suitability of sites in Flood Zone 2 be considered.
10. The Framework does not define the extent of a sequential test search area. The Planning Practice Guidance (PPG) advises that the area to apply the sequential test will be defined by local circumstances relating to the catchment area for

the type of development proposed and that a pragmatic approach on the availability of alternatives should be taken.

11. In the PPG reasonably available sites are defined as those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.
12. The appellant's sequential test refers to sites identified within Kingston's Local Plan 2019-2041 (First Draft of the Local Plan Consultation, Regulation 18). However, this indicates a range of available sites which are in Flood Zone 1. It also does not analyse in detail whether or not there are any further reasonably available sites for housing elsewhere within the borough. For instance, the mapping included within the FRA identifies large areas which are close to the appeal site and which are within Flood Zone 1.
13. It seems to me that housing at other reasonably nearby locations within the built up area of Kingston Upon Thames would provide residents of new residential accommodation with access to the same types of local services and facilities. In these circumstances, these locations would provide reasonable and appropriate alternatives for open market housing within the catchment area for the type of development proposed. These areas have a lower risk of flooding than the appeal site and there is no clear evidence that housing land is not available.
14. Furthermore, although the sequential test includes some sites which may in future be allocated sites within high flood risk areas, it has not been made clear whether they would have appropriate measures in place that would make those alternative sites suitable. Under such circumstances, I cannot find that all other potentially available, and less harmful alternative options in flood risk terms have been reasonably explored, and therefore the requirements of the Sequential Test have not been met.
15. The site has not been affected by previous recorded fluvial flooding, however, this does not indicate that it would not be susceptible to future flood events. Since I have found the proposal fails the Sequential Test, it is unnecessary for me to go on to consider whether the Exception Test is met.
16. The appellant raises the matter of the Council's 5-year housing land supply, noting that this falls short. I return to this matter subsequently. However, the absence of a 5-year land supply, or the policy direction to locate new housing within the town centre are not relevant considerations for the Sequential Test for individual applications.
17. I note that the Council's reason for refusal refers, in part, to the absence of a dry means of safe access and egress for future occupiers. The FRA Technical Note highlights that due to the site's location within FZ2, dry access and egress is not possible at the 1 in 100 year event with an allowance for climate change. I acknowledge that the future residents could sign up for Floodline Warning Direct, that a fluvial flooding escape route is shown within the FRA, and that the proposed escape route for surface water flooding is a dry escape route. I am also mindful that the neighbouring Eden Quarter redevelopment scheme lies within Flood Zones 2 and 3. Nevertheless, the PPG is clear that the Sequential Test still needs to be satisfied.

18. For the reasons detailed above, the location of the site is not acceptable in terms of the risk of flooding, with particular regard to the Sequential Test. It would fail to accord with the provisions of Policy DM4 of the Council's Core Strategy (2012) (CS) and Policy SI12 of the London Plan (2021) (LP) where they require, amongst other things, developments subject to flood risks to be considered in accordance with local and national guidance, while current and expected flood risks should be managed in a sustainable way. For similar reasons, the proposal would also be inconsistent with the provisions in the Framework.

Housing mix

19. Policy DM13 of the Core Strategy expects proposals for new residential development to provide a minimum of 30% of dwellings as 3 or more bedroom units, unless it can be robustly demonstrated that this would be unsuitable or unviable.
20. None of the proposed units would be 3 bedroom family sized units. This is justified by the appellant because future occupiers would not have access to traditional open gardens and private playspace. I recognise that some families may gravitate to suburban locations with properties with a garden and access to a local park and schools. Equally, it seems to me, that there will be some families that are attracted to the benefits of town centre living, such as the close access to local amenities and public transport.
21. Furthermore, the supporting text to the Policy DM13 explains that a high proportion of recent residential schemes have been in the form of 1 and 2-bedroom flatted developments, raising concerns about the availability of family housing. In the absence of any 3 bedroom units, the proposal would not contribute to the mix of family homes within the borough.
22. Car-free residential development is not uncommon in areas of London with good access to public transport. Given the site's very good access to public transport, I do not find that it is unsuitable for family size accommodation simply because the residential units would be car-free.
23. I understand that other town centre apartment schemes have been permitted with less than 30% of 3-beds, for instance, at 146-152 Clarence Street (Council Ref: 21/02177/FUL). In that instance, the proposal provided approximately 20% 3 bed units, and the Council accepted this in the light of evidence that demonstrated a greater proportion would be unviable. No substantive evidence relating to viability has been provided in relation to the appeal proposal before me.
24. I have also been referred to a planning permission (Council Ref: 17/12088/FUL) under which the Council approved a development with no 3 bed units. I understand that justification for this related to the car-free nature of the proposal, its town centre location and limited amenity spaces. I have been provided with no further details such as drawings of the proposal which would enable a detailed comparison with the appeal proposal before me. In any event, this proposal has been assessed on its own merits, and for the reasons identified above, I do not consider that the town centre location, car-free development and amenity space, are sufficient reasons to prevent the provision of any family size accommodation on site.

25. On this basis, I conclude that the appeal proposal would not make adequate provision for family housing. Consequently, it fails to accord with Policy DM13 of the Core Strategy (CS) in respect of this important component of housing need.

Quality of amenity spaces and future development

26. There is a requirement under Policy DM 10 of the CS and the Council's Residential Design Supplementary Planning Document (2013) (SPD) for communal amenity space. The proposal does not include communal amenity space. Within the SPD, Policy Guidance 13 sets out that private amenity space standards should be achieved unless it can be demonstrated that this would be at odds with the prevailing physical context and local character of development, e.g. town centre locations. However, Policy Guidance 14 of the SPD does not include similar flexibility and requires new flat development schemes (including conversions and changes of use) to provide 50 square metres communal amenity space. Whilst this is guidance only, the lack of any communal amenity would be a significant shortfall, and would not be compensated by the availability of public open space within walking distance, as suggested by the appellant.
27. The appellant indicates that under a previous planning permission at 11-13 Thames Street (Council Ref: 17/12088/FUL), not all units were provided with private amenity space. However, the issue under consideration in this appeal is the provision of communal amenity space, rather than private amenity space. In any event, I am not provided with the full details of the circumstances of that planning permission and the existence of development elsewhere does not represent an appropriate reason to find in favour of a proposal that would fail to deliver the required levels of communal amenity space.
28. The terraces to units 2, 3 and 4 would face 36 Clarence Road, with limited set back from the shared boundary with this property. Each would meet the private amenity space requirements set out in the Council's Residential Design Supplementary Planning Document (2013) ('SPD'). Given the height of the appeal property the terraces would have expansive views over the roof of 36 Clarence Road. For the same reason the terraces would receive good levels of daylight and sunlight.
29. Each of units 2,3 and 4's primary living spaces and bedrooms would open onto the terraces. As a result, future occupiers of the dual aspect units would have reasonable levels of both outlook and natural light within the accommodation.
30. The Council are concerned that the location of the windows could stymie the possible future vertical expansion of buildings adjoining the appeal site. Whilst the Council's ambition of seeking to prevent development that could frustrate a larger redevelopment of an adjoining site could be a legitimate planning aim, I am not satisfied in this instance it can be given more than limited weight. In my view, for this aim to be given overriding weight in an assessment there needs to be a high probability that a comprehensive redevelopment would come forward with clear public benefits. To otherwise resist development would unreasonably preclude opportunities for smaller scale developments, which could bring their own benefits.
31. I have seen no evidence that any party is currently seeking a comprehensive redevelopment of the adjoining site or that this is likely to occur in the future.

For instance, I have not been presented with any evidence to suggest there is an extant planning permission on the adjoining site or that there is a planning application currently under consideration or about to be submitted.

32. Whilst I have found that the proposal would provide satisfactory private amenity space and internal living conditions for future occupiers, I have found that the lack of communal amenity space would be harmful to the living conditions of future occupiers.
33. For these reasons, I conclude that the development would fail to provide satisfactory living conditions for future occupiers with regard to the provision of external communal amenity space. I therefore find that there would be conflict with Policy DM 10 of the CS, Policies D3, D5 and D11 of the LP, the SPD and the Framework. Collectively, these require development to incorporate good design principles, including ensuring good levels of communal amenity space, whilst optimising housing output consistent with the local context.

Character and appearance

34. The appeal building is located in a busy high street location and the surrounding area is commercial in character, with a mix of town centre uses including retail, food and drink and services. The architectural appearance and scale of buildings varies in the vicinity of the appeal site. At three storeys in height the appeal property is noticeably taller than the group of three lower single storey buildings (40, 40a, 40b Clarence Street) located to the east, and the two storey buildings (36 and 34 Clarence Street) located to the west.
35. 40c Clarence Street, located to the east of the appeal site is a locally listed building (also known as a Building of Townscape Merit). Whilst the property is not statutorily listed nor in a conservation area, paragraph 209 of the Framework states that the effect of an application on the significance of a non designated heritage asset (NDHA) should be taken into account in determining the application. In weighing applications that affect directly or indirectly a NDHA, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
36. From my observations, the significance of the NDHA derives from its historic frontage and rich architectural detailing within its front elevation. However, the building is set significantly back from Clarence Road above No's 40a and 40b, which have deep single storey projections in front of the building. As result of its significant setback No. 40c is largely imperceptible in the majority of views along Clarence Street.
37. 40 Clarence Street, is located between the appeal building and the NDHA creating visual separation between the two. Whilst the proposal would increase the height of the appeal building, given the limited visibility of the NDHA in views from Clarence Road, I do not find that the proposal would harmfully obscure or reduce the view of the NDHA. As a result, there would not be a harmful impact on the historic frontage of the NDHA and there would therefore be no harm to the feature that contributes most to the significance and character of the NDHA.
38. As a result of its greater height in comparison to the neighbouring buildings on Clarence Street, the appeal property is already prominent in views from both directions on the street. The appeal proposal would add an additional storey to

the existing building which would be visible from both long and shorter range views. The proposed extension would be set back from the existing front and side elevations, providing roof terraces for the proposed units and reducing its presence when viewed from street level. As a result of its set back from the building's front elevation, it would not be an overly prominent feature in these views, including the view from the corner of Clarence Street with the HSBC building in the foreground. Furthermore, the "punched" holes within the floor layout and roof form further reduce the proposal's massing.

39. In terms of materiality, the new storey would incorporate dark grey or black standing seam metal roofing and metal cladding, which would have a different tone to the red-brown brickwork of the existing building. Whilst the final tone of materials could be agreed via a planning condition, the proposed materials are sympathetic to the host building, and would not appear incongruous within the street scene.
40. The submitted drawings indicate that a parapet wall would be constructed to surround the front and side roof terraces. This would screen the views of the terraces, particularly in angled views upwards from street level. Consequently, plants and furniture which may be stored on the terraces by future occupiers are unlikely to be prominent features.
41. Overall, the proposal would be a sympathetic addition to the existing building, in keeping in scale and appearance, and would not appear unduly dominant or bulky. Given the variation in the built form of the surrounding area, the proposal would also not appear out of keeping with neighbouring buildings or the street scene.
42. I conclude that the proposal would not harm the character and appearance of the area, including the setting of the NDHA. It therefore accords with Policies D3 and HC1 of the LP and Policies CS8, DM10, DM11 and DM12 of the CS. These policies seek, among other things, to protect heritage assets, and ensure new development responds positively to local context and character, including in terms of scale, height and massing, and reinforces local distinctiveness. It is also in accordance with paragraph 135 of the Framework, in respect of its aims of ensuring that development is sympathetic to local character and history.

Car parking

43. The site is located within a Controlled Parking Zone (CPZ) and has a public transport accessibility level (PTAL) of 6a which is considered to be very good. The proposal would provide no off-street car parking. Given the accessibility of the site, the main parties agree that this is acceptable.
44. Policy T6 of the LP states that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport. As such, the requirement for a UU to secure restrictions on future occupiers obtaining resident parking permits in the CPZ is both reasonable and necessary.
45. The appellant has submitted a signed and dated UU to prevent future owners or occupiers of the properties from being entitled to residents parking permits within the CPZ. I am satisfied that the UU achieves what it sets out to do and meets the tests for planning obligations outlined in the Framework. If I had

been otherwise minded to allow this appeal, I would have sought feedback from the Council on the revised document.

46. Consequently, I conclude that the proposal would not harm parking provision and highway safety. It would comply with Policy T6 of the LP and Policy DM10 of the CS. Together, these support car-free development that is well-connected by public transport, restrict eligibility for on-street parking permits for residents of new developments in controlled parking zones, and require developments to have regard to highway safety. It would also accord with the principles of the Framework which require the potential impacts of development on transport networks to be addressed.

Secure Accommodation and Safe Access

47. Residents would access the proposal via a rear car park and service yard known as Neville Yard. The Designing Out Crime Officer from the Metropolitan Police Service has commented that the proposal is within a high crime location, and that the access is located away from main traffic and footfall, is poorly lit at night and residents may feel vulnerable returning to their homes.
48. Policy DM10 of the CS requires development to incorporate the principles of safe design to reduce the risk and fear of crime, for example natural surveillance and appropriate levels of lighting. Due to the open nature of the car park, future occupiers would have a clear line of sight from the street entrance onto Neville Yard to the proposal's ground floor residential entrance. There are also multiple other pedestrian access points from the car park to properties along both the northern and eastern side of Neville Yard, further increasing footfall and surveillance. I also noted that the external surface car park and adjacent multi-storey car park, which is accessed via Neville Yard, appear to be operational twenty four hours daily. As a result, and given the town centre location, the comings and goings of vehicles to the car parks and pedestrians to the surrounding properties would provide additional surveillance.
49. In respect of lighting, additional information submitted with the appeal demonstrates that the residential entrance and refuse/cycle storage area would be well lit through the introduction of 'lightframes' above doorways. Whilst I undertook my site visit during daylight hours I noted that a number of street light poles are present within the car park which would also provide illumination during hours of darkness.
50. Consequently, I do not consider that the proposed development would fail to provide safe access for future occupiers. There would therefore be no conflict with Policies D6 and D11 of the LP and Policies DM10 and DM13 of the CS and the Framework, insofar as they seek that new development has regard to safety and security in designing out crime to ultimately create safe and accessible environments.

Fire Safety

51. The appellant has provided further details in relation to fire safety including information on space provisions for fire appliances and assembly points, the provision of an evacuation lift, means of escape and evacuation strategy, access and equipment for firefighting. These details and the relocation of the bin and final escape exit, which is shown on the updated Ground Floor Plan, ensure that there would be no obstructions during evacuation. Additional

details to mitigate the use of the single stair, such as the provision of a ventilated lobby between the stair and non-residential accommodation have been provided.

52. The Fire Safety Design Note confirms that the proposed internal lift will be an evacuation lift. This would satisfy the requirement of LP Policy D5 for safe and dignified emergency evacuation for all building users.
53. Whilst the content of the Building Regulations Approved Document B – Volume 1 Dwellings (2019 incorporating 2020 and 2022 amendments – for use in England) is acknowledged, the information demonstrates that the appellant has considered in detail the issues of fire safety before the Building Control application stage, as required in the guidance notes to Policy D12. The appeal proposal is not a major development and thus it is considered that the proposal has, in a proportionate manner, considered the requirements of D12.
54. As the explanatory text to Policy D12 clarifies the matter of fire safety is covered by Part B of the Building Regulations. Therefore, a condition, which incorporates the additional measures outlined by the appellants, could be imposed to ensure the Council is aware of the fire safety measures within the building and can make appropriate comments and suggestions when considering the submission required under the terms of the condition imposed.
55. The appellants have considered issues of fire safety before the Building Control application stage. I therefore conclude that sufficient information to demonstrate compliance with the aims of Policy D5 and D12 of the LP in terms of fire safety have been provided.

Other Matters

56. The Framework seeks to significantly boost housing supply and indicates the value of using suitable land within settlements for homes. It also encourages the optimal use of underutilised land and supports the use of airspace above commercial premises for new homes. The proposal would contribute to local housing supply by providing five units and would represent a more efficient use of the appeal site.
57. I acknowledge that residential development in this general location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan, for instance in respect of the standard of accommodation. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
58. The proposal would also help activate the rear of the site by bringing activity to Neville Yard car park and improving its appearance with a new illuminated entrance. This would also have limited additional benefit for future developments of Eden Walk to the south of the site.
59. I understand that the appellant had informal discussions with the Council's Head of Development. However, I am mindful that pre-application discussions are informal, and they will not influence any future decision the LPA may make once a proposal has been subject to the formal planning process.
60. The concerns expressed regarding the Council's conduct during the processing of the planning application are outside the remit of this appeal decision.

Planning Balance and Conclusion

61. The proposal would make a valuable contribution towards the government's target to significantly boost the supply of homes in the borough. It would help to achieve the Framework objective of making effective use of land, although this is tempered by the absence of any three bed homes which have been identified as in high demand by local policy. The construction of the proposed development would deliver temporary economic benefits, through job creation. The delivery of five additional dwellings would result in additional spending within the area and would be located close to a range of services and public transport.
62. The appellant and the Council are in agreement that the Council cannot demonstrate a 5-year housing land supply. The appellant suggests that the Council can demonstrate 2.32 years of supply. This has not been disputed by the Council. As such, paragraph 11(d) of the Framework is relevant.
63. In this appeal, as I have found harm in respect of flooding, the application of policies in the Framework that protect an area or asset of particular importance, including areas at risk of flooding, provide a clear reason for refusing permission. Consequently, the presumption in favour of sustainable development would not apply in this particular case.
64. Furthermore, the Framework outlines an overall aim to meet as much of an area's identified housing need as possible, including with an appropriate mix of housing types for the local community. Policy DM13 of the CS is therefore consistent with the Framework. Equally, one of the aims of the Framework is to achieve well-designed development which provides a high standard of amenity for existing and future users. Even taking into account the objective to promote the effective use of land, the proposal's lack of communal amenity space, would result in a development which does not provide a high standard of amenity.
65. Overall, the harm identified and policy conflicts weigh very heavily against the proposals, and overall, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
66. The harm that I have found leads me to conclude that the proposal would conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR