



Appeal Decision

Site visit made on 15 April 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd May 2024

Appeal Ref: APP/Z5630/W/23/3333474

90 Leatherhead Road, Chessington, Kingston upon Thames KT9 2HY

- 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 L Whelan against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/00346/FUL.
 - The development proposed is construction of two storey building to comprise two 1-bedroom dwelling units.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Revised plans for Flat 2 were submitted as part of the appeal¹. They show a balcony over a flat roof below and an external enclosure for a box-planter used instead as a balcony. These amendments would not fundamentally change the description of development but there would be a substantial difference in how some external amenity space would be provided. While re-consultation could address procedural unfairness, the appeal process should not be used to evolve a proposal. Nor could the amended plans be approved by a planning condition, as the appellant suggests, were the appeal to be allowed; that would also deprive those who should have been consulted on the amended development of the opportunity of such consultation. I have, therefore, determined the appeal on the equivalent plans before the Council when it made its decision².

Main Issues

3. The main issues in this appeal are:
 - whether the proposal would provide satisfactory living conditions for the future occupiers of Flat 2 with regard to the size and useability of private outside amenity space; and
 - whether it would displace car parking serving the commercial unit at No.90 Leatherhead Road and, if it would, its effect on highway safety.

Reasons

4. The appeal site is a narrow, long parcel of undeveloped land in a mainly residential suburb. It forms the rest of the plot behind No.90 Leatherhead Road. It would be redeveloped to provide two 1-bedroom, 1-2 person flats.

¹ Drawing number 1056 25 Rev A and 1109 28 Rev A

² Drawing number 1056 25 and 1109 28

This mid-terrace building would infill a gap between similar recent residential development either side of the site behind buildings fronting Leatherhead Road.

Living conditions

5. Flat 2 would have between 9.5sq.m or 9.7sq.m private outside space at ground level. But this includes timber enclosures for bin and cycle storage, so potential useable amenity space would be reduced to about 7.55sq.m. These figures exceed the minimum 5sq.m private outside space for a 1-2 person dwelling set out in Policy D6(F9) of the London Plan, March 2021 (LP).
6. However, LP Policy D6(F9) defers to a higher local borough standard, if there is one. In this case, the Council's minimum standard for private outdoor amenity space is 10sq.m in Policy Guidance 13 of the Council's adopted Residential Design Guide Supplementary Planning Document, July 2013 (SPD). Amongst others, the SPD supports Policy DM10(h) of the Council's Core Strategy, April 2012 (CS). This policy includes that development should have adequate private amenity space.
7. The potential useable ground floor amenity space would, therefore, be appreciably less than 10sq.m in quantity. Moreover, much of it would be a short, narrow strip sandwiched between a throughfare to the front door of Flat 2 and the bin and cycle stores. Most of the small external first floor enclosure in front of the main living area would be taken up by the box-planter or used to tend plants, so give a pleasant outlook and help to restrict views towards adjoining properties. It would not anyway be 1.5m deep, as must be provided under LP Policy D6(F9). The limited size with the constrained arrangement of the private outside amenity space, including the first floor enclosure, would not be practical in shape and utility or, therefore, adequate in quality to sufficiently meet a range of normal domestic uses; such as sitting out, drying washing, entertaining or other leisure use. It would not be SPD Policy Guidance 13 'fit for purpose' and at odds with relevant objectives of LP Policy D6(F9)³ and CS Policy DM10(h).
8. Although at the front of Flat 2, next to a drive for two adjoining flats, the ground level space would otherwise function in practical terms as a 'back garden'. There is public open space within walking distance of the site but no evidence it is suitable to mitigate inadequate on-site provision of enclosed outside space for private domestic activity⁴. The Council has granted permission for an adjoining flat with no private amenity space and in the area with a 'low level' of private amenity space. The reasons why are not before me so I don't know if they are directly comparable to the appeal proposal.
9. The appellant has therefore not demonstrated that the proposed lower level of private outside space would be in-keeping with the prevailing physical context and local character of development. Nor that achieving the required space would compromise optimising housing potential on the site, in this case for two flats. A condition to secure details of landscaping and fencing would not overcome the concerns outlined above, nor would any of the other conditions suggested by the appellant or those provided by the Council.
10. The minimum required size of private outside amenity space in this case is already quite limited, so the deficiency, albeit small in area, would have a

³ LP paragraph 3.6.9 and Table 3.2 v

⁴ SPD paragraph 3.59

significant adverse impact on amenity. As a result, I find that the proposal would not provide satisfactory living conditions for the future occupiers of Flat 2 with regard to the size and useability of private outside amenity space. Consequently, it is contrary to LP Policy D6(F9) and CS Policy DM10(h).

Car parking

11. The Council accepted no off-street parking for the proposed flats, which I take to mean within the appeal site. No.90 is in ground floor commercial use, currently a tattoo studio, with a flat above (No.90a). There are 4 car parking spaces in an apron in front of this property with drop-kerb access to Leatherhead Road, which is the A243. These spaces could also be used to park a motorcycle, cycle or electric scooter. The appellant states 3 are used by the tattoo studio and 1 by the flat.
12. None of this part of No.90 is in the appeal site, as defined by the red line in the submitted plans. The Council considers this parking could be used to park a car by a future occupier(s) of the proposed flats, so result in loss or displacement of car parking for the existing or future commercial use of No.90. However, even if this did occur it is a finite number of spaces so a reduction in parking for No.90 (or No.90a) would still result in the same number of car movements to and from the A243. This stretch of the A243 is a Transport for London Red Route which usually prohibits intentional stopping on it for any reason. I have not been informed about any special circumstance or dispensation to allow parking in this part of the road.
13. It is a reasonably busy road and, albeit a snapshot, I saw that the only delay, which was southbound, was queuing for traffic lights at a nearby junction, not volume of traffic. The Council has provided no objective evidence to substantiate any level or frequency of congestion along this part of the A243. Nor to show what the additional effect would be if occupiers of the proposed flats owned cars and travelled along this road, including to park in the apron. Nor has it justified by these means that additional parking would cause unacceptable increased parking stress in the surrounding area; such as by the capacity and take up of any on-street parking, including any residents permit parking, or a parking survey. There is, therefore, no apparent reason why parking in the apron by an occupier of the proposed flats, if it did occur, would necessarily lead to increased vehicle movements at all; nor even if it did that this would materially interfere with the free flow of traffic movement along this part of the A243.
14. The appellant contends that (any) cars could park in a nearby supermarket car park or at a Church. But both are private land and the former is also restricted to 90 minutes maximum stay. Despite a relatively low public transport accessibility level rating of 2, the Council agrees that the site (thus No.90) is accessible by bus (there are convenient bus stops) and is within walking distance of a train station. It therefore seems likely that some staff or customers of No.90 could use other means of travel than a car if they wished or if staff were required to. A previous planning permission included the appeal site to be used to park cars for the tattoo studio⁵. It was a rear garden but is currently overgrown with grass and has an unroadworthy car on part of it, it seems likely in situ for some time. Whether the Council can now enforce that

⁵ 06/10116/FUL

this car parking, approved in 2007, be provided on the site, is not within the scope of this appeal.

15. No.90 (including No.90a) and the parking apron are edged by a blue line in the application plans so, on the face of it, owned or controlled by the appellant. But the appellant's appeal statement describes No.90 and No.90a as owned by two other people; neither is the other owner of the appeal site declared in the application form. The appellant also describes these two people as the 'site' or 'property' owners, which could mean the appeal site or No.90 (including No.90a and the apron) or all of this land/property. Furthermore, the appeal form declares the appellant is not the owner of the appeal site.
16. It is not, therefore, clear that a condition in this appeal could restrict use of any of the apron parking spaces to No.90 (or No.90a) as the appellant suggests, or as it appears the Council seeks to achieve. A lease or covenant assigning spaces to No.90, as the appellant also contends, could be altered in the future outside of planning control; especially if the appellant is not a party to either or is not an owner or in control of the parking apron. No other mechanism, such as a suitable planning obligation, is before me in this respect. Some interested parties objected because of alleged existing and increased future on-street parking in, or obstructing, Sienna Close which also gives access to dwellings behind the site. This is a private road and there is no evidence it is owned or controlled by the appellant, so road markings or signs restricting parking could not be secured by a condition, as the appellant believes. These would be private matters for the respective parties.
17. Taking all the above into account, even if the proposal displaced car parking for the commercial unit at No.90 Leatherhead Road, I am not satisfied that the Council has demonstrated increased vehicle movements would exacerbate congestion on this part of the A243 or any other road, or prejudice highway safety. In these circumstances, I find no conflict with CS Policies DM9 or DM10. These policies include that development should not contribute to congestion or compromise highway safety having regard to local traffic conditions and by complying with parking standards.

Other Matters

18. Noise and disturbance from construction works is an inevitable consequence of new development, but for a temporary period. Suitable hours of working could be controlled by a condition, including details of a construction environmental management plan to further reduce inconvenience to local residents. Damage to the Sienna Close road surface would be a private matter between the respective parties, as would be suggested improvements to this road. It is for the Council to decide if it wanted to adopt this road. A condition could secure suitable details of foul drainage for the proposal, including to avoid exacerbating alleged inadequacies of foul drainage off-site (also a private matter for the respective parties and/or relevant Water Authority).
19. Subject to conditions there would be appropriate provision for bin and cycle storage and satisfactory design, with suitable external materials to integrate with the character and appearance of the local area. There is no objective evidence about alleged significant adverse effect on natural light or privacy of occupiers of adjoining or nearby dwellings and considering the staggered, mid-terraced siting of the building and separation from other dwellings. There would be satisfactory internal living conditions for future occupiers of both flats,

including suitable external living conditions for the ground floor Flat 1. The Council did not object to the proposal for any of these reasons. The absence of harm in these regards is a neutral factor in my decision.

20. The proposal follows the Council's refusal of similar development at the appeal site and the appellant considers it overcomes the Council's previous objections. I have considered the appeal on its individual planning merits.

Planning Balance and Conclusion

21. The Council cannot currently demonstrate a 5 year supply of deliverable housing sites against the housing requirement set out in the LP, with a 2.21 year supply representing a shortfall of some 3,874 dwellings⁶. It also failed the 2022 Housing Delivery Test (at 60%). Either way, by virtue of footnote 8, Framework paragraph 11 d) is therefore engaged and the starting point is that planning permission should be granted.
22. The site is not previously-developed land by definition because this excludes residential gardens in built-up areas⁷. It is, though, located where appropriate residential infilling is acceptable in principle under the development plan. The proposal would support the Government's objective in the NPPF of significantly boosting the supply of new homes to meet peoples living needs and make efficient and effective use of a windfall site and could be built relatively quickly. Though important considerations, two flats would make a small contribution in these regards so these public benefits have modest weight in favour of the appeal.
23. On the other hand, the proposal would result in unacceptable harm to the living conditions for the future occupiers of Flat 2. This would be at odds with the development plan, which is consistent in these respects with aims of the NPPF to ensure that development functions well and has a high standard of amenity for future users. This consideration has substantial weight against the proposal.
24. Notwithstanding the notable housing shortfall in this case, the support in the NPPF to delivering housing does not dispel that residential development must be satisfactory for those who would live in it. In my view, the adverse impact of granting planning permission in this case would, therefore, significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole. Consequently, the presumption in favour of sustainable development (the 'tilted balance') does not apply in this appeal.
25. The proposal does not comply with certain policies of the development plan and conflicts with some provisions of the NPPF. There are no other material considerations to indicate that the decision in this case should be made other than in accordance with the development plan taken as a whole⁸, consistent with other relevant provisions of the NPPF. Consequently, for the reasons given above the proposal is unacceptable, so the appeal does not succeed.

Robin Buchanan

INSPECTOR

⁶ Council's Five-year Housing Land Supply Statement: Position as at 1st April 2022, prepared August 2023

⁷ NPPF Annex 2: Glossary

⁸ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and Framework paragraph 12