



Appeal Decision

Site visit made on 4 June 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 June 2024

Appeal Ref: APP/Z5630/W/23/3327434

23 Tolworth Park Road, Kingston Upon Thames, Tolworth KT6 7RN

- 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 Ms A Davies (Calbrook Cars Limited) against the decision of the Council of the London Borough of Kingston upon Thames.
 - The application Ref 23/01343/FUL, dated 17 May 2023, was refused by notice dated 2 August 2023.
 - The development proposed is the change of use from shop/retail to residential use (Use Class C3). Alteration of front elevation with associated cycle store and bin store.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of development from the Council's Decision Notice, which is more accurate than that provided on the Application Form.

Main Issues

3. The main issues are the effect of the development on: the availability of commercial/ employment floorspace; and the living conditions of future occupiers with regard the amenity space provision.

Reasons

Commercial/ Employment Floorspace

4. The appeal site comprises a two storey property on Tolworth Park Road, with a vacant commercial unit at street level and a residential use above. The surrounds are mixed in nature, featuring a range of commercial and residential uses, including nearby former commercial properties that have been converted to residential dwellings. The proposal seeks to change the use of the appeal property from shop/ retail to residential use as one studio flat.
5. Policy DM17 of the Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy 2012 (the Core Strategy) states the Council will seek to protect all employment land and premises in certain parts of the Borough. It continues that alternative uses will not be considered acceptable in such areas unless it has been demonstrated by sound evidence and rigorous marketing over a number of years (up to two years) that there is no quantitative or qualitative need for a range of employment uses.

6. The proposal would result in the loss of the employment use at the site, such that Policy DM17 is engaged. The appellant has provided a marketing letter in support of its application, which sets out that due to the location of the appeal site, a lack of passing trade, and nearby commercial properties having been on the market for several years, finding a tenant for the appeal property has been problematic.
7. The letter cites further reasons such as the poor condition of the property, lack of allocated parking and current EPC rating. The contents of the marketing letter are acknowledged, as is the appellant's position that the premises would need refurbished prior to marketing, thus resulting in increased costs. Nevertheless, the requirements of Policy DM17 are clear, and it remains that no substantive evidence has been provided to demonstrate a lack of need for the current commercial use of the site or detailed evidence of a precise period of marketing in line with policy requirements.
8. Supporting text to Policy DM17 sets out that the Borough has a limited supply of industrial/ business land and that maintaining and developing a local economy is a key theme of the Core Strategy. As such, the policy seeks to ensure that existing commercial land and premises are protected. In the absence of sound evidence or a marketing exercise in relation to the appeal property, the appellant has not therefore demonstrated that the loss of the commercial premises at the site would not have a detrimental impact on the supply of industrial/ business land within the Borough.
9. For the reasons given, I am unable to conclude on the evidence before me that the proposal would not have an adverse effect on the availability of commercial/ employment land. As such, it would fail to accord with Policies DM17 and DM19 of the Core Strategy and Policies E1, E2 and E9 of the London Plan 2021 insofar as they seek to protect existing employment land and premises, and retail uses.

Living conditions

10. Policy D6 of the London Plan sets out that a minimum of 5sqm of private outdoor space should be provided for 1-2 person dwellings, with an extra 1sqm for each additional occupant. However, it is clear that this will only apply where there are no higher local standards in the borough Development Plan Documents. The Council's Policy Guidance 13 of the Residential Design Guide Supplementary Planning Document 2013 (the SPD) sets a higher figure for private amenity space of 10sqm for new flats and 1sqm for each additional person. While this is guidance rather than policy, it remains a material consideration and as such I give it substantial weight.
11. The proposal would provide 9sqm of outdoor amenity space. I accept that, although this would be below the Council's requirement, the shortfall would be modest. However, this space would be provided to the front of the dwelling, adjacent to the busy Tolworth Park Road. This would limit the privacy of the space such that, despite being only marginally below the quantum of space that should be provided, it would represent a poor standard of private, external space for a residential dwelling. Accordingly, it would fail to effectively support the range of uses required of such space such as sitting out, hanging washing etc. and would limit occupiers' enjoyment of the space.

12. The appellant refers to communal outdoor space to the rear of the appeal property, measuring 77.7sqm. However, no precise information on this space is provided, which appears to be outside of the redline boundary. I observed the space to the rear of Tolworth Park Road on my visit, which currently appears to be physically split between properties. That part which the appeal property backs onto is made up of a long, narrow corridor adjacent to the habitable windows of the neighbouring dwelling, and a small square section. Overall, it appears to be a cramped space and, in the absence of information on the precise extent of the communal space and the level of occupants that would share it, I cannot be certain it would comfortably and effectively support current users and potential occupiers of the proposal.
13. For the reasons given, the proposal would have a significant adverse effect on the living conditions of future occupiers, with particular regard to the provision of external amenity space. As such, it would fail to comply with Policy DM10 of the Core Strategy, Policy D6 of the London Plan 2021, and the SPD insofar as they seek to ensure that development provides adequate private and/ or communal amenity space.

Other Matters

14. The proposal would result in additional housing, in an established residential area, contributing to the housing mix and choice in the area and reusing previously developed, brownfield land. This is a clear benefit of the scheme. However, due to the single dwelling nature of the proposal it would overall make a limited contribution in this regard, such that it carries limited weight.

Planning Balance and Conclusion

15. The Council is unable to demonstrate a five year supply of housing. Where the requisite housing land supply does not exist, 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.
16. It has not been effectively demonstrated that the proposal would not have an adverse effect on the availability of commercial/ employment land, contrary to Policies DM17 and DM19 of the Core Strategy. This policy conflict carries significant weight against granting the appeal. The proposal would also harm the living conditions of future occupiers with regard to amenity space provision, which also carries significant weight.
17. I acknowledge the identified benefit of the scheme with regard to housing provision but, for the reasons given, this attracts limited weight. Accordingly, overall the adverse impacts of granting permission would not be significantly and demonstrably outweighed by the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the proposal cannot benefit from the presumption in favour of sustainable development.
18. The appeal should therefore be dismissed.

C Rafferty

INSPECTOR