



Appeal Decision

Site visit made on 20 May 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/Z5630/W/23/3328319

17-21 Meadway House, Brighton Road, Surbiton, Kingston Upon Thames KT6 5LR

- 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 Mahal Properties against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/01447/FUL.
 - The development proposed is change of use of part of the ground floor, part of the first floor and the second floor of Meadway House from vacant commercial floorspace (Class E) to a large House in Multiple Occupation (HMO) with a total of 11 rooms and a maximum occupancy of 11 persons (Use Class Sui Generis) with associated external alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of their appeal submission the appellant has included¹ alternative plans in relation to the internal and external parking of cycles. It is however unclear from the submission as to whether these plans are for information purposes only, or whether the appellant wishes to replace the plans submitted with the planning application with these alternate plans.
3. Given this uncertainty and having regard to the Wheatcroft² and Holborn³ principles, as well as the procedural guidance⁴, I conclude that it would not be fair or reasonable to determine the appeal against the alternative plans, as to do so would prejudice interested parties. As such I have determined the appeal against the plans as submitted to, and considered by, the Council when it made its decision.
4. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Both parties, within their respective submissions had an opportunity to comment on the revised Framework. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

¹ Appendix 8 of Appellant's Appeal Statement

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

³ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

⁴ Planning Inspectorate Procedural Guide: Planning Appeals – England (updated 13 September 2023)

Main Issues

5. The main issues are:

- whether the proposed development would provide appropriate living conditions for future occupiers, with regard to internal and external communal living space, privacy, outlook, daylight and sunlight.
- whether the proposed development would make adequate provision for cycle parking; and
- the effect of the proposed development on pedestrian and highway safety, with regard to car parking and congestion.

Reasons

Living conditions

6. The appeal relates to part of the ground and first floors, and the second floor of a mid-terrace property known as Meadway House at 17 – 21 Brighton Road.
7. The appeal scheme would provide an 11-bedroom House of Multiple Occupation (HMO), and all bedrooms would each be served by window openings. The appeal proposal is accompanied by a Daylight and Sunlight Assessment (DSA) which acknowledges that there are no mandatory standards for daylight and sunlight provisions in new dwellings. However, the DSA assessed all the proposed rooms against guidelines values contained within BRE Report 209, Site Layout Planning for Daylight and Sunlight: A guide to good practice (third edition, 2022) (BRE guidelines).
8. I observed on site that the only window which would serve proposed Bedroom 3 at first floor level currently provides a substandard outlook by way of its corner position in the rear elevation of the original property and the sense of enclosure that is created by the two existing large, two-storey rear outriggers situated almost directly either side of this window. These outriggers also impact the amount of natural light received through this window and the DSA details that this proposed bedroom would not adhere to the BRE guidelines in respect of both the levels of daylight and sunlight received.
9. I noted that the window serving proposed Bedroom 7, at second floor level, again as a result of its size and location in the corner of the room, also only provides limited natural light into this room. The DSA details that this proposed bedroom would adhere to BRE guidelines in respect of sunlight but would not meet the BRE guidelines in terms of daylight received. With regard to outlook, this window does provide a view above the roofs of the aforementioned rear outriggers either side, and thus the outlook from this window is acceptable.
10. In view of the above, the proposed development would not provide appropriate living conditions for the future occupiers of proposed Bedroom 3, with regard to outlook, daylight and sunlight received, and proposed Bedroom 7 with regard to daylight received.
11. In coming to the above, I acknowledge that the submission details how eight bedrooms, including proposed Bedrooms 3 and 7, would be provided with additional natural light by way of introducing sun pipes into these rooms. However, the submission does not provide any specific details of the additional light benefits these sun pipes would provide. Moreover, a sun pipe would not

would not address the unacceptable outlook provided for the occupiers of proposed Bedroom 3.

12. The appellant has drawn my attention to the built-up nature of the surrounding urban area, the constraints of the site, limitations of providing additional openings to serve these rooms and the need to provide an efficient use within the building. However, these matters do not override the harm I have identified for future occupiers of these rooms.
13. With regard to the shared communal living room / kitchen area at ground floor level, this space would be served by existing and proposed openings in the rear and side elevations, as well as six new roof lights. I appreciate that the outlook from the windows in the rear and side elevations of this shared communal space would be compromised by the proximity to surrounding existing structures. Nevertheless, given the number of proposed openings serving this room, and its function as a communal area rather than a bedroom, I consider that the existing and proposed windows, and rooflights would provide sufficient outlook and natural light for future occupiers when using this space.
14. Furthermore, given my observations on site and the relationship between the windows serving this shared space and existing windows in neighbouring properties, I find that users of this communal area would not be subject to any undue loss of privacy through overlooking.
15. Given the surrounding built up urban nature of the site and the wider area, there is very little provision of outdoor amenity space for future occupiers, save for areas which are largely proposed to be used for the storage of external refuse facilities and cycles. Nevertheless, in this case residents would be provided with a relatively large shared communal area inside the property, and have access to nearby areas of outdoor public open space, most noticeably Victoria Recreation Ground, which is a short walk from the appeal site. As such, the limited provision of outdoor space would not be unduly harmful to the living conditions of future occupiers.
16. In view of all the above, I conclude that the appeal scheme would provide adequate living conditions for future occupiers in terms of private/communal amenity space but would not provide appropriate living conditions for the occupiers of Bedrooms 3 and 7. The magnitude of this harm would be significant in this context. The proposal would therefore conflict with Policy D6 of the London Plan (2021) and Policies DM10 and DM13 of the Royal Borough of Kingston Upon Thames Core Strategy⁵ (2012) (CS) where they together seek to ensure, amongst other things, that development should be of high quality design and provide sufficient daylight, sunlight and outlook for occupiers.
17. I note the reason for refusal on living conditions refers to the Council's HMO Guidance⁶, however the Council's submissions do not state which specific section of this HMO Guidance the appeal proposal would conflict with. Having reviewed the appeal proposal against this HMO Guidance I note that paragraph 5⁷ of the Amenity & Space Standards Section states that "*All habitable rooms shall be provided with an area of clear glazing within a window opening to the external area, equivalent of total area to at least 1/10th of the floor area of the room*". I

⁵ Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy (April 2012)

⁶ The Royal Borough of Kingston Upon Thames Houses in Multiple Occupation Standards

⁷ Natural Lighting

have insufficient evidence before me as to whether the appeal proposal would comply with this requirement. As such, the HMO Guidance has not been determinative in my consideration of this appeal.

Cycle provision

18. Notwithstanding the appellant's submissions, in accordance with Policy T5 of the London Plan the appeal proposal is required to provide a minimum of 13no. cycle parking spaces – one for each of the 11no. bedrooms and 2no. for visitors.
19. Policy T5 of the London Plan also states that cycle parking should be designed and laid out in accordance with the guidance within the London Cycling Design Standards and proposals should demonstrate how cycle parking facilities will cater for larger cycles, including adapted cycles for disabled people. Policy DM8 of the CS requires new development to provide on-site facilities for cyclists as appropriate, and Table 4⁸ of the Council's Sustainable Transport SPD (2013) states that cycle parking design should be based on a bicycle length of 2000mm.
20. The plans submitted with the planning application demonstrate that the appeal proposal would provide a total of 7no. cycle parking spaces, 4no. within the rear external areas and 3no. within an internal storeroom, with all of these parking spaces showing cycles stored vertically. The plans also show that internal lockers to accommodate 12no. fold-up Brompton cycles would also be provided within the communal corridor area.
21. The proposed of parking spaces for 7no. cycles is significantly below the minimum requirement of 13no. spaces required by Policy T5 of the London Plan. Additionally, the parking of cycles vertically is likely to be less appealing for some users and in particular may even preclude certain individuals, as a result of physical limitations or mobility issues, from being able to safely access and / or store their bike. As such, I find that the storage of bikes vertically is not appropriate cycle parking provision.
22. Furthermore, the inclusion of 12no. lockers for the storage of fold-up Brompton cycles is very specific and would only cater for persons that have this particular style of bicycle. I have limited evidence before me that occupiers of the appeal proposal would have fold-up Brompton cycles and thus the provision of 12no. lockers for the storage of fold-up Brompton cycles is not appropriate and does not mitigate for the shortfall in standard cycle parking spaces that I have identified.
23. I note the appellant's claim that there is additional space for 4no. cycles to be stored on the northern side elevation of the ground floor. However, I have limited information before me by way of plans to demonstrate the position and type of spaces that could be provided in this location.
24. Consequently, I conclude that the appeal proposal would not provide the required levels of appropriate cycle parking facilities. Given the reliance on vertical cycle storage in combination with the limited numbers, the lack of suitable cycle parking attracts significant harm in this context. Thus the proposal is contrary to Policy T5 of the London Plan and Policy DM8 of the CS, which together seek to ensure, amongst other things, that proposals provide appropriate cycle parking provision at least in accordance with the minimum standards. The proposal is also contrary to the aforementioned guidance contained within the Council's Sustainable Transport SPD.

⁸ Requirements for cycle parking location, design and layout

Car parking

25. Policy T6 of the London Plan states that car-free development should be the starting point for all development proposals in places that are well-connected by public transport.
26. 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 excellent. The proposal would provide no off-street parking provision.
27. Whilst I am aware that my site visit was a single snapshot in time, and parking levels may fluctuate at different times during the day, nevertheless I observed that Victoria Avenue was heavily parked, with limited parking spaces available, at the time of my visit (early afternoon on a weekday).
28. As such, additional parking arising from the appeal proposal would likely increase parking stress within this area and the additional demand for on-street parking could result in congestion or unsafe and unsuitable parking which would be harmful to pedestrian and / or highway safety.
29. The requirement for a Unilateral Undertaking (UU) to secure restrictions on future occupiers of the appeal scheme from obtaining resident parking permits in the CPZ is therefore both reasonable and necessary.
30. The appellant has submitted a signed and dated UU, and the Council has raised no objection to its content. I am satisfied that the UU achieves what it sets out to do and meets the tests for planning obligations outlined in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
31. Consequently, as a result of the submitted UU I conclude that the appeal scheme would not result in a significant increase in vehicles parking on-street and therefore would not lead to additional parking stress in this area. The proposal would also not result in congestion or unsafe and unsuitable parking which would be harmful to either pedestrian or highway safety.
32. As such, the appeal proposal would comply with Policy T6 of the London Plan, and Policies DM9 and DM10 of the CS, which seek, amongst other things, to support car-free development in areas well-connected by public transport; to restrict eligibility for on-street parking permits for residents of new developments in CPZs; to provide car parking in accordance with the standards in the London Plan; and require developments to have regard to highway safety. The proposal would also comply with paragraph 115 of the Framework where it states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.

Other Matters

33. The appeal site is within the Surbiton Town Centre Conservation Area (CA), and in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
34. The significance of the CA is partly derived from its historical development as part of Surbiton 'New Town' following the relocation of Surbiton railway station

in the mid-19th century. The area has a typical mix of high street uses including shops, pubs and food outlets, which contribute to the diverse character, appearance and significance of this vibrant CA.

35. Furthermore, all the buildings within this terrace row, including the appeal building, are locally listed and therefore non-designated heritage assets. I observed on site that the terrace row within which the appeal site is located creates a strong rhythm and sense of enclosure within the Surbiton District Centre. As such, this terrace row, and the appeal property, makes a positive contribution to the character and appearance of the CA.
36. The appeal proposal would not result in any external alteration to the front of the building. The only external alterations would be the installation of two ground floor windows in the rear elevation of, and the insertion of six conservation style rooflights in, the existing single storey rear extension. This single storey rear extension is enclosed on all sides by surrounding two storey developments and thus these alterations would only be visible from the limited external area associated with the appeal site, and from the rears of a small number of adjacent properties.
37. These minor alterations would therefore not result in any harm or loss of significance to this non-designated heritage asset and would preserve the character and appearance of the CA, avoiding harm to its significance.
38. An interested party has raised concerns over land ownership issues and potential alterations to rights of access. The appellant has confirmed that they own all the land associated with the appeal proposal and the neighbour's ability to utilise the alleyway between their building and the appeal property would not be impacted. Nevertheless, these are private land use considerations and are not determinative in this appeal.

Other Considerations

39. The Council have confirmed that they cannot currently demonstrate a five-year housing land supply and there is no dispute between the parties that the appeal proposal for an 11no. bedroom HMO would provide the equivalent of 6no. residential units.
40. Set against the harm identified, the provision of the equivalent of 6no. residential units would support the Government's aim of significantly boosting the supply of homes and improve the current shortfall in the Council's housing land supply. Furthermore, the proposal would make efficient use of a vacant property in a sustainable location. However, the addition of the equivalent of 6no. residential units would be limited in this context and I therefore attach limited weight to this benefit.
41. There would be economic benefits arising from the construction activities to provide the HMO and from residents using local shops and services. However, such benefits would be limited by the scale of the proposal and therefore attract limited weight in favour of the appeal scheme.
42. The appellant has commented that the proposal would not have an adverse impact in neighbouring occupiers and the bedrooms would exceed the minimum standards. These are neutral matters in the planning balance.

43. I also note the appellant's comments that changes have been made to improve the proposal in comparison to a previously refused application at this site. However, this matter is not determinative in my consideration of the appeal proposal which must be judged on its own merits and in accordance with the relevant policies and guidance.

Planning Balance

44. The appeal proposal would not provide acceptable living conditions for all future occupiers and would not provide the required levels of appropriate cycle storage facilities. Collectively, I judge the magnitude of harm from these matters to be substantial.
45. The CS dates from 2012 but the weight to be attached does not hinge on its age. Paragraph 225 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. According to the Framework the creation of high-quality buildings and places is fundamental to what the planning development process should achieve and that a high standard of amenity should be provided for future users. It also seeks to ensure that specific applications ensure that appropriate opportunities to promote sustainable modes of transport can be taken.
46. Therefore, the conflict between the proposal and London Plan Policies D6 and T5, and CS Policies DM8, DM10 and DM13 should be given significant weight in this appeal as these policies are consistent with the Framework. As the proposal would be contrary to these policies there would be conflict with the development plan as a whole.
47. The Council cannot demonstrate a five-year supply of deliverable housing sites and in these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the appeal are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
48. The adverse impacts of the proposals failure to provide acceptable living conditions for all future occupiers and the failure to provide the required levels of appropriate cycle parking facilities would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

49. The proposal conflicts with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given, the appeal should be dismissed.

R Major

INSPECTOR