



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: 3 July 2024

Appeal Ref: APP/Z5630/W/23/3333355

160 Ewell Road, Surbiton, Kingston Upon Thames KT6 6HG

- 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 Maule Property Developments Ltd against the decision of the Council of the Royal Borough of Kingston Upon Thames.
- The application Ref is 23/02324/FUL.
- The development proposed is erection of a single storey, 2 bedroom dwelling following demolition of rear extension. Cycle parking and bin storage.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey, 2 bedroom dwelling following demolition of rear extension including cycle parking and bin storage at 160 Ewell Road, Surbiton, Kingston Upon Thames KT6 6HG in accordance with the terms of the application, Ref 23/02324/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development in the above banner heading is taken from the application form. However, I have removed the words "*to 160 Ewell Road*" as this does not form part of the development. The description of development in my formal decision is taken from the decision notice and appeal form as I consider this to be a more precise description of the appeal proposal.
3. The appellant's appeal statement refers to an amended plan and an additional plan that were to be submitted as part of the appeal to overcome the Council's reasons for refusal in relation to built-in storage space and floor to ceiling heights. However, these amended / additional plans were only received after the Final Comments deadline.
4. The Council were given an opportunity to provide comments on these amended / additional plans and responded by stating these plans should not be accepted as the appeal process should not be used to amend a scheme.
5. Whilst I note the Council's comments on this matter, having regard to the Wheatcroft¹ and Holborn² principles, as well as the procedural guidance³, the Council were provided with an opportunity to comment on these plans. As such, I do not consider that the Council, or other parties, would be prejudiced by my acceptance of these plans. I have therefore determined the appeal based on the submitted amended plan "P.M.500 Rev E - Proposed Floor Plans" and the additional plan "P.M.700 - Proposed Section".

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

³ Planning Inspectorate Procedural Guide: Planning Appeals – England (updated 13 September 2023)

6. 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.

Main Issues

7. The main issues are:

- the effect of the proposed development on the supply of employment land within the borough;
- whether the proposed development would provide appropriate internal living conditions for future occupiers, with regard to outlook, built-in storage space and floor to ceiling heights;
- whether the proposed development would provide appropriate levels of outdoor amenity space for future occupiers; and
- the effect of the proposal on parking congestion in the surrounding area.

Reasons

Employment Land

8. The appeal relates to a substantial three-storey end terrace property occupying a prominent corner plot at the junction of Ewell Road and Langley Road. To the rear of the original property is a two-storey extension. The original property, and this two-storey extension, have been converted into five flats, having previously been used as offices.
9. To the rear of the two-storey extension is a flat roofed, timber framed, single-storey extension. This extension is not currently in use and I observed on my site visit that it is boarded up and in a very poor condition. It is the single-storey rear extension to which the appeal specifically relates and the proposal seeks to demolish this extension and replace it with a single-storey, two-bedroom dwelling.
10. The Council's Officer Report details that the appeal site is within the Surbiton District Centre (SDC). Policy DM17 of the Royal Borough of Kingston Upon Thames Core Strategy⁴ (2012) (CS) states that all employment land within the SDC will be protected. The policy goes on to state that alternative uses will not be acceptable unless it is demonstrated by sound evidence and marketing over a number of years (up to two years) that there is no quantitative or qualitative need for a range of employment uses.
11. Similarly, Policy E1 of the London Plan (2021) states that existing viable office floorspace should be retained and proposals should take into account the need for a range of suitable workspace including lower cost and affordable workspace. The sub text of this policy (6.1.7) also states that evidence to demonstrate surplus office space should include strategic and local assessments of demand and supply, and evidence of vacancy and marketing for at least 12 months.

⁴ Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy (April 2012)

12. There is no dispute between the parties that whilst not currently in use, the single-storey extension to which this appeal relates has previously been used for employment purposes as an office use. However, the appellant contends that this was an extension to the original main office building, and not a standalone unit / use.
13. To support this assertion the appellant has provided a Statutory Declaration from the former Director of a company that occupied the main office at 160 Ewell Road for a period of approximately 15 years beginning 1992. This Statutory Declaration confirms that the main building was used as an office and the rear extension was used as a storage area. The Statutory Declaration goes on to state that the use of the extension ceased in 2007 and to their understanding has not been used since.
14. The appellant also states that when the main building was converted from office to residential use, under a prior approval application⁵, the single storey extension became ancillary to the residential use. I have however been provided with very limited information, and no plans, in relation to this prior approval application to ascertain whether the single storey extension formed part of that application.
15. I also acknowledge the appellant's comments that the extension has no lawful use and was abandoned a long time ago, as well as the aforementioned Statutory Declaration. However, I have insufficient evidence before me as part of this Section 78 appeal to definitively conclude that the extension subject of this appeal has no lawful use, has been abandoned and / or no longer has an employment use.
16. Consequently, the appeal proposal would result in a loss of employment land, and it has not been demonstrated by sound evidence and marketing that there is no quantitative or qualitative need for an employment use, including lower cost and affordable workspace, of this site for the requisite period.
17. In coming to this view, I have noted the appellant's comments on the present state of the building. While I accept that the poor condition of the building does somewhat reduce the likelihood of the site being brought back into use for employment purposes in its present state, the employment use runs with the land rather than just the existing building and thus the land could potentially be marketed for an employment use.
18. In view of all the above, I conclude that the proposal would result in the loss of employment land which would be harmful to the amount of available employment land within the borough. However, given the size / amount of employment land that would be lost as a result of the appeal proposal, and the present poor state of the appeal structure, the magnitude of harm in this context would be limited.
19. Nevertheless, the proposal would be contrary to London Plan Policies E1 and SD9, and Policies CS12 and DM17 of the CS. These policies together seek to ensure, among other things, that employment land within the SDC is protected; the vitality and viability of the SDC is enhanced and continues to provide employment opportunities; and that existing viable office floorspace should be retained. The proposal is also contrary to paragraph 85 of the Framework where it states that significant weight should be placed on the need to support economic growth and productivity.

⁵ LPA ref: 16/16546/PNO

Internal living conditions

20. The proposed single-storey two-bedroom dwelling would have an open plan kitchen, living room and dining area, served by openings in each of the front (north), rear (south) and side (west) elevations.
21. The window and patio doors in the rear elevation of the proposed dwelling would be sited close to the boundary treatment situated along the shared boundary to the south, and thus the outlook from these openings would be somewhat compromised. Nevertheless, these openings serve an open plan area within the proposed dwelling that would also be served by additional openings in the front and side elevations, resulting in this open plan area having a triple aspect.
22. The windows in the front and side elevations, with the addition of the openings to the rear, would collectively provide an adequate outlook from the open plan kitchen, living room and dining area. Furthermore, the two bedrooms, which would each be served by a window in the front elevation, would be provided with an acceptable outlook.
23. The plans which were submitted with the appeal demonstrate that the appeal proposal would accord with the requirements of London Plan Policy D6 in respect of built-in storage and floor to ceiling heights.
24. In view of all the above, I conclude that the proposed development would provide appropriate internal living conditions for future occupiers, with regard to outlook, built-in storage space and floor to ceiling heights. The proposal therefore complies with Policies D3 and D6 of the London Plan, and Policies DM10 and DM13 of the CS. These policies together seek to ensure, among other things, that developments have regard to the amenities of occupants, provide adequate internal space, and deliver an appropriate outlook.

Provision of outdoor amenity space

25. London Plan Policy D6 states that where there are no higher local standards in the borough Development Plan Documents a minimum of 5sqm of private amenity space should be provided for 1-2 person dwellings, and an extra 1sqm should be provided for each additional occupant. Criterion (h) of CS Policy DM10 requires developments to ensure adequate private amenity space.
26. Policy Guidance 13 of the Council's Residential Design SPD (2013) (SPD) relates to private amenity space and states that new houses should provide 50sqm of private garden. However, this guidance acknowledges that in different character areas the levels of private amenity space may vary considerably.
27. The proposal would provide 13sqm of outdoor amenity space to the rear of the dwelling and the Council assert that this is substandard for the proposed unit. However, I observed that there are a variety of property types with differing levels of outdoor amenity space within this area. The proposed outdoor amenity space, whilst fairly limited in size, is south facing, accessed via a set of patio doors and is sufficient to provide for sitting out and hanging washing. As such this area would likely serve as a useful space for future occupiers in this urban location.
28. In view of the above, I conclude that the proposal would provide sufficient outdoor amenity space for future occupiers. I therefore find no conflict with

Policy D6 of the London Plan and Policy DM10 of the CS, where they together seek to ensure, among other things, that development provide adequate private amenity space. I also find no conflict with the Framework, which seeks to ensure a high standard of amenity is provided for future users.

Car parking

29. 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.
30. The site is located within a Controlled Parking Zone (CPZ) and has a public transport accessibility level (PTAL) of 4 which is considered to be good. The submission states that the proposed development would be car-free.
31. 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 the surrounding roads were heavily parked, with very limited parking spaces available, at the time of my visit (early afternoon on a weekday).
32. 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 highway safety.
33. 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.
34. 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.
35. 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 highway safety.
36. As such, the appeal proposal would comply with Policy T6 of the London Plan, and Policy DM10 of the CS, where they together seek, among other things, to support car-free development in areas well-connected by public transport 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.
37. I note the Council's reason for refusal on this matter refers to paragraph 107 of the Framework, which is now paragraph 111 in the latest version. This paragraph relates specifically to the setting of local parking standards within planning policies, and I find no conflict between the appeal scheme and this paragraph.

Other Matters

38. The appeal site is within the Oakhill Conservation Area (CA). 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 CA. Furthermore, the appeal building is locally listed and therefore a non-designated heritage asset (NDHA).
39. The significance of the CA is partly derived from its mixed character and appearance, comprised of Regency and early Victorian linear housing along the turnpike road (Ewell Road) which was later converted to a commercial centre. Furthermore, the CA is enhanced by an area of substantial Victorian houses in planned form, interspersed with more recent developments, and the area of public open space to the west known as The Wood.
40. The appeal building occupies a prominent corner location at the junction of Ewell Road and Langley Road. The attractive appeal building is three-storey in height with a two-storey rear extension that is very much in keeping with the original design of the property. Consequently, the locally listed appeal building, along with its two-storey rear extension, currently makes a positive contribution to the CA and the character of the area in general.
41. However, this appeal relates specifically to the single-storey, flat-roofed, timber extension attached to the rear of the two-storey brick extension. This single-storey extension is currently boarded up and has been vacant for a considerable period of time. In its present state this unattractive extension currently has a harmful visual impact upon the NDHA it adjoins, the CA and the wider area in general.
42. The appeal proposal seeks to demolish this single-storey timber extension and replace it with a single-storey red brick dwelling which includes a low-level stone band that would be continued from the main three-storey building and its two-storey extension. The new windows in the proposed dwelling would match the existing sash window design of the main building, and the design includes a central entrance door with a fanlight and stone porch overhang. The proposed dwelling would also have a hipped roof to match the roof design of the two-storey extension to the rear of the main building.
43. As such, the proposed dwelling would be a significant visual improvement in comparison to the existing structure that it would replace on this site, and thus the proposal would enhance the significance of this NDHA. The proposal would also enhance the character and appearance of the CA, and there would be no harm to its significance. This is a significant benefit of the appeal scheme.
44. An interested party has commented that while they broadly support the development, they have made reference to the wellbeing of an existing oak tree on site whilst building works take place. The application is accompanied by an Arboricultural Method Statement (AMS) which details that works to prune this tree have been granted, and the AMS provides a detailed sequence of events that will take place to ensure the tree is protected prior to and during the demolition and construction phases of the development.
45. I note from the Council's Officer Report that the Council's Arboricultural Officer has reviewed the submitted information and raised no objection to the

proposal. As such, and subject to the condition I have added that requires the proposed development to be undertaken in accordance with the details included within the submitted AMS, the appeal proposal would not have an adverse impact upon this oak tree.

Other considerations

46. The proposal would deliver one new single-storey, two-bedroom dwelling which would provide a good standard of accommodation. The scheme would also represent an efficient use of brownfield land in a sustainable location. Furthermore, the proposal would support the Government's aim of boosting the supply of homes and improve the current shortfall in the Council's housing land supply. However, given the scale of the development for one dwelling I attach limited weight to these benefits.
47. There would also be economic benefits arising from the construction of the development and ongoing economic benefits from future occupiers spend in the local area, however given the scale of development these economic benefits would also be limited.
48. For the reasons given earlier, in comparison to the existing structure on site, the appeal proposal would enhance the significance of this NDHA and also enhance the character and appearance of the CA, and wider area in general. I consider this to be a significant benefit of the appeal scheme.

Planning Balance

49. The appeal proposal would cause harm through the loss of employment land. There would however be a visual improvement to a NDHA, the CA and the surrounding area in general. Nonetheless, there would be a conflict with the development plan when taken as a whole. However, the Council cannot demonstrate a five-year supply of deliverable housing sites and therefore paragraph 11 d) of the Framework is relevant.
50. On the debit side, the proposal would result in the loss of employment land. The harm arising from this is however reduced by the size and amount of employment land that would be lost, and the existing condition of the appeal structure.
51. On the positive side, the proposal would deliver an additional housing unit in a Borough that is falling short of the level of housing supply required by national policy. One unit would make a minor but useful contribution as indicated by paragraph 70 of the Framework. Furthermore, some positive weight should also be given to the benefits of making efficient use of a brownfield site, within an urban location, and this is supported by the Framework.
52. In addition, one of the aims of the Framework is to achieve well-designed places and good design is a key aspect of sustainable development. Moreover, the Framework seeks to enhance the historic environment. The proposal scores well in this respect as it would result in the replacement of the existing unattractive extension which currently has a harmful visual impact upon the NDHA it adjoins, the CA and the wider area in general. This is a significant benefit in favour of the appeal scheme.
53. When assessed against the policies in the Framework as a whole, the adverse impact of the loss of the employment land does not significantly and

demonstrably outweigh the benefits of an additional home in a suitable location which would enhance the significance of this NDHA and also enhance the character and appearance of the surrounding area, including the CA. Consequently, the presumption in favour of sustainable development applies and this indicates that permission should be granted.

Conditions

54. The Council has provided a list of suggested planning conditions, which I have considered against paragraph 56 of the Framework, and the advice contained in the Planning Practice Guidance, and I have edited to improve precision and enforceability.
55. In addition to the standard time limit condition (1), I have attached a condition specifying the approved plans to provide certainty (2).
56. A pre-commencement condition has been included which requires the submission of a scheme to enhance the nature conservation interest of the site (3). This pre-commencement condition is necessary to ensure that the enhancement measures can be implemented and incorporated into the construction phase of the development.
57. I have also added a pre-commencement condition which requires the submission of a demolition and construction management plan (4). This pre-commencement condition is necessary to protect the living conditions of occupiers of neighbouring properties, and in the interest of highway safety, throughout the demolition and construction phases.
58. The details of the materials to be used within the submitted application form are not sufficient for a development within the CA and adjoining a NDHA. As such, in order to safeguard the character and appearance of the adjoining building and surrounding area I have amended the Council's suggested materials condition to require the submission of full details, or samples, of the external materials to be used in the development (5). I have also added a condition requiring the submission of details of all boundary treatments in order to safeguard the character and appearance of the area (11).
59. A condition requiring details of the provision of waste and recycling facilities (6) to be submitted has been included to safeguard the living conditions of neighbouring occupiers and to safeguard the character and appearance of the area. A condition requiring details of the cycle storage provision (7) to be submitted has been included to support the use of sustainable modes of transport. While I acknowledge the submitted site plan shows areas for the storage of bins and cycles, I do not consider this submitted information to be sufficiently detailed and therefore these conditions are reasonable and necessary.
60. In the interest of ensuring sustainable drainage and to reduce the risk of flooding, I have included a condition requiring the approved hard surface areas to be made of porous materials or to direct water to a permeable or porous surface within the site (8). In order to protect the living conditions of occupiers of neighbouring properties a condition has been included to specify that the flat roof area shall not be used as a balcony area, without the grant of planning permission from the Local Planning Authority (9).
61. As detailed earlier a condition is necessary to ensure that the existing oak tree is protected during the demolition and construction phases of the development (12).

A condition requiring the submission of a landscaping scheme, which shall then be implemented within the first planting season following occupation, or completion, of the dwelling (10), has been attached. These conditions are necessary to safeguard the character and appearance of the area. However, the suggested wording of condition 10 in relation to maintaining the landscaped area to the satisfaction of the Local Planning Authority is not precise. As such I have amended the wording of this suggested condition accordingly.

Conclusion

62. The proposed development would conflict with the development plan but material considerations, including the Framework, indicate that a decision should be made other than in accordance with it. For the above reasons I conclude that the appeal should be allowed.

R Major

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development must be begun not later than the expiration of three years beginning with the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans:
 - P.000 - Location Plan
 - P.M.400 Rev D - Proposed Site Plan and 3D Views
 - P.M.500 Rev E - Proposed Floor Plans
 - P.M.600 Rev D - Proposed Elevations
 - P.M. 601 Rev D - Proposed Elevations 2
 - P.M.700 – Proposed Section
- 3) No development hereby approved shall commence on site, including any works of demolition, until a scheme to enhance the nature conservation interest of the site has been submitted to, and approved in writing by, the Local Planning Authority. The required scheme shall include enhancements measures for birds, bats and hedgehogs. The duly approved scheme shall be implemented in full prior to first occupation of the development and retained as such thereafter.
- 4) No development hereby approved shall commence on site, including any works of demolition, until a detailed demolition and construction management plan has been submitted to, and approved in writing by, the Local Planning Authority. The management plan shall detail the arrangements for:
 - a) the parking of vehicles for site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in the construction of the development;
 - d) measures for the control and reduction of dust;
 - e) measures for the control and reduction of noise and vibration;
 - f) how traffic would be managed to minimise disruption; and
 - g) hours of operation.

The demolition and construction of the development hereby approved shall be carried out in complete accordance with the approved management plan.
- 5) Notwithstanding any description of materials in the application, no above ground construction works shall take place on the development hereby approved until samples, or a full specification, of the materials to be used in the construction of the external surfaces noted below, have been submitted to, and approved in writing by, the Local Planning Authority:
 - a) All facing wall and roof materials for the buildings (including door and window surrounds); and
 - b) Windows / doors / glazing.

Such details shall include the type, colour and texture of the materials. The development shall then be carried out in accordance with the approved details and retained as such thereafter.

- 6) No above ground construction works shall take place on the development hereby approved until details of waste and recycling facilities to serve the development to which this permission relates have been submitted to, and approved in writing by, the Local Planning Authority.

The refuse and recycling facilities as shown in the approved details shall be provided prior to first occupation of the development and shall be permanently retained thereafter. All refuse bins and waste shall be stored at all times, other than on collection days, within the approved refuse storage area(s).

- 7) No above ground construction works shall take place on the development hereby approved until details of secure cycle parking facilities to serve the development to which this permission relates have been submitted to, and approved in writing by, the Local Planning Authority.

The cycle parking facilities as shown in the approved details shall be provided prior to first occupation of the development and shall be permanently retained for that purpose and kept free from obstruction thereafter.

- 8) Any hard surface areas hereby approved shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property, and shall be retained as such thereafter.
- 9) The flat roof area of the development hereby approved shall not be used as a roof garden, balcony, seating area or other similar amenity area and shall not be accessed except for the purpose of maintenance or in the case of emergency, without express planning permission having first been granted by the Local Planning Authority.
- 10) No above ground construction works shall take place on the development hereby approved until a detailed landscape & planting plan has been submitted to, and approved in writing by, the Local Planning Authority. The plan shall include a clear key or legend corresponding to the landscaping plan and provide the following information:

- Species (both Latin & Common names) for all plants;
- Locations of all plants or areas of planting;
- Plant numbers or planting densities;
- Sizes of all plants and trees 'at time of planting'; and
- Details of all hard-landscaping areas including materials

The approved scheme shall then be implemented within the first planting season following the occupation of the development, or the completion of the development, whichever is the sooner. Any trees or shrubs which, within a period of 5 years from first planting, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season, with others of a similar size and species.

- 11) No above ground construction works shall take place on the development hereby approved until full details of the positions, height, design, materials and type of the site's boundary treatments have been submitted to, and approved in writing by, the Local Planning Authority. The boundary treatments shall be installed in accordance with the approved details prior to first occupation of the development hereby approved and shall be retained as such thereafter.
- 12) The development hereby approved shall be carried out in complete accordance with the recommendations detailed within the submitted Arboricultural Method Statement (prepared by TRETEC, dated April 2023).

END OF CONDITIONS SCHEDULE