



Appeal Decision

Site visit made on 16 July 2024

by A Caines BSc (Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Appeal Ref: APP/Z5630/W/24/3336328

49 Lower Kings Road, Kingston Upon Thames KT2 5JA

- 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 Lytton Homes (No.1) Limited against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/012345/FUL.
 - The development proposed is described as conversion of vacant nursery (Use Class E) including erection of first floor rear extension, 4no. side dormer roof extensions with installation of 10no. side rooflights to facilitate loft conversion, to provide 5no. residential units (comprising 2 x 3bed duplex flats, 1 x 2bed duplex flat, 1 x 1bed duplex flat and 1 x 2 bed flat) with associated parking and refuse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am aware that an appeal (Ref: APP/Z5630/W/23/3321938) for the provision of six residential units at the site was dismissed in December 2023, and I have had regard to that decision where relevant.

Main Issues

3. The main issues are:
 - The effect of the development on the character and appearance of the area;
 - The suitability of the development in terms of flood risk;
 - Whether the development would provide its occupants with satisfactory living conditions, with particular regard to outdoor amenity space, outlook, and light;
 - The effect on availability of on-street parking in the surrounding area;
 - Whether the development would make suitable provision for cycle parking.

Reasons

Character and appearance

4. The appeal site is a vacant detached building within a predominantly residential area. Buildings are typically modest detached and semi-detached properties of traditional design which are set back from the road with front gardens, although many of the gardens have been replaced with car parking spaces. The

overriding character is open frontages with either no, or low level, boundary treatments to the front and sides, particularly on the northern side of the road where the appeal site is located.

5. In dismissing the previous appeal, the Inspector found that the proposed bin and cycle stores would, through their size, height, and siting to the front, be visually prominent and erode the distinctive open front gardens found on this side of the road to the detriment of the character and appearance of the area.
6. Despite some minor changes that have been made to the configuration of the bin and cycle stores, they would still be unduly prominent, extending right up to the pavement edge, and with a bulky form that would be unlike any other type of enclosure or structure within the street. As a result, they would erode and harmfully disrupt the continuity and open character of the frontages on this side of the road. The use of timber cladding and sedum roofs would do little to prevent them from appearing as highly incongruous and disruptive elements at the front of the site. That the site does not lie within a conservation area, does not obviate the need for good design and compliance with the development plan and the National Planning Policy Framework (the Framework) in this regard.
7. I therefore conclude that the development would cause significant harm to the character and appearance of the area. This is contrary to Policy D3 of the London Plan 2021 (the LP) and Policy DM10 of the Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy 2012 (the CS). Amongst other things, these seek high quality design that positively responds to local distinctiveness and character. It is also contrary to the Council's Residential Design Supplementary Planning Document (the SPD) which advises that cycle and waste storage should be sensitively sited and well screened to preserve and enhance the character of the street scene. There is also conflict with the Framework with regards to achieving well-designed and beautiful places.

Flood risk

8. The appeal site is in Flood Zone 2. The Planning Practice Guidance advises that changes of use can increase the vulnerability of the development or result in occupation or use by people who are more vulnerable than the previous users to risks of flooding. Policies D11 and SI12 of the LP, and Policy DM4 of the CS require proposals to maximise building resilience and minimise potential risks from all sources of flooding.
9. A fundamental change from the previous appeal scheme is that there would no longer be any bedrooms at ground floor level. This, in combination with various flood resilience measures set out in the appellant's submissions, and use of the Environment Agency's flood alert system, would go some way to addressing the previous Inspector's flood risk concerns for occupants of the development.
10. However, there remains limited detail in relation to whether the proposed mitigation measures, including demountable flood barriers, would not result in flooding elsewhere, or how and where the flood barriers would be accommodated on site. This is an important matter which is fundamental to the acceptability of the scheme so it cannot be left to a planning condition.

11. Reference has been made to an approved development at 34 Portsmouth Road (Ref: 22/01923/FUL), but for the same reasons set out in the previous appeal decision, this example has limited bearing on my assessment of this appeal.
12. I therefore conclude that the proposal has not satisfactorily demonstrated it would not have an unacceptable effect with respect to flood risk, contrary to Policies D11 and SI12 of the LP, and Policy DM4 of the CS. For the same reasons there is conflict with Section 14 of the National Planning Policy Framework (the Framework).

Living conditions

13. Paragraph 135 of the Framework requires that developments will function well and create places which promote health and well-being, with a high standard of amenity for future users. Similarly, LP Policy D6, CS Policy DM10, and the SPD seek to achieve a high standard of amenity for future users, including in respect of outlook, daylight, and provision of useable and high-quality outdoor amenity space.
14. In terms of outdoor amenity space, only Flats 1 & 2 would have a private garden. The other two ground floor flats (Flats 3 & 4) would be provided with a courtyard area at the side of the building. The courtyards have been increased in length compared to the previous appeal scheme. Nevertheless, they would be narrow, dark, and enclosed spaces, significantly limiting their value as a useful outdoor space for the enjoyment of the occupiers. Flat 5 would have no private outdoor amenity space provided as part of the scheme. While there are various sport and recreation opportunities within convenient walking distance from the site, private amenity spaces are typically used very differently i.e. for clothes drying, growing plants etc, so this is not adequate justification for either substandard, or a complete lack of outdoor amenity space provision for some occupants of the development, particularly in relation to the 2-bed units.
15. In terms of outlook and light, all rooms would be served by a combination of windows and rooflights. In the case of Flats 3 and 4, the changes to the parking layout would ensure that the main outlook is not dominated by vehicles. The outlook from the windows to the single bedrooms in Flats 1 & 2 would be restricted by the neighbouring buildings, but each bedroom would also benefit from a skylight and there would be a good standard of outlook from the other habitable rooms in these units, including onto the rear gardens. I am therefore satisfied that the development would achieve suitable levels of outlook and light for the occupants. An Internal Daylight Assessment is therefore not necessary in this case.
16. Nevertheless, the unsatisfactory outdoor amenity space provision would result in substandard living conditions for the occupants of Flats 3, 4 and 5 and would be contrary to LP Policy D6, CS Policy DM10, the SPD, and the Framework.

Car parking

17. The site has a Public Transport Accessibility Level (PTAL) rating of 2, which is poor. It is therefore likely that there would be some reliance on private cars for making trips to and from the new dwellings, along with associated visitors and deliveries.
18. The development would provide 2 off-street parking spaces at the front of the building. This would not exceed the maximum parking standards under

LP Policy T6.1. However, the Council has concerns that vehicles will oversail the footway due to the slightly substandard length of the spaces. While this is not ideal, it is no different to the existing situation. I am also mindful that there would be a reduction in the number of vehicles compared to the previous use of the site. Consequently, I do not share the Council's concerns in this regard.

19. Nevertheless, the appeal site is in a Controlled Parking Zone (CPZ) and the off-street parking provision would not be sufficient to meet the likely parking demand for the number and size of the units proposed. A CPZ is usually an area where there is more demand for parking than there are spaces, and I have no substantive evidence to demonstrate this is not the case here. Without a suitable mechanism to prevent the occupants of the development from obtaining parking permits, there would likely be further demand for the few on-street parking spaces, which in turn, would have an adverse effect on parking availability, congestion, and general local amenity in the area.
20. In the previous appeal, the appellant provided a Unilateral Undertaking (UU) to restrict eligibility to obtain car parking permits. However, no UU was provided with this appeal. While I note the appellant's reasons for this, the Procedural Guide to Planning Appeals makes clear that for appeals following the written representations procedure, the appellant must ensure that an executed and certified copy of the planning obligation is received at the time of the making of their appeal. I do not consider this to be a case where the matter could be resolved by a planning condition. As such, I do not have a suitable mechanism to restrict the ability for occupants of the development to obtain parking permits.
21. I therefore conclude that the development would have an adverse effect on parking availability, congestion, and general local amenity in the area. This is contrary to Policies DM9 and DM10 of the CS in so far as they seek to restrict eligibility to obtain parking permits in a CPZ, and avoid adverse effects on local highway conditions, parking, and amenity.

Cycle parking

22. Policy T5 of the LP and Policy DM8 of the CS support the use of sustainable modes of transport and aim to create a healthy environment in which people choose to cycle.
23. The development has a requirement to provide 12 cycle parking spaces. The plans show a mix of external and internal storage facilities.
24. However, similar to the previous appeal, I have found that the 6-space cycle store at the front of the site would be harmful to the character and appearance of the area. Consequently, this cycle store would not be suitably located, and there is little before me to demonstrate that the required cycle storage could be accommodated elsewhere on site without the need to reconfigure the layout and design of the scheme. As such, it would not be appropriate to seek further details of cycle storage by a condition.
25. I therefore conclude that the proposal would not make suitable provision for cycle parking, and so, is contrary to LP Policy T5 and CS Policy DM8.

Other Matters

26. The appellant has sought to work collaboratively with the Council and has made various amendments to the scheme with a view to achieving a suitable outcome. Nevertheless, I have found that the proposal would be harmful for the reasons set out above. Moreover, it seems to me that some of the matters could have been better addressed if the appellant had waited for the previous appeal decision before resubmitting.
27. I have noted the variety of other concerns that were raised by local residents, but as I am dismissing the scheme for other reasons it has not been necessary to consider those matters any further in this decision.

Planning Balance and Conclusion

28. The proposal would provide new dwellings in a context where it appears that the Council has a deficient five-year housing land supply. There would also be associated economic benefits from construction and expenditure from future occupiers. However, given the scale of the development, I attach moderate weight to these public benefits.
29. On the other hand, I have found harm in relation to character and appearance, flood risk, living conditions, and car and cycle parking. This weighs very heavily against the scheme.
30. Regardless of the extent of any shortfall in housing supply, paragraph 11 d) i) of the Framework states that where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, the presumption in favour of sustainable development does not apply. Footnote 7 identifies that this includes policies relating to areas at risk of flooding. Consequently, the harm in relation to flood risk is sufficient reason to reject the proposal.
31. I therefore conclude that the proposal conflicts with the development plan as a whole. There are no other considerations, including the provisions of the Framework, which indicate that the appeal should be decided other than in accordance with the development plan. Therefore, the appeal is dismissed.

A Caines

INSPECTOR