



Appeal Decision

Site visit made on 11 July 2024

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 14th August 2024

Appeal Ref: APP/Z5630/W/23/3330373

Flat 1, 1 Lovelace Road, Surbiton, Kingston Upon Thames KT6 6NS

- 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 and Mrs Anthony and Jennifer Mackewn of Trimax Investments Ltd against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/01471/FUL.
 - The development proposed is described as "Amalgamation of two one bedroom flats into a single two bedroom house".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellants have submitted amended floor plans as part of their appeal, showing an additional bedroom. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
3. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
4. The amendments would substantially alter the internal layout, creating an additional bedroom compared to those upon which the Council made its decision. This is a material change affecting the determination of this appeal. The changes have not been consulted upon. I find that neither part of the necessary test set out in the relevant case law has been satisfied and so I will not accept the amendments. Accordingly, I have determined the appeal having regard to the same proposal on which the Council made its decision.
5. Reference has been made to the emerging new Local Plan for Kingston (ELP), which is at an early stage of preparation. Given the lack of information as to whether there are any unresolved objections to the policies within it, there is a high degree of uncertainty whether it will be submitted in the same form.

Therefore, the weight to be attached to the draft policies is limited and I have determined the appeal against the current development plan policies.

Main Issues

6. The main issues are:

- the effect of the loss of an existing dwelling on the supply of housing in the Borough, and
- whether the proposal would provide an appropriate standard of accommodation for future occupants with regard to amenity space.

Reasons

The supply of housing

7. The proposal would result in the net loss of a 1-bedroom flat. Although the overall floorspace and the number of potential occupants would not be reduced, this would conflict with policy DM14 of the Kingston Core Strategy 2012 (CS) which seeks to resist the loss of residential accommodation. The policy wording emphasises that it seeks to restrict the loss of all forms of accommodation, not just family accommodation.
8. It is recognised that there is a high level of need for family accommodation. This is reflected in the emphasis on protecting such within policy DM14, as well as the 2016 Strategic Housing Market Assessment for Kingston Upon Thames (SHMA) which recommends that 72% of new housing provision within the Borough is for three or four bedroomed units. However, although the proposed 2-bedroom dwelling has the potential to accommodate a small family, policy DM13 of the CS, together with the definitions in the London Plan (LP), define a family home as generally providing 3 or more bedrooms. A 2-bedroom dwelling would be limited in terms of the families that it could accommodate and as such would not meet this need.
9. My attention has been drawn to the possibility of creating a third bedroom through internal alterations. This is not the proposal before me, and in any event, there would still be a policy conflict due to the loss of a residential unit.
10. Notwithstanding the emphasis on family housing, there remains a need for 1-bedroom units both within the Borough as well as the wider London Area. It is recommended that 5% of new homes in the Borough¹, and 55% within London² are 1-bedroom. The retention of existing smaller units of accommodation would help to ensure the availability of a broad mix of accommodation options, as required by policy CS10 of the CS and the National Planning Policy Framework (the Framework).
11. The loss of a 1-bedroom flat would undermine the aim of increasing the supply of housing, as set out in policy CS10 of the CS, as well as the Framework. The Council currently has a significant undersupply of housing and is unable to demonstrate a five-year supply of deliverable housing sites. This adds to the necessity of increasing the supply of housing.

¹ 2016 SHMA for Kingston Upon Thames

² London Strategic Housing Market Assessment 2017

12. The appellants contend that the appeal proposal would comply with policy KH3 of the ELP. This draft policy seeks to resist the loss of homes with at least 2 bedrooms, rather than all accommodation. However, this attracts limited weight given the early stage of the plan and does not justify the loss of a 1-bedroom flat.
13. The need to optimise the potential for housing on suitable existing sites, including through the redevelopment of under-utilised land and buildings, as set out in policy H1 of the LP and paragraphs 123 and 124 of the Framework, is relevant. In this case, as the proposal would result in a net reduction of residential dwellings, it would result in a less efficient use of land and buildings.
14. To conclude, the loss of an existing dwelling would have a detrimental effect on the supply of housing in the Borough. The proposal would therefore conflict with policies DM14 and CS10 of the CS, and H1 of the LP. These policies collectively seek to increase the supply of housing, including through resisting the loss of existing accommodation.

Amenity space

15. The appeal building is detached and set within a corner plot which provides a wrap-around garden. The rear and sides of this garden are enclosed, providing an appropriate level of privacy and is shared between the flats. There are several points of access into the garden, including from both sides of the building and from a side access onto the A243.
16. Reference is made to the subdivision of the amenity space to provide a private garden for the proposed dwelling, with the remainder to provide a communal garden to be shared between the remaining flats, however, limited detail is provided.
17. Policy Guidance 13 of the Residential Design Supplementary Planning Document 2013 (RSPD) recommends that 50sqm of private garden is provided per family house, whilst the recommendation for new flats is 10sqm per dwelling + 1sqm per additional occupant.
18. The evidence from the appellants clearly demonstrates that these guidelines would be met and exceeded, both in terms of the proposed dwelling as well as for the remaining flats. In terms of the quality of amenity space, both the communal and private garden would be functional with a good degree of privacy and featuring soft landscaping.
19. Further detail is required regarding the sub-division of the site, and the type of boundary treatments that would be used. However, given the amount of amenity space available, together with the configuration of the plot and points of access, I am satisfied that an appropriate solution could be found. Given this, further details could be sought through an appropriate planning condition in the event of my allowing the appeal.
20. Overall, both gardens would provide an attractive functional space. Therefore, I am satisfied that the proposal would provide an appropriate standard of accommodation for future occupants with regard to amenity space. The proposal would accord with policy DM10 of the CS and policy D6 of the London Plan 2021. These policies require, amongst other matters, the provision of adequate private and/or communal amenity space.

Other Matters

21. The site lies within the Southborough Conservation Area (CA), its significance is derived from the age and architectural interest of the buildings together with their setting within spacious verdant plots. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA including buildings within it.
22. The conversion of two flats would not alter the external appearance of the appeal site, and any external works such as the subdivision of the garden could be controlled through condition. As such, the character and appearance of the CA would be preserved. My attention is drawn to the type of conversion, being particularly rare. However, there is no evidence to substantiate this.
23. The appellants have referred to an allowed appeal from 2020³, which relates to the conversion of two flats to form a single dwelling house. This appeal decision relates to a proposal in a different Borough, wherein different policies apply. Furthermore, whilst there is limited detail before me, there appears to be fundamental differences between the proposals, with that scheme including extensions and thus an increase in the residential floorspace. Given these factors, the decision carries very limited weight. Reference is also made to an approved application from 2004⁴, however, this pre dates the current core strategy and policy position, as such, this also attracts very limited weight.
24. I have also had regard to an allowed appeal relating to the amalgamation of two properties on Mill Street to form a single-family dwelling. There are similarities with the current appeal, in that the amount of floorspace and the number of bedrooms would not be altered, however, in that case the proposal resulted in the creation of a larger family dwelling. Furthermore, in the case of the current appeal, there is evidence before me to highlight a need for 1-bedroom flats. Given these factors, I have determined the appeal on its own merits⁵.
25. It is understood that the proposal would accommodate the needs of the appellants' family, thus avoiding a move out of the area to secure suitable accommodation. Although this clearly carries significant benefits to the appellants, this is nonetheless a private benefit and as such this attracts very limited weight.
26. I understand that some of the existing flats do not currently benefit from use of the shared garden, and that this would be rectified as part of the appeal scheme. The provision of amenity space for existing occupants who currently do not benefit from such is clearly positive; however, there is no evidence to suggest that this could not be achieved independently of this appeal. As such, this carries limited weight.
27. The proposal would generate local employment in the area during the construction period. However, given the limited scale of the proposed works these economic benefits would be modest.

³ APP/H1515/W/20/3250145

⁴ 04/14343/LDE

⁵ APP/25630/W/17/3185000

Planning Balance

28. The Local Plan dates from 2012 but the weight to be attached does not hinge on its age. Rather 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.
29. The Framework includes a requirement to significantly boost the supply of housing, including through an appropriate mix of housing types. The requirements of the Framework also include providing a high standard of amenity for existing and future users. Given this consistency, the conflict between the proposal and policies DM14 and CS10 of the CS, and H1 of the LP, carry significant weight. This amounts to a conflict with the development plan as a whole.
30. The Council's inability to demonstrate a five-year supply of deliverable housing sites, has the effect that the policies which are most important for determining the application are 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. The site is not in a protected area.
31. As described above, the benefits associated with the appeal are limited. The scheme would be acceptable in terms of the living conditions for future occupiers, including in terms of amenity space, character and appearance, the amenities of neighbouring occupiers and highway safety. However, the absence of harm in these respects is a neutral matter.
32. By comparison, given the objective of boosting significantly the supply of housing in the Framework and the Council's housing land supply position, the adverse impacts through the loss of an existing residential unit are significant. Consequently, these impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

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

R Lawrence

INSPECTOR