

Appeal Decision

Site visit made on 13 August 2024

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/Z5630/W/24/3339383

14 The Cottage, Lime Grove, New Malden, Kingston Upon Thames KT3 3TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr P Khakharia against Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/03205/OUT.
 - The development proposed is described as 'outline planning permission is sought for demolition of existing house and rear outbuildings and erection of a new front building and new rear building housing a mix of 1 replacement and 7 new dwellings with associated parking, bins and cycle provision (landscaping reserve matters)'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted amended plans as part of their appeal. 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 proposing the removal of the front balconies would be a fundamental change to the application as the presence of the balconies is central to the Council's case. This is a material matter affecting the determination of this appeal and the changes have not been consulted upon. Whilst the removal of the front balconies would revert the appearance of the

front elevation to what was considered in the previous dismissed appeals (APP/Z5630/W/23/3320974 and APP/Z5630/W/23/3325612), these appeals were dismissed due to insufficient outdoor garden/amenity space. As such the main issues in the previous appeal schemes, differ to those in the current submission. Therefore, producing amended plans will alter the main issues that need to be considered, thus resulting in procedural unfairness.

5. I find that neither part of the necessary tests set out in the relevant case law has been satisfied and so I am unable to accept the amendments. Accordingly, I have determined the appeal having regard to the same proposal on which the Council made its decision.
6. The Council initially raised concerns regarding on street car parking. A completed undertaking dated the 23 May 2024 has been submitted which would restrict car parking permits and provide car club membership, therefore this matter is no longer in dispute. I have determined the appeal accordingly.

Main Issues

7. The main issues are the effect of the proposed development on:
 - the character and appearance of the Lime Grove Local Area of Special Character and the locally listed Christ Church Primary School; and
 - Christ Church Primary School and the occupiers of 19 and 19A Lime Grove, Kavanagh Court, and future occupiers of the rear block, with reference to outlook and privacy.

Reasons

Character and appearance

8. Lime Grove is within the Lime Grove Local Area of Special Character (LGLASC) (a non-designated heritage asset). The LGLASC comprises five roads including Lime Grove and is characterised by Victorian villas, terraces and cottages, and their qualities of townscape.
9. Lime Grove is predominately characterised by residential two and three storey buildings. Whilst buildings vary in design and form, many of the properties are Victorian with similar features such as projecting bays and sash windows. These buildings amongst other well-designed properties provide a distinctive suburban character and contribute to the significance of the Non-Designated Heritage Asset (NDHA). The adjacent primary school, also a NDHA, is a Victorian building, set back from the shared boundary and is largely screened by mature trees and vegetation when viewed from the road.
10. Paragraph 209 of the National Planning Policy Framework (The Framework) confirms that the effect on the significance of a NDHA should be taken into account in determining an application. A balanced judgement will be required having regard to the scale of the harm or loss of the significance of the heritage asset.
11. Whilst balconies on flats are not uncommon, they are not a feature on the flats or dwellings in Lime Grove. Despite not dominating the front elevation

of the proposed building, they would appear particularly stark and incongruous in the street scene and would therefore fail to respect the townscape quality of the LGLASC.

12. Given the position of the proposed buildings, the vegetative screening and position of the school, it is not considered that the proposed development would adversely affect the adjacent NDHA.
13. For the reasons identified above, I conclude that the proposed balconies would have an unacceptable effect on the character and appearance of the LGLASC. The proposed development would therefore be contrary to Policy D3 of the London Plan and Policies CS8, DM10 and DM12 of the Royal Borough of Kingston Upon Thames Core Strategy¹ (RBKTCS). These policies require development to preserve or enhance heritage assets, respond to local distinctiveness, and respect and maintain the design detailing of elevations that contribute to the character and distinctiveness of an area.

Privacy and Outlook

14. The appeal is positioned between Kavanagh Court (a 3-storey block of flats) and Christ Church Primary School. The boundaries between the appeal site and both adjacent properties are well screened with established vegetation. 19 and 19A Lime Grove are situated on the opposite side of the road.

19 and 19A Lime Grove

15. The proposed front facing projecting balconies at first and second floor would provide direct views into the front facing first floor windows of 19 and 19A. Whilst the separation distance between the balconies and these dwellings may be comparable to the distance between the properties and existing windows, the impact of a balcony on privacy is far greater than a window. This is because the existing windows are much smaller than the proposed balconies and unlike the balconies, they are not designed as an outside open amenity area, for sitting and looking out, thereby providing a large area to gain unrestricted direct views into the properties opposite.
16. Reference has been made to the use of the balconies being sporadic and them not being the main amenity area. Given that the balconies are of a size where they could accommodate a table and chairs and that they are accessed from the living/kitchen area, it is plausible that the balconies would be fully utilised by future occupiers for dining etc and thus they would unacceptably impinge on privacy.

Kavanagh Court

17. The proposed rear balconies would face the rear garden of the appeal site, any views of the communal garden space at Kavanagh Court would be from a notable distance, at an oblique angle and limited due to the established vegetation. In addition, frosted glass on the sides of the balconies could further mitigate any perceived privacy issue. Therefore, the proposed rear balconies would not unacceptably impinge on the privacy of the communal garden at Kavanagh Court.

¹ Adopted April 2012

Christ Church Primary School

18. The proposed rear balconies are centrally positioned and set away from the boundary with Christ Church Primary School. Given the position of the balconies, the separation distance with the school, vegetative screening and that the primary outlook from the balconies would be into the rear garden of the appeal site, it is not considered that the balconies would provide unrestricted views across the playground.

Future Occupiers

19. The proposed building at the end of the garden accommodating two flats would have large windows, at first and second floor, serving habitable spaces. These windows would face the rear elevation and projecting balconies of the front building.
20. The balconies serving the family flats in the front building are large and would provide 8m² of outdoor amenity space at first and second floor. Given their size and the likelihood of them being used to sit and look out, the use of the balconies would negatively impinge on the sense of privacy to those using the communal garden and the occupiers of Flats 7 and Flat 8 in the rear block.
21. For the reasons identified above, I conclude that the proposed development would have an unacceptable effect on the outlook and privacy of 19 and 19A Lime Grove and future occupiers of the rear block. The proposed development would therefore be contrary to Policy DM10 of the RBKTCS and Policy D3 of the London Plan which require development to deliver appropriate outlook and privacy and have regard to the amenities of occupants and neighbours in terms of privacy. In respect of the impact on privacy and outlook on Kavanagh Court and Christ Church Primary School I conclude that the proposed development would have an acceptable impact.

Planning Balance and Conclusion

22. The proposal would conflict with the development plan when read as a whole. The impact of the proposed development on the character and appearance of the LGLASC and the harm to the privacy and outlook of 19 and 19A Lime Grove and future occupiers of the rear block must carry substantial weight in the balance.
23. The Council is unable to demonstrate a five-year housing supply and therefore the 'tilted balance' set out in paragraph 11d of the Framework should apply. Paragraph 11(d) of the Framework explains that in these circumstances, planning 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.
24. The proposal would deliver seven additional dwellings in a Borough that is falling below the level of housing supply required by national policy. Seven units would make a modest but useful contribution as indicated by paragraph 70 of the Framework. However, due to the small scale of the development, this benefit would be limited.

25. Taking all of the above into account, I consider that the harm identified in relation to the character and appearance of the area, NDHA and living conditions of nearby residents significantly and demonstrably outweighs the minor benefits when assessed against the policies in the Framework when taken as a whole. The proposal cannot therefore be considered to be sustainable development.
26. For the reasons given above planning permission is refused and the appeal should be dismissed.

V Goldberg

INSPECTOR