



Appeal Decision

Site visit made on 27 August 2024

by N Perrins MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2024

Appeal Ref: APP/Z5630/W/24/3340685

34 Somerset Avenue, Chessington, Kingston Upon Thames KT9 1PN

- 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 Steve Kerner against the decision made by The Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/01693/FUL.
 - The development proposed is conversion of the existing detached garage into 1no 2 bedroom bungalow with a separate access. Installation of solar panels.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I am aware that a previous scheme to convert the building subject of this appeal to a dwelling was refused planning permission under application Ref: 22/03919/FUL. The appeal before me is a revised proposal that was submitted seeking to overcome the previous scheme's reasons for refusal.

Main Issues

3. The main issues are whether the proposed development is acceptable in respect of (i) the character and appearance of the area, (ii) living conditions of future occupants, (iii) waste collection arrangements, and (iv) Flood risk.

Reasons

Character and appearance

4. The appeal site is a semi-detached dwelling that fronts onto Somerset Avenue, a suburban area where the principle of residential development is acceptable. The single storey building subject of this appeal is located to the rear of the dwelling at the end of the garden. Adjacent to the appeal site is an access road to sports playing fields beyond.
5. The proposal comprises converting the existing garden building, with changes to fenestration, to create a 2-bedroom bungalow dwelling. The plot would be separated from the host dwelling by erecting a fence through the existing garden area. Access to the proposed dwelling for future occupants would be from the adjacent access road. No parking would be provided.
6. The prevailing character along Somerset Avenue comprises semi-detached two-storey dwellings laid out along defined building lines with long gardens to the

- rear. Plot sub-divisions and bungalow dwellings as proposed in this case are not a common character feature of the street.
7. Furthermore, due to where the existing building is sited, the property would have a side, rather than rear, garden area. The fence to form the plot would be positioned horizontally between the existing boundary treatment when looking towards the existing dwelling. The resulting juxtaposition between the location of boundary treatment to create the plot, the side garden, and the siting of the building's footprint would create a cramped and small layout of development that would be out of character with the prevailing pattern in the area.
 8. I acknowledge the appellant's contention that the building is already in situ and forms part of the character of the area. However, the existing building appears as an ancillary and subordinate building to the main dwelling currently enclosed within the plot by boundary treatment. In contrast, the proposed design changes to the building, opening up of its frontage, and plot sub-division would create a markedly different form of development than the existing situation. As previously stated, these changes to create a bungalow within a tightly drawn and small plot would result in a form of development that would harm and be out of character with the area.
 9. The appellant also contends that the Council has failed to consider the existing backland development to the north of the site. I understand that the development to the north was granted planning permission at appeal in 2008¹. In that decision the Inspector noted, in allowing the appeal, that it is unnecessary to replicate the style and form of existing development provided that the quality of the local environment is not compromised.
 10. However, the 2008 appeal scheme is very different to the proposal before me as it comprised a comprehensively designed development within its own cul-de-sac. The development to the north, therefore, appears as a cohesively designed development that has integrated successfully with the character of the area. The appeal proposal, for the reasons stated above, would have a contrasting impact and result in harm to the character of the area. Therefore, I find that the 2008 decision does not provide any support for the appeal scheme before me, and give it limited weight in this decision.
 11. I have also had regard to the example provided by the appellant for a backland development² on land to the rear of Heather Court on Hunters Road near to the appeal site. However, that development involved the loss of garages and hardstanding to provide 6 dwellings, as opposed to the sub-division of garden land to provide 1 dwelling. The example to the rear of Hunters Court also comprised two storey dwellings, parking and rear gardens in a uniform layout, which are all features that reflect the prevailing pattern of development in the area; for the reasons set out above, this would not be the case for the appeal proposal. As such, the example to the rear of Hunters Court is not directly comparable to the appeal scheme and does not provide any justification for the harm identified.
 12. To conclude, the proposed sub-division to create a bungalow would be out of character with the prevailing pattern and layout of development in the area contrary to Policy D3 of the London Plan 2021 (LP) and Policies CS8 and DM10

¹ APP/Z5630/A/08/2073978

² Application Ref: 22/01233/FUL

of the Royal Borough of Kingston upon Thames Local Development Framework Core Strategy 2012 (CS). The proposal would also conflict with the advice within the Royal Borough of Kingston upon Thames Residential Design Guide Supplementary Planning Document 2013 (SPD) and Paragraph 135 of the Framework. Amongst other things, these require development to enhance local context by delivering buildings and spaces that positively respond to local distinctiveness, relate well and respect prevailing development typology and scale, layout, form and plot width.

Living conditions for future occupants

13. There is a disagreement between the two parties as to whether the proposal would be for a 3-person or 4-person dwelling. Policy D6 of the LP requires a 3-person dwelling to have a minimum floor area of 61 sqm, and a 4-person dwelling a minimum floor area of 70 sqm. The dwelling would have a floor area of just over 63sqm.
14. The Council consider the proposal to be a 4-person 2-bed dwelling, although has not provided any evidence to justify their position. The appellant has set out the room sizes in their statement although have not corroborated how those measurements were arrived at. Notwithstanding this, it is evident that if the appellant's measurements were confirmed as accurate, the appeal proposal would accord with Policy D6 due to being a 3-person dwelling with a floor area more than the minimum requirement.
15. However, of more concern is whether the proposal would provide sufficient outlook and light for future occupants. Whilst the eastern side elevation would look across the proposed garden area and provide a reasonable outlook in this direction, the window on the western elevation would face out directly onto existing fencing that abuts the existing building. Looking directly out to fencing would not provide adequate outlook for future occupants from what would be the master bedroom. The proximity of the fence would also be likely to affect the amount of sunlight and daylight to the master bedroom.
16. Whilst the appellant states that the boundary treatment could be lowered to improve outlook and light, no details are provided to confirm how much the fence would need to be reduced by. Furthermore, no information is provided to confirm that lowering the fence would not create any other issues such as impacting on the overall design quality and security of the proposed dwelling.
17. A reduction in height could also open up views from the sports ground into the development. I am aware that there is a hedge and building between the sports fields and the proposed dwelling that would provide some screening. However, it would not protect against people using the access road and anyone using the grassed area adjacent to the stream. Whilst these areas may not be frequently used, the lowering of the fence would still have the potential to be intrusive to future occupants when activity does take place on those parts of the sports field that would look onto the proposed dwelling.
18. Bringing these points together, I am not satisfied from the information before me that a reduction in the height of the fence would adequately address the concerns with living conditions to the master bedroom.
19. The northern elevation window and front door would face onto and look out across the side access road and boundary treatment to other properties. The

Council consider that due to the proximity of the boundary treatment in this direction, the proposal should be considered as a single aspect building. However, the distance to the boundary treatment is larger than would be the case on the western elevation and would look out to hedges, which is not unusual in an urban context. I, therefore, do not agree that the proposal should be considered as a single aspect building. Moreover, the living space that this window would serve also has other windows that together would provide an acceptable outlook for future occupants from this part of the proposal.

20. To conclude, the proposal would not provide suitable living conditions for future occupants in terms of outlook, daylight and sunlight to the master bedroom. I find, therefore, the proposal to be contrary to Policy D6 of the LP and DM10 of the CS, which require development to be of high-quality design that safeguard the amenities of future occupants. The proposal would also not be consistent with Paragraph 135 of the Framework with regard to the living conditions of future occupants.

Waste

21. The plans show where waste and recycling bins would be stored within the site. I agree with the Council that the size and location of the proposed waste bins within the site is acceptable.
22. However, given the location of the appeal site, future occupants would need to take their bins to Somerset Avenue along the adjacent access road, and then back again, on collection days. The proposed collection point would be on a grass verge on Somerset Avenue, which is next to the access for neighbouring dwellings.
23. I don't agree with the Council that this would have any materially harmful impact in terms of visual nuisance given that bins being put out on pavements on collection day is entirely normal practice for a suburban road such as Somerset Avenue.
24. However, I am not satisfied that sufficient detail has been provided to confirm that the proposals would present a workable solution for waste collection in terms of the impact on highway safety. In particular, I am not persuaded that the information presented confirms it would be appropriate and safe for bins to be positioned on a grass verge near to the access of someone else's property.
25. In short, I agree with the Council that further details would need to be provided before confirming whether suitable waste collection arrangements can be provided to serve the development. Without these details, I find that the proposal is contrary to Policy D3 of the LP and Policy DM10 of the CS. These policies require development to achieve safe and secure environments and have regard to local traffic conditions and highway safety to ensure they are not adversely affected.

Flooding

26. Paragraph 173 of the Framework states that where appropriate applications should be supported by a site-specific flood-risk assessment. Development should then only be allowed in areas at risk of flooding where, in light of this assessment, it can be demonstrated amongst other matters, safe access and

escape routes are included where appropriate and as part of an agreed emergency plan.

27. The flood risk in this case arises from the small channel of water at the rear of the site. The Council's concern is that it has not been demonstrated that safe egress can be achieved from the site during a flooding event. As the site being at risk of flooding is not in dispute between the parties, I conclude that it would be appropriate for the appeal scheme to include safe escape routes to accord with Paragraph 173 of the Framework.
28. A standalone site-specific flood risk assessment is not included in the information before me, albeit I note the appellant's statement of case includes a section on flood risk. This advises that safe egress would be provided by future occupants receiving flood alerts that would enable them to move to higher ground. However, without specific details before me to explain how frequently and effectively future occupants would receive flood alerts, it has not been adequately demonstrated that safe egress from the proposed development can be achieved. Nor has it been explained where precisely the higher ground is located on Hook Road and whether it is reasonably practical for future occupants to get to it in good time in the event of a flood alert.
29. Overall, I am not persuaded that to rely on flood alerts adequately addresses the need for the development to provide for safe egress during a flood event as required by the Framework. Accordingly, I am not satisfied that it would be appropriate to leave this matter to conditions given the importance of protecting development from flood risk in both the development plan and the Framework.
30. To conclude, the information before me does not adequately demonstrate that the proposal is in accordance with Policy SI 12 of the LP and Policy DM4 of the CS. These policies require flood risk to be minimised and mitigated and for development proposals to be considered in accordance with the Framework, which as identified above requires safe escape routes to be demonstrated before development in areas of flood risk are allowed.

Other Matters

31. Other concerns raised from responses to the planning application were that development would create traffic and parking issues, harm living conditions of neighbouring properties, create air pollution and is an incompatible use. These other matters did not form part of the Council's reasons for refusal. Having carefully considered all the information before me, I agree with the Council's considerations of these matters and do not need to consider them further in this decision.

Planning Balance and Conclusion

32. I acknowledge that the scheme would have benefits from the supply of one new home on a small brownfield site. However, the proposal would be contrary to Policies D3, D6 and SI 12 of the LP and Policies CS8, DM4 and DM10 of the CS, which amounts to a conflict with the development plan as a whole. These Policies are consistent with the Framework in ensuring that development preserves the character and appearance of the area, has a high standard of amenity for future users, is supported by suitable waste arrangements and protects people from flood risk.

33. With reference to Footnote 8 of the Framework, I understand that the Council cannot demonstrate the required deliverable housing land supply and so the policies in the development plan most important for determining the proposal are deemed to be out of date.
34. However, with reference to Footnote 7 of the Framework, the harm I have identified in terms of flood risk provides a clear reason for refusing the development proposed, and so the presumption in favour of sustainable development is not engaged.
35. For the reasons given above, I conclude the appeal is dismissed.

N Perrins

INSPECTOR