
Appeal Decision

Site visit made on 18 November 2024

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/Z5630/W/24/3340104

113 Tolworth Rise North and some of the land at the rear of Nos 107, 109 and 113 Tolworth Rise North, Tolworth KT5 9EP

- 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 Southern Property Services Ltd against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/01702/FUL.
 - The development proposed is the demolition of No 113 Tolworth Rise North KT5 9EP garage and shed to allow for new road to provide access to 6 no. proposed new houses comprising 3 no. pairs of 2 storey, 3 bed, 4-person semi-detached houses.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) was published on 12 December 2024. As the changes are material to the proposal, I sought the parties comments on the revised Framework. My decision is based on the revised Framework. I have also sought clarification on the Council's housing land supply position.
3. Since planning permission was refused, the appellant has sought to address the Council's second Reason for Refusal (RfR) and submitted an ecological statement and survey¹ to support the initial ecological surveys submitted with the planning application. I am therefore prepared to accept these documents as the additional information does not materially alter the proposed development. Accordingly, I consider that no party would be prejudiced by my consideration of this information.
4. However, amended plans were also submitted as part of the appeal seeking to address the Council's third and fourth RfR relating to cycle parking and the absence of a detailed swept path analysis. The revised plans show cycle parking within the site and a swept path for refuse vehicles. However, the proposals now show significant alterations to the house at 113 Tolworth Rise North² to accommodate the swept path, as well as cycle parking within the site. Through submitting these further plans, the appellant's case has evolved from the application stage.

¹ aLyne Ecological Statement 15 January 2024 and aLyne Ecological Appraisal, Preliminary Roost Assessment, and Ground Level Tree Assessment.

² Drawing no.2020:33B Site Plan; Drawing no.2020:EX1; Drawing no.2020:EX2; and a vehicle datasheet.

5. The appeal Procedural Guide: Planning appeals – England (2024) states if an applicant thinks that amending their application will overcome the reasons for refusal, they should normally make a new planning application. Having regard to relevant case law³ it is also important that what is considered at appeal is essentially the same scheme that was considered by the Council and by interested parties at the application stage. My consideration of the amended plans could prejudice those with an interest in the appeal and alter matters fundamental to the case. I have therefore considered the appeal on the basis the plans which were before the Council when it made its decision.
6. There have also been several appeal decisions⁴ for the appeal site. I have had regard to these only insofar as they are material to my decision.

Main Issues

7. The main issues are:
 - the effect of the proposed development upon the character and appearance of the area;
 - whether the proposal would be harmful to highway safety with particular regard to vehicular movements;
 - whether the proposal would provide adequate visitor cycle parking; and
 - the effect of the proposed development upon the ecology of the site and protected species.

Reasons

Character and appearance

8. The appeal site encompasses the large garden of No 113 which runs to the rear of the gardens of 107, 109, 111, and 115 Tolworth Rise North. The site also borders the gardens of other properties including 105 and 115 Tolworth Rise North, and those on Lyndhurst Avenue to the rear of the site. Tolworth Rise North is dominated by the A3 Kingston Bypass, but the area is predominantly residential, comprised of dwellings with a road frontage and long back gardens.
9. The garden of No 113, is not of the same character as these other gardens by virtue of its overall size, irregular shape, numerous buildings and extensive vegetation. Nevertheless, the absence of taller and expansive development means that the site, like other gardens in the locality contributes to the overall open, spacious layout and verdant character of the area.
10. The proposal for three pairs of semi-detached dwellings would be arranged in a single line roughly parallel with the rear boundary of the site. The layout of properties would reflect the alignment of the homes on Tolworth Rise North and Lyndhurst Avenue. Entry to the proposed site would be gained via a new access road between Nos 113 and 115, which would return along the rear of Nos 107, 109, 111 and 113. These properties would have a road to the front and vehicular access to the rear. The introduction of the dwellings in a

³ Wheatcroft (Bernard) Ltd v Secretary of State for the Environment (1982) JLP 37 Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin).

⁴ Linked Appeals Appeal A Ref: APP/Z5630/W/21/3277951, Appeal B Ref: APP/Z5630/W/21/3285339; and Appeal Ref: APP/Z5630/W/22/3303437.

backland garden location would introduce a form of layout which is not evident in the immediate area, and the pattern of spacious rear gardens would be eroded which would result in harm.

11. Although changes have been made to reduce the scale and the number of dwellings, the new dwellings would have a narrower plot width than the surrounding properties. The rear gardens would not only be relatively short, but significantly shorter than those in the surrounding area.
12. The Council's policies are not restricted to views from the public domain, and the development would be highly visible from the surrounding dwellings. The development would fill a significant proportion across the site, as well as reducing the openness through introducing taller buildings between the rear of existing properties. That being said, the development would not be highly visible from outside the site.
13. The Framework supports the efficient use of land and the avoidance of building at too low densities. However, within chapter 12, it also expects good design, and the desirability of maintain an areas prevailing character and setting. Although a landscape scheme has been provided, for the above reasons, the dwellings would appear as a cramped, dominant and incongruous form of development. The proposal would not respect the setting and layout of other dwellings and the spacious character of the area.
14. I therefore conclude that the proposal would harm the character and appearance of the area, although this would be tempered by the limited visibility of the development from public viewpoints. Nonetheless, it would be contrary to the Royal Borough of Kingston upon Thames Local Development Framework Core Strategy, adopted April 2012 (the LDF) Policy DM10 and Policy D3 of the London Plan The Spatial Development Strategy for Greater London, adopted March 2021 (the London Plan). Together, and amongst other criteria, these require new development to incorporate principles of good design, to respond to the site's context, and to contribute to the character and local distinctiveness of the area.

Highway safety

15. The plans before the Council showed the dwelling at No 113 without any modifications. The appellant contends that the width is appropriate for access by most large vehicles. The creation of the access introduces a new narrow entry point for vehicles between two properties. The access to the proposed homes would introduce new vehicular movements at this point on Tolworth Rise North. However, the plan does not provide clarity that refuse vehicles, HGV or other longer vehicles could undertake manoeuvres into the site because the entrance is narrow, and the existing dwelling juts out close to the corner. This could lead to an increased potential for larger vehicles to mount kerbs and damage the footway. This would be detrimental to highway safety for all road users trying to cross or manoeuvre vehicles.
16. There is no evidence that a Stage 1 Road Safety Audit, as required by Transport for London (TfL) has been undertaken. Given the proximity to the TfL Road network (the A3), which is an extremely busy and fast road, this is a matter of concern. Whilst certain elements such as a Construction Logistic Plan could be conditioned, overall, it is not clear whether the road safety implications of the proposal scheme could be accommodated or whether the

proposal could result in damage to TfL assets designed for the safe operation of the highway as a result of vehicles being about to manoeuvre fully or safely into and out of the site.

17. For the above reasons, and in the absence of sufficient information to demonstrate to the contrary, the development would harm highway safety with particular regard to vehicular movements. There is conflict with LDF Policies DM9 and DM10 and Policy T6 of the London Plan. Together these seek to ensure development has regard to local traffic conditions and does not compromise highway safety.

Cycle parking

18. The proposal provides two parking space for each dwelling. The proposal fulfils the requirement contained in Table 10.2 of the London Plan for long-stay cycle parking. Although no short-stay cycle parking is shown, this could be easily remedied as there are several areas within the site, that could feasibly accommodate this provision.
19. Therefore, if I were to allow the appeal, I am satisfied that amendments to accommodate two short stay cycle parking spaces would not change the nature of this scheme. This could be secured through the imposition of suitably worded planning condition. I conclude that that the proposal would provide adequate visitor cycle parking. It would therefore be in accordance with London Plan Policy T6 which seeks to reduce barriers to cycling.

Ecology

20. A preliminary ecological survey and bat survey was submitted as part of the planning application. However, the Council raised concerns over its age rather than its contents. An updated survey was carried out by aLyne Ecology Ltd on 9th January 2024. The accompanying ecological statement advises that it follows guidance set out in CIEEM Advice Note on the Lifespan of Ecological Reports and Surveys (CIEEM, 2019).
21. The Ecological statement concludes that habitats have not significantly changed and concluded that the original assessments remain valid and further surveys are not required. I have no reason to disagree with the ecological statement. I have taken into account the previous 2022 appeal decision which considered the appellants initial ecological survey⁵ which was also submitted with the appeal planning application. This concluded that the avoidance, mitigation and enhancement measures set out and shown on the Biodiversity Mitigation and Enhancement Plan could be secured by suitably worded planning conditions.
22. I conclude, on the basis of the evidence before me that the proposal would not harm the ecology of the site and protected species. It would therefore accord with Policies G6 and DM6 of the LDF. Together these seek, amongst other things, for new development to protect and promote biodiversity by managing its impacts and aiming to secure net biodiversity gain.

⁵ Preliminary Ecological Appraisal and Preliminary Inspection for Bats Report dated 28 May 2021, and Ecological Surveys in respect of Reptiles and Bats dated 17 August 2021 by aLyne Ecology Ltd.

Other Matters

23. It is appreciated that some homes have steep driveways which can be difficult to access. However, it is not clear how spaces within the site could be secured for the use of Nos 107 and 109. Accordingly, I afford this matter only very limited weight as a benefit of the proposal.
24. The appellant contends that they have not received further advice from the Council following the submission of the pre-application enquiry. However, it is not clear whether further pre-application enquiries were submitted following earlier refusals. However, this is not a matter which has any bearing on the appeal.

Planning Balance

25. The Council cannot demonstrate a 5-year housing land supply and have confirmed it stands at 1.55 years. It is therefore necessary to apply paragraph 11 of the Framework which indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
26. Taking into account of the objective of significantly boosting the supply of housing in the Framework within chapter 5, the proposed development would provide social benefits. This includes the creation of six additional dwellings contributing to the supply, mix and range of housing in the district. Although this is a small number of homes, this would attract moderate weight due to the current housing supply position.
27. Economic benefits would arise from the construction and occupation of the development. There would also be some biodiversity enhancement and benefits for parking. However, given the number of homes involved, and the unquantified nature of the enhancements only limited weight can be attributed to these benefits.
28. No harm has been identified in relation to the accessibility of the location, housing mix, standard of accommodation, living conditions of neighbouring residents, noise and disturbance, air quality, refuse storage, climate change and trees. However, these do not view for nor against the proposal.
29. The proposal would result in harm to the character and appearance of the area and conflict with Policy DM10 of the LDF and London Plan Policy D3. Furthermore, the Framework at paragraph 139 expects development that is not well designed to be refused. Given the limited overall visibility of the site I attribute moderate weight in this respect.
30. Nevertheless, highway safety is also a key aspect of sustainable development, and a position supported by the Framework at paragraph 115, as such I attribute significant weight to harm arising from the failure to show that vehicles can suitably manoeuvre and without damage to the road infrastructure and conflict with LDF Policies DM9, DM10 and London Plan Policy T6. Therefore, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

Conclusion

31. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

K Williams

INSPECTOR