



Appeal Decision

Site visit made on 21 November 2024

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 14 MARCH 2025

Appeal Ref: APP/Z5630/W/24/3341574

45 Broomfield Road, Tolworth, Kingston Upon Thames KT5 9AZ

- 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 planning permission.
 - The appeal is made by Ms A Napoletani against Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/03554/FUL.
 - The development proposed is the erection of a new dwelling house.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice. However, the Council has submitted a written statement, which, had they made the decision, recommended that planning permission should be refused. I have had regard to the Council's Statement and their recommendation, insofar that it provides clarity in terms of the reasons the Council would have considered had it been able to do so.
3. Following the determination of the application by the Council, the National Planning Policy Framework (Framework) was updated in December 2024 and subsequently amended on 7 February 2025. The main parties have had the opportunity to comment on any changes arising from this update during the appeal process and I have taken those comments into consideration in my determination of the appeal.

Main Issues

4. The main issues are:
 - whether the proposed development would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

Flooding

5. The appeal site is located within the rear garden of the host building. This area is divided between Flood Zone 2 and Flood Zone 3 due to its proximity to a minor tributary of the Hogsmill River. As a result, the PPG¹ classifies the area as having a medium to high probability of flooding. The proposal is for residential development, which is classed as being more vulnerable to the effects of flooding².
6. Policy SI 12 of the London Plan 2021 (LP) requires that development proposals should ensure that flood risk is minimised and mitigated, and that residual risk is addressed. Policy DM 4 of the Kingston Core Strategy 2012 (CS) requires development to be designed to take account of the impacts of climate change, including the increase in flood risk from fluvial and surface water flooding.
7. Paragraph 170 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. This is achieved through the application of the Sequential Test. The aim of the test is to steer new development to areas with the lowest risk of flooding. Paragraph 174 of the Framework states that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The PPG states that 'Reasonably available sites' are those in a suitable location for the type of development proposed. Furthermore, for individual planning applications, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed, with reference to reasonable alternatives.
8. If the Sequential Test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding, the Exception Test will need to be applied. To pass the Exception Test it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk; and that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, reducing flood risk overall.
9. The appellant's Sequential Test recognises that the appeal site intersects Flood Zone 3 and that the proposed dwelling would be located within Flood Zone 2. However, it concludes that there are no reasonably available sites in the relevant search area. It defines the relevant search area as encompassing the current plot boundary. As such, its view that the site passes the Sequential Test is to be expected.
10. There may well be less vulnerable sites outside of this site, as indicated by the Council, however, the appellant's area of search, which is confined to the appeal site does not identify any. Conversely, I note the Council's observation that its Strategic Flood Risk Assessment specifies that the default search area as the entire borough. However, this area may be reduced where justified by the functional requirements of the development or relevant objectives of the CS. The appellant has not provided specific reasoning to explain why the proposed

¹ Planning Practice Guidance, Paragraph: 078 Reference ID: 7-078-20220825

² Annex 3: Flood risk vulnerability classification, National Planning Policy Framework

development must be functionally limited to the appeal site, other than the rationale that it is within their ownership. Neither have they referred to any specific objectives set out in the CS.

11. In any case, it is common ground between the parties that the site location has a high probability of flooding, and as such, the proposal would need to pass the subsequent Exception Test to succeed. The addition of a new dwelling would provide a small boost to local housing supply. However, there is no evidence before me that the development of one further housing unit would be critical to sustaining community vitality or provide other sustainability benefits to the community that outweigh the flood risk. I acknowledge that the proposed development would remove some hardstanding and provide a drainage system which integrates with green infrastructure, however, it has not been evidenced that this would result in any significant benefits to the community. Taking the above factors into account, the wider sustainability benefits of the scheme to the community are minor and would not outweigh the harmful risk associated with the high probability of flooding at the site.
12. In respect to the second strand of the Exception Test, the PPG requires, in part, that the development is safe for its lifetime taking account of the vulnerability of its users. Similarly, Paragraph 181 of the Framework requires any residual risk to be safely managed, and the inclusion of safe access and escape routes.
13. In the event of breached local flood defences and climate change, the appellant's flood hazard assessment demonstrates that the appeal site would be at a high risk of groundwater flooding and potentially within an area of sewer flooding. This would be an extreme event, yet a worst-case scenario, that the Environment Agency states, should be planned for. While the EA flood mapping may show that flooding would likely only be a few centimetres deep, the appellant's flood risk assessment contains more detailed information which is directly focused on the appeal site. As such, it is likely that this information is more accurate. This assessment estimates that the depth of water at this location would be approximately 0.62m and recommends that the finished floor of the proposed development should be above this level. However, some sections of the building would still be in contact with water irrespective of what measures are used to mitigate the risk of flooding.
14. The site is located within an area that is covered by the Environment Agency Flood Alert service. Evacuating the proposed development would require residents to negotiate varying depths of flood water of up to approximately 0.62m before they would be able to reach land not affected by flooding. Even at shallow depths, the velocity of floodwater could be enough to knock someone off their feet. There would also be no guarantee of assistance during this time from emergency services, thus placing residents at serious risk during site evacuation. Safe access and escape routes from the site during residual flood events, as required by Paragraph 181 of the Framework, cannot therefore be secured during the development's lifetime. While the appellant indicates that the site has not yet flooded, the proposed development would still be unsafe, taking account of the vulnerability of its future users.
15. The Environment Agency Flood Alert service could provide early warning of an imminent flood hazard prior to evacuation. But the efficacy of this service cannot be guaranteed, particularly during the night and times of sleep, while occupiers

may not be able to respond quickly to these warnings. While safe refuge could be sought in the dwelling in a first-floor room set above the anticipated flood level, this would not be appropriate as a place of refuge for those with mobility impairments. Moreover, it would place additional demands on emergency services, during flood events, to remove occupiers from those rooms.

16. The appellant has referred to another development at Swan House on Portsmouth Road, where the Council has allowed development without requiring the ground floor to be raised. However, there is limited evidence before me regarding this other case, specifically its location, size or similarity to the development. As I am not aware of the circumstances of this case, I can only give it limited weight. In any event, I must consider the appeal scheme on its own merits and in the context of the current flooding regime.
17. Taking account of the above assessment, the proposed development would fail to comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding. It would fail to minimise and mitigate flood risk or address any residual risk, contrary to Policy SI 12 of the LP. It would not take into account the increased flood risk from fluvial and surface water flooding, contrary to Policy DM 4 of the CS. It would fail the Exceptions Test outlined in the PPG and Paragraph 178 of the Framework.
18. On this basis, the proposal represents an unacceptable form of development having regard to its flood zone location and the provisions of local and national policy.

Character and Appearance

19. The appeal site forms part of the garden of a two-storey detached property which is located on the corner of King Charles Road and Broomfield Road. This space is currently occupied by a detached single storey double garage. The dwellings in the area are generally uniform in size and typically feature bay windows and gable roofs. They are predominantly constructed from brick and roof tiles, giving them a traditional appearance. The street scene is generally characterised by rows of housing that are aligned in an ordered manner, often framing small front gardens and larger rear garden spaces. These characteristics, along with the adjacent park and surrounding vegetation, combine to give the street scene a strong rhythm and rather spacious feel.
20. The proposed development would replace the existing garage with a detached two storey residential property featuring a contemporary design, a flat roof, and a silicone-coloured render finish. The appellant has described it as an art deco style chalet and accepts that it would not follow the prevailing house style in the area.
21. The proposed development has a box-like profile with a flat roof and bulky proportions. It does not integrate bay windows or gable roofs within its design. As a result, it would contrast awkwardly with the surrounding dwellings which have a more traditional appearance. Its silicone-coloured render finish would also be inconsistent with the area's predominantly exposed brick buildings, disrupting the cohesion and uniformity of the streetscape. Additionally, although modest in height, the proposed development would be accessible directly from the highway with a very small front garden area, making it highly visible and prominent from the public realm. Consequently, it would have a disruptive effect on the marked

balance and rhythm described above, both in relation to the host building and the surrounding pattern of development.

22. In reaching this view, I acknowledge that contemporary designs are often introduced into established street scenes and can provide a striking contrast within the townscape. I also recognise that the appellant has drawn on previous pre-application advice and an earlier planning application to address the Council's concerns. Nonetheless, in this instance, the proposed development still fails to complement the prevailing character of the area and would instead appear as a jarring and discordant addition.
23. While pale blue is the preferred finish of the appellant, they have indicated a willingness to accept a condition that determines the final finish. I have considered the potential use of such a condition. However, imposing such a condition would not address other concerns related to the design and the disruptive visual effect of the building. Therefore, I am not convinced that such a condition would make the development acceptable in planning terms.
24. The appellant has made broad references to other existing alterations, extensions and additions in the immediate vicinity without planning permission. They have referred to the back of the houses on Beaconsfield and Broomfield Roads, and more recent infill buildings off Birchington Road. However, there is limited evidence before me regarding these other cases, specifically their location, size or similarity to the development. As I am not aware of the circumstances of those cases, I can only give them limited weight. In any event, I must consider the appeal scheme on its own merits and in the context of the current policy regime.
25. In conclusion, the proposal would harm the character and appearance of the site and its surroundings. It would fail to positively respond to local distinctiveness, contrary to Policy D3 of the LP. It would not protect the primarily suburban character of existing buildings or respect the prevailing development typology, contrary to Policy CS 8 and DM 10 of the CS.
26. The Council also cites conflict with the Residential Design Guidance 2013. However, no specific wording within it that pertains to this main issue has been identified. In any event, the appeal has been determined in accordance with the development plan, and as such, these documents have not been referenced in this conclusion.

Other Matters

27. The proposal is a small windfall site that will make a useful contribution to meeting local housing need. There would also be economic benefits through its construction and future support for local services and facilities by occupiers of the development. However, considering the scale and nature of the proposed development, these benefits are relatively limited and do not overcome the harm identified under the main issues and the conflict with the development plan in this regard.
28. The appellant has stated that earlier pre-application advice confirmed that the Council considered the proposed demolition of the existing garage and construction of a new residential dwelling to be acceptable in principle. However, there is limited evidence before me to substantiate this advice. In any event, pre-

application advice is not binding on the Council, and I have reached my own conclusions based on the evidence presented.

Planning Balance

29. The Council cannot currently demonstrate a five-year supply of deliverable housing sites in accordance with the Framework. As such, paragraph 11 of the Framework is engaged. Sub-paragraph 11 (d)(i) states that permission should be granted unless the application of policies in the Framework that protect assets of particular importance provides a strong reason for refusing the development proposed. The relevant footnote states that such policies referred to includes areas at risk of flooding.
30. In this case, the proposed development conflicts with national policy which seeks to avoid inappropriate development in areas at risk of flooding and provides a strong reason for refusing the development. Accordingly, the presumption in favour of granting planning permission as set out under paragraph 11 of the Framework does not apply.

Conclusion

31. 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. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed, and planning permission should be refused.

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INSPECTOR