



Appeal Decision

Site visit made on 01 April 2025

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal Ref: APP/Z5630/W/24/3355473

40, 40a, 40b, 40c Clarence Street, Kingston Upon Thames KT1 1NR

- 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 Penwell Design Concepts Ltd against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 24/00406/FUL.
 - The development proposed is part demolition, part conversion and erection of first floor front and rear extensions and loft conversion to provide 8 new residential dwellings (Use Class C3) and the reconfiguration of the 3 commercial units (Use Class E).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. A revision to the National Planning Policy Framework (the Framework) was published on 12 December 2024. The main parties were given an opportunity to comment on the effect of these changes. This decision is based on the current Framework and has taken account of the representations made on this.
3. Amended plans were submitted with the appeal which show an amendment to the housing mix, internal floor heights, internal layout and amenity space provision. However, these amendments make some substantial changes to the proposal and I cannot be certain that all interested parties have had the opportunity to consider them. As the appeal process should not be used to evolve the design of a scheme, and to avoid prejudicing other parties, I have therefore determined the appeal on the basis of the plans considered by the Council.
4. My attention has been drawn to an Emerging Local Plan, which has reached Regulation 18 stage. Given the early stage of the process for this plan, and the level of unknown objections, I have afforded it limited weight.
5. At the site visit I was unable to gain access to No 40b Clarence Street. Nonetheless, I am satisfied that I was able to see all I needed to from public land and from the other buildings which form the appeal site.

Main Issues

6. The main issues are:
 - Whether the proposal would provide adequate living conditions for future occupiers, with particular regard to the quality of the internal space and amenity space;

- Whether the proposal makes provision for an appropriate mix of housing;
- The effect of the proposal on the character and appearance of the area including the effect on the significance and character of 40c Clarence Street; and
- The effect of the proposal on the viability and vitality of the commercial units.

Reasons

Living conditions

7. The proposal relates to the part-demolition, part-conversion and extension to Nos 40, 40a, 40b and 40c Clarence Street. It is proposed that the ground floor of the buildings would comprise 3 commercial units with ancillary storage to the first floor. The upper floors of the buildings and part of the ground floor would accommodate a studio flat and 7no 2-bedroom flats.
8. London Plan (2021) (LP) Policy D6 seeks to ensure that housing developments are of a high quality of design and provide adequately-sized rooms. As a part of this, it sets out certain private internal and external space standards which developments are required to meet, including a minimum floor to ceiling height, bedroom size and private amenity space requirements.
9. The proposed units would receive adequate levels of natural light and privacy and would achieve appropriate internal noise levels. However, whilst the flats would meet the minimum internal space standards for new dwellings set down in LP policy D6, all units would fail to meet the minimum floor to ceiling height of 2.5m for at least 75% of the Gross Internal Area of the dwelling. The master bedrooms to units 1,2,3,5,6,7 and 8 would be below the minimum floor space of 11.5m² for a double bedroom set down in LP policy D6. These bedrooms would be cramped and would fail to provide adequate space for a bed, wardrobe and circulation space.
10. LP Policy D6 sets out that a minimum of 5m² of private outdoor space should be provided for 1-2 person dwellings. However, it is clear that this will only apply where there are no higher local standards in the borough Development Plan Documents. The Council's Residential Design Guide Supplementary Planning Document (2013) (SPD) sets a higher figure for private amenity space of 10m² for new flats. Whilst this SPD pre-dates the LP and whilst this is guidance rather than policy, it remains a material consideration and as such I give it substantial weight.
11. The outdoor space requirement set down in the SPD would be met for units 1,3,6 and 7. However, unit 4 would not be provided with any amenity space and the amenity spaces to units 2,5 and 8 would fall short of the 10m² requirement. The terraces and balconies to units 1, 2 and 3 would be enclosed by built form with limited outlook and would not be a pleasant space for the intended occupiers to spend time in. Therefore, the proposal would not provide appropriate private outdoor space for the occupiers of flats 1,2,3,4, 5 and 8.
12. Whilst nearby open spaces may serve to meet some recreational needs of future occupants of these dwellings, I observed at my site visit that the nearest is in excess of 0.3 miles from the appeal site. Given its distance it would not compensate for a lack of private amenity space, and future occupiers would nonetheless reasonably expect to have suitable high quality private outdoor space.

13. My attention has been drawn to recent approvals¹ for residential development where it is stated the Council accepted non-policy compliant amounts of external amenity space. However, the full details of these applications are not before me, and I am therefore unable to draw conclusions on the similarities between this appeal and the decisions to which my attention has been drawn. In any case, even if these schemes did not provide a policy-compliant level of amenity space, that is not in itself justification for development which fails to make adequate provision in this regard.
14. The Council raise concerns regarding the potential for conflict between future occupiers of the residential properties and the operators of the retail units as there is no clear separation between the residential and commercial uses. However, there is no evidence that this arrangement would cause noise or other nuisances which would cause harm to the living conditions of the occupiers of the flats, or that this arrangement would compromise the viability of the commercial units.
15. The proposal would not provide satisfactory living conditions for the occupiers of the development, in particular in relation to the proposed room sizes and amenity space. Conflict therefore arises with those aims of Policy DM10 of the Local Development Framework Core Strategy (2012) (CS) and LP Policy D6 which seek to ensure that housing development is of a high-quality design with adequate internal and outdoor space.

Housing mix

16. CS policy DM13 states that proposals for new residential development should incorporate a mix of unit sizes and types and provide a minimum of 30% of dwellings as 3 or more bedroom units, unless it can be robustly demonstrated that this would be unsuitable or unviable. None of the proposed units would be 3 or more-bedroom family sized units, and there is no evidence that the provision of larger units would be unviable or could not be accommodated in the development. In light of my conclusions on the first main issue in relation to the shortcomings of the proposed accommodation, the 2-bedroom units would not appear to be suitable for accommodation by families.
17. The proposed housing mix is justified by the appellant as it is stated the town-centre location is more suited to professionals and young persons who typically seek smaller dwellings. However, whilst I recognise that some families may prefer suburban locations, equally, there will be some families that are attracted to the benefits of town centre living, such as the close access to local amenities and public transport. Furthermore, the supporting text to CS Policy DM13 explains that a high proportion of recent residential schemes have been in the form of 1 and 2-bedroom flatted developments, raising concerns about the availability of family housing. The supporting text goes on to state that the Borough's Strategic Housing Market Assessment identified a significant requirement for family housing over the lifetime of the CS. In the absence of any larger units, the proposal fails to contribute to the identified requirement for family housing in the borough.
18. Reference is made to other proposals in the area² which, it is stated, have been approved without compliance with CS policy DM13 in relation to housing mix. However, limited details of these applications are before me and thus I am unable

¹ Applications 22/03472/FUL and 20/00474/FUL

² Applications 21/02177/FUL and 17/12088/FUL

to compare this proposal and the decisions to which my attention has been drawn. Even if these schemes did fail to provide a policy-compliant housing mix, that does not in itself justify further proposals that would fail to contribute to the provision of family homes within the borough.

19. The proposal would not make any provision for family housing and thus would fail to provide for an appropriate mix of housing. Consequently, it fails to accord with those aims of CS Policy DM13 in respect of this component of housing need.

Character and appearance

20. The appeal site comprises 4 units, 3 of which are retail units (Nos 40, 40a and 40b) fronting Clarence Street. Unit 40c sits behind the retail units and does not have an active frontage to Clarence Street. This building accommodates ancillary storage to unit 40b at first floor level and a House in Multiple Occupation to the second floor, accessed from the rear of the building. The 3 retail units have single storey frontages with recessed upper storeys. Each unit has a different height, appearance, palette of materials and roof form. Buildings on Clarence Street comprise a mixture of building heights, forms and shop frontages. These variations in scale, appearance and roofscape results in a varied street scene.
21. 40c Clarence Street is a locally listed building (a Building of Townscape Merit) and is thus considered to be a non designated heritage asset (NDHA). The Framework states that the effect of an application on the significance of a NDHA should be taken into account in determining the application. In weighing applications that affect a NDHA directly or indirectly, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
22. Unit 40c is 3 storeys in height with a pitched roof. The significance of the NDHA appears to derive from its historic frontage and architectural detailing. The NDHA appears to have been heavily altered and poorly preserved and is surrounded by built form which conceals the building so that it is largely imperceptible in the majority of public views. Given this, there are limited opportunities for the significance of the NDHA to be appreciated from the public realm. Surrounding built form has amalgamated the ground floor of the NDHA with the adjoining buildings and has paid little regard to its historic significance. These alterations have significantly compromised the aesthetic value and the setting of the building and consequently the significance of the NDHA has been reduced to a negligible one.
23. The appeal proposal seeks to part demolish, part convert and extend the appeal buildings. The site frontage would comprise a uniform row of 2-storey buildings with 3 individual shopfronts. The proposed extensions and alterations to the site frontage would respect the scale, massing and proportions of the adjoining retail units on Clarence Street. The palette of materials and elevation treatment relate well to unit 40c and the buildings within the street scene, including the retail units which border the site. The coherent façade would represent a marked improvement to the existing piecemeal frontage, bringing about a positive change to the character and appearance of this part of Clarence Street.
24. The proposed alterations would result in limited change to the appearance of unit 40c. Whilst the proposal would increase the height of buildings fronting Clarence Street, the extensions to units 40, 40a and 40b would be separated from the NDHA at second floor level and the building would appear no more constrained by built form in street scene views than it does at present. Given the limited visibility of the

NDHA from public realm, the proposal would not harmfully obscure or reduce the view of the NDHA, and, given the limited significance of the building as a NDHA and the compromised setting of this building, the significance of this NDHA would not be harmed as a result of the proposal.

25. The proposal would not harm the character and appearance of the area, including the setting and significance of the NDHA. It therefore accords with LP Policy D3 and CS Policies CS8, DM10 and DM12 which seek to protect heritage assets and ensure new development responds positively to local context and character, including in terms of scale, height and massing. I find no conflict with Section 16 of the Framework which seeks to conserve and enhance the historic environment.

Viability and vitality of commercial units

26. The appeal site is located on a principal shopping street in Kingston town centre designated as primary shopping frontage. Two of the retail units (Nos 40 and 40a) are in active commercial use and at the time of my site visit No 40b was vacant. Nonetheless, from my site visit it would appear that Clarence Street forms part of a busy and vibrant town centre. The retail units each have ancillary storage space to the first floor and at my site visit I observed that much of the upper floors of units 40 and 40a were not in active use.
27. The proposal would retain 3 commercial units at ground floor level. The overall amount of retail floor space would be reduced by 76m², and ancillary storage space reduced by 105m². Nonetheless, there is no evidence that the smaller retail units would not continue to generate footfall and contribute to the vitality of the commercial area, or that they would become unviable as commercial units as a consequence of their reduced size. It is stated that the existing ancillary storage space is surplus to requirements for modern retail units, and there is no evidence that the reduced storage space would not meet the needs of the businesses occupying these buildings.
28. In light of these factors, there is no compelling evidence that the reduction in commercial floor space and ancillary space would harm the vitality and viability of these commercial units. I therefore find no conflict with those aims of CS policy DM17 which seeks to protect employment land.

Other Matters

29. I can see that the appellant is dissatisfied with the Council's handling of the application and approach to decision making in this case. However, this has little to do with the planning merits of the case. Additionally, I note that interested parties and statutory consultees have not objected to the proposal. However, the absence of objection does not in itself render the scheme acceptable.

Planning Balance

30. The Council is unable to demonstrate a 5-year housing land supply. Paragraph 11 d) of the Framework indicates that, in such circumstances where the requisite housing land supply cannot be shown, 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.
31. The proposed 8 dwellings (7 net) would make a meaningful contribution towards the area's housing supply on a brownfield site with excellent access to facilities,

services and public transport, contributing to the Government's objective to significantly boost the supply of homes. Given the supply shortfall, this attracts significant weight as a public benefit. The proposal would make more efficient use of the site, bringing about improvements to the quality and energy-efficiency of the units and the appearance of the retail frontage. There would also be some economic benefits during the construction and occupancy phases.

32. On the other hand, the proposal fails to provide an appropriate mix of dwelling sizes and therefore does not address the borough's housing needs. This infringes on the principles of sustainable development outlined in Chapter 5 of the Framework, which require that development meets identified local need in order to create diverse communities. Additionally, due to the failure to provide adequate living spaces, the proposal would fail to provide acceptable living conditions for future occupiers. Conflict therefore arises with Chapter 12 of the Framework. These are matters which weigh heavily against the scheme.
33. Consequently, I find that the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal therefore does not benefit from the presumption in favour of sustainable development.

Conclusion

34. The proposal would conflict with the development plan. Material considerations, including the Framework, do not indicate that the decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

N Robinson

INSPECTOR