



Appeal Decision

Site visit made on 10 April 2025

by **P Barton BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 June 2025

Appeal Ref: APP/Z5630/W/24/3354479

Land Adjacent to The Keep, King's Road, Kingston upon Thames KT2 5UF

Grid Ref Easting: 518647, Grid Ref Northing: 170288

- 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 Mr Leon Van Tonder of Cartwheel Lettings Middleton Ltd against the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 24/00809/FUL.
 - The development proposed is the erection of a two storey building comprising 2 x two bed dwellings with integral refuse and cycle store.
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Decision

1. The appeal is dismissed and planning permission is refused for the erection of a two storey building comprising 2 x two bed dwellings with integral refuse and cycle store.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024 with a further minor revision on 7 February 2025. The main parties were given an opportunity to comment, and the comments received have been taken into account in the determination of the appeal.
3. The appeal relates to a planning application that was not determined by the Council within the prescribed period. I note that the Council would have refused planning permission should it have made a decision on the proposal. I have had regard to the parties' submissions in establishing the main issues which I set out below.
4. The Council considers that the proposed development would: detract from the character and appearance of the site and its surroundings; cause less than substantial harm to the setting of a heritage asset; result in an impractical layout that would not provide good quality living standards for future occupants; be likely to give rise to noise and disturbance, as well as perceived if not actual overlooking of neighbouring occupiers; and create on-street parking pressures and prejudice highway safety.

Main Issues

5. Having regard to the above, the main issues are:
- the effect of the proposed development on the character and appearance of the area, and the setting of The Gatehouse (or Keep), a grade II listed building;
 - whether the proposed development would provide acceptable living conditions of future occupiers with regard to outlook, daylight, sunlight, privacy and sense of enclosure,
 - the effect of the proposed development on the living conditions of the occupiers of nearby residential properties, with particular reference to the potential for noise and disturbance, and privacy; and
 - the effect of the proposal on highway safety, with particular regard to on-street parking.

Reasons

Character and appearance

6. The appeal site is an open parcel of land positioned at the junction of King's Road and an estate road called The Keep. The appeal site was, along with a similar parcel of land on the opposite side of the estate road, created when the site of a former barracks was redeveloped to form a post-war housing estate, known as The Keep. The estate consists of 2 and 3 storey residential buildings set within a layout containing areas of open space and mature trees, creating an open and verdant character and appearance.
7. King's Road consists of predominantly 2-storey terraced and semi-detached houses, with modest setbacks. Some have off-street parking to the frontage and there is a strong presence of low brick walls to the back of the pavement. These factors give King's Road a marked difference in its character and appearance to The Keep housing estate.
8. To the east of the estate road and facing King's Road is a grade II listed building known as The Gatehouse (or Keep), which also includes the attached walls and railings. There are further walls and railings to the west of the appeal site, as well as two buildings behind, that were part of the former barracks but are not listed.
9. The proposal would develop a significant part of the appeal site, leaving the area forward of the line of the adjoining former barracks wall and a narrower strip facing the estate road undeveloped. This would unbalance in a harmful manner the current symmetry achieved with the undeveloped parcels of land to either side of the estate road that mark the entrance to and reflect the established open and verdant character and appearance of the estate.
10. For the above reasons, the proposed development would be harmful to the character and appearance of the area. This would conflict with Policies CS8 and DM10 of the Royal Borough of Kingston Upon Thames Local Development Framework Core Strategy (the Core Strategy), which seek to ensure new development, amongst other things, recognises distinctive local features and

character as well as respects, maintains or enhances landscape settings and features. It would also be contrary to Policy D3 of The London Plan, which requires all development to follow a design-led approach, including responding to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality.

Setting of The Gatehouse (or Keep)

11. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 contains a statutory duty to consider whether to grant planning permission for development which affects a listed building or its setting. Special regard should be given to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
12. The Gatehouse (or Keep) at Kingston Barracks was built in 1875 and is one of a few surviving keeps from the national building programme following Cardwell's 1872 Localisation Act, which set out to reform army recruitment by establishing a network of local depots. Keeps were at the centre of many of the new depots and were designed to dominate visually as an expression of military strength to attract new recruits and alter the image of the army. Consequently, The Gatehouse's significance rests primarily with its C19 military historical association, age, architectural detailing and prominence.
13. The appeal site, as well as the undeveloped parcel of land opposite, and the estate road have a limited contribution to the setting of The Gatehouse due to their creation with the redevelopment of the barracks. This also severed the physical, and diluted the visual, connection of the Gatehouse with the wall and railings and the two former barrack buildings to the west of the appeal site. There is significant visual separation between the listed building and the appeal site, and the proposal would primarily be seen against the backdrop of the housing estate and the unlisted former barracks buildings.
14. As such, I conclude that the proposal would preserve the setting of the listed building and the ability to appreciate it. This would accord with Policies DM12 of the Core Strategy, and HC1 of the London Plan, which seek to preserve or enhance existing heritage assets and, amongst other things, require development proposals to conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings.

Living conditions of future occupiers

15. Three narrow windows would be provided to the single bedroom on the west elevation of the proposed ground floor flat, which would be positioned to the back of a footpath that runs between the appeal site and a line of vegetation that forms the western boundary of the site containing the two former barracks buildings. The arrangement of the three narrow windows in such proximity to the existing vegetation would significantly limit the amount of outlook, daylight and sunlight into this room. The location of these windows to the back of the pavement in such a confined space would also naturally attract the attention of anybody using the footpath, resulting an unacceptable loss of privacy.

16. Windows serving the proposed ground floor flat's open plan living area and a double bedroom and looking out onto an area of private outdoor amenity space that would be enclosed behind brick walls and railings. Whilst a daylight and sunlight assessment has not been provided, I am satisfied that due to the open nature and positioning of the railings, sufficient outlook, daylight and sunlight to these rooms as well as the private outdoor amenity space would be provided. For the same reasons this arrangement would also not result in a harmful sense of enclosure. Moreover, both of the proposed flats would have windows to multiple elevations and would not represent single aspect dwellings.
17. There would also be two narrow windows to the open plan living area of the proposed ground floor flat, positioned next to an area that would remain undeveloped. The area would be enclosed by metal estate fencing, thereby limiting access to it and not cause an unacceptable loss of privacy to future occupiers in this regard.
18. The refuse and recycling enclosure and cycle parking to the rear elevation would be conveniently located adjacent to the entrances of the proposed flats. Whilst concerns about the doors opening over the pavement is noted, this is not shown on the submitted ground floor plan and I am satisfied that such matters could be dealt with via a planning condition requiring full details of access to the enclosure to be provided. Such a condition could be imposed were the appeal to be allowed.
19. In conclusion, I have found that the proposal would provide unacceptable living conditions of future occupiers of the ground floor flat with regard to outlook, daylight, sunlight and privacy to the single bedroom. The acceptability of the other aspects of the proposed development described on the living conditions of future residents does not obviate the harm that would be caused. The proposals would therefore conflict with Policies DM10 and DM13 of the Core Strategy and Policy D6 of the London Plan, which require development proposals to, amongst other criteria, have regard to the amenities of occupants, including in terms of privacy, outlook, sunlight and daylight.
20. The Council's submission identifies that this aspect of the proposal would be contrary to Policy DM9 of the Core Strategy. However, this policy relates to managing vehicle use for new development. The proposed development would not conflict with this policy in relation to the living conditions of future occupiers.

Living conditions of nearby residents

21. The proposed first floor flat would be provided with a private outdoor amenity space in the form of a terrace at first floor level to the south elevation facing King's Road. I did not observe any similar private outdoor amenity space at first floor level in the area. Nevertheless, the terrace would be of a sufficient distance away from the existing houses to the south, across an area of undeveloped land to be retained and King's Road, not to cause unacceptable harm in terms of actual or perceived overlooking and loss of privacy.
22. The provision of private amenity space at first floor level would have the potential to create noise and disturbance. However, the scale and nature of the space in association with a single flat as well as the distance to existing nearby residential

properties would not generate a noticeable and harmful increase in any noise and disturbance currently experienced.

23. Consequently, the proposal would not cause unacceptable harm to the living conditions of the occupiers of nearby residential properties with particular reference to the potential for noise and disturbance, and privacy. It would accord with Policy DM10 of the Core Strategy, which seeks development proposals have regard to, amongst other things, the amenities of neighbours, including in terms of privacy, and noise and disturbance.

Highway safety

24. King's Road is subject to a controlled parking zone (CPZ) whilst the estate road (The Keep) is unrestricted. There are also waiting restrictions around the estate road's junction with King's Road, and I did observe signs within the estate stating, '*Parking for residents only*'. Entrance to the flats would be off The Keep where there are no formal parking restrictions.
25. The proposal would provide no off-street parking, and a parking stress survey shows capacity for on-street parking. The survey area included publicly adopted roads in the estate as well as three roads within the CPZ on the basis that there are no parking restrictions on these between the hours of 6:30pm to 8:30am Monday to Saturday and all day on Sunday. It is therefore reasonable to include these roads as an occupier of the proposal could park within the CPZ during weekday evenings and for a significant part of the weekend.
26. Concerns have been raised about the impact of the proposal on parking and highway safety. However, the findings from the parking stress survey have not been contested by the Council. Moreover, during my visit I observed capacity for on-street parking both within the estate and the CPZ, which was when the latter was operational for permit holders and time restricted payment parking.
27. Policy DM9 of the Core Strategy seeks to restrict eligibility for on-street parking permits for residents of new developments located in a CPZ. However, as the appeal site is next to the CPZ and adjacent to an unrestricted area with evidence, unchallenged by the Council, demonstrating capacity for on-street parking, the need for a legal agreement to secure the proposal as a car free development is not necessary.
28. For the above reasons, I conclude that the proposal would not have an adverse impact on highway safety, with particular regard to on-street parking. Accordingly, I find no conflict with Policy DM9 of the Core Strategy and Policy T6.1 of the London Plan, which seek to ensure that new development does not contribute to congestion or compromise highway safety and should not exceed the maximum parking standards.

Other Matters

29. I note the appellant's concern over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.

Planning Balance

30. The Council have confirmed that they have a deliverable housing land supply of 1.48 years and, as per footnote 8 to paragraph 11 of the Framework, relevant development plan policies are taken to be out of date. Therefore paragraph 11 d) of the Framework identifies that planning permission should be granted unless any adverse impact 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 development would make a positive contribution to housing supply, providing accessible housing in the form of a pair of 2-bed units, for which there is a need. There would also be associated social and economic benefits during the period of construction and once the flats are occupied. The development would also be designed and built to make the most efficient use of resources and reduce its lifecycle impact on the environment. It would also contribute to climate change mitigation and adaption with, amongst other things, energy efficiency measures, provision of air source heat pumps and triple glazing. The proposal would also see the planting of trees and the creation of wildlife habitats on the site.
32. However, 2 additional units would make little difference to the overall supply, and the support of 2 extra households would provide to the local economy would be minimal. Moreover, whilst paragraph 73 of the Framework emphasises the important contribution small and medium sized sites can make to meeting the housing requirement for an area, great weight is only given to the benefits of using suitable sites within existing settlements for homes. Given the harm that I have identified the proposal would cause to the character and appearance of the area, the appeal site is not a suitable site for the development proposed.
33. On the other side of the balance, in addition to the harm to the character and appearance of the area there would also be unacceptable living conditions for occupiers of the ground floor flat. I give significant weight to the conflict with Policies CS8, DM10 and DM13 of the Core Strategy and Policies D3 and D6 of the London Plan. These policies are consistent with the Framework in ensuring that development is sympathetic to local character and the creation of a high standard of amenity for future users.
34. It is claimed that the proposal would put back part of the wall to the barracks that was lost when the housing estate was developed, and this would be a benefit on the basis that it would be seen as more reflective of the past, than the existing situation. However, I have found that the proposed development would harm the character and appearance of the area. The proposal would also preserve the setting of the listed building and the ability to appreciate it. As such I afford limited weight to this matter.
35. Compliance with the development plan on drainage and certain matters of design would have a neutral impact on the planning balance.
36. Taking all these matters into account, I therefore conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As such, the presumption in favour of sustainable development set out in paragraph 11 d) of the Framework does not apply.

Conclusion

37. The proposal conflicts with the development plan as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

P Barton

INSPECTOR