



Appeal Decision

Site visit made on 1 May 2025

by Jennifer Wallace BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2025

Appeal Ref: APP/Z5630/W/24/3352759

8 Upper Brighton Road, Kingston Upon Thames, Surbiton, KT6 6JY

- 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 K Jeetoo of Reamcare Limited against the decision of the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref is 23/03224/FUL.
 - The development proposed is the extension and change of use of the existing building at 8 Upper Brighton Road, which contains 7 residential flats (C3), into a nursery. An outbuilding will be erected to the rear of the site containing additional nursery space alongside a supported living admin unit, whilst 3 supported living residential units will be erected to the rear with a total of 13 bedrooms.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Procedural Guide: Planning Appeals – England is clear that the appeal process should not be used to evolve a scheme and that what is considered at appeal is essentially the same scheme that was considered by the Council and interested parties. Amended plans have been submitted with the appeal which show the outbuilding being reduced in the extent of its width across the site and only providing additional floorspace in relation to the supported living. A covered walkway has been removed between the existing building and the proposed outbuilding. A passing place on the access road has been proposed. T18, T19 and G04 are shown as being retained.
3. I have considered whether it would be appropriate to accept these revised plans, having regard to the Procedural Guide and the tests set out in the ‘Holborn Studios’ judgement¹. The amended plans show a reduction in floorspace which allows for the retention of more trees and a minor change to an existing access. I consider this would not be a fundamental change to the proposed development. Given the limited extent of these changes, procedural unfairness to any of the parties in the appeal would not arise. I have therefore considered the appeal on the basis of the amended plans.
4. Additional technical documentation has been submitted in support of a number of the reasons for refusal. This is common practice in appeals, and does not fundamentally change the proposal but rather provide further assessment of its effects. It is also not unusual for statutory consultees to be consulted as part of the appeal process, and the appeal timetable is no less than the standard consultation

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

period on a planning application. There is therefore no reason that the additional information should not be taken into account in the determination of this appeal.

Main Issues

5. The main issues in this appeal are:

- whether the loss of residential units is outweighed by the benefits of the proposal;
- the effect of the proposal on the character and appearance of the area with particular regard to the Southborough Conservation Area and trees;
- the effect of the proposal on the living conditions of neighbouring occupiers with respect to noise;
- the effect of the proposal on highway safety;
- the effect of the proposal on protected species; and
- whether the proposal makes adequate provision for fire safety.

Reasons

Loss of Residential Units

6. Royal Borough of Kingston upon Thames Core Strategy (2012) (CS) Policy DM 14 is unequivocal that the loss of existing accommodation will be resisted. The policy is not caveated; rather it is clear that the retention of dwellings which are suitable for family accommodation is of particular importance. However, this does not diminish the principal aim of the policy which is to resist the loss of existing accommodation.
7. Two of the existing flats are shown as being particularly small. However, the policy does not provide any exemption for dwellings that are small or otherwise fail to meet other standards although I note that the CS was adopted prior to the introduction of the Nationally Described Space Standards (NDSS). Furthermore, the smaller dwellings are on the same floor as much larger flats. There is no evidence before me to suggest that it would not be possible for the internal accommodation to be remodelled, and for all flats within the property to comply with the NDSS.
8. It is put forward that the supported living proposal would be a like for like replacement for these properties as all thirteen bedrooms would be of a suitable standard. This would not be the case, as the existing dwellings and proposed accommodation fall within different use classes. The Council's pre-application response sets out the ratio to be taken when assessing the contribution of C2 bedspaces to housing land supply. This confirms the proposal would equate to 7.2 residential units, so there would be at worst, no net effect on the overall supply of dwellings. However, this would not address the loss of existing accommodation.
9. London Plan (2021) (LP) Policy H12 does support the delivery of supported and specialised accommodation to meet an identified need. CS Policy DM 10 requires development to optimise housing output consistent with the local context in accordance with London Plan policies.

10. The appellant's evidence is clear that while it is proposed that the units would be to support the needs of a particular group, permission is sought on the basis that they could be used to meet any support needs within the borough. I have been provided with evidence from meetings and email discussions between the appellant and officers of other departments of the Council with responsibility for housing and those in need of support. The appellant has also provided statistics around the increase in people with particular needs which I accept as being reliable. However, there is nothing within this evidence that quantifies the need for supported accommodation of the type the appellant proposes to deliver. Indeed, it highlights the demand for accommodation for a slightly different group. There is no evidence of the assessments required by LP Policy H12 to demonstrate the need for such accommodation. There is therefore no substantive evidence of the need for supported or specialised accommodation, nor is it certain that the proposal would meet this need were it evidenced.
11. The admission criteria for school entry is simply that: the policy for allocating school places. It is not evidence of a lack of demand of nursery school places. The Childcare Sufficiency Assessment is dated February 2020, and so is unlikely to be an accurate reflection of the current situation, given the passage of time, particularly over this period and national changes with respect to access to pre-school education. There is therefore no robust evidence of a deficit in childcare places before me.
12. There is no viability evidence before me to demonstrate that it is necessary for the nursery business to operate to enable the provision of the C2 dwellings. Nor is there a functional link between the two uses, beyond that of them falling under the aegis of the appellant company.
13. As the site is within a built up area, its garden is excluded from the definition of previously developed land. Notwithstanding, the site is well located for access to services and facilities. I have no reason to doubt that the appellant provides an important service within the borough and has done for a number of years. The fact they do not operate any nurseries at present is not relevant to the planning merits of this proposal. However, these factors do not alter my assessment of the proposal against the policies of the development plan.
14. It therefore has not been demonstrated that the benefits of the proposal would outweigh the harm that would arise from the loss of the existing residential properties. The proposal would therefore be contrary to CS Policy DM 14 which seeks to resist the loss of existing accommodation.

Noise and Disturbance

15. The Council has intimated that it would no longer be seeking to defend its second reason for refusal with respect to noise and disturbance following an updated acoustic report and comments from the public protection officer. This is subject to the imposition of conditions.
16. The assumption that windows in the nursery would not be opened is on the basis that there would be air conditioning within the building. There is no evidence on the plans before me of the installation of such equipment. The submitted noise assessment does not take account of the effect of additional noise that would be generated by the plant that would be necessary to provide air conditioning.

17. However, even if I were to accept that the effect of the installation of the necessary plant would be acceptable, the noise assessment is predicated on an assumption that the windows within the proposed nursery would not be opened and so there would be no noise breakout from the building. It is also predicated on there not being more than 24 children in the rear garden at any one time, and for this to be further restricted to 12 children at either end of the day.
18. In order to be certain of these, I would have to secure such matters by condition. Paragraph 57 of the National Planning Policy Framework (the Framework) sets out six tests that conditions must meet in order to be imposed. I am not satisfied that it would be reasonable to limit the use of the nursery garden to no more than 24 children, or to require windows in the building to not be opened. Nor would such issues be practically enforceable.
19. I therefore cannot be certain that there would not be an adverse effect on the living conditions of neighbouring occupiers with respect to noise. The proposal would therefore be contrary to CS Policy DM10 and LP Policy D14 which require development to have regard to the amenities of neighbours with respect to noise and avoid significant adverse noise impacts.
20. The reason for refusal refers to LP Policy D4. This sets out the actions Council's should take to deliver good design and does not directly relate to this main issue.

Character and Appearance including Protected Trees

21. The site lies within the Southborough Conservation Area (CA) where s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. The significance of the CA lies in its architectural and historic interest of large dwellings in commensurate plots developed in the 19th and 20th centuries. Mature trees are a feature in the CA which positively contribute to its character and appearance by softening the urban street scene and providing a verdant quality to the garden areas.
22. In addition to the protection provided by the site lying within the CA, four individual trees (a fifth no longer appears to be present) and one group within the site are subject to a Tree Preservation Order² (TPO) while the area of land that lies to the rear of Nos.10 and 10a is subject to a woodland TPO³. This identifies that the woodland was planted in 2014 to replace trees removed from the CA without consent. The CAA identifies that trees are a special feature of the area, which is epitomised by properties situated in generous plots with extensive tree and shrub planting throughout. It further notes that large trees are prevalent, but that smaller trees contribute to the overall verdant character of the area and that the most significant garden trees are covered by TPOs. The site is representative of this, with a substantial degree of planting containing trees of varying scales, with the most significant subject to TPO. The tree cover within the grounds makes a positive contribution to the character and appearance of the CA.
23. The proposed supported housing would occupy much of the area covered by the woodland TPO. It is not quantified how many trees would be lost from this woodland area. However, based on the number of species listed in the woodland

² Tree Preservation Order No.6 1973

³ Tree Preservation Order (No.2) 2015

TPO and the areas of trees shown to be removed, it is likely that this would be greater than four. Consequently, there would be a net loss in the number of trees on the site. Furthermore, this area makes a particular contribution to the character and appearance of the CA due to the plot size and number of trees it contains. I also cannot be sure that the replacement tree planting sought by CS Policy DM10 and LP Policy G7 could be delivered.

24. The proposal would involve works within the root protection areas of many trees. Some of these are within areas of existing hard standing where precautionary working practices could be secured by condition. The Arboricultural Method Statement (AMS) also shows measures that could be taken to protect those trees where works are proposed with the root protection areas and I have no reason to disagree that these measures would not be appropriate.
25. High-sided vehicles could use the existing access to reach 8A Upper Brighton Road. The Fire Service Site Plan submitted with the appeal shows a minimum of 6m clear height under the tree canopies of a number of trees. The AMS indicates that works to crown lift other trees to 5m would also be carried out adjacent to the access. These works would not be unreasonable, nor would they materially affect the amenity value of the trees.
26. Development has taken place in what were the large rear gardens of many of the properties on Upper Brighton Road. There are also more modern residential developments in proximity which introduce a new form of layout contrary to that of the large dwellings fronting onto Upper Brighton Road. The erection of the accommodation units and the associated office space in the rear garden would therefore not be entirely uncharacteristic of the location of development in the CA.
27. The associated office space would be modest in scale and single storey so it would have a neutral effect on the character and appearance of the area. The proposed supported living units, although of a modern appearance, would also have a neutral effect on the character and appearance of the area due to its position to the rear of the plot and design which reflects the time in which it would be constructed.
28. The majority of the proposed extensions and alterations to the existing building are not disputed by the Council. The proposed rear ground floor extension would result in the loss of the central and side bay at ground floor level. While the proposed ground floor extension would be substantial, its modern appearance would be acceptable given its position to the rear of the property. The loss of the bays at ground floor would be unfortunate as they are attractive features of the property, however given their location at the rear, the effect would not be significantly adverse. The proposed first floor bay would become a strong feature of the building, however this would not adversely affect the appearance of the rear elevation, given its position between the two gables.
29. Paragraph 212 of the National Planning Policy Framework (the Framework) sets out that great weight should be given to the conservation of a designated heritage asset, irrespective of whether this would amount to substantial harm, total loss or less than substantial harm to significance. Paragraph 213 further advises that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Overall, the proposal would result in less than

substantial harm to the significance of the CA arising from the loss of the trees. This harm would be moderate given the scale of the loss of trees.

30. In such circumstances, paragraph 215 of the Framework confirms that this harm should be weighed against the public benefits of the proposal. The public benefits of this proposal would be the economic benefits during the construction and renovation works along with the ongoing employment the proposed uses would provide. There would be social benefits from an increase in the provision of childcare places and supported living accommodation. However, these social benefits are limited by the concerns I have set out above. Consequently, I consider that they would not outweigh the harm to the CA I have identified to which I attach great weight.
31. The repair works to the existing building are akin to ongoing maintenance. This is to be expected at any property and would therefore be a neutral factor in my assessment.
32. The proposal would therefore have an adverse effect on the character and appearance of the area with particular regard to the CA and protected trees. It would therefore be contrary to CS Policies CS8, DM10 and DM12 and LP Policies HC1 and G7 which require development to have regard to the historic environment, preserve or enhancing existing heritage assets, conserve their significance, the contribution of gardens to the natural environment, seek to retain existing trees of value and ensure adequate replacement.

Protected Species

33. The Conservation of Habitats and Species Regulations 2017 (as amended) impose a duty on me to consider whether European Protected Species (EPS) would be affected by the development. The Preliminary Ecological Appraisal (PEA) identified the potential for there to be bats present on the site. It clearly identified that three bat emergence and re-entry surveys would be required. These surveys have not been provided. Circular 06/2005⁴ (the Circular) sets out that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision". Consequently, I cannot be certain of the effect of the proposed development on protected species.
34. The Circular is clear that surveys should only be secured by condition in exceptional circumstances. No exceptional circumstances have been put before me, nor can I identify any. As such, there is no reason that would justify the use of a condition in light of the clear advice in the Circular.
35. I therefore cannot conclude that the proposed development would not have an adverse effect on protected species contrary to CS Policies DM6, DM10 and DM12 and LP Policies G4, G6 and G7 which taken together require development to protect biodiversity
36. CS Policy DM5 and LP Policy G4 refer to open spaces and appears to relate to designated open spaces while Policy DM12 refers to Conservation Areas. It is not readily apparent that either of these policies apply to this reason for refusal.

⁴ Circular 06/2005: Biodiversity and Geological Conservation

Highways

37. Additional highways information has been submitted with the appeal. The local highways authority is satisfied with the amendments to the access road within the site including the provision of a passing place and walkway. I have no reason to disagree that the amended layout would not provide appropriate access within the site.
38. Further measures to control the use of parking spaces within the site are proposed by the appellant which provides that there would only be staff parking at the site. Management measures could prevent parents from accessing the site to drop children off. However, there is no mechanism before me which would prevent parents using cars to drop children off or to secure the development as car free other than staff. A condition would not be sufficient to secure such measures. There is no evidence before me which would allow me to conclude that users of the nursery would live close by or on public transport routes. Given the extent of parking restrictions along Upper Brighton Road which is a busy main route, and wider parking restrictions in the area taken in conjunction with the young age of children being taken to and from the nursery, it is likely that any use of the private car would likely result in a negative impact on highway safety in the surrounding area.
39. Furthermore, only staff parking is shown for the supported housing to the rear of the site. While it may be that the occupiers would not have access to vehicles, it seems unrealistic to assume that they would either walk or be transported by on-site staff on all occasions. There is no provision for pick up or drop off of those residents which adds to my concerns about the ability of the site to adequately accommodate the likely vehicular activity that would be generated by the proposal.
40. The proposal would therefore have an adverse effect on highway safety, contrary to LP Policies DM9 and DM10 and LP Policies T6 and T6.1 which taken together require development to ensure that it does not compromise or adversely affect highway safety and make appropriate provision for parking.

Fire Safety

41. Additional fire safety information has been submitted with the appeal, and the Council has not identified any concerns with this. I have no reason to disagree with the majority of the measures proposed. A swept path diagram has been submitted in support of the appeal. This appears to show conflict with the manoeuvre of the tender with the site boundary. However with the removal of the covered walkway from the scheme, it is likely that this conflict could be resolved. Had I been minded to allow the appeal, I am satisfied this is a matter which could have been addressed through the use of a condition. Other issues in relation to fire safety would be addressed through other regimes.
42. The proposal would therefore make adequate provision for fire safety. It would therefore not be in conflict with LP Policy D12 which requires high standards of fire safety to be demonstrated.

Other Matters

43. There is broad policy support for the delivery of residential and community uses within existing urban areas and in principle would represent an efficient use of

land. There would be economic benefits during the construction and renovation works and from the ongoing employment the proposed uses would provide. There would be social benefits from an increase in the provision of childcare places and supported living accommodation.

44. The Council's pre-application advice, while generally positive, is heavily caveated with the need for further evidence to be submitted. While it is unfortunate when decisions are taken in a way that seems contrary to such advice, that advice is not binding.

Conclusion

45. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations, including the Framework, of sufficient weight to indicate the decision should be taken otherwise. For the reasons given, I conclude that the appeal should be dismissed.

Jennifer Wallace

INSPECTOR