
Appeal Decision

Site visit made on 8 September 2025

by **C Housden BSc(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 October 2025

Appeal Ref: APP/Z5630/W/25/3366821

Flat 104 Gilders Road, Chessington, Kingston Upon Thames KT9 2AN

- 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 Peter Rybinski against the Council of the Royal Borough of Kingston Upon Thames.
 - The application ref is 24/02475/FUL.
 - The development proposed is conversion of the first and second floors to provide 1 studio and 1 x 1 bed self contained flats with erection of rear dormer roof extension and installation of 1no. rooflight to facilitate loft conversion. Demolition of outbuildings and erection of outbuilding to the rear garden, and provision of 3nos. parking spaces and 2nos. cycle stores.
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Decision

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

Background and Main Issues

2. The appeal results from the failure of the Council to determine the planning application within the relevant time period, and as such, there is no formal decision notice. The Council has confirmed in its appeal documentation that, had it been able to do so, it would have refused planning permission.
3. A signed unilateral undertaking was submitted by the appellant during the course of the appeal. This was submitted before the Council's statement of case was due. I am therefore satisfied the Council have had adequate chance to comment on the unilateral undertaking and there would be no procedural unfairness to accept this document.
4. Having considered the evidence before me I consider the main issues to be:
 - the effect of the proposed development on the supply of family dwellings; and
 - the effect of the appeal proposal on highway safety, with specific regard to whether the proposed development provides sufficient parking arrangements for the future occupiers of the development.

Reasons

Loss of the family dwelling

5. Policy DM14 of the Royal Borough of Kingston Upon Thames Core Strategy (2012) (CS) seeks to resist the loss of existing accommodation, particularly

dwelling which is suitable for family accommodation. The appeal site currently comprises a three-bedroom flat situated over the first and second floor of 104 Gilders Road.

6. The appellant sets out that the proposal is unsuitable to function as a family dwelling, primarily due to the lack of access to an external amenity space. This position is supported by two letters from local estate agents, which also raise some other issues such as a lack of internal storage.
7. However, on my visit I observed that the existing property has a spacious living area and bedrooms which would allow the property to comfortably be used as family accommodation. Whilst an external amenity area would be desirable for families seeking accommodation, the lack of such a space does not adequately demonstrate that the property could not be used at all as family accommodation. I therefore consider that the property would be suitable family accommodation without any convincing evidence to the contrary.
8. The appellant also states the proposal would help to free up existing family stock, the unit has previously been under-occupied and there is a demand for smaller properties within the borough. However, the appeal proposal would result in the net loss of appropriate family accommodation, and I have no compelling evidence before me demonstrating that the creation of the two smaller flats would directly result in the freeing up of other family housing within the area. Furthermore, if the existing property is underoccupied, this does not justify its permanent loss as it still forms part of the family housing stock of the borough. Whilst there might be a demand for smaller sized properties, Policy DM14 of the CS is clear that decision makers should, in particular, resist the loss of dwellings which are suitable for family accommodation. The proposal would result in the loss of a suitable family property and would therefore conflict with Policy DM14 of the CS.

Parking provision

9. A signed unilateral undertaking (UU) has been submitted to secure two off-street parking spaces within an off-site existing garage to serve the proposed flats. Having regard to the tests set out in paragraph 58 of the National Planning Policy Framework (the Framework), a legal agreement to secure these spaces would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
10. The garage is situated outside the red line of the location plan for the development. However, the plan appended to the planning obligation utilises a different red line than that submitted with the planning application to include the off-site garages and therefore the UU inaccurately defines the application site subject to this planning appeal. The UU also refers to the site as 104a Gilders Road, which is different to the address of the appeal site as described on the application form, and, despite being signed is nevertheless marked as a draft.
11. Furthermore, the UU confirms that a landowner who is not the appellant owns the off-site garage, however, contradictorily states within Schedule 3 that “the Applicant also owns two lock-up garages”. Schedule 3 is also imprecisely drafted by what appears to be a duplication of the requirements of the obligation but using terms which are not defined within the definitions section of the UU.

12. For these reasons I am not convinced that the UU would be effective in securing these offsite parking spaces for the development before me or be legally sound and capable of being enforced. Therefore, I conclude that the planning obligation is flawed it carries no weight. There would be no mechanism to secure the off-street parking spaces for the proposed flats.
13. The proposal would introduce a net-increase in dwellings which would result in an increase in vehicles parking within the area. I do not have evidence before me demonstrating the local area has sufficient capacity to accommodate the additional vehicles generated by the proposal without causing unacceptable harm to highway safety.
14. As such, I cannot conclude that the additional vehicles requiring on-street parking spaces would have an acceptable impact on the surrounding highway network and not result in material harm to the safety of other road users and pedestrians.
15. Therefore, due to not securing the off-street parking spaces I conclude that the appeal proposal would conflict with Policy DM9 of the CS which seeks to ensure that development does not compromise highway safety.

Other Matters

16. My attention has been drawn to some appeal decisions which the appellant believes to be similar to the proposal before me. However, these appeals relate to sites within the boundaries of different local planning authorities, none of which would be assessed under the policies of the CS before me. I also have been provided very limited information on the specific details of these cases, nor do I know the site specific circumstances of each appeal. I therefore cannot be certain these appeals are directly comparable to the development before me. In any case, each proposal should be assessed on its individual merits which I have done so in this case.

Planning Balance

17. The proposal is not in accordance with the aforementioned policies of the CS, by virtue of the permanent loss of a suitable family sized property and lack of off-street parking.
18. However, whilst I have not been provided with an exact figure, the Council's statement of case confirms that it cannot demonstrate a five-year housing land supply. Therefore, the provisions of paragraph 11(d) of the Framework are engaged. Footnote 8 confirms in these circumstances the policies which are most important for determining the application are deemed to be out-of-date.
19. Paragraph 232 of the Framework confirms due weight should be given to policies, according to their consistency with the Framework.
20. Paragraph 61 of the Framework sets out the Government's objective of significantly boosting the supply of homes. As the Council cannot demonstrate a five year housing land supply, the adopted housing strategy is failing to meet the local housing needs of the area. Therefore, the conflict with Policy DM14, which in this case, restricts the creation of additional housing units through the conversion of the existing family unit would carry moderate weight against the proposal.

21. Paragraph 109 of the Framework sets out that parking is integral to the design of schemes and this contributes to the making of high-quality places. Paragraph 116 sets out that development should be refused if there would be an unacceptable impact on highway safety. As such, conflict with Policy DM9 would carry significant weight against the development.
22. The proposal would therefore conflict with the development plan as a whole and with the abovementioned parts of the Framework.
23. As mentioned, the Government's objective is to significantly boost the supply of housing, including through small and medium schemes. The proposal would contribute towards the Council's housing land supply. However, given the small scale of the proposal, this would at most attract limited weight in favour of the development.
24. The new outbuilding would be of a smaller stature compared to the existing and would therefore reduce the bulk and mass situated adjacent to the neighbouring property. However, it has not been sufficiently demonstrated that the existing outbuilding by virtue of its size or siting is so materially harmful to the living conditions of the adjacent neighbour that it requires remedying through this application. As such, the effect on the living conditions of the adjacent neighbour would only carry very limited weight in favour of the development.
25. The proposal would provide a suitable standard of living conditions for future occupiers of the development, including the shared facilities situated within the outbuilding. Given that it is expected that appropriate living conditions are provided for future occupiers of the development, this lack of harm is not a benefit in itself.
26. Overall, the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. The presumption in favour of sustainable development would not apply.

Conclusion

27. 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 given above, I conclude that the appeal should be dismissed.

C Housden

INSPECTOR