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## Appeal Decision

Site visit made on 21 October 2025

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 18 November 2025

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**Appeal Ref: APP/Z5630/W/25/3369621**

**141 London Road, Kingston Upon Thames, KT2 6NH**

- 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 Amish Derodra (Silverspoon Acquisitions Ltd) against the decision of Royal Borough of Kingston Upon Thames.
  - The application Ref is 24/00605/FUL.
  - The development proposed is the erection of single storey rear extension and internal alterations to existing ground floor commercial unit (Use Class E(a) and B8). Erection of rear extension to first and second floors, loft conversion, rear upwards roof extension, and internal alterations to provide 5nos. flats, with associated cycle parking and refuse storage.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appellant describes the appeal site as a mixed-use building, which contains commercial and residential uses. These commercial uses include the use of the property as a restaurant and flooring showroom. It is understood that a certificate of lawfulness (16/12571/LDE ) to validate the of parts of the appeal site as residential units was applied for and subsequently refused in July 2016. There is no evidence before me to indicate that this decision was appealed. More recently, the appellant state that they have submitted a further application for a Certificate of Lawfulness for the residential use of the upper floors. To support this application, they have submitted council tax demand notices, street naming and numbering certificates, and Royal Mail registered addresses. However, it is understood that this has yet to be validated by the Council and it is unclear what progress has since been made regarding this application.
3. While it is acknowledged that the upper floors may have been used as residential dwellings, it would not be appropriate for me to determine that this is their lawful use, particularly as a Certificate of Lawfulness has been applied for and remains undetermined. Notably, the parties continue to dispute the lawful use of the appeal site and a s78 appeal is not the appropriate mechanism for establishing the lawful use of land or buildings. As there is insufficient evidence to demonstrate otherwise, I consider it necessary to adopt a precautionary approach and determine this appeal on the basis that the lawful use of the site does not include any residential accommodation. This remains the case irrespective of whether enforcement action has been taken and whether the matter was referenced in previous appeal decisions (APP/Z5630/W/17/3189323).

4. The appellant considers that, following discussions with the Council's planning officer, it was indicated that the application was likely to be approved, subject to the submission of revised floor plans, unilateral undertaking and an updated Flood Risk Assessment (FRA). However, the appellant is of the view that the Council's newly appointed planning officer subsequently refused the application based on the original documents, rather than considering the updated submissions. However, there is no clear and unambiguous evidence before me that the Council formally accepted these updated documents. Instead, it appears that the Council decision was made on the originally submitted documents and plans, and that it did not consider these amendments as part of its assessment.
5. Nonetheless, the appellant now seeks to have the appeal determined based on the amended documents. In determining whether it is appropriate to accept the updated plans, the Inspectorate has published the 'Procedural Guide: Planning appeals – England' guidance. It advises that the appeal process should not be used to evolve a scheme, as it is important that what is considered at appeal is essentially the same scheme that was considered by the Council and by interested parties at the application stage. Where amendments are proposed during the appeals process, I am required to consider whether, exceptionally, to accept them.
6. The Holborn Studios<sup>1</sup> case sets out two tests to determine whether proposed amendments should be considered. Regarding the substantive test, the changes between floor plan revisions Rev B and Rev C are significant. These include a reconfiguration of Flat 2, which has been enlarged to a three-bedroom unit. Additionally, the location of the refuse store on the ground floor has been altered, resulting in the relocation of a fire exit route serving the commercial space. This modification introduces some inconsistencies with other submitted documents, such as the proposed external lighting strategy and the fire emergency plan, which would no longer align with the revised layout. Furthermore, the updated FRA contains substantial differences in technical clarity, with particular regard to compliance with the drainage hierarchy. Additional references to a basement bedroom were also removed. The unilateral undertaking secures various planning obligations which bind the owner and their successors in title, specifically regarding commencement and parking permits. Taken together, these amendments represent a fundamental change to the application, affecting the core design and functionality of the overall scheme.
7. Regarding the procedural test, there is a significant risk that the updated documents would cause unlawful procedural unfairness to consultees and third parties involved in the appeal, as it could deprive them of the opportunity to make representations. As discussions appear to have been limited to the parties involved, it is unclear whether consultees and third parties have been made adequately informed of this amended proposal. Given this, I cannot be satisfied that the proposed amendments comply with the relevant procedural and substantive tests. Accordingly, based on the evidence before me, the documents will not be taken into account in the determination of this appeal.
8. A previous planning application (21/03726/FUL) for a similar scheme was dismissed on appeal (APP/Z5630/W/22/3307209) in August 2023. In that decision, the Inspector considered a range of issues raised by the Council and dismissed the appeal due to harm to the setting of adjacent listed buildings, the character and

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<sup>1</sup> Holborn Studios Ltd v The Council of the London Borough of Hackney (2018)

appearance of the area, the loss of employment provision, and adverse effects on outlook, daylight and sunlight, noise, and highway safety. The Inspector did not identify harm in relation to flood risk. The current proposal seeks to address the concerns highlighted in that decision.

9. The appeal site is located directly adjacent to the Grade II Listed Building at 143 London Road (Vine House). The developed proposed under the previous application and appeal differs significantly to the current proposal, as it involved the demolition of the existing building and was considered overly bulky in appearance. In contrast, both the Council and the appellant have concluded that this proposed development would not affect the setting of this heritage asset. Having regard to the visibility of the proposed rear extension and the minimal changes to the front elevation, I concur with this assessment and agree that this issue has been resolved.

## **Main Issues**

10. The main issues are:

- whether or not the appeal site is a suitable location for the proposed development, having regard to the retention of employment land;
- the effect of the proposed development upon the supply of family housing in the borough;
- whether or not the proposed development would provide suitable living conditions for future occupiers; and
- the effect of the proposed development on surface water drainage and flood risk in the area.

## **Reasons**

### *Employment Land*

11. The appeal site is a building which includes a ground floor level commercial retail space. During my site visit, I observed that parts of the building have been utilised as a ground floor flat, a first-floor flat, and a second-floor flat. However, as set out above, there is no compelling evidence to demonstrate that these residential uses are lawful. Consequently, the appropriate starting point is to treat the building as being in commercial use in its entirety.
12. It forms part of an established building line and, while it is adjacent to listed buildings, it is not itself listed. The surrounding area is characterised by higher-density development with limited on-site parking provision. The site lies within Kingston Town Centre, a designated regional shopping centre, and is also located within a Locally Significant Industrial Site (LSIS).
13. Policy DM 17 of the Kingston Core Strategy 2012 (KCS) states that the Council will protect all employment land in Kingston Town Centre, such that alternative uses will not be acceptable unless it has been demonstrated by sound evidence and rigorous marketing over a number of years (up to two years) that there is no quantitative or qualitative need for a range of employment uses. It states that mixed use development schemes should not result in a net loss of employment capacity (floorspace and/or land) and should not compromise the viability of the

site and/or its surroundings for employment purposes. I am satisfied that the availability of land for commercial and industrial uses is directly analogous to the capacity for employment-generating activities. Accordingly, any loss of this land inherently diminishes the potential for sustaining or expanding employment opportunities.

14. The plans indicate that the existing ground floor comprises approximately 145 sqm of commercial space. The proposed floor plan proposes an increase to approximately 150 sqm of commercial space, with an additional 49 sqm allocated for communal use. However, the proposed development involves the conversion of the upper floors into residential dwellings. As the lawful use of these upper floors has not been adequately demonstrated to be other than commercial, the Council has calculated that the proposal would result in the approximate loss of 89 sqm of employment land on the first floor and 25 sqm on the second floor.
15. I am therefore satisfied that the development would lead to a reduction in employment land within a metropolitan centre, such as Kingston Town Centre. Crucially, there is no evidence before me of rigorous marketing over a sustained period to demonstrate a lack of demand for the commercial use currently provided by the appeal site. This loss of commercial capacity would, in turn, likely undermine the site's viability for continued employment use. This assessment remains valid even if the site is not presently occupied for commercial purposes, as the lawful use of the upper floors should be considered to be commercial land.
16. In reaching this view, I have considered the appellant's consideration that the upper floors have been used for residential purposes over a prolonged period, as supported by council tax records and other related documentation. However, there is no substantive evidence before me to confirm that the necessary legal threshold for a lawful change of use has been met. This remains the case regardless of whether such matters were raised in previous appeal decisions.
17. I acknowledge the appellant's view that the LSIS designation of the appeal site is outdated, particularly given the reported increase in residential accommodation in the surrounding area. Nevertheless, the evidence indicates that the LSIS designation remains part of an adopted development plan. In any event, it is not disputed by the appellant that the site lies within Kingston Town Centre. Accordingly, the requirements set out in Policy DM 17 of the KCS remain directly relevant.
18. In conclusion, the evidence has not demonstrated that the policy tests for the loss of commercial land have been met. Therefore, the appeal site would not be a suitable location for the proposed development, having regard to the retention of employment land. The proposal would erode the employment function of Kingston Town Centre, undermining its role as a sustainable metropolitan centre. Furthermore, it fails to safeguard employment land within this key urban area, contrary to Policies CS 12 and DM 17 of the KCS. It would also fail to ensure the adequate safeguarding of land for industrial and related functions, thereby compromising the continued efficient operation of the designated LSIS. This is contrary to Policies E4 and E7 of the London Plan 2021 (LP), which seek to protect and promote industrial capacity across London.

### *Family Housing*

19. The plans indicate that the proposed development would result in the development of 2 x 1 bedroom 2 persons flats, 1 x 2 bedroom 3 persons flat, 1 x 2 bedroom 4 persons flat and a 1 x bedroom 1 person flat.
20. Policy DM 13 of the KCS states that new residential developments 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. Additionally, the Council's Strategic Housing Market Assessment (2016) (SHMA) notes that there is an objectively assessed need is for three or four bedroom units.
21. According to the planning history, specifically application reference 16/12571/LDE, the Council previously determined that the appeal site included a four-bedroom flat on the first floor. However, as discussed earlier, the lawful use of this space remains commercial. Therefore, the proposed development would not result in the loss of any lawful residential accommodation. In any event, the proposed development fails to incorporate any three-bedroom dwellings and does not provide any evidence to demonstrate that such provision would be unsuitable or unviable. As such, the proposal does not offer an appropriate mix of housing. This would have the effect of undermining the borough's ability to meet its strategic housing objectives, particularly in delivering family-sized homes, and would contribute to an unbalanced housing stock that fails to support the creation of a mixed and sustainable community.
22. In conclusion, the proposed development would have a harmful effect upon the supply of family housing in the borough. It would not deliver an appropriate mix of unit sizes and types, contrary to Policies DM 13 of the KCS and H10 of the LP.
23. The Council also alleges a conflict with Policy DM 15 of the KCS. However, this policy is primarily concerned with the loss of existing residential accommodation. As previously discussed, the proposed development would not result in the loss of any lawful residential units. Accordingly, this policy has not been determinative with regard to this main issue.

### *Living Conditions*

24. A Daylight and Sunlight Assessment (DSA) was submitted at the application stage in support of the proposed development. The report, dated 28 March 2024, confirms that it was prepared in accordance with the BRE Site Layout Planning for Daylight and Sunlight guidance (2<sup>nd</sup> edition) and the British Standard BS EN 17037:2018. The assessment concludes that all habitable rooms within the proposed development achieve the required daylight levels and that sunlight exposure across all flats complies with BRE guidelines.
25. Notably, the DSA references a Rev A version of the Proposed Floor Plan. However, the appellant submitted a Rev B version alongside their application. Other than the addition of measurements in Rev B, it is unclear if there are any further substantive changes between the two plans.
26. The report relies on the second edition of the BRE guidance. However, the Council submit that the current and applicable standard is the third edition, which superseded any previous versions. It is unclear why the report has been based on



previous guidance, as the use of standards in that earlier edition may mean that the report may not accurately reflect the current expectations for daylight and sunlight provision. This could directly affect important factors such as the impact of framing, overhanging balconies, and the correct calculation of habitable spaces. As a result, the lack of a robust and up-to-date assessment creates uncertainty that the scheme would meet the necessary standards for residential amenity. Accordingly, I cannot be satisfied that the proposal would safeguard the health and well-being of future residents.

27. Policy D6 of the LP states that where there are no higher local standards in the borough, a minimum of 5 sqm of private outdoor space should be provided for 1-2 person dwellings and an extra 1 sqm should be provided for each additional occupant, provided that they must achieve a minimum depth and width of 1.5m. However, higher local standards can be found in Policy DM 10 of the KCS which requires development proposals to ensure adequate private amenity space, with specific reference to the Residential Design SPD 2013 (SPD). Policy Guidance 13 of the SPD specifies that, unless it can be demonstrated it would be at odds with the prevailing physical context and local character, all new flats should provide 10sqm of private amenity space, plus an addition 1sqm per additional occupant.
28. The proposed floor plan indicates that none of the flats would provide the recommended 10 sqm of private outdoor space. I cannot, therefore, be satisfied that adequate private outdoor space would be available for future residents. While Flat 3 appears to provide access to a balcony, unlike the other units, no explicit measurements have been provided to confirm its dimensions. In any event, its size also does not appear sufficient to meet the recommended standard when compared with other proposed balcony areas.
29. The absence of sufficient outdoor amenity space means that future occupiers may lack opportunities for relaxation, recreation, and access to fresh air within the confines of their homes. This shortfall in private outdoor space is likely to have a significant adverse impact on the overall well-being of future occupants. While the appellant refers to the proximity of Fairfield Recreation Ground, Bushy Park, and Richmond Park, these public spaces cannot provide a comparable level of convenience, privacy, and immediate accessibility as private outdoor space. I recognise that achieving sufficient amenity space can be challenging in dense urban environments; however, this requirement serves an essential purpose in safeguarding residential amenity. The appellant considers that many nearby properties lack private outdoor space, yet no substantive evidence has been provided to support this view. In the absence of such evidence, the proposed shortfall cannot be justified.
30. The floor plan indicates that Flat 3 would be approximately 37 sqm, though it is unclear if this includes the balcony area. This suggests the flat could meet the minimum gross internal floor area for a one-bedroom, one-person dwelling. However, the proposed elevations & sectional elevations plan does not clearly indicate the division between flats, making it unclear whether flat 3 would comply with minimum internal height requirements. Policy D6 of the LP requires at least 75% of the gross internal area to have a floor-to-ceiling height of 2.5 metres. While the appellant considers that around 80% of the flat would meet this standard, there are no detailed measurements to confirm this. In the absence of clear and accurate data, it remains uncertain whether the required internal height standard would be met for this flat, thereby likely leading to a confined living environment.

31. With regard to outlook, the plans indicate that Flat 3 would depend entirely on two small rooflights and a narrow balcony window. Such an arrangement would provide only a very limited and constrained outlook, restricting views and reducing the sense of openness. The lack of a meaningful visual connection to the external environment is likely to result in a poor living experience, creating a sense of enclosure. No evidence has been presented to demonstrate that future occupiers would benefit from an acceptable level of visual amenity. Similarly, at Flat 2, the Council has determined that there would be a separation distance of approximately 9 square metres between the adjoining building and the living room window, with an even smaller distance for the proposed bedroom windows. In response, the appellant has referred to the adjacent residential development, citing it as an example of a similar scheme that was granted planning permission. However, there is limited evidence before me regarding this other case, specifically the planning history, mitigation measures or similarity to the development. As I am not aware of the circumstances of this other 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 policy regime.
32. The appellant's Noise Impact Assessment identifies that parts of the building fall within the "high risk" category for both daytime and night-time periods when windows are opened to prevent overheating. The report recommends that a Level 2 Acoustic Ventilation and Overheating (AVO) assessment should be undertaken to address these concerns. While the appellant suggests that this risk could be mitigated through planning conditions, the current AVO assessment is limited in scope and explicitly advises that further detailed assessments are required. In the absence of this information, it is not possible to fully evaluate the likely impact of the development or the adequacy of any proposed mitigation measures. As such, the use of such a planning condition would not be sufficiently precise and would not be reasonable in all other respects. This remains the case irrespective of whether the matter was explicitly cited within the reasons for refusal, as it directly concerns the living conditions and health of future occupiers. It is essential that the extent of the effect on residential amenity is properly established prior to the granting of planning permission.
33. In conclusion, the proposed development would fail to provide suitable living conditions for future occupiers. It would not have appropriate regard to the amenities of occupants and would not accord with the principles of good design, contrary to Policies DM10 and DM13 of the KCS. It would fail to deliver appropriate outlook and amenity and provide adequate levels of private outside space, contrary to Policies D3 and D6 of the LP.

### *Flooding*

34. It is agreed between the parties that the front of the property falls within Flood Zone 2 and the appeal site itself is located within a Critical Drainage Area. The FRA states that although part of the boundary is located within Flood Zone 2, the overall modelling indicates that the appeal site is effectively located within Flood Zone 1 in terms of fluvial flooding. However, it also identifies that the adjoining road (London Road) represents a medium/high flood risk from surface water.
35. Policy DM 4 of the KCS requires development to be designed to take account of the impacts of climate change, including the increased risk from fluvial and surface water flooding. It also requires development proposals to include sustainable

drainage systems (SuDS) to manage surface water run-off unless it can be demonstrated that such measures are not feasible. Policy SI 13 of the LP states that proposals should ensure that surface water run-off is managed as close to its source as possible, in line with the drainage hierarchy.

36. The Council has identified several inconsistencies within the FRA, including references to a possible basement bedroom and lack of clarity as to how any SuDs would be integrated into the proposed development. Although the FRA recommends measures such as permeable paving, green roofs, landscaping, and rainwater harvesting to reduce surface water discharge, these features do not appear to be indicated on the plans. Additionally, the 'Outline proposal of surface water drainage scheme' referred to within the FRA does not appear to correlate with the existing plans. It is unclear whether the designated areas for permeable paving and landscaping would be available for this purpose. Furthermore, the FRA proposes maintaining and enhancing the existing sewer connection rather than prioritising infiltration or discharge to a watercourse, raising questions about compliance with the drainage hierarchy.
37. Without clear evidence of how these mitigation measures would be implemented, it is not possible to assess the likely impact of the development or the adequacy of any proposed solutions. Accordingly, the use of a planning condition to seek to address these matters would not be sufficiently precise and would not be reasonable in all other respects. Consequently, it has not been demonstrated that the development would deliver an effective solution to mitigate flood risk within the appeal site.
38. In conclusion, the proposed development would, in the absence of detailed evidence to demonstrate otherwise, likely have a harmful effect on surface water drainage and flood risk in the area. It would not sufficiently plan for increased flood risk nor include adequate detail regarding the use of SuDS, contrary to Policies CS 1 and DM 4 of the KCS. It would not ensure that water run-off is managed as close to its source as possible, contrary to Policy SI 13 of the LP.

## **Planning Balance**

39. The proposal would generate modest economic benefits through the increase in commercial space on the ground floor, which is likely to increase the quality of this retained space. It is located within a highly sustainable location with regard to the Public Transport Accessibility Level of the site and would be unlikely to result in a significant increase in parking pressure. It would also involve the use of previously developed land. Nonetheless, given the limited scale of the proposed development, these benefits are relatively minor in planning terms.
40. As noted above, there is harm and policy conflict arising from the loss of employment land, lack of supply of family housing, adverse living conditions of future residents and issues with surface water drainage and flood risk. These are very significant shortcomings with the scheme and result in conflict with the development plan as a whole. Collectively these harms and policy conflicts should be attributed substantial weight against the scheme.
41. Conversely, the Council acknowledges a shortfall in housing delivery, such that they are unable to demonstrate a five-year housing land supply in accordance with the National Planning Policy Framework (the Framework). As such, paragraph 11 d) of the Framework applies. In such circumstances, permission should be granted



unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies.

42. While this undersupply is acknowledged, the proposed development would, while boosting housing supply in a sustainable location, deliver only five new dwellings. As such, the benefit associated with this increase would be relatively limited. Nevertheless, having regard to the policies of the Framework taken as a whole and the need to consider any adverse impacts, the proposal would conflict with key policies. Consequently, the adverse impacts of the proposal significantly and demonstrably outweigh the identified minor benefits of the proposal when assessed against the Framework as a whole. As a result, the scheme would not be sustainable development within the meaning of the Framework.

### **Conclusion**

43. The proposal conflicts with the development plan taken as a whole and material considerations do not indicate that the appeal should be determined other than in accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

*S Lo*

INSPECTOR