Planning Inspectorate

Appeal Decision

Hearing held on 8 October 2025

Site visit made on 8 October 2025

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 December 2025

Appeal Ref: APP/Z5630/W/25/3368238
127 Chiltern Drive and Chiltern Works, Surbiton, KT5 8LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Bugler Homes Limited against the decision of The Council of the Royal Borough of Kingston Upon Thames.
- The application Ref is 24/02917/FUL.
- The application sought planning permission for a mixed use development including retention of 127 Chiltern Drive, demolition of all other buildings and erection of 2no. buildings for flexible commercial floorspace at ground floor and 43 no residential units on upper floors, with associated access, landscaping, car parking, cycle parking and refuse storage without complying with a condition attached to planning permission Ref 21/03876/FUL, dated 5 May 2023.
- The condition in dispute is No 1 which states that: The approved development shall be carried out in accordance with the following drawings/details: 20.075 200.010 P1 Proposed Ground Floor Plan Blocks A, B and Commercial; 20.075 200.004 P5 Proposed Third Floor Plan; 20.075 001.000 P01 Site Location Plan; 20.075 200.000 P09 Proposed Site Plan; 20.075 300.002 P6 Proposed Block A East Elevation; 20.075 300.005 P5 Proposed Block B East Elevation; 20.075 200.005 P4 Proposed Fourth Floor; 20.075 300.000 P6 Proposed South Elevation; 20.075 200.007 P3 Proposed Roof Plan; 20.075 200.001 P5 Proposed Ground Floor Plan; 20.075 200.002 P4 Proposed First Floor Plan; 20.075 300.003 P5 Proposed Block B West Elevation; 20.075 300.001 P7 Proposed North Elevation; 20.075 300.004 P4 Proposed Block A West Elevation; 18-0590 TOPO-03 Topographic Survey - Existing Site Plan; 20.075 200.003 P4 Proposed Second Floor Plan; 20.075 200.006 P2 Proposed Fifth Floor Plan; 07-19-78706 NC01 Rev 2 Noise and Vibration Assessment(1); 07960 Berrylands GLA Energy Addendum Rev 5; 1_197041-01C_Flood Risk Assessment and Sustainable Drainage Strategy; 1_CA3840-R04-JT-DR-Transport Statement Nov.2021; 5014368-3_CA3840-R04-JT-DR-Transport Statement Appendices; 132681 Air Quality Assessment Nov. 2021; Preliminary Roost Assessment and Emergence Survey v3.0; Statement of Community Involvement November 2021; Tree Constraints Plan July 2019; Legal Agreement dated 09.03.2023.
- The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal process the appellant has submitted an Indicative Cost Estimate 2025 Scheme dated 9 September 2025 prepared by QSetc. As I considered this was material to my assessment of the case, I used my discretion and accepted this evidence. To ensure that the Council had adequate time to review this new evidence I set a deadline for them to respond after the Hearing. Subsequently, the

parties agreed to commission a joint independent review which I have taken into account in the determination of the appeal.

3. Similarly, close to the opening of the Hearing the appellant submitted a draft Unilateral Undertaking (UU) which has now been executed. Again, in order to ensure that the Council had adequate time to review this document I set a deadline for them to respond, and I have taken account of all submissions in relation to the UU and the UU itself in the determination of the appeal.

4. The second reason for refusal relates to the lack of information in relation to whether or not the proposal would result in an unacceptable harm to wildlife and habitats or that any adverse risks would be adequately managed. In light of the fact that the appellant provided an updated ecology report, subject to the imposition of appropriate conditions in the event that the appeal was allowed the Council are satisfied that this issue has been satisfactorily addressed. I agree.

Background and Main Issue

5. Planning permission was granted for a mixed-use development at the appeal site comprising the retention of 127 Chiltern Drive, the demolition of all other buildings and erection of 2no. buildings for flexible commercial floorspace at ground floor and 43 no residential units on upper floors (the approved scheme).

6. The approved scheme provides 10 affordable housing units, (7 London Affordable Rent and 3 shared ownership properties) representing just over 23% of the total units approved. The appellant wishes to remove the affordable housing units from the scheme and instead provide a commuted sum of £75,000. The proposal also involves a change to the housing mix which would require an amendment to the approved plans.

7. The Council has not raised any concerns about the proposed change of housing mix or the quality of accommodation. I agree that these elements would be satisfactory.

8. On that basis, the main issue is whether the condition is necessary and reasonable having regard to whether or not the proposal would make adequate provision for affordable housing taking into account the financial viability of the scheme.

Reasons

9. Among other things, Policy DM15 of the Royal Borough of Kingston upon Thames Core Strategy 2012 (RBKCS) sets out that on sites of 10 or more units 50% of the units are required to be provided as affordable housing and that this is expected to be on site, although in exceptional circumstances where it can be justified that this would not be viable and provision cannot be made on an alternative site then the Council may accept a contribution or commuted sum.

10. Among other things Policies H4 and H5 of the London Plan 2021 set out that the strategic target is for 50% of units of all new homes delivered across London to be genuinely affordable requiring major developments which trigger affordable housing requirements to provide them through a threshold approach which is initially set at a minimum of 35%. In relation to section 73 applications for schemes where the original permission did not meet the threshold, viability information will be required when an application is submitted to vary the consent, and such cases will be assessed under the Viability Tested Route. Any proposed amendments that result

in a reduction in affordable housing should be rigorously assessed under the Viability Tested Route.

11. Prior to and at the Hearing I received information on the financial viability of the proposed development from two suitably qualified chartered surveyors on behalf of the appellant and the Council.

12. They helpfully identified the key components of their respective assessments and in several aspects they agree. For example, in terms of non-residential use, refurbishment costs for 271 Chiltern Drive (No 271), community infrastructure levy and planning obligation contributions, sales costs and legal fees. They have also identified where they disagree, and I shall deal with each of these components in turn.

Residential Gross Development Value

13. The value of the commercial element of the proposal has been agreed between the parties and set out in the statement of common ground. Consequently, it is only necessary to consider the private residential element. The appellant has indicated a residential gross development value (GDV) of £642 per square foot (psf) which amounts to a total GDV of £20,367,380. This incorporates the value of the 21 proposed car parking spaces into the total GDV. The Council has indicated the same private residential sales value but has separated out the 21 proposed car parking spaces and has assumed they have an additional value of £20,000 per space which adds an additional £420,000 to the total GDV which amounts to £656psf or a total GDV of £20,787,380.

14. The difference in the respective GDVs is about 2.1%. Moreover, the appellant accepts that a value of £20,000 is a reasonable sum for a parking space, but do not consider the spaces should be given a separate value and added to the total GDV. However, the appellant has listed their assessment of the unit-by-unit achievable value including parking, but have not indicated which unit they have assumed would have the parking space and their values range between £589psf – 693psf.

15. Having carefully considered the available evidence I prefer the Council's assessment. I say this because there are not enough car parking spaces for each residential unit to have one, in an area close to the station where I observed at the site visit that on road parking restrictions mean that vehicles cannot park in this part of Chiltern Drive all day.

16. To my mind on-site parking would be an attractive element of the proposed scheme and I consider it reasonable that future purchasers would be willing to pay an additional premium for the convenience of having a private parking space and that would be in addition to the private residential sales value.

17. In reaching that view I have taken account of the comparable schemes highlighted by both parties. On the one hand, the appellant has highlighted a number of new build schemes where they say the rate of sale has been poor such as Castanea Court in Kingston Road and The Fountain in Malden Road as well as the Former Roselands Clinic, Kingston Road where they highlight that the site has remained dormant. They have also indicated some older properties in Surbiton, Kingston and Worcester Park. On the other hand, the Council have highlighted Kingston East on Kingston Road, Jade Apartments in New Malden High Street, Kingston Grove, Hollyfield Road development and Kingston Grove.

18. As expected, the comparable information from the parties pulls in different directions but is highly site specific and covers a range well below and well above the private residential sales value psf suggested by both parties. The location of the appeal site positioned behind an existing retail parade of shops and near the railway line makes it less desirable than some of the comparable examples. I also accept that the residential property market is not strong at the present time. Moreover, there has not been significant apartment development within close proximity of the appeal site and therefore although the comparables provide helpful context, they do not provide a definitive answer to the GDV.

19. However, overall, in my judgement based on the available evidence, the private residential sales value of £642psf is reasonable. However, it is also reasonable to ascribe an additional sum of £420,000 for the parking which results in an overall total residential GDV of £20,787,380.

Benchmark Land Value

20. There is a significant difference between the parties in relation to the benchmark land value (BLV) as the appellant has adopted a BLV of £1,710,000 whereas the Council's figure is £850,000. The appeal site area is 0.82 acre accommodating 15,342m^2 of poor-quality industrial units.

21. At the site visit I observed that the existing accommodation on the appeal site is in very poor condition. In some buildings there are holes in the external timber cladding, others smelt damp, and they had very basic facilities.

22. I note that the appellant has attempted to distance themselves from the description they provided with the original application which was as follows

    "As an industrial site, Chiltern Works is an outlier because it is not part of an existing cluster. The site is surrounded by residential uses so any future use that generated noise or emissions would be inconsistent with its surroundings. It also falls short of modern occupational requirements. The estate's access road and irregular shape means HGV access to the site is limited. Internal circulation is compromised by the ad hoc nature of the layout. The buildings are in poor condition and nearing the end of their functional life. These characteristics would suggest that there would be low demand for the existing premises.

    The marketing exercise confirms that the site has limited commercial attractiveness or functionality in its current use and configuration. There is no reasonable prospect of the site being used for industry in a manner that is financially viable for the landowner, nor sustainable in the medium/longer terms."

23. Ultimately, that description is reasonable and I would only add that given my own observations on the site visit I agree with the Council that it is likely that the buildings have deteriorated further since those comments were made. I therefore agree with the appellant that the accommodation is poor quality, however I do not agree that the existing buildings are currently lettable in their current form and to enable that to happen would require significant refurbishment. Further, although I do not have the full details of the condition of the other properties provided as comparable examples by the appellant, but given the existing condition of the buildings on the site, I am not persuaded that these other examples provide compelling comparables of the type of sales value or rent that could be achieved at the appeal site.

24. I have taken account of the points the appellant has made about possible alternative retail and Class E uses on the appeal site and the comments made by a previous Inspector in relation to an appeal at Sunnyside Road, London[1] where she set out that "it is true that no other planning permission exists at the site, but that is not a policy requirement, nor does the PPG or SPG specifically require that."

25. However, I am not sure what level of detail was before that Inspector but the examples provided by the appellant are general in nature with no detailed analysis of whether such alternative uses would fully comply with up-to-date development plan policies as required by the Planning Practice Guidance – Viability (PPG), or what works would be involved to redevelop the appeal site for such uses.

26. Moreover, the Mayor of London's affordable housing and viability supplementary planning guidance 2017 does say that generally the Mayor will only accept the use of an alternative use value where there is an existing implementable permission and sets out that if no planning permission has been granted even if such use would have a realistic prospect of achieving planning permission, the applicant should provide a detailed alternative proposal, incorporating current day costs and values and explain why the alternative use has not been pursued. Based on the available evidence it is not clear to me whether planning permission for the possible alternative uses suggested by the appellant would have a realistic prospect of achieving planning permission. Even if that was the case, no detailed alternative proposal is before me.

27. Consequently, the theoretical possibility that some other uses could be secured at the appeal site does not alter my view on the BLV. As a result, having carefully considered the available evidence I consider that the Council's assessment of the BLV is more reasonable than that of the appellants.

Construction Costs

28. As outlined above, the parties agreed to commission a joint independent review of the construction costs which estimated that the total rounded current day cost would be £13,620,000. I have no reason to disagree with this figure.

29. I note that this figure is above the figures initially estimated by the appellant and the Councill which were based on standard building rate indices (BCIS) but is below the figure included in the indicative cost estimate prepared by QSetc.

Finance Costs

30. In terms of finance costs, the appellant has assumed a figure of 9% whereas the Council has assumed a figure of 7.5%. Ultimately the financing arrangements vary by scheme and are dependent on the developer and the lender involved. The Framework sets out that all viability assessments should reflect the recommended approach in national planning practice guidance, including standardised inputs. Consequently, to ensure consistency in the context of the overall viability exercise it is important that any assumptions are standardised.

31. I note the appellant has provided a breakdown of hypothetical finance costs and provided examples of finance offer terms for two residential developments. They also point out that viability consultants acting for Council's are now using finance

[1] APP/V5570/W/21/3267951

rate assumptions significantly higher than they were using two years ago, including in Croydon and Nottingham.

32. However, any other examples are inevitably lender, development and developer reliant. Moreover, both finance letters that have been brought to my attention use a rate based on a set percentage above the Bank of England Base Rate (BofE BR) and those percentages are different for each example and so are not standardised but rather are tailored for the particular schemes involved.

33. Further, the first example is dated 18 May 2024 when the BofE BR was 5.25%. The second is dated 12 July 2023 when the BofE BR was 5%. Between July 2023 and May 2024 the BofE BR peaked at 5.25% but since that date there have been a number of rate reductions and it now stands at 4%.

34. Consequently, given the fact that these examples are within a materially different base rate context and involve materially different schemes on different sites they have limited weight in the determination of this appeal. Although I do note that the finance rate for both would have been lower now than at the time they were issued.

35. I have also taken account of a previous appeal decision which has been brought to my attention involving a site at High Road, Uxbridge[2] where, although ultimately the Inspector found the Council's viability assessment and position more convincing than that of the appellants, he was more convinced by the appellant's finance inputs than those of the Council's. However, I note that part of his reasoning referred to a viability appraisal for the same site undertaken by the Council's viability consultant in 2019, since when the Inspector noted there has been significant increases to the BofE BR. There are not similar circumstances here. Accordingly, in relation to the finance rate this previous appeal decision has limited weight in the determination of this appeal.

36. I note that the Council has supported their assumed rate with many examples that relate to viability assessments from different schemes and involving a number of different viability consultants. The finance rates used in these other cases are consistent with those assumed by the Council.

37. Overall, while I accept the property market is challenging at the present time, I nevertheless consider that a rate about 3.5% above the current BofE BR is a reasonable assumption for the purposes of this appeal and consequently I prefer the Council's finance rate than the appellants.

Developer's Profit

38. The appellant considers that a profit on cost of 22.5% is reasonable whereas the Council highlight that across London developers and landowners almost universally submit and agree profit margins of 17.5% on gross development value (GDV) and they consider this level of profit reasonable. On that basis the Council considers that an appropriate developer's profit is 17.5% on value for the private residential element, 15% on value for the commercial element and if applicable 6% on value for the affordable housing.

39. The PPG indicates that for the purposes of plan making an assumption of 15-20% of GDV may be considered a suitable return for developments in order to establish the viability of plan policies and notwithstanding the appellant's comments in

[2] APP/R5510/W/25/3360212

relation to whether this should be considered a blended figure I have taken account of the range quoted in the PPG in a straightforward manner. The appellant has again highlighted the previous appeal at Sunnyside Road (referenced above), where the Inspector indicated that in general a 18-20% margin is standard. I note that she qualifies that statement by prefacing it with “in general”. Even so, notwithstanding that may have been the case at the time that appeal was determined, I am not sure I would agree that is still the case as the Council have provided many examples where that range is not standard.

40. Further, in the appeal decision for the site at High Road, Uxbridge which the appellant has referenced in support of their case, and which was determined much more recently than the Sunnyside Road case, the Inspector was not convinced that a profit limited to 15% of GDV would render the scheme unviable.

41. Although the range set out in the PPG is for plan making purposes, I nevertheless consider that the Council’s assumptions in relation to developer’s profit are reasonable as a starting point and I am not persuaded that it would be appropriate to increase them to the levels suggested by the appellant.

42. In reaching that view I have taken account of the headwinds set out by the appellant, including an end to help to buy, inflation including build costs, the cost-of-living crisis, the implications of the Building Safety Act, finance costs (which I have dealt with above) and weaker demand for new homes. However, although undoubtedly these factors have created a more challenging environment in more recent years, these factors have not altered my view on the reasonable level of developer’s profit.

Viability Conclusion

43. Overall, I prefer the Councils position in relation to the key components of the viability assessments where the parties disagree. However, as already outlined a joint independent review of the construction costs now estimates that the total cost would be £13,620,000. The Council have updated their appraisal based on this revised figure. Given my findings set out above I am satisfied that this element represents the only material change to the Council’s assessment. This results in an overall profit of £3,771,108 which represents a profit on GDV of 16.48% and a profit on cost of 19.74%. I appreciate this is less than the developer’s profit assumed within the Council viability assessment which was 17.5% on GDV which they accept represents a small viability deficit.

44. However, as recognised by the appellant it is not possible to accurately predict what might happen with regard to values and costs over the lifespan of a planning consent or the date by which this scheme might reach practical completion. Bearing in mind that even the reduced profit that flows from the Council’s updated assessment would still be within the range of 15-20% of GDV set out in the PPG as being a suitable return for developments in order to establish the viability of plan policies. Therefore, I am not persuaded that a profit limited to about 16.5% on GDV would render the scheme unviable. Certainly, it would not justify removing all of the affordable housing and replacing it with a commuted sum of £75,000.

45. I therefore conclude that the relevant condition is necessary and reasonable as I am not satisfied that the proposal would make adequate provision for affordable housing taking into account the financial viability of the scheme. I afford this issue very substantial weight in the determination of the appeal. It follows that the

proposal would not accord with Policy DM15 of the RBKCS or with Policies H4 and H5 of the London Plan 2021 which have been summarised above. Further, the proposal would not accord with the Framework which seeks to ensure that there is sufficient provision for affordable housing.

Other Matters

46. I turn first to consider housing supply. The statement of common ground sets out that the Council are unable to demonstrate a 5-year supply of housing land, and the current situation represents a significant under-delivery of housing in the borough. The proposal would be valuable in boosting housing stock and would provide a commuted sum towards the provision of affordable housing. However, as the number of residential units would be the same for both this proposal and the approved scheme, I afford both substantial weight. Moreover, very importantly the approved scheme would have the added benefit of providing 10 on-site affordable homes.

47. I accept that the proposal would have a positive effect on the supply of housing and would make efficient use of this previously developed site. The proposal would also have economic, social, and environmental benefits. For example, it would provide jobs and create demand for materials during the construction phase, would broaden the availability of much needed housing in the area and future residents would use the local services and facilities. However, the approved scheme would have similar benefits.

48. I accept that the increase in the proportion of three-bedroom units represents a benefit and would accord with the Framework which seeks to ensure there is an appropriate mix of housing types for the local community. I afford this matter significant weight in the determination of the appeal.

49. Overall, although there are clearly benefits associated with proposed scheme including the provision of additional dwellings and an appropriate housing mix, there is a significant overlap between the approved scheme and this proposal in relation to those matters that weigh in favour of the respective schemes.

50. Importantly, the proposed removal of the on-site affordable housing to be replaced by a commuted sum represents an issue of very substantial weight that weighs against the proposal. As a result, although I afford the totality of the benefits substantial weight, I afford the matters that weigh against the proposal very substantial weight.

Planning Balance and Conclusion

51. I have afforded some matters weight as outlined above and overall, I afford the totality of the benefits substantial weight in the determination of the appeal. On the other hand, I afford very substantial weight to the fact that I am not satisfied that the proposal would make adequate provision for affordable housing taking into account the financial viability of the scheme.

52. As set out above, the Council cannot demonstrate a 5-year supply of housing land. This is at odds with Framework requirements and as a result Paragraph 11(d) of the Framework is relevant.

53. However, given the relative benefits weighed against the harm and having had particular regard to relevant key policies, including providing affordable homes I find

that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

54. Consequently, the presumption in favour of sustainable development, as set out in paragraph 11(d) of the Framework is disengaged and the scheme should be considered under a normal planning balance. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.[3]

55. In this case, the proposal conflicts with the development plan when considered as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal should therefore be dismissed.

S Rawle

INSPECTOR

[3] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

APPEARANCES

For the Appellant:

Alun Evans BSc (Hons) MRTPI	Planning agent for the appellant
Wilf Foster	Planning agent for the appellant
James Brown BSc (Hons) MRICS	Viability consultant for the appellant
James Chell	Appellant

For the Council

Harsha Bhundia	Planner, Royal Borough of Kingston Upon Thames
Guy Ingram	Viability consultant for the Council

Interested Parties

Cllr Jackie Davies	Ward Councillor – Berrylands
Cllr Anita Schaper	Ward Councillor - Berrylands

DOCUMENTS – submitted after the Hearing

1. Executed Unilateral Undertaking.
2. Joint independent review of the Construction Costs prepared by Johnson Associates.
3. Full set of drawings and details referred to in Condition 1 of the approved scheme.
4. Final version of suggested conditions.