



Appeal Decision

Site visit made on 18 September 2025

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th December 2025

Appeal Ref: APP/Z5630/W/25/3367730

Hobkirk House, Blagdon Road, New Malden, Kingston Upon Thames KT3 4BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Patel of RAA Ltd against the decision of Royal Borough of Kingston Upon Thames.
 - The application Ref is 25/00116/OUT.
 - The development proposed is described as demolition of vacant former care home and erection of a part four storey and part five storey building with a mix of 34 dwellings with associated bins and cycle provision and re-siting of access and parking bays.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 20 October 2025.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline permission, with details of access, appearance, layout and scale submitted for consideration. I have determined the appeal on this basis and have treated any plans in relation to the matter of landscaping as indicative.
3. During the course of this appeal, an earlier appeal relating to this site has been determined¹. That appeal was dismissed and related to an application for outline planning permission for the redevelopment of the site to provide a part four/ part five storey building with basement parking and mix of 36 dwellings with associated bins, cycle provision and re-siting of the access. That Inspector found the proposal would fail to make adequate provision for affordable housing.
4. The appeal scheme before me incorporates differences to the earlier proposal, including a reduction in the number of homes proposed, changes to the layout, footprint and massing of the development as well as the removal of the basement level car park. The recent appeal decision is, nonetheless, a material consideration in the assessment of this appeal and both main parties have had the opportunity to comment on the implications within this appeal process.
5. It has also been brought to my attention that an alternative planning application for the redevelopment of the site is currently under consideration by the Council, under its reference 25/01660/OUT. I have not been provided with full details of that scheme and, while I understand it had been subject to a favourable

¹ Appeal reference APP/Z5630/W/24/3350183 – decision dated 16 June 2025

recommendation by Officers, it has not been determined at the time of this decision.

6. This appeal includes additional information which did not accompany the planning application, including a daylight assessment, ecological appraisal and Urban Greening Factor plan. As this information does not substantially change the appeal scheme, and as the Council and interested parties have had the opportunity to comment on it, I have included those documents in my assessment of the appeal scheme.
7. During the appeal the Council provided late evidence relating to the intended works to the existing building which it considered could have implications for the delivery of affordable housing. Given the Council claim this information became apparent only at this late stage I have taken it into account in reaching my decision. The appellant has provided a response which has also been taken into account.

Main Issues

8. Given the findings of the Inspector in the recent appeal decision, the Council have confirmed that its third reason for refusal, relating to the design of the proposed development, has been overcome. As this is no longer a matter in dispute between the main parties I have not dealt with it as a main issue.
9. The standard of proposed accommodation was not a matter that was considered under the recent appeal decision since it was not a matter in dispute. Given the differences between the schemes and as this is now the subject of a reason for refusal, I have dealt with this as a main issue of the appeal.
10. The main issues are:
 - Whether the proposal would provide an acceptable standard of accommodation for future occupiers, with particular regard to outlook, natural lighting, privacy and ventilation;
 - Whether the proposal would deliver an appropriate contribution to affordable housing, and;
 - Effects on ecology and whether the proposal would deliver appropriate Urban Greening.

Reasons

Standard of Accommodation

11. The proposed flats numbered 4, 5, 12, 13, 20, 21, 28 and 29 would all be single aspect, having outlook to the east or west. The London Plan 2021 (the LP) Policy D6 includes that a single aspect dwelling should only be provided where it is considered a more appropriate design solution and where it can be demonstrated that it will have adequate passive ventilation, daylight and privacy, and avoid overheating. The appellant has provided an Internal Daylight Assessment². However, that report appears to consider a different development and internal configuration to the appeal scheme before me. While it concludes that all habitable rooms would receive acceptable levels of daylight, the window sizes shown on the

² Internal Daylight Assessment issued June 2025 Issue no.1

plans it includes are different to those now proposed and the assessment appears to have been based on a different proposal. Neither does the report consider the daylighting of all the units listed above, which are likely to receive different conditions given the varying window sizes across them. Therefore the document does not provide assurances that levels of daylight would be acceptable in those single aspect units.

12. Neither are there assurances on matters of ventilation and overheating, which the LP similarly identifies as particular concerns for single-aspect units. While I find the outlook from those units listed above to be acceptable, for the reasons given the above listed units would not provide an acceptable standard of accommodation for their future occupiers.
13. As a consequence of the development's C-shape, the units closest to the eastern site boundary would have habitable room windows facing each other across the internal courtyard. A distance of only 15m would exist between those closest habitable room windows. This would be significantly below the 21m distance of separation set out in the Council's Residential Design Guide Supplementary Planning Document (the RD SPD) and the distance of between 18 and 21m given in the LP Housing SPD. In the case of the living/ kitchen areas of flats 3, 11, 19 and 27 those would be the only windows serving the main living spaces of those units. The units they would face in the south eastern corner of the development would have an additional set of double doors serving their living/ kitchen areas, however, the courtyard-facing windows would remain an important source of outlook from those units. As such there would be significant scope for overlooking between them and very low levels of privacy. These effects would also extend to the south facing bedroom windows of the above listed units.
14. While the relevant SPDs allow for some flexibility in separation distances, there is not sufficient justification for the distances involved here nor evidence to suggest it is necessary. The proposed drawings show some of the courtyard-facing windows would be obscure glazed to a height of 1.7m from the internal floor level to prevent outlook. However, this would not be the case for all affected windows and to obscure glaze all the courtyard facing windows would heavily affect the standard of accommodation within those rooms. Landscaping is not a matter for consideration under this appeal, however, while planting could reduce overlooking at the ground floor level to some extent, it is unlikely to reduce the harmful effects of overlooking at the upper floors and landscaping would inevitably take some time to establish. For these reasons it would not be reasonable to deal with the matter by condition.
15. In conclusion on this main issue, the proposal would not provide an acceptable standard of accommodation for future occupiers. It would conflict with Policy DM10 of the Council's Core Strategy 2012 (the CS) as well as LP Policies D3 and D6 insofar as they require development to have regard to amenities of occupants, including delivering appropriate outlook, privacy and amenity. The proposal would also conflict with Policy Guidance 16 of the RD SPD regarding separation distances, as set out above.

Affordable Housing

16. Policy DM15 of the CS confirms that the delivery of affordable housing is a key priority and that the Council will seek to maximise its provision. It sets out expected levels of affordable housing, and includes that proposals departing from those

requirements will be expected to justify any lower provision through the submission of a financial appraisal. Policy H5 of the LP adopts a similar approach.

17. The proposed development exceeds the affordable housing thresholds but would not include any on-site provision. There is not substantive evidence before me to demonstrate why an on-site contribution, or a contribution on an alternative site, as expected by Policy DM15, could not be made here. However, I note this was not a matter in dispute under the previous appeal and is not disputed between the main parties here.
18. The main parties had previously agreed a financial contribution of £301,054 towards affordable housing as the maximum reasonable amount. However, the Council have since brought to my attention information regarding the extent of intended demolition to the existing building which could have implications for the Benchmark Land Value which informed the financial appraisal. The appellant has provided details of the extent of contracted demolition, which refers to a cleared buffer at the southern part of the building.
19. The Council's viability consultant, quoted by the appellant, stated that the Benchmark Land Value had been based on a refurbishment scenario with limited information³. The extent of works necessary to the southern side of the building therefore have the ability to alter the inputs which established the Benchmark Land Value.
20. While demolition costs were accepted by the Council this does not provide reassurances that the Benchmark Land Value would remain the same in light of the necessary works. I also appreciate the appellant's concerns that this information may have already been before the Council in its wider functions. However, there is not sufficient evidence to suggest the extent of demolition and associated programme of works required to re-use the existing building were factored in during the viability appraisal. In turn, this casts significant doubt on whether the amount of affordable housing which the scheme could deliver would remain the same.
21. In addition, and even if the extent of the contribution had been agreed, a legal agreement has not been completed to secure it. I have been provided with a draft legal agreement as well as details of correspondence between the main parties which demonstrates collaboration and intent to complete the agreement. I note, however, that the latest draft of the agreement maintains disagreement surrounding the timing of the affordable housing payment. In the absence of a completed agreement the parties suggested a negatively worded condition, which they suggest could be imposed to secure the agreement at a later date if planning permission were granted.
22. Planning Practice Guidance (PPG) clearly sets out that such conditions are unlikely to be appropriate in the majority of cases, it nonetheless sets out that it may be appropriate in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk. There is no such evidence of exceptional circumstances, nor suggested risk of delivery here. I also have significant concerns surrounding the enforceability, precision of the condition and its ability to secure the required affordable housing contribution even if it were agreed.

³ Carter Jonas June 2025, cited in appellant's comments of 17 October 2025

23. In combination, given the uncertainty surrounding the adopted Benchmark Land Value together with the concerns for how a contribution would be secured, it cannot be established with certainty that the proposal would deliver an appropriate contribution to affordable housing. Accordingly, the proposal would conflict with CS Policy DM15 and LP Policy H5 summarised above.

Ecology

24. The appellant's Ecological Appraisal Report May 2024 considers the effects of the proposal on ecology including protected species. It finds the site to be of low-medium ecological value and makes recommendations in respect of effects on bats, breeding birds and ecological enhancements, which could be secured if the proposal were otherwise acceptable.
25. The appellant has submitted a Bat Emergence Survey dated July 2024, which considered the wider Noble Hobkirk site, of which the appeal site forms a part. While the report was prepared in the context of a different development proposal, it nonetheless establishes that the existing building on the appeal site had a negligible potential for roosting bats and there were no visible potential roosting features at the time of the survey. The recommendations of the report, in respect of sensitive lighting, could be adopted if the proposal were otherwise acceptable.
26. Given the conclusions of those documents, together with the findings of my site visit and in the absence of evidence to the contrary, the proposal would have acceptable effects on ecology and protected species. The proposal would comply with LP Policy G6 and CS Policy DM6 which relate to the effects of development on biodiversity.

Urban Greening Factor

27. The appellant has provided an Urban Greening Factor Plan with the appeal, which demonstrates the scheme could achieve an Urban Greening Factor of 0.4, in line with the LP requirement. This relies on specific characteristics being delivered through the landscaping scheme, which is not for consideration at this stage. However, based on the information submitted, I am satisfied that the policy requirement is capable of being achieved on this site. On this basis, the proposal would comply with LP Policy G5 which requires major developments to contribute to the greening of London through the Urban Greening Factor.

Other Matters

28. The draft legal agreement includes a number of other obligations in addition to affordable housing, which broadly meet the additional requirements listed by the Council. This includes car club membership for occupants, a travel plan and monitoring, carbon off-setting contribution of £41,240, highways contribution of £20,000 for works including reinstating the kerb at the site, as well as £15,000 towards a future Controlled Parking Zone. A separate monitoring fee for the obligation is also included.
29. There is very little information before me to demonstrate how such contributions meet the statutory tests for planning obligations and, as above, insufficient certainty as to how they would be secured if the appeal were allowed. In any event, as the appeal is being dismissed for other reasons, it is not necessary to consider those obligations in further detail.

30. I am aware of the issues raised by third parties in response to the appeal. However, it is not necessary for me to address these in further detail since it would not alter the outcome of the appeal.

Planning Balance

31. The Council accept that it cannot demonstrate a five year land supply for housing and reports a significant shortfall at just 1.48 years. As a consequence, the provisions of paragraph 11d) of the Framework are relevant to the appeal. In terms of paragraph 11d)i, the application of policies in the Framework that protect areas or assets of particular importance do not provide a strong reason for refusing the development proposed. Paragraph 11d)ii. is therefore applicable, and states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole and having regard to the key policies in the relevant footnote.
32. The adverse impacts of granting planning permission would be the delivery of homes which would not provide acceptable living conditions and a failure to secure an appropriate contribution to affordable housing. The unacceptable living conditions proposed would affect a significant proportion of the proposed units through inadequate levels of privacy and through being single-aspect, and would include units intended to be occupied by families. This would be in conflict with the Framework where it seeks healthy living conditions and importantly, would conflict with paragraphs 135 and 129 which are among the key policies signposted by paragraph 11d)ii, which seek to promote health and well-being, with a high standard of amenity for existing and future users. The effects of this adverse impact would be significant and long lasting, and I give this very substantial weight. Having regard to the findings of the earlier Inspector, the failure to provide affordable housing similarly causes conflict with the key policy at paragraph 66 of the Framework to provide affordable homes and attracts substantial weight.
33. In terms of benefits, the proposal would provide 34 new residential units, which would make a tangible contribution to the local housing supply and would contribute to the national objective to boost the supply of homes. This is of particular importance given the acute shortfall in land for housing in the Borough. They would comprise a mix of unit sizes and would be in a built up area, on an already developed site, with good accessibility to services and facilities including public transport links. The proposal would also be capable of delivering biodiversity enhancements. These benefits align with the key policies contained in paragraphs 110 and 115 of the Framework.
34. There would be economic benefits arising from expenditure by future occupants into the local economy, as well as short-term economic benefits during the construction process. The development would also be liable for a CIL contribution, and could deliver financial contributions as set out above, although in many cases those would amount to mitigation for the effects of the development and its future occupiers, rather than being benefits of the scheme. The proposal could be attractive to down-sizers and older residents, although there is no certainty of this. Where the proposal has been found to be acceptable in other respects, these are neutral factors, rather than weighing in favour of the development.

35. Taken together, having regard to the findings of the Inspector in the recent appeal and given the relatively modest scale of the development, the benefits attract moderate weight.
36. For the reasons given, 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. The proposal would not therefore benefit from the presumption in favour of sustainable development set out in the Framework.

Conclusion

37. There are not material considerations of sufficient weight, including approaches in the Framework, which indicate that a decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

C Shearing

INSPECTOR