



## Appeal Decision

Hearing held on 22 August 2023

Site visit made on 22 August 2023

**by Louise Crosby MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8<sup>th</sup> September 2023**

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### **Appeal Ref: APP/Z5630/W/23/3321649**

#### **441-447 Ewell Road, Surbiton, KT6 7ES**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr D Patel against the decision of Royal Borough of Kingston Upon Thames.
  - The application Ref 23/00567/OUT, dated 1 March 2023, was refused by notice dated, 4 May 2023.
  - The development proposed is outline application for demolition of vacant former dance studio and erection of a new three storey building housing 9 x 3 bedroom flats with associated bins and cycle provision and formation of drop kerbs to provide 6 parking spaces (landscape reserved matter).
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### **Decision**

1. The appeal is allowed and outline planning permission is granted for the demolition of existing dance studio and erection of a new three storey building housing 9 x 3 bedroom flats with associated bins and cycle provision and formation of drop kerbs to provide 6 parking spaces (landscape reserved matter) at 441-447 Ewell Road, Surbiton, KT6 7ES in accordance with the terms of the application, Ref 23/00567/OUT, dated 1 March 2023, subject to the conditions set out in the Conditions Schedule at the end of the decision.

### **Preliminary Matters**

2. Outline planning permission is sought with the only matter reserved being landscaping.
3. The Council's fourth reason for refusal relates to the loss of a tree within the site. However, the tree has now been felled since it had no protection from a tree preservation order, nor was it in a conservation area. Consequently, this reason for refusal is not being defended by the Council.
4. In relation to the third reason for refusal the appellant has provided a unilateral undertaking that would prevent occupiers of the proposed flats applying for a permit for future controlled parking zones (CPZs). I shall return to this matter later in my decision.

### **Main Issues**

5. The main issues are:
  - i) Whether there is a demonstrable need for the site to be retained for a community facility; and

- ii) The effect of the proposal on the character and appearance of the surrounding area.

## **Reasons**

### *Community facility*

6. Kingston upon Thames LDF Core Strategy 2012 (CS) policy DM24 seeks, among other things, to protect community facilities unless there is evidence the facility is no longer needed, where appropriate, it has been vacant and marketed for a community use without success, or it can be re-provided elsewhere or in a different way.
7. London Plan 2021 (LP) policy S1 also requires redundant social infrastructure to be considered for full or partial use as other forms of social infrastructure before alternative developments are considered.
8. It was agreed at the hearing that the site has not been in a community use since at least 2011. The Council confirmed that there are committee reports which show that the Council decided to dispose of the site in 2007 and then again in 2011. There is very limited evidence of the marketing that took place by the Council, other than an auction in 2022 when the appellant bought the site from the Council.
9. The large single storey building has fallen into a state of disrepair, along with the associated land. I saw when I visited the site that it is overgrown and contains signs of fly tipping and anti-social behaviour. It is also common ground that it would not be viable to bring the existing building back into use because of the degree of disrepair and the presence of asbestos. It would need to be demolished and rebuilt.
10. It seems that the building was last used as a nursery and/or a dance school. Indeed, I saw when I visited the site that there is a broken sign in the site advertising the dance school. The appellant has done some research which seems to indicate the dance school did relocate to a local church but is no longer in business. In terms of the need for the facility, firstly there has been no objections to the planning application or in relation to the appeal from any local residents or businesses. To me this is an indication that the site is no longer required for community facilities. Secondly, the cost of bringing the site back into use would be significant given the need to demolish the existing building and dispose of the asbestos in a controlled manner.
11. When marketed by the Council it was not bought by someone wishing to bring it back into community use. For the purposes of this planning appeal the appellant has been marketing the site since May this year with an established local estate agent. It has been marketed on the basis that it can only be used for community uses.
12. A report prepared for the appellant for lending purposes when he purchased the site valued it on the basis that it did not have planning permission for residential purposes. The site is being marketed at the value in the valuation report which is the same as what the appellant paid for it. Reports produced by the local estate agent in connection with the ongoing marketing exercise show only interest from parties wishing to develop the site for residential purposes. Whilst I realise that this is not a long marketing period it is another indicator of the lack of interest in the site for community facilities.

13. On the final point of Policy DM24 a) it seems that the dance school at least re-located elsewhere. Anecdotal evidence from the appellant suggests that there are a lot of day nurseries in the local area and demand is falling for these since more people are working in a hybrid/flexible manner following the Covid pandemic.
14. Taking all the above into account I find that on balance the proposal would not conflict with CS policy DM24 and LP policy S1; or the Framework in so far it encourages the retention of community facilities.

*The effect of the proposal on the character and appearance of the surrounding area*

15. The area is characterised by suburban post war housing, but Ewell Road also contains a number of non-residential uses such as a parade of shops with flats above, an ambulance station, a Travelodge hotel and a 1960s office tower block known as Tolworth Tower. Consequently, the scale of development nearby ranges from modest semi-detached dwellings to the Travelodge whose scale and mass is significant, to the very tall Tolworth Tower.
16. As set out above the site is untidy and overgrown and the derelict buildings are covered in graffiti. Presently the site significantly detracts from the character and appearance of the surrounding area which is otherwise well-kept. In addition, because it is a corner site it is particularly prominent in the streetscene along both Ewell Road and Fairmead. It is also bounded on 2 sides by well-maintained residential properties.
17. The proposed 3 storey flat roofed building would be set back from both roads, roughly in line with the adjacent dwellings on Ewell Road and Fairmead, with communal green space in front as well as 6 car parking spaces. The existing overgrown boundary hedges would be replaced with new planting.
18. The L-shaped building has been designed with relief on both front elevations which would help reduce the overall scale and mass. The L-shape would ensure that the building would not appear overly dominant from the rear gardens of neighbouring dwellings, and also provide further amenity space which is important given that all of the flats would be 3 bedroomed, aimed at families.
19. Whist both front elevations contain a lot of windows, these are necessary from a functional point of view to provide decent amounts of light into the habitable rooms. The Ewell Road elevation would contain some narrower windows, that would be the same height as the wider ones. I am satisfied that the composition of both elevations is acceptable and that the solid to void ratio would be appropriate and well balanced.
20. Turning now to consider the proposed balconies, those on the first and second floors of the Ewell Road elevation, despite being quite large would not appear unduly prominent or out of place as one end of them would be up against a return in the front elevational wall. Those on Fairmead would appear more prominent since they would not be enclosed at all, and there would be 4 in total. Nevertheless, given the setback of the building within the site, the projecting central entrance and stair well I am satisfied that they would not appear incongruous in the streetscene.
21. In reaching this conclusion I am mindful that these are 3 bedroomed flats aimed at families who would need decent levels of private outdoor space and

even though they are generous at 10m<sup>2</sup>, their size would be below the requirements of the Council's standard of 13m<sup>2</sup> for a family balcony and the London Plan requirement for balconies of 1.5 metres deep. However, the Council have not raised any objections in relation to the living conditions of future residents as a result of the size of the balconies and I concur given the communal outdoor space that would be available too. As such I find that the balconies are acceptable in all regards.

22. The entrance into the building would be via Fairmead, into a communal lobby. Consequently, there would be no external doors on Ewell Road. Views of the lower level of this elevation would be screened to passers-by on Ewell Road, to some degree, by the proposed boundary treatment and the 3 car parking spaces when occupied by cars. If there were a door or doors in this elevation it would be to a very limited number of flats and therefore the pedestrian movements in this area would be limited. Moreover, I would expect that there would be a footpath through the site from the car parking spaces to the entrance door on Fairmead and this would introduce that kind of activity.
23. Overall, I am satisfied that the proposal would respect and indeed greatly improve the character and appearance of the area and provide an attractive building on this prominent corner site in accordance with CS policies CS8 and DM10 and LP policy D3.

### **Planning Obligation**

24. The proposed scheme would provide 6 on-site parking spaces, including one disabled space. London Plan parking standards set out in policy T6.1 require a maximum of 9 parking spaces for this development. The site is within a PTAL 3 area and so it is likely that residents would own at least one car per flat.
25. It was agreed between the parties that there is parking stress in the area already and I saw this when I visited the appeal site. The submitted legal agreement would ensure that this development would not exacerbate the existing on street parking problem by ensuring that future residents of the flats could not apply for a parking permit.
26. Based on the evidence before me I am satisfied that this restriction is 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. Moreover, it would accord with LP policies T6 and T6.1.

### **Conditions**

27. In addition to the standard outline planning permission conditions, I have imposed a number of other conditions. I have varied some of the Council's suggested conditions in line with the discussion that took place at the hearing.
28. Conditions are required to ensure that the development is built in accordance with the submitted plans and that the materials used are acceptable. Several conditions are required to protect the living conditions of local residents including preventing the use of the rooftop for amenity purposes, a construction management plan covering a number of matters and restrictions on windows to prevent harmful overlooking. The construction management plan also covers matters relating to highway safety and environmental safety matters.

29. The provision of on-site cycle parking facilities is important to reduce the reliance on the private car. Controlling the details of the refuse and recycling facilities is essential to protect the character and appearance of the area as well as the living conditions of existing and future residents. A condition is necessary in relation to a Fire Safety Strategy to ensure compliance with policy D12 of the London Plan. For sustainability and energy conservation reasons and to comply with the development plan a condition is necessary in relation to water usage targets.
30. A condition is necessary regarding the surfacing of the parking spaces for highway safety reasons. To prevent the risk of flooding to and from the site a condition to control onsite drainage is required. Given the presence of numerous trees and vegetation on site there is a need for the submission of a detailed arboricultural method statement (AMS) and tree protection plan. This condition has been varied to take account of the fact that a tree onsite has been felled, but to avoid the need for a whole new AMS being prepared.
31. To safeguard the biodiversity and nature conservation value of the site it is necessary for the development to be carried out in accordance with the submitted ecological appraisal report. To encourage the use of electric vehicles it is necessary to provide on-site electric vehicle charging points. Since there is asbestos present on site a condition is necessary to ensure this is removed safely, in the interests of the health and safety of future residents and existing neighbouring residents.

### **Conclusion**

32. For the reasons given above I conclude that the appeal should be allowed.

*Louise Crosby*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Mr R Patel – RAA Planning

Mr H Wagjiani – Architect, B-12 Development

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Garside – Planning Officer, Kingston upon Thames Borough Council

## Schedule of Planning Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) Details of the landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:  
ER-AP3-101 Existing location plan; ER-AP3-102 Existing site plan; ER-AP3-103 Proposed location plan; ER-AP3-104 Proposed site plan; ER-AP3-105 Existing plans and elevations; ER-AP3-106 Proposed ground floor plan; ER-AP3-107 Proposed first floor plan; ER-AP3-108 Proposed second floor plan; ER-AP3-109 Proposed roof plan; ER-AP3-110 Proposed elevations; ER-AP3-111 Existing and proposed plans and elevations; ER-AP3-112 Proposed street elevations; ER-AP3-113 Site plan with distances; and L 06 22-T Site survey.
- 5) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 6) The flat roof areas of the development to which this permission relates shall not be used as a roof garden, balcony, seating area or other similar amenity area, and shall not be accessed except for the purpose of maintenance or in the case of emergency.
- 7) Prior to first occupation of any of the flats, details of secure cycle parking facilities to serve the development (20 no. spaces) to which this permission relates shall be submitted to and approved in writing by the local planning authority. The cycle parking facilities as shown in the approved details shall be provided prior to beneficial occupation of the development to which this permission relates and shall be permanently retained for that purpose and kept free from obstruction thereafter.
- 8) Prior to first occupation of any of the flats, details of waste and recycling facilities to serve the development to which this permission relates shall be submitted to and approved in writing by the local planning authority. The refuse and recycling facilities as shown in the approved details shall be provided prior to beneficial occupation of the development and shall be permanently retained thereafter. The developer and/or their successors in title shall take all reasonable steps to ensure that all refuse and recyclable materials associated with the development are either stored within these facilities or internally within the building(s) on the application site, and that no refuse or recycling material is stored or



placed for collection on the public highway except on the day of collection.

- 9) No development shall take place (including any works of demolition) until a construction management plan or construction method statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for:
- i) How the proposed development will be built;
  - ii) Hours of working (which shall be limited to 08.00 to 18.00 Mondays to Fridays and between 08.00 to 13.00 on Saturdays and not at all on Bank Holidays and Sundays);
  - iii) The procedure for loading/unloading materials;
  - iv) The route to and away from site for muck away and vehicles with materials;
  - v) The protocol for managing deliveries to one vehicle at a time on sites with restricted access or space;
  - vi) The protocol for managing vehicles that need to wait for access to the site;
  - vii) Whether any reversing manoeuvres are required onto or off the public highway into the site and whether a banksman will be provided;
  - viii) Temporary site access;
  - ix) Signing system for works traffic;
  - x) Whether site access warning signs will be required in adjacent roads;
  - xi) Whether it is anticipated that statutory undertaker connections will be required into the site;
  - xii) The storage of plant, materials and operatives vehicles;
  - xiii) The potential for impacts from dust and emissions during the demolition and/or construction phase upon local air quality and surrounding residents;
  - xiv) Measures for the laying of dust, suppression of noise and abatement of other nuisance arising from development works;
  - xv) The location of all ancillary site buildings;
  - xvi) The means of enclosure of the site, its erection and maintenance;
  - xvii) Wheel washing equipment;
  - xviii) The parking of vehicles of site operatives and visitors;
  - xix) Meeting the requirements of the Low Emission Zone for Non-Road Mobile Machinery (where relevant plant or vehicles are being used);
  - xx) The method of recycling and disposing of waste resulting from the demolition and/or construction phases; and
  - xxi) Deliveries/collections to and from the site shall use a route that is agreed with the highway authority and the agreed route shall be signposted accordingly.
- 10) Prior to beneficial occupation of the development to which this permission relates, a Fire Safety Strategy shall be submitted to and approved in writing by the local planning authority. The Fire Safety Strategy shall



demonstrate how the development will achieve the highest standards of fire safety and shall include the following details:

- 1) suitably positioned outside space for fire appliances/ an evacuation assembly point;
  - 2) appropriate fire alarm systems;
  - 3) passive and active fire safety measures;
  - 4) appropriate construction details to minimise the risk of fire spread;
  - 5) provision of suitable and convenient means of escape/ an evacuation strategy; and
  - 6) provision of suitable access and equipment for firefighting which is appropriate for the size and use of the development. The Fire Safety Strategy shall include a statement of competence. The development shall be carried out in accordance with the approved Strategy and thereafter maintained. The required Fire Safety Strategy shall reference the London Plan Guidance Fire Safety (February 2022), where applicable and a Reasonable Exception Statement (RES) shall be submitted in relation to those fire safety requirements which the applicant does not consider to be relevant.
- 11) Prior to beneficial occupation of the development to which this permission relates, evidence showing that the development has achieved internal water usage rates of no greater than 105L per person per day have been submitted to and approved in writing by the local planning authority. Once approved, any measures necessary to meet the targets shall be maintained throughout the lifetime of the development.
  - 12) The car parking shown on the approved plans shall be provided with a hard-bound, adequately drained, dust-free surface prior to beneficial occupation of the development to which this permission relates and shall be permanently retained and kept free from obstruction thereafter. It shall not be used for any purposes other than the parking of vehicles for the occupiers of and visitors to the development.
  - 13) Prior to beneficial occupation of the development to which this permission relates, the Living / Kitchen windows in the first and second floors of the east elevation of the new building facing 1 Fairmead, shall be constructed so that no part of the framework less than 1.7m above finished floor level shall be openable. The same is the case for the first and second floor bathroom windows in the new building (north elevation) directly facing 439 Ewell Road. Any part below that level shall be fitted with and permanently retained in obscure glazing to a minimum of level 3 on the standard scale. Any film used to achieve the requisite obscurity level shall be non-perishable, tamper-proof, and shall be replaced immediately in the event that it ceases to result in obscurity to level 3.
  - 14) Six (6 no.) car parking spaces shall be provided with active provision for electric vehicle charging points. Prior to the any occupation of the development hereby approved, the approved scheme shall be installed, be ready for use, and be thereafter maintained.
  - 15) Prior to commencement of groundworks (excluding site investigations and demolition), a final detailed drainage design, including drawings, supporting calculations, SuDS Statement and Drainage Assessment Form

shall be submitted to and approved in writing by the local planning authority. A detailed management plan confirming routine maintenance tasks for all drainage components must also be submitted to demonstrate how the drainage system is to be maintained for the lifetime of the development. The system shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 16) The development to which this permission relates shall be carried out in accordance with Arboricultural Impact Assessment Method Statement & Tree Protection Plan (Arboricultural Consultancy Ltd, 2nd March 2023) other than in relation to Tree 8 of the Tree Data Schedule which has since been felled. The approved measures shall be implemented prior to commencement of any work on site and maintained to the reasonable satisfaction of the Local Planning Authority until the completion of the development.
- 17) The development to which this permission relates shall be carried out in accordance with the ecological enhancements, mitigation and recommendations set out in Section 5, 6 and 7 of the Ecological Appraisal Report (WE, March 2023), The approved scheme shall be implemented in full prior to beneficial occupation of the development and maintained thereafter.
- 18) Prior to commencement of the development hereby approved, an asbestos management plan shall be submitted to and approved in writing providing full details of measures in place to ensure the safe removal of the asbestos in the building. The construction works shall be implemented in full accordance with the approved asbestos management plan for the duration of the works.