



Appeal Decision

Site visit made on 17 October 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2023

Appeal Ref: APP/P5870/W/23/3318327

85 Langley Park Road, Sutton SM2 5HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs N Main against the decision of the Council of the London Borough of Sutton.
- The application Ref DM2022/00426, dated 25 February 2022, was refused by notice dated 4 November 2022.
- The development proposed is a three storey side and rear extension plus conversion to form eight flats.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. An amended layout plan¹ has been submitted with the appeal which shows a reconfigured car parking layout, an additional area of external amenity space and areas of proposed and retained landscape planting. I am mindful that the appeal process should not be used to evolve a scheme to overcome a Council's reasons for refusal and instead a fresh planning application should usually be made². However, in this case, the Council has commented on the submitted plan and on this basis has confirmed that they do not wish to defend their fifth reason for refusal. Having considered the *Wheatcroft* principles³ I am satisfied that in this case the appeal should proceed on the basis of the amended plan.
3. A Daylight and Sunlight assessment⁴ has been submitted with the appeal which seeks to demonstrate that the occupiers of flats adjacent to the appeal site would not be adversely affected with regard to loss of light. On this basis the Council has confirmed that it no longer wishes to defend the part of Refusal Reason 3 which relates to the impact of the development on the light received to habitable room windows within the south-eastern flats of Jean Mary House.
4. The Council have also confirmed that they no longer wish to defend the part of Refusal Reason 6 relating to the lack of a planning obligation to mitigate against the effects of the development on biodiversity. In all respects above, I have determined the appeal accordingly.
5. The appeal is accompanied by a draft planning obligation by way of a Unilateral Undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended). This proposes to restrict future residents from

¹ Drawing Number 22/2320 Sheet Number 18 Rev C - hand altered in green with handwritten annotations.

² Annex M of the *Procedural Guide Planning Appeals – England*.

³ *Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]*

⁴ Daylight and Sunlight Report 85 Langley Park Road Waldrums dated 01 March 2023

obtaining resident parking permits for on street parking and contracts for parking in Council-run car parks. I shall return to this matter below.

Main Issues

6. The main issues are:

- The effect of the development on the character and appearance of the site and its surroundings;
- Whether the development would deliver an adequate mix of housing to meet local needs;
- Whether the development would provide adequate living conditions for future occupiers with particular regard to the provision of external amenity space, outlook, light, privacy and noise and disturbance;
- The effect of the development on the living conditions of existing occupiers of 1 Madison Close, 87-91A Langley Park Road and Jean Mary House with particular regard to privacy;
- Whether the development would make adequate provision to mitigate against the effects of overspill car parking on highway safety.

Reasons

Character and Appearance

7. The appeal property is an Edwardian five bedroomed, detached dwelling situated on a modestly proportioned plot on a tree lined road. The road contains a variety of types of residential properties including, detached, semi-detached and terraced houses and flatted developments of varying eras and styles with no defined architectural style or building type. The appeal scheme consists of the conversion and substantial extension of an existing five bedroomed dwelling to create eight flats.
8. The property would be extended to the rear. The resulting building would be large and of substantial depth. It would extend further back within the plot than the flatted development adjacent at Jean Mary House and would have a complex and conflicting roof arrangement with cat slide elements at the front and back, pitch roofed dormers on the side elevations and areas of flat roof in between the dormers. As a consequence, the overall depth of the building would appear bulky and the roofscape incongruously awkward.
9. Although the existing frontage of the property would remain largely unaltered, the deep side elevations would be readily visible behind the original frontage of the property. It would therefore appear as a detached house which had been substantially, excessively and unsympathetically extended rather than a cohesively designed purpose-built development. Consequently, its scale and mass in this respect would appear visually uncomfortable and at odds with the prevailing patter of built form on Langley Park Road.
10. The site would be partially screened at the front by a tree, the subject of a Tree Preservation Order. A short stretch of hedge is also proposed to be retained along the frontage of the property. Furthermore, two street trees are located close to the appeal site. Nevertheless, the side elevation would remain prominent when viewed from the north.

11. I accept that gables are not uncommon features in the locality and note the examples my attention has been drawn. However, examples which have been cited refer to gabled peaks at the fronts of properties. Just because these are common features on the fronts of properties does not mean that their repetition on side elevations is appropriate or consistent with the prevailing character or style of buildings.
12. However, the proposal would not constitute backland development and would be distinct from the cul-de-sac developments close by at Madison Close, Montgomery Gardens and Milestone Close. I am therefore unable to draw any direct comparisons with these developments in support of the scheme before me.
13. The proposal may be comparable in terms of the density of habitable rooms to other developments close by. Nevertheless, the visual appearance of the proposal would be cramped. Furthermore, many of the examples cited are of some age and I cannot, therefore, be certain that these would have been assessed against the same development plan policies. I am not, therefore persuaded that they are directly comparable to the appeal scheme.
14. In June 2023 the Mayor of London adopted new guidelines aimed at assisting developers and local authorities to comply with the requirement of Policy D4 of the London Plan 2021. The guidance has been introduced since the Council made their decision. Nonetheless, the guidance is now adopted, and the appeal is determined in this context. It has, however, not been determinative in my conclusions on this main issue, for which I have had regard to adopted development plan policies.
15. Nevertheless, for the above reasons, I conclude that the proposed development would be harmful to the character and appearance of the site and its surroundings. It would conflict with Policy 7 of the Sutton Local Plan 2018 (SLP) and Policy D4 of the London Plan 2021 which seek to ensure that development is of a high quality and respects local context.

Housing Mix

16. The appeal scheme would provide two 1-bedroomed units, four 2-bedroomed units and two 3-bedroomed units. The appellants state that 50% of the flats would be able to accommodate 4 people which should be considered to be family homes. However, SLP Policy 9 requires the provision of 50% of dwellings to have 3 or more bedrooms to reflect established housing market need⁵ for these types of properties, rather than a general requirement to provide housing suitable for accommodation by families of any size. It is not located within an Area of Potential Intensification (API).
17. I have not been presented with any compelling evidence why it would not be viable to provide accommodation in line with the policy's requirements. Whilst I recognise that family sizes may decrease in future and other developments elsewhere may have not provided accommodation in line with the current policy requirements, this is not sufficient reason to deviate from the requirements of Policy 9 of the SLP which clearly sets out the requirements for housing mix in the Borough for the plan period. I am therefore not satisfied that the appeal proposal would deliver a range of house types and sizes that

⁵ Strategic Housing Market Assessment (SHMA) for period 2013-2031

reflect and respond to the identified housing needs and demands of the borough's households.

18. Furthermore, SLP Policy 10 seeks to resist the loss of residential dwellings except where a range of criteria can be demonstrated, including its location outside an API. Although the appeal site is located close to the boundary of an API, it is not located within its designated boundary. Moreover, it would also fail to comply with all but one of the other criteria set out in Part B of the policy relating to the conversion of existing dwellings to self-contained housing units.
19. Consequently, the proposal would therefore not provide an appropriate mix of market housing appropriate to its location. It would also result in the loss of a larger family home. Consequently, the proposal conflicts with SLP Policies 9 and 10 which seeks to provide quality of new housing which meets the housing needs of residents across the wider area of south-west London and residential conversions contribute positively to the Borough's housing stock.

Living Conditions – Future

20. A Daylight and Sunlight report indicates that bedrooms with north facing windows in the side elevation within each of Flats 1 and 3 on the ground floor would not receive daylight in line with BRE⁶ guidelines. Windows in these bedrooms would face, in close proximity, towards a boundary fence and the side elevation of Jean Mary House. Although, some planting is proposed on the boundary, I cannot be certain what the nature of the planting would be. Therefore, given the orientation of the windows and the closeness of the boundary fence to the windows it is highly likely that the outlook from these rooms would be gloomy for users of these spaces.
21. Living spaces in Flat 2 (ground floor) and Flat 5 (first floor) would also not receive adequate light in accordance with BRE guidelines. The Daylight and Sunlight report also indicates that the bedroom in Flat 2 would only just reach the recommended levels of daylight. Coupled with poor daylight levels in the living space Flat 2 would be particularly gloomy. This would result in poor living conditions for future occupiers with regard to daylight, which would not be overcome by the suggested planting on the boundary.
22. I have considered the suggestion that a condition could be imposed on any planning permission to require additional skylights to be inserted to alleviate the concerns relating to light received into rooms in the building. Skylights would only provide additional light into flats at the second floor and would not be effective for flats at lower floors. Moreover, I am not convinced that such a condition would pass the tests for conditions set out in the National Planning Policy Framework (the Framework) or Planning Practice Guidance (PPG) in this instance.
23. Single person bedrooms in Flats 3 and 6 would be awkwardly shaped which would affect the usability of these rooms as bedrooms. Their stepped form would mean that it would be difficult to position a bed with other furniture easily within the room. Whilst it may be that circulation space could be improved within the rooms by utilising a sliding door to access the ensuite bathroom, this would not overcome the awkward overall shape of the rooms, and therefore their useability.

⁶ British Research Establishment Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (2022)

24. Bedroom windows on the side elevation of Flat 8 at second floor level would be approximately 10.5 metres from the balconies of flats in Jean Mary House. I have not been directed towards any adopted standards in relation to the spacing between habitable room windows for privacy purposes but from my own experience and from my observations on site, it is likely that some overlooking would be inevitable at the distances indicated. The living conditions of the occupiers of these rooms would therefore be compromised with regard to privacy.
25. The refusal reason also refers to noise and disturbance. However, the amended layout plan would mean that space close to Flat 3 would not be available as shared amenity space and as a result alleviates concerns that the use of this space would create unacceptable noise and disturbance for the occupiers of Flat 3. The amended layout plan would also increase the amount of amenity space available for future occupiers and as a result the living conditions of future occupiers would not be adversely affected. I therefore have not considered these matters further.
26. A balcony would be provided for Flat 1 at the front of the property. Although this would have an obscured glazed balustrade, this would be low and would be unlikely to afford any substantial privacy to users of the space, which would be exacerbated by its location on the front of the property at ground floor level. Whilst I recognise that other developments have balconies on their front elevations the majority of these are at upper floor levels and therefore not comparable to the proposal under consideration.
27. The Council has raised concerns that there would be a window in the wall between an ensuite in Flat 1 and a bedroom in Flat 3. The inclusion of the window opening between the two flats appears to me to have been a drafting error as it does not appear in all versions of the floor plans before me. As I am dismissing the appeal for other reasons I have not, however, sought clarity on this matter from the parties.
28. Nevertheless, taking all other factors into account their cumulative effects would add up to the proposal failing to provide adequate living conditions for future occupiers with particular regard to privacy, outlook and light. This would be in conflict with Policy D6 of the London Plan and SLP Policy 9 which seek to ensure that future occupiers are provided with high quality living accommodation. However, I find no harm in relation to the provision of external amenity space or noise and disturbance.

Living Conditions – Existing

29. I have set out above how the separation distance between bedroom windows in the proposed development and balconies on the adjacent development at Jean Mary House would result in overlooking between the two and would adversely affect the living conditions of future occupiers of the proposal before me. It therefore follows that the living conditions of the existing flats in Jean Mary House would also be adversely affected as a result of the overlooking identified.
30. Although there is an existing landing window and small bedroom window in the side elevation of the appeal property facing 87 Langley Park Road (No. 87), the proposal would introduce several bedroom and living accommodation windows at first and second floor levels and a balcony at second floor level along the length of the elevation facing No. 87 and 1 Madison Close (No. 1).

31. The occupiers of No.1 and No. 87 would be aware of their presence close to the boundary with their gardens and close to their windows. Lights and movement within flats and on the balcony would be visible from both the garden and rooms of No.1 and No. 87. This would mean that even if there were to be no actual overlooking, there would at the very least be a sense of perceived overlooking from windows and balconies in the proposed development. Subsequently, there would be a loss of privacy for the occupiers of those properties which would be harmful to their living conditions.
32. However, with regard to 89-91A Langley Park Road, the increased distance to the boundaries and orientation of windows of those properties would mean that there would not be any actual or perceived overlooking to the extent which would cause adverse impacts on the living conditions of occupiers of those properties.
33. I therefore conclude that the proposed development would adversely affect the living conditions of existing residents at Jean Mary House with regard to overlooking and 1 Madison Close and 87 Langley Park Road with regard to loss of privacy. This would be contrary to SLP Policy 29 which seeks to protect the amenity of existing occupiers. However, I find no adverse impact on the occupiers of 89-91A Langley Park Road with regard to loss of privacy.

Overspill Parking

34. A UU has been submitted with the appeal which would remove the entitlement of the occupiers of the development from applying for resident's car parking permits or for contracts for parking in Council-run car parks. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. The site is located in a Controlled Parking Zone (CPZ). The requirement relating to residents parking permits is reasonably related to in scale and kind to the development as this would adequately deal with potential overspill parking from the development. Therefore, it seems to me that the obligation is directly related to the development.
35. However, the UU goes further by placing restrictions on the ability of residents to obtain contracts for Council-run car parks. I have not been made aware of any nearby Council-run car parks that would act as convenient overspill parking for the development, therefore I am not persuaded that this measure would be necessary to make the development acceptable in planning terms. Hence the obligation when read as a whole would fail to meet the tests set out in the regulations.
36. Furthermore, the UU is unsigned and undated. I also have some concerns about the drafting and execution of the document itself and thus whether the Council could rely on it to secure its requirements. *The Procedural Guide – Planning appeals – England* sets out the expectations for appellants for the submission of planning obligations during the appeal process. Therefore, for the reasons set out, and as it is not properly executed, I cannot take it in to consideration. However, as I have dismissed the appeal for other reasons, I have not pursued this matter further with the main parties.

Other Matters

37. The proposed development would provide units which would provide accommodation which would be attractive to a range of proposed occupiers and despite the location's PTAL rating of 1b, it is reasonably well located close to public transport links, shops and services. It would also retain a substantial amount of the existing building on the appeal site. The site is not located in a Conservation Area, there are no listed buildings close to the site and is not in a flood risk area. I attribute moderate weight to these benefits.
38. My attention has been drawn to numerous other developments which the appellants feel are comparable to the proposal before me. I do not have the full details of these schemes nor the circumstances that led to them being accepted and so cannot be sure that they represent a direct parallel to the appeal proposal, including in respect of their design approach, features, relationship to neighbouring properties, scale, location, use or development plan policy context. In any case, I have determined the appeal on its own merits based on the evidence before me.
39. In addition to the above, I have noted the other points made by the appellant in support of the appeal scheme. However, these do not either singly or in combination, lead me away from my overall conclusion.
40. I acknowledge the appellant's concerns over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.

Conclusion

41. Whilst I recognise that the proposal would result in the provision of a net gain of seven dwellings and would represent an efficient use of land this would not be outweighed by the significant harm that I have identified in the main issues above. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise. Therefore, for the reasons set out the appeal is dismissed.

K L Robbie

INSPECTOR