



Appeal Decision

Site visit made on 16 November 2023

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2024

Appeal Ref: APP/L5240/W/23/3316788

108-114 & 118-120 Pampisford Road, Purley, London, CR8 2NF

- 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 DP (Pampisford) Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/05373/FUL, dated 18 October 2021, was refused by notice dated 16 January 2023.
 - The development proposed is the demolition of 6no. detached houses & the erection of a residential development including access, parking, cycle and refuse storage and landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted updated ecology surveys with the appeal. The Council was provided with the opportunity to review these. The Council no longer raise any objections to the proposal on the grounds of biodiversity and habitats, instead suggesting planning conditions. I have considered the appeal accordingly.
3. Additional plans were submitted with the appeal. These show additional detail on the plans for information purposes, but do not change the proposals that were before the Council. Given this, I am content that there would be no prejudice to any other parties.
4. A revised National Planning Policy Framework (the Framework) was published on 20 December 2023. Given my decision on the scheme, and the reasons for it, it was not necessary to request views from the Council or appellant.

Main Issues

5. These are the effect of the proposal:
 - a) on the character and appearance of the area, and;
 - b) on the living conditions of the occupiers of 116 Pampisford Road and 1-15 Montpelier Road, with regard to privacy and outlook.

Reasons

Character and appearance

6. Located on the south eastern side of Pampisford Road, just outside the centre of Purley, the appeal land comprises 2 sites, currently occupied by 6 houses. These are 108-114 and 118-120 Pampisford Road. Between the sites are 116

and 116a Pampisford Road – these are not included in the appeal land. The dwellings are all detached houses on a sloping site, with the frontages being considerably lower than the road level, such that the first floor of the dwellings are level with the road. Several have parking decks leading to first floor garages and the front doors are accessed by steps down to each property. The ground continues to slope away to the south east, with the rear gardens being at considerably lower levels than the road. Pampisford Road is also on a slope, gradually increasing in topography from Purley centre, such that No 120 is at a higher point than No 108.

7. The area has an evolved residential character, with older dwellings along Pampisford Road being detached, set back from the road with large gardens amongst significant redevelopment schemes. These have taken place on numerous plots with flatted and back land developments. This has resulted in the area having a varied character with higher density development dotted amongst the larger original plots, giving the area an urbanised feel. Within a stone's throw of the site is the 4 storey redevelopment at 1 Wyvern Road, 3 storey development at 2 Wyvern Road, 3 storey flatted development at No 122, and redevelopment for a large 4 block, 4 storey flatted scheme under construction at No 126-132.
8. The proposal is to demolish the existing dwellings and replace them with a denser form of residential development. At Nos 108-114, 2 residential blocks of flats are proposed (Blocks A and B), which will maintain a similar building line to the neighbouring houses, staggering accordingly to meet neighbouring dwellings. These will have a 2/3 storey appearance from the road, increasing to 4.5 storeys at the rear. There will also be 2 blocks (Blocks C and D) of housing to the south eastern far end of the rear gardens. Block C would be flatted, and 2.5 storeys tall at the front, rising to 3.5 storeys at the rear. Block D would provide a terrace row of 5 houses, being 2.5 storeys.
9. At Nos 118-120, the proposal is to demolish the existing dwellings and erect one large block of flats. This will also maintain a similar building line, appearing 2.5 storeys to the front and 3.5 storeys to the rear. Underground car parks would be located below all the blocks and there would be on site amenity areas, play space, cycle and refuse storage.
10. Both proposals would significantly increase the density, massing, height and scale of development on the sites currently. However, this does not necessarily lead to harm. The character of the area has evolved, and the developments would be set within the context of other large flatted block development. This is not only nearby, but also adjacent at No 122. The design of the proposals, using gables, set backs and hipped roofs reduces the overall mass and adds interesting articulation. The depth of the proposals would be commensurate with surrounding development at Nos 126-132. The design of the proposals is also suitably modern, high quality and would use complementary materials that would harmonise with surrounding development.
11. The use of balconies is apt, with many of them being recessed by the development itself, using hit and miss brick patterns as screening. Balconies are commonplace in flatted developments and the design approach and articulation ensures they would appear congruent and of high quality.
12. From the front, the developments would be around a storey taller than Nos 116 and 116A and No 106. However, the overall increase in height would not be

adversely dominant. Indeed, the proposed street scene shows varying heights, with the block at No 118-120 stepping down in height near to Nos 116-116a, and then increasing in height at Nos 108-114. Furthermore, in the surrounding street context, rising topography and varying heights, this would be appropriate and congruent, reflective of other higher density schemes.

13. At the rear, the proposals would appear taller in scale, but this is contained within the development itself and would not be harmful. Blocks C and D would be large blocks, and taller than development on Montpelier Road. However, their heights and form would be subservient to Block A and B, and I consider that the proposals would efficiently utilise the site, similar to that No 126-132.
14. Therefore, the proposals would have an acceptable effect upon the character and appearance of the area. This would be compliant with Policies SP4 and DM10 of the Croydon Local Plan (2018) (the CLP), Policies D2 and D3 of the London Plan (March 2021) (the LP). Together these seek high quality development that optimises the capacity of sites, whilst respecting and enhancing local character.
15. There would also be compliance with Chapter 12 of the Framework and Chapters I1, I2, I3 and B2 of the National Design Guide 2021, which seek high quality design.

Living conditions

116 Pampisford Road

16. Block B would be located adjacent to No 116. It would project around 4.5m beyond its rear extension and about 6.5m beyond the rear elevation. Even though No 116 is located at a higher land level, the height and projection of Block B would result in a relatively large flank projection. This would be notable from the rear garden and from views towards No 114 from the rear elevation windows.
17. That said, there would be no adverse loss of privacy or overlooking owing to obscure glazing and brick design for the side of the balconies. Furthermore, Block B would be set a considerable distance away from the boundary, and the '45 degree rule' would be met both horizontally and vertically. Additionally, an 18m cone of vision would be maintained from the rear windows, such that whilst the flank elevation would be visible, this would only be when looking to the right. Whilst it would have an impact upon the neighbouring living conditions, it would not be unacceptably adverse.

1-15 Montpelier Road

18. There would be around 32-36m between the rear elevations of Blocks C and D and the rear elevations of the dwellings on Montpelier Road. Whilst these blocks would be taller and at a moderately higher land level, separation distances of over 30m would be more than sufficient to ensure that there was no harmful effects to the living conditions of these residents. Indeed it would considerably exceed The London Housing Design Guide Standards, which details that in the past, planning guidance for privacy has been concerned with achieving visual separation between dwellings by setting a minimum distance of 18-21m between facing homes.

19. In terms of the effect upon the rear gardens, Blocks C and D would be located reasonably close, at around 9m for Block C and about 6m for Block D from the boundary. However, they would be at the end of what are considerably long gardens, and to this extent, use of most of the gardens would not be unacceptably impinged, especially nearest to the dwellings. Additionally, there is intervening landscaping that would filter views.
20. Therefore, whilst there could be a moderate sense of overbearing upon the rear end of the gardens, overall, this would not result in an unacceptable effect upon the living conditions of these residents.

Conclusion

21. The proposal would not have an unacceptable effect upon the living conditions of the residents of 116 Pampisford Road and 1-15 Montpelier Road. This would be compliant with Policy DM10.6 of the CLP and Policy D3 of the LP. These policies seek to ensure that proposals protect the amenity of occupiers of adjoining buildings and deliver appropriate outlook, privacy and amenity. There would also be compliance with paragraph 135 of the Framework, which seeks to ensure a high standard of amenity for existing users.

Planning obligation

22. A Unilateral Undertaking (UU) has been submitted, dated 4 October 2022. The UU covers the provision of 22 affordable dwellings, Section 278 undertaking, car club and monetary contributions towards sustainable transport, carbon offsetting, air quality, local employment and training, energy monitoring and monitoring. All are necessary to make the development acceptable, related to planning and fairly and reasonably related in scale and kind. Thus, they meet the tests in the Framework and the CIL Regulations.
23. The UU only includes 2 of the owners of the site (Nos 108 and 118). There are 4 other owners, plus mortgagees. Section 106(3) of Town and Country Planning Act 1990 (as amended) provides that a planning obligation is enforceable by the Local Planning Authority against a) the person entering into the obligation and b) any person deriving title from that person. In other words, a planning obligation should 'run' with the land. Upon sale of the whole or part of the land the obligation will automatically be binding on successors in title of the original parties to it.
24. It follows that an obligation will not be enforceable against those who are not party to it. This is why all those with current interests such as freehold, leasehold and mortgagee interests will usually need to be a party to the deed.
25. However, I am aware that there are some instances where planning obligations can be drawn up where not all current interests have been party to the deed. In this instance, there is a clause in the UU requiring "*The Owner covenants with the Council and with each other that they shall not Implement Development until the Confirmatory Deed with the Council has been completed.*" The Confirmatory Deed is defined as "*a deed which confirms that the Additional Land (the other land owners) is bound by the terms of this Unilateral Undertaking.*"
26. Although this would seek to ensure that all those with current interests in the site are bound by the UU prior to development commencing, only 2 parties have currently signed up. The requirement for the Confirmatory Deed is akin to

imposing a negatively worded planning condition requiring a planning obligation to be drawn up. The Council is also required to be party to the Confirmatory Deed and it does not appear to have agreed to this.

27. Thus, it would also be necessary to impose a negatively worded planning condition limiting the development that can take place until a planning obligation has been executed. This is because it would properly secure the requirement for all those with land interests to be party to the planning obligation before any development commenced. This in turn would allay doubts over the enforceability of the UU presented on the missing landowners.
28. Nonetheless, Planning Practice Guidance advises that this should only be done in exceptional circumstances, where there is clear evidence that the delivery of the development would otherwise be at serious risk.
29. The appellant claims that there was insufficient time to enable all landowners to sign up to the agreement. These are not exceptional circumstances, nor is there clear evidence that the delivery of development would be at serious risk. Therefore, the imposition of a negatively worded condition would not be appropriate.
30. Additionally, I acknowledge there is a likelihood that the monetary obligations could be sought from the 2 landowners, because these measures would be enforceable as they seek only money. However, I have very serious concerns about the delivery of the affordable housing, and to some extent car club membership. This is because these requirements are not related to the 2 landowners' plots, but are spread across the site. Therefore, I cannot be sure that the affordable housing, or car club membership, for the whole site would be forthcoming or guaranteed, even if I were to impose a negatively worded condition.

Planning balance

31. The proposal would provide much needed housing in the area, that would bring with it economic, social and environmental benefits. There would also be no harm to the character and appearance of the area or the living conditions of nearby residents, the reasons for which the proposal was refused by the Council.
32. However, the UU would not secure the delivery of important and necessary infrastructure. The proposal would be unacceptable without these provisions. Therefore, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

Conclusion

33. For the reasons given above, the appeal should be dismissed.

Katie McDonald

INSPECTOR