



# Appeal Decision

Site visit made on 14 February 2024

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 March 2024**

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**Appeal Ref: APP/Z5630/W/23/3325862**

**16 Acacia Grove, New Malden, London KT3 3BJ**

- 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 My Jon Standley, Standley Property Ltd against the decision of the Royal Borough of Kingston Upon Thames.
  - The application Ref 23/00808/FUL, dated 6 April 2023, was refused by notice dated 1 June 2023.
  - The development proposed is demolition of existing 3 bed dwelling and garages and erection of new flatted development of 3 storeys consisting of 1no. 3 bed and 3 no. 2 bed apartments with associated landscaping and on site parking.
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## Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing 3 bed dwelling and garages and erection of new flatted development of 3 storeys consisting of 1no. 3 bed and 3 no. 2 bed apartments with associated landscaping and on site parking in accordance with the terms of the application, Ref 23/00808/FUL, dated 6 April 2023, and the plans submitted with it, subject to the conditions set out at the end of this decision letter.

## Preliminary Matter

2. The Government published a revised National Planning Policy Framework (the Framework) in December 2023, replacing the previous version dating from September 2023. The amendments made did not have any bearing on the issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the updated Framework. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the December 2023 version.

## Main Issues

3. The main issues in this appeal are:
  - the effect of the proposal on the character and appearance of the area;
  - the effect of the proposals on the living conditions of the occupiers of 18 Acacia Grove with particular regard to privacy; and
  - the effect of the proposed car parking provision on highway safety.

## Reasons

### *Character and appearance*

4. The appeal site comprises a two-storey dwelling with detached garages located to the rear. The property sits back from the highway in a fairly modest plot within a predominantly residential location which contains a mix of detached and semi-detached dwellings, which are generally two storey in height, but are varied in design, scale and use of external materials.
5. The appeal site is situated within the Lime Grove Local Area of Special Character (LGLASC), which the Council describe as being a non-designated heritage asset (NDHA). Whilst the property is not statutorily listed nor in a conservation area, paragraph 209 of the Framework states that the effect of an application on the significance of a NDHA should be taken into account in determining the application. In weighing applications that affect directly or indirectly a NDHA, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
6. From my observations on site, the significance of the NDHA derives from the arrangement of historic buildings, of varying designs, often with front gables. The plots are set along a consistent building line, a little way back from enclosed frontages, which are often marked by planting adjoining the highway.
7. The appeal building is part of a broadly symmetrical group of three residential buildings comprising 16-20 Acacia Grove (No's 16, 18 and 20). No's 16 and 20 are two storey buildings which are positioned either side of No. 18, a brick faced building which is three storeys in height, with additional roof level accommodation. To the rear of the properties on this part of Acacia Grove is Charter Court, a large four storey block of flats which is visible in views between properties.
8. A number of properties on this side of Acacia Grove have single and two storey rear projections which project into their rear gardens thereby creating deeper plan buildings. The proposed replacement of the existing two storey house with a deeper plan three storey block of flats with a stepped rear elevation would fit reasonably well within this context as the appeal site is large enough to accommodate the building without appearing cramped or overdeveloped.
9. Whilst not matching the height of No 20 the proposal would be clearly subservient in height to the taller, centrally located No 18. The proposal's height would create a visual transition to the lower two storey buildings at 14A-14D Acacia Grove. The use of a hipped roof for the top floor would help to minimise the bulk and massing of the building. The front gable features would visually break the massing of the front elevation and would also reflect the gables on the front elevations of both No's 18 and 20, and found widely across the NDHA, thereby reinforcing the character of the area. In this regard, it would successfully assimilate with the built context, and I note that Paragraph 135 of the Framework states that developments should be sympathetic to local character and history, including the surrounding built environment, while not preventing or discouraging appropriate innovation or change such as increased densities.
10. The proposed design contains sufficient features, such as ground floor bay windows, which would reflect the bay windows at No 20 to enable the building

to blend comfortably into the varied street scene. The proposed external materials and fenestration would add to the varied palette of materials, and would not detract from the character and appearance of this particular street scene. The submitted evidence indicates that two trees would be planted adjacent to the front boundary thereby reinstating planting adjacent to the highway, which is a notable characteristic of the NDHA.

11. The existing appeal building has a rear dormer window, whilst No 20 has two rear dormers. Consequently, the proposed second floor rear dormer would not be an uncharacteristic feature. Furthermore, the central positioning of the dormer within the rear roof ensures that it would not be a prominent feature and would not be visible in views from Acacia Grove. Whilst there are limited examples of existing balconies on the street, the proposal's balconies would not project beyond the building's footprint thereby ensuring that they would not be unduly prominent.
12. Consequently, taking this and the wider character considerations, such as the varied nature and appearance of nearby properties into account, the proposal would accord with the character and appearance of the surrounding area and would preserve the significance that the LGLASC has as a NDHA.
13. For the above reasons, I find no conflict with policies CS8, DM10 and DM12 of the Council's Core Strategy (2012) (CS) which concern design and the protection and conservation of heritage assets, and which seek to protect local distinctiveness.

*Living conditions for neighbouring occupiers*

14. From the evidence before me, it is clear that the Council's concerns relate to overlooking from the proposed balconies into the neighbouring rear private amenity space of No.18 and the potential for a perceived loss of privacy for the occupiers of that property. Interested parties have also raised concerns about the impact on properties within Charter Court, located to the rear of the appeal site, which is a considerable distance from the appeal property beyond a communal car parking area.
15. At present, the appeal property's existing first floor rear windows direct views to the rear of its garden, albeit they allow angled views to the rear of neighbouring gardens on Acacia Grove. As a result, properties on Acacia Grove already experience a degree of mutual overlooking between properties and gardens which is common within a residential area such as this.
16. The proposal would include balconies at first and second floor level. The submitted drawings indicate that privacy screens up to 1.8 metres in height would be installed on the perimeters of the balconies. The privacy screens would be made of opaque glass and consequently would be effective in preventing any meaningful degree of overlooking from the balconies towards either the windows within the rear elevation of No 18 or the areas of its garden closest to the dwelling, thereby ensuring the privacy of occupiers is adequately protected. The installation and retention of the privacy screens can be secured by condition.
17. Given the extent of existing mutual overlooking into the gardens of other Acacia Grove properties, and the considerable distance to Charter Court, I do

not find that the balconies would result in a harmful loss of privacy for these neighbouring occupiers.

18. Consequently, the proposal would not have an unacceptable impact on the living conditions of neighbouring occupiers. Therefore, in this respect, it would not be contrary to the principles outlined within paragraph 135 of the Framework which seeks development which promotes health and well-being, with a high standard of amenity for existing and future users.

#### *Car parking*

19. Policy DM9 of the CS requires new development to comply with car parking standards. The supporting text to the policy states that to manage demand for vehicle use, the Council supports the policy approach of the London Plan (LP) of applying parking standards for new development to ensure that there is no over-provision of parking that could undermine the use of sustainable modes of transport.
20. The site is within an area with a Public Transport Accessibility Level (PTAL) rating of 3 which indicates moderate access to frequent public transport services. My attention has been drawn to the LP parking standards, which for developments in PTAL 3 areas, highlight a maximum provision of 0.75 spaces for each 1 or 2 bed dwelling, and up to 1 space for each 3 or more bed dwelling. For the proposed mix of units, this amounts to a maximum provision of 3.25 spaces. The submitted drawings show that the proposal would provide 2 off-street spaces.
21. I have not been provided with detailed information in respect of car parking demand in Acacia Grove. However, the appeal site is within walking distance of local shops and facilities in New Malden. The site is also located approximately 200 metres from New Malden Train Station and 240 metres from the Cambridge Avenue bus stop on Coombe Road, and has therefore been evidenced as having reasonable access to public transport. Future occupiers would therefore benefit from opportunities to travel by modes other than by private vehicles, reducing reliance on these and the requirement for on-site parking.
22. I acknowledge the comments of neighbouring residents, in particular in relation to parking associated with commuters accessing the local train station. However, the provision of two off-street parking spaces accords with the maximum parking standards set out within the LP, and it also follows the approach outlined within Policy DM9 to ensure that there is no over-provision of parking.
23. I have not been provided with a signed and dated Unilateral Undertaking making provision for a restriction to prevent future occupiers from applying for street parking permits in the event that a controlled parking zone (CPZ) is introduced to the surrounding streets in the future. Policy DM9 states that development should restrict eligibility for on-street parking permits for residents of new developments located within controlled parking zones. However, from the evidence before me, the site is not located within a CPZ.
24. I have considered the requirement for a planning obligation in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. As I have found that the proposed parking

provision would be adequate to serve future occupiers and there is not a policy requirement to prevent future occupiers from applying for parking permits, I cannot be certain that a legal agreement is necessary or fairly and reasonably related in scale or kind to the proposal before me.

25. Consequently, I am satisfied that future occupiers of the proposed dwellings would have options other than the private motor car and the proposed parking provision would be adequate to serve future occupiers and would not significantly impact on demand for on-street parking.
26. In finding no unacceptable harm, I find no conflict with Policy DM9 of the CS which seeks to ensure that new development does not contribute to congestion or compromise highway safety. The proposal also complies with paragraph 115 of the Framework which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

### **Other Matters**

27. Concerns have been raised in relation to the effect of the proposal on future occupiers as a result of limited outlook, overheating, insufficient internal floor to ceiling heights and the width of the side entrance and access. Each of the units meet the space standards set by the LP and each have windows on more than one elevation, thereby providing opportunities for cross-ventilation. Overall, I have been provided with no substantive evidence which would prompt me to disagree with the Council's conclusions that the quality of accommodation would be acceptable and that there would be no unacceptable harm in these respects.
28. Any noise and disturbance and effect on access associated with construction would be for a temporary period only, and I have imposed a condition requiring the submission of a Construction Management Plan (CMP) to manage the noise and highway impacts during construction.
29. Three trees on the site are identified for removal including a Common Lime at the front of the property which is identified as being a category C1 tree which has been pollarded, is located within a hard surfaced area and which has suffered mechanical damage. Furthermore, I have included a condition requiring the submission of a detailed arboricultural method statement and tree protection plan to ensure that off-site trees are protected. The appellant's Landscaping and Planting Plan indicates the re-provision of three trees within the appeal site and I have imposed a condition requiring the details of this replacement tree planting.
30. Interested parties have referred to an appeal decision at Thetford Road (APP/Z5630/W/21/3266585) and I have considered the information provided. I acknowledge that in that instance the Inspector found that the proposal would not provide a satisfactory level of amenity. However, that proposal related to a greater number of flats, and the access to the communal area appears to have been along a longer enclosed alley between the building and fencing to a private amenity area. As a result, the layout is different to the proposal before me. In any event, each case must be considered on its own merits, circumstances and situation.

31. Interested parties have raised concerns about the potential loss of natural light, privacy and outlook for occupiers of neighbouring properties. As the sides of the upper floor balconies would be obscure glazed and conditioned to remain as such, I do not find harm to the living conditions of any neighbouring occupiers. Given the separation distances and stepped design of the rear elevation, I do not find harm to the living conditions of neighbouring occupiers with regard to outlook and natural light.
32. In relation to the effect of the proposal on the ability of the occupiers of No 18 to carry out maintenance on their property, this is a private matter to be resolved by the parties and is therefore not relevant to my decision.
33. A number of other matters have been raised by interested parties and I have taken them all into account. Those related to planning include the safety of demolition of the appeal property, mix of residential units, designing out crime, drainage and insufficient renewable energy measures. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects. Consequently, they do not lead me to a different overall conclusion.
34. Any concerns regarding due process during the processing of the planning application, including public consultation, fall outside of the remit of this decision.

### **Conditions**

35. I have had regard to the various planning conditions that have been suggested. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and for clarity and consistency.
36. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty.
37. A condition requiring the development to be constructed with the external materials identified by the approved plans and application form is necessary in the interests of the character and appearance of the area. Likewise, a condition related to the approval of hard and soft landscaping is necessary in the interests of the character and appearance of the area. However, I have modified the landscaping condition because the details are not required prior to the commencement of above ground works.
38. In order to minimise disruption to surrounding highways and residents it is necessary to approve a Construction Management Plan which includes details relating to the control of construction traffic, noise and dust during construction. To prevent damage to trees I have included a condition requiring the submission of a detailed arboricultural method statement and tree protection plan.
39. Conditions restricting the use of areas of flat roof as outdoor amenity space, and requiring the installation of privacy screening are necessary to protect the living conditions of neighbouring occupiers.
40. I have included a condition to limit water usage in the interests of promoting sustainable design practices. A condition requiring the submission of a Fire Safety Strategy is necessary in the interests of fire safety.

41. In the interests of waste management and to encourage sustainable transport I have included conditions requiring the provision of refuse, recycling and cycle storage. I have modified both conditions because the details are not required prior to commencement of above ground works. I have included a condition requiring the provision of car parking for residents in the interests of highway safety.

**Conclusion**

42. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development would accord with the development plan and the Framework. The appeal is therefore allowed.

*B Pattison*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan - P(0)001; Block Plan - P(0)002; Existing Ground Floor Plan - P(0)100; Existing First Floor Plan - P(0)101; Existing Roof Plan - P(0)102; Existing Section AA - P(0)104; Existing North Elevation - P(0)105; Existing South Elevation - P(0)106; Existing East Elevation - P(0)107 1:100 @ A3; Proposed Ground Floor Plan - P(0)110; Proposed First Floor Plan - P(0)111; Proposed Second Floor Plan - P(0)112; Proposed Roof Plan - P(0)113; Fire Plans - P(0)150; Section AA - P(0)200; Site Section - P(0)210; Proposed North (front) Elevation - P(0)300 Rev P1; North Elevation - P(0)300 1:100 @ A3; Proposed South (rear) Elevation - P(0)301 Rev P1 1:100; South Elevation - P(0)301; Proposed East (side) Elevation - P(0)302 Rev P1; East Elevation - P(0)302; Context Street Elevation Existing and Proposed - P(0)310 Rev P1; Context Elevation - P(0)310; Landscape Plan and Planting - P(0)530.
- 3) No development shall take place until a construction management plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved CMP shall be implemented and adhered to throughout the entire construction period. The CMP shall include the following details:
  - 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 signed accordingly.
- 4) No development shall take place until a detailed arboricultural method statement and tree protection plan has been submitted to and approved by the Local Planning Authority. Thereafter, the approved details shall be implemented and adhered to throughout the entire construction period. The submission shall include:
- A plan to a scale and level of accuracy appropriate to the proposal, that shows the positions, crown spreads and root protection areas (RPA) of every retained tree on site, and on nearby ground or land adjacent to the site;
  - A schedule of pre-construction works for the above-detailed trees, where appropriate;
  - Calculated dimensions and positions of all tree root protection areas;
  - Details and positions of tree protection barriers and ground protection where appropriate;
  - Details and positions of any construction exclusion zones;
  - Details and positions of the existing and proposed underground service runs, to be routed to avoid root protection areas where possible and if not possible, for alternative methods of installation to be detailed within the arboricultural method statement;
  - Details and positions of any change in levels or positions of any excavations within 5m of the root protection area of retained trees.
  - Details of any special engineering required to accommodate proposals within the root protection areas of retained trees (e.g. in connection with foundations, service installation, bridging, water features, surfacing); and
  - Details of the working methods to be employed for the installation of drives, paths or any other form of hard surfacing within the root

protection areas of retained trees in accordance with the principles of 'No Dig' construction.

All details shall be in accordance with British Standard BS5837: 2012 "Trees in relation to Design, Demolition and Construction".

- 5) The development shall not progress above the damp proof course of the new building until a Fire Safety Strategy which shall reference the London Plan Guidance: Fire Safety (February 2022), where applicable, has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the relevant works shall be carried out in accordance with the approved Fire Safety Strategy. The Fire Safety Strategy shall include a statement of competence, 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;
  - 6) Provision of suitable access and equipment for firefighting which is appropriate for the size and use of the development; and
  - 7) Provision, where applicable of a Reasonable Exception Statement (RES) in relation to those fire safety requirements which the applicant does not consider to be relevant.
- 6) The development shall not be occupied until evidence showing that the development will achieve internal water usage rates of no greater than 105L per person per day has been submitted to and approved in writing by the Local Planning Authority. Any measures necessary to meet the targets shall be installed prior to the occupation of the development and maintained in an operable condition thereafter.
- 7) The development shall not be occupied until a detailed landscape and planting plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include a clear key or legend and shall provide the following information:
  - Species (both Latin & Common names) for all plants;
  - Locations of all plants or areas of planting;
  - Plant numbers or planting densities;
  - Sizes of all plants and particularly trees 'at time of planting'; and
  - Details of all hard-landscaping areas including materials.

The hard landscaping shall be implemented prior to the occupation of the development and maintained thereafter and the soft landscaping comprised in the approved details shall be implemented in the first planting season following the occupation of the first dwelling. If, within a period of 5 years from the completion of development, any of the trees or plants that form part of the approved details of soft landscaping, die, are

- removed or become seriously damaged or diseased they shall be replaced in the next planting season with others of a similar size and species.
- 8) The development shall not be occupied until details of refuse and recycling facilities to serve the development have been submitted to and approved by the Local Planning Authority. The refuse and recycling facilities as shown in the approved details shall be provided prior to the occupation of the development and shall be permanently retained thereafter.
  - 9) The development shall not be occupied until details of secure cycle parking facilities to serve the development have been submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities shall be installed prior to the occupation of the development and maintained thereafter for the lifetime of the development.
  - 10) The development shall not be occupied until the parking spaces shown on the approved plans have been provided with a hard-bound, adequately-drained, dust-free surface. The parking spaces shall thereafter be kept available for the parking of vehicles.
  - 11) The development shall not be occupied until privacy screening which is 1.7m in height, as measured from the floor level adjacent to the screen, has been erected along the sides of the balconies and/or terraces in accordance with the approved plans. Aside from essential fixings, the screens shall be constructed entirely of 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. Once installed the privacy screening shall be retained thereafter.
  - 12) The external surfaces of the development shall be constructed in the materials specified on the approved plans and on the application form.
  - 13) Other than the areas labelled 'Amenity' on drawings P(0)111 and P(0)112, the roof area of the development shall not be used as a balcony, roof garden or similar amenity area.

**END OF SCHEDULE**