



Appeal Decision

Site visit made on 21 January 2025

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 February 2025

Appeal Ref: APP/L5240/W/24/3345891

Land adjacent to 2 Denmark Road, South Norwood, Croydon, London SE25 5QU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Parkdale Properties Ltd against the decision of the Council of the London Borough of Croydon.
 - The application reference is 23/02904/FUL.
 - The development proposed is the erection of two-storey end-of-terrace dwellinghouse (Use Class C3) following removal of existing open storage yard (Use Class B8) and associated elements, associated amenity, cycle parking and waste storage spaces, and associated alterations.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of two-storey end-of-terrace dwellinghouse (Use Class C3) following removal of existing open storage yard (Use Class B8) and associated elements, associated amenity, cycle parking and waste storage spaces, and associated alterations at Land adjacent to 2 Denmark Road, South Norwood, Croydon, London, SE25 5QU in accordance with the terms of the application, Ref 23/02904/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have taken the site address from the appeal form and the Council's decision notice and the appeal form as this appears to be a more precise reflection of the site's location than that on the application form.
3. I have adopted the description of development set out in the Council's decision notice and subsequently cited by the appellants in their appeal submission as I consider this to be a more accurate description of the proposal which omits superfluous wording. I am satisfied that in doing so neither party is disadvantaged, and I have determined the appeal accordingly.
4. The plans submitted with the appeal and the Council's decision notice refer to two plans showing differing elevational details (PA004 Rev A and PA005). The parties were provided with an opportunity to comment on this matter during the appeal proceedings. The Council have confirmed that the application was determined on the basis of drawing PA004 Rev A. For clarity I have considered the appeal on the basis of this drawing.
5. The Government published a revised National Planning Policy Framework (the Framework) in December 2024. It does not change the planning policy context in respect of the main issues, and I have determined the appeal accordingly.

Main Issue

6. The main issue is whether the loss of an employment generating site would meet the requirements of the development plan policy.

Reasons

7. The appeal site is located on Denmark Road, close to its junction with Holland Road, within an established residential area. It is a small site situated adjacent to a terrace of two storey houses on Denmark Road and is otherwise bounded by the rear gardens and yards of properties on Holland Road. The site was formerly used as an open storage yard but is currently unused and in an unkempt state.
8. Policy SP3 of the Croydon Local Plan 2018 (the Local Plan) sets out a 4-tier approach to the retention and redevelopment of land and premises relating to industrial or employment activity. The appeal site is categorised as a scattered employment site (Tier 4) where the aim is to protect land for industrial and warehousing activities allowing for residential development subject to certain criteria.
9. CLP Policy SP3 is clear that planning permission for limited residential development will be granted in Tier 4 locations if it can be demonstrated that there is no demand for the existing premises or for a scheme comprised solely of the permitted uses set out in CLP Table 5.1, and residential use would not harm the wider location's business function. The appellant has indicated that the site was first marketed in 2020 and has provided evidence that it was being marketed at points in time during 2022 and 2023. The evidence before me indicates that during that time there was limited interest in the site with no evidence of offers from potential users coming forward. Whilst the evidence confirms that the site was marketed at specific points in time, I have no reason to doubt that the site was not being actively marketed in between and I am mindful that in the digital age, evidence of continuous marketing may be problematic to unequivocally demonstrate.
10. The exact nature of the previous use is unclear nor when that use ceased. From my observations on site and from the evidence before me the site is currently not in use as an employment generating site. Furthermore, as the surrounding area is dominated by residential uses the site is likely to be unattractive for employment users within the range of permitted uses set out in Table 5.1. Having regard to the characteristics of the site and its surroundings any residential use of it would not harm any wider business use of the location.
11. I have considered both parties' representations regarding the use of the site as a Sui Generis employment generating site or one which falls into Use Class B8. It is not ordinarily the role of appeals made under s78 of the Town and Country Planning Act 1990 (the Act) to examine matters of lawfulness. Indeed, it is open to the appellant to apply to have such matters determined under sections 191 or 192 of the Act for which there is also a right of appeal. In any event, the site is small and would not represent a significant loss of employment land, under either classification, and the benefits of providing an additional dwelling would outweigh the loss of it as a potential employment site in this instance.
12. Therefore, I am satisfied that the proposal would not lead to an unacceptable loss of an employment generating site. As such I find no conflict with Local Plan Policy

SP3 and Table 5.1 and Policies E4, E6 and GG5 of the London Plan 2021 which, amongst other things, seek to ensure a sufficient supply of land for economic purposes.

Other Matters

13. It is noted that the Council did not object to the proposal on grounds relating to character and appearance, biodiversity or flood risk. Subject to suitably worded planning conditions where necessary and reasonable, as set out below, I have not been presented with any reason to reach an alternative conclusion in respect of these matters.
14. I have considered representations from a third party at the appeal stage relating to privacy, light pollution and parking provision. The side flank elevation of the proposal facing the rears of properties on Holland Road would be blank with no windows, and the boundary walls high, therefore the overlooking would be unlikely to ensue, and I have no reason to conclude that proposal would result in unacceptable light pollution, causing an adverse effect on living conditions for neighbouring occupiers. Although no parking spaces would be provided within the appeal site, I have no evidence before me to conclude that an additional dwelling in the location would cause undue pressure on on-street parking in the area. These matters do not lead me to an alternative conclusion on the main issue.
15. I have noted that the Highways Authority consider that a planning obligation under Section 106 of the Town and Country Planning Act is necessary requiring a financial contribution towards an electric vehicle charging point (EVCP) and restricting access to residents parking permits. I have no legal agreement before me; however, the lack of a legal agreement did not form a reason for refusal. Furthermore, as set out above, I have no substantive evidence before me to demonstrate that the proposal would lead to undue pressure for on-street parking in the locality, nor have I provided with any details of a suitable EVCP scheme to which a financial payment could contribute towards. Therefore, having considered the requirements in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (the Regulations), in my judgement, although both the requirements would be directly and reasonably related in scale and kind to the development, the absence of certainty of an EVCP scheme to contribute towards and the lack of evidence relating to the harm to highway safety from on-street parking pressure leads me to conclude that it would be unreasonable to require an obligation in this instance.

Conditions

16. I have carefully considered the conditions suggested by the Council in the light of the Framework and Planning Practice Guidance. In addition to the standard time limit, a plans condition is necessary in the interests of certainty. So too, is a materials condition in the interests of character and appearance. I am satisfied that the plans are clear, and the submission of details of materials and final elevations and floor plans as suggested by the Council are not necessary. I agree, however, that a condition relating to the submission of a Construction Logistics and Management Plan should be imposed in the interests of the living conditions of occupiers of nearby properties during the construction period.
17. Additionally, conditions relating to cycle parking provision and refuse storage, landscaping, external energy generation and fire safety are necessary and

reasonable in the interests of character and appearance and proper planning. I have also imposed a condition relating to the submission a Sustainable Urban Drainage System as the appeal site is located within a Critical Drainage Area with a medium risk of flooding. It is therefore considered a reasonable requirement in relation the development.

18. There is no evidence before me indicating that the site is potentially liable to contain contamination. Nevertheless, as a result of the legacy of historic uses, as a precautionary approach it would be necessary, reasonable and prudent to impose a condition regarding addressing unexpected contamination. However, I do not consider conditions suggested by the Council requiring Phase 1 and 2 desktop surveys and subsequent reports are proportionate or necessary. I have also not imposed a condition requiring details of a Construction Environmental Management Plan as this would not be reasonable given the scale of the development and the nature of the site.
19. The Council has suggested conditions relating to accessibility and water usage; however, these are covered by alternative legislation and are therefore not necessary. It is also not necessary to impose a condition relating to noise from external machinery. The opportunity to control this matter would be through the specification of details submitted in relation to external energy generation measures. Finally, a condition restricting the use of the development to a C3 dwelling is also not necessary as this is what has been applied for. I have not been provided with any justification for the removal of permitted development rights and therefore this may not pass the tests of reasonableness or necessity.

Conclusion

20. For the reasons given above, having had regard to the development plan and all other material considerations, I conclude that the appeal should be allowed subject to the conditions set out in the schedule attached to this decision.

K L Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: PA001 Site Location Site Context; PA002 Proposed Ground and First Floor Plans; PA003 Proposed Room and Roof Plans; PA004 Existing and Proposed Front + Proposed Rear and Side (South) Elevations.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan no. PA004 Existing and Proposed Front + Proposed Rear and Side (South) Elevations.
- 4) Prior to the commencement of any construction, demolition and excavation works, a Construction Logistics and Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan must include the following information for all construction phases of the development:
 - A. Hours of deliveries;
 - B. Hours of construction;
 - C. Construction access arrangements;
 - D. Details of the storage facilities for any plant and materials;
 - E. Details of the proposed security arrangements for the site;
 - F. Facilities for the loading and unloading of plant and materials;
 - G. Threshold levels where the development abuts the public highway;
 - H. The siting of any site huts and other temporary structures, including site hoardings;
 - I. Parking of vehicles associated with deliveries, site personnel, operatives and visitors;
 - J. Details outlining the proposed range of dust control methods and noise mitigation measures;
 - K. Methods for and phasing of all construction, demolition and excavation works (incl. key dates);
 - L. A photographic highway condition survey covering the site and near vicinity so that on completion of the development an assessment of damage caused by construction activity can be made and remedial works undertaken;
 - M. Details demonstrating compliance with the non-road mobile machinery (NRMM) regulations 2015; Details confirming that all delivery vehicles are registered under the Freight Operators Recognition Scheme (FORS) achieving a minimum of silver status; and
 - N. Details of the precautions to guard against the deposit of mud and substances on the public highway, to include washing facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances prior to entering the highway.

The development shall be carried out in strict accordance with the approved plan for the duration of the works.

- 5) The presence of any unsuspected contamination encountered during the development must be drawn to the attention of the Local Planning Authority by the Applicant/Developer. In the event of contamination to land and/or water being encountered, no development shall continue until a programme of investigation and/or remedial work (incl. methods of monitoring and certification of such work undertaken) has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until the approved remedial works, monitoring, and certification of the works have been carried out and a full validation report has been submitted to and approved in writing by the Local Planning Authority. In the event that no contamination is encountered, the developer shall provide a written statement (incl. photographic evidence) to the Local Planning Authority confirming that this was the case. The development shall only be occupied after written approval is provided by the Local Planning Authority. The evidence shall include waste disposal transfer notes proving correct disposal of soil.
- 6) Prior to the commencement of above ground works, full details of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - a) Full details of cycle parking provision (comprising no less than two (2) long stay spaces), including the type of cycle stands; and
 - b) Full details of the refuse stores for the existing and proposed dwellings (incl. the size and number of bins), as well as a dedicated area for the storage of bulky waste. The details approved shall be provided and completed in accordance with this condition prior to the first occupation of the development, and maintained for the lifetime of the development
- 7) Prior to the first occupation of the dwellinghouse hereby approved, full details of the landscaping proposals shall be submitted to and approved in writing by the Local Planning Authority. These details shall include but are not limited to:
 - A. Hard landscaping materials including samples as appropriate;
 - B. Soft landscaping details including existing planting to be retained, construction/formation/planting/management of sedum roof(s), tree planting plan with supporting dimensions of new trees, and the species, size and density of proposed new plantings;
 - C. Boundary treatments including additional planting and details including confirmation that no treatments (incl. steps and walls) would be located within 0.6m of sightlines for motorists entering/exiting the forecourt); and
 - D. Details of a Landscape Management Plan for a minimum period of five (5) years from the implementation of final planting for all aspects of the hard and soft landscaping (incl. child play and communal amenity spaces).

The approved details of the hard landscaping and boundary treatments shall be implemented prior to the first occupation of the dwellinghouse and, thereafter, retained and maintained for the life of the development.

The soft landscaping details shall be laid out and planted within the first planting season following the commencement of the development or other such period as may be agreed in writing with the local planning authority. Any trees or plants which die within five (5) years of planting, are removed, or become seriously damaged or diseased shall be replaced with others of the same size and species and in the same positions within the next planting season

- 8) Prior to the occupation of the dwellinghouse hereby permitted, full details of any external energy generation measures (i.e. Air Source Heat Pumps, Photovoltaic Panels etc.) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out strictly in accordance with the details thus approved.
- 9) The development hereby permitted shall be carried out in accordance with the provisions of the Fire Safety Statement (ref: PH/21/195) prepared by Robinson Escott Planning dated 01.10.2023 and submitted with the application.
- 10) The development hereby permitted shall be carried out in full and strict accordance with the provisions of the Tree Survey, Arboricultural Impact Assessment, Arboricultural Method Statement & Tree Protection Plan prepared by Usherwood Arboriculture, dated 04.07.2023, and submitted with the application.

****End of Schedule****