

<b>Item No.</b> 6.2	<b>Classification:</b> Open	<b>Date:</b> 17 October 2011	<b>Meeting Name:</b> Dulwich Community Council
<b>Report title:</b>	<b>Development Management planning application:</b> Application 11-AP-1735 for: Renewal of unimplemented permission  <b>Address:</b> LAND ADJACENT TO 379 UPLAND ROAD, LONDON, SE22 0DR  <b>Proposal:</b> Renewal of planning permission 05-AP-1380 granted on appeal on 4 June 2006 for: Residential development consisting of six self contained two bedroom flats, proposing lift access to all floors and underground/lower ground floor off street parking.		
<b>Ward(s) or groups affected:</b>	College		
<b>From:</b>	Head of Development Management		
<b>Application Start Date</b> 27 May 2011		<b>Application Expiry Date</b> 22 July 2011	

## RECOMMENDATION

- 1 Approval of outline planning permission, were the council in a position to determine the application.

## BACKGROUND INFORMATION

- 2 This application was called in by Members for consideration at Dulwich Community Council. However, the applicants have since lodged a non determination appeal with the Planning Inspectorate.

### Site location and description

- 3 The site situated on the eastern side of Upland Road in the College area of the borough. The land is currently vacant and it is understood to have previously formed the garden of 379 Upland Road. The site is 17m wide and has a depth of 26m.
- 4 There are several mature trees on the site including one with a TPO located on the site frontage. The land slopes towards the street and is adjoined on all other sides by residential gardens.
- 5 The area is characterised by a wide variety of residential properties some of which are set in substantial plots of land. There is a two storey terrace development on the western side and a three storey with basement development on the eastern side. A two/three storey flatted development is located behind the application site fronting Mount Adon Park Road.
- 6 The site is not located in a Conservation Area or in proximity to any listed buildings.

## **Details of proposal**

- 7 This application seeks to renew outline planning permission for the redevelopment of the site for a residential development of 6 flats over three floors each containing two bedrooms, with proposed lift access and underground car parking. The application seeks to gain approval in respect of access and siting of the building with all other matters reserved.

## **Planning history**

- 8 05-AP-1380

Outline planning application for residential development of 6 flats on ground to second floors with associated underground car parking. Allowed on appeal following non-determination APP/A5840/A/06/2007122 - 5 July 2006.

- 9 07-AP-1597

Reserved Matters application for design and external appearance and landscaping following Outline Planning Permission dated 5th June 2006 (05-AP-1380) for a development comprising a block of 6 flats on basement, ground, first and second floors and Approval of Details for condition 5 (details of refuse storage), condition 6 (details of cycle storage), condition 7 (details of site enclosure), condition 9 (building height), condition 10 (car parking) and condition 11 (tree protection measures for existing pine tree). Permission granted under delegated powers 6/12/2007.

- 10 08-AP-0563

Erection of a 4 storey building to accommodate 8 units, basement level to accommodate 5 car parking spaces with a further 2 spaces on the front forecourt, 8 cycle parking spaces to be located in shed in rear garden and vehicle access from Upland Road. Planning permission refused on appeal APP/A5840/A/09/2098244 - 15 June 2009. The Inspector felt that the proposal which raised the height marginally in relation to the approved scheme did not relate well to no. 369, in respect of the resulting bulk and mismatched eaves.

- 11 10-AP-336

Details of soil survey and investigation for the discharge of condition 8 of the planning permission 05-AP-1380.

## **Planning history of adjoining sites**

- 12 369 Upland Road - Planning permission was granted on 9/9/1997 for conversion of disused lower ground floor flat into a one bedroom flat.

## **KEY ISSUES FOR CONSIDERATION**

### **Summary of main issues**

- 13 The main issues to be considered in respect of this application are:
- a) the principle of the development in terms of land use and conformity with strategic policies.
  - b) the impact upon the amenity of adjoining occupiers.

- c) the design of the proposal.
- d) the impact upon traffic in the area.

## **Planning policy**

### Core Strategy 2011

- 14 Strategic Policy 1 Sustainable Development
- Strategic Policy 2 Sustainable Transport
- Strategic Policy 5 Providing New Homes
- Strategic Policy 11 Open Spaces and Wildlife
- Strategic Policy 12 Design and Conservation
- Strategic Policy 13 High Environmental Standards

### Southwark Plan 2007 (July) - saved policies

- 15 3.2 Protection of Amenity
- 3.7 Waste Reduction
- 3.9 Water
- 3.11 Efficient use of Land
- 3.12 Quality in Design
- 3.13 Urban Design
- 3.14 Designing out Crime
- 4.2 Quality of Residential Accommodation
- 4.3 Mix of Dwellings
- 5.3 Walking and Cycling
- 5.6 Car Parking
- 16 Draft Dulwich SPD
- Residential Design Guidance SPD (Draft 2011)
- Sustainable construction and design SPD

### London Plan 2011

- 17 Policy 1.1 Delivering the strategic vision and objectives for London
- Policy 3.3 Increasing housing supply
- Policy 3.4 Optimising housing potential
- Policy 3.5 Quality and design of housing developments
- Policy 5.2 Minimising carbon dioxide emissions
- Policy 5.3 Sustainable design and construction
- Policy 6.9 Cycling
- Policy 6.10 Walking
- Policy 6.13 Parking
- Policy 7.1 Building London's neighbourhoods and communities
- Policy 7.3 Designing out crime
- Policy 7.4 Local character
- Policy 7.5 Public realm
- Policy 7.18 Protecting local open space and addressing local deficiency
- Policy 7.19 Biodiversity and access to nature

### Planning Policy Guidance (PPG) and Planning Policy Statements (PPS)

- 18 PPS1 Delivering Sustainable Development  
PPS 3 Housing (2011)  
Ministerial Statement 'Planning for Growth' (2011)  
DCLG 'Greater Flexibility for Planning Permissions' (2009)

### **Principle of development**

- 19 The Government Department for Communities and Local Government released guidance (Greater Flexibility for Planning Permissions) in 2009 to assist Local Planning Authorities (LPA) in the determination of renewal applications. The guidance explains that the LPA retains jurisdiction to determine an application for an extension of time, even if the original permission has expired after the application was made but before its determination.
- 20 The guidance also explains that LPAs should take a positive and constructive approach towards renewal applications, which may improve the prospect of sustainable development being taken forward quickly. In determining such applications, the focus should be on development plan policies and other material considerations (including national policies on matters such as climate change) which may have changed significantly since the grant of permission.
- 21 The guidance also confirms that LPAs may refuse applications to extend the time limit for permissions where changes in the development plan or other relevant material considerations indicate the proposal should no longer be treated favourably.
- 22 The Ministerial Statement 'Planning for Growth' explains the Government's clear expectation that the answer to development and growth should wherever possible be 'yes' except where this would compromise the key sustainable development principles set out in national policy.
- 23 PPS 3 is also relevant in this instance. A key land use issue with the determination of this application is that of building on gardens, referred to as "garden grabbing". Recent changes in government policy (PPS3 Housing) set out that private gardens, shall be removed from the brownfield definition. However, this is not at the same time conferring particular protection of this land, for example in the same way that Borough Open Land or Metropolitan Open Land is protected. It means that gardens are not classified as 'previously developed land'. The development of such areas will not contribute to the target set by the Government which is that at least 60% of development occurs on brownfield land, which means that development of housing on gardens cannot be used to contribute towards Government targets. In Southwark, housing targets are generally being met and the Council does not rely on gardens being developed in order to meet housing targets, unlike the case in a number of other parts of the country where development of gardens has been relied upon in order to meet housing delivery targets. Given the limited number of back garden developments applied for in Southwark, development on gardens would be unlikely approach the 40% limit for non brownfield, or greenfield, development. It is not considered that the fact that back gardens are no longer 'brownfield' may in itself be used as a reason for refusal. Rather, regard still needs to be had to the site specific assessment of impacts in terms of matters such as the character of residential neighbourhoods, quality of residential accommodation, design, amenity, and transport. The circumstances are slightly different from true 'garden grabbing' in that the site has existed as a separate plot of land from original dwelling for some time and has been subject to previous planning decisions granting planning permission for residential development. Notwithstanding, the advice of PPS3 has been treated as a material consideration.
- 24

- 25 The Draft Dulwich Supplementary Planning Document does state that Dulwich is not a suitable area for backland development due to its character, and such development is considered harmful. The land was originally the former garden of no. 369, which together with nos 361-369 had the unusual situation of the main garden areas to the side of the dwelling. This was then separated and used as part of the garden of no. 379 (according to historic maps from around 1977), before being sold as a separate plot. The site has a substantial road frontage untypical for a backland site, and the question of harm is to some degree dealt with in the Inspector's assessment of the original decision.
- 26 "...The footprint of the proposed development against the size of the plot is not dissimilar to others I observed in the area and, in my view, the spaces that would be left between the buildings would retain the characteristic feel of this section of the road..."
- 27 In the current circumstance and given the recent planning history, weighing the pressure for new housing development against the desire to retain garden plots, it is unlikely another Inspector would take a different view. On balance, therefore the principle of residential use in this location is acceptable. However the policy environment is subject to change and it is necessary to ensure that the proposal is compliant with all relevant policies within the adopted Core Strategy as well as saved Southwark Plan Policies.

#### **Environmental impact assessment**

- 28 Not required for a development of this type. No significant environmental impacts would arise.

#### **Impact of proposed development on amenity of adjoining occupiers and surrounding area**

- 29 Mount Adon Park

The land rises from the rear of the application site to the rear of these properties, and the development would leave sufficient space between residential windows to maintain levels of privacy between the existing and future residents. This was agreed by both planning Inspectors in the previous appeal decisions.

- 30 369 and 379 Upland Road

There are a number of windows on the flank elevation of these properties close to the boundary of the application site. The majority of these windows are towards the rear. In assessing the impact of the outline consent upon this building, the Inspector stated;

- 31 "... the overall impact of the proposed siting would not significantly harm the living conditions of the residents of no. 369. Most of the windows would keep their relatively open aspect over the appeal site's proposed rear amenity area. Due to the separation of the buildings and the intervening pitched roof, there would also be little impact on the flank wall windows of no. 379."

- 32 It is acknowledged that whilst the original application was considered under the former Southwark UDP and the Draft Southwark Plan, the policies referred to have largely been carried through as saved Southwark Plan policies and the Core Strategy 2011. As such there are no policies that would guide to reach another conclusion on the assessment of the impacts of this on neighbouring residents.

### **Impact of adjoining and nearby uses on occupiers and users of proposed development**

- 33 The surrounding area is residential and the use of the land for residential purposes is considered acceptable.

### **Traffic issues**

- 34 **Car parking**  
The proposal should not give rise to any overspill parking as it is proposed to provide a parking space for each unit. This is in line with Saved Policy 5.6 Car Parking which sets a maximum level for parking of 1.5 within a low Ptal area.

- 35 **Cycle storage**  
The proposal would require the provision of 7 secure cycle stands in line with Saved Policy 5.3 Walking and cycling. This could be secured as before by way of condition, it is noted that the approval of reserved matters application included provision for 6 cycles, and it would not be considered unreasonable to have the additional space provided by requesting the details be submitted.

- 36 **Waste**  
The waste receptacles would be located to the front of the property. It is considered that the area as detailed within the reserved matters application adequately dealt with this issue and a condition allowing the applicant to revert to those details as shown on that permission or otherwise approved should adequately deal with this matter.

### **Design issues**

- 37 This application is for the renewal of an outline consent, establishing a building of three storeys with its position and access agreed; however it is noted that the design and external appearance was subject to condition. The condition which dealt with the design and external appearance was submitted as a reserved matter and approved in 2007. As with other matters judged to be acceptable it is suggested that the reserved matters condition allowing the applicant to revert to those details as shown on that permission or to resubmit further details should be applied to any planning permission.

### **Impact on character and setting of a listed building and/or conservation area**

- 38 The proposal will have no impact on any listed building or conservation area.

### **Impact on trees**

- 39 The landscaping arrangement for the proposed development was included in the details discharged in 2007. As with other matters judged to be acceptable it is suggested that the reserved matters condition allowing the applicant to revert to those details as shown on that permission or to resubmit further details should be applied to any planning permission. Existing trees that are retained as part of this development would be protected by condition for protection measures to be put in place during the course of construction.

### **Planning obligations (S.106 undertaking or agreement)**

- 40 The proposal is below the threshold in respect of Section 106 contributions.

## **Sustainable development implications**

- 41 The principle of the redevelopment of the site for residential use would promote a sustainable use of a vacant plot of land, in line with recent Government guidance. Additional conditions are suggested to improve the energy efficiency of the proposed new building in line with updated policies and guidance.

## **Other matters**

- 42 **Density**  
The site lies within the suburban density area with a range of 200 to 350 hrph (habitable rooms per hectare). The proposed density is 370 hrph and thus exceeds the range, however this was the case in the previous application, and was cited as a reason for refusal. Notwithstanding, the view taken by the Inspector was that there was no resulting harm from the higher density and he did not accept this as a reason for refusal. It is not considered that a reason for refusal around density could be sustained, and could potentially leave the Council open to an award of costs.

## **Conclusion on planning issues**

- 43 This application is for the renewal of a former outline permission granted on appeal in 2006. All but one of the conditions imposed by the Planning Inspectorate have been formally discharged in December 2007. It is acknowledged that there have been changes in both national and local policy and guidance in respect of development on previously undeveloped land. This together with the previous planning decisions on the site have been considered and it is concluded that there remains insufficient justification to withhold permission. Subject to conditions it is recommended that had the application remained for determination by the Council, it would be minded to grant outline planning permission.

## **Community impact statement**

- 44 In line with the Council's Community Impact Statement the impact of this application has been assessed as part of the application process with regard to local people in respect of their age, disability, faith/religion, gender, race and ethnicity and sexual orientation. Consultation with the community has been undertaken as part of the application process.

a) The impact on local people is set out above.

b) The following issues relevant to particular communities/groups likely to be affected by the proposal have been identified as above

c) The likely adverse or less good implications for any particular communities/groups have been also been discussed above. Specific actions to ameliorate these implications can be dealt with via conditions.

## **Consultations**

- 45 Details of consultation and any re-consultation undertaken in respect of this application are set out in Appendix 1.

## **Consultation replies**

- 46 Details of consultation responses received are set out in Appendix 2.

## **Summary of consultation responses**

- 47 Two letters of objection have been received to the application raising the following issues;
- 48 This development represents garden development as defined within PPS3 (June 2011 Annex B) and should be included in the policy objectives of PPS3 concerning land on previously developed sites.
- 49 The development is now contrary to the London Plan Interim Housing Supplementary Planning Guidance (April 2010) and London Plan Policies 3A.1 and 3A.2.
- 50 The proposal does not increase the quality and supply of affordable housing nor does it reuse previously developed land.
- 51 The proposal does not provide larger homes as required by Southwark housing needs.
- 52 The proposal would not comply with the density required for this area and represents an overdevelopment of this site which has poor access to local transport.
- 53 Contrary to Dulwich SPD 3.8 Backland development.
- 54 Loss of light and outlook to windows on the side of no. 369 contrary to the view taken by the Planning Inspector.
- 55 Overdevelopment of the site, the proposed development is considerably larger than the surrounding properties.
- 56 Noise pollution, the development is close to the front boundary fence with 369 and the living rooms will be close to existing bedrooms (3.8m). Further noise from the underground car park will cause disturbance to the dwellings on the western side of no. 369.

## **Human rights implications**

- 57 This planning application engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term 'engage' simply means that human rights may be affected or relevant.
- 58 This application has the legitimate aim of providing new residential development. The rights potentially engaged by this application, including the right to a fair trial and the right to respect for private and family life are not considered to be unlawfully interfered with by this proposal.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law & Governance**

- 59 N/A.



## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Site history file: TP/2567-379  Application file: 11-AP-1735  Southwark Local Development Framework and Development Plan Documents	Regeneration and Neighbourhoods Department 160 Tooley Street London SE1 2TZ	Planning enquiries telephone: 020 7525 5403 Planning enquiries email: <a href="mailto:planning.enquiries@southwark.gov.uk">planning.enquiries@southwark.gov.uk</a> Case officer telephone: 020 7525 5434 Council website: <a href="http://www.southwark.gov.uk">www.southwark.gov.uk</a>

## APPENDICES

No.	Title
Appendix 1	Consultation undertaken
Appendix 2	Consultation responses received

## AUDIT TRAIL

<b>Lead Officer</b>	Gary Rice, Head of Development Management	
<b>Report Author</b>	Sonia Watson, Senior Planning Officer	
<b>Version</b>	Final	
<b>Dated</b>	26 September 2011	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Communities, Law & Governance	No	No
Strategic Director of Regeneration and Neighbourhoods	No	No
Strategic Director of Environment	No	No
<b>Date final report sent to Constitutional Team</b>		5 October 2011

**Consultation undertaken**

**Site notice date:** 21/06/2011

**Press notice date:** n/a

**Case officer site visit date:** 21/06/2011

**Neighbour consultation letters sent:** 16/06/2011

**Internal services consulted:**

n/a

**Statutory and non-statutory organisations consulted:**

None

**Neighbours and local groups consulted:**

31 MOUNT ADON PARK LONDON SE22 0DS  
33 MOUNT ADON PARK LONDON SE22 0DS  
21 MOUNT ADON PARK LONDON SE22 0DS  
17 MOUNT ADON PARK LONDON SE22 0DS  
23 MOUNT ADON PARK LONDON SE22 0DS  
29B MOUNT ADON PARK LONDON SE22 0DS  
27 MOUNT ADON PARK LONDON SE22 0DS  
FLAT 4 369 UPLAND ROAD LONDON SE22 0DR  
29A MOUNT ADON PARK LONDON SE22 0DS  
29C MOUNT ADON PARK LONDON SE22 0DS  
FLAT 5 369 UPLAND ROAD LONDON SE22 0DR  
FLAT 2 369 UPLAND ROAD LONDON SE22 0DR  
FLAT 3 369 UPLAND ROAD LONDON SE22 0DR  
FLAT 1 27 MOUNT ADON PARK LONDON SE22 0DS  
367 UPLAND ROAD LONDON SE22 0DR  
379 UPLAND ROAD LONDON SE22 0DR  
FLAT 1 369 UPLAND ROAD LONDON SE22 0DR  
FLAT 5 27 MOUNT ADON PARK LONDON SE22 0DS  
25 MOUNT ADON PARK LONDON SE22 0DS  
15 MOUNT ADON PARK LONDON SE22 0DS  
FLAT 2 27 MOUNT ADON PARK LONDON SE22 0DS  
FLAT 3 27 MOUNT ADON PARK LONDON SE22 0DS  
FLAT 4 27 MOUNT ADON PARK LONDON SE22 0DS

**Re-consultation:**

None

**Consultation responses received**

**Internal services**

None

**Statutory and non-statutory organisations**

None

**Neighbours and local groups**

Flat 3 369 Upland Road - Objects, Loss of light and outlook to windows on the side of no. 369 contrary to the view taken by the Planning Inspector.

Overdevelopment of the site, the proposed development is considerably larger than the surrounding properties.

Noise pollution, the development is close to the front boundary fence with 369 and the living rooms will be close to existing bedrooms (3.8m). Further noise from the underground car park will cause disturbance to the dwellings on the western side of no. 369.

25 Mount Adon Park - Objects. This development represents garden development as defined within PPS3 (June 2011 Annex B) and should be included in the policy objectives of PPS3 concerning land on previously developed sites.

The development is now contrary to the London Plan Interim Housing Supplementary Planning Guidance (April 2010) and London Plan Policies 3A.1 and 3A.2.

The proposal does not increase the quality and supply of affordable housing nor does it reuse previously developed land.

The proposal does not provide larger homes as required by Southwark housing needs.

The proposal would not comply with the density required for this area and represents an overdevelopment of this site which has poor access to local transport.

Contrary to Dulwich SPD 3.8 Backland development.