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## Appeal Decision

Site visit made on 24 July 2018

**by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 August 2018**

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**Appeal Ref: APP/L5240/W/17/3191432**  
**22 Brownlow Road, Croydon CR0 5JT**

- 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 B Goshtasb against the decision of the Council of the London Borough of Croydon.
  - The application Ref 17/00902/FUL, dated 21 February 2017, was refused by notice dated 21 July 2017.
  - The development proposed is to construct one building comprising of 2No. 2bed flats and associated parking, bin storage and cycle storage.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The description of development in the heading above has been taken from the planning application form which differs from that on the Council's decision notice. In Part E of the appeal form it is stated that the description of development has not changed and neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. The appellant has requested that the appeal be determined on the basis of details which were submitted subsequent to the original planning application. The subsequent details are materially different from the original submission in that they include, amongst other things, a proposal to remove and replace two protected horse chestnut trees to the rear of the site which were shown to be retained in the initial application. The subsequent details include a Tree Report<sup>1</sup> submitted to the Council which recommends the removal of the two trees, as well as a Unilateral Undertaking submitted as part of the appeal process in respect of mitigation planting.
4. However, the Council's reason for refusal specifically refers to the two large horse chestnut trees to the rear of the site and I note that a comment made locally on the appeal refers to the effect of potential pollarding on the trees to the rear. The evidence therefore suggests that interested parties have not been afforded adequate opportunity to comment on the subsequent information submitted by the appellant. Within this context I am very conscious of the Wheatcroft Principles derived from *Bernard Wheatcroft Ltd v*

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<sup>1</sup> Tree Report - Gifford Tree Services, 7 July 2017

SSE (1982) which are further explained in the Procedural Guide: Planning Appeals - England<sup>2</sup>. It is my firm view, in the interests of fairness, that this appeal must be determined on the basis of the details that were submitted with the planning application and which have been subject to consultation and not the subsequent details. To do otherwise could prejudice unacceptably the interests of interested people and/or consultees who would not have been consulted on the amended proposals and who may have observations to make.

5. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the comments and the Framework in reaching my decision.
6. As set out in the Council's Appeal Statement, the Croydon Local Plan 2018 (LP) was adopted by the Council on 27 February 2018 after it determined the application. The LP replaces the Croydon Local Plan: Strategic Policies 2013 and the Croydon Replacement Unitary Development Plan (The Croydon Plan) 2006 Saved Policies 2013. The Council has specified which LP policies it considers are relevant to this appeal and the appellant has been given an opportunity to comment on this. The appellant's interests would therefore not be prejudiced by my consideration of this appeal against the relevant development plan policies and I will make no further reference to the previous development plan.

### **Main Issue**

7. The main issue in this appeal is the effect of the proposal on protected trees.

### **Reasons**

8. The proposal consists of erecting a building containing two flats to the side of an existing dwelling, with the subdivision of the front and rear garden. The appeal site includes a number of trees covered by a Tree Preservation Order<sup>3</sup> (TPO), which includes two horse chestnut trees to the rear covered by a group order as well as individually protected trees to the front of the site.
9. I saw that the horse chestnut trees to the rear of the site are located in an elevated position within the landscape. Due to their size and prominence they make an important contribution to the leafy character of this residential estate, both in views from neighbouring properties and the wider area.
10. There are three trees to the front of the appeal site, which the Council state have recently been planted to replace protected trees that have been removed. Whilst these trees are of a limited size, they also contribute to the leafy character and appearance of the area, particularly in views along the streetscape of Brownlow Road. The amenity value of these trees will increase as they continue to grow.
11. In relation to the horse chestnut trees to the rear, the details<sup>4</sup> submitted with the planning application propose works to the trees including a crown reduction on a significant extent of the crown as well as a crown lift. Due to the effect on the appearance of the resulting tree canopy, I agree with the Council's

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<sup>2</sup> Procedural Guide: Planning appeals – England 2018: Annexe M - Can a proposed scheme be amended?

<sup>3</sup> Croydon Council Tree Preservation Order No 14, 2016

<sup>4</sup> Arboricultural Method Statement, Arbtech 20 June 2017

concerns that the scale of the proposed works would significantly reduce the amenity value of these trees. Furthermore, whilst I note that the Council is prepared to accept some works to the trees, I consider that the tree canopy would have an overdominant relationship with the rear windows of habitable rooms of the flats which would be unduly affected by loss of light and overshadowing. Whilst potential residents would be aware of the position of the trees, the implications of living next to such large trees could not be fully appreciated until occupation. I consider that this would raise undue pressure in the future for further works to the trees or potential removal.

12. The relationship between the proposal and trees to the front of the site adds to my concerns on this matter. The trees would be located in close proximity to windows on the front elevation of the building, as well as a patio and a balcony. As the trees to the front continue to grow they would significantly reduce the amount of sunlight and daylight reaching the windows and amenity areas, to the detriment of the living conditions of residents. The trees would also be located in close proximity to the vehicle parking spaces to the front of the site, which may lead to concern from residents about damage caused to vehicles by sap, leaves and other debris falling from the trees. I consider that this would lead to undue pressure in the future for further works to the trees to the front of the site or potential removal.
13. I note that there is some disagreement between the parties as to the effect of transplanting two of the newly planted trees to the front of the site. However, even if I were to conclude that these trees could be successfully transplanted, this does not affect my consideration of the impact of the trees on the living conditions of residents.
14. Furthermore, due to the close proximity of the proposed building to the trees, valid concerns could be raised about potential property damage. I am mindful that felling of the trees would be within the control of the local planning authority, but such pressure would be difficult to resist once the flats are occupied.
15. I also note the comments raised by the appellant in relation to the condition of the horse chestnut trees and the effect on adjacent property and structures. However, for the reasons stated previously, I have considered this appeal on the basis that the trees would be retained. There are other procedures which the appellant may use to address his concerns on these matters.
16. I have had regard to the benefits of the proposal. The development of the flats on an infill site would add to the mix and supply of housing and would contribute to the Council's housing targets, albeit to a limited degree. I also note the appellant's comments in relation to the contribution to the provision of affordable housing, although such a contribution would be very modest. The benefits that would arise from the proposal would therefore not outweigh the significant harm identified above.
17. I conclude that the proposed development would place unacceptable long-term pressure for the removal or significant works to trees which are the subject of a TPO with subsequent harm to their amenity value. The proposal would therefore be contrary to Policy DM28 of the LP in respect of the protection of trees as well as Policies SP4 and DM10 in respect of the protection of local character and the living conditions of future occupants. The proposal would

also be contrary to the Framework in respect of achieving well designed places as well as conserving or enhancing the natural environment.

18. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

*David Cross*

INSPECTOR