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## Appeal Decision

Hearing held on 1 August 2018

Site visit made on 1 August 2018

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

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

**Decision date: 29 October 2018**

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**Appeal Ref: APP/L5240/W/18/3196773**  
**825 Brighton Road, Purley CR8 2BJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Justin Owens of Silverleaf Group against the decision of the Council of the London Borough of Croydon.
  - The application Ref 17/04695/OUT, dated 18 September 2017, was refused by notice dated 14 December 2017.
  - The development proposed is the demolition of the existing building, erection of a 4 storey building comprising of 19 residential apartments and provision of associated parking.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal was submitted in outline with landscaping as the only matter reserved for subsequent approval. A landscape masterplan was submitted with the application and I have treated this as illustrative.
3. It has been brought to my attention that since the determination of the planning application that the Croydon Local Plan 2018 (CLP) has been adopted. I was provided with copies of the relevant policies before the hearing and the appellant has had the chance to comment on them.
4. The revised 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 responses made at the hearing and the Framework in reaching my decision.
5. At the hearing the appellants submitted a draft planning obligation (UU) under the provisions of section 106 of the above Act. Two separate UUs were submitted after the date of the hearing. I will return to this matter below.

### Main Issues

6. The main issues are :-
  - Whether or not the development proposed makes appropriate provision for affordable housing, with reference to the relevant provisions of local and national planning policy;

- Whether the proposal makes adequate provision to mitigate the impacts in relation to affordable housing, employment and training, carbon offsetting, air quality and highway works arising from the development.

## **Reasons**

7. The appeal site comprises a relatively substantial building and its associated garden areas. It is sited within an area that is mainly residential in character. Nevertheless, there is a Milk and More depot adjacent to the site. Brighton Road is a relatively busy thoroughfare at the front of the site. The proposal would involve the demolition of the existing building and the construction of a 4-storey building comprising 19 apartments.

### *Affordable housing*

8. CLP Policy SP2 relates to the provision of housing. The need/delivery and minimum levels of affordable housing including commuted sums are outlined in parts SP2.3, SP2.4, SP2.5 and SP2.6 of this policy. SP2.4 states that on sites of 10 or more dwellings the Council will; negotiate to achieve up to 50% affordable housing, subject to viability; seek a 60:40 ratio between affordable rented homes and intermediate (including starter) homes unless a number of criteria are met; require a minimum provision of affordable housing as set out in SP2.5.
9. SP2.5 states, amongst other things, that the Council will require a minimum provision of affordable housing to be provided either: preferably as a minimum level of 30% affordable housing on the same site as the proposed development or, if 30% on site provision is not viable; as a minimum level of 15% of affordable housing on the same site as the proposed development plus a review mechanism entered into for the remaining affordable housing provided 30% on-site provision is not viable and construction costs are not in the upper quartile. There is no dispute that the site is not within Croydon Opportunity Area or a District Centre.
10. The supporting text to CLP Policy SP2 states that an appraisal of development sites in the borough has found that a requirement for 30% on site affordable homes will be viable for the majority of sites in the borough. This supporting text also states that viability evidence suggests that schemes that are not viable with 15% on-site provision of affordable housing would not be viable with any affordable housing and are therefore unlikely to be built. I was informed at the hearing that the appraisal of development sites was carried out as part of the evidence to support the CLP.
11. CLP Policy SP2 is reflective of Policies 3.11, 3.12 and 3.13 of the London Plan (LP). LP Policies 3.11 and 3.12 support the maximum reasonable amount of affordable housing being sought when negotiating on individual private residential schemes, having regard, amongst other matters, to affordable housing targets and the specific circumstances of individual sites including development viability. LP Policy 3.13 states that Boroughs should normally require affordable housing provision on a site which has capacity to provide 10 or more homes.
12. The Framework (paragraph 34) sets out that development plans should set out the contributions expected from development including the levels and types of affordable housing provision required. It goes on to state at paragraph 57

that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The Planning Practice Guidance (PPG) on viability has been revised and it states that the role for viability assessment is primarily at the plan making stage<sup>1</sup>.

13. At paragraph 62 the Framework states that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on site unless specific criteria is met. Paragraph 63 of the Framework states that where vacant buildings are being reused or redeveloped any affordable housing contribution should be reduced by a proportionate amount. It was agreed at the hearing that this reflected the vacant building credit introduced by the Government in 2014 and had not been applied in this case.
14. In relation to major development involving the provision of housing paragraph 64 of the Framework states that planning policies should expect at least 10% of the homes to be available for affordable home ownership as part of the overall affordable housing contribution from the site subject to criteria and exceptions.
15. The proposal would not provide any affordable housing within the site as the appellant considers that the scheme would not be viable with any level of affordable housing provision. The appellant submitted a viability assessment, undertaken by Affordable 106, (A106VA) as part of the planning application on the basis of 9 affordable dwellings, approximately 50% of the units, being provided on the site (6 affordable rent and 3 shared ownership).
16. That report considers that even without any affordable housing provision the proposal is not viable. The A106VA was independently reviewed for the Council by Adams Integra (AIVA) and a series of negotiations occurred between the appellant and the Council based on those reports before the planning application was determined. The Council considers that on the basis of 7 shared ownership and 2 affordable rent homes being provided on the site that the scheme would be viable.
17. The A106VA is based on the Argus Developer model and the AIVA on the HCA model and they both utilise the government's overall recommended approach to viability assessment for planning. The main areas of disagreement between the parties relate to the level of professional fees and contingencies, the market values, profit targets and benchmark land values contained within the A106VA and the AIVA.
18. The December 2017 A106VA contains a breakdown of professional fees and the value added tax (VAT) based on what has and would be attributable to the scheme. The net total fees that the appellant anticipates are £303,337 and the A106VA states that this equates to 9.4% of base build costs. The AIVA considers that a figure of 8% of building costs (£245,836) would be acceptable taking into account that it is a relatively small scheme and that VAT would be recoverable in the overall accounting of the business. There is little evidence to indicate that the breakdown of fees supplied within the A106VA is unrealistic. Nevertheless, part or all of the VAT included within the figures may well be capable of being offset or claimed back by the appellant. As such, it is

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<sup>1</sup> Paragraph: 002 Reference ID: 10-002-20180724

reasonable to consider that the actual professional fees attributable to the scheme would be at a level between 8% and 9.4% of the building costs.

19. In relation to contingencies the A106VA contains a 5% of build costs figure whilst the AIVA includes a figure of 4% of build costs. The Building Cost Information Service (BCIS) build cost figures do not include contingency costs. However, the PPG states that explicit reference to project contingency costs should be included in circumstances where scheme specific assessment is deemed necessary, with a justification for contingency relative to project risk and developers return<sup>2</sup>. The specific costs of the works required for the drainage strategy of the site is unknown until soil testing can be undertaken. The 5% contingency has been based on the advice of a Quantity Surveyor taking into account the risks associated with the scheme. As such, I consider that it is reasonable that a 5% contingency would be attributable to the proposal.
20. There is no dispute between the parties on the market values of the refurbished flats that have been included in the benchmark land value (BLV). However, there is dispute on the market values of the proposed apartments with the AIVA stating that the overall market value would be £7,097,250 and the A106VA £6,902,500. The figure in the A106VA is based on completed sale prices of apartments in the surrounding area from 2015 to 2017.
21. The evidence before me indicates that there has been a large amount of apartments come onto the property market within Croydon town centre through new build schemes and conversions of offices. I was told at the hearing that data received from the land registry indicates that from 2016 to 2018 that property prices within the Croydon area fell by approximately 1%. Nonetheless, the appeal site is not within Croydon town centre and there does not appear to have been a major down turn in property prices in the surrounding area.
22. The AIVA overall market value is based on asking prices for apartments in the surrounding area. Even though some of those apartments are indicated to be sold subject to contract the actual sales prices achieved for the apartments is not part of the evidence before me. In my experience, the asking prices for properties are generally higher than the actual sales prices achieved. Furthermore, the duplex nature of a number of the apartments means that they are larger in floor space terms than an equivalent single storey apartment. Taking into account, all of the above I consider that the market value contained within the A106VA is the most realistic.
23. The return to the developer or profit target has been set at slightly different levels in the 2 assessments. In the A106VA it is 20% on the gross development value (GDV) and in the AIVA it is 17.5% of GDV in relation to the market housing and 6% of the GDV in the A106VA on the affordable housing and 6% of the gross development costs (GDC) in the AIVA. It was agreed at the hearing that the differences in relation to the affordable housing profit targets are very small and make little difference to the overall calculations.
24. The market housing profit target should take account of the risks associated with the scheme, the individual characteristics of that scheme and comparable schemes. As stated above the risks associated with this scheme include the

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<sup>2</sup> Paragraph: 012 Reference ID: 10-012-20180724

unknowns attached to the drainage strategy that would be required on this site due to its increased flood risk. Nevertheless, the flood risk associated with the site and the wider Brighton Road area has not altered recently and a cautious approach has been adopted to this risk by applying the 5% contingency indicated above. The appellant stated at the hearing that 20% is the minimum profit target accepted by lenders in the current economic climate.

25. However, taking into account all of the above the individual circumstances of this site do not appear to promote an inherently higher risk level than comparable sites in the surrounding area. The Council stated at the hearing that a 17.5% profit margin has been utilised on other comparable sites within its area. The appellant also stated at the hearing that to deliver a scheme on this site the profit margin may need to be compromised. As a result, a profit return of 17.5% on this scheme would appear to be reasonable.
26. The BLV has been calculated utilising the existing use value (EUV) of the appeal site plus a premium for the landowner. The GDV used within the EUV calculation is not disputed between the parties. However, the costs and fees associated with site acquisition and refurbishment of the building and the profit margins for the developer are disputed. These disputes mean that the BLV within the A106VA is £1.288 million and £990,000 within the AIVA.
27. The costs associated with the refurbishment of the building and the existing flats within the A106VA are based on a quotation for the works from a contractor. Whereas the costs within the AIVA are based on BCIS figures for the refurbishment of flats. The quotation contains a number of provisional sums for sanitary ware, kitchens, floor finishes and ceramic tiling. These provisional sums could alter and appear to be set at a minimal level. Furthermore, the appellant could not explain why the provisional sums, on opposing pages of the quotation, for kitchens and sanitary ware did not correlate. The costs of refurbishment of £600 per m<sup>2</sup> contained within the AIVA are only slightly higher than the lowest BCIS figures for this type of project. As such, I consider that the costs associated with the refurbishment of the building would realistically be closer to the figure within the AIVA than the A106VA.
28. The AIVA BLV calculation includes the costs associated with site acquisition and the appellant considers that these should not be included as the EUV is based on the existing landowner selling the land to a developer. The refurbishment of the flats could be carried out by the existing landowner. The PPG states that the EUV is the value of the land in its existing use together with the right to implement any development for which there are policy compliant extant planning consents, including realistic deemed consents. As such, I do not consider that in this case the site acquisition costs should be included in the EUV.
29. The profit returns in relation to the GDV of the refurbishment of the flats are included within the EUV calculations. The A106VA sets it at 10% and the AIVA at 15%. The scheme for the EUV would be relatively small in that it relates to 4 dwellings, the construction period would be short in comparison to the proposed scheme and a drainage strategy is not required. However, there are risks involved in the scheme as there are unknowns in relation to the underlying condition of the building and the sale or renting of the flats would be

as market housing. As such, it is reasonable that the profit returns for the flat refurbishment should be 15%.

30. Consequently, it is likely that the BLV for this site would be closer to the £990,000 contained within the AIVA than the £1.28 million in the A106VA. As has been demonstrated here, the viability assessments do not represent precise science as the assumptions underpinning variables are open to interpretation. I have found that there are a number of areas where the figures contained within the A106VA are reasonable and in other areas the figures contained within the AIVA are more realistic.
31. Furthermore, the adoption of the CLP and the publication of the revised Framework and PPG on viability have all occurred since the planning application was submitted and determined. The A106VA has only appraised the provision of 9 affordable dwellings or 100% market housing. I acknowledge that the tenure split of affordable housing indicated within the AIVA would not meet that required by CLP Policy SP2 and that the costs associated with either of the UUs are not included in either of the assessments.
32. However, the viability appraisal undertaken as part of the recently adopted CLP found that a requirement for 30% on site affordable homes would be viable for the majority of sites in the borough and there is little evidence before me to indicate that the development of this site would not be broadly comparable to other sites within the borough.
33. As a result, even with the uplift in Community Infrastructure Levy payments that was highlighted at the hearing I do not consider that the evidence demonstrates that the scheme would necessarily be unviable with a level of affordable housing provided on the site that would meet the requirements of CLP Policy SP2. The one version of the UU does make provision for a late stage viability review to be undertaken. However, even if this UU was complete, the proposal would not provide the minimum level of affordable housing on the site as required by CLP Policy SP2. Taking into account all of the above, I consider that the proposal would not comply with CLP Policy SP2 and LP Policies 3.11, 3.12 and 3.13.
34. These policies pre-date the publication of the revised Framework. However, paragraph 213 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior the publication of the revised Framework. Taking into account this paragraph I consider that these policies are broadly consistent with the revised Framework. Consequently, the conflict with these policies has substantial weight.
35. The appellant has drawn my attention to appeal decisions<sup>3</sup> and developments that have been approved in the area. However, I do not have the full details of the circumstances that led to these proposals being accepted and so cannot be sure that they represent a direct parallel to the appeal proposal. Moreover, only the latest appeal decision has been determined after the adoption of the CLP and the publication of the revised Framework. In that case the Inspector found that, based on the evidence before her, that the scheme would not be viable were it to provide affordable housing. As such, it is not directly comparable to this appeal. In any case, I am required to determine the appeal on its own merits.

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<sup>3</sup> APP/L5240/W/15/3022134 – 8 February 2015 & APP/L5240/W/17/3190889 – 14 September 2018



### *Planning Obligation*

36. The copies of the 2 alternate UUs are not dated and as such are not complete. It is not for me to complete these documents and given my findings above I do not consider that it would be reasonable to delay this appeal any further by going back to the parties requiring the completed documents.
37. The one version of the UU relates to a late stage viability review, the submission of a local employment and training strategy and a number of measures in relation to carbon offsetting and financial contributions towards employment, training and air quality. The alternate version of the UU does not include the late stage viability review but contains all the other items. I acknowledge that the Inspector in the recent appeal decision<sup>4</sup> found that '*a viability review is not required by the development plan in this instance and thus it would not be necessary*'.
38. Nevertheless, given my findings on the other main issue there is no need for me to consider this matter or the remainder of the UUs further as a conclusion either way would not affect the overall decision. Furthermore, it was agreed at the hearing that any necessary highway works could be required through the imposition of planning conditions if I was minded to allow the appeal.

### *Other matters*

39. The Council have not objected to the proposed scheme in respect of its design or the amenity of neighbouring occupiers. However, these are neutral matters in the planning balance which therefore do not weigh in favour of the appeal proposal.
40. The proposal would utilise a brownfield site to increase housing supply in an accessible location. There would be economic and social benefits associated with the construction and occupation of the scheme. These are matters which significantly weigh in its favour. However, the proposal would not deliver development plan policy requirements for affordable housing and therefore the weight to be given to the social benefits would be limited in this respect.

### **Conclusion**

41. The lack of affordable housing provision on the site leads me to conclude that the proposal would conflict with the development plan as a whole. In accordance with S38(6) of the Planning and Compensation Act 2004 development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. I recognise that there are benefits, both socially and economically, associated with the proposed development. Nevertheless, there are no material considerations of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan.
42. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*D. Boffin*

INSPECTOR

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<sup>4</sup> APP/L5240/W/17/3190889 – 14 September 2018

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Spencer Copping	WS Planning and Architecture
Mr Sean Phillips	Affordable 106
Mr Justin Owens	Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Robert Naylor	Planning Officer
Mr David Coate	Adams Integra
Miss Julia Hurley	Croydon Council
Mr Adhnan Ahmed	Croydon Council

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 NPPF Flood Risk Assessment
- 2 Section 106 Planning Obligations in Croydon and their relationship to the Community Infrastructure Levy – Review 2017
- 3 A tracked changes and a complete copy of the draft Unilateral Undertaking

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

- 4 Two alternative versions of the Unilateral Undertaking
- 5 Community Infrastructure Levy Compliance Statement