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## Appeal Decision

Site visit made on 5 November 2019

**by Julia Gregory BSc(Hons) BTP MRTPI MCMI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 29 January 2020**

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**Appeal Ref: APP/L5240/W/19/3234942**

**28A-30 Chatsworth Road, Croydon CR0 1BN**

- 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 Mantle Developments Ltd against the decision of the Council of the London Borough of Croydon.
  - The application Ref 18/05336/FUL, dated 29 October 2018, was refused by notice dated 22 March 2019.
  - The development proposed is demolition of the existing houses and erection of a block of flats comprising 14no. flats together with cycle storage, amenity space, a refuse/recycling store, and landscaping.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The Council's decision notice contains four reasons for refusal. Reason for refusal No 3 alleges an inadequacy in the provision of affordable housing. Reason for refusal No 4 specifies an alleged inadequacy in the provision of a carbon off-set contribution, a low emissions strategy or a contribution towards the local air quality fund and lack of provision for car free development.
3. As part of the appeal the appellant has sought to overcome reasons for refusal No 3 and No 4. A S106 Unilateral Undertaking (UU) dated 5 November 2019 was initially submitted but this had various drafting inadequacies. Also, all those with an interest in the land were not party to it. I therefore attribute it limited weight.
4. The Council subsequently prepared another UU on behalf of the appellant. They were therefore content with its drafting and were satisfied that it would overcome their concerns regarding those matters covered in reasons for refusal No 3 and No 4, subject to the appropriate execution of the deed.
5. A further few days were allowed for the appellant to obtain signatures to the document. The later UU has been signed by the appellant, but not by Barclays Security Trustees Limited. Given that the UU has been dated 23 January 2020, in the absence of a necessary signature, I also attribute this second UU limited weight.

## **Main Issues**

6. The main issues are:

- whether the development would preserve or enhance the character or appearance of the Chatsworth Road Conservation Area (CA);
- the effect on the living conditions of the occupiers of No 28 and No 32 Chatsworth Road in respect of light and outlook;
- the adequacy of the provision for affordable housing;
- the adequacy of the provision of a carbon off-set contribution, or for a low emissions strategy or a contribution towards the local air quality fund; and
- the adequacy of provision for car free housing.

## **Reasons**

### *Conservation Area*

7. The block of flats would be located within Chatsworth Road CA. Chatsworth Road Conservation Area Appraisal and Management Plan and Conservation Areas General Guidance SPD (CA SPD) identifies that the character of the CA is predominantly defined as containing substantial groupings of late Victorian and Edwardian houses, many of which are of high architectural value and 15 of which are locally listed. It identifies the delicate and detailed architectural details of many of the buildings and the level of architectural cohesion and notable group value of buildings. The character and form of the area is largely unchanged from its original design and layout.
8. Chatsworth Road is the spine of the CA. There has been a fair amount of infill development and replacement buildings in Chatsworth Road which is identified as detracting from the special character on the east side of the road, predominantly to the south of Nos 28A and 30.
9. Although views along Chatsworth Road of the site are limited to relatively close by because of the regular building line, there are prominent important views up Beech House Road, which contains mainly positive unlisted or locally listed buildings, towards No 30. Prominent linear views from side roads towards Chatsworth Road properties add to the significance of the CA with Chatsworth Road being on higher land than roads to the west.
10. Threats to the CA are identified in the CA SPD. These include partial or total demolition of historic buildings, loss of historic or traditional style architectural features, architectural features and materials that detract from the areas character, and inappropriate new development.
11. The existing properties would be demolished. Although not listed or locally listed, the CA SPD identifies that No 28A and 30 are positive to the character and appearance of the CA. No 30 is agreed by the main parties to be the more important of the two buildings. It is an Arts and Crafts style building which is revealed at the end of Beech House Road, whereas No 28A was built at the end of the 1960's and has had subsequent alterations.
12. No 30 was built in the early years of the 20<sup>th</sup> century and was one of the early properties built in the CA with features characteristic of the Edwardian period.

The front gable with third floor curved parapet, the traditional fenestration with three paned bay window and the style and traditional materials of the roof, traditional materials elsewhere and traditional style porch canopy all lead to an idiosyncratic design, but one which is nonetheless a positive feature of the CA. That some of the features might not be original, and that they are not the best or most attractive examples of such features does not alter that they are characteristic, and, although modest in scale, are positive and part of the significance of the CA.

13. As part of the appeal the Council has accepted that the positive contribution of No 28A is limited. Nonetheless its scale, design of the roof and materials are generally sympathetic to the character of the CA, and the two buildings are conjoined, albeit that the linking is not of historic quality. They have most recently been occupied as a single care home, and they are effectively one property.
14. The overall scale and details of the appearance of No 28A and 30 in the street scene make them together a positive feature. Croydon Local Plan (LP) policy DM18.4 specifies that the demolition of a building that makes a positive contribution to the special character and appearance of the CA will be treated as substantial harm.
15. Turning now to the replacement building, there are various relevant development plan policies. LP policy DM18.1 specifies that development affecting heritage assets will only be permitted if their significance is preserved or enhanced.
16. LP policy DM18.2 requires development proposals that affect heritage assets to demonstrate how particular attention has been paid to scale, height, massing, historic building lines, the pattern of historic development, use, design, detailing and materials. It also requires a high quality design that integrates with and makes a positive contribution to the historic environment.
17. LP policy SP4 seeks high quality development informed by distinctive qualities of relevant places in Croydon. LP policy DM10 requires new development to respect the pattern, layout, siting, scale, height, massing, density, appearance, materials and built and natural features of the surrounding area.
18. London Plan policy 7.8 says that development should identify, value, conserve, restore, re-use and incorporate heritage assets, where appropriate. Development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail. London Plan policies 7.4 and 7.6 also require development which has regard to its context.
19. The replacement building would amount to a building of substantial scale. The front elevation would be symmetrical with two doors, one to bin store and one as front entrance. Nonetheless, the pairing of features and width of the corresponding two segments would be at odds with the narrower proportions of properties more generally in the area. The rhythm of bays would not be characteristic.
20. It would be three storeys with a large bulky crown roof, with a large element of flat roof that would be at odds with its two storey neighbours. Whilst there are many three storey buildings within the CA, the bulk of the third storey

crown roof and the massing of the third floor would be unsympathetic in its proportions to that of the historic rooms in the roof locally, contributed to by the depth of the building. The bulk of the building would reduce openness within the street scene by obscuring views that can currently be obtained to the side of the existing properties.

21. There are modern blocks of three storey buildings nearby, but these are all identified as unsympathetic detractors from the character and appearance and the significance of the heritage asset. Adding a further 3 storey block would leave No 28 as a detached two storey property between substantial 3 storey blocks, which would harm the appearance of the street frontage. The boundary treatment would all be new and so would take a substantial time to provide any screening.
22. The balconies on the front of the building would be stacked substantial canted bay projections, unlike the limited number of timber balcony features which are more akin to decorative features and which occur only rarely locally. The use of balconies could also lead to unsightly domestic paraphernalia clutter on the front elevation. UPVC windows and concrete roof tiles would not reflect the traditional timber and clay tiles used locally in the CA. In addition, there would be a false panel central to the two windows in gables on the third floor as this would be where rooms divide. The building would provide an ungainly excessively imposing conclusion to the view up Beech House Road.
23. Whilst there are various architectural details used in the design that reflect those found in the CA, the overall design would fail to preserve or enhance the character or appearance of the CA for the reasons already given.
24. I conclude that the block of flats would fail to preserve or enhance the character or appearance of the CA. This would be contrary LP policies SP4, DM10 and DM18, and London Plan policies 7.4, 7.6 and 7.8.
25. The National Planning Policy Framework (the Framework) identifies that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. I attribute the harm that I have identified great weight.
26. Where a development proposal would lead to substantial harm to the significance of a heritage asset, as has been identified here in relation to the criterion in LP policy 18.4, local authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply a) the nature of the heritage asset prevents all reasonable uses of the site; and b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d) the harm or loss is outweighed by the benefit of bringing the site back into use.
27. The CA SPD also specifies that the Council must be satisfied that the building is beyond economic repair and all possible re-uses and / or options for retention have been examined. The appellant argues that the retention and conversion of the building would be costly and would result in a building with

difficult internal spaces not fitting current standards. Nonetheless the tests given by the Framework and the SPD have not been comprehensively answered

28. Turning to public benefits. There are undoubtedly public benefits from the provision of 14 flats including a contribution towards affordable housing. This would contribute to the Council housing requirement for the provision of a minimum of 32,890 homes between 2016 to 2036. I attribute significant weight to the need for housing in London and nationally and the Government imperative to boost the supply of housing. I also acknowledge that there would be economic benefits arising from the construction which has some weight.
29. The public benefits would however be modest and would not be of a scale sufficient to outweigh the great weight that I have accorded the harm to the significance of the CA. The harm to the CA would be contrary to the development plan.

#### *Living conditions*

30. The two closest properties to either side would be No 28 and No 30 which are both residential properties. LP policy DM10 seeks to ensure that the amenity of the occupiers of adjoining buildings are protected including from overlooking, and loss of light. LP policy SP4 promotes high quality design. London Plan policy 7.6 also seeks to ensure that development does not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings including in relation to privacy and overlooking.
31. The Council and the neighbour are concerned about light to the north facing kitchen window in No 28. The development would project only slightly further towards southern boundary than the existing property in a part of the elevation near to a side kitchen window at No 28. Given that the side kitchen window is north facing and that much of the side elevation of the new building would be further away than what is existing there is unlikely to be a material loss of daylight and sunlight to this window which already faces directly onto the existing property at No 28a. In addition, according to the appellant, the window in question is not the only window serving the ground floor kitchen of No 28. Nonetheless, there would be a greater sense of enclosure because the existing building has a roof that slopes steeply away rather than a three-storey side elevation.
32. In respect of No 32, the proposed 3 storey building would project to the rear of No 32, close to where there are windows in the rear elevation. The building would be located to the south of No 32. The development would not intercept the 45-degree line taken from the rear elevation of No 32 adjacent to the boundary in plan form according to the Council. However, the development would intercept the 45-degree line taken from the ground floor window on the rear elevation of No 32 adjacent to the boundary in elevation form. Therefore, the development could result in a loss of daylight and sunlight to this living room window. No technical assessment of this has been provided by the appellant. There is a tree in the rear garden of No 32, which provides some shading but again no analysis has been provided of the overall impact of the development and the tree.
33. In these circumstances, I am not satisfied that living conditions would be protected as required by LP policy DM10 or that there would not be an impact

on residential amenity as required by London Plan policy 7.6. It would not therefore represent high quality design, and it would fail to comply with LP policy SP4.

#### *Affordable Housing*

34. Both the LP and the London Plan promote affordable housing. London Plan policy 3.11 sets targets for supply, policy 3.12 identifies what should be negotiated on individual schemes, and policy 3.13 sets the threshold. LP policy SP2.4 seeks the provision of affordable housing on all sites of 10 dwellings or more. LP policy SP2.5 specifies what is required, and viability tests.
35. The second UU makes provision for an affordable housing contribution of £80,315 to be paid to the Council prior to occupation. This reflects the viability of the scheme. The Council has drafted the provisions, including the review mechanism, which was missing from the earlier version, and so is content with what is contained within the UU. However, as the document has not been properly executed, securing the provision is in question, and therefore the reason for refusal has not been overcome. I conclude that the development makes inadequate provision for affordable housing, contrary to the provisions of the development plan.

#### *Carbon off set contribution*

36. The second UU makes provision for a Carbon Offset Contribution of £19,656. 50% would be paid before commencement of the development and 50% would be paid on practical completion. There is also the possibility of reduction in the contribution if a District Energy Scheme has been initiated by the Council. The provision would comply with the requirements of London Plan policy 5.2 in respect of off-setting the schemes remaining CO<sub>2</sub> contributions. This requires any shortfall to be provided off site or through a cash in lieu contribution to secure carbon dioxide saving elsewhere. It would also be consistent with the thrust of LP policy SP6 to minimise CO<sub>2</sub> emissions.
37. There is also provision in the same UU for a contribution of £1400 towards the Council's Air Quality Action Plan to be made prior to commencement of the development. This would comply with London Plan policy 7.14, and LP policies DM16 and DM23 which promote assessment and mitigation of air pollution.
38. Again, because of the inadequate execution of the UU enforceability is in question. I conclude therefore that the scheme makes inadequate provision for carbon off-setting and air quality mitigation, contrary to the development plan.

#### *Car free housing*

39. The second UU contains undertakings in respect of applications for parking permits to ensure that the development will not generate additional demand for parking within the controlled parking zone. This is compliant with LP policies SP8 which encourages car free development in areas of high accessibility, DM29 which promotes sustainable travel, and DM30 which seeks to reduce the impact of car parking in the context of London Plan parking strategy policy 6.13. Given the sustainable location of the site, which has an excellent level of accessibility and that two disabled spaces are proposed, car free housing is justified by the development plan.



40. For the same reasons given earlier, in respect of execution of the deed, enforceability of its provisions in respect of parking permits would be deficient and the development could therefore lead to additional congestion in the controlled parking zone.

### **Other matters**

41. That the second UU does not appear to make provision to supersede the first UU, and that there is no evidence about the remaining status of the original version adds to my concerns about the UUs.
42. The second UU contains a provision for a contribution of £6250 toward employment and training. There are also various provisions in respect of a local employment and training strategy that would be submitted and adhered to. Neither provision has been mentioned in the reasons for refusal or evidence from the Council and therefore I cannot be sure that they would be justified by the development plan or comply with the CIL Regulations and can be considered. Nonetheless, I acknowledge that these have the potential to amount to public benefits of the scheme. Even if added to the other public benefits identified earlier, they would not outweigh the harm to the CA.
43. Although I have attributed both UUs limited weight, I acknowledge that the last three main issues could have been resolved. Nonetheless, that does not overcome my concerns in respect of the first two main issues.

### **Conclusions**

44. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

*Julia Gregory*

Inspector