

## Appeal Decision

Site visit made on 14 May 2020

**by S M Holden BSc MSc CEng MICE CTPP FCIHT MRTPI**

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

**Decision date: 05 June 2020**

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**Appeal Ref: APP/Q3820/W/20/3245862**

**5 The Boulevard, Northgate, Crawley RH10 1UR**

- 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 Mark Powell of Robinson Kenning & Gallagher against the decision of Crawley Borough Council.
  - The application Ref CR/2019/0192/FUL, dated 12 March 2019, was refused by notice dated 29 July 2019.
  - The development proposed is two additional floors to existing 5 storey residential building to provide 4no 2 bed flats and side extension. Side extension to include circulation core to additional floors and also four additional floors of accommodation to provide 4no 1 bed flats. Access to new cycle parking and existing electrical sub-station is provided at ground floor level.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council's 4<sup>th</sup> reason for refusing the application related to its effect on two long distance views which are protected in the Crawley Borough Local Plan 2015-2030 (CBLP). However, in response to additional information submitted with the appeal the Council is satisfied that these views would not be unduly eroded. It has withdrawn its objection in relation to this matter and I have determined the appeal accordingly.
3. The Council's final (7<sup>th</sup>) reason for refusing the scheme related to the lack of a legal agreement to secure contributions towards affordable housing and tree planting. The appellant's appeal statement indicated a willingness to provide an obligation, but none was submitted with the appeal. However, the appellant's final comments sought to contend that provision of a contribution towards affordable housing is contrary to Government guidance and would render the scheme unviable. I will return to this matter later.

### Main Issues

4. The main issues are the effects of the proposal on the:
    - a) significance of heritage assets, including the settings of Grade II and Grade II\* listed buildings and the High Street Conservation Area;
    - b) character and appearance of the host property and the surrounding area;
    - c) living conditions of existing occupants of No 5, in relation to outlook, privacy and noise and disturbance;
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- d) living conditions of future occupants in relation to noise;
- e) provision of affordable housing.

## **Reasons**

### *Heritage*

5. The appeal site is occupied by a 5-storey modern office block, converted into flats, and its associated car park. It is located at the western end of The Boulevard where modern development meets the historic settlement of Crawley. It is adjacent to 'The Tree', a Grade II listed building, and not far from 'The Punch Bowl', a Grade II\* listed building, which also lies within the High Street Conservation Area. I therefore have a statutory duty to have special regard to the desirability of preserving the setting of these listed buildings. The National Planning Policy Framework (the Framework) states that heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance. It also advises that any harm or loss to a designated heritage asset should require clear and convincing justification.
6. The Tree, a two-storey building, is the oldest surviving medieval house in the High Street. Its significance derives from its rich historic and cultural interest associated with its age, traditional design, local materials, its previous and current uses and its incremental alteration over time. The Punch Bowl, also two-storeys, is a good example of a timber-framed Wealden Hall House and draws its significance from this and its location on the ribbon development that was the context of historic Crawley prior to the creation of the new town.
7. Both buildings are sited on the eastern side of the High Street on opposite sides of its junction with The Boulevard. The eastern side of the High Street has an open and spacious feel with wide grass verges and mature trees which are taller than either of the listed buildings. By contrast the western side of the High Street is enclosed and dominated by the distinctive, highly glazed modern building formerly occupied by Morrisons.
8. The setting of the listed buildings is therefore an eclectic mix of large modern buildings, a busy main road and a quieter side street predominantly characterised by smaller scale modern buildings, car parks and footways, separated and softened by grass verges and trees. The mature trees along The Boulevard and the High Street make a positive contribution to the setting of the listed buildings. Within their immediate surroundings, only No 5 is already taller and more visually prominent than either The Tree or The Punch Bowl. It is therefore already a dominant and somewhat discordant feature in the street scene. However, the street trees provide some screening of No 5 which mitigates the effect of its height with The Boulevard.
9. In this context, the addition of two extra storeys onto No 5 and the 5 and 7-storey side extension would significantly increase the prominence of the building. The additional height of the roof extension would be visible above the canopy of the trees. It would intrude into the setting of the listed buildings and increase the visual dominance of this already prominent building. This would harmfully erode the significance of this sensitive and small historic part of the town and would be particularly apparent during winter months when the trees are bare. The western elevation of the roof extension would be set back and the colour of the proposed materials would be less conspicuous than the

existing white elevations. However, these aspects of the design are insufficient to mitigate the harm I have identified, which would be less than substantial in terms of the Framework. However, this harm must be weighed against the public benefits of the proposal, as required by Paragraph 196, and is therefore a matter I will return to later.

10. The High Street Conservation Area (HSCA) derives its significance from its longstanding role as a north-south route since Norman times and the town's early development as a centre for work and trade. Its generous width contributes to a unique relationship between the buildings and the open spaces. This spaciousness also provides views to the surrounding built form and positively contributes to its setting. The additional height of No 5 would be seen from within the HSCA. However, in the context of the existing mix of buildings in the surrounding area, this change would be marginal. I therefore consider that the effect on the setting of the conservation area would be neutral.
11. I conclude that the proposal would fail to preserve the setting of the Grade II and Grade II\* Listed Buildings. It would conflict with Policies CH12, CH13 and CH15 of the CBLP, which require development to have regard to the significance of the Borough's heritage assets and protect their key features, including their settings. The scheme would also conflict with Policies CH2 and CH3 of the CBLP which require proposals to relate effectively to their surroundings having due regard to significant and distinctive features within them.

#### *Character and appearance*

12. No 5 is a 5-storey building with a simple rectangular footprint. It has predominantly white elevations with a strong vertical emphasis arising from its fenestration pattern. The side extension with its 5 and 7 storey elements would be large and bulky additions which would detract from the building's simple design and appearance. The introduction of balconies and wider windows on the eastern extension would provide a more horizontal emphasis to the design. This would help to distinguish between the two parts of the building. However, it would fail to integrate the extension with the key features of the existing structure, causing it to appear dominant and disproportionate.
13. The proposed roof extension would be set in from the western elevation and incorporate a roof garden on its southern side. The remainder would be almost flush with the existing elevations. However, its additional height, bulk and grey cladding would result in it appearing top heavy. The degree of set in would not alleviate the extension's scale or proportions. The proposed fenestration arrangement would not align with the existing distinctive window pattern. Consequently, the roof extension would fail to assimilate satisfactorily with the existing building. The enlarged building would appear incongruous and be more conspicuous from the surrounding area. Although the roof garden and trees lining the pedestrian entrance would soften the building's appearance to a limited degree, these positive aspects of the scheme would not mitigate the identified harm.
14. While there are taller buildings, such as The Platform, towards the eastern end of the Boulevard these are some distance from the appeal site. They are therefore not a justification for increasing the height of No 5 which is in an area where buildings of more modest heights predominate.

15. I therefore conclude that the proposal would be harmful to the character and appearance of the host property and its immediate surroundings, arising from its unacceptable height, scale, design and massing. It would fail to comply with Policies CH2 and CH3 of the CBLP, which requires development to integrate effectively with and relate sympathetically with the existing development and its surroundings.

*Living conditions*

16. There are two flats on each floor of the existing building that have windows looking out in an easterly direction. The ground floor flats look out on the existing parking; the flats on the upper floors have a more open outlook. The proposal would introduce a 7-storey building alongside the north-eastern corner of the building. The exiting car parking would be replaced by a line of trees with intervening planting that would be directly outside four windows of the ground floor flats. A little further to the east a new 5-storey block would be erected. The bedroom windows serving the flats on the north-eastern corner of the existing building would look directly out on this new building's flank wall with a separation distance of about 5m.
17. While the oblique angle of outlook towards The Boulevard would be largely unaffected, the outlook in all other directions would become more limited. The height, bulk and proximity of the new building would appear overbearing and introduce a significant sense of enclosure for the occupants of the flats on all five floors. This would be a particularly severe change for the occupiers of the ground floor flat who would also be enclosed by the introduction of trees so close to their windows. While the harmful effects would be slightly diminished for the occupants of flats on the upper floors, it would nevertheless, still amount to a profound change. I consider that this would give rise to unacceptable effects on the quality of life of the occupants of at least 5 of the existing flats.
18. My concerns are confirmed by reference to the Council's adopted Urban Design Supplementary Planning Document (SPD) which recommends a minimum distance of 10.5m between a side development and any windows serving habitable rooms within adjacent properties. The proposal would breach this recommended separation distance by a considerable margin.
19. The pedestrian entrance into the new flats would be alongside 2 of the existing ground floor flats. Consequently, the occupants would be likely to experience noise and disturbance from comings and goings from 8 additional flats. This would be more intrusive and disturbing than activities associated with cars parking adjacent to the existing building. Even with the proposed planting, there would be a loss of privacy for the occupants of these flats arising from the public nature of the entrance to the new apartment block.
20. The flats within the new building would have balconies on the southern elevation. Anyone using these balconies could look directly towards the east facing bedrooms in the existing flats, leading to a loss of privacy for the occupants. However, harmful overlooking could be prevented if the western sides of the balconies were enclosed by privacy screens. If the development was otherwise acceptable, this could be secured by the imposition of an appropriate condition.

21. Nevertheless, I conclude that the side extensions would harm the living conditions of existing occupants of No 5, due to its overbearing appearance and causing unacceptable losses of outlook and privacy, and noise and disturbance. This would be contrary to Policy CH3 of the CBLP which requires development to retain a good standard of amenity for all existing occupants of land and buildings.

### *Noise*

22. The appeal site's town centre location means that it is in close proximity to a number of activities that are sources of noise. These include the Rhythm night club (107 High Street), The Punch Bowl public house and the Royal Mail distribution depot. The night-time economy is focused on these and other licenced establishments in or near the High Street which customers disperse from in the early hours of the morning. This has the potential to cause sleep disturbance for residents who live nearby.
23. An acoustic report was provided with the application based on noise surveys initially undertaken in February 2019. Measurements were undertaken at roof level on the north-west (point A) and south-west (point B) corners of the building. These observations were repeated at point A in January 2020, principally to assess the effects of the operation of the night club on noise levels. The observed  $L_{Aeq(8 \text{ hour})}$  between 23.00-07.00 hours was 50dB at A and 59dB at B. Both fall within the Significant Observed Adverse Effect Level (SOAEL) of 45-63dB as defined by the World Health Organisation (WHO). This level of noise is considered to be noticeable and disruptive with potential for sleep disturbance.
24.  $L_{Amax}$  is also an important measurement when considering the effects of noise on sleep disturbance. These are reported for 5-minute periods and in February 2019 the highest  $L_{Amax}$  at A was 84dB (Friday) and 79dB (Saturday). When the survey was repeated in 2020 the noise levels were lower on Friday, at 71dB, but the same on Saturday, 79dB. While this suggests that the operation of the night club does not make the noise environment worse, it confirms that the area is noisy at night with significant and potentially disturbing peaks.
25. In view the recorded noise levels there is no dispute between the parties that mitigation measures are required to provide satisfactory living conditions within the flats. The acoustic report recommended that this could be achieved with the use of suitable external façade materials, appropriate glazing and trickle ventilation. In recognition of the southern part of the building being exposed to greater noise levels, thicker glazing would be required.
26. Having to keep windows closed and relying on mechanical ventilation to avoid sleep disturbance is not ideal. However, as this is a town centre location, future residents are likely to expect some level of noise disturbance. Although the Council indicated that existing residents have expressed concerns about noise, no details of the number or nature of complaints was provided with the appeal. Furthermore, I have no evidence to suggest that noise mitigation measures were incorporated into No 5 when the building was converted from office to residential use. It therefore seems to me that if mitigation measures were included in the design, thereby reducing the noise levels within the flats to acceptable levels, the risk of complaint is likely to be small. If the development had been acceptable in all other respects, this is a matter that could have been secured through the imposition of an appropriate condition.

27. I therefore conclude that, subject to suitable mitigation measures, the scheme would provide satisfactory living conditions for future occupants without exposing them to unacceptable levels of noise disturbance. The proposal would comply with Policies CH3 and ENV11 and of the CBLP which, among other things, require development to demonstrate that users will not be exposed to unacceptable noise disturbance from existing uses. As the evidence did not indicate that any specific town centre business would be constrained by the proposal, I find no conflict with Policy EC4 of the CBLP which primarily seeks to prevent conflict between residential and employment uses.

#### *Affordable housing*

28. Policy H4 of the CBLP states that all residential development is required to provide 40% affordable housing. The policy only allows for commuted sums on small sites of less than 5 dwellings or where there are exceptional circumstances. However, this approach is not consistent with the Government's Written Ministerial Statement (WMS) of 2014, now incorporated into the Framework, as Paragraph 63 states that affordable housing should not be sought for residential development that are not major developments.
29. Both parties have provided details of appeals<sup>1</sup> where Inspectors have reached differing conclusions on the justification for a contribution in the light of the WMS and the Framework. They will have reached their decisions having regard to the evidence before them. However, the weight to be attached to the WMS and the Framework as material considerations is a matter for the decision maker in each individual case.
30. From the evidence presented with this appeal it is apparent that there is an ongoing need for the provision of affordable housing in Crawley. Furthermore, a significant proportion of all housing within the borough is delivered through small developments. In these circumstances, I consider that the approach to affordable housing provision set out in the Framework is not a material consideration that outweighs the requirements of the development plan.
31. Policy H4 applies to all residential developments unless evidence demonstrates that the site cannot support its requirements from a viability perspective. The policy goes on to set out a series of cascading priorities that the Council will use to negotiate a level that the scheme can support. In this case, the appellant initially indicated a willingness to make a contribution through an appropriate planning obligation. However, instead of doing so, a viability assessment was submitted with the appeal that sought to demonstrate that such a contribution would render the scheme unviable. As this was presented late in the appeal process, no negotiations with the Council have taken place on its assumptions or findings. I therefore cannot be certain that the assessment represents a fair reflection of the developer's return and give it very limited weight in my consideration of the appeal proposal.
32. I therefore conclude that in the absence of a contribution towards affordable housing, the proposal conflicts with Policy H4 of the CBLP.

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<sup>1</sup> Referred to by appellant: APP/Q3820/W/18/3216038;  
Referred to by the Council: APP/Q3820/W/18/3194938, APP/Q3820/W/18/3201383, APP/Q3820/W/19/3221950, APP/Q3820/W/19/3224604 and APP/Q3820/W/19/3236572

## **Other Matters**

33. The development plan requires new residential development to plant at least one new tree for each dwelling in the interests of the Borough's character and appearance. The proposal included 6 trees; the appellant indicated a willingness to contribute towards the provision of 2 others. The contribution would be secured by means of a planning obligation. However, no completed agreement was submitted with the appeal.
34. Local residents raised additional concerns about the proposal, including loss of parking and noise and disturbance during construction. It is apparent from their submissions that a significant number of occupants of the existing flats work shifts making reliance on public transport to get to and from work difficult. Similarly, disturbance during construction for those working shifts would be more difficult to mitigate than might normally be the case.
35. However, as I have found the proposal to be unacceptable for other reasons, none of the above matters has been determinative and this case. It has therefore not been necessary for me to consider them further.

## **Conclusion**

36. The Government is seeking to significantly boost the supply of housing and there is no objection in principle to additional units of accommodation being provided on this site. There would be social and economic benefits associated with 8 flats. They would make a small contribution to housing supply in a location where there is excellent access to a range of services and facilities. Subject to conditions to mitigate the effect of noise, future occupants would have satisfactory living conditions. These are positive factors in the scheme's favour which attract modest weight.
37. However, I have concluded that the scheme would be harmful to heritage assets arising from its excessive height. This is a matter to which I am required to attach considerable weight and importance. The proposal would also fail to integrate satisfactorily with the existing building and harm the living conditions of its occupants. Furthermore, I have found that in the absence of a planning obligation to contribute towards the provision of affordable housing, the proposal would conflict with the development plan.
38. These cumulative harms and shortcomings of the scheme clearly outweigh the modest public benefits associated with the provision of 8 flats. This leads me to conclude that the proposal conflicts with the development plan as a whole and there are no other considerations that outweigh that conflict.
39. The appeal is therefore dismissed.

*Sheila Holden*

INSPECTOR