



---

## Appeal Decision

Hearing held on 16 and 17 November 2021

Site visit made on 17 November 2021

**by E Brownless BA (Hons) Solicitor (non-practising)**

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

**Decision date: 10/03/2022**

---

**Appeal Ref: APP/L5240/W/20/3266186**

**87 & 89 Foxley Lane, Purley, CR8 3HP**

- 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 London Borough of Croydon.
  - The application Ref: 20/02239/FUL, dated 22 May 2020, was refused by notice dated 13 October 2020.
  - The development proposed is described as 'demolition of two existing properties and erection of a block of flats comprising of 23 units and five houses to the rear of the site together with parking, bike and refuse/recycling storage'.
- 

### Decision

1. The appeal is dismissed.

### Applications for costs

2. At the hearing an application for costs was made by Mantle Developments Ltd against the London Borough of Croydon Council. This application is the subject of a separate decision.

### Preliminary Matters

3. The appeal site comprises Nos 87 and 89 Foxley Lane and I have therefore amended the address of the appeal site from that given on the application form as this referred solely to No 87. This concurs with my observations at the site visit and the details provided on the appeal form and the Council's decision notice.
4. Since the Council determined the application, a new version of the London Plan (LP) has been adopted in March 2021. The Council's decision notice refers to policies of the London Plan (2016). These have been superseded. The agreed statement of common ground (SOCG) confirms which LP policies are relevant to the determination of this appeal and I have therefore decided this appeal with regards to the LP and the Croydon Local Plan (2018)(CLP).
5. A revised National Planning Policy Framework (the Framework) was published on the 20 July 2021. The parties have been provided an opportunity to comment on the implications of this for their case and I have had regard to the Framework in reaching a decision.
6. The Council's decision notice included a number of reasons for refusal. Reason for refusal No. 9 concerned the provision of adequate site drainage

and cites the provision of insufficient information. The Lead Local Flood Authority (LLFA) had identified a discrepancy between the submitted calculations and drawings. The Council, LLFA and appellant agree that this could be overcome with an updated calculation and drawing to confirm the exact dimensions of the soakaway. The Council are satisfied that this matter can be overcome by an appropriately worded condition and as such the LLFA withdrew their standing objection to this reason for refusal. The Council confirmed that it no longer wished to contest this matter. On the basis of the information before me I see no reason to take a different view.

7. Additionally, the agreed SOCG confirmed that by reason of an updated energy statement and the s.106 planning agreement which provides for a carbon offset contribution to be confirmed, the Council no longer wished to contest reason for refusal No 8. Again, I see no reason to take a different view.
8. A revised plan, drawing number 6756-PL-500 Rev C, was submitted by the appellant at the hearing. This drawing remedied a defect in an earlier version (6756-PL-500 Rev B) by including the location of a tree to be retained as part of the appeal scheme. Given the very minor amendment to the plan I am satisfied that no party would be prejudiced by my consideration of this plan during the appeal.
9. An engrossed s.106 agreement was available and discussed at the hearing. However, an error was noted within the original and therefore a revised s.106 agreement with manuscript amendments was submitted after the hearing with my agreement.
10. The obligations in the legal agreement would secure financial contributions towards air quality, carbon off-set and affordable housing through early and late stage reviews, in the event of the viability position of the scheme improving. Any subsequent provision of affordable housing would be made in accordance with the affordable housing tenure split required by LP Policy H6 and the monitoring requirements of Policy H7. The agreement also requires a local employment and training strategy, restriction on parking permits, s278 agreement for works to the highway and the provision of a travel plan. The agreement is a material consideration in this appeal.

## **Main Issues**

11. The main issues are:-

- i) The effect of the proposed development on the character and appearance of the surrounding area;
- ii) whether the proposed development would preserve or enhance the setting of the Conservation Area;
- iii) whether the proposed development would provide adequate living conditions for future occupiers with regards to ventilation, passive heating, sunlight and level access;
- iv) whether the proposed development would make safe and adequate provision for pedestrians, vehicle and cycle parking, delivery and servicing vehicles;

- v) the effect of the proposed development on trees;
- vi) whether the proposed development makes adequate provision for refuse storage and collection; and
- vii) whether the proposed development accords with development plan policies for the provision of affordable housing.

## **Reasons**

### *Character and appearance*

12. Foxley Lane is predominantly characterised by large detached and semi-detached dwellinghouses, albeit there are several examples of large, flatted developments with substantial roof structures nearby, including Nos 114 and 85 Foxley Lane, which sit opposite and adjacent to the appeal site, respectively. Properties are varied in terms of their design, style and architecture and as a consequence there is little uniformity in their appearance. However, they are mainly set back from the highway with large front gardens comprising parking areas, access driveways and well-maintained lawns and mature landscaping. By reason of their set back position and mature established vegetation, the area has a pleasantly attractive, sylvan and spacious character.
13. The appeal site is comprised of a wide-fronted pair of two storey semi-detached dwellings that are set back from the highway in a slightly elevated position. Their plots are generously sized and well landscaped with mature trees and vegetation predominantly sited towards the edges of the site including a dense band along the site's rear boundary. To their front, each dwelling includes an access from the highway together with substantial hardstanding driveways and parking areas together with well-maintained landscaping including lawns, mature trees and shrubs. Overall, the appeal site makes a positive contribution to the verdant and spacious character of the surrounding area.
14. Whilst the appeal scheme would introduce a sizeable four-storey building, no concern has been raised by the Council with regards to the proposed height of the apartment building with the principle of buildings of a minimum height of three storeys being supported within CLP Policy DM10.1.
15. The appeal scheme would introduce a substantial sized building comprising some 23 units (the front block). The sides of the building would be inset from the common boundaries, and it would be set away from the highway which would respect the pattern of development along Foxley Lane. Whilst its proposed width, depth and height would be broadly consistent with No.85, it would appear out of place against the substantially narrower footprints of properties along Foxley Lane, which are also of a much smaller scale and height.
16. Although part of the building would be recessed, which would diminish its effect, it would not resolve the bulkiness of the building which would result as a consequence of the cumulative effect of its largely unrelieved width, height and depth which would be out of proportion with the vast majority of other buildings along this part of Foxley Lane.

17. The inclusion of features such as projecting gables, canted bay windows, a variety of recessed and projecting balconies, roof dormer windows and the sloping roof of the entrance would not relieve the effect of the continuous frontage nor the unrelenting length of the roof behind those features. To my mind, the front block would appear unduly bulky, imposing and uncharacteristic of the surrounding area such that it would fail to integrate successfully into the streetscene.
18. Reference is made to the proposed use of materials and features. Given that the surrounding townscape is varied in terms of the architectural styles that are present, features such as canted bay with stone surrounds, sliding sash windows, projecting gables and barge boards would not be out of keeping with the locality based upon my observations at the site visit. Whilst not commonplace, some balcony features do exist and overall, in the absence of a prevailing architectural style the proposed materials and features would not appear out of keeping with the surrounding area. Notwithstanding this, the use of the proposed materials and features would not overcome the harm I have described above.
19. Whilst areas of frontage parking are commonplace along Foxley Lane, the proposed frontage parking area would be greater in size and more formally arranged than at present. Notwithstanding that the scheme would reduce the number of vehicular access points to the highway from two to one, and the appeal scheme proposes the retention of many mature trees and additional landscaping, when having regard to the extent of built form proposed within the site, including substantial areas of hardstanding for access together with the proposed terraced row of two-storey houses to be constructed towards the rear of the appeal site, the appeal scheme would alter the site's character through a reduction in openness and the loss of garden space. The resultant individual plot sizes would be considerably smaller than those within the locality and the scheme would result in a significant adverse effect that would erode the verdant, spacious and open character of the appeal site to the detriment of the surrounding area.
20. Overall, I consider that the appeal scheme would fail to respect the character and appearance of the surrounding area and thus it fails to accord with CLP Policies SP4.1, SP4.2, DM10, and LP Policies D3 and D4. Among other things, these policies seek high quality development that enhances local context by delivering buildings and spaces that positively respond to local distinctiveness in terms of their layout, scale and appearance.

#### *Setting of the conservation area*

21. The rear boundary of the appeal site adjoins the Webb Estate and Upper Woodcote Conservation Area (CA). The area consists of large, detached dwellings of varied design that are set within generous landscaped plots. As a result, the area possesses a pleasant spacious, sylvan and tranquil character.
22. The Webb Estate is an early 20<sup>th</sup> century planned estate designed by William Webb following a 'Garden First' principle where the landscaping, in particular the specimen trees and other planting are the most important feature of the estate which takes priority over the buildings. Houses were not introduced for their architectural merit, but rather to show how any simple and restrained style of building may be made more attractive by Garden First

Methods, the estate being designed with the character of country lanes and English garden villages in mind.

23. A series of restrictive covenants were laid out by Webb to ensure the integrity of the Estate remained intact with the most important principles being encapsulated within the Webb Estate and Upper Woodcote Village Conservation Areas Appraisal and Management Plan SPD. In addition to the landscaping of the estate, the significance of the CA is derived from its historical links in terms of the UK's town planning and landscape history and its unique and relatively secluded tranquil character within the borough.
24. Although the properties of Foxley Lane comprise a more standard type of development where built form is denser and it abuts a heavily trafficked road; their massing, siting away from the highway and large plots with well landscaped rear gardens provide a complimentary setting to the CA and how the CA is experienced in this location. Therefore, I find that the appeal site makes a positive contribution to the significance of the heritage asset.
25. The introduction of substantial built form, particularly the terraced row which would be built in close proximity to the edge of the CA, would largely fill the width of the plot and it would create the impression of a scheme that is very tight on the site. Taken together with their small rear gardens, the proposed development would appear incongruous thus detracting from the 'garden first' principles of the estate.
26. There are only a few locations from where the development would be visible and, albeit intervening vegetation would mean that views would be of a partial nature, due to the considerable height and continuous width of the appeal scheme, its visual impact would be substantial. The visual experience of pedestrians walking along Rose Walk and the occupants of nearby dwellings would be negatively altered with a considerable amount of built form visible beyond the CA boundary. Whilst some mature trees would be retained along the rear boundary and additional planting would be implemented, the resultant band of vegetation would not, in my view, be particularly deep nor its potential to screen the development meaningful to mitigate the effect as the upper floors and roofs of the proposed dwellings would remain visible. The appeal scheme would be perceived as a dense and inharmonious addition and create a significantly more suburban character than is currently the case.
27. I accept that there is ongoing development nearby which will introduce built form in a location close to the edge of the CA. However, to my mind, this nearby development is not justification for additional change that would compromise the setting of the CA.
28. The appeal scheme would introduce a drastically more developed backdrop and it would significantly reduce the ability to appreciate the semi-rural 'country garden' character of the CA as, critically, it would extend built development towards it. Rather than preserving the experience it would introduce a poor and abrupt transition and result in the loss of sylvan and tranquil vistas from Rose Walk.
29. There would be a significant change to the setting of the CA and thus it would be harmful to the significance that I have identified. Overall, the proposed development would fail to preserve the setting of the conservation

area. Consequently, it would conflict with CLP Policy DM18 insofar as this policy seeks to preserve or enhance the significance of heritage assets and their setting.

30. I consider that the harm identified to the heritage asset would be less than substantial harm. The Framework requires that 'less than substantial harm' to the significance of heritage assets be assessed against any public benefit the development may bring. The contribution towards market housing would be a public benefit together with temporary economic benefits generated during the construction of the scheme and further economic benefits from the residential use and increased local spend.
31. Notwithstanding the public benefits of the scheme, paragraph 193 of the Framework makes it clear that great weight should be given to the asset's conservation, irrespective of whether the harm amounts to 'less than substantial harm' to its significance. Any harm to, or loss of, the significance of a heritage asset, including from development within its setting, should require clear and convincing justification. In this instance, the limited public benefits arising from the proposed scheme do not outweigh the harm to the heritage asset, to which I attach considerable importance and weight. The proposal would conflict with the aims of the Framework to conserve and enhance the historic environment.

#### *Living conditions*

32. CLP Policy SP2.8 requires new homes to achieve the minimum standards set out within the Mayor of London Housing Supplementary Planning Guidance (2016)(SPG). Standard 29 of the SPG states that development should minimise the number of single aspect dwellings. It goes on to state that single aspect dwellings that are north facing or those which contain three or more bedrooms should be avoided. LP Policy D6 has similar aims for housing quality and standards.
33. The supporting text to Standard 29 advises that a dual aspect dwelling is defined as a dwelling with openable windows on two external walls, which may be on opposite sides of a dwelling or on adjacent sides of a dwelling where the external walls of a dwelling wrap around the corner of a building. In light of this definition, I do not consider that the provision of windows within the roof structure would result in a dwelling being considered as dual aspect. Furthermore, the supporting text to Standard 29 specifically excludes bay windows from counting as dual aspect. Whilst several dwellings would be served by an opening within a recessed flank wall serving private balcony areas, I am not satisfied that these dwellings should be considered as dual aspect.
34. The appeal scheme would incorporate nine single aspect dwellings, approximately, including a number with three bedrooms or north facing. Whilst the SPG seeks to minimise the number of single aspect dwellings, it does not specify a level at which the proportion of dwellings will be considered to be unacceptable. Therefore a planning judgement will be required to assess this matter.
35. Where single aspect dwellings are to be provided, the SPG states that the design should address issues such as noise, insulation, ventilation and



daylight. Similar provision is made by LP Policy D6 which recognises<sup>1</sup> that single aspect dwellings are more difficult to ventilate naturally and are more likely to overheat. No concerns have been raised with regards to noise. However, no evidence in the form of daylight/sunlight surveys, overheating assessments or similar evidence has been put to me. In the absence of any substantive evidence and taking into account the orientation of single aspect dwellings towards the north, I find that a number of dwellings are likely to result in a lack of passive heating, ventilation and have inadequate access to sunlight, which would materially compromise the living conditions of future occupiers.

36. In addition, single aspect dwellings orientated to the south have the potential to experience overheating due to an absence of cross ventilation. There is no clear evidence before me to demonstrate the effect of shading from overhead balconies and I cannot be certain that cross ventilation would be sufficiently acceptable with the opening of rooflights. To my mind, the adverse impact of overheating is likely to result in significant discomfort for future occupiers.
37. The Council's fourth putative reason for refusal also sets out a concern that there is no level access to the front entrance of the front block. Discussion at the hearing concerned the inclusion of an orange coloured step shown on the elevational drawing. However, from my consideration of the submitted plans it would appear that the Council are mistaken. The appellant states access would be via a ramp and I have seen nothing on the plans to lead me to take a different view. Thus, I consider there would be adequate access to the apartment block, including for disabled persons, older people and families with young children as is required by LP Policy D7.
38. Despite there being no conflict with LP Policy D7 in terms of level access, taking everything into consideration, even if I were minded to accept that the appeal scheme had minimised, so far as possible, the number of single aspect dwellings, the inclusion of single aspect north facing dwellings and three bedroom dwellings, in the absence of any clear evidence to demonstrate acceptable living conditions for future occupants would be achieved, would conflict with the provisions of CLP Policies SP2.8, DM10 and LP Policy D6 together with the guidance of the SPG. Among other things, these policies and guidance seek to ensure satisfactory living conditions for future occupiers.
39. Reference is also made to the Suburban Design Guide SPD2 (2019) within the Council's reason for refusal. However, no specific conflict with this design guide has been brought to my attention and I therefore do not attach any weight to it in my overall consideration.

#### *Access for pedestrians and vehicles*

40. CLP Policies DM29 and DM30 seek to promote sustainable travel and reduce congestion and, in doing so, these require new development to promote measures to increase the use of public transport, cycling and walking. Proposals must not have a detrimental impact on highway safety for pedestrians, cyclists and private vehicles and ensure that movements of pedestrians and cyclists is not impeded by the provision of car parking.

---

<sup>1</sup> Paragraph

41. Notwithstanding the provision of a sizeable opening within the side wall of the proposed undercroft parking bay, and despite the additional evidence of the appellant's transport consultant, I am not satisfied that a vehicle emerging from this parking space would have adequate visibility.
42. The view would largely be at an oblique angle and any oncoming pedestrian, cyclist or vehicle would likely not be seen until the last moment which would compromise the ability to stop safely to avoid a collision. Similarly, I am not persuaded that those approaching the rear of the apartment building, on foot, by cycle or in a vehicle, would have satisfactory visibility of a vehicle emerging from this parking space.
43. In my view, the route adjacent to the apartment building provides the most convenient and quick route to exit and access the cycle store positioned at the rear of the block and therefore this is likely to be a frequently used route for cyclists and mobility scooter users. Whilst I accept that it is not the sole route for occupants of the appeal scheme to leave the site, I am not persuaded that the route through the front block, which would require several doors to be opened to pass through, would provide a quick and convenient route, particularly for those with mobility issues or those with children especially those using a pushchair or similar. Given that the access road is a surface for shared use with no designated footway, in my view, a manoeuvring vehicle would be likely to pose a harmful risk to passing pedestrians and cyclists and significantly prejudice their safety.
44. I note that the Council's original reason for refusal concerned the adequacy of the parking provision. However, the Council advised that they are content that this part of their reason for refusal had been overcome by the inclusion of an additional parking bay, the swept path analysis plans which demonstrate how the disabled parking bay will be accessed and issues of parking stress and the use of out dated census data. I see no reason to disagree.
45. Reference is made by the Council to the scheme's failure to demonstrate acceptable delivery and servicing plans. Setting aside matters concerning refuse storage and collection, which I have addressed separately in this decision letter, this matter would not, of itself, justify a refusal of planning permission. However, taking account of my findings with regards to the inadequacy of visibility arising from the use of the undercroft parking space, any indiscriminate vehicular parking in the vicinity of this area is likely to further impede the safety of occupants and visitors.
46. Overall, I conclude that the appeal scheme fails to demonstrate that the proposed parking arrangements would provide safe and adequate access for pedestrians, cyclists and other users of the site which would materially compromise highway safety. It would conflict with CLP Policies DM29 and DM30, the requirements of which are set out above.

### *Trees*

47. CLP Policy DM10.8 requires a proposal for development to retain existing trees. Although the appeal scheme has been designed to retain a number of the existing trees, the removal of several trees would be necessary to accommodate the proposed development. The appellant's Arboricultural Report indicates the removal of eight trees and a group of young saplings.



This includes two trees identified as being moderate quality Category B trees and six low quality Category C trees.

48. Several Category C trees are noted to be in a fair condition with decay present. Therefore, in the interests of good landscape management and maintenance, I find no harm would be caused by the removal of these trees.
49. CLP Policy DM10.8 goes on to state at point e), that in exceptional circumstances where the loss of mature trees is outweighed by the benefits of a development, those trees lost shall be replaced with new semi-mature trees of a commensurate species, scale and form.
50. There is no dispute that the appellant's tree replacement strategy is in principle acceptable to the Council. This point is confirmed with the SOCG and therefore the second part of Policy 10.8 e) is satisfied.
51. However, the Council's reason for refusal in this respect concerns the 'benefits' of the scheme and whether these outweigh the loss. The policy and its supporting text do not provide any further guidance on what could constitute a benefit and how this should be assessed. In the circumstances, in the absence of any clear guidance on the matter and noting that the purpose of Policy DM10.8 is to ensure a cohesive approach is taken to the design and management of the landscape, I take the view that benefits must be proportionate to what is being lost.
52. Of the remaining trees proposed to be removed, these are assessed as being a low to medium landscape value. Whilst several are positioned towards the rear boundary of the site where there is negligible visibility from Foxley Lane, as a group of trees they make an important contribution to the verdant setting, including that of the CA, and their value is not diminished by their position towards the rear boundary where there is limited public visibility. In addition, tree T4, a category B tree, is located towards the front boundary of the appeal site and is clearly visible from the highway. As a young specimen it would have the potential to mature over time and become more established and make a greater contribution to the landscape.
53. Taking account of the benefits of the scheme, which are outlined in the heritage section above, and are largely limited to the provision of additional housing and its associated benefits, I find that these benefits are limited and, in this instance, do not outweigh the loss of trees as proposed. Notwithstanding the tree replacement strategy being acceptable, there would result in a technical breach of CLP Policy DM10.8 and the loss of trees is not justified.
54. Thus, there would be conflict with CLP Policies DM10.8 and DM28 which require proposals to ensure a cohesive approach is taken to the design and management of the landscape including the retention of existing trees. It would also be inconsistent with Policies G1 and G7 of the LP which seek to protect green features and ensure existing trees of value are protected and retained.

### *Refuse*

55. Policy DM13 of the CLP specifically addresses refuse and recycling. In particular, it requires the provision of adequate space for the temporary storage of waste (including bulky waste) materials generated by the

development and requires a layout that ensures facilities are safe, conveniently located and easily accessible by occupants, operatives and their vehicles.

56. The submitted plans identify areas for the storage of waste materials for the proposed flats and houses, including bulky household waste. The SOCG confirms that the space provided for these facilities is adequately sized. Areas for the collection of waste are also proposed. Whilst the position of the collection points would result in a reduction of the landscaping along this part of the boundary, these would occupy a small area and as such would not unduly compromise the landscaping boundary.
57. Notwithstanding that a waste collection vehicle would be capable of egressing the site in a forward gear, there is dispute between the parties concerning the extent of the reversing distance. The Council's Waste and Recycling in Planning Policy Document (Aug 2015, edited Oct 2018)(WRPPD) provides guidance for the appropriate storage, collection and management of waste. It stipulates that a waste collection vehicle should not be required to reverse more than 12 metres<sup>2</sup>.
58. Whilst the straight-line reversing distance would not exceed the stated figure, it does not take into account the distance involved in the turning manoeuvre, which I am advised by the Council would result in a vehicle reversing an overall distance of 30 metres, approximately. As the appellant has not directed me to a specific provision of the WRPPD, or any other policy or guidance document which specifically excludes the distance of the turning circle, I am satisfied that the totality of the reversing distance including the turning manoeuvre should be included within this figure.
59. That being said, I am mindful that the WRPPD provides guidance and by their nature, guidelines have some degree of flexibility. Moreover, it is not an adopted planning document, nor is it listed as one of the key supporting documents to CLP Policy DM13.
60. The overarching technical considerations of CLP Policy DM13 are stated to be that refuse facilities are located in an area where they are easily accessible to all residents, including children and wheelchair users which includes the provision of a safe route together with the facilities being easily accessible for waste collectors.
61. Notwithstanding a technical breach of the distance set out in the WRPPD and the requirement for a raised pedestrian footpath, the reversing route would be reasonably straight beyond the turning manoeuvre and with reasonable visibility and an absence of parking bays. As such, I am satisfied that the proposed waste arrangements would provide a safe, convenient and accessible location for future occupiers of the proposed development and the waste collection operatives and their vehicles.
62. Reference is made to the distance from the presentation point to where the collection vehicle can safely stop. However, a distance of some 21 metres is only marginally in excess of the 20 metre guidelines of the WRPPD.

---

<sup>2</sup> Point 8.3 of the Waste and Recycling in Planning Policy Document (Aug 2015, edited Oct 2018)

63. Accordingly, I conclude that the appeal scheme makes adequate provision for refuse storage and collection. Thus, the proposed development would accord with CLP Policy DM13, the requirements of which are set out above.
64. The Council's reason for refusal also cites a conflict with CLP Policy DM30. However, this policy concerns car and cycle parking provision, which I have addressed elsewhere within this decision letter and therefore, for the purposes of determining this main issue, I find no specific conflict with this policy.

#### *Affordable housing*

65. The appellant's Viability Assessment (VA) establishes that the appeal scheme would not be capable of making any provision of on-site affordable housing or any financial contribution in lieu of affordable housing. The VA has been reviewed by the Council's independent viability consultant and the agreed SOCG confirms that it is not financially viable for the proposed scheme to provide either the full or minimum policy compliant levels of affordable housing. Consequently, there is no dispute that the appeal scheme would be unviable if affordable housing were to be provided and, on this basis, I consider that the VA must carry significant weight.
66. CLP Policy SP2 comprises a suite of policies that set out the need for, delivery of, and minimum levels of affordable housing including the provision of commuted sums. On sites of ten or more dwellings, CLP Policy SP2.4 states, among other things, that affordable housing of upto 50% will be sought, subject to viability, and it requires the minimum provision of affordable housing as set out in Policy SP2.5.
67. CLP Policy SP2.5 requires a minimum provision of affordable housing of 30% on site, or if this is not viable, a minimum level of 15% on site together with a Review Mechanism entered into for the remaining affordable housing upto a maximum of 50% overall provision through a commuted sum based on a review of actual sales values and build costs of completed units.
68. Notwithstanding the provision of a review mechanism within the s.106 agreement, by reason of the appeal scheme failing to achieve at least the minimum level of 15% affordable housing as envisaged by Policy SP2.5, the appeal scheme would conflict with the provisions of CLP Policy SP2. The approach within the CLP acknowledges that reduced contributions are acceptable when supported by a robust viability assessment. The Council's issue therefore concerns the scale of the reduction and not the principle together with the perceived deliverability of the scheme.
69. Paragraph 4.6 of the CLP 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. Despite this, it does not suggest that all schemes would fail to be delivered and the appellant confirmed this to be the case, citing the existence of a conditional contract for sale and the existence of other similar schemes where affordable housing provision of less than 15% has been provided. Notwithstanding the reference within paragraph 4.6, the policy does not direct that planning permission should be refused on the basis of deliverability. Similarly, there is nothing within the Framework which advocates such an approach.

70. In addition to the CLP, which was adopted in 2018, the appeal scheme is to be determined having regard to the policies of the more recently adopted LP. Policy H4 of the LP sets out a strategic target that 50% of all new homes to be provided should be genuinely affordable. In circumstances where an appeal scheme for major development of 10 or more units does not provide the threshold level of affordable housing at 35%, the Viability Tested Route (VTR) must be followed. The supporting text at paragraph 4.5.2 sets out that the VTR will assess the maximum level of affordable housing that a scheme can deliver in cases where the threshold level cannot be satisfied. In the appeal case, the maximum level of affordable housing is nil and there is no dispute that the scheme is unviable if it were to provide affordable housing. However, unlike the CLP which sets a minimum level of affordable housing that can be provided, LP Policy H5 has no similar provision, and the policy does not set a lower threshold for affordable housing or financial contribution beyond which a development will be refused.
71. The appeal proposal has been supported by detailed viability information which has been scrutinised by the Council. This satisfies the provisions of Part F 1) of LP Policy H5. In addition to viability scrutiny, the provision of early and late-stage reviews through the s.106 agreement satisfies Part F 2) of the policy. This approach ensures that affordable housing contribution is increased if viability improves over time and accords with the guidance of the Affordable Housing and Viability Supplementary Planning Guidance (2017)(SPG). Accordingly, on the basis of the evidence before me, I find that the appeal scheme accords with the provisions of LP Policy H4 and H5.
72. With regards to a minimum level of affordable housing, the policies of the CLP and the LP are not aligned and, the policies of the development plan clearly conflict with one another. The Council have failed to establish why CLP Policy SP2 should be preferred over policies H4 and H5 of the LP. Whilst I accept that viability assessments informed the CLP, paragraph 4.5.3 to LP Policy H5 explains that the thresholds set out within this policy have been informed by viability testing, are subject to monitoring and review, and the purpose of this approach seeks to embed affordable housing requirements into land values and create consistency and certainty across London. The SPG cites similar aims and explains the rationale for the 35% threshold. It states *'it is not a fixed level of affordable housing, but a threshold at which the approach to viability information changes. This means that schemes which cannot deliver the threshold can still gain permission where the lower level of affordable housing is fully justified through site-specific viability assessments. A single threshold ensures consistency and certainty across London while providing the flexibility to follow the Viability Tested Route where the threshold cannot be met'*.
73. There is no dispute that the provision of affordable housing is an important objective of planning policy at both local and national level. Whilst the appeal scheme would comply with some elements of CLP Policy SP2 in terms of the review mechanisms, the appeal scheme would not deliver the minimum affordable housing provision of 15% as set out within CLP Policies SP2.4(c) and SP2.5(c) and there would be a clear conflict with the development plan in this regard.
74. In circumstances where a policy contained in a development plan for an area conflicts with another policy of the development plan, s.38(5) of the Planning

and Compulsory Purchase Act 2004 requires the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.

75. In this instance, given that the LP was adopted most recently, I therefore attribute it significant weight in my overall consideration of this matter. The CLP is considerably older than the LP and as such I ascribe minimal weight to the conflict with the CLP. The conflict with CLP Policy SP2 is set against and, significantly outweighed by the scheme's compliance with LP Policies H4 and H5, together with the guidance of the SPG, which jointly enable consideration to be given to the viability of providing affordable housing with a view to maximising the delivery of affordable housing which is critical to meeting the needs of London's workforce and maintaining the function and resilience of the city.
76. Accordingly, on the basis of the evidence before me, I conclude that the appeal scheme would accord with the development plan, when taken as a whole, for the provision for affordable housing.

### **Other Matters**

77. Albeit the Council are presently able to demonstrate an adequate five-year supply of housing land, this does not provide a ceiling upon the level of housing provision and therefore the contribution of additional housing through open market dwellings upon a windfall site would be benefits of the appeal scheme. In addition, there would be support for the construction industry although this would be short-term. However, given the scale of the proposal, the benefits would be moderated by the modest number of dwellings that are proposed.
78. Whilst I have not referred in detail to the matters secured through the s.106 agreement, the matters secured therein, including financial contributions, are principally to mitigate the harms of the appeal scheme rather than being a benefit of the proposal.

### **Conclusion**

79. I have not found the appeal scheme to be in conflict with the development plan policies for the provision of affordable housing and refuse. The absence of harm is a neutral matter that weighs neither for nor against a proposal.
80. In this instance, when considered individually and cumulatively, I find that the benefits of the proposal do not overcome the significant weight that I attach to the harm identified to the character and appearance of the surrounding area, the heritage asset, trees, the living conditions of future occupiers and highway and pedestrian safety.
81. The proposed development is contrary to the development plan as a whole, and there are no material considerations, including the Framework, that indicate otherwise. For the reasons given above, I conclude that the appeal is dismissed.

*E Brownless*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Alan Gunne-Jones	Director, Planning & Development Associates Ltd
Ron Terry	Director, Howard:Fairbairn:MHK
Mark Smith	Principal Adviser, Affordable Housing 106 Limited
Lee Clemson	Director, Mantle Developments UK

### FOR THE LOCAL PLANNING AUTHORITY:

Samantha Dixon	Principal Planning Officer, London Borough of Croydon Council
Tim Edwards	Deputy Team Leader, London Borough of Croydon Council

## **DOCUMENTS**

- 1 Notification of hearing dated 7 October 2021 including list of persons notified of appeal
- 2 Statement of Common Ground (Signed and dated 15 November 2021)
- 3 Application for costs dated 15 November 2021
- 4 Croydon Air Quality Action Plan 2017-2022
- 5 Section 106 Planning Obligations in Croydon and their relationship to the Community Infrastructure Levy Review 2019 (November 2019)

## **PLANS**

- 1 Drawing Number 6756-PL-500 Rev C