



Appeal Decision

Site visit made on 16 March 2022

by **L Page BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th June 2022

Appeal Ref: APP/L5240/W/21/3281590 176 & 178 Orchard Way, Croydon CR0 7NN

- 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 David James of Blackthorn Homes Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/01635/FUL, dated 29 March 2021, was refused by notice dated 14 July 2021.
 - The development proposed is demolition of existing dwellings; erection of three pairs of two storey 3-bed semi-detached dwellings with roof accommodation and one pair of two storey 2-bed semi-detached dwellings with car parking; formation of accesses onto Sloane Walk together with a new pavement; and provision of cycle, refuse and recycling stores and soft landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant submitted new evidence under the appeal in relation to protected species surveys. The Council and other interested parties will have had an opportunity to comment, and the new evidence has been accepted on this basis.
3. The Council has confirmed that reasons for refusal relating to protected species and fire safety are no longer contested and the appeal has been considered accordingly.

Main Issues

4. The main issues are the effect of the proposal on the:
 - (a) character and appearance of the area including protected trees;
 - (b) biodiversity net gain;
 - (c) living conditions of neighbouring occupiers in relation to privacy; and
 - (d) highway matters, including safety and whether planning obligations are necessary.

Reasons

Character and Appearance

5. The site is located on the corner of Orchard Way and Sloane Walk and contains two detached bungalows, one of which is in a very poor state of repair and detracts from the otherwise well kempt appearance of the area. The bungalows front Orchard Way and have large front gardens with appreciable amounts of off street parking. The boundary of the site fronting Sloane Walk has a close board fence of significant length which does not contribute positively to the street scene or integrate well with neighbouring development. Altogether, there are opportunities to improve the appearance of the site and its integration with Sloane Walk.
6. The immediate area is predominantly residential in character and appearance, and includes Sloane Walk which comprises two and three storey dwellings with significant off street forecourt parking, Peter Kennedy Court which comprises two and three storey apartment buildings and Baron's Walk which comprises two storey terraced dwellings. Altogether, the area exhibits an appreciable mix of residential designs which create a degree of flexibility within which new development can come forward.
7. The proposal would deliver two storey semidetached dwellings of various bedroom configurations at the site. Dwellings at plots one through to six would comprise dormer windows in the roof space and would be of a design which generally conforms with other dwellings in the vicinity. However, dwellings at plots seven and eight would comprise an outrigger design at their frontage, which is markedly different in appearance compared to the design of the other proposed dwellings or other dwellings in the area more broadly.
8. Consequently, I acknowledge that there may be some flexibility in approach due to the appreciable mix of other dwelling designs in the area, but these are generally established in cohesive groups, and the almost unique nature of the outrigger configuration makes it appear isolated in design terms.
9. I note the appellant considers it reflective of the staggered form of some of the other grouped dwellings, but I disagree as here it would be a recognisable row of dwellings in which the outriggers would project forward in a way that would not integrate successfully with the local context. It would look stark and incongruous as a result.
10. Whilst it is appreciated that the site may have topographical constraints as well as protected trees, it is not clear how these would limit the use of more conventional designs to ensure that the dwellings at plots seven and eight retain an appropriate level of cohesiveness with the other dwellings proposed.
11. Furthermore, in my judgement, the isolated starkness in the appearance of the outrigger configuration would override any other shared characteristics relating to building line, choice, patterns and arrangement of fenestration, and the use of a consistent external materials palette.
12. There are protected trees on Peter Kennedy Court and these overhang the site to a degree, but there is no evidence demonstrating the overhang impinges on existing occupiers or that there is pressure for their pruning or removal, or that this would manifest under the proposal.

13. Furthermore, it is clear from the arboriculture reporting submitted by the appellant that the proposal's staggered siting of the dwellings would allow it to come forward without compromising root protection areas or canopy spreads.
14. A number of trees are identified for removal and pruning on site, but there is no evidence that these are important to the area. Indeed, the appellant has established that they are of low quality, and I am satisfied that their loss and pruning would have very little effect given the presence of more significant and protected trees that would remain along the northern boundary of the site, and any additional planting forthcoming under the proposal's landscaping scheme.
15. Whilst it may be the case that no confirmation of service or drainage routes have been provided with the proposal, I am mindful that this is typically a matter that can be subject to planning conditions. Consequently, in conjunction with tree protection measures, I am satisfied that the proposal could come forward without detriment to protected trees.
16. Off street forecourt parking is a clear design feature of the site at present, and of the dwellings directly adjacent at Sloane Walk. Furthermore, the proposal incorporates landscaping along its frontage, which is very similar in scope to the landscaping at Sloane Walk.
17. Whilst the nature of the site limits the potential location for parking, I am nonetheless satisfied that the position of parking to the front gardens and side of the outriggers, when coupled with the proposed landscaping, which could be secured by conditions, would not, in this case, be harmful to the character or the appearance of the area here.
18. Therefore, although the parking is focussed in one location, it would still comply with Croydon's Suburban Design Guide Supplementary Planning Document 2019, which seeks to limit the introduction of unacceptable levels of hardstanding to the detriment of the area.
19. Whilst there are opportunities to improve the site's integration with neighbouring development, by creating active frontages, among other things, and the proposal may otherwise be acceptable in relation to its effect on protected trees, the stark and incongruous nature of the outrigger design would generate overriding harm in my judgement.
20. Overall, the proposal would harm the character and appearance of the area and conflict with Policies D3 and D4 of the London Plan 2021 and Policies SP4.1, SP4.2, DM10.1 and DM10.7 of the Croydon Local Plan 2018, and Croydon's Suburban Design Guide Supplementary Planning Document 2019. Among other things, these require a design-led approach to determine the most appropriate form of development that responds to a site's context and capacity for growth.

Biodiversity Net Gain

21. It is clear from the evidence provided by the appellant, and consultation response from the Council's ecological consultant, that the preliminary ecological appraisal includes satisfactory enhancements for hedgehogs and nesting birds potentially using the site, green roofs, and rain gardens, among other things.

22. These enhancements, and others not provided but still advised by the Council's ecological consultant¹, can be adequately secured by planning conditions. Altogether, I am not persuaded that the Council's argument about lack of biodiversity enhancements is substantive.
23. However, I am mindful of the wording under Paragraph 179 (b) of the National Planning Policy Framework (the Framework) and guidance² which set out that biodiversity net gain should deliver measurable improvements. Guidance³ also sets out that suitable metrics should be used to demonstrate whether or not biodiversity net gain would be achieved, and the proposal fails in this respect.
24. Overall, the proposal would indicatively provide biodiversity enhancements and avoid conflict with Policies G6 and G7 of the London Plan 2021 and Policies DM10.8, SP7, DM27 and DM28 of the Croydon Local Plan 2018. Among other things, these policies seek to incorporate biodiversity within and on buildings in the form of green roofs, green walls or equivalent measures.
25. However, without a suitable metric calculation, I cannot reasonably conclude that measurable biodiversity net gain would be achieved by the proposal, and it would therefore conflict with Paragraph 179 (b) of the Framework, which is a material consideration indicating that a decision on this main issue should be taken otherwise than in accordance with the development plan.

Living Conditions of Neighbouring Occupiers

26. The dwellings proposed would front Sloane Walk and this would create an active frontage with the existing dwellings directly opposite. The Council's Suburban Design Guide Supplementary Planning Document 2019 sets out that front to front separation distances should be no less than the height of the proposal's frontage and there are plans to demonstrate that this would be achieved under the proposal. Furthermore, the National Model Design Code Part 2 Guidance Notes 2021 sets out that there would not normally be a privacy distance at the front of a dwelling.
27. In my judgement, whilst I acknowledge the views of the Council and other interested parties, without substantive evidence clearly demonstrating that front to front separation distances should not be applied, I cannot conclude that harmful overlooking of neighbouring dwellings is likely to occur. Accordingly, it is not clear a survey of the rooms in the existing dwellings along Sloane Walk would be necessary.
28. Overall, based on the current evidence, the proposal would not harm the living conditions of neighbouring occupiers in relation to privacy. Accordingly, the proposal would comply with Policies D3 and D4 of the London Plan 2021 and Policies SP4.2 and DM10.6 of the Croydon Local Plan 2018, and Croydon's Suburban Design Guide Supplementary Planning Document 2019 and the National Model Design Code Part 2 Guidance Notes 2021. Among other things, these seek to protect against direct overlooking at close range and at habitable rooms in main rear or private elevations.

¹ Such as greater inclusion of native and wildlife friendly species within the planting scheme

² Planning Practice Guidance: Paragraph 022 Reference ID: 8-022-20190721

³ Planning Practice Guidance: Paragraph 025 Reference ID: 8-025-20190721

Highway Safety

29. There was an appreciable number of cars parked along Sloane Walk during my site visit. It would appear from evidence that parking stress in the area is around 71% on average. This level of parking stress includes likely displacement of parking along Sloane Walk resultant from the proposal and would be below the threshold for saturated conditions which is generally taken to be 85%.
30. The minimum likely demand for off street parking has been calculated using car ownership levels taken from the latest census data and equates to ten spaces. The site is located in an area with a Public Transport Accessibility Levels (PTAL) rating of 1a. Therefore, it is regarded as having poor accessibility to public transport and this has informed the maximum level of off street parking provided by the proposal, equating to twelve spaces.
31. Altogether, the level of off street parking provision would satisfy the minimum and maximum requirements. This would avoid indiscriminate parking along the local highway network and would not increase the existing level of parking stress, which would stay below the threshold for saturated conditions.
32. In terms of the reliability of survey data, I am satisfied that due to the coronavirus restrictions in place at the time, the parking stress represents the potential worst case scenario. Furthermore, it would appear the survey data includes one other committed development, and there is limited evidence from the Council demonstrating that there are serious omissions in terms of other commitments.
33. Even taking the position of the Council and accepting that parking stress within the area may be slightly higher than what the survey data suggests, it would still be below saturated conditions. Consequently, I am satisfied that the proposal would provide sufficient off street parking to mitigate undue stress and highway safety risks.
34. The trip generation forecast suggests the proposal would give rise to four additional vehicle movements in the am peak, five in the pm peak and two over a twelve hour period. These are insignificant numbers of additional vehicles and there is no evidence that the existing highway network is at capacity or that the proposal would generate harmful congestion.
35. Whilst I acknowledge the Council's contentions about the position of the car parking crossover of the dwelling at plot one, and the spacing between crossovers, they have not provided any substantive evidence as part of their submissions demonstrating that the proposal is contrary to accepted policy or guidance.
36. For example, they have not submitted the dropped kerb policy document referred to in their appeal statement. Nonetheless, the matter of the crossover being within 10m of the corner is addressed by the appellant and I cannot reasonably conclude that the proposal would be harmful in this respect or that the effective enforcement of double yellow parking restrictions would not be sufficient to ensure the safety of the junction.

37. A new footpath would be introduced at the site's frontage. This would improve pedestrian safety for future occupiers versus the existing situation and link into the wider footpath network on Orchard Way. However, it would not serve the entirety of Sloane Walk and any wider public benefits would be limited in this context.
38. Based on my findings above, I cannot conclude that a planning obligation comprising a financial contribution would be necessary to make the proposal acceptable in planning terms.
39. This is because there would be no harmful levels of traffic generation or congestion to alleviate, and pedestrian links are being provided for future occupiers to offer alternative modes of travel. There is no persuasive reasoning provided by the Council that other forms of sustainable transport contributions are also necessary to make the development acceptable in planning terms.
40. Furthermore, there is limited evidence that the planning obligations are directly related to the development or fairly related in scale and kind. For example, among other things, it is not clear where the £1500 per unit is derived from and on what schemes it would be spent.
41. Consequently, in this particular case there is insufficient justification that such a planning obligation would pass the tests under Paragraph 57 of the Framework. Whilst I note the Council has cited another appeal⁴ dealing with similar issues, I do not have details of the evidence presented to support the compliance with the relevant tests in that case.
42. Overall, the proposal would have an acceptable effect on highway safety and planning obligations would not be necessary. Consequently, the proposal would accord with Policies T4, T5, T6, T6.1 and T9 of the London Plan 2021 and Policies SP8.3, DM29 and DM30 of the Croydon Local Plan 2018. Among other things, these seek to ensure proposals promote sustainable transport options for future occupiers.

Other Matters

43. I acknowledge the appellant has engaged in pre application discussions about the proposal, but I am mindful of guidance⁵ which states that any subsequent advice provided by the Council cannot pre-empt the democratic decision making process or a particular outcome, in the event that a formal planning application is made.
44. The principle of development is not disputed by the Council and Paragraph 69 of the Framework sets out that small sites can make an important contribution to meeting housing requirements.
45. However, there is no evidence that the Council is currently lacking in the delivery of such sites within this particular area. Furthermore, Paragraph 119 of the Framework promotes the efficient use of land. However, this should not be at the expense of safeguarding and improving the environment.

⁴ APP/L5240/W/20/3265390

⁵ Planning Practice Guidance: Paragraph: 011 Reference ID: 20-011-20140306

46. A planning application⁶ for an alternative proposal has been submitted to the Council, but it has not been determined and is not a material consideration for the purposes of this appeal, which has been considered on its own merits.

Conclusion

47. Whilst the proposal would be acceptable in relation to effects on the living conditions of neighbouring occupiers and highway safety, it would harm the character and appearance of the area and would not provide measurable biodiversity net gains. Consequently, it is in conflict with the development plan as a whole and the Framework. Accordingly, for the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR

⁶ 21/06038/FUL