



Appeal Decision

Site visit made on 13 July 2022

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2022

Appeal Ref: APP/L5240/W/21/3278893
57-59 South End, Croydon CR0 1BF

- 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 Warrant Investments PLC against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/00406/FUL, dated 28 January 2021, was refused by notice dated 17 May 2021.
 - The development proposed is a five-storey building to provide ground floor commercial unit together with 9no. one, two and three-bedroom upper floor apartments following demolition of existing building.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant submitted revised drawings with the appeal. These include design amendments to swap the position of the residential bin store from the back of the building to the front, and the bike store from the front of the building to the back; as well as amendments inside the bike store.
 3. It is only appropriate to take amended plans into account if no party would be disadvantaged. In *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* [1982] JPL 37, it was held that the main criterion is whether the development proposed is so changed by such amendments that to grant permission would be to deprive those who should have been consulted of the opportunity of such consultation.
 4. The adjoining building, 61 South End, has a café at ground floor. Its frontage folds back to allow customers to take advantage of the street scene while eating or drinking. In my view, the amended ground floor plan, with the bin store and access to it adjacent to the front of 61 South End rather than at the back, is a significant amendment. I also note that the elevations of the proposed building have not been amended to accommodate these revisions. The Council has relied on its delegated report on the original layout, which did not encompass these changes. Moreover, consultees and third parties who have been notified may not have been conscious of these revisions.
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5. In these circumstances, I cannot be sure that neighbours would not be disadvantaged. Thus, mindful of the Inspectorate's published guidance¹ which indicates that the appeal process should not be used to evolve a scheme, and in accordance with the principles in *Wheatcroft*, I shall come to my decision on the plans determined by the Council, and not take the ground floor amendment into account.

Main Issues

6. The main issues are the effect of the development on:

- the appearance of the area;
- the living conditions of future occupiers with particular regard to daylight, aspect, and private amenity space; and,

whether the proposed development would provide:

- an appropriate proportion of 3-bedroom flats;
- appropriate refuse facilities;
- appropriate cycle storage;
- the required measures to reduce car dependency and improve the highway; and,
- its effect on the living conditions of the occupiers of 61 South End, with particular regard to daylight and outlook.

Reasons

The appearance of the area

7. Lines: I can see no incompatibility from the advance of the front building line to the back edge of footway. The front line of the building would be similar to others in the street; there appears historical precedent for it, and there is no reason or logic in terms of enclosure or townscape to hold on to the present line, which appears to have developed from the siting of a petrol station here.
8. Height and mass: The Council accepts that some additional height on the corner could be acceptable if wider design concerns were improved. I agree that the present height of the building is anomalous now in the street scene. However, because of the additional mass of the fifth storey, the proposed building would overpower the order and balance of the three and four storey buildings which characterise the terrace of which it is part, and whose heights rise and fall incrementally within that range.
9. I appreciate that to the other side of this proposal, a small part of the building 51-55 South End, which is part of a 3-storey terrace, actually rises higher than this proposal. However, its high point is small in footprint, and it appears as a utilitarian enclosure rather than a floor of accommodation. Moreover, these two buildings, Nos 51-55 and the appeal proposal, would be separated by the clear space above the alley between them. They would be adjacent; but they would not be adjoining. The bearing of this anomalous peak of mass at Nos

¹ Annexe M; Procedural Guide to Planning Appeals – England; The Planning Inspectorate; February 2022

51-55 on the appeal site and the street is not so strong that it suggests a shift in the architectural character of building heights in this section of the street to five storeys.

10. While there is an attractive variety in the detailing and materials of the buildings in this section, the architectural distinctiveness of their enclosure turns equally on the consistency of building heights and the manipulation of mass running across them, which varies in this section, generally, between three and four storeys. In this height sensitive context, the additional mass of the fifth storey of this proposal would undermine the attractiveness of the street.
11. Form and detailing: I am not convinced that the splayed corner proposed is a positive building form beside this alleyway. I acknowledge that the buildings framing Spices Yard further up South End turn their corners with splays. However, they lead to what is or was a street, whereas here the turn would lead to a side alley, which in turn leads to a back alley. The buildings on the corner of Aberdeen Road and South End are splayed, but they form a framing pair beside a busy junction rather than a single gesture beside a service alley, as in this case.
12. I acknowledge the intention, above ground, to model the frontage with a stepping front line. This could ground the building in two or three sections, which would respond to the plot-width pattern of development in the terrace. However, the arrangement of openings, their proportions and the solid:void ratios across the front elevation appear overly vertical or squeezed in the horizontal aspect of the building.
13. I note that the building would use two bricks and some precast detailing, like many of its neighbours. The drawings suggest opportunities for a richness in the townscape detailing of the proposal to match the attentive elegance in the detailing of its neighbours. However, there is no evidence of their exploitation in the design of this proposal. I have noted the photographs of beautifully detailed buildings shown in the design statement. However, photographs of completed buildings only show an aspiration to match the quality of the efforts of others. Aspirations can change. While the intention they reveal by their inclusion is reassuring, they do not actually demonstrate how such quality detailing would be realized in this proposal.
14. Given the close attention paid to architectural detailing demonstrated in so many of the surrounding buildings, the importance of this aspect to the townscape of the street, and the articulation, layering, different materials and numerous junctions in the front elevation of this proposal, the architectural quality in the detailing of this building needs to be resolved before permission, rather than being relegated to a condition to be met afterwards.
15. The National Planning Policy Framework (the Framework) indicates that decisions should ensure that developments are visually attractive as a result of

good architecture, are sympathetic to local character, and maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit. The proposed building would fall well short of this mark.

16. For these reasons, I conclude that the proposed building would harm the appearance of the area. It would conflict with policy DM10 of the Croydon Local Plan 2018 (CLP) which requires proposals to respect the development pattern, scale, and height of the surrounding area. While London Plan 2021 (LP) policy D8, which concerns the public realm, is less relevant to this issue, the proposed development would conflict with LP policies D3 and D4 which require development to enhance local context by responding to local distinctiveness through scale, shape and appearance and which seek to secure design quality by ensuring maximum detail appropriate for the design stage.

The living conditions of future occupiers

17. Daylight and aspect: LP policy D6 requires development to provide sufficient daylight and sunlight that is appropriate for its context, to maximise the number of dual aspect dwellings, and to normally avoid the provision of single aspect dwellings. It permits single aspect dwellings where it is considered a more appropriate design solution to optimise site capacity through the design led approach advocated in LP policy D3, and it can be demonstrated that it will have adequate passive ventilation, daylight and privacy, and avoid overheating. The four 1-bedroom flats and one of the 2-bedroom flats would have single aspects; either onto the back alleyway or onto the street below.
18. The number and size of the windows to the single aspect flats would be sufficient to provide good levels of daylight and access to sunlight. I have also taken into account that they would be at first floor or higher, with aspects directly east or west. This would avoid the permanent gloominess of a north aspect. I also understand how a small urban site of this depth, with three exposed sides, presents particular constraints for aspect if the core is to be sited in the most efficient position, in space planning terms.
19. However, it is clear that an alternative layout which more successfully avoids single aspect flats could be achieved, while still working around the constraint of the block footprint. This is especially important here as the flats with aspects solely onto the front elevation may struggle to prevent overheating while managing the risk of disturbance from the noise in the busy street below. In any event, it has not been demonstrated that the single aspect flats would have adequate passive ventilation, and avoid overheating, as LP policy D6 requires.
20. I appreciate that the adjoining development may have single aspect units. However, it does not have the advantage of this site which is free at one end. Nor, it appears, has it involved the development of a new building as in this case.
21. For the reasons above, though the flats would have satisfactory levels of daylight, access to sunlight, and privacy, the single aspect flats would not

- provide an acceptable standard of accommodation for future occupiers, placing the development in conflict with LP policy D6.
22. Private amenity space: CLP policy DM10.4 and LP policy D6 require a minimum of 5m² of private outdoor space for dwellings up to 2 people and 1m² per additional occupant. LP policy D6 also requires a minimum depth of 1.5m to balconies. The balconies of three of the flats would not meet the minimum area, and of these, the balcony in the 2-bedroom flat would be accessed only through a bedroom. It is also unclear if the depths of all the balconies would meet the minimum dimension.
23. I appreciate that there would be a communal roof terrace. However, this does not substitute for a private outdoor space that is of sufficient size to be useable. I conclude on this issue that the proposed development, because of insufficient private amenity space provision, would not provide acceptable living conditions for future occupiers. This places the development in conflict with LP policy D6 and CLP policy DM10.4.

Proportion of 3-bedroom flats

24. Of the 9 flats in the development, only one, or 11% of the total, would be 3-bedroom. This proportion falls short of the strategic target set in CLP policy SP2.7 for 30% of all new homes up to 2036 to have 3 or more bedrooms. It would also fall short of the guideline target of 45% set out in the Planning Framework² (OAPF) which guides development in this area.
25. I recognise that the CLP target is a strategic one. I acknowledge too that the OAPF promotes flexibility in land use, planning and design requirements (paragraph 9.6). It also describes the target as a starting point, and it accepts (paragraph 4.48) that some sites will deliver a greater proportion of 3-bed+ homes than others.
26. However, the guidance says that the proportion should be informed by factors including site context, site history, design potential, and building height. There is no substantive evidence specific to this site and this building against these criteria to justify the shortfall. I appreciate that a block of flats may not lend itself as easily to provide 3-bedroom flats as a scheme incorporating houses. However, that is not sufficient reason to justify missing the target. Nor is there any evidence to suggest that the Council is already on track to meeting its overall target of 3-bedroom homes, which might have justified a lower proportion.
27. I note that LP policy D3 encourages development to make the best use of land by optimising the capacity of sites. However, optimising is not the same as maximising. I understand that a greater proportion of 3-bedroom homes may result in fewer new homes overall. However, there is no evidence that the incorporation of a greater proportion of 3-bedroom homes would not result in

² Croydon Opportunity Area Planning Framework Supplementary Planning Document 2013

the most appropriate form and land use on this site which is how the London Plan defines optimising.

28. I acknowledge that the proposal would, in addition to the single 3-bedroom unit, bring a mix of 1-bedroom and 2-bedroom flats. These would provide choice and a mix of tenures to the community, though not as much as with the policy compliant mix of unit sizes, as sought by the Council. I note the scheme referred to which did not provide 3-bedroom flats. However, without the details of that permission and the reasoning behind its conclusion, I cannot be sure that there are parallels to draw to this proposal, which I have considered on its own merits.
29. In these circumstances, and without any meaningful justification to depart from the target, I am unable to conclude other than that the proposed development would not provide an appropriate proportion of 3-bedroom flats. It would, in this respect, conflict with CLP policy SP2.7.

Refuse facilities

30. CLP policy DM13 requires that refuse and recycling facilities are integrated within the building envelope, conveniently located, and easily accessible by operatives and their vehicles.
31. Residential: I appreciate that the residential bin store would be a few metres more than the 20m that the Council considers the maximum distance its operatives should have to push bins. However, given the particular constraints of this corner site, it is important, in helping to avoid the fear of crime, to maximise natural surveillance from active frontages. It is also important that bike stores are conveniently located, and that the frontage of a building on a busy, commercial street is able to contribute to the street scene and not be dominated by a utilitarian functional requirement. In this respect, and given the marginal additional distance over the Council's ideal, the proposed site of the bin store at the back of the building is not unreasonable.
32. The Council has not referred to any detailed guidelines which the design of bin stores should meet. Without any reference to published, accepted guidance, there is no evidence that the proposed bin store would provide insufficient storage space. On the evidence before me, I can see no conflict with the proposed residential bin store and the development plan.
33. Commercial: While I saw that the commercial unit presently has a refuse store accessed from the side alley, there is no indication of where the commercial waste in the proposed development would be stored, the size of the store, or its access. The location of the commercial bin store on this constrained site is too important to leave to a planning condition. It should be resolved before an application is determined. For this reason, I can only conclude that the proposed development would not provide appropriate refuse storage, placing it in conflict with CLP policy DM13.

Cycle storage

34. Residential: The number of bike spaces proposed would meet the parking standards in policy T5 of the London Plan, to which CLP policy DM30 defers. However, the means of storage would be exclusively a vertical system. This may not suit all users of the store, including those using tricycles or adapted cycles. This would not meet the objective of policy T5 to remove barriers to cycling and to create the environment in which people choose to cycle.
35. The Council has identified a risk of conflict between people pushing their bikes out of the store and people passing along the busy footway, and suggests siting the store to the back of the building. I appreciate that the entrance would be almost on the back edge of footway line. However, bringing a bike through a doorway is not a speedy manoeuvre, and it demands a high degree of awareness of one's immediate surroundings.
36. Given this, and the breadth of the footway which widens in front of the proposed building, subject to the door width and operating mechanism being suitable, I do not consider there would be a material risk of conflict between cyclists accessing the store, and footway users. On the evidence before me, there would be no conflict from the residential cycle access and location with London Plan policy T5.
37. Commercial: whereas LP policy T5 requires uses similar to those in Class E to provide employee and visitor parking, there are no parking spaces proposed. In this respect too therefore, the proposal would not meet the objective of policy T5 to remove barriers to cycling and to create the environment in which people choose to cycle. I appreciate that an alternative layout was provided with the appeal. However, for the reasons set out at the start of this letter, it is not appropriate to consider this alternative.
38. Overall, I conclude on this issue that the proposed development would not provide appropriate bike storage. It would conflict with London Plan policy T5, and CLP policies SP8.7, DM29 and DM30 which require development to provide cycle parking and to promote measures to increase cycling.

Measures to reduce car dependency and improve the highway

39. The Council considers that because the proposal would provide no car-parking, it should mitigate its impacts by providing a planning obligation to make financial contributions to transport improvements of £1,500 per flat, unspecified contributions towards electric vehicle charging infrastructure, and to offer future occupiers membership of a car club and a car-sharing scheme.
40. London Plan policies T4 and T9 require the mitigation of adverse transport impacts, including cumulative impacts, through direct provision or through financial contributions. CLP policy SP8 also requires development to contribute to electric vehicle charging infrastructure, car clubs and car-sharing schemes.
41. While the Council has identified which contributions it seeks, it has not justified with sufficient detail why those contributions are sought, or specified with sufficient detail how they would be spent. I have not been provided with any detailed evidence of the additional demands on infrastructure likely to arise

from this development; details of the extent to which the existing infrastructure is unable to meet any additional demands; the methodology for calculating the figure of £1,500 per flat; details of the facilities or infrastructure on which the contributions would be spent; nor justification as to why the policy compliant parking provision should need mitigation as suggested.

42. Accordingly, I cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, and notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework. In these circumstances, the absence of a planning obligation does not weigh against the development.

The living conditions of the occupiers of 61 South End

43. The proposed building would rise above the recently completed roof storey on the adjoining building, 61 South End. However, to the front, the forward projection of the rising element of the proposal would be sufficiently small that there would be no material loss of light or outlook to occupiers in rooms at the front of No 61.
44. To the rear, the backwards projection of the proposal would be greater, though little different to the present relationship between the openings in No 61 and the lines of the existing building. There would be a degree of reduction in outlook from the closest window of the new top floor at No 61. However, in noting the present configuration of openings and buildings, which is typical of development above shops in an urban centre, the proposed relationship would not be uncharacteristic, nor harmful to the occupiers of No 61.
45. I conclude on this issue that the proposal would protect the amenity of the occupiers of the adjoining building, retaining sufficient daylight and sunlight to surrounding occupiers appropriate for its context, in accordance with LP policy D6 and CLP policy DM10.6.

Other Matters

46. I have taken into account the desirability of preserving the setting of the listed building on the opposite side of the street, 46 South End. Despite my criticism of the design of the proposed building, given the heights of the buildings adjoining the listed building, its distance from this proposal, and the general urban texture of the townscape in this section of the street, I find no harm to its setting.

Conclusion

47. I have found that while the proposed development would not harm the amenity of surrounding occupiers, and the absence of a planning obligation does not weigh against it, it would nonetheless harm the appearance of the area; it

would not provide acceptable living conditions for future occupiers; neither would it provide an appropriate proportion of 3-bedroom flats; nor appropriate refuse facilities and cycle storage.

48. I appreciate that the proposal would provide additional housing in a sustainable location and a modernised commercial space with access and energy improvements. Future occupiers would bolster the demand for local services and facilities and bring economic benefits too from their spending in the local area. The construction would stimulate employment, and the commissioning of services and the supply of products.
49. Notwithstanding all the positive factors of the proposal which attract significant weight, these benefits would not outweigh the harms I have identified above, to whose combination I attribute very substantial weight. The proposed development would be contrary to the development plan considered as a whole, and it would conflict too with one of the fundamental objectives of planning described in the Framework; the creation of high-quality, beautiful and sustainable buildings and places. There are no other material considerations which suggest that the decision should be taken other than in accordance with the development plan. For the reasons above the appeal is dismissed.

Patrick Whelan

INSPECTOR