
Appeal Decision

Site visit made on 25 July 2022

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 OCTOBER 2022

Appeal Ref: APP/L5240/W/21/3284035

13 Abbots Lane, Kenley CR8 5JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Trinity Square Developments against the decision of the Council of the London Borough of Croydon.
 - The application Ref 19/05955/FUL, is dated 17 December 2019.
 - The development proposed is demolition of existing two-storey dwellinghouse and the construction of a part-three and part-five building comprising 17 flats, with associated vehicle and cycle parking, refuse store, soft and hard landscaping.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the submission of the appeal against a failure to give notice within the prescribed period, the Council have clarified the position they would have taken had they determined the application. I have had regard to these submissions, in so far as they provide clarity in terms of the reasons why the Council would have refused planning permission had it done so. The main issues below are therefore informed by the Council's submissions.
3. For reasons of precision and clarity, I have taken the description of development from the application form.
4. During the course of the appeal, a completed and signed Unilateral Undertaking was submitted by the appellant. Whilst this dealt with a number of matters, it included no provision for affordable housing as part of the appeal scheme. As a result, the Council considered this to be contrary to the development plan and introduced an additional reason for refusal on this matter. I have therefore considered the appeal on this basis.
5. I note that following the submission of further information, the Council have confirmed that their concerns in relation to drainage and flood risk have now been addressed. Having reviewed the submitted information, I see no reason to disagree with this position and I have therefore dealt with the appeal on this basis.

Main Issues

6. The main issues in this appeal are:

- Whether the proposal would make adequate provision for the delivery of family sized units;
- Whether the proposal would have an unacceptable impact upon highway safety, in particular with regards to parking provision;
- The effect of the proposal upon protected trees;
- The effect of the proposal upon the living conditions of future residents, in particular with regards to the provision of accessible children's play space and accessible communal amenity space;
- Whether the proposal would make adequate provision in relation to fire safety; and
- Whether the proposed development accords with development plan policies for the provision of affordable housing.

Reasons

Housing mix

7. Policy SP2.7 of the Croydon Local Plan (CLP) seeks to ensure that, to address the need for homes of different sizes, new developments should provide a choice of homes. It sets a strategic target of 30% of all new homes to have three or more bedrooms. Policy DM1.1 of the CLP identifies the minimum provision of three bedroomed units that should be provided on individual sites of 10 or more homes to be dependent on its setting and the Public Transport Accessibility Level (PTAL) of the site.
8. In this instance, it is agreed between the parties that the proposed development falls above the threshold identified in Policies SP2.7 and DM1.1, with the site lying within a suburban setting and having a low PTAL of 1b. Therefore, using Table 4.1 of the CLP, to ensure compliance with policy, 70% of the total units should have three or more bedrooms.
9. Policy DM1.1b of the CLP does however identify a number of exceptions to this requirement. The first exception allows for a lower quantum of three or more bedrooms where there is an agreement with a registered provider that three bed units are not needed as part of the affordable housing element. The second identifies that for the first 3 years following the adoption of the CLP, two bedroomed four person units (2b4p) can be substituted if it is demonstrated that the provision of three bed units are not viable.
10. In terms of the first exception, there is no evidence before me to suggest that such an agreement is in place. With regards to the second, the CLP was adopted in February 2018, with this 3-year period expiring in February 2021. Therefore, in this instance, I find that none of the exceptions as set out in Policy DM1.1b apply to the proposal.
11. The proposed development would provide for 4 x 1bed units, 10 x 2bed units and 3 x 3bed units. The provision of three or more bedroomed units, would therefore amount to around 17% of the total provision. Therefore, on the face of it, the proposal would fall well short of the required provision to meet Policy DM1.1 of the CLP.
12. In their submissions, the appellant makes reference to the proposed two bed units being 2b4p units which, in their opinion, would be suitable for family accommodation. On this basis, if these were included within the calculations

required by the CLP, the proposed development would deliver a provision in excess of the policy requirement. To my mind however, the policy is clear in that whilst seeking to ensure the provision of family accommodation, this is to be through the provision of dwellings with three or more bedrooms. Therefore, whilst it may be the case that 2b4p units may well be sufficient to accommodate a small family, the policy is clearly seeking the provision of units with three or more bedrooms.

13. The appellant has drawn my attention to a number of recent planning applications, where development has been approved, where either the decision date was beyond the three-year exception or where the Council have accepted the provision of 2b4p units as part of the calculations in relation to policies SP2.7 and DM1.1. Whilst it would appear that there have been a number of instances where the Council applied the policies with some degree of flexibility, considering the clear wording of the policies, and the requirement to consider the appeal against the development plan, I have given these examples limited weight.
14. In terms of the provision of three-bedroom units, the appellant's Viability Assessment (VA) highlights that the floorspace values decrease as the flat sizes increase. This position is confirmed by the Council's independent assessment. Further submissions have been made by the appellant that, due to the current economic climate, the position with regards to viability has worsened, although there is no further evidence before me to substantiate this. Therefore, from the evidence before me, it would appear that any increase in the overall number of three-bed units as part of the proposed development, would likely lead to a further decrease in the viability of the appeal scheme.
15. Drawing all this together, whilst the proposal would result in a net gain in the provision of residential properties, it would fail to provide the necessary level of three or more bed roomed units to meet the development plan. With regards to viability, I do not seek to bring into question the conclusion of the appellant's VA, however, whilst it may show that the provision of additional three or more bed units could lead to a further decrease in the viability of the scheme, Policy DM1.1 is clear in that the option to swap 3 bed units for 2 bed units in these instances has expired. I acknowledge that there may be occasions where the Council have applied this policy and the associated exceptions flexibly. However I do not consider that this, along with the appellant's submission that additional 3 bed units would have a negative impact upon the design and mass of the building, to be sufficient justification to outweigh the conflict that I have found with the development plan.
16. On the basis of the above, I therefore conclude that the proposed development fails to make adequate provision for family sized units and, in this respect, would be contrary to Policies SP2.7 and DM1.1 of the CLP and the National Planning Policy Framework (the Framework).

Parking

17. It is agreed between the parties that, whilst Policy DM30 forms part of the development plan, due to its more recent adoption, Policy T6.1 of the London Plan (LP) should carry more weight. Having reviewed both policies, I can see no reason to disagree with this position.

18. Table 10.3 of Policy T6.1 of the LP identifies that residential development in Outer London, with a PTAL 0-1, should not exceed a maximum level of car parking of 1.5 spaces per dwelling. When calculating general parking provision within the relevant standards, the starting point for discussions should be the highest existing or planned PTAL at the site, although consideration should be given to local circumstances and the quality of public transport provision, as well as conditions for walking and cycling.
19. The proposal seeks to provide a total of 15 car parking spaces for 17 units, which represents a provision of less than 1 space per unit.
20. In this respect, I note the position of the appeal site in relation to public transport routes, in particular Kenley Railway Station. However, whilst the distance to the station may be relatively short, it would involve the use of Hayes Lane, which has little in the way of footpath provision, along with poor visibility due to its topography and limited lighting. As a consequence, it would not make it an especially attractive route for walking, in particular for vulnerable users. Therefore, due to the lack of a suitable environment, in my view, I do not consider that it would represent a suitably attractive option for walking or cycling, for vulnerable groups such as children, especially after dark.
21. My attention has been drawn by the appellant to proposed improvements to Hayes Lane which have come out of the Kenley Transport Study. However, without any detail as to how and when these measures would be implemented, I have attributed these potential improvements only limited weight.
22. Therefore, whilst being in relatively close proximity to public transport links, in this case, I find the characteristics of the location to be one that would not encourage future residents to use alternative modes of transport. It is therefore likely that future residents would rely heavily upon private vehicles to access local services and facilities.
23. On this basis, whilst the proposal makes provision for car parking that is below the LP maximum level, I consider that due to the nature of the surroundings, the proposal is likely to result in the overspill of car parking onto the local highway network.
24. In this respect, I note the submissions of the appellant which shows that within the surrounding area, there would be sufficient on-street parking to accommodate any additional demand. Furthermore, this shows demand for such spaces to be currently very low. Therefore, despite the fact that parts of the surrounding streets are relatively narrow and that Abbotts Lane only has a footpath along one side, I find that any overspill car parking as a result of the proposed development would be capable of being accommodated on the surrounding roads without having an unacceptable impact upon highway safety.
25. For the above reasons, I conclude that the proposed development would not have an unacceptable impact upon highway safety and, in this respect, accords with Policies DM29 and DM30 of the CLP, Policy 6.1 of the LP and the Framework.

Trees

26. A number of trees on the appeal site are subject to a Tree Preservation Order (TPO no 10 of 1980). There are also a number of unprotected trees, hedges

- and shrubs within the appeal site, in particular along the front boundary. The presence of mature trees is an important feature within the surrounding area. As a consequence, the surroundings are verdant and sylvan in character and appearance, with the presence and dominance of large mature trees being an important feature within the street scene.
27. The proposed development would result in the loss of 6 unprotected trees within the site, although I note that replacement planting would be delivered via a landscaping scheme. Whilst the loss of any trees should be avoided, the Council raise no issue with their loss and having reviewed the proposals, I have no evidence to disagree with this position.
28. With regards to the protected trees, the proposed development would encroach into the root protection area of a number of these trees and would involve construction activity in close proximity. I acknowledge the detail provided by the appellant with regards to the use of specific methods of construction and adoption of specific working practices in sensitive parts of the appeal site. However, given the nature of the construction work and its proximity to the protected trees, I am not convinced that the proposal would avoid potential harm to the protected trees.
29. I note pruning would be required to enable the development to take place. Given the importance of the trees within the street scene, I consider that pruning of the trees would have a harmful effect upon the character and appearance of the area. Furthermore, I am not convinced that, in the future, there would not be additional pressure upon these trees to be pruned further. Whilst I accept that their protected status and therefore the ability of the Council to resist these requests, I consider the relationship between the proposed building and protected trees to be uncertain. I note that there may also be some pressure on the trees due to the presence of the existing dwelling, however I do not consider this provides sufficient justification to overcome the concerns I have identified.
30. As a consequence, taking a precautionary approach, I consider that the proposed development would result in unacceptable pressure being placed on the existing protected trees on the appeal site, the loss of which would have a significant adverse effect upon the character and appearance of the area.
31. The appellant has referred me to the Council's pre-application response in relation to trees, which differed, for a number of reasons, from their formal response on the appeal application. However, in this respect, I note that pre-application advice is not binding on the Council when they are considering a formal planning application and, as such, the pre-application advice provided by the Council has not been material to my determination of this appeal.
32. For the above reasons, I therefore conclude that the proposed development would have an adverse effect upon protected trees and, in this respect, would be contrary to Policies DM10.8 and DM28 of the CLP, Policy G7 of the LP and the Framework.

Open space

33. The appeal scheme makes provision for communal garden space to the rear and side of the proposed building, however it is accepted by the appellant that the majority of this space is not on the same level as the building's ground

floor. As a result, the current proposals do not allow for the communal gardens to be fully accessible. In this respect, I acknowledge the appellant's identification of an area that would be suitable for the insertion of an external lift to provide access to at least the upper parts of the communal areas. I consider that the design and delivery of such a lift could be adequately addressed through an appropriately worded planning condition.

34. For the above reasons, the proposal makes adequate provision for the living conditions of future residents with regards to the provision of on-site amenity space and, in this respect, would comply with policies DM10.4 and DM10.5 of the CLP, Policies D6 and D7 of the LP and the Framework.

Fire Safety

35. Policy D12 of the LP requires all major developments to be submitted with a Fire Statement. Whilst no information was submitted with the appeal application, the appellant provided a Fire Safety Report as part of their appeal submissions. Due to the timing of this information, neither the Council, nor its consultees have provided any comments on the suitability or not of the information.
36. In this respect, I note that the submitted report has been prepared by a suitably qualified individual and identifies a number of measures that would be included within the proposed development. Whilst I have no evidence before me as to whether the Council consider the information to be adequate to address LP Policy D12(b), having reviewed the submitted details against the requirements of the policy, I am satisfied that the submitted information provides sufficient detail to meet its requirements. I am also content, that a suitably worded condition could be attached to require the submission and agreement of the details with the Council prior to the occupation of the appeal development.
37. For the above reasons, I therefore conclude that the proposed development makes adequate provision for fire safety and, in this respect, accords with Policy D12(b) of the LP and the Framework.

Affordable housing

38. During the course of the appeal, the appellant submitted a completed Unilateral Undertaking (UU), which included obligations in relation to air quality, carbon off-setting, sustainable transport, a local employment training strategy, Section 278 highway works, a restriction on parking permits, a travel plan and monitoring fees.
39. Whilst the Council, from their submissions, raised no issues on the majority of the matters contained within the UU, they did raise significant concerns in relation to the lack of affordable housing provision.
40. In support of the appeal application, a Financial Viability Assessment (FVA) was submitted by the appellant, which concluded that it was not viable for the proposed development to make any provision for affordable housing. However, despite this, an element of affordable housing was included as part of the appeal application, but during the course of the appeal this was subsequently removed from the appeal scheme.

41. CLP Policy SP2 sets out the need for, delivery of, and the minimum levels of affordable housing that the Council expects to be provided within new developments. Policy SP2.4 identifies that on sites of ten or more dwellings that, subject to viability, affordable housing of upto 50% will be sought. In instances where this level is not achievable, Policy SP2.5 requires a minimum provision of affordable housing of 30% on site, with a further minimum level of 15% on site together with a Review Mechanism entered into for the remaining element. Notwithstanding the above viability and deliverability arguments, the requirements of policy SP2.5 of the CLP are clear in the fact, irrespective of viability, that 15% on-site affordable housing provision is the minimum requirement, with no provision for the level of affordable housing to be reduced below this.
42. Policy H4 of the LP identifies a strategic target that 50% of all new homes 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%, Policy H5 of the LP requires proposals to follow a Viability Tested Route (VTR), with paragraph 4.5.2 identifying the purpose of the VTR being to assess the maximum level of affordable housing that a scheme can deliver where the threshold level cannot be achieved.
43. The lack of affordable housing provision makes the proposed development contrary to the CLP as it fails to meet the required minimum threshold. In this respect however, LP Policy H5 has no similar provision, and does not set a lower threshold for affordable housing or financial contribution beyond which a development will be refused. Through the submission of the FVA, which demonstrates that the proposed development is unable to support the delivery of affordable housing, along with a commitment to a review through the UU, the appeal proposal meets the VTR as set out in Policy H5.
44. In this respect, I note that the Council accepts the conclusions of the appellant's FVA but raises concerns with regards to the overall deliverability of the proposed development given its conclusions. However this is not a reason upon which planning permission can be withheld and this has not been material to my consideration of the appeal proposal.
45. It is clear that the general strategic aims of the affordable housing policies in both the CLP and LP are aligned in that they are both seeking to deliver the provision of affordable housing. However, they take a different approach towards both minimum requirements and the use of viability to determine this. In these circumstances, s38 (5) of the Planning and Compulsory Purchase Act 2004 is clear, that this should be resolved in favour of the most recent part of the development plan. In this instance this is Policies H4 and H5 of the LP and I accordingly attribute these policies significant weight.
46. Drawing the above together, given the results of the appellant's FVA, the proposal makes no provision for affordable housing. Although, through the UU, a commitment is made to early and late-stage reviews, which would ensure that, should viability improve, the affordable housing contribution increases accordingly. In this respect, the proposal accords with Policies H4 and H5 of the LP. The non-provision of affordable housing is clearly contrary to Policy SP2.5 of the CLP and there is a clear conflict with the development plan in this respect.

47. In conclusion, in this case, given that the LP was the most recently adopted part of the development plan, I attribute significant weight to its policies. In contrast, the CLP is much older than the LP and, as a consequence, I have attached limited weight to the conflict with the CLP that I have identified in relation to this matter. Therefore, the compliance of the proposed development with Policies H4 and H5 of the LP outweighs the conflict with CLP Policy SP2, with the LP policies enabling consideration to be given to the viability of providing affordable housing.
48. It therefore follows that, on the basis of the evidence before me, in relation to the provision of affordable housing, I conclude that the proposed development would accord with the development plan, when taken as a whole.

Other Matters

49. I have been referred to the positive response to the submitted pre-application enquiry. Whilst I appreciate that the pre-application advice differs from the decision on the appeal application, pre-application advice is offered without prejudice to the formal decision on any subsequent planning application. Accordingly, issues relating to the pre-application advice have not had any material bearing on my assessment of the planning issues in this appeal.
50. Furthermore, I note that the Council raise no other issues in relation to ecology, access and impact on neighbouring occupiers, amongst other things. However, as these are requirements of policy and legislation, the absence of harm in respect of these matters are neutral factors that weigh neither for nor against the development.

Conclusion

51. I have concluded that the proposed development would fail to deliver a policy compliant mix of family housing and that it would likely lead to harm to protected trees, which would have an adverse effect upon the character and appearance of the area. I attach significant weight to these conflicts with the development plan.
52. On the other hand, I have not found the appeal scheme to be in conflict with the development plan policies for the provision of affordable housing and highway safety. I have also concluded that, through the use of appropriately worded conditions, the proposed development would make suitable provision of accessible amenity space and children's play provision and would ensure adequate fire safety measures. Given these are requirements of policy, the absence of harm weighs neither for nor against the proposal.
53. In relation to the UU, given that these matters principally mitigate harm arising from the proposed development, rather than being a benefit of the proposal, they weigh neither for nor against the appeal scheme.
54. In this instance, I find that the benefits of the proposal, either individually or cumulatively, do not overcome the significant weight that I attach to the identified harm.
55. The proposed development is contrary to the development plan as a whole, and there are no material considerations, including the Framework, that indicate otherwise.

56. For the reasons given above, I conclude that the appeal is dismissed.

Adrian Hunter

INSPECTOR