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# Appeal Decision

Site visit made on 27 September 2022

**by M Russell BA (Hons) DipTP MRTPI**

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

**Decision date: 3 November 2022**

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**Appeal Ref: APP/L5240/W/22/3299357**

**34A and 34B Arkwright Road and rear section of 34 Arkwright Road, South Croydon CR2 0LL**

- 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 Martin Avery - Chartwell Property Group against the decision of London Borough of Croydon.
  - The application Ref 21/01208/FUL, dated 5 March 2021, was refused by notice dated 9 May 2022.
  - The development proposed is described as 'demolition of dwelling houses (34a and 34b) and rear of 34 and erection of building containing 19 flats with associated parking and access'.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs was made by Mr Martin Avery – Chartwell Property Group against London Borough of Croydon. This application is the subject of a separate Decision.

## Preliminary Matters

3. I have assessed the proposal on the basis of the plans provided and the clearer description given on the Council's decision notice which states 'Demolition of 2 dwellings and erection of a 3/4 storey building comprising 19 flats with associated car parking, cycle and refuse storage and landscaping. Alterations to existing vehicular access/road'.
4. The officer report to the Council's planning committee referred amongst other things to the number of 3-bed units proposed falling below the minimum requirements in the development plan. The report also referred to increased overlooking of the neighbouring properties at Nos 78 and 80 Ridge Langley. These matters have also been referred to amongst concerns raised by third-parties. While the Council did not refuse planning permission on the basis of these matters, given there is potential harm arising, I have elevated them to main issues. The main parties have been provided with an opportunity to comment on these additional main issues and I have taken any comments received into consideration.
5. The decision notice refers amongst other things to The Croydon Council Suburban Design Guide (2019). The Council's statement of case confirms that the SDG was subsequently revoked on 25 July 2022. I am not aware that an

application for judicial review on the decision to revoke the SDG has been made. In the circumstances, the SDG has not been material to my conclusions on this appeal which has been assessed against the relevant policies of the development plan and the National Planning Policy Framework (the Framework).

## **Main Issues**

6. The main issues are:

- (i) the effect of the proposal on the character and appearance of the area;
- (ii) whether the proposal would deliver a suitable mix of housing having regard to the development plan and national policy; and
- (iii) the effect of the proposal on the living conditions of the occupiers of Nos 78 and 80 Ridge Langley, with particular regard to privacy.

## **Reasons**

### *Character and appearance*

- 7. The appeal site is situated within a residential area predominantly characterised by detached dwellings. It is a backland site accessed by a private drive taken off Arkwright Road. The site encompasses land to the rear of No 34 Arkwright Road in addition to plots currently occupied by the detached two-storey dwellings at Nos 34A and 34B Arkwright Road. Rear gardens serving neighbouring dwellings on Arkwright Road, Ridge Langley and Courtlands Close surround the site.
- 8. There are a mix of architectural styles in the area. However, buildings are mainly traditional in design, more often have pitched roofs and are generally no greater than two-storey in scale. Regular gaps are provided between individual dwellings. During my site visit, I saw the recently erected building containing flats at No 34 Arkwright Road. Although larger than some of the surrounding dwellings, it is mainly two-storeys and also of a traditional form.
- 9. Large rear gardens are a common feature of the area although relatively shallow rear garden depths serve the existing dwellings at Nos 34A and 34B and the dwellings which back onto the site at Ridge Langley. Even so, the prevailing scale and massing of buildings together with the spacing between them gives general consistency to the area's built form and provides for an attractive suburban character.
- 10. The Framework and the development plan encourage the efficient use of land. Policy DM10 (Design and character) of the Croydon Local Plan (2018) (CLP) accords with this objective insofar as amongst other things it seeks to achieve minimum heights of three-storeys. However, local and national policies including DM10 are clear that making the best use of land is also subject to the design of proposals respecting their surrounding context.
- 11. The footprint, width and three to four storey scale of the development, together with its flat roofed profile would combine to form a building of substantial bulk and mass. Combined with the large window and balcony apertures along with the contrasting mix of materials, including copper coloured cladding to upper levels, the proposal would have an imposing

contemporary appearance which would be significantly at odds with the overriding domestic scale and traditional vernacular of the site's suburban surroundings.

12. I acknowledge that the site's backland position would reduce the perception of the development in public views from surrounding streets. However, I do not consider that a lack of public visibility obviates the needs to achieve good design. Indeed, paragraph 126 of the Framework states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve.
13. The building would be visible from some of the rear gardens and windows serving the properties which surround the site. Notably, and despite the scale of the building being much larger than neighbouring built form, the depth of its rear amenity space would only be comparable to the shallow gardens of the single dwellings on Ridge Langley that back on to the site. As a result, and even accounting for the relative levels and boundary screening in place, the design and scale of the building would be likely to appear particularly incongruous and out of keeping with its immediate context when seen from the rear of these neighbouring properties.
14. The appellant suggests that the density of the development would be comparable to the recent developments at Nos 34 and 54 Arkwright Road. Whether or not this be the case, this does not overcome my specific design concerns.
15. I conclude that the development would result in significant harm to the character and appearance of the area. In that regard, it would conflict with the design and local character requirements in Policies D3 (Optimising site capacity through the design-led approach) and D4 (Delivering good design) of the London Plan (2021) (LP 2021), Policies SP4 (Urban Design and Local Character) and DM10 (Design and character) of the CLP and the Framework.

#### *Housing mix*

16. The Framework seeks to create mixed and balanced communities and states amongst other things that the size, type and tenure of housing needed for different groups should be reflected in planning policies.
17. Policy SP2 (Homes) of the CLP confirms amongst other things that the borough's need for homes of different sizes for both market and affordable housing will be achieved by setting a preferred unit mix on individual sites through the CLP's detailed policies for sites of ten or more homes.
18. The appellant suggests that as Policy SP2 refers to a 'preferred unit mix' this implies there is a degree of flexibility on the housing mix required. However, Policy DM1 of the CLP provides the detail for such sites and confirms that to enable housing choice for sustainable communities it 'requires', and not for example that it would 'prefer', a minimum provision of homes designed with 3 or more bedrooms on sites of 10 or more dwellings. The required minimum percentages are set out in Table 4.1 of the CLP. In suburban areas such as where the appeal site is located with a low (Public Transport Accessibility Level (PTAL) rating of 0, 1a, 1b, 2 or 3, the minimum percentage of three bedroom or larger units required is 70%.

19. The supporting text to Policy DM1 confirms that the policy applies to both market and affordable housing. It also sets out that the policy recognises that more central locations with higher density development will not be so compatible for accommodating larger units. This explains why a higher proportion of family sized homes are expected in suburban lower density areas.
20. Only 58% of the proposed housing mix would be 3-bed units meaning the proposal would not meet the minimum requirements of the development plan.
21. The appellant contends that the shortfall in 3-bed units substantially relates to the affordable housing element of the scheme and that if additional 3-bed affordable units had been provided this would have impacted negatively on the viability of the scheme. I acknowledge that the viability of the scheme was independently assessed during the planning application process and is not a matter disputed between the main parties. From what I have seen, I find no reason to conclude differently in terms of the viability conclusions.
22. Notwithstanding the above, this does not explain why a higher proportion of 3-bed market dwellings could not have been provided in order to ensure the minimum policy requirement would be achieved. Moreover, Policy DM1.1 a) and b) set out the specific exceptions to the requirements to meet the minimum provision for homes designed with 3 or more bedrooms, neither of which have been demonstrated in the evidence before me.
23. I conclude, the proposal would not deliver a suitable mix of housing having regard to the specified minimum requirements in Policy DM1. In that regard, it would also conflict with the requirements in the Framework to address the specific needs of groups as assessed and reflected in planning policies.

*Living conditions of occupiers of Nos 78 and 80 Ridge Langley*

24. The two-storey detached dwellings at Nos 78 and 80 Ridge Langley have rear elevations and gardens which back on to the appeal site. The neighbouring rear facing windows include windows serving main habitable rooms. I also saw during my site visit that due to the shallow depth of the neighbouring rear gardens, they are well used including in close proximity to the shared boundary with the appeal site. The levels on the appeal site drop towards the boundary with these neighbouring properties. Mature planting of a substantial height sits within the appeal site along the boundary with No 80. However, the fencing and planting next to the shared boundary with No 78 is generally lower in height.
25. The main parties have indicated that the development would achieve the minimum separation distances of 18 – 21 metres (m) referred to in the Mayor of London's Housing Supplementary Planning Guidance (2016) (SPG). They have also confirmed that the proposal would achieve a distance of 10m from the boundary with the rear boundaries with Nos 78 and 80 at its closest point. The main parties consider that this would be sufficient to ensure that there would be no direct overlooking of private outdoor space within 10m perpendicular to the rear elevation of these neighbouring dwellings as required by Policy DM10.6c of the CLP.
26. However, the evidence before me including that from third-parties indicates that any compliance with these distances would at some points be marginal. The minimum distances in the SPG are guidance and compliance with them

does not guarantee that suitable levels of privacy would be achieved in all instances regardless of the form of development or its site-specific context.

27. The proposed building would sit closer to the rear elevation windows and gardens serving the dwellings at Nos 78 and 80 than the dwellings it would replace. From what I experienced on site, and even accounting for the angles incorporated into the proposed rear elevation, the proliferation of windows and balconies to the upper floors of the development at the distances proposed would be likely to have a very conspicuous presence in views from the rear garden and windows serving these neighbouring properties. In the event that the development could not be effectively screened in perpetuity, this would result in a perception of being very overlooked for occupiers of Nos 78 and 80. This would be particularly so when compared with the established good levels of privacy that occupiers of these neighbouring dwellings have been previously accustomed to.
28. I acknowledge that there is tree planting to a considerable height within the appeal site to the boundary with No 80. However, it has not been demonstrated that the trees are of a lifespan that means they could be retained at this height for the lifetime of the development. Furthermore, the appellant's Arboricultural Impact and Method Statement along with the Arboricultural Strategy Plan provided indicate that some of the tree planting close to this boundary would be removed and this would have the potential to open up gaps in the existing screen planting.
29. The appellant suggests that new planting would be provided and that this would also assist in screening views between No 78. However, given the extent to which views are currently available between this neighbouring property and that any new planting would need to be substantial and would take time to establish, I am not persuaded that acceptable levels of privacy could be achieved from first occupation of the development.
30. I conclude, the development has the potential to have a detrimental effect on the living conditions of occupiers of Nos 78 and 80 Ridge Langley with particular regard to privacy. In that regard, the proposal would conflict with the requirements to ensure that the amenity of the occupiers of adjoining buildings are protected in Policy DM10 of the CLP. For the same reasons, the proposals would also be contrary to the requirements at Paragraph 130 of the Framework for developments to create places with a high standard of amenity for existing and future users.

### **Other Matters**

31. I have been provided with a completed legal agreement setting out amongst other things developer contributions including in respect of affordable housing in the event that planning permission were to be granted. The Council's Committee report suggests that the conflict with the housing mix requirements of the development plan and the overlooking impacts are matters which when weighed against the benefits of the scheme, such as the provision of affordable housing, did not warrant refusal.
32. However, I am not persuaded that the living conditions of neighbouring occupiers or the housing mix requirements of the development plan are matters which can be compromised upon in this instance. In any case, taken together with the harm identified to the character and appearance of the area

and the overall conflict with the development plan, this is not overcome through the provision of the legal agreement.

### **Conclusion**

33. In accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004), the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.
34. I have found that the proposal would have a significantly harmful effect on the character and appearance of the area. Furthermore, the housing mix proposed would conflict with the minimum requirements of the development plan and there is the potential that the proposal would also be detrimental to the privacy of neighbouring occupiers. In these respects, the proposal would conflict with the development plan taken as a whole and the sustainable objectives of the Framework. There are no material considerations that indicate the decision should be made other than in accordance with the development plan.
35. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*M Russell*

INSPECTOR