



Appeal Decision

Site visit made on 11 November 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 DECEMBER 2022

Appeal Ref: APP/L5240/W/22/3293577

86 Clarendon Road, Croydon CR0 3SG

- 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 S Bodmer (Ashurst Developments Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/03488/FUL, dated 28 June 2021, was refused by notice dated 5 October 2021.
 - The development proposed is demolition of existing building and erection of a two storey building to provide 4 no. two bed flats, together with associated waste bin and cycle storage areas, provision of amenity space and landscaping and one car parking space within the existing access drive.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council's reasons for refusal refer to its Suburban Design Guide Supplementary Planning Document (2019) (the SDG). However, from other appeals I have dealt with in Croydon, I am aware that the Council has revoked the SDG as of 25 July 2022 and it no longer forms a material planning consideration. Consequently, I have not attached weight to the SDG.

Main Issues

3. Having regard to the evidence before me, the main issues are:
 - i) Whether the proposal would provide a suitable mix of housing, having regard to relevant development plan policy;
 - ii) Whether the proposal would represent good design and its effect on the character and appearance of the area;
 - iii) The effect of the proposal on the living conditions of neighbouring occupants, with respect to privacy;
 - iv) Whether the proposal would prejudice development of an adjacent site;
 - v) Whether the proposal would provide a suitable standard of accommodation for prospective occupants, having regard to layout, light, outlook, privacy, amenity space, accessibility and fire safety.
 - vi) Whether the proposal would be acceptable with respect to parking and highway safety;
 - vii) Whether there are material planning considerations that would outweigh any development plan conflict so as to justify granting permission.

Reasons

Site Context

4. The appeal relates to a two storey, brick commercial building to the rear of dwellings on Clarendon Road, in use by a construction business as offices and for storage of materials. Access is via an entrance between Nos 84 and 88. The rear wall of the building forms the site boundary and directly abuts the internal access road of the site behind, which contains a tyre centre and a former place of worship/community use building. To one side of the appeal site are two backland dwellings which replaced a former commercial building.
5. The proposed development would contain four flats, with the existing access made pedestrian only, except for a disabled parking space at the entrance to the site. It would also contain bin and cycle storage and soft landscaping.

Housing Mix

6. Under Policy SP2.7 of the Croydon Local Plan (February 2018) (the CLP), the Council seeks to ensure that a choice of homes is available that will address the borough's need for homes of different sizes. The strategic target is for 30% of all new homes up to 2036 to have three or more bedrooms.
7. Policy H10 of the London Plan (March 2021) (the LP21) sets out that schemes should generally consist of a range of unit sizes, with the appropriate mix being informed by a number of considerations. These include robust local evidence of need and the nature and location of the site, with a higher proportion of one and two bed units generally more appropriate in locations which are closer to a town centre or area with higher public transport access and connectivity.
8. The proposal would comprise four two-bedroom apartments. The appellant argues that Policy SP2.7 does not require three-bed units in every scheme as the 30% target is strategic across the whole borough. It is further stated that it would not be appropriate or viable to provide family-sized housing on the site.
9. The policy does not contain any exemptions in terms of the type or size of developments which should contribute to delivery of the 30% target. I have no evidence from the Council as to whether the 30% target is being met, but absent specific criteria in the policy for applying the target, it is reasonable to consider that such a strategic target, if it is to be met, should be applied in all cases and its requirements should not be set aside without justification.
10. I have no evidence to substantiate the appellant's comments on the perceived inappropriateness of family housing on the site, nor any evidence that provision of such would render the development unviable. I recognise that the site has some physical constraints, but the development nevertheless proposes multiple units within a new build development, the layout of which could feasibly have been designed to incorporate a larger unit.
11. I accept that the location of the site is close to Croydon town centre and its many transport links, and in this respect a provision of two bedroom units would be appropriate. However, this does not mean that the requirements of Policy SP2.7 can be set aside, and I am not satisfied that substantive reasons have been advanced as to why the policy requirement for family-sized housing cannot be met. Therefore, the proposal would fail to provide a suitable mix of housing to meet the needs of the borough, in conflict with CLP Policy SP2.7.

Design, Character and Appearance

12. The Council's concerns are expressed across two reasons for refusal, one relating to the design and appearance of the replacement building, the other in respect of the proposed access route and forecourt area.
13. The principle of demolition and replacement of the existing building has been established through a recent planning permission¹ for a two storey office building. The proposed building would occupy a similar footprint and overall scale to the existing, maintaining a shallow monopitch form that would include a green roof. The overall massing would be broken up by a recessed and substantially glazed central staircase. The front and side elevations would be finished in yellow stock brick with sections of vertical timber cladding, with white painted render to the rear elevation facing onto the neighbouring site. The appellant has also submitted alternative plans at appeal stage omitting the timber panelling and showing brickwork to the rear elevation.
14. The overall scale of the building would reflect that which exists, and I note the appellant's reference to this being a restrained approach given the general encouragement of Policy DM10.1 for three storey buildings. Although this scale of building already exists on site, it stands in close proximity to the rear of dwellings on Clarendon Road, and in this context, I agree that a two storey scale would be appropriate.
15. The Council criticises the use of timber cladding, referring to guidance of the SDG that it can weather poorly and deteriorate the quality of a building. The appellant's revised plans omit the timber panels in favour of brickwork. The panels would form an element of visual interest on the building, but notwithstanding that the SDG guidance has been withdrawn, I share the concerns of the Council that such materials, if not properly maintained, would undermine the quality of the design over time. However, the alternative design, which I do not regard as a material change, would overcome such concerns.
16. This aside, the Council offers no other substantive criticism of the design of the building itself. It would maintain the overall massing and presence of the existing building, with a relatively muted fenestration and facing materials that would reflect those of neighbouring dwellings. Overall, the design of the building would befit its backland location and relate comfortably to its surroundings, neither being overly prominent in scale or departing significantly from the prevailing appearance.
17. At the rear, the building would effectively replicate the existing form, with the exception of the addition of windows to serve the flats. Given this elevation would face the blank side wall of a tyre centre, the composition of the rear elevation would be acceptable. The use of either render or brick as a facing material on the rear elevation would also be acceptable, given the presence of both to nearby buildings.
18. The proposed access and entrance would include a disabled parking space to the front, soft landscaping, bike and bin storage and some private amenity space. The Council criticises the space as 'underwhelming', describing it as 'dominated' by the refuse and cycle storage and pointing to the planting being ineffective.

¹ Council Ref 20/02856/FUL

19. The physical constraints of the site are such that the entrance way presents a logical place for communal facilities such as bike and bin storage. Whilst they would be seen by residents and visitors entering the site, the plans indicate they would be offset to the side and screened by planting. There would remain a direct pedestrian route into the site and visibility of the building itself. The amount and form of landscaping could be specified through an appropriately worded condition to ensure it provides sufficient screening of the cycle and bin stores. With suitable landscaping, the entrance would achieve a more inviting appearance compared to the existing vehicular-dominated entrance.
20. Moreover, the disabled parking space would be located to the front of the site in an expected location for parking, and would be no worse than the present situation where vehicles associated with the existing business park in tandem along the entrance way. Details of landscaping and other boundary treatments to separate the parking space from the pedestrian access could also be secured by condition. This would also be possible for the proposed amenity space, the details of which are only loosely given on the plans before me, but which could be elaborated upon in a subsequent landscaping plan.
21. For these reasons, I conclude that the design of the proposal would be of a suitable standard and would preserve the character and appearance of the area. This would accord with Policies SP4, DM10, DM13 and DM27 of the CLP, and Policies D3, D4, G1, G5 and G6 of the LP21, which together require development of high quality which respects and enhances Croydon's varied local character and contributes positively to the townscape to create sustainable communities, through respecting development pattern, layout, siting, scale, height and massing; and by providing well integrated refuse facilities, green roofs to enhance biodiversity and urban greening.

Neighbours' Living Conditions

22. The proposal would introduce residential accommodation directly to the rear of dwellings at 78-84 Clarendon Road, with windows of No 88 also facing towards the site. There are no windows within the existing building facing these dwellings or their rear gardens.
23. The windows at ground floor level would be screened by the existing garden fences, though some upward views towards first floor windows of Nos 78-88 would be possible. At first floor level, three windows are proposed which would face neighbours. One would serve a bathroom and be obscurely glazed. A second would serve a kitchen and would be at high level to prevent views. The third would serve the living room of Flat 3, set within an angled wall facing towards the site entrance. An oriel window to Flat 4 is designed so as to prevent direct views over neighbouring dwellings.
24. The 18 metres separation distance between facing windows quoted by the Council no longer forms current guidance due to the revocation of the SDG. However, even taking 18m as an indicative measure, the intervening distances between the windows serving Flat 3 and those to the rear of Nos 78-84 would be significantly shorter than this. The proposal would introduce opportunities for direct overlooking of the dwellings in Clarendon Road which do not exist at present from the French doors serving Flat 3, which would have a Juliet balcony that would encourage outlook by occupants of the flat. These views would be particularly invasive over the gardens and rear windows of Nos 82

and 84. Such views would severely erode the privacy enjoyed by neighbouring occupants.

25. For these reasons, I conclude that the proposal would cause material harm to the living conditions of neighbouring occupants, contrary to Policies SP4.2 and DM10.6 of the CLP and Policies D3 and D4 of the LP21, which together require development to ensure the amenity of neighbouring occupiers by delivering appropriate privacy.

Development of Adjacent Site

26. The Council argues that the proposed insertions of windows serving habitable rooms in the rear elevation, facing the site at 34 Pitlake, would contradict guidance in the SDG which states that developments on back land sites should demonstrate how the proposal would not prejudice similar development on neighbouring sites in the future. With the SDG having been withdrawn, I am not pointed to a specific development plan policy which contains similar requirements, though I recognise that the thrust of the guidance was to avoid unneighbourly placement of windows which may subsequently restrict development to an adjacent site.
27. Windows are proposed at the rear; however, they face onto an access road and an industrial premises occupying a large site. I have no indication of any prospective development on this land. Nevertheless, there appeared to me to be sufficient space within this site that any redevelopment scheme could overcome any potential constraint presented by these windows through a well-considered layout and orientation of buildings. Consequently, I am not persuaded that the proposal would prejudice development of an adjacent site.

Standard of Accommodation

28. The flats would each meet relevant floorspace standards. The Council's concerns with Flats 1 and 2 centre on their outlook being constrained by the surrounding built form and the use of high level windows in the bedrooms.
29. The site is physically constrained by the high garden fencing to the front and the imposing industrial building at the rear. Outlook from the ground floor flats would be limited as a result, particularly Flat 2 which would have only one view of note from the living room French doors, but even these would face a small communal entrance area and garden fencing at close range. The windows to the rear would be high level and would offer no realistic outlook. The north-westerly orientation of these windows would also result in them receiving little to no direct sunlight. These factors would result in the rooms being gloomy, uninviting spaces.
30. Flat 1 would enjoy slightly better outlook from its living room to an external amenity area at the front. However, this would be offset by limited outlook from the kitchen window at the rear towards the wall of the neighbouring building, and the bedrooms suffering the same poor outlook and light as Flat 2 due to the high level windows.
31. Moreover, the living room window of Flat 1 and the French doors of Flat 2 would both address the communal access to the development, with no physical separation. As a result, it would be possible for those entering or leaving the flats to look directly into these windows. This is also indicated to be a rear access for the gardens of the dwellings in Clarendon Road, which increases the

- potential foot traffic in front of these windows. This would result in a severe lack of privacy for occupants who may be forced to keep blinds or curtains drawn, which in turn would significantly undermine their living conditions.
32. Flat 3 would match the layout of Flat 2, but being at first floor level would have better outlook from the living room window, though this would lead to the privacy concerns identified above. The bedroom windows at this level would also be of standard size and position, affording some outlook. Overall, this layout, considered in isolation, would be acceptable.
33. Flat 4 would feature an oriel window to the living room designed to avoid overlooking by having window panes only to the sides. However, this would conversely curtail outlook for occupants of the flat which would otherwise be limited to the rearward views of the industrial building. The main living space would have limited natural light due to the form and orientation of the windows, having to be supplemented by two rooflights. Even with these, the space would be poorly lit and would feel dark and enclosed.
34. In addition, the Council criticises the lack of external amenity space. The only practical space proposed is that in front of Flat 1, which appears designed for the sole use of that flat given the landscaping arrangement. Moreover, communal use of this space would create the same privacy issues already referred to with respect to the other ground floor windows. The 'amenity space' between the two blocks appears to be no more than a communal entrance, and unlikely to be utilised as a recreation space. Therefore, the proposal would not in practice provide the required 6sqm of private amenity space and 1.2sqm of children's play space for each flat as set out under Table 6.2 of the CLP and required by Policy DM10.4.
35. The Council further points to the lack of lift provision to ensure M4(3) wheelchair adaptable accommodation can be provided on all floors and to a failure to specify that the dwellings would be M4(2) compliant. Policy D7 of the LP21 requires 10% of dwellings in a development to achieve M4(3) and for all other dwellings to meet M4(2). On the basis of the plans, one or both of the ground floor units could have level access and be designed to be wheelchair adaptable, meeting the 10% requirement. Paragraph 3.7.6 of the LP21 also provides some flexibility to the requirement of Policy D7 on specific small scale infill sites. Given the physical constraints of the site, and the scale of the development, there is some justification for a flexible approach in this case. The LP21 sets out that M4(2) and M4(3) dwellings should be secured via condition. On the evidence before me, I am satisfied that these matters could be addressed in this way so as to accord with the aims of Policy D7.
36. The appellant has provided a Planning Fire Statement Strategy in response to one of the reasons for refusal. It sets out responses to the criteria set out under Policy D12 of the LP21. On this evidence, I am satisfied that the proposal would make adequate provision for fire safety, in accordance with Policy D12.
37. Overall, and notwithstanding that the dwellings could be made acceptable in respect of accessibility and fire safety, the poor internal layouts of Flats 1, 2 and 4, along with the lack of adequate private amenity space to Flats 2, 3 and 4, would result in an unsatisfactory standard of accommodation for future occupants. This would conflict with Policy D6 of the LP21 and Policies SP2.8, SP4.2, DM10.4 and DM10.5 of the CLP, which together require high quality development that enhances well-being and ensures new homes meet the needs

of residents over a lifetime and contribute to sustainable communities within the borough, through providing adequately sized rooms with comfortable and functional layouts which are fit for purpose and provide sufficient sunlight, daylight, privacy, outlook and amenity space.

Parking and Highway Safety

38. The site is located in an area of high public transport accessibility (PTAL 6b). Per Policy T6.1 of the LP21, development in such areas should be car-free, i.e. no on-site parking provision. The exception to this is disabled parking. One disabled space is proposed, which would accord with the policy.
39. However, the Council criticises the layout of the space as it would require occupants to either reverse into or out of it. I am not referred to specific guidance which resists such a layout, and I have no evidence to suggest a space could not be provided to meet relevant design specifications. Moreover, a single space would result in fewer vehicular movements than at present, and comparatively less risk to pedestrians and other road users than currently exists. Therefore, I am satisfied that the proposal would accord with the requirements of Policy T6.1 with respect to parking provision and Policy T4 in terms of ensuring proposals do not increase road danger.
40. The site lies within a Controlled Parking Zone (CPZ) which restricts on-street parking to permit holders or pay-and-display within marked parking bays between 9am and 5pm, Monday to Saturday. The Council seeks a restriction on future occupants being able to obtain a residents parking permit, in line with the aims of CLP Policies SP8.15 and SP8.16 to encourage car-free development where there are high PTAL levels and viable alternatives, and those of Policies DM29 and DM30 to increase use of public transport, cycling and walking and reduce the impact of car parking in high PTAL areas.
41. I have no evidence which quantifies the level of parking pressure which exists, though it is reasonable to consider that the existence of the CPZ indicates there is pressure, particularly given the lengthy periods of control across the week. The proposal would add to parking stress in the vicinity of the appeal site, as existing off-street parking would no longer exist and occupants, if they own vehicles, would seek to use marked bays on Clarendon Road. Though the site is close to the centre of Croydon where sustainable modes of transport can be utilised, it is not possible to rule out occupants having vehicles. Therefore, I cannot conclude that the requirement for the development to be car-free should be set aside in this instance.
42. The appellant queries the way in which car-free policies are generally approached by councils in London. However, they are open to the imposition of a planning condition to secure the development as car-free if necessary. The appellant has also provided a signed unilateral undertaking (UU) as an alternative to a condition. Having regard to the Planning Practice Guidance, I do not regard the proposal as a particularly complex scheme where use of a negatively worded condition requiring a planning obligation or other agreement to be entered into would be justified. However, a UU has been submitted which provides for the development to be car-free by restricting eligibility of future occupants from applying for a parking permit. This would be enforceable as the agreement is also made under Section 16 of the Greater London Council (General Powers) Act 1974 and other powers.

43. I am satisfied that this undertaking meets the tests for planning obligations at Paragraph 57 of the Framework. Accordingly, I have taken the UU into consideration and find that the proposal would accord with the aims of the aforementioned policies to encourage car-free development and the promotion of sustainable modes of transport.

Other Material Considerations

44. The appellant identifies a potential fall-back position through the use of permitted development (PD) rights² to change the use of the existing building to up to nine studio flats. This is based on an average flat size of 39sqm and a total building size of 372sqm. However, whilst I accept that the availability of PD rights may form a material planning consideration, any such proposal would be subject to a prior approval process in respect of a number of matters. I have no details of any alternative scheme being pursued, but even if one was, there is no certainty at this stage that it would secure prior approval. Consequently, I have little evidence to suggest that the fall-back position outlined by the appellant is a realistic alternative to the appeal scheme, or any certainty that it would in fact be more harmful.
45. Similarly, whilst I am not provided with details of the extant permission for an office redevelopment, such a scheme would not be expected to be occupied round the clock and would not give rise to the same level of concern over neighbours' privacy, nor would there be any concern over the standard of accommodation. As such, I am not persuaded that these fall-back options would present an equivalent or greater degree of harm than the appeal scheme and I afford them no more than limited weight in the planning balance.
46. I accept that the site is in a highly accessible location and would add dwellings to the Council's housing stock. This would represent a benefit, albeit a modest one given the scale of the proposal. Nonetheless, given the importance placed on the supply of housing in the Framework, this benefit attracts moderate weight in favour of the appeal.
47. There would be economic activity during construction and afterwards as residents engage in the local economy. However, the scale of these benefits would be limited, having regard to the size of the development. Any benefit arising from the removal of an industrial use to the rear of residential dwellings would be nullified by the adverse effects identified in respect of privacy.
48. Moreover, given my findings above with respect to neighbours' living conditions and the standard of accommodation, the proposal would not improve the immediate environment. Therefore, I do not regard the proposal as making effective use of the land that would amount to a benefit to be weighed in favour of the proposal.
49. Moreover, given my findings above with respect to neighbours' living conditions and the standard of accommodation, the proposal would not improve the immediate environment. Therefore, whilst acknowledging the support in the LP21 for development on small sites and in the Framework for re-use of previously-developed land, I do not regard the proposal as making effective use of the land that would amount to a benefit weighing in favour of the proposal.

² Under Schedule 2, Part 3, Class MA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Other Matters

50. The Council did not refuse the application in respect of flood risk, drainage, low energy use, carbon reduction, water efficiency, land contamination or site security, subject to potential conditions in some cases. On the evidence before me, I have no reasons to conclude otherwise in these matters. However, an absence of harm means these are neutral factors in the planning balance.
51. I note other concerns raised by interested parties, beyond those already addressed. However, on the limited evidence before me in respect of these other matters, I have not identified other material harms or benefits to be weighed in the planning balance.

Conclusion

52. The proposal would be acceptable in a number of respects, including character and appearance, parking and highway safety; however, for the reasons set out, I have found that the proposal would cause harm in respect of housing mix, neighbours' living conditions and the standard of accommodation proposed. Therefore, overall, there would be conflict with the development plan, to which I afford significant weight.
53. Other material considerations in this case, including the identified benefits and fall-back positions, do not cumulatively outweigh the conflict with the development plan, taken as a whole. Therefore, I conclude that the appeal should be dismissed.

K. Savage

INSPECTOR