



Appeal Decision

Site visit made on 26 May 2023

by S Poole BA(Hons) DipArch MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th August 2023

Appeal Ref: APP/L5240/W/22/3308796

Land to the rear of 104 South End, Croydon CR0 1DQ

- 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 John McMillan against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/05748/FUL, dated 16 November 2021, was refused by notice dated 13 April 2022.
 - The development proposed is the erection of a pair of two storey, three-bedroom dwellings and the provision of associated landscaping, and refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Some of the reasons for refusal refer to the Council's Supplementary Planning Document '*Suburban Design Guide*' (2019). As this document was revoked by the Council in July 2022 it is not a matter to which I can attach weight in the consideration of this appeal.

Main Issues

3. The main issues are:
 - (i) the effects of the proposal on the character and appearance of the surrounding area and the settings of nearby heritage assets,
 - (ii) whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to amenity space, outlook and privacy,
 - (iii) whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding,
 - (iv) the effect of the proposal on the health and life expectancy of nearby trees, and
 - (v) the effect of the proposal on the living conditions of the occupiers of 102 South End, with particular regard to outlook.

Reasons

Character and Appearance

4. The appeal site comprises a car park to the rear of 104 South End. It faces, and is accessed from, Warham Road and is bounded to the rear by a car parking area and a nursery. To one side is a narrow access road and a pair of handsome Edwardian semi-detached houses. On the other side, on the corner between Warham Road and South End, is No. 104, a 2-storey, end-of-terrace, "Tudorbethan-style", Locally Listed Building. No. 104, together with the appeal site, form part of the South End and Ye Market Local Heritage Area. This includes a mix of styles of well-preserved, handsome and decorative late-Victorian and Edwardian commercial premises which create a high-quality urban environment, albeit somewhat overwhelmed by heavy traffic.
5. The proposal would comprise the erection of an attached pair of 2-storey, 3-bedroom, family dwellings with flat roofs. These would abut the rear boundary of the site and would be set back from the road and set a short distance away from the rear elevation of No. 104. The pair of houses would be relatively modest in height and footprint compared to surrounding buildings. However, the scale, design and "box-like" form of the proposal would result in an incongruous form of development that would be out of keeping with the character and appearance of the surrounding area.
6. Due to its design, form and scale I therefore conclude that the proposal would have an unacceptable effect on the character and appearance of its surroundings and cause unacceptable harm to the settings of nearby heritage assets. As such the proposal fails to comply with Policies SP4 and DM10 of the Croydon Local Plan (2018) (CLP) and Policies D3 and D4 of the London Plan (2021) (LP) which, amongst other matters, seek to ensure that development is well-designed and respects the scale, massing and built features of its surroundings. There is also conflict with CLP Policy DM18, which seeks to preserve or enhance the character, appearance and setting of Locally Listed Buildings and Local Heritage Areas in the borough, and the aims of LP Policy HC1 and the National Planning Policy Framework (2021) (the "Framework").

Living Conditions of Future Occupiers

7. The proposal would provide a pair of 3-bedroom family dwellings each with reasonably sized gardens. However, in the most part these amenity areas would be situated next to a busy road. As such they would not provide adequate privacy or acceptable levels of tranquillity for future occupiers. In addition, the retained mature trees and proposed replacement trees close to the front boundary of the site would enclose and overshadow the garden areas to a high degree further limiting their amenity value. Whilst I note that boundary planting could to a degree improve the quality of the garden areas, this would take a while to become adequately established and its long-term retention and maintenance could not be secured.
8. For these reasons the proposal would provide unacceptable living conditions for future occupiers. It therefore fails to accord with CLP Policies SP4 and DM10 and LP Policies D6 and D12. Amongst other matters these policies seek to ensure that development is well-designed and provides a high quality and useable private amenity space.

9. I note that the pair of houses would be largely single-aspect. However, I am satisfied that the shallow plan arrangement and the pairs of openable windows in the rear elevation would ensure adequate cross-ventilation is achieved. I am also satisfied that the main rooms would benefit from adequate outlook and natural light despite the close vicinity of proposed trees, which would be beneficial in respect of shading in summer months.

Flood Risk

10. The Appellants Flood Risk Assessment (FRA) indicates that the appeal site is located within Flood Risk Zone 3, namely an area with a high probability of flooding. Paragraph 159 of the Framework states that *"Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere"*.
11. The Framework indicates that sequential testing should be carried out to steer new development to areas with the lowest risk of flooding and development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. There is nothing before me to indicate that the proposal is "necessary" or that there is an absence of land available for housing with a lower level of flood risk.
12. The FRA applies the exception test. However, the Framework advises that *"Only if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied"*. In essence, the sequential test must be passed before the exception test can be applied. This is clearly stipulated at Table 8.1 in the CLP.
13. The proposal therefore fails to accord with Chapter 14 of the Framework. There is also non-compliance with LP Policy SI12 and CLP Policy DM25 which steer development to the areas with a lower risk of flooding and stipulate that proposals should ensure that flood risk is minimised.

Health and Life Expectancy of Trees

14. There is a Lime tree situated in one corner of the site, a Horse Chestnut in the pavement in front of the site and a London Plane situated close to No. 104. The latter 2 trees are impressive mature specimens that are subject to Tree Protection Orders and have Root Protection Areas (RPAs) that cover a large proportion of the appeal site.
15. The proposal would include the removal of the hard-surfacing within the appeal site and the provision of soft-landscaped garden areas close to the trees which would be beneficial to their health and life-expectancy. The proposed pair of dwellings would however impinge on the RPAs resulting in potential harm. The application drawings indicate the use of a perimeter pile and ground beam type foundation with the ground beams no deeper than 300mm. I am satisfied that such a solution could be implemented through the imposition of a planning condition and that this would be sufficient to ensure that any damage to the RPAs is kept to a minimum.
16. The Council advises that 4 Lime trees have recently been removed from the front edge of the site and that the consent for this requires replacement tree

planting which has not yet occurred. Details of this matter are not before me. However, it is clear that the proposal allows scope for replacement tree planting along the street boundary and this could be secured via a planning condition.

17. For these reasons the proposal would not have an unacceptable effect on the health and life expectancy of existing trees and would provide adequate scope for replacement tree planting. It therefore accords with CLP Policy DM28 and LP Policy G7. The former seeks to protect and enhance the borough's woodlands, trees and hedgerows whilst the latter states that if planning permission is granted that necessitates the removal of trees there should be adequate replacement.

Living Conditions of Neighbouring Property Occupiers

18. There is residential accommodation on the upper floor of 102 South End with windows that look out over areas of car park to the rear of Nos 100-102 and over the appeal site. Due to the absence of close by development these windows, some of which are likely to serve main habitable rooms, benefit from relatively high levels of outlook and natural light.
19. The appeal proposal would be 2-storeys in height and therefore not a great deal taller than the level of the windows serving No. 102. It would be set at right angles to the windows and a reasonable distance from them. As such any reductions in natural light to, and outlook from, the windows would be small and therefore not of a degree that would be noticeable or harmful.
20. For these reasons the proposal would not result in unacceptable harm to the living conditions of the occupiers of No. 102. The proposal therefore accords with CLPO Policies SP4 and DM10 and LP Policy D6 which support development that ensures the amenity of occupiers of adjoining buildings is protected.

Other Matters

21. I recognise that the proposal would make a contribution towards housing supply on a site that is under-utilised brownfield land and situated in a highly accessible location. Although this form of development is supported in principle by LP Policy H2, and the CLP supports the development of windfall sites, the proposal needs to be considered against the entirety of the development plan. The benefits of the proposal do not outweigh the clear harm identified under the first, second and third main issues outlined above.
22. I note that there have been pre-application discussions relating to proposals to develop the site and the appellant has referred to inconsistencies between pre-application advice and the subsequent determination of the planning application. These are not matters before me for consideration.

Conclusion

23. For the reasons set out under the first, second and third main issues, and having regard to all other matters raised, I conclude that the appeal should fail.

S Poole

INSPECTOR