



Appeal Decision

Site visit made on 7 August 2023

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2023

Appeal Ref: APP/L5240/W/22/3303688

17 Abbots Lane, Kenley, Croydon 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 Mr G and Mrs P Bloxham against the Council of the London Borough of Croydon.
 - The application Ref 22/01140/FUL, is dated 15 March 2022.
 - The development proposed is the demolition of existing dwelling and construction of a part 3, part 6 storey residential building accommodating 15 flats with associated access, parking, refuse and recycling provision and hard and soft landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The Council has indicated that had it determined the appeal it would have refused planning permission. The indicative reasons for refusal contained in its appeal statement dated December 2022 concerned the provision of affordable housing, the character and appearance of the area, the living conditions of future and nearby occupiers, parking provision and accessibility, and drainage and flood risk, and the absence of a planning obligation.
3. During the appeal process the appellant submitted a signed Unilateral Undertaking planning obligation dated 8 January 2023, which sought, amongst other things, to address issues of air quality, carbon off-setting, sustainable transport, local employment and training, parking permit restrictions, affordable housing provision and monitoring costs.
4. However, shortly after this document was submitted, the Council advised the appellant that due to the nature of the obligations it contained, they considered a Unilateral Undertaking was inadequate and that an Agreement between the Council and the appellant was needed. A signed planning obligation Agreement dated 21 February 2023 was submitted and is in the evidence before me, and I have considered it in determining this appeal. Following clarification from both main parties, I am satisfied it supersedes and replaces the earlier Unilateral Undertaking.
5. The appellant has also submitted some revised drawings¹ which seek to address the issue of overlooking of 13 Abbots Lane. I note the appellant's

¹ The amended plans were submitted on 9 January 2023. The drawing numbers of the amended plans listed at paragraph 2.18 of the appellant's final comments are not accurate.

comments regarding the dismissal of an appeal at 13 Abbots Lane², which has caused them to submit revised plans.

6. However, I am not satisfied that the dismissal of the appeal on a nearby site is sufficient to exceptionally allow for the submission of revised plans in this case. In any event, even if I were to consider the appellant's reasons acceptable, I am not satisfied that these plans would not disadvantage parties in the appeal process due to the significance of the changes to the proposal. This includes with regard to the character and appearance of the area and the living conditions of nearby and future occupiers. Consequently, I have not considered the submitted revised drawings in determining this appeal.
7. On 5 September 2023, the Government published the latest version of the National Planning Policy Framework (the Framework). I am satisfied that the changes to the revised version would not affect this appeal and that the interests of the parties would not be affected.

Main Issues

8. The main issues are the effect of the proposal on:
 - The character and appearance of the area;
 - The living conditions of future occupiers, with particular regard to the single aspect design of units, internal and private external spaces and communal amenity space;
 - The living conditions of nearby occupiers, with particular regard to outlook and privacy;
 - Parking provision and accessibility;
 - Drainage and flood risk; and;
 - Affordable housing provision.

Reasons

Character and appearance

9. The appeal site is located on the eastern side of Abbots Lane, within a residential area, containing a mix of dwelling types and sizes. Mature trees and hedgerows are to be found here and give the area a verdant character.
10. In the vicinity of the appeal site, the area has an undulating topography, generally sloping downwards from west to east before rising again; Abbots Lane itself slopes gently upwards from north to south.
11. The appeal site descends a considerable distance eastwards from Abbots Lane, via a series of small plateaus and slopes. The site contains mature landscaping to the east, with maintained hedgerows to the side and front. The site is currently occupied by a 2-storey detached dwelling, with a detached, flat-roofed brick garage facing onto Abbots Lane.
12. The existing dwelling has an interesting design in response to the undulating terrain. It is constructed below street level on a plateau and is accessed via

² Ref. APP/L5240/W/21/3284035

steps down from Abbots Lane, over a bridge to a first floor entrance. The location is such that the ridgeline of the pitched roof of the dwelling is at a similar height to the flat roof of the single storey garage at street level.

13. Together with the next door dwellings on either side of No 17 on the eastern side of the road, the existing dwelling is not visually prominent in the streetscene. Beyond the hedgerow that separates these dwellings from Abbots Lane is a largely open aspect, with views of mature woodland on a generally similar elevation to Abbots Lane.
14. The western side of Abbots Lane is quite different. It rises away from the road and there are substantial dwellings set back from the road at a higher elevation. A small housing estate is located to the north of the appeal site, whilst several large, 3.5-storey, residential developments are located to the south.
15. The proposed development would entail the provision of 15 flats over six levels and would extend across most of the width of the appeal site and a considerable distance to the east.
16. The proposed building would have three storeys on the Abbots Lane elevation, including the large dormer projections, with a winding driveway at the front descending to a subterranean car park. As a result of the undulating terrain of the area, much of the two side elevations would also be readily visible in views from Abbots Lane.
17. The proposed building would appear to have six storeys in views from the east, again with the substantial dormer projections, and with the lower four levels stepped to provide private outdoor space for the rear flats on these levels. There would be further communal amenity space and landscaping beyond the building, extending to the eastern boundary.
18. However, the footprint, scale and massing of the proposal would be substantially greater than the existing and next door dwellings on the eastern side of Abbots Lane. It would be a visually prominent and incongruous addition on the eastern side of the road, out of keeping with the existing pattern of development and detracting from the generally open aspect to be found there.
19. Furthermore, and notwithstanding the sloping terrain and landscaping, in views from the east, the six storey height of the proposed building would be an over-dominant and obtrusive feature, particularly during late autumn, winter and early spring when leaves are shed.
20. The proposed design attempts to address the significant change in levels across the appeal site. However, the proposed contemporary design, with its visually prominent and awkward dormer projections, would be inharmonious with the prevailing traditional style of dwellings in the area. Moreover, the scale and massing of the building would accentuate the contemporary design and would detract from the visual character and appearance of the area.
21. Whilst there are some substantial developments to the south of the appeal site, on the western side of Abbots Lane, this has a much less open aspect than the eastern side of the road. These recent developments are seen within the context of the rising ground and mature trees to be found there and are significantly less visually obtrusive than the appeal proposal would be.

22. The appellant also makes extensive reference to the proposal at No 13 next door that was dismissed at appeal. Concerns are raised with the Council's approach to the appeal scheme, in not considering that scheme appropriately. The appellant also notes that neither the Council nor the Inspector were concerned with the scale and design of that proposal.
23. Setting aside the merits or otherwise of these schemes, and the limited information before me regarding them, each proposal should be determined on its own merits, which is what I have done in this case. These schemes do not alter my assessment of the harm that would be caused to the character and appearance of the area, as set out above.
24. The originally submitted proposed streetscene elevation drawing³, and various other originally submitted plan and section drawings, are also inaccurate with regard to 13 Abbots Lane, next door to the north. These drawings appear to show the proposal that was dismissed at appeal, rather than the existing building. I have considered the appeal proposal with regard to the existing building at No 13 I observed on site.
25. I do not share the Council's concerns over the proposed car park driveway, which would be largely screened from view by the proposed building and hedgerows at the front and sides. A ramped access, as exists nearby to the south of the appeal site, would be a practical means of accommodating vehicles on the sloping site.
26. Nevertheless, for these reasons, the proposed development would adversely affect the character and appearance of the area. It would, therefore, conflict with Policies D3 (optimising site capacity through the design-led approach) and D4 (delivering good design) of the Spatial Development Strategy for Greater London 2021 (the LP), and Policies SP4 (urban design and local character) and DM10 (design and character) of the Croydon Local Plan 2018 (the CLP), and with the September 2023 version of the Framework, in this regard.

Living conditions of future occupiers – design and spaces

27. The Council has identified five dwellings that would be single aspect units, Nos 2, 12, 13, 14 and 15, whereas the appellant considers that only one would be a single aspect unit, No 2. There are inconsistencies between the submitted plan and elevation drawings with regard to the window openings on the two side elevations affecting unit Nos 12-15. The elevation drawings show high level windows for these units in the side elevations, whereas the plan drawings do not.
28. Whilst the plan drawings show dashed lines, there is no annotation to explain whether these are intended to show the high level windows. Whilst this is not clear or helpful, I consider that the dashed lines do represent the high level side elevation windows and so only one dwelling, unit 2 would be single aspect. With regard to this unit, there is no substantive evidence that causes me to think that this would, by itself, have an unacceptably harmful effect on the living conditions of the future occupier of this unit, including in terms of natural light or ventilation.
29. Some of the unit sizes, including private outdoor amenity spaces, are below the minimum standards defined in the development plan. However, given the very

³ Ref. ABL-OBA-00-ZZ-DR-A-0450

small scale of these deficiencies, and in the context of this development, I do not consider this would, by itself, cause unacceptable harm to the living conditions of future occupiers either.

30. The proposal would have a number of areas of communal amenity space, including a small area within the building structure itself, an area to the north of the steps by the southern boundary and larger areas to the eastern end of the appeal site. The larger spaces would include seating areas and recreational equipment and would be accessible to residents by steps and lifts.
31. Given the aforementioned minor deficiencies in the design of one of the units and in the proposed size of some of the units, including private amenity space, the importance of the communal amenity space is increased. However, the large footprint of the building, the boundary landscaping and the sloping terrain of the site, means the available space is limited in size and usability.
32. Whilst some effort has been made to try and create a decent communal space at this constrained site, I do not consider this has been successful. In my view, the scale, layout and design of the proposed communal amenity space would be insufficient for the needs of future occupiers.
33. For these reasons, the proposed development would not cause unacceptable harm to the living conditions of future occupiers, with particular regard to the single aspect design of unit 2 and the internal and private external spaces of other units. However, there would be substantial harm to the living conditions of future occupiers with particular regard to the proposed communal amenity space. The proposal would not, therefore, accord with Policy D6 (housing quality and standards) of the LP and Policies SP2.8 (homes – quality and standards) and DM10 of the CLP, and with the Framework, in this regard.

Living conditions of nearby occupiers - outlook and privacy

34. The proposed development would have a substantially greater scale, massing and footprint than the existing dwelling, or the next door dwellings on Abbots Lane, Nos 13 and 21. It would also be similarly larger than No 40A Welcomes Road and would be at a significantly higher elevation.
35. However, the separation distances between the properties to the side and rear of the appeal site, together with the boundary landscaping, means that the adverse effect on the outlook of the occupiers of these properties would be limited, and would not cause unacceptable harm.
36. Nevertheless, in my view the top two level windows in the side elevations of the proposed building would allow for harmful overlooking of the next door properties on Abbots Lane, including habitable rooms and private garden areas. The appellant's submission of revised drawings seeking to address this issue suggests they recognise this is a problem, although as previously explained, I have not considered the revised drawings in determining this appeal.
37. I am also not satisfied that rear habitable rooms and the rear garden area of 40A Welcomes Road would not be harmfully overlooked from the appeal site, including from the proposed rear elevation and terraces, and the communal amenity space close to the boundary with No 40A.
38. Whilst the rear eastern boundary is heavily landscaped, it has not been satisfactorily demonstrated that this would prevent deleterious overlooking of

No 40A, and this effect would be worse in late autumn, winter and early spring. When I visited the site, I was able to see into much of the rear garden and the rooms on the rear elevation of the dwelling, despite the boundary fencing and vegetation; the lower position of No 40A is significant in this regard.

39. For these reasons, whilst the proposal would have an acceptable effect on the living conditions of nearby occupiers in terms of outlook, it would have an adverse effect in terms of privacy. It would, therefore, conflict with Policy DM10 of the CLP, and with the Framework, in this regard.

Parking provision and accessibility

40. The appeal site is located some 650 metres to the south of Kenley Railway Station, which has regular services to and from London. The station is linked to Abbots Lane by way of Hayes Lane, which is a narrow winding road with only a very small stretch of footpath along its length, making it a generally unattractive pedestrian route.
41. The appeal site has a Public Transport Accessibility Level (PTAL) of 1b, which is said to be very poor. In such locations the development plan allows up to 1.5 car parking spaces per unit to be provided.
42. A total of 15 spaces are to be provided as part of the proposal, in an underground car park, somewhat confusingly labelled as being at ground level on the submitted plans. I note the Council's comments regarding car ownership levels in the area and with regard to on-street overflow parking, even where parking stress is said to be very low.
43. However, the Council has provided no compelling evidence to demonstrate why the proposed level of car parking would be inadequate, given the availability of unrestricted on-street parking nearby, and I am satisfied that 15 spaces would be acceptable in this case.
44. I also note the Council's comments regarding the management of the car park access ramp and swept paths for vehicles, as well as the appellant's response. Abbots Lane is not a busy road and vehicles using it should be travelling no faster than 20mph; within the appeal site speeds would be substantially less than this. I am satisfied that the proposed access and parking arrangements would not be unreasonable and that the risk to safety would be very low.
45. For these reasons, the proposal would have an acceptable effect on parking provision and accessibility. It would, therefore, not conflict with Policy T4 (assessing and mitigating transport impacts) of the LP and Policies SP8 (transport and communication), DM29 (promoting sustainable travel and reducing congestion), and DM30 (car and cycle parking in new development) of the CLP, and with the Framework, in this regard.

Drainage and flood risk

46. The appeal site is located in an undulating terrain with the ground sloping away gently to the north and steeply to the east. The submitted Flood Risk Assessment notes that the site is at a very low risk of fluvial and surface water flooding, including any interactions with the sewer network or in the event of a reservoir failure.

47. I note the comments of the Lead Local Flood Authority regarding sustainable drainage, based upon the information submitted by the appellant, and the appellant's response. In this case, I see no reason why a pre-commencement condition could not be imposed upon any grant of planning permission were the appeal to be allowed, to address these concerns.
48. A pre-commencement condition would need to be discharged to the satisfaction of the Council or the development would not be able to take place; I am satisfied in this case this would be an acceptable approach, given the stated difficulties in securing a response from the Environment Agency.
49. For these reasons, the proposal would have an acceptable effect on drainage and flood risk. Consequently, it would not conflict with Policies SI13 (sustainable drainage) of the LP and Policies SP6 (environment and climate change) and DM25 (sustainable drainage systems and reducing flood risk) of the CLP, and with the Framework, in this regard.

Affordable housing provision

50. A planning obligation Agreement dated 21 February 2023 has been submitted. Amongst other things, this seeks to address affordable housing provision, and I note that both main parties consider the Agreement would address the Council's first indicative reason for refusal regarding affordable housing provision.
51. With reference to Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework, I am satisfied that the planning obligation Agreement would be necessary to make the proposed development acceptable in planning terms; would be directly related to the proposed development; and would be fairly and reasonably related in scale and kind to the proposed development.
52. However, with reference to the *Procedural Guide: Planning appeals – England* June 2023 and the Planning Inspectorate's *Planning obligations: good practice advice* April 2023, I am not satisfied that the planning obligation would be legally sound or effective.
53. At C.2. of the Recitals, reference is made to the "Appeal" under the reference number APP/L5240/W/22/330688. This is not the reference number for the appeal before me. Furthermore, this inaccurate reference number is also listed on the first page of the Agreement, and a different appeal reference number is listed under 3 Interpretation⁴.
54. In addition, whilst reference is made to the 'Owner' having freehold title absolute under 'Title Number SY 127938', there is no evidence of title before me. Consequently, I am not satisfied that the 'Owner' has the freehold title absolute, as is claimed.
55. For these reasons, the submitted planning obligation Agreement would not be legally sound or effective and so carries no weight in my determination of this appeal. The proposal would, therefore, have an adverse effect on affordable housing provision in the area, amongst other things, and would conflict with Policies H4 (delivering affordable housing) and H5 (threshold approach to

⁴ 'APP/L5240/W/3279949'

applications) of the LP and Policy SP2 (homes) of the CLP, and with the Framework, in this regard.

Other Matters

56. In addition to affordable housing provision, other matters, including a sustainable transport financial contribution; a carbon offsetting payment, an air quality payment; and changes to the vehicular access arrangements to the property were sought to be addressed by the s106 planning agreement.
57. As I have found the s106 agreement not to be legally sound or effective, I am not satisfied these matters would be adequately addressed. However, as I am dismissing the appeal for other reasons, I do not need to address these matters further.

Conclusion

58. Whilst the proposal would have an acceptable effect on parking provision and accessibility, and drainage and flood risk, the harm caused to the character and appearance of the area, the living conditions of future and nearby occupiers and to affordable housing provision would outweigh this.
59. For the reasons given above, the appeal is dismissed and planning permission is refused.

Andrew Parkin

INSPECTOR