



Appeal Decision

Site visit made on 20 September 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2023

Appeal Ref: APP/L5240/W/22/3311658

176 & 178 Foxley Lane, Purley CR8 3NF

- 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 outline planning permission.
 - The appeal is made by Mr Craig Hatchard (Strata Land Ltd) against the Council of the London Borough of Croydon.
 - The application Ref 22/02639/OUT, is dated 11 July 2022.
 - The development proposed is the demolition of existing semi detached houses and the erection of a 8 No 2 storey semi-detached 4 bedroom houses with accommodation within the roof space and associated parking.
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Decision

1. The appeal is dismissed and planning permission is refused for the demolition of existing semi detached houses and the erection of a 8 No 2 storey semi-detached 4 bedroom houses with accommodation within the roof space and associated parking.

Preliminary Matters

2. The application is for outline planning permission with access, appearance, layout and scale to be considered at this stage. The matter of landscaping is reserved for subsequent consideration. I have considered the proposal on this basis.
3. A revised National Planning Policy Framework (the Framework) was published by the Government after the determination of the planning application. It does not raise any new considerations in relation to this appeal.

Main Issues

4. Although there is no formal decision from the Council, they have offered putative reasons for refusal. Based on these, the main issues are the effect of the proposed development on a) the character and appearance of the area; b) the living conditions of neighbouring occupants; c) the living conditions of future occupants; and d) trees.

Reasons

Character and Appearance

5. Houses in the vicinity of the appeal site are generally either detached or semi-detached and two storeys in appearance although many have accommodation within the roof space. There is variety in the style and appearance of individual buildings which are generally set within well sized plots and back from their site frontages.

6. The area does also contain some existing flatted developments although these have generally been designed to broadly reflect the prevailing palette of building heights and styling. Together with the width of the road and the extensive tree and boundary planting that exists, the area has a suburban but spacious character. The appeal site, which comprises a pair of two storey semi-detached dwellings, broadly conforms to this prevailing character and positively contributes to it.
7. The proposal would replace the existing buildings to the front of the site with two pairs of semi-detached houses on plots 1 - 4. The Council acknowledges that these dwellings would be broadly reflective of the wider character of the area and raises no objection to them in terms of their footprint or positioning. I have no reason to disagree with this conclusion.
8. The houses to the rear would be accessed via a new driveway that would run beyond plots 1-4 and into the centre of the site, where it would serve a parking court. This central area of parking would represent a large expanse of hardstanding, pushing the houses on plots 5 – 8 towards the rear of the site. This arrangement and scale of built form within a relatively contained area would appear cramped and squeezed in when compared with the more spacious character of the area.
9. I acknowledge that there are examples of 'backland' development elsewhere along Foxley Lane as well as the development of Badgers Walk immediately to the rear of the site. Much of the impetus for those sites coming forward appears to have been the Council's since revoked Suburban Design Guide. More importantly, whilst these developments have increased the density and amount of built form in the area, based on what I have seen, they do not harm the spacious character and appearance of the area in the same way the appeal proposals would. They do not therefore lead me to allowing the appeal.
10. There is a degree of repetition in the design of the front four dwellings and a different but repeated design for the rear four dwellings. Whilst the scheme would be improved by a less repetitive approach to the external appearance of the houses, any such changes would not overcome the concerns I have identified.
11. All of the above leads me to the conclusion that the scheme would detract from the spacious qualities of the area and be harmful to its prevailing character and appearance. As such, it is contrary to Policy D3 of the London Plan 2021 (LP) and Policies SP4 and DM10 of the Croydon Local Plan 2018 (CLP) which, amongst other things, require development to be of a high quality that respects and responds to the character and pattern of development in its area.
12. The proposal would also fail to accord with the mandate in the Framework for developments to be sympathetic to local character and establish a strong sense of place.

Living Conditions - Neighbours

13. The Council has not identified any harm arising to the neighbouring occupiers from the houses on plots 1 – 4. From the evidence before me and from my observations of the site, I have no reason to disagree with this assessment.
14. The position of the houses on plots 5 – 8 would curtail and alter some of the outlook currently enjoyed by the occupiers of No. 180 Foxley Lane. However,

the distances and positions of the buildings would not be so close as to make the effect on outlook in itself unacceptable. Nevertheless, the orientation and proximity of plot 5 in relation to this neighbour's rear garden, would result in a degree of overlooking that would not be reflective of the area generally.

15. Although there is some disagreement between the main parties as to the distances involved, the side elevation of the house on plot 5 would be at most 16m from the rear elevation of No. 235 Woodcote Road, and 4.9m from its rear boundary. From this it is nonetheless evident that the rear garden to No.235 is not overly deep. Positioning this scale of building within such proximity to the neighbouring property would not be reflective of the prevailing pattern of development. Moreover, it would clearly result in a harmful loss of outlook and an increased sense of enclosure to the existing occupants.
16. Even without a daylight and sunlight study it is clear that the overall effect of the proposal on the living condition of neighbours would be unneighbourly and unacceptable. As such, the proposal would be contrary to Policy D3 of the LP and Policies SP4 and DM10 of the CLP which, amongst other things, look for developments to deliver appropriate outlook, privacy and amenity and in particular require the amenity of neighbouring occupiers to be protected and for wellbeing to be enhanced.
17. The proposal would also be contrary to the overarching objectives of the Framework, which amongst other things, seek to ensure developments achieve quality living conditions and create a high standard of amenity for existing and future users.

Living Conditions – Future Occupants

18. It was only as part of their appeal submission that sectional drawings of the proposed houses were produced by the appellant. The Council was given an opportunity to comment on these drawings and has indicated that they demonstrate adequate floor to ceiling heights could be achieved.
19. Although the sectional drawings are not said to be drawn to any recognised scale, I acknowledge that the overall heights and proportions seem to tally with the originally submitted house designs. As such, the dwellings do seem able to provide acceptable internal floor-to-ceiling heights. On this basis, I conclude that the living conditions of future occupiers would not be harmed.
20. In providing appropriate living conditions for future occupiers, the proposal would meet the relevant aspects of Policies D3, D6 and table 3.2 of the LP and Policies SP2.8, SP4 and DM10 of the CLP, as well as meeting such requirements of the Housing Supplementary Planning Guidance to the London Plan.

Trees

21. As part of their appeal submission, the appellants have produced an Arboricultural Addendum Report. This report concludes that the roots of the Common Yew tree on the front boundary could be manually protected and demonstrates how the access road could be built up by 300mm to help protect and retain the tree's roots.
22. The Council has indicated that whilst this would not be the solution it suggested, it would nevertheless support such an approach. Based on the evidence before me and subject to the imposition of appropriate conditions, it

seems that this and other trees could be sufficiently protected or compensated. Accordingly, the proposal would accord with the relevant parts of Policies DM10 and DM28 of the CLP which address such matters.

23. In securing the retention of the existing tree the proposal would accord with the provisions of the Framework.

Other Matters

24. The Council's appeal Statement indicated that the initial planning application submission lacked clarity around various highways matters and raised a number of concerns. The appellant's final submission included a new report from transport consultants which sought to address these matters. In accepting this late submission of new material, it was appropriate to give the Council an opportunity to respond. The appellant's transport consultant subsequently responded to and countered the points raised by the Council.
25. Although it appears that some issues could be addressed by condition, there remains disagreement around such matters as the proposed site entrance in relation to the bus cage, the roundabout and cycles as well as the issues of vehicular sightlines, swept path analysis and trip generation.
26. It has therefore become evident that any resolution of these technical matters might not necessarily be simple or straightforward. It is also not clear that even if a resolution could be reached there would not need to be some changes or amendments to the scheme.
27. Government guidance relating to planning appeals explains that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector at appeal is essentially the same as that considered by the Council and interested parties at the application stage. Furthermore, as I am dismissing the appeal for other reasons, any additional consultation with, or input from, the appellant's transport consultants would not overcome the other harms I have identified and so would not result in an overall positive outcome for the appeal. However, such input might incur additional expense for the appellant. Accordingly, I have not sought to pursue these matters further.
28. In addition, despite the appellant indicating a willingness to provide the required sustainable transport contribution. There is no planning agreement before me. It is suggested that a planning condition requiring the completion of such an agreement would address the matter. However, the Planning Policy Guidance (Paragraph 005: ID 21a-005-20190723 and Paragraph 010: ID 21a-010-20190723) is quite clear that no payment of money or other consideration can be positively required when granting planning permission; and that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation.
29. Thus, even if I had found in favour of the appellant in relation to the transport matters, and notwithstanding my findings on the main issues, the absence of a completed and signed planning agreement would provide a clear reason for dismissing the appeal.
30. The issues of carbon emissions, air quality and energy efficiency were also raised by the Council in relation to the proposal. It is suggested that the adverse effects of the development in relation to these matters could be

addressed by financial contributions. However, much of this appears to be on the basis that the proposal represents a 'major' development.

31. As the scheme is for 8 houses, the development is not 'major' and the requirements of Policy SP6 of the CLP and Policies SI1 and SI2 of the LP could possibly be achieved on site. It is not clear that a planning agreement would necessarily be required to achieve a policy compliant development in relation to all these issues. However, even if it were possible to resolve these matters through planning conditions it would not overcome the harms I have identified in relation to the main issues of this appeal.
32. I have not had further regard in this decision to concerns over how the Council handled the pre-application advice process or the revocation of the Suburban Design Guide, as these are administrative matters to be taken up directly with them. I have focused on the planning merits of the scheme in regard to the main issues of the case.

Conclusion

33. The proposal would raise harms that would conflict with the development plan when taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan.
34. I have had regard to all matters raised but for the reasons given, I conclude that the appeal should not succeed and planning permission should be refused.

Stewart Glassar

INSPECTOR