



# Appeal Decision

Site visit made on 16 October 2023

**by K L Robbie BA (Hons) DipTP MTP MRTPI**

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

**Decision date: 13 November 2023**

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**Appeal Ref: APP/L5240/W/23/3318923**

**19 Orchard Avenue, Croydon CR0 8UB**

- 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 J Hannah of Church Hill Holdings Ltd against the decision of the Council of the London Borough of Croydon.
  - The application Ref 22/02202/FUL, dated 23 May 2022, was refused by notice dated 9 November 2022.
  - The development proposed is demolition of the existing property and a proposed 8 unit apartment building with associated centralised drop kerb, access and parking.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. During the appeal a signed planning obligation by way of a Unilateral Undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted. This proposes to pay a contribution of £12,000 to the Council for a range of sustainable transport initiatives and compels occupiers to membership of a Car Club. I return to this matter below.

## Main Issues

3. The main issues are:
  - The effect of the development on the character and appearance of the site and its surroundings, including trees;
  - Whether the development would deliver an adequate mix of housing to meet local needs;
  - Whether the development would provide future occupiers of the development with adequate living conditions with regard to privacy, outlook and light and access to external amenity space;
  - The effect of the development on the existing occupiers of 21 Orchard Avenue (No. 21) with regard to outlook;
  - Whether the proposal would make adequate provision for car parking, sustainable travel options and the effect of the development on highway safety;
  - Whether the development would make adequate provision for storage of refuse and recycling; and
  - The effect of the development on biodiversity.

## Reasons

### *Character and appearance*

4. The appeal property is a traditional suburban-style detached dwelling situated on Orchard Avenue close to its junction with Wickham Road. The avenue contains a variety of types of residential developments of varying eras and styles; however, on this side of the avenue, with the notable exception of the adjacent flats at 17 Orchard Avenue (No. 17) they are predominantly detached and semi-detached single- and two-storey dwellings. Nos. 19 to 23 Orchard Avenue are similar in style and appearance and form a cohesive group of properties which together contribute positively to the pleasant spacious character of the avenue.
5. The appeal scheme involves the demolition of an existing two storey property and its replacement with a three-storey mock-tudor style building with accommodation in the roof to provide eight flats. Car parking would be provided to the front with amenity space and cycle parking facilities to the rear.
6. The appeal site is located in an 'Area of Focussed Intensification' (AFI) as set out in Policy DM10.11 of the Croydon Local Plan 2018 (CLP) where new development may be significantly larger than existing. The policy aims to tackle unmet housing need in focussed areas close to shops, services and local transport connections.
7. The appeal scheme would be very similar in appearance to a recent redevelopment scheme at No. 17 approved in 2019<sup>1</sup>. However, in the intervening period there have been changes in national and local planning policy and guidance. Most pertinent of which is the revocation of the Council's Suburban Design Guide Supplementary Planning Document in 2022 which indicated support for the form of development before me. Whilst AFIs remain as an element of CLP DM10, development in these areas is expected to enhance and sensitively respond to existing character by being of high quality and respectful of the existing place in which they would be placed.
8. Although the development would be approximately the same height as No. 17 the appeal site is narrower and therefore the appeal scheme would result in a form of development which would appear taller and with a more vertical emphasis. Furthermore, the gable features which would form a repeating element of the main roof slopes on either side of the building would appear as incongruous and prominent features in the street scene given the height of the building relative to No. 21 and its position relative to No. 17. There would be little space between the appeal proposal and development either side leading to a very cramped appearance, at odds with general sense of spaciousness which exists within the avenue at present.
9. Whilst there are flats opposite at Peregrine Garden, these face Wickham Road and are set in generous grounds. Therefore, are appreciated in a different environment and context. Their presence does not persuade me to reach an alternative conclusion on this main issue.
10. I appreciate that the scheme before me attempts to overcome some of the Inspector's observations on a previous appeal<sup>2</sup> at the site. However, the

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<sup>1</sup> LPA reference 19/00131/FUL

<sup>2</sup> APP/L5240/W/21/3266351

proposal would, when viewed together with the development at No.17, appear overly dominant, out of character and out of proportion with the prevailing development in the avenue. Although the appeal site is located in an AFI, it would not be respectful of the character of Orchard Avenue or enhance and respond sensitively to its setting.

11. The proposal would include the removal of several trees from the site including a substantial Lawson Cypress hedge on the front boundary which forms a high dense screen along the street frontage. Whilst the removal of the hedge and other trees within the site would change the appearance of the site in its setting, it would not, however, adversely affect its character. Basic details have been provided indicating some replacement planting at the front of the site, which could be capable of enhancing the appearance of the site, but do not include planting schedules or details of species. However, I see no reason why suitable landscaping details including the replacement of trees and details of boundary treatments could not be adequately addressed though the imposition of a suitably worded condition.
12. Whilst it would be possible to ensure appropriate landscaping on the site, this would not overcome or outweigh the other identified concerns relating to the harm that would be caused by the development on the character and appearance of the area. I therefore conclude that the proposal would conflict with CLP Policies SP4 and DM10 which seek to ensure that development in the borough is of high quality which respects and enhance Croydon's varied local character. It would also conflict with Policies H2 and D6 of the London Plan 2021 which seek to ensure that housing development on small sites is well-designed, and all housing is of high quality. The removal of the trees and replacement planting would be acceptable, and, in this regard, I do not find conflict with CLP Policy DM28.
13. The Council refer to London Plan Policy D4 in relation to this main issue, but as this relates to the contribution of masterplans and design scrutiny to the development process it is not directly relevant to this main issue.

#### *Housing Mix*

14. The development would provide six 2-bedroomed units and two 1-bedroomed units equating to a total provision of 8 units. It would replace a 4-bedroomed dwelling with a floorspace more than 130m<sup>2</sup>.
15. CLP Policy SP2.7 seeks to ensure that a choice of homes is available in the borough that will address its housing needs for homes of different sizes by setting a strategic target of 30% of all new homes to have three or more bedrooms. CLP Policy DM1 sets out the Council's requirement for the provision of homes with 3 or more bedrooms on sites of 10 dwellings or more. My attention has not been drawn to any site-specific targets for sites with a capacity of less than 10 dwellings. Nevertheless, CLP Policy DM1.2 supports the redevelopment of residential sites where it would not result in the net loss of 3 bedroomed homes (as originally built) or the loss of homes smaller than 130m<sup>2</sup>.
16. The appellant contends that CLP Policy SP2.7 sets out a strategic target and it does not follow that 3-bedroomed units are required to be provided on every site. The supporting text to London Plan Policy H10 refers to 1- and 2-bedroom units meeting a need for those wanting to downsize from existing family

homes. Nevertheless, it also sets out the need for schemes to generally consist of a range of unit sizes and refers to an appropriate mix of unit sizes being identified on the basis of robust local evidence.

17. To that end, I have not been provided with any substantive evidence that the strategic target set out in CLP Policy SP2.7 is being met from housing delivery elsewhere in the borough or that there is a significantly unmet need for 1- and 2-bedroomed units in the locality. Nor have I been provided with any compelling evidence as to why it would not be possible or viable to provide any 3-bedroomed units at all in this instance. I am therefore not satisfied that it has been robustly demonstrated that the proposal would deliver a range of house types and sizes that reflects and responds to the identified housing needs and demands of the borough's households.
18. Some of the units may be capable of accommodating 4 persons which the appellant argues could be considered to be family homes. However, on the evidence that is before me CLP Policy SP2.7 has identified a specific need for 3-bedroomed properties rather than a generalised need for family sized accommodation.
19. Consequently, the proposal would not provide an appropriate mix of market housing appropriate to its location. It would also result in the loss of a larger family home. Consequently, the proposal conflicts with CLP Policies DM1.1 and SP2.7 and London Plan Policy H10 which seeks to provide quality of new housing which meets the housing needs of residents across the borough and London as a whole.

#### *Living Conditions for Future Occupiers*

20. Bedroom windows on the ground floor would be located either close to car parking spaces at the front or on the side elevations close to narrow pedestrian walkways. Other residents would be likely to use these walkways to gain access to the rear of the property where amenity space and cycle storage would be located, thereby passing these bedroom windows in very close proximity. The windows would also face boundary fences at very close quarters.
21. In the absence of any evidence to the contrary, given the proximity of buildings on either side of the appeal site in combination with the closeness of the boundary fence to windows in the side elevations at ground floor, it is highly likely that poor levels of light would be penetrate these windows resulting in unduly gloomy and oppressive conditions for occupiers. Although the windows would be obscured in part and would be fixed shut which may overcome the loss of privacy to some extent, these measures would compound the poor outlook and oppressive nature for the occupiers of these rooms.
22. I acknowledge that this may be a similar situation to that at No. 17 and that all the flats would be dual aspect. Nevertheless, this is not a compelling reason that poor living conditions for future occupiers are acceptable and does not overcome the harm that I have found on this matter.
23. External amenity space would be provided to the rear of the building. The ground floor flats would have private gardens. The remainder of the flats would have access to a shared space beyond, access to which would be via narrow paths between the proposal and the boundary with adjacent properties. The

distance for occupants of upper floor flats to access this area would be lengthy and tortuous and therefore render its use inconvenient and unappealing.

24. Nevertheless, the space provided would be adequate for children's play or sitting out, and in that respect, I find no harm. Therefore, whilst the quantum and type of amenity space may be acceptable, its poor relationship with the flats would not provide an adequate standard of living accommodation for future occupiers.
25. The accommodation provided would not comply with Parts M4(2) and M(3) of The Building Regulations 2010 in relation to the accessibility of flats as set out in Policy D7 of the London Plan. Although the policy advocates a flexible approach in some circumstances, I can see no overriding reason in this instance why the ground floor flats at the very least could not be accessible.
26. For these reasons, having regard to the quality of the internal space and external amenity space proposed, their cumulative effects would add up to the proposal failing to provide adequate living conditions for future occupiers with particular regard to outlook, light, the provision of external amenity space and accessibility. This would conflict with CLP Policy DM10 and London Plan Policies D4, D5, D6 and D7 which seek to ensure that future occupiers are provided with high quality living accommodation. However, I find no harm with regard to privacy or the quantum of external amenity space suitable for children's play.

#### *Living Conditions for the Occupiers of 21 Orchard Avenue*

27. The proposal would be much deeper and higher than the existing dwelling. It would extend a considerable distance beyond the rear elevation of No. 21 and when viewed from the rear windows and, particularly the recessed ground floor window, would be an imposing feature close to the boundary. The relationship of No. 17 with the appeal site goes some way to demonstrate the dominating nature of the proposed development and the effect that it would have on the occupiers of No.21, especially given the proposed removal of trees on the boundary with No. 21.
28. The appellant states that the 45-degree rule would not be breached and hence claims that this demonstrates that the proposal would not adversely impact the occupiers of No. 21 with regard to outlook or sense of enclosure. However, my attention has not been drawn to any Council guidance which advocates the use of this rule. Whilst the proposal may not breach this rule of thumb, in my judgement the proposal comprises a substantial building close to the boundary with a more modest dwelling and compliance with a 45-degree rule would not overcome the identified harm above.
29. I therefore conclude that the proposed development would adversely affect the living conditions of the occupiers of 21 Orchard Avenue with particular regard to outlook contrary to CLP Policy DM10.6 and London Plan Policy D3 which seek to ensure that the amenity of adjoining occupiers is protected.

#### *Car Parking, Sustainable Travel and Highway Safety*

30. Cycle parking would be located to the rear of the development in accordance with the quantum of provision required by London Plan Policy T5. However, it is not located in a convenient location which would encourage cycle use. The narrow access to side of the property is likely to be problematic for the manoeuvring of cycles in and out of the site, which would be likely to

discourage cycling as an alternative means of transport. Furthermore, no visitor cycle parking is provided to the front of the property, and visitors are unlikely to be able to easily utilise the storage facility at the rear. Therefore, the proposed cycle parking for the development would be inadequate.

31. Car parking for four cars would be provided to the front of the development either side of a centralised access point. Although the appellant states that a blue badge bay would be provided none of the spaces proposed are shown to be used in this way.
32. A swept path analysis demonstrates that the spaces would be able to be accessed independently of one another. However, manoeuvrability from the innermost left-hand side bay is likely to be problematic, due to proximity of the refuse storage facility.
33. The avenue is straight at this point and visibility splays from the edge of the carriageway indicate that visibility would not be impeded. However, this does address the need to cross the pavement to achieve this and therefore does not take account of parked vehicles and proposed boundary planting within the site.
34. The appellant contends that sightlines and the other highways matters as set out above, could be dealt with by condition. However, due to the constrained nature of the site, these matters serve to highlight the potential conflicts and shortcomings with the overall scheme. Therefore, I am not persuaded that they could be adequately dealt with by condition. These are important matters that go to the heart of the acceptability of the proposal in principle.
35. I have been provided with a legal agreement in the form of UU which would provide a contribution towards sustainable transport initiatives in the area and seeks to compel the occupiers of the units to membership of a car club. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. The site is not located in a Controlled Parking Zone (CPZ). The requirement relating to residents' membership of a car club is reasonably related in scale and kind to the development as this would adequately deal with potential overspill parking from the development. Therefore, the evidence indicates that the obligation is directly related to the development.
36. The Council have provided details of local sustainable transport initiatives and justification for the calculation of the proposed £12,000 contribution and the UU is sufficiently detailed to set out what the contribution would be used for and how the level of the contribution has been reached. However, as the appeal is being dismissed for other reasons, I have not considered this matter further.
37. I acknowledge that highway safety was not a concern on a previously refused proposal for the site, however, I do not have the details of that scheme before me. Nevertheless, I have determined the appeal based on the reasons for refusal and the information before me.
38. Whilst the cumulative impacts on the road network would not be severe, there would be an unacceptable impact on highway safety with regard to the manoeuvrability of vehicles within the site and sightlines. Furthermore, proposal does not suitably provide blue badge parking or cycle storage. The

proposal would therefore conflict with CLP Policies SP8, DM29 and DM30 and London Plan Policies T4, T5 and T6.1H which seek, amongst other things, to ensure that development promotes and provides adequate access to sustainable modes of travel, and that the movement of pedestrians, cycles, public transport and emergency services is not impeded.

### *Refuse Storage*

39. CLP Policy DM13 sets out the Council's requirements for the integration of refuse and recycling storage facilities into the design of residential developments. It does not set out a requirement for a bulky goods storage area. A refuse storage area is indicated within the area to the front of the building.
40. Nevertheless, the number and cumulative dimensions of the bins that would need to be stored has also not been provided. Therefore, there is nothing to suggest that the size of the denoted storage areas would be capable of accommodating the refuse and recycling storage requirements that would be generated by the development. Furthermore, the restricted space at the front of the site means that there would be little scope for any additional capacity to be provided without impeding either access to the building or car parking spaces. Moreover, given the potential conflict of the refuse storage with the manoeuvrability of vehicles, in this instance it would not be appropriate to cover this matter through the imposition of a planning condition.
41. Consequently, adequate provision has not been demonstrated for the storage of refuse and recycling. There would therefore be a conflict with CLP Policy DM13 which seek to ensure that development relates well and connects with its surroundings and requires integrated well designed recycling facilities be incorporated into new developments.

### *Biodiversity*

42. The appellant contends that the site does not have any significant or notable nature conservation, ecological or biodiversity value, and that a Preliminary Ecological Assessment concludes that habitats and conditions remain unchanged from previous surveys in 2020. However, it does recommend that further bat emergence surveys are undertaken and recommends a range of enhancements, none of which have been incorporated into the proposals. Furthermore, the proposal does not demonstrate that there would be any enhancement of biodiversity or biodiversity net gain.
43. Whilst the removal of trees has been found not to cause adverse harm to the character and appearance of the site and its surroundings, their loss would result in the loss of habitat. Furthermore, CLP Policy DM27 is clear that development proposals must incorporate biodiversity to enhance flora and fauna and aid pollination. To this end, I consider that insufficient evidence has been put forward to ensure that there would be no harm to either protected species or the natural environment in general nor how any mitigation for biodiversity impacts would be provided.
44. In the absence of sufficient information, I cannot be certain that the scheme would not adversely affect protected species or that it would deliver appropriate mitigation for biodiversity impacts. The proposals would therefore conflict with London Plan Policy G6 and CLP Policy DM27 which together require

developments to incorporate biodiversity on development sites and manage impacts on biodiversity.

### **Other Matters**

45. My attention has been drawn to numerous other developments which the appellant feels are comparable to the proposal before me. I do not have the full details of these schemes nor the circumstances that led to them being accepted. I cannot therefore be certain that they represent a direct parallel to the appeal proposal. In any case, I have determined the appeal on its own merits based on the evidence before me.

### **Planning Balance**

46. Notwithstanding my findings in respect of the proposed housing mix, the proposal would result in a net gain of seven dwellings, on a 'windfall' site in an area well located in relation to shops and services with access to public transport links. There would be a relatively small but nonetheless positive contribution to the supply of housing locally. There would also be some economic benefit from occupiers of the residential units supporting facilities and services in the area. There would be some benefit from construction employment although this would be short-lived. Overall, I attribute moderate weight to these benefits.
47. Weighed against the above is the harm that would be caused to the living conditions of the occupiers of the neighbouring property in terms of outlook, the harm cause to the character and appearance of the site and the area, and the fact that the proposal would not provide adequate living conditions for future occupiers, including the provision of refuse and cycle storage and car parking, and in the absence of further information unacceptable harm to highway safety. Furthermore, it has not been adequately demonstrated that the proposal would not have an adverse impact on biodiversity. These are matters to which I afford very significant adverse weight in the planning balance.
48. The above harmful effects would conflict with both development plan policies and the Framework policies. This would not be outweighed by the limited benefits of the scheme. My conclusion is therefore that the scheme conflicts with the development plan as a whole.

### **Conclusion**

49. For the reasons set out above, I conclude that the appeal should be dismissed.

*KL Robbie*

INSPECTOR