



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: 21st November 2023

Appeal Ref: APP/L5240/W/22/3309454

44 Orchard Avenue, Croydon CR0 7NA

- 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 Inicio Homes against the decision of the Council of the London Borough of Croydon.
 - The application Ref 22/02015/FUL, dated 13 May 2022, was refused by notice dated 16 September 2022.
 - The development proposed is the demolition of an existing detached dwelling and construction of a new three storey building comprising 7 apartments with associated private and communal amenity space, refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. An amended layout plan has been submitted with the appeal which shows visitor cycle parking to the front of the site. I am mindful that the appeal process should not be used to evolve a scheme to overcome a Council's reasons for refusal and instead a fresh planning application should usually be made¹. However, in this case, the Council has commented on the submitted plan and is satisfied with the proposed location and level of visitor cycling provision. Having considered the *Wheatcroft*² principles I am satisfied that in this case the appeal should proceed on the basis of the amended plan.

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;
 - The effect of the development on the living conditions of the occupiers of 46 Orchard Avenue with particular regard to light and 6 Potters Close with particular regard to outlook;
 - Whether adequate provision is made for car parking, vehicular access, safe pedestrian access and cycle parking within the site; and
 - Whether adequate provision is made on site for the storage of refuse and recycling.

¹ Annexe M of the *Procedural Guide Planning Appeals – England*.

² *Bernard Wheatcroft Ltd v Secretary of State for the Environment* [JPL, 1982, P37]

Reasons

Character and Appearance

4. The appeal property is a detached gable fronted dormer bungalow situated on Orchard Avenue. The avenue contains a variety of types of residential developments of varying style and design. In this part of the avenue, dwellings are predominantly two storey dwellings, with the notable exception of Holbrooke Court immediately adjacent to the appeal site, which is a double fronted two storey block of flats with accommodation in the roof. Properties contribute positively to the pleasant spacious and verdant character of the avenue.
5. The appeal scheme involves the demolition of the existing dwelling and its replacement with a two-storey building with accommodation in the roof to provide seven flats. Car parking facilities would be provided to the front with amenity space to the rear and sides.
6. The appeal proposal would be set back from the road frontage, with its front building line approximately similar to the existing dwelling on the site and roughly in line with properties either side. When viewed from the front the proposal would assimilate well in terms of scale and proportion into the street scene and the use of contemporary material is not disputed.
7. Although there is no strong building line at the rear of properties in this part of the avenue and the proposal would not extend further back than the rear of Holbrooke Court next door, generally properties are well proportioned in relation to the plots on which they are sited. However, the proposal would result in a rear garden which would be much smaller in comparison to the property itself than the majority of those around it.
8. The rear elevation would also include a significant element of hipped roof forming part of a lower projecting element. Whilst this would not be readily visible from the public realm on Orchard Avenue, it would however be visible from Potters Close and surrounding properties, notably 6 Potters Close (No. 6). The result here would be the visible erosion of the buffer provided by gardens between the rear of properties on Orchard Avenue and streets behind. Consequently, the proposal would result in a cramped relationship between the rear elevation of the proposal and the side elevation of No. 6 and its rear garden.
9. An oak tree is located close to the frontage of the appeal site and covered by a Tree Preservation Order (TPO), which would remain in situ as part of the proposal. A cedar tree is also located in a neighbouring property close to the boundary with the site, the root zone of which is likely to extend within the appeal site. Although there are street trees within in the highway both these trees make an important contribution to the verdant character of this part of the avenue.
10. The appellant has indicated that a 'root bridge' would be utilised which would afford protection to tree roots during and after construction. The Council have not disputed the merits of this approach. Furthermore, given that the existing property is likely to already be connected to services, the need for significant excavation within the root protection area for these purposes is also likely to be less intrusive than if the appeal site were an undeveloped plot. Consequently, I

am not persuaded that this matter could not be adequately covered by condition but this would not outweigh the harm that I have otherwise found to the overall character and appearance of the area.

11. Subject therefore to a condition of this nature there would be no conflict with Croydon Local Plan 2018 (CLP) Policy DM28 which seeks to protect and enhance the borough's trees. There would however be conflict with CLP Policy DM10 more generally in terms of the development's overall effect on character and appearance of the area. This policy seeks to secure high-quality development which respects and enhances Croydon's varied local character, which the proposal fails to achieve for the reasons I set out.
12. 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 and is not a material consideration to which I give any significant weight.

Living Conditions – 46 Orchard Avenue and 6 Potters Close

13. The proposal would be much taller and deeper than the existing dwelling. It would be located to the south of 46 Orchard Avenue (No. 46). A sun path analysis has been submitted with the appeal which shows the shadow path at various dates (1 January/ 4 April / 7 July / 10 October) during the year. I note that the shadow paths provided are not spring and summer equinox dates which are accepted standards used to demonstrate average sun paths. Nor have I been provided with a baseline shadow path to show the extent of shadow cast by the existing property. I therefore cannot be certain that the proposal would not cause undue overshadowing of the No. 46's rear elevation and garden in comparison to the existing situation.
14. The rear elevation of the proposal would be close to the side elevation of No. 6. Massing models illustrate that the proposal would be an imposing feature when viewed from the rear garden of No. 6. Whilst the hipped roof of the projecting element of the proposal would reduce the impact, the two-storey element with windows in the apex would be overbearing. The result would be an unacceptable sense of enclosure for the occupiers of No. 6.
15. I therefore conclude that the proposed development would adversely affect the living conditions of the occupiers of 46 Orchard Avenue with particular regard to light and 6 Potters Close with particular regard to outlook contrary to CLP Policy DM10 and London Plan Policies D3 and D6 which seek to ensure that the amenity of adjoining occupiers is protected.

Car Parking, Access, Cycle Parking and Sustainable Transport

16. Car parking for four cars would be provided at the front of the property accessed by a single point of entry to the left hand side of the site. The Council have indicated that six spaces would be required for a development of this size. The appellant contends that car parking requirements are maxima and given car ownership levels in the locality, five spaces would be required. Therefore, the provision of four car parking spaces would still represent a shortfall of onsite parking, for which no compelling justification has been provided. Although a wider parking space is indicated this is not proposed as dedicated provision for blue badge parking. However, CLP Table 10.1 indicates that

dedicated blue badge parking for a development of this size would not be required.

17. A parking stress survey states that there are 57 spaces within 200 metres of the appeal site. However, these are located on Firsby Avenue, Wilks Gardens, Woodland Way and High Trees, none of which are conveniently located in relation to the appeal site and therefore future occupiers of the property are likely to utilise spaces in these locations for parking.
18. A swept path analysis demonstrates that although each of the spaces would be able to be accessed independently of one another, accessing the wider space would be problematic, requiring multiple reversing manoeuvres within the route indicated as the pedestrian route to the front door of the property. However, speeds of vehicles would be low, and the recessed front door would mean that pedestrians emerging from the building would be able to wait for vehicles to complete a manoeuvre before crossing the car park. Equally pedestrians entering the site would have clear sight of vehicles manoeuvring. The small numbers of vehicles and pedestrians accessing the site would not lead to an undue conflict in this respect.
19. Vehicular access to the site from the avenue would be via a single access point approximately in the position of an existing vehicular access into the site adjacent to the boundary with No. 46. The existing vehicular access adjacent to the boundary with Holbrooke Court would be modified for pedestrian and cycle use. The avenue is straight at this point and visibility splays from the back of the wide grass verge indicate that visibility would not be impeded. Furthermore, pedestrian visibility splays from inside the site could be achieved by ensuring those obstructions above 0.6 metres in height would be removed. This could be adequately controlled by condition.
20. Cycle parking would be located to front of the site. Plans submitted with the appeal show that visitor cycle parking would be located to the front of the site. I am therefore satisfied that visitor cycle parking provision could be adequately accommodated without prejudicing either pedestrian or vehicular movement within the site.
21. The Council states that a planning obligation is required to secure a contribution towards sustainable transport initiatives in the area and towards membership of a Car Club. I have considered these in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. As the appeal site is not located in a Controlled Parking Zone (CPZ) and has a PTAL rating of 2, membership of a Car Club would be a reasonable requirement related in scale and kind to the development as this would adequately deal with potential overspill parking from the development and would be a reasonable requirement to deal with the shortfall of on-site parking. Nevertheless, the appellant states that there is currently no locally operating Car Club. However, this is a requirement set out in Table 10.1 following CLP Policy DM30. Furthermore, I have no reason to believe that given development pressure in the locality one would not commence operating locally within the foreseeable future.
22. The Council has stated that £1,500 per unit is required as a contribution towards sustainable travel initiatives. However, I have no substantive information before me as to how this level of contribution has been reached or precisely what the contribution would be used for. Therefore, I cannot be

certain that the payment is necessary or fairly and reasonably related in scale or kind to the proposal before me.

23. The appellant has indicated that they would be willing in principle to enter into such an agreement. However, I have no obligation before me. The proposal therefore fails to provide adequate parking facilities commensurate with the scale and nature of development.
24. Although visibility in and out of the site would be adequately provided for, cycle parking would be adequately provided and pedestrian movements would not be compromised by the layout, adequate levels of car parking have not been provided. Furthermore, the proposal does not adequately provide blue badge or cycle parking. As a result, there would be 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 and Recycling Storage

25. CLP Policy DM13 sets out the Council's requirements for the integration of refuse and recycling storage facilities into the building envelope of residential developments, or, in the case of conversions, where that is not possible, in covered facilities behind the building line. It also requires facilities to be conveniently located for occupants, operatives and their vehicles.
26. In this instance, a refuse storage area is indicated within the area to the front of the building. Although the refuse storage is not integrated into the building, to do so, would be likely that the facility would not be conveniently located for all occupiers of the building, refuse collection operatives or their vehicles. The proposed location of the refuse storage would, however, be well integrated into the landscaping and would be located within a covered facility, easily accessible to all.
27. I therefore conclude that the proposed refuse and recycling facility would be effectively an integral element of the overall design, integrated into landscaping to the front of the appeal site and conveniently located for occupiers and refuse collection operatives. Consequently, there would be adequate provision for the storage of refuse and recycling. As a result, no material conflict with CLP Policy DM13 would arise.

Other Matters

28. I am mindful that the appeal site is not located in a conservation area or within the setting of listed buildings. Furthermore, the Council did not refuse the application in respect of principle, standard of accommodation or living conditions of future occupiers. However, the lack of harm on these matters are neutral factors which do not outweigh the harm that I have found on the main issues.
29. My attention has been drawn to other CLP policies and policies contained within the London Plan which the proposal would align with, including the presumption in favour of sustainable development. However, neither party has made a case regarding the presence or otherwise of a 5-year housing land supply. I can only therefore conclude that the development plan policies are up-to-date and the provisions of paragraph 11 (d) of the Framework are not engaged.

30. The appellant refers to pre-application discussions with officers at the Council which appears to have been generally positive. However, I am mindful that pre-application discussions are informal and not binding on any future decision the LPA may make once a proposal has been subject to the formal planning process. I also note that members of the LPA's Development Control Committee are not duty bound to follow the advice of their Officers. Therefore, these matters do not lead me away from my conclusion on the main issue in this case.
31. In addition to the above, reference has been made to similar developments at 17 Orchard Avenue and 5 Dagmar Road. Although the development on Orchard Avenue is close by, the context of that development is within a designated Area of Focussed Intensification where new development may be significantly larger than that which it replaced. I have no substantive information surrounding the precise circumstances and context of the development at Dagmar Road. I therefore cannot be certain that it represents 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

32. The proposal would provide a net gain of six dwellings in an area of housing need, which would be a small but positive contribution to the supply of housing locally. There would be some economic benefits from the occupiers of the residential units supporting local facilities and services in the area and there would be some benefits from construction employment, but these would be short term. I attribute moderate weight to these benefits.
33. Weighed against the above is the harm which would be caused to the character and appearance of the area and to the living conditions of the occupiers of neighbouring properties. Furthermore, it has not been adequately demonstrated that the proposal would provide adequate car parking for occupiers. These are all matters to which I afford significant adverse weight in the planning balance.
34. The 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

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

KL Robbie

INSPECTOR