



## Appeal Decision

Site visit made on 21 November 2023

**by D R McCreery MA BA (Hons) MRTPI**

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

**Decision date: 5 December 2023**

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**Appeal Ref: APP/L5240/W/23/3320830**  
**3 Church Road, Croydon, Purley CR8 3QQ**

- 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 Kanwal Awal against the decision of London Borough of Croydon.
  - The application Ref 22/02115/FUL, dated 12 May 2022, was refused by notice dated 18 November 2022.
  - The development proposed is to demolish an existing detached double garage and replace with a new four bedroomed detached family dwelling. This will involve the sub division of an existing plot into two, with both the existing and proposed new dwelling having vehicular and pedestrian access off of Church Road.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Planning law requires that applications for planning permission be determined in accordance with the development plan for the area unless material considerations indicate otherwise. In this case, the relevant parts of the development plan are the Croydon Local Plan (Local Plan) and the London Plan. The National Planning Policy Framework (the Framework) is a material consideration.

### Main Issues

3. The main issues are:
  - Effects on the character and appearance of the area.
  - Whether the proposal would result in the avoidable loss or excessive pruning of nearby trees.
  - Effects on the living conditions of nearby residents.

### Reasons

#### Character and appearance

4. The character of the area is residential, typically made up of relatively large, detached dwellings of two storey's (plus roof space). Dwellings are mostly set back from the road, with gardens/driveways to the front and in some cases (such as the site) mature trees.

5. The Grade II Listed St Mark's Church on the opposite side of the road to the site also informs the character of the immediate surroundings, providing a break from residential development as well as a focal point within the street scene.
6. To achieve the high quality development required by Policy DM10, Local Plan, proposals should respect the three design elements detailed in (a) to (c). In addition, the policy makes specific reference to proposals in the grounds of an existing building which is to be retained, where development shall be subservient to that building. To address the question of subservience it is reasonable to adopt an approach where the factors mentioned at (a) to (c) are important in reaching a judgement.
7. The main visual appreciation of the existing dwelling within the street scene is in closer views along Church Road, particularly when approaching towards Peaks Hill. Here, the dwelling is seen in its wider context with similar homes and is not especially prominent. In this respect it is a background residential dwelling that is typical of the area. Any prominence it has in the surroundings is principally derived from its width, height, site coverage, and position towards the centre of the site.
8. Whilst the proposed dwelling would match the existing in terms of height, it would be narrower, less extensive in terms of site coverage, and not as centrally located within the plot. As such, despite the height and position forward of the existing dwelling, taken as a whole, the proposal would be visually subservient to the host dwelling and would not detract from its role and prominence within the street scene, as described above.
9. I acknowledge that the Appellant accepts that the height of the proposal would not meet the requirements of the policy. However, I see nothing in Policy DM10 saying that subservience is to be judged purely in relation to height. To my mind it is important to take a more rounded view to acknowledge that subservience is more than just a question of height. I have approached this issue from this perspective.
10. Further, a simple comparison with the subservience achieved by the existing garage fails to grapple with the effects of the proposal on its own merits and whether the impacts arising would be acceptable, or not. In this respect, such an approach would fail to engage with the realities of place change.
11. The width of the proposal would create a dwelling with a stronger vertical emphasis than evident on the existing dwelling. It would be an exaggeration to say that this feature would be inconsistent with the existing dwelling or the wider surroundings. The existing dwelling has a two storey gabled projection to the front that introduces a vertical element, and there are similar features on neighbouring buildings and in the surroundings. As such, this element of the proposal would not be alien within this context. It would instead be respectful of the main characteristics of the area and the existing dwelling.
12. In relation to the garden space and layout the site is, by the Council's own admission, an anomaly as it has a more significant existing gap between the side wall and boundary with Highfield that is not widely seen on neighbouring properties where the dwelling is closer to the boundary.

13. This spatial configuration means that the proposal would maintain an appropriate sense of spaciousness that is consistent with the surroundings (particularly distance from side boundaries), as well as maintaining a good set back from the front boundary. In this respect, the proposal would not be cramped.
14. The rear of the new dwelling would create more limited garden space than is evident in the surroundings. However, in character and appearance terms this element of the proposal would not be harmful due to the lack of extensive visibility and the open aspect that would remain in relation to the garden of the existing dwelling.
15. The scale and nature of the development, along with the separation distances, are such that the proposal would not impact on the significance of the Grade II Listed church. I agree with the Council's assessment on this matter as set out in their officer report and on the basis of my own findings.
16. In conclusion on this main issue, the proposal would have acceptable effects on the character and appearance of the area. Consequently, there is no conflict with the development plan for the area, including Policies DM10 and SP4.1, Local Plan and Policies D3 and D4, London Plan in relation to development achieving a standard of design that respects the character and appearance of the area.
17. These conclusions relate solely to the issues raised in the Council's reasons for refusal numbers 1 and 2. They are without prejudice to my conclusions on trees, which is an issue that also has a design and character element.

### Trees

18. The Council draw three potentially affected trees of concern to my attention. Two beech trees within the grounds of the site that are subject to a Tree Preservation Order (TPO) and one London plane within the garden of No.26 that is not.
19. The Appellant's tree report (Marcus Foster, April 2022) confirms that the survey has been carried out in accordance with the relevant British Standard. The tree report is a sound basis on which to judge the condition and classification of potentially affected trees. In this case, it is right to regard the two trees within the site as being of Category B (moderate quality) and the London plane as being of Category A (high quality).
20. Regardless of whether trees are covered by a TPO, Policy DM28, Local Plan is relevant. The tree report and other evidence leads me to conclude that all three trees make a significant contribution to the character of the area. The location and appearance of the two beech trees at the front of the site is such that they collectively provide a natural focal point in the street scene. The London plane plays an important role in street scene terms as part of an overall tree rich backdrop that adds quality to the residential environment. As such, DM28(b) is engaged.
21. In relation to both beech trees within the site, I am satisfied that the tree report details appropriate measures that have a reasonable likelihood of being effective in managing potential effects on the trees. This includes effects arising from the additional hardstanding to the front of the site.

22. Turning to the London plane tree, there is a clear incursion on the root protection area arising from the dwelling itself. In light of the location and scale of the proposal and the proximity to the tree, I regard 12% to be a significant incursion in this context. As the tree report acknowledges, the survey work undertaken does not include any trial digs or other efforts to inspect the foundations of the existing garage or the depth and degree of root establishment within the area of incursion.
23. Within this context and taking a view on the level of potential risk, whilst I have noted the potential methodology that could be employed, I am not satisfied that the site specific evidence demonstrates that long term harm to the tree would not arise as a consequence of the location of the dwelling. I would not be happy to leave this matter to conditions as to do so assumes that development avoiding harm to the tree is realistically possible in principle. The evidence as currently presented does not allow me to say that this is a reasonable conclusion.
24. In relation to effects on the London plane arising from future occupation of the development, I note that paragraph 5.9 of the tree report indicates that effects from future occupation have not been considered. This appears internally inconsistent with paragraph 5.19 and the shadowing path on the tree constraints plan that collectively offers some consideration of pressure for pruning arising from future occupation. The extent to which this issue has been addressed, and any mitigation needed, therefore needs to be clarified. Given my fundamental concern about the effect on the root protection area of the tree, it is not expedient to seek clarification in the lifetime of this appeal.
25. In conclusion on this main issue, the evidence does not demonstrate that the proposal would avoid loss or excessive pruning of nearby trees. As such, there is conflict with the development plan for the area, including Policies DM10 and DM28, Local Plan in relation to design quality and protecting and enhancing the Borough's trees.

#### Living conditions

26. The Council have expressed concerns in relation to effects on No.26 Peaks Hill (No.26), specifically loss of outlook and privacy.
27. The proposal would result in a two storey dwelling with rear facing windows looking out over the rear garden of No.26. The main direct views would be from upper floor windows over the rear section of garden. Views towards the front section of garden and No.26 itself would be at an angle. Whilst there would be some loss of privacy, the views created would not materially harm the living conditions of the occupants of No.26, when regard is paid to the scale and nature of the proposal (including the angle of the dwelling) and the existing privacy conditions in the area where a degree of mutual overlooking into neighbouring gardens is a feature.
28. I have considered other effects on living conditions, including in relation to other properties. I have noted the Council's assessment of the effects and agree with their reasoning, having visited the site.

29. In overall conclusion on this main issue, the proposal would not have a harmful effect on the living conditions of nearby residents. As such, there is no conflict with the development plan for the area, including Policy D3, London Plan and Policy DM10, Local Plan.

## **Other Matters**

### Third party comments

30. I have paid regard to comments from other interested parties. Where they relate to the main issues they have been considered as part of my conclusions elsewhere in this decision. Other comments do not affect my conclusions on the main issues or the overall outcome of the appeal.
31. The development plan for the area, as well as the Framework, recognise the role that small sites play in helping to meet the housing needs of an area. In an area such as Croydon, a good portion of sites inevitably come forward through infill development. Resisting such development on principle, due to rather vague notions such as opening floodgates for similar proposals, fails to properly consider developments on their own merits.
32. I understand concerns that new development can add pressure to local infrastructure. Such matters are hard to attribute to individual proposals at this scale. As such, they are best addressed through plan making and mechanisms such as the community infrastructure levy, which this development would be liable to pay.
33. The original development being built to a specific layout offers no guarantee that it should always remain as such, provided future changes accord with planning and other requirements.
34. Section F of the Council's officer report provides their assessment of the impact of the proposal on highways. Having considered the issue and the comments made, I see no reason to depart from their assessment and find the proposal to be acceptable in this regard.

### Garden space

35. The officer report refers to the quality of the garden space that would be created, although this isn't explicitly referred to in the reasons for refusal. The parties were given the opportunity to comment on this matter, which I have paid regard to. The size of the amenity space would accord with Policy 10.4, Local Plan. The Council's concerns about whether the space would be of high quality could be adequately addressed by condition requiring approval of a quality landscaping scheme. With this in place, the external amenity space would be acceptable.

### Conduct of the Council

36. References to pre-application discussions and Council conduct during the application process are noted but do not change my conclusions on the main issues. Amendments to the scheme aimed at addressing the issues would be a matter between the Council and the Appellant.
37. No application for costs has been made during the appeal process which, in any event, would have been treated as a separate issue from the merits of the proposal.

## **Conclusion**

38. The evidence does not demonstrate that the proposal would avoid loss or excessive pruning of nearby trees. There is conflict with the development plan arising from this matter.
39. The additional dwelling proposed would help to deliver the Government's objective of significantly boosting the supply of new homes. I have no evidence one way or another about whether the proposal would make a meaningful contribution to housing supply in Croydon. Nevertheless, the Framework recognises the contribution that small and medium sites can make to housing supply.
40. Policy H2, London Plan also asks Borough's to significantly increase the contribution of small sites to meet London's housing needs by pro-actively supporting well designed new homes on small sites. The need for proposals to be well designed confirms that small site housing delivery should not come at all costs. In this case, I cannot conclude that the effects on the London plane tree (a tree that makes a significant contribution to the character of the area) would be acceptable. As such, I cannot reach a conclusion that the proposal would be well designed (when regard is paid to this matter) and therefore accord with Policy H2.
41. The possible additional benefit in terms of facilitating multigenerational living is unevidenced and has no means of control. As such, the consideration attracts limited weight in my decision.
42. In overall conclusion and weighing everything up, the proposal would not accord with the development plan for the area. I regard the conflict to be with the development plan as a whole. There are no material considerations indicating that a decision should be taken other than in accordance with the development plan. As a consequence, the appeal should be dismissed.

*D. McCreery*

INSPECTOR