
Appeal Decisions

Site visit made on 14 November 2023

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 December 2023

Appeal A

Ref: APP/W/23/3314571

Underwood, Ballards Farms Lane, South Croydon, CR2 7JA

- 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 L Poku against the Council of the London Borough of Croydon.
 - The application Ref 22/02064/FUL, is dated 13 May 2022.
 - The development proposed is the construction of nine self-contained homes, together with landscaping, boundary treatments, car parking, cycle parking and bin storage.
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Appeal B

Ref: APP/L5240/W/23/3314810

Underwood, Ballards Farms Lane, South Croydon, CR2 7JA

- 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 M Mehta against the Council of the London Borough of Croydon.
 - The application Ref 22/02531/FUL, is dated 10 June 2022.
 - The development proposed is the construction of three self-contained homes, together with landscaping, boundary treatments, car parking, cycle parking and bin storage.
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Appeal C

Ref: APP/L5240/W/23/3315126

Underwood, Ballards Farms Lane, South Croydon, CR2 7JA

- 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 L Poku against the Council of the London Borough of Croydon.
 - The application Ref 22/02381/FUL, is dated 28 July 2022.
 - The development proposed is the erection of single storey side and rear extension, two storey front extension to create four self-contained homes, together with landscaping, boundary treatments, car parking, cycle parking and bin storage.
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Decisions

1. Appeal A – the appeal is dismissed.
2. Appeal B – the appeal is dismissed.

3. Appeal C – the appeal is dismissed.

Application for costs

4. An application for costs for each appeal was made by Sterling Rose Homes against the Council of the London Borough of Croydon. These applications are the subject of separate Decisions.

Procedural Matters

5. As set out above there are three appeals on this site. They differ in the extent of development proposed. I have considered each appeal on its own merits separately.
6. As the appeals were lodged against non-determination the Council has included in the officer reports a list of putative reasons for refusal. Whilst each of these appeals raise the same main issues the details of each are different. I have addressed these matters separately within the main issues below.
7. The appeal site is subject to two Tree Preservation Orders (TPO). The second one was confirmed on 23 March 2023 (22/00019 TPO). I have taken this into account in this decision.
8. The Development Plan comprises both the Croydon Local Plan (CLP) 2018 and the London Plan 2021 (LP). The appellant refers to the recent consultation on the Mayor's Design and Small Sites Guidance. Whilst this reflects the importance of small sites it still requires that new development reflects the character of its surroundings as required by adopted policy. This guidance is still in draft and I have accorded it limited weight in these decisions.

Main Issues

9. For each appeal the main issues are the effect of the appeal scheme on:
 - the character and appearance of the area,
 - the living conditions of future occupiers,
 - highway safety with reference to access to the site and location of parking spaces,
 - the Tree Preservation Orders within the site,
 - the site's ecology, and
 - local infrastructure with specific reference to the provision of sustainable transport initiatives.

Reasons

Appeal sites and their context

10. Ballards Farm Road slopes steeply up from Croham Valley Road and Underwood, the parent property to the appeal site (Appeals A and B), is one of three detached dwellings lying on a western arm of this road. Due to the configuration of the roads at this point part of the north side of Ballards Farm Road comprises the rear gardens of these three properties whilst on its south side are other detached properties.

11. The area is characterised by low density suburban development. A distinction can be drawn between the large detached properties along Croham Valley Road, a broad avenue which carries bus routes and Ballards Farm Road which has a width of around 3metres, serves both as a vehicular access to residential properties and is a defined bridleway.
12. The site for Appeal C includes the extension and conversion of Underwood.

Appeal A

Character and appearance

13. The proposed scheme involves a single building which in part comprises lower ground, ground, first and second floors accommodating 6 flats and 3 dwellings. The block includes a staggered frontage to Ballards Farm Road with vehicular access serving a lower ground parking area. The building includes a green roof.
14. The scheme is designed to take full advantage of the steep slope across the site with the creation of a development platform at a height just above Ballards Farm Road. The foundations would act as the retaining wall.
15. This would be a substantial development, which due to a combination of both its height and scale in relation to its immediate context, would dominate Ballards Farm Road at this point. Despite its design involving a cut into to the sloping rear garden of the parent property, it would still be considerably higher than the property, No.1 Croham Valley Road and the Annex on the southern side of Ballards Farm Road.
16. Although the flatted part of the scheme involving a lower ground floor with three floors above sits away from the site's frontage the three dwellings would lie much closer and overall the appeal scheme would dominate the street scene at this point. The marked change in levels arising from the roads slope does not adequately compensate for what will be a significantly larger building than its surroundings.
17. The combination of both the height of the site and the appeal scheme would result in its being an over dominant and discordant feature in the wider townscape.
18. Policies CLP DM10, LP D3 and D4 require a design led approach which attaches importance to the efficient use of land but requires development to respond positively to the character and distinctiveness of the character of the surrounding area.
19. The appellant cites recent development along Croham Valley Road as being indicative of local character. Whilst many of these have recently been granted planning permission they each have a context determined primarily by Croham Valley Road which is a broad avenue along which large detached buildings sit comfortably. Existing development along the south side of Ballards Farm Avenue is smaller in scale comprising 2-2.5 storeys reflecting the transition to the area's more open character which lies to the north of the site.
20. I conclude that the appeal scheme would adversely impact on the street scene and the character and appearance of the area conflicting with Policies CLP DM10, LP D3 and D4.

Living conditions of future occupants

21. London Plan policies LPD5, LPD6 and Croydon Plan policies SP2.8, DM10.4 and DM10.5 require that new development should be of high quality and provide adequate amenity space with appropriately sized rooms as part of comfortable and functional layouts designed to meet the needs of London's diverse population.

Internal space standards

22. I acknowledge that whilst the appeal scheme meets the Nationally Described Space Standards (NDSS)¹ three flats would fail the standard included in LP D6. The standards included in the London Plan reflect the particular needs of London and in this instance, given that they form part of the Development Plan prevail over the NDSS. For this reason, I conclude that the scheme conflicts with Policy LPD6.

Loss of privacy

23. Due to the juxta position and proximity of rear bedroom windows the appeal scheme would result in overlooking between flats 1 and 2, flats 3 and 4 and flats 5 and 6 leading to a loss of privacy. These unfortunate relationships could be mitigated by introducing obscure glazing into the secondary windows of flats 2, 4 and 6. This is a matter which could be controlled through a planning conditions if I were minded to allow this appeal.

Private amenity space

24. Flats 2, 3, 4 and 5 are 2 bedroom units and could provide family sized accommodation. In these instances the provision of accessible private amenity space is important. However, each of these four flats do not adhere to the Councils adopted standards included in Policy LPD6 of 5m² for each 1-2 person unit with an extra 1m for every additional person. The appellant has not identified why an exception to this policy is necessary for this scheme. For these reasons I conclude that the appeal scheme conflicts with Policy CLP DM10.

Accessibility

25. London Plan Policies D5 and D7 require that development should be fully accessible both internally and externally. Policy D7 requires that at least 10% of housing should comply with Part M volume 1 of the Building Regulations M4(3) allowing full wheelchair access and that all dwellings are fully accessible as required by Regulation M4(2).
26. Supporting text to the policy identifies that M4(2) and M4(3) dwellings should be secure by planning conditions to ensure compliance with the Building Regulations Standards. Whilst planning conditions could control the appropriate internal standards the Regulations require step free access into the dwellings. There is insufficient detail included in the appeal scheme to demonstrate how this could be achieved for the proposed houses. This is critical given the configuration of the proposed development on what is a steeply sloping site.
27. For these reasons I find that the appeal scheme conflicts with Policies LPD5 and LPD7. This matter cannot be satisfactorily resolved through planning condition.

¹ HM Government 2015

Conclusions on living conditions

28. I acknowledge the Council's concerns with regard to overlooking between dwellings within the scheme could be resolved through the imposition of a planning condition were I minded to allow this appeal. However, the scheme conflicts with adopted policies regarding internal space standards, provision of private amenity space and accessibility.

Highway Safety

29. Ballards Farm Road has a restricted width of 3 metres and does not include pedestrian footways. Its carriageway is required to accommodate vehicles, horse riders and walkers.
30. Whilst the appeal scheme's vehicular access is recessed away from the site's frontage the appeal scheme does not include sight lines indicating how vehicular access to/from the site could minimise the potential conflict with other highways users. This is critical given the function of the carriageway's as both a bridleway and footpath. Furthermore, the basement parking layout is not accompanied by a swept path analysis indicating how vehicles could leave the site in a forward gear. These are critical omissions given the function and restricted width of Ballards Farm Road.
31. The Council has identified the location of the site by reference to an extract from the WebCAT, a Transport for London data base) that the site, has a PTAL of 1b. I am satisfied, however, that this part of the site has a PTAL of 2 and the suggested amount of parking spaces is appropriate.
32. I conclude that the appeal scheme would conflict with Policies LPT3,B3 which requires safeguarding of London's walking network and LPT4F which requires that proposals should not increase road danger.

Highway infrastructure

33. Finally, Policy LPT9 requires that London Boroughs secure transport measures through planning obligations. The Council has identified a range of measures which it states could include car clubs and the provision of electric vehicle charging points in the scheme funded by a suggested financial contribution of £1,500 per dwelling.
34. Whilst the appellant indicates that they would be supportive of such a contribution subject to caveats no Unilateral Undertaking or S106 Agreement is before me.
35. Accordingly, I conclude that the absence of a legal agreement which includes obligations for a range of transport measures conflicts with Policy LPT9.

Protection of trees

36. The site is covered by two group Tree Preservation Orders. The Arboricultural Assessment identifies that whilst no Category A trees would be removed one Category B tree and nine Category C trees would be removed. These would involve the loss of trees towards the western edge of the site which are now included in the new TPO (No. 19 2022).
37. Furthermore, several trees would be removed from the site's frontage which currently add significantly to the character of Ballard's Farm Lane and the

scheme's development platform would lead to incursions into the Root Protection Areas of several other trees across the site.

38. For these reasons I consider that the appeal scheme conflicts with Policies CLP DM10.8 and DM29 and LPG7 which require that existing trees of value are retained.

Ecology impacts

39. Policies LPG6 requires that development proposals should aim to secure biodiversity net gain (BNG) and be informed through the best available ecological information and CLP SP7 requires that biodiversity will be enhanced and there should be ecological restoration. These policies are supported by Paragraph 174d) of the National Planning Policy Framework ('the Framework').
40. Whilst the landscape scheme includes proposals for biodiversity there is no ecological assessment to inform decisions on protected species and habitats and which would allow an understanding of the site in order to calculate BNG.
41. I conclude therefore that the appeal scheme conflicts with Policies CLPSP7.

Refuse/waste storage

42. The appeal scheme includes a refuse/recycling storage area for 4 paladins towards the front of the lower ground floor; this is an appropriate location being close to the main access which would not adversely impact on the streetscene. The Council raises matters which could be addressed through details submitted for approval of a suitably worded condition were I minded to allow the appeal.
43. The suggested location would not conflict with Policy CLP DM13 which requires that all development include refuse/recycling facilities which are sensitively located, adequately screened and accessible by occupants, operative and their vehicles.

Appeal A – Conclusions and Planning balance

44. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
45. The Development Plan recognises the importance of small sites such as the appeal scheme to achieving housing targets. The scheme design is innovative in seeking to take full advantage of the site's slope.
46. Whilst the appellant refers to the Government priority to increase housing supply the Framework also promotes a range of other policies, including those which require development to be sympathetic to surrounding built environment and landscape setting.
47. The scale of the proposed scheme would have an overbearing and dominant relationship to its surroundings; it does not reflect the character of the surrounding area and conflicts with the detailed requirements of Policy LPD3. Whilst some matters could be addressed through planning conditions the appeal scheme includes significant shortcomings arising from its adverse impacts on the living conditions of future occupiers, the loss of trees, potential

adverse impacts on ecology and the lack of planning obligations which conflict with adopted policies.

48. These matters underscore the extent of its conflict with Development Plan policies and there are no other material considerations which weigh significantly against this degree of conflict.

49. For these reasons, the appeal is dismissed.

Appeal B

Character and appearance

50. The appeal site is the same area of rear garden to Underwood as for Appeal A although its development platform is smaller. The scheme comprises 3 terraced 2 storey dwellings served by basement parking.

51. Although the Council in its decision letter refers to the scheme's dominance and incongruous design its location would sit comfortably within the site. Whilst it is of a more contemporary design than its parent property and surrounding development the elevational treatment of the rear of No. 3 Croham Valley Road, which faces Ballards Farm Road, presents an elevation which includes similar features albeit of only two storeys.

52. The precedents cited by the appellant have a different context in that they lie on Croham Valley Road.

53. The location of the proposed scheme within the site would allow for landscaping along its frontage and this would reduce the ratio of development to plot size. However, the appeal scheme lies close to its frontage and would still be considerably higher than existing development on the south side of Ballards Farm Lane resulting in its dominance in the streetscene at this point. In particular this would adversely impact on No1 Croham Valley Road and the Annex.

54. For the above reasons, I conclude that the appeal scheme would adversely impact on the streetscene and character and appearance of the area in conflict with Policies CLP DM10, LP D3 and D4.

Living conditions

Accessibility

55. London Plan Policies D5 and D7 require that development should be fully accessible both internally and externally. Policy D7 requires that at least 10% of housing should comply with Part M volume 1 of the Building Regulations M4(3) allowing full wheelchair access and that all dwellings are fully accessible as required by Regulation M4(2).

56. Supporting text to the policy identifies that M4(2) and M4(3) dwellings should be secured by planning conditions to ensure compliance against the optional Building Regulations Standards. Whilst planning conditions could control the appropriate internal standards supporting text to the policies require step free access into the dwellings. There is insufficient detail included in the appeal scheme to demonstrate how this could be achieved.

57. For these reasons I find that the appeal scheme conflicts with Policies LPD5 and LPD7.

Highway Safety

58. Ballards Farm Road has a restricted width of 3 metres and does not include pedestrian footways. Its carriageway is designed to accommodate vehicles, horse riders and walkers.

59. The appeal scheme does not include sight lines indicating how vehicular access to/from the site could minimise potential conflict with other highways users including those using the road as a bridleway. Furthermore, the basement parking layout is not accompanied by a swept path analysis indicating how vehicles could leave the site in a forward gear.

60. The Council has identified the location of the site by reference to an extract from the WebCAT, a Transport for London data base) that the site, has a PTAL of 1b. I am satisfied, however, that this part of the site has a PTAL of 2 and the suggested amount of parking spaces is appropriate.

61. The omission of details regarding sight lines and the basement parking are significant given the range of highway users and the restricted width of Ballards Farm Road. For these reasons I find that the appeal scheme would conflict with Policies LPT3,B3 which requires the safeguarding of London's walking network and LPT4F which requires that proposals should not increase road danger.

Highway Infrastructure

62. Finally, Policy LPT9 requires the London Boroughs to secure strategic and other transport measures through planning obligations. The Council has identified a range of measures which may include car clubs and the provision of electric vehicle charging points in the scheme funded by a suggested contribution of £1,500 per dwelling.

63. Whilst the appellant indicates that they would be supportive of such a contribution subject to caveats no Unilateral Undertaking or S106 Agreement is before me.

64. Accordingly, I conclude that the absence of a legal agreement which includes obligations for a range of transport measures conflicts with Policy LPT9.

Protection of trees

65. The site is covered by two group Tree Preservation Orders. The Arboriculture Assessment included with the appeal does not address this appeal scheme but is instead the same report as for Appeal A.

66. In the absence of an Arboriculture Assessment which accurately reflects the impact of this scheme it is not possible to come to firm conclusions on this matter.

67. Furthermore, several trees would be removed from the site's frontage which currently add significantly to the character of Ballards Farm Lane and the development platform would lead to incursions into the Root Protection Areas of several other trees.

68. For these reasons I consider that the appeal scheme conflicts with Policies CLP DM10.8 and DM29 and LPG7 which require that existing trees of value are retained.

Ecological impacts

69. Policies LPG6 requires that development proposals should secure biodiversity net gain (BNG) and be informed through the best available ecological information and CLP SP7 requires that biodiversity will be enhanced and ecological restoration. These policies are supported by Paragraph 174d) of the Framework.
70. Whilst the landscape scheme includes proposals for biodiversity there is no ecological assessment to inform decisions on protected species and habitats and which would allow an understanding of the site in order to calculate BNG.
71. I conclude therefore that the appeal scheme conflicts with Policies CLPSP7.

Refuse/waste storage

72. The appeal scheme includes a refuse/recycling storage area for 4 paladins towards the front of the lower ground floor with direct access to the front of the site. This is an appropriate location being close to the main access which would not adversely impact on the streetscene. The Councils objection raises points of details which could be matters addressed in detail submitted for approval of a suitably worded condition were I minded to allow the appeal.
73. The suggested location would not conflict with Policy CLP DM13 which requires that all development include refuse/recycling facilities which are sensitively located, adequately screened and accessible by occupants, operative and their vehicles.

Appeal B - Planning balance and Conclusions

74. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
75. The Development Plan recognises the importance of small sites such as the appeal scheme to achieving housing targets. The scheme design is innovative.
76. Whilst the appellant refers to the Government priority to increase housing supply the Framework also promotes a range of other policies, including those which require development to be sympathetic to surrounding built environment and landscape setting.
77. The proposed scheme would have an overbearing and dominant relationship to its surroundings and would conflict with the detailed requirements of Policy LPD3. Furthermore, the appeal scheme does not contain sufficient information on the site's ecology and how existing tree belts would be impacted as required by adopted policies. The scheme conflicts with other policies on highway safety and planning obligations.
78. These matters underscore the extent of its conflict with the Development Plan policies and there are no other material considerations which weigh significantly against this degree of conflict.

79. For these reasons the appeal is dismissed.

Appeal C

Character and appearance

80. The appeal site comprises Underwood, one of three detached properties of contrasting architectural style which lie on a western arm of Ballards Farm Road which forms part of a footpath network. The scheme includes ground and first floor extensions and conversion into four self-contained dwellings.
81. The building's character is derived from the variation in its front and rear elevations and its set back and position below the road which diminish its physical impact on its surroundings. The front elevation includes two storeys and comprises two additions designed with hipped and straight gables with a single storey projecting bay. In contrast the rear elevation is more uniform in character with the windows serving the first floor in the roof which is a dominant feature of this elevation involving three planes.
82. The proposed ground floor extensions would wrap around the whole of the existing building with the extension to the first floor being modest in scale affecting the existing buildings north western corner.
83. The overall impact of these extensions would be to make its elevational treatment uniform with two hipped front gables and the single storey projecting bay being incorporated into the single storey extension. These features together with the single storey extension would bring the scheme forward but would not lead to it becoming dominant amongst the three properties along this part of Ballards Farm Road. Although these changes would remove the buildings interest, they lead to it being more balanced in appearance.
84. The proposed extensions would not be of such a scale that would result in a new building unrelated to the character and appearance of the surrounding area. I find therefore that the appeal scheme does not conflict with Policies CLP DM10, LP D3 and D4.

Living conditions of future occupants

Fire Safety

85. London Plan policy D12 requires that the highest standards of onsite fire safety are embedded in design at the earliest stages.
86. The appellant states that the appeal is accompanied by a Fire Safety report. However, this refers to a different scheme than the one included in this appeal.
87. Given the central importance of this issue a precautionary approach is necessary. I conclude therefore that in the absence of the fire safety report the appeal scheme conflicts with Policy LPD12.

Living conditions of existing occupiers

88. The appeal scheme involves the creation of a shallow rear patio. Given the relationship of the site to existing development and the abundance of boundary vegetation which includes mature trees and shrubs there would be only limited opportunities for overlooking into the adjacent properties. If I were minded to

allow this appeal a suitably worded planning condition regarding boundary treatment could address this issue.

89. I conclude therefore that the appeal scheme would not result in conflict with Policies CLP D10.

Highway Matters

90. The Council has identified the location of the site by reference to an extract from the WebCAT, a Transport for London data base) that the site, has a PTAL of 1b. This reflects its distance from the bus services on Croham Valley Road compared to the locations of Appeals A and B.
91. Whilst the appeal is not accompanied by a Transport Statement demonstrating the numbers of vehicles likely to be generated by the scheme parking provision as required by Policy LPT6 is determined by the PTAL rating and in this case 1.5 spaces would be required for each dwelling leading to a total requirement of 6 parking space. The inclusion within the scheme of 4 parking spaces conflicts with Policy LPT6.
92. The existing car port involves manoeuvring on Ballards Farm Road which is not ideal. The appeal scheme would result in an increase in the numbers of vehicles requiring similar manoeuvres to access/egress parking areas potentially resulting in conflict with other highway users including walkers. For this reason, I conclude that it would conflict with Policies LPT3,B3 which requires the safeguarding of London's walking network and LPT4F which requires that proposals should not increase road danger and LPT6 regarding the number of parking spaces.

Protection of trees

93. The site is covered by a Tree Preservation Order and there are a large number of trees along the boundaries of the site. No detailed Arboriculture Assessment is included with the appeal which addresses the potential impact of this scheme on protected trees and root protection areas.
94. For these reasons I consider that the appeal scheme conflicts with Policies CLP DM10.8 and DM29 and LPG7 which require that existing trees of value are retained.

Ecology impacts

95. Policies LPG6 requires that development proposals should aim to secure biodiversity net gain (BNG) and be informed through the best available ecological information and CLP SP7 requires that biodiversity will be enhanced through ecological restoration. These policies are supported by Paragraph 174d) of the Framework.
96. No ecological assessment was included with the appeal which is required to inform decisions on protected species and habitats and which would allow an understanding of the site in order to calculate BNG.
97. I conclude therefore that the appeal scheme conflicts with Policies CLPSP7.

Refuse/waste storage

98. The appeal scheme includes waste and recycling storage accessed directly from the road at the front of the site.
99. CLP DM13 requires that all development include refuse/recycling facilities are sensitively located, adequately screened and accessible by occupants, operative and their vehicles. The suggested location could be adequately screened from users of the footpath network along this part of Ballards Farm Lane.
100. I concluded that a suitably worded planning condition requiring full details of how this storage area could address the requirements of Policy CLP DM13 could be imposed on any permission if I allowed this appeal.

Appeal C – Planning balance and Conclusions

101. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
102. The Development Plan recognises the importance of small sites such as the appeal scheme to achieving housing targets.
103. The design of the proposed scheme broadly reflects the character of its surroundings. However, the appeal scheme does not contain sufficient information on the site's ecology and how existing tree belts would be impacted as required by adopted policies. The scheme conflicts with other policies on highway safety and parking.
104. These matters underscore the extent of its conflict with the Development Plan policies and there are no other material considerations which weigh significantly against this degree of conflict.
105. For these reasons the appeal is dismissed.

Stephen Wilkinson

INSPECTOR