



Appeal Decision

Site visit made on 16 November 2023

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal Ref: APP/L5240/W/23/3319702

128 Foxley Lane, Purley CR8 3NE

- 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 CR8 Three Limited and Moat Homes Limited against the decision of the London Borough of Croydon.
 - The application Ref 22/02084/FUL, dated 17 May 2022, was refused by notice dated 24 February 2023.
 - The development proposed is the demolition of existing building and redevelopment of site to provide 16 residential units (Use Class C3) including affordable housing comprising of a 3.5 storey building together with associated cycle provision, amenity space, external landscaping, refuse storage and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted a unilateral undertaking, dated 14 August 2023. This includes provision for infrastructure requirements and affordable housing, detailed in the Council's 4th reason for refusal. I will address this below.
3. The final reason for refusal related to a drainage strategy. However, the Council has suggested that this matter could be resolved by way of suitably worded condition. It has not been necessary to address this any further.

Main Issues

4. These are the effect of the proposal on:
 - a) Biodiversity, with specific regard to protected species,
 - b) The character and appearance of the area.
 - c) Protected trees.
 - d) The living conditions of the occupiers of 130 Foxley Lane, with specific regard to outlook.

Reasons

5. Located on the northern side of Foxley Lane, the site contains a large, 2 storey detached house set within a substantial plot. The proposal is to demolish the existing dwelling and erect a building that would contain 16 apartments.

Biodiversity

6. There are features on the existing house, such as gaps in the roof tiles, which could provide habitat value for crevice-dwelling bats, such as common pipistrelles. Clay hanging tiles are also present and will also provide habitat

value for crevice-dwellers. The site also offers suitable habitat for foraging badgers. Therefore, there is a reasonable likelihood of the species being present and affected by the development.

7. The Preliminary Ecological Appraisal, Preliminary Roost Assessment and Bat Emergence and Re-entry Surveys were carried out over 2 years ago. It is common practice that 2 years is the upper time limit for an ecological appraisal, before updated or repeat surveys are necessary. This is because, depending on the habitats present, protect species could have moved on site, even if little evidence was found previously. Therefore, the findings of the original survey are now likely to be unreliable.
8. The appellant was given the opportunity to provide evidence that the survey evidence remains valid, yet nothing was forthcoming. Bats and Badgers are species protected by law and their presence on site, even if of low potential, is a material consideration. Circular 06/2005 advises that surveys should only be required by condition in exceptional circumstances. I do not see any exceptional circumstances here that would justify requiring the further surveys by condition, particularly as I have no up to date evidence before me.
9. Therefore, I must apply the precautionary principle and find that the proposal could result in harm to protected species and biodiversity. This would be contrary to the requirements in the National Planning Policy Framework that seek to protect and enhance biodiversity, and the legal obligations placed upon me as the Competent Authority.

Character and appearance

10. The area has a residential suburban character, and contains large, wide plots, many with well-established trees and landscaping both to the front and rear gardens. The original architectural character of the road is varied, with a mix of Arts and Crafts, 1930s and 40s, 1960s and 70s, and mock Georgian and mock Tudor properties. The houses are generally 2-2.5 storeys in height and are laid out in a relatively consistent pattern along the road creating the prevailing urban grain. The prominent facing materials are red and brown brick, clay tile hanging, white render and clay and concrete tiled roofs.
11. Nonetheless, there is also a noticeable evolution to the character of the area, particularly on Foxley Lane running eastwards from the appeal site. Several dwellings have been demolished and replaced with taller, modern, wider and denser developments, optimising site capacity. These include 2 plots adjacent to the site and opposite the site. The road is also a main bus route and road into Purley, such that it has a busy urban feel, more so than surrounding quieter streets.
12. The development would be 3.5 stories high and takes design cues from the adjacent development at No 126. These include the roof design, elevation treatment and fenestration. However, the height would be lower than No 126 and the sloping roof design to the side, and the hipped elements, enables a suitable transition to the height of the neighbouring dwelling at No 130. This represents a more suitable transition that currently exists between Nos 128 and 126.
13. Furthermore, the angled roof form on the eastern side elevation would also respond positively to No 126. The design and external appearance would be

appropriate, high quality and respectful of the existing materials and built form in the area. The materials would respond to both adjoining developments, with a red brick and tile element towards No 130, which is appropriate and transitional.

14. The depth and width of the proposal would also be consistent with the adjoining development at No 126, in terms of its layout, pattern and siting. Whilst the proposal would represent a large increase in density, height and form in comparison to the replacement dwelling, and other older dwellings westwards, it would optimise the space on the plot and respond to the evolving character of the street in this specific location. This would not be harmful. Indeed, it would support the development plan's aims to achieve a minimum height of 3 storeys, whilst respecting the evolved character of the street.
15. The Council detail that adjoining development was allowed during the adoptive use of the now revoked Suburban Design Guide Supplementary Planning Document (SPD). However, the development plan has not changed, and SPDs are guidance only.
16. Therefore, the proposal would have an acceptable effect on the character and appearance of the area. This would comply with Policies SP4 and DM10.1 of the Croydon Local Plan (2018) (CLP) and Policies D3, D4 and D5 London Plan (March 2021) (the LP). These seek to optimise density through delivering good, high quality and inclusive design.

Trees

17. There are several protected trees on site, which run along the eastern boundary with No 126. The Council's Tree Preservation Order identifies them as T1 (Maple) located to the front of the site, and Group 1 (3 Sycamores, 2 Beech, a Horse Chestnut and a Cypress).
18. The location of the trees would cause some shadowing to the rooms on the boundary of the site. This could lead to future pressure on the Council to allow removal of the trees, which would cause harm to the amenity and leafy character of the area.
19. However, in the main, the rooms affected would serve bedrooms. These are not primary living spaces, and there is less reliance upon these rooms during daylight hours. Although bedrooms may sometimes be used as home office space, this does not mean that they are primary living areas. Therefore, pressure to remove the trees affecting these windows is not likely to be forthcoming.
20. That said, the primary living space of the third floor flat (Unit 13) would be affected most as this faces directly towards the group of trees. The proposed layout could lead to some future pressure to fell. However, it is important to note that Unit 13 is on the top floor, and rather than felling the trees, some managed branch removal could take place to reduce shadowing. Additionally, future occupiers of the flat would be aware of the trees prior to their purchase. Therefore, on balance, the proposal would not be guaranteed to lead to future pressure to remove the protected trees.
21. Several trees are proposed to be removed, one of these is a category B tree. Yet this is located to the rear of the site and has limited public amenity value. Furthermore, none of the protected trees would be removed and the

landscaping proposals are an intrinsic part of the design concept. Whilst no tree loss is desirable, it is unavoidable in some instances and the development would retain the most important trees. Around 16 trees would be planted as replacement planting, along with hedges and other landscape features. These would be appropriate elements of green infrastructure when considering the existing well landscaped nature of the site.

22. There is also no substantive evidence presented by the Council to support the assertion that the replacement planting would be suppressed by the existing trees. In any event, a condition requiring replacement of any species dying within 5 years is common practice.
23. Additionally, the Council also assert in its Statement of Case that the proposal would lead to damage to the protected trees. However, there is no evidence to substantiate this. Indeed, hardstanding and structures would be removed in the root protection areas of the trees such that tree health could be improved. Furthermore, the arboricultural method statement includes tree protection measures, and a condition would ensure that trees are protected during construction.
24. Therefore, the proposal would have an acceptable effect upon protected trees. This would be compliant with Policy DM28 of the CLP and Policy G7 of the LP. These seek to retain trees of value wherever possible.

Living conditions

25. The proposal would project around 11 metres beyond the rear elevation of No 130, which has been subdivided into flats. It would be around 3 storeys in height. The appellant has demonstrated the location of the proposal would pass the '45 degree rule' when applied both vertically and horizontally to windows in the rear elevation of No 130. Whilst this commonly relates to the effects on daylight and sunlight, it is also a helpful indicator of the effect a proposal has upon neighbouring living conditions.
26. Whilst there would be an impact upon the outlook from windows at No 130, the distance between the properties would enable some relief. The proposal would also dog leg away from the garden of No 130 as it projects beyond its rear elevation. Furthermore, the boundary is landscaped with tall trees and hedging that would ameliorate the effect, and a similar relationship exists with Nos 128 and 130 currently.
27. Therefore, overall, the proposal would not result in an unacceptable adverse effect upon the living conditions of the existing residents at No 130. This would be compliant with Policy DM10 of the CLP which seeks to protect the amenity of occupiers of adjoining buildings.

Other Matters

Planning obligation

28. The planning obligation commits to providing monies towards air quality, carbon off setting and sustainable transport. Additionally, there is a commitment to a local employment and training strategy, provision of a travel plan, restrictions on parking permits and the provision of affordable housing units. A S278 agreement for off site highway works is also included which

provides for the removal of 2 crossovers and reinstatement as footway, resurfacing and damage remediation.

29. The Council provided comments on the Unilateral Undertaking (UU) in the form of a CIL Compliance Statement and a covering letter. Whilst the Council requested additional time to review the document, I am satisfied with the information I have.
30. The CIL Compliance Statement sets out adequate information that all the obligations contained in the UU would meet the tests set out in the Framework, apart from the restriction on parking permits. The Council set out this would be unnecessary. Given clause 2.ii in the UU, this obligation would not take effect were the appeal to be allowed. Therefore, the 4th reason for refusal would be overcome by the provision of the UU.

Balance

31. The proposal would have an acceptable effect on the character and appearance of the area, protected trees and neighbouring living conditions. It would also provide suitable drainage systems and infrastructure. There are also benefits associated with providing much needed housing and affordable housing.
32. However, the lack of up to date ecological evidence means that the proposal could result in harm to protected species. The legal obligations relating to this would outweigh all other matters and provide a clear reason for refusing the development proposed.

Conclusion

33. For the reasons given, the appeal is dismissed.

Katie McDonald

INSPECTOR