



## Appeal Decision

Site visit made on 24 October 2023

**by A Hunter LLB (Hons) PG Dip MA MRTPI**

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

**Decision date: 15<sup>th</sup> December 2023**

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**Appeal Ref: APP/L5240/W/23/3319966**

**Land and garages to rear of 1 to 4 Mulberry Lane, Croydon CR0 6QQ**

- 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 Oli Walsh of Revilo Havelock Ltd against the decision of the Council of the London Borough of Croydon.
  - The application Ref 21/05313/FUL, dated 18 October 2021, was refused by notice dated 5 December 2022.
  - The proposed development is the demolition of garages and construction of 4 new mews houses with associated landscaping, cycle storage and refuse provision.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for an award of costs has been made by Mr Oli Walsh on behalf of Revilo Havelock Ltd against the Council of the London Borough of Croydon. This is the subject of a separate decision.

### Preliminary Matters

3. The appellant has submitted a signed Unilateral Undertaking (UU) dated 23 August 2023 relating to the appeal proposal being 'car-free' development. I shall return to this later in my decision.

### Main Issues

4. The main issues are the effect of the proposed development upon:
  - the character and appearance of the East India Estate Conservation Area (the CA);
  - the living conditions of neighbouring occupiers, with particular regard to their outlook; and,
  - whether there are satisfactory arrangements for refuse facilities.

### Reasons

#### *Character and appearance*

5. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires when determining proposals in conservation areas that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. At paragraph 197, the National Planning Policy Framework (the Framework), sets out matters which should be

considered, including sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 199 of the Framework states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

6. The East India Estate Conservation Area Appraisal and Management Plan, Supplementary Planning Document, adopted April 2014 (CAAMP) outlines that the CA is a ladder of 6 parallel roads, being mainly low density and street facing properties, with pitched roofs. It is said that there is no significant development of backland areas, which has preserved open areas behind properties. Many of the properties in the CA are terraced, setback from the road with front gardens and typically much longer rear gardens, some are set within spacious plots, and most of the plot sizes are said to be consistent with the original 1860s plan form. These elements form part of the significance of the CA.
7. The CAAMP also highlights that more recent development at Ashburton Gardens and Ashburton Grove, some of which is behind other properties, is detrimental to the CA due to the increased density. In addition, it further highlights that threats to the CA include back garden development, and the inappropriate siting, scale and design of new development.
8. The appeal site includes a number of garages behind properties that face onto Mulberry Lane, Outram Road, and Havelock Road, alongside several trees in the rear gardens of nearby street facing properties. The existing shallow pitched roof garages are not in use and I saw on my site inspection that they are in a poor state of repair. The garages do not have any architectural merit and they do not make a positive contribution to the character and appearance of the CA, their removal would be a benefit to it. It is also note there is no disagreement between the main parties on this aspect.
9. Turning to the proposed scheme, the 4 no. proposed dwellings, owing to the constrained size of the appeal site would abut most of the site's boundaries, preventing the proposed dwellings from having the characterful plot arrangement, which is distinctive of the CA. This very dense arrangement of the dwellings, particularly in this location, and with such limited outdoor space would appear wholly discordant and cramped in comparison to the mostly spacious character of surrounding street frontage properties. It is accepted that the appeal site is not a back garden, but it is within a backland location behind other properties and without a street frontage.
10. It is clear that the design of the scheme has been carefully considered, and in the right location, I am sure it could be appropriate. However, in this context its busy design, including its accommodation at lower level, its curved and diagonal walls, mono-pitch roof design, and varying fenestration, bears no resemblance to the appearance and form of the nearby properties within the CA. I acknowledge the efforts made to keep the buildings low and reduce their scale, to allow views between them. However, the higher roofs of the four dwellings would be taller than the existing garages, which would be viewed from rear gardens, and would appear incongruous and alien to the mainly low and simple buildings in these backland areas. Moreover, the proposed scheme appears overly contrived to fit into a constrained area behind other properties.

11. I note the cues taken by the appellant from existing buildings in the CA, such as the window details, curved detailing on their front elevations and basement accommodation, and their reference to the Old East India Company Military Academy Building. Although, the features which they have tried to replicate are part of an overall legible design of other such buildings in the CA, which are mostly much taller properties. In addition, the curved elements on properties in the CA are generally on flat elevations, such as around windows, not on the walls themselves. The interpretation of these aspects in this case is not befitting of the appeal site or its context.
12. Whilst the proposed development would not be particularly visible from the surrounding roads, it would clearly be visible from nearby properties and from within their rear gardens. Its increased scale would also make it more visible than the existing garages, which would harmfully contrast with the character and appearance of the CA.
13. I note that the proposals would be built of brick, which along with the other proposed external materials would be appropriate for the CA and planting is proposed to help integrate the scheme into the area. However, this would not outweigh the identified harm above.
14. My attention has been drawn to Havelock Hall, elsewhere on Havelock Road, along with a recent development near to it, for 2 dwellings, behind 172 Lower Addiscombe Road. I am not aware of the planning history relating to the 2 no. new dwellings or the reasons for approving that planning application, or the reasons for properties being so close to Havelock Hall. Although I acknowledge the location of both these new properties and Havelock Hall are behind street fronting properties. However, not only are they in a different location to the appeal site, both examples relate to a single building with dual pitched roof, unlike the appeal scheme before me. Whilst there are some similarities with the appeal proposal, these examples do not outweigh the harm identified above.
15. The existing garages do not make a positive contribution to the CA. However, the proposed scheme fails to either preserve or enhance the CA. I therefore conclude that the proposed development would not preserve or enhance the character or appearance of the CA, contrary to the requirements of the duty in the Act. For the same reasons the proposal would also conflict with the relevant parts of Policies D3 and HC1 of the London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (the LP) and Policies DM10 and DM18 of the Croydon Local Plan, dated 2018 (CLP), which amongst other things require development to preserve or enhance the significance of heritage assets, and respect the local context in terms of its siting, pattern, design, and ensure it is sympathetic to the significance of heritage assets. For similar reasons the proposal is also inconsistent with the CAAMP which seeks to prevent inappropriate development behind properties and new development that does not respect the distinctive character and appearance of the CA.
16. The Council has referred to the proposal being in conflict with Policy D4 of the LP. As this policy is concerned with strategic design review and analysis, I did not find it to be determinative in this case.

#### *Living conditions*

17. The rear elevations of some of the properties on Mulberry Lane face onto the appeal site, with the rear sides of the existing garages on the appeal site

abutting their rear boundaries. They are said to be between some 15-18 metres from their rear elevations. I saw on my site inspection that views from their rear gardens include the rear sides of the existing garages and trees beyond. The closest 3 no. proposed dwellings to them are said to be a maximum of 1.6 metres above the height of the rear walls of the existing garages at some 4.4 metres in height, but with lower parts between them. The highest point of the proposed mono pitch roofs would be farthest away, as shown on the proposed section drawing. Taking into account the orientation of the appeal site in relation to the surrounding properties and their gardens; the ground level changes; separation distances; and the increase in the height, the mass of the proposals would not be oppressive, enclosing or overbearing to the occupiers of these properties from within their habitable rooms or their rear gardens.

18. The rear elevation of No. 53 Outram Road is also said to be some 18 metres from the appeal site. Given the separation distance and the proposed roof height, I am content that the proposal would not be harmful to the outlook of the occupiers of that property from within habitable rooms or within their rear garden. There would be a much greater separation between the proposed development and the rear of properties facing Havelock Road, including the communal shared area and their own rear gardens in-between. As such there would be no harmful effects from the proposal upon the outlook of the occupiers of those nearest properties on Havelock Road.
19. For these reasons, the proposal would have an acceptable effect on the living conditions of nearby occupiers in terms of outlook and comply with the relevant parts of Policy D3 of the LP and Policy DM10 of the CLP, that amongst other things, requires the amenity for the occupiers of adjoining buildings is protected, ensuring an appropriate outlook for occupiers.
20. The Council has also referred to the proposal being contrary to Policy D4 of the LP and Policy SP4 of the CLP in terms of this main issue. Again, Policy D4 relates to strategic design review and analysis and Policy SP4 primarily relates to urban design, I did not find these policies to be determinative on this issue.

#### *Refuse facilities*

21. The proposals include a refuse storage area adjoining the private access track immediately behind No. 38 Havelock House, to accommodate bins for landfill and recycling from the proposed development. An area midway along the access track is shown to be available for bulky waste items, if required. These areas are set away from the access track and would not impair its width or movements along it by cars, pedestrians, or cyclists.
22. The appellant has submitted a Refuse Management Strategy (RMS) that details how waste from the dwellings would be collected and moved to the refuse area by a contractor. Although the Council said that the distance between the refuse area and the properties is contrary to Building Regulations, they did not specify the exact regulation and whether there are any possible exceptions. The Council's waste service is content that the RMS is reasonable and has not raised objections to it, I have no substantive evidence before me that demonstrates why the refuse facilities and proposed operations would not be reasonable or appropriate for the proposed development.

23. The appeal scheme itself is proposed to be car free and swept path analysis shows that access to existing garages adjoining the appeal site would be possible with cars being able to access and leave in a forward gear. Such movements are likely to be at very slow speeds, particularly given the bend in the access track, and the likely frequency of movements to them would not be incompatible with pedestrian, cycle, and refuse movements along the access track from the proposed development. Furthermore, there is no evidence that the movements associated with the proposed dwellings, including those related to the refuse facilities, could not be safely undertaken along the access track together with the existing and proposed movements along it.
24. To conclude, there would be satisfactory refuse facilities at the appeal site. As such, the proposal would comply with the relevant parts of Policies DM10 and DM13 of the CLP that amongst other things, require adequate space is available for refuse facilities including bulky items, which is accessible for occupants and allows the development to be easily accessible and safe for all of its users.
25. The Council referred to the proposal being contrary to Policy DM29 of the CLP. This policy is focussed on promoting sustainable transport and ensuring proposals are not detrimental to highway safety for pedestrians, cyclists, public transport users or private cars. The proposed refuse facilities are not located within the highway, I did not find this policy to be determinative on this main issue.

### **Other Matters**

26. The appellants detailed comments about the history to their planning application together with the Council's handling of it, are not matters that are relevant to the planning merits of the appeal. These are matters between the parties.
27. As I am dismissing the appeal for other reasons it is not necessary for me to assess the submitted UU in this case. In addition, I note the decisions<sup>1</sup> referred to by the appellant in regard to sustainable transport contributions. In this case, no sustainable transport contribution has been requested by the Council, consequently this is not before me to determine.
28. It has been argued that the proposals would provide high quality family housing; have green roofs and courtyards with good levels of sunlight; be a small housing site in accordance with Policy H2 of the LP which would contribute to the housing supply for Croydon; be in a well-connected location; make the site more secure and remove opportunities for anti-social behaviour; it would improve the appearance of the site; be car free development; re-use of previously developed land; and includes cycle parking. These matters are noted, but they do not collectively outweigh the identified harm to the CA, and the conflict with the development plan and the Framework.
29. The appellant has also stated that there would be no unacceptable effects upon the living conditions of neighbouring occupiers; it would not prevent continued use of the existing garages; it will protect the existing trees; it is located within flood zone 1 and the site can be effectively drained; it would not result in displaced parking; there are no technical objections from consultees; it meets

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<sup>1</sup> Refs: APP/L5240/W/22/3298225 and APP/L5240/W/22/3293208

residential space standards; and that it is said to comply with Policy D12 of the LP in terms of fire safety. These points are noted however, they are requirements for any well-designed scheme and are neutral matters that neither weigh in favour or against the proposal.

30. I have been made aware of a proposal to combine the appeal site with other adjoining land and for it to be jointly redeveloped. That proposal is not before me to consider and accordingly I attach no weight to it in my decision.
31. Reference is made to mews developments elsewhere which are said to have worked successfully, including reference to Moray Mews, Finsbury Park. Without knowing the exact details of those schemes, it is not possible to make comparisons between them and this scheme, I therefore attach limited weight to them.

### **Planning Balance**

32. I have found that the proposed development fails to preserve or enhance the character or appearance of the CA. I give this harm considerable importance and weight in the planning balance of this appeal.
33. I find the harm to the CA to constitute less than substantial harm owing to its effect being localised. Although, this does not equate to a less than substantial planning objection, especially where the statutory tests are not met. Paragraph 202 of the Framework requires public benefits to outweigh such harm.
34. In this case, there would be a contribution of 4 no. dwellings from a small previously developed site in a well-connected area that would have good access to sustainable transport methods, improve the security of the site and reduce opportunities for anti-social behaviour. However, these benefits would be somewhat tempered by the scale of the appeal scheme and the limited size of the appeal site. Furthermore, the contribution of 4 no. dwellings to the Council's overall housing supply would be limited. There would also be economic benefits associated with the construction of the development, which on their own are also likely to be limited. Community benefits from future occupiers being members of local community groups could be a community benefit, although such contributions would likely be variable.
35. Against this background, these collective public benefits are limited and do not outweigh the harm identified above to the significance of the designated heritage asset. Accordingly, there is conflict with the heritage protection policies of the Framework.

### **Conclusion**

36. Whilst I found the proposed development to be acceptable in terms of its effect upon living conditions and refuse facilities, I found harm to the heritage asset, as such the proposal conflicts with development plan taken as a whole and does not comprise sustainable development. There are no material considerations, including the Framework which indicate that a decision should be made other than in accordance with the development plan. I therefore dismiss the appeal.

*A Hunter*

INSPECTOR