



Appeal Decision

Site visit made on 12 March 2024

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2024

Appeal Ref: APP/L5240/W/23/3326869

67 Orchard Avenue, Croydon CR0 7NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by N J Roberts Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 22/03552/FUL.
 - The development proposed is demolition of the existing dwelling and redevelopment in the form of a 3-storey block (with upper floor contained within the roof profile) containing 6 self-contained residential flats, associated access, parking, landscaping, cycle and refuse storage facilities.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effects of the proposal on the character and appearance of the area;
 - whether the proposal would make adequate provision for drainage and flood risk;
 - the effects of the proposal on the living conditions of residents of 65 Orchard Avenue with regard to outlook;
 - the effects of the proposal on biodiversity; and
 - whether there is a need for a contribution towards the provision of sustainable transport measures.

Reasons

Character and Appearance

3. Along this part of Orchard Avenue, the properties comprise mainly detached dwellings of varying styles, designs, and materials, with onsite parking and reasonably sized rear gardens. The street scene in the vicinity of the site has a pleasantly open and verdant character and appearance. This is mainly due to the street trees and grassed verges, the space around the dwellings, and the greenery in the rear gardens that can be glimpsed through gaps between the properties.
4. The proposed building would be set back from the road frontage and would maintain the staggered building line that currently exists with the existing

building on the site and the neighbouring properties. However, the proposed building would have a much greater depth than many of the other nearby dwellings. The additional depth would result in a much greater volume of development. Combined with the height, the side of the building would have a considerable massing. The substantial expanse of this side elevation would be clearly visible from Orchard Avenue, especially when approaching from the north east due to the staggered building line here. The visual impact of the scale and bulk of the building would be further exacerbated by the stark contrast with the much more modest scale of the dwelling at 67A Orchard Avenue.

5. Due to the depth of the building, in combination with its height, the proposal would appear overly large on the site. This would conflict with the prevailing pattern of development in the vicinity, where dwellings are generally well proportioned in relation to the plots on which they are sited. The reduced extent of soft landscaping to the rear would exacerbate such an effect, with much of this area being given over to hard surfacing to accommodate the proposed parking spaces and access to them. This would reduce the positive contribution that the reasonably sized rear gardens make to the open and verdant character and appearance of the area. While some landscaped areas are proposed, these would mainly be enclosed and so would not be obvious from public vantage points.
6. The proposal would therefore result in a dominant form of development markedly at odds with its surroundings. As such, it would detract from the character and appearance of the area.
7. The design of the building would include architectural details and materials common to other dwellings in the vicinity on both Orchard Avenue and Woodland Way to the rear. This includes a mix of brick and mock Tudor detailing, a double bay with gable ends to the front, and rear dormer windows. Given the diversity in the street scene in terms of the appearance of the dwellings on Orchard Avenue and Woodland Way, in my judgement, the design of the proposal would not harm the character and appearance of the area. However, this would not mitigate the harm that would be caused by the overall scale and massing of the proposed development.
8. While there would be a reduced area of soft landscaping to the rear, there would be some landscaped areas to the front. Given that the front of the site is relatively devoid of vegetation, comprising predominantly an area of hardcore, the proposal would offer the potential for some enhancement, subject to details on species, planting schedules and boundary treatment which could be secured by a condition. In addition, while several of the dwellings in the vicinity along Orchard Avenue have some landscaping to the front of the plots, I also observed a number that had only hard surfaced areas that are used for vehicle parking. On this basis, the hard and soft landscaping proposals for the front of the site would not harm the character and appearance of the street scene along Orchard Avenue.
9. Although the refuse storage area would not be integrated into the building, it would nevertheless be visually screened as it would be contained within a covered structure with a green roof that would be incorporated within the landscaped areas to the front. The refuse storage area would provide sufficient storage and would be accessible to future occupiers and waste collectors. From

what I observed during my site visit, it is not uncommon for residents in the vicinity to store refuse bins to the front of the dwellings. Consequently, while there are not many structures that sit forward of the building line along Orchard Avenue in the vicinity of the site, the proposed refuse store would not be an inharmonious feature.

10. While some aspects of the proposal would be acceptable, overall, I conclude that it would harm the character and appearance of the area. Consequently, the proposed development would conflict with the requirements of Policy D3 of the 2021 London Plan and Policies DM10 and SP4.1 of the 2018 adopted Croydon Local Plan (the Local Plan). Broadly and amongst other matters, these policies require proposals to enhance local context by delivering spaces and buildings that positively respond to local distinctiveness; to be of a high quality and respect the form and built and natural features of the surrounding area; and to secure high-quality development which respects and enhances Croydon's varied local character. Given my finding on the rear landscaping, there would also be conflict with Policy DM10.8 of the Local Plan where it requires proposals to seek to retain existing landscape features that contribute to the setting and local character of an area.
11. Given my conclusion on the proposed refuse store, I find no conflict with Policy DM13 of the Local Plan which sets out the requirements for refuse and recycling. The Council refers to Policy D4 of the London Plan in relation to this main issue. However, this policy appears to relate to the contribution of masterplans and design scrutiny to the development process and in my view, it is not directly relevant to this main issue, although this does not alter my conclusion.

Flood Risk and Drainage

12. There is no dispute between the main parties that the site lies within Flood Zone 1, which is at lowest risk from flooding. The appellant's evidence and the Council's officer report set out that the site is not at risk from surface water flooding.
13. The Planning Practice Guidance (the PPG) identifies the situations when a flood risk assessment (FRA) is required. From the evidence that is before me, none of these would appear to apply here. On this basis, I am not persuaded that a FRA would be required in this case, or that the proposal would fall within the terms of Policy DM25.2 of the Local Plan. This policy requires development in areas at risk of flooding to incorporate flood resilience and resistant measures into the design, layout, and form of buildings to reduce the level of flood risk both on site and elsewhere.
14. However, the supporting text to Local Plan Policy DM25 identifies that Croydon has experienced a number of surface water flood events. The Council contends that both neighbouring properties and the roads in front and behind suffer from surface water flooding.
15. Amongst other matters, Policy DM25.3 of the Local Plan states that sustainable drainage systems are required in all developments and should meet a number of requirements including the achievement of better than greenfield runoff rates. Policy SI 13 of the London Plan states that development proposals should aim to achieve greenfield runoff rates and ensure that surface water runoff is managed as close to its source as possible.

16. The proposal would result in more of the site being taken up by built development and hard surfacing than is currently the case. To manage surface water, the appellant indicates that the hardstanding on the site would be permeable paving, and the bicycle and refuse storage buildings would have green roofs. Such measures would allow for ground infiltration in line with the hierarchy of drainage options identified in the PPG and Policy SI 13 of the London Plan.
17. However, there is no clear evidence before me to demonstrate that the proposal would meet all of the required measures specified in Policies DM25.3 and SI 13, in particular the achievement of better than/equivalent to greenfield runoff rates. In the absence of this information, I am unable to determine whether adequate and effective drainage would be provided at the site, and so I cannot be certain that flood risk either on the site or elsewhere would not be increased.
18. The management of surface water could have implications for the layout and scale of development on the site. From the evidence before me, I am unable to say with any confidence that it would be possible to provide adequate and effective drainage while also accommodating the development applied for. Given this uncertainty, it would not be appropriate to defer consideration of this matter to a planning condition.
19. I therefore conclude that it has not been demonstrated that the proposal would make satisfactory provision for surface water drainage, and I cannot be certain that flood risk would not be unacceptably increased. In this regard, the proposal would conflict with the requirements of Policy DM25 of the Local Plan and Policy SI 13 of the London Plan, as summarised above.

Living Conditions

20. The Council's evidence confirms that its concern relates to the effect of the proposal on outlook from the garden of 65 Orchard Avenue. The existing property on the site sits relatively close to its boundary with this neighbouring dwelling, although the closest feature is a single storey garage. The proposed building would have a similar separation distance, but it would be taller than the existing property and would project further into the site. The conservatory to the rear of no. 65 reduces the extent of useable rear garden that would be affected by the proposal. A reasonable depth of garden would remain unaffected by the side elevation that would sit closest to the common boundary. The stepped nature of the proposed building means that the part of the rear elevation that extends further outwards would be located more remote from the rear garden of no. 65. These factors would ensure that the sense of enclosure when in the garden would be modest, and the proposed development would not dominate the outlook from it.
21. I therefore conclude that the proposal would not cause unacceptable harm to the living conditions of residents of 65 Orchard Avenue with regard to outlook. As such, the proposal would not conflict with Policy D3 of the London Plan where it requires proposals to deliver appropriate outlook, privacy and amenity, or the residential amenity requirements of Policy DM10 of the Local Plan.

Biodiversity

22. The site is relatively devoid of vegetation to the front. The proposed soft landscaping here would result in a decrease in hardstanding and increase in green coverage when compared to the existing situation.
23. The rear garden is currently laid almost exclusively to grass with a patio/hardstanding area nearest to the dwelling, and some low-level shrubbery around the boundary. This would be replaced with hardstanding along with small lawned amenity areas and children's play area and stretches of boundary hedging. In addition, green roofs are proposed on the bicycle and refuse storage buildings. While less of the site would be given over to soft landscaping, with an appropriate choice of species, including those which aid pollination, there would be scope for the proposal to provide some biodiversity value.
24. In my judgement, the appellant's evidence provides sufficient comfort to show that the site could be developed in a manner that would address the requirements of the relevant criteria of Policy DM27 of the Local Plan. This includes that, to enhance biodiversity across the borough and improve access to nature, development proposals should: incorporate biodiversity on development sites to enhance local flora and fauna and aid pollination locally; and incorporate biodiversity within and on buildings in the form of green roofs, green walls, or equivalent measures. Given this context, if I had been minded to allow the appeal, it would be reasonable to deliver biodiversity measures through a planning condition.
25. I note the appeal decision¹ that the Council has highlighted in this regard. In that case, the proposed dwellings would cover a significant proportion of the undeveloped plot and would include the loss of a valued tree. This differs from the current appeal proposal where there are no trees on the site and as noted above, there would be space for both hard and soft landscaping.
26. Consequently, I conclude that the proposal would have due regard to biodiversity. As such, it would not conflict with the requirements of Policy DM27 of the Local Plan, as summarised above.
27. The Council has cited a conflict with Policy G7 of the London Plan and Policy DM28 of the Local Plan. Both policies seek to protect trees, woodlands, and hedgerows, including ensuring that, wherever possible, existing trees of value are retained. The appellant highlights that the trees on the site have been removed, which coincides with what I observed at my site visit. I therefore find no specific conflict with these policies. I am also not persuaded as to the relevance of Policy SP7 of the Local Plan, which seems to be focussed on the delivery of a 'Green Grid' and local green spaces.

Sustainable Transport Contribution

28. The Council is seeking a financial contribution of £1,500 per unit. The Council's officer report identifies that the contribution would be towards improvements to sustainable transport, including but not limited to on-street car clubs with electric vehicle charging points (EVCPs) as well as EVCPs in general. Extensions and improvements to walking and cycling routes in the area are also referred to. The Council identifies several London Plan and Local Plan policies in regard

¹ Appeal reference APP/L5240/W/23/3321507

to this issue. No detail has been provided about how the amount of the contribution has been calculated.

29. I have had regard to the judgement² submitted by the Council as part of its evidence. I have also considered the appeal decision³ provided by the Council where the Inspector paid regard to this judgement and accepted the need for a contribution towards sustainable transport measures.
30. The judgement is focussed on specific issues and based on a particular proposal which is in a different ward to the current appeal proposal and which I do not have full details of. In my view, the judgement is not interpreted as meaning that all residential schemes should have to make a financial contribution of £1,500 to sustainable transport measures. The requirement for such contributions would still need to be considered against regulation 122 of the Community Infrastructure Levy Regulations 2010.
31. The proposed development would be below the parking standards in Policy T6.1 of the London Plan. However, these are maximum figures. The appellant's evidence⁴ contends that given car ownership levels in the locality, four spaces would be required, whereas six spaces would be provided, which the Council considered to be sufficient. On this basis, there is no indication that the proposal would lead to on-street parking pressure. This differentiates it from the scheme which was the subject of the appeal decision referenced above, where additional on-street parking would arise as a result of the proposal. One of the proposed spaces could be designated as an on-site car club/pool car parking space in line with Table 10.1 of the Local Plan, associated with Policy DM30, should occupiers wish to take advantage of such a facility.
32. The appellant identifies that two of the proposed spaces would be provided with active charging points and an appropriate number of bicycle parking spaces would be provided. These would provide some sustainable transport benefits.
33. On this basis, with the circumstances of this particular proposal, I am not persuaded that the need for a contribution towards the provision of sustainable transport measures has been justified. Consequently, I find no conflict with the requirements of Policy T6 of the London Plan and Policies DM29 and DM30 of the Local Plan. Amongst other matters, these policies require development to promote measures to increase the use of public transport, cycling and walking as well as addressing highway safety considerations and car and cycle parking requirements.
34. The Council has referred to a conflict with Policy SP6 of the Local Plan. This policy addresses environment and climate change and includes several sections which in my view are not relevant to this main issue. However, this does not alter my conclusion.

Other Matters

35. The proposed development would contribute a net addition of five dwellings of a range of sizes including three-bed units to the supply of housing on an existing site. In this regard, it would accord with objectives of the Framework, including significantly boosting the supply of homes and the recognition given

² R(Whiteside) v Croydon LBC & Others [2022] EWHC 3318 (Admin)

³ Appeal reference APP/L5240/W/23/3316113

⁴ Transport Technical Note, Crosby Transport Planning, July 2022, reference PC/P22042

to the contribution that small sites can make to meeting the housing requirement of an area. It would also accord with the similar policy aims in the London Plan and Local Plan, including a recognition of the role smaller units play in the housing mix and scope for higher densities. However, I do not afford such benefits very significant weight given the quantum of dwellings proposed.

36. The proposed units would meet internal and external space standards. The appellant highlights that fire safety and accessibility standards would also be met. Due to the absence of windows in the side elevation of 67A Orchard Avenue and the relationship of the proposed building with the garden of this dwelling, I am satisfied that there would not be an unacceptable loss of sunlight to residents of this property. I am also satisfied that there would be a sufficient separation distance to the dwelling at 32 Woodland Way such that the living conditions of residents of this dwelling would not be harmed. However, a lack of harm is effectively neutral in the planning balance.
37. None of the other matters raised outweigh the harm I have found, including the identified conflict with development plan policy.

Conclusion

38. I have found that the proposal would be acceptable in terms of its effect on the living conditions of neighbouring residents and biodiversity and that the absence of a contribution to sustainable transport measures should not weigh against the proposal. Conversely, I have found harm to the character and appearance of the area and that adequate provision has not been made for drainage and flood risk.
39. While there would be some beneficial aspects of the scheme, considered overall it would cause harm which would conflict with the development plan when taken as a whole. There are no material considerations that would indicate a decision other than in accordance with the development plan.
40. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

F Wilkinson

INSPECTOR