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# Appeal Decision

Site visit made on 20 February 2024

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

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

**Decision date: 18<sup>th</sup> April 2024**

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**Appeal Ref: APP/L5240/W/23/3321659**

**107 Foxley Lane, Purley, Croydon CR8 3HQ**

- 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 Mr James Caldwell of The Turnbull Group against the decision of the Council of the London Borough of Croydon.
  - The application Ref is 22/04037/FUL.
  - The development proposed is the part demolition of 107 Foxley Lane and erection of a block of four apartments (2x 1 bed and 2x 2 bed) and the erection of 5x 3 bedroom houses, with associated access and parking.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes, albeit the numbering of paragraphs. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.
3. The appellant has submitted a Unilateral Undertaking dated 4<sup>th</sup> September 2023 (the legal agreement) for the payment of an off-site financial contribution towards sustainable transport. The Council considers the legal agreement addresses its reason for refusal no.3 and has advised that reason for refusal no longer applies. The appeal will be determined on this basis, and I shall return to the legal agreement later in my decision.
4. With their appeal the appellant has submitted an Ecological Impact Assessment, by Darwin Ecology, amended date 4/4/23. The Council has confirmed that in light of this information its reason for refusal no. 4 has been overcome, subject to conditions, and that reason for refusal is no longer contested. The appeal has been determined on this basis.
5. The appellant has also submitted the following revised plans with their appeal; a site plan and site sections plan updated to show 1200mm clear zone to parking space no.7 and amended cycle storage details; proposed flat layout to show flat 2 with a bedroom size of 12 square metres and its living and dining windows adjusted to include a high level window; proposed house 1 layout adjusted to comply with building regulation part M4(3), and its en-suite removed. In addition, plans showing summer and winter shading have been submitted. These changes in terms of the scheme as a whole are relatively

minor, and the Council and other interested parties have had the opportunity to comment on them through the appeal process, I am satisfied there would be no unfairness to any interested party by accepting this information. Consequently, the appeal will be determined on this basis.

6. The Council has confirmed that based on the revised layout plan submitted with the appeal, House 1 meets relevant accessibility standards and that it accepts the appellant's reasons for not having a lift within the proposed 2-storey building containing flats. As such, it raises no objection in respect of these aspects, and the relevant parts of reason no. 2 in this regard no longer apply. The appeal has also been determined on this basis.
7. I have been made aware of a formatting mistake on the Council's notice of decision referring to a 7<sup>th</sup> reason for refusal. The Council has confirmed that the paragraph relates to its positive and proactive statement, and it is not a reason for refusal. The Council has also advised of initial errors within their Questionnaire, in respect of its initial answers to Questions 12a, 12b, and 19b. They have provided corrected answers, which have been shared with the appellant and I have determined the appeal on this basis.

### **Main Issues**

8. The main issues are:

- The effect of the proposed development upon the character and appearance of the area, with particular regard to its layout, density and its effect upon trees;
- Whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to its layout, proximity to trees, privacy, outdoor space, and outlook; and,
- The effect of the proposed development upon the living conditions of the occupiers of No. 109a Foxley Lane, with particular regard to noise and disturbance.

### **Reasons**

#### *Character and appearance*

9. The appeal site comprises No. 107 Foxley Lane, a semi-detached dwelling extended to its side, together with its long rear garden and part of the rear garden of No. 109 Foxley Lane, which wraps around the rear of No's 109 and 109a. Foxley Lane contains a variety of properties that are mostly set back from the road with long rear gardens, in spacious and landscaped settings, and despite some newer buildings being quite large, the area on the whole due to the many gaps between buildings and planting, provides a spacious and low density area. Although, there is some development to the rear of properties along Foxley Lane, these are the exception rather than the norm, and it tends to be one or two buildings as opposed to a cul-de-sac of dwellings.
10. The appeal site contains 6 no. trees that are protected under a Tree Preservation Order (No. 20, 2016); 3 no. trees on the rear boundary; and 3 no. trees on the side boundary near to a recently built garage. These trees are all tall and established, they can be seen both within and outside of the appeal

site, including from along Foxley Lane, and they make a positive contribution to the area and are part of its distinctive character.

11. The new apartment building would be three storeys high and sit between No.'s 107 and 109a, its overall height would be comparable with adjoining properties. It would infill a space that is relatively open at present due to the low single storey height of No. 107's side extension. Nevertheless, the proposed new access road would still afford views into the rear of the site. In addition, proposed in front of the flats would be 4 no. parking spaces, a small private amenity space for one of the flats and a bike store, described as a Rosta double store. To the rear of the proposed flats would be a bin store, shown to be screened by a brick enclosure, together with both private and communal amenity spaces. 5 no. two-storey dwellings would also to be located to the rear of the site, most of them would not be in any form of cohesive layout, seemingly to take account of the shape of the appeal site and the protected trees. Collectively the arrangement and scale of these proposals would create a very dense and intensive use of the appeal site.
12. The close arrangement of the proposed buildings, particularly the two-storey buildings to be located at the rear of the site, including the majority of them having limited separation to the boundaries of the appeal site, the large areas of hard surfacing, and the narrow gaps, would create a very dense form of development. This would contrast harmfully with the spacious arrangement, and long rear gardens of most properties nearby. The limited size and depth of the gardens proposed to serve the houses, particularly the disjointed shape of House 1's garden, would be alien within this context and appear overly contrived, detracting significantly from the area's spacious and established character. Whilst character can evolve, such changes would be harmful to it and not in keeping with the immediate area.
13. Despite the mixture of housing types and sizes, and the appellant claiming the proposal would be an optimisation of the appeal site, this would be at a significant cost to the character and appearance of the area and result in a cramped form of development with a density of dwellings not befitting the immediate area.
14. Furthermore, siting proposed Houses 1, 2 and 3 so close to the protected trees (T8, T9, T10, T28, T29 and T30 as referred to on the appellant's Tree Protection Plan), most being categorised as grade A and B trees, with over 40 years of future growth, would more than likely threaten their long-term growth potential. It is noted that consent would be required for any works to these trees, but it would not be inconceivable that those trees could grow considerably over that time and extend much closer to, or be in physical contact with the proposed dwellings, and shed leaves on and near to them. There would more than likely be future pressure for felling or pruning the trees, harming their long-term growth potential. Furthermore, such likely felling and pruning of them, could be harmful to the positive contribution they make to the character and appearance of the area.
15. Whether or not the location and construction of the garage on the adjoining site adhered to British Standard requirements, is not a reason to cause harm to the protected trees T8, T9, and T10 through the proposed development. I acknowledge that the foundations of works close to the trees could be undertaken with minimal ground disturbance work, and be undertaken outside

- of the root protection areas, and conditions could be imposed regarding this and related ground levels, but this does not overcome the harm from the proposals upon the long-term future growth potential of the protected trees.
16. Whether T28 is categorised as C or B, it makes a positive contribution to the character and appearance of the area and is said to have 10-20 years of growth ahead of it. The Council have not provided any evidence to support their assertions that it is not suppressing T29, it is unclear on what basis they have said this. Even if I were to accept that the tree is suppressed to justify its removal, a replacement tree would need to be provided and there would appear to be no other space on the site for such a tree to grow and mature to a similar size, again indicating to me that the proposed development is too cramped for the appeal site.
  17. In total 20 no. trees, 2 no. groups of trees, part of another group and 2 no hedges are said to require removal. Although replacement planting is proposed, there would be very limited space for any meaningful planting that would fully off-set this and positively contribute to the landscaped setting of appeal site, or integrate the proposed development into this area.
  18. A streetscene drawing would have been helpful to assess the effect of the proposed development, particularly from Foxley Lane, given the rise in land towards the rear of the appeal site. From my own site observations, some of the proposed dwellings would be partly visible from Foxley Lane. There would also be views of the proposed development from within the gardens of neighbouring properties. The levels change is not dramatic and the proposed properties being at a higher level would not necessarily be harmful, particularly given that the building behind the appeal site would be taller, but the concentration of so many different buildings with different orientations and roof planes, would appear overly dense, when viewed between buildings and from neighbouring gardens.
  19. The appeal site is not within the Webb Estate Conservation Area (the CA), but it adjoins one of its boundaries. I acknowledge that paragraph 212 of the Framework states that new development should enhance or better reveal the significance of heritage assets. In this case, the trees within the appeal site contribute to its wooded setting, and whilst the proposed development would be close to it, the two-storey scale of the proposed dwellings nearest to the CA along with the planting to be retained, would ensure there would be no harm to the setting of the CA or of views into and out of it.
  20. The appellant has cited several examples of other development in the locality, particularly involving the demolition of properties and redevelopment of the sites. I have considered all of these examples carefully, but they are quite distinct from this appeal proposal, as they relate mainly to larger blocks of buildings containing flats. Furthermore, the majority of these examples also occupy street frontage locations. Others, including behind No. 105 Foxley Lane and 120 Foxley Lane, are in similar backland locations, but the habitable accommodation comprises one building in the case of No. 120. Or in the case of No. 105, two larger buildings but within spacious surroundings with much more retained landscaping and open areas than the proposal. Consequently, these examples did not lead me to conclude differently regarding the identified harm above in this case.

21. I therefore conclude that the proposed development would be harmful to the character and appearance of the area in terms of its layout and density and its effect upon protected trees. In doing so, I find the proposal to conflict with the relevant parts of Policies D3 and G7 of the London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (the LP) and Policies SP4, DM10, DM13 and DM28 of the Croydon Local Plan, dated 2018 (CLP), which amongst other things require development to be high quality and respect and enhance local character, deliver development that responds to local distinctiveness, through its layout, siting, and density, whilst also protecting and avoiding harm both now and in the future to trees of value that make a positive contribution to the area. In addition, the proposal would also conflict with paragraph 135 of the Framework insofar as it requires development to be sympathetic to local character and history, add to the overall quality of the area, and be visually attractive.
22. The Council has referred to the proposal conflicting with Policy D4 of the LP, that policy is primarily concerned with strategic design review and analysis, I did not find it to be directly determinative on this main issue.

*Living conditions – future occupiers*

23. There is no dispute between the parties that the size of the private amenity spaces is above the minimum sizes required. Nevertheless, in terms of the proposed houses, the private amenity space for Houses 1,2, and 3 is heavily constrained by the very close proximity of the large, protected trees. House 1 has a split garden, with space to its side and to its rear side. The summer shading plans show the existing trees would be dominant features and at certain times provide a significant degree of shading on the gardens of Houses 1,2, and 3. It is also pertinent to indicate that most of these trees have future growth potential and such shading would likely only get worse. Whilst some occupiers may appreciate light from between the trees, others may not, and the presence of these large trees in such close proximity, including their future growth potential would be harmful to the living conditions of the occupiers of these three properties.
24. The private amenity area for flat 1 would be to the front of the building containing the flats, immediately adjoining the cycle storage structure and parking area, however, with suitable planting this space could be a private and functional area for its future occupiers. Flat 2's private amenity space is to the rear side and partly enclosed by its own living room, although it is close to the bin storage area, it would have adequate separation to also be a private and functional space for its future occupiers. The proposed communal space for the flats and the dedicated play space would also provide satisfactory communal space for future occupiers of the 4 no. flats.
25. Flat 1 would have a bedroom window that would look directly towards the proposed 2 tier cycle store, said to be some 1.3 metres away. Whilst planting is proposed directly in-between, given the close proximity of the cycle store and any such planting there would be a poor outlook from that window, harming the living conditions of future occupiers of that flat. Whether the cycle store was used infrequently or not, it would not address the bedroom window's outlook towards the structure and planting. I note the bedroom would have another window, but that would be at a high level facing the new access road and would not provide the bedroom with a satisfactory outlook. Nevertheless, I

am satisfied that the bedroom window would retain adequate privacy, with a suitable landscaping scheme that could be conditioned, had I been minded to allow the appeal.

26. Flat 2's high level window on its elevation facing onto the access road would be one of its three windows serving its living area. These windows combined would provide a good outlook for future occupiers within that room, including views into its private amenity area, and the bin storage building would be a satisfactory distance away. There would also be no unacceptable privacy issues for occupiers of Flat 2 due to the proposed layout of the private and communal amenity spaces, which would be in addition to the private amenity space belonging to each flat. Whilst there could be noise and disturbance from use of the shared amenity areas and from use of the bin storage area, this is unlikely to cause unacceptable noise and disturbance for the occupiers of No. 2 owing to the separation distance and there being only 3 other flats in total.
27. Movements passed the flats along the new access road, including pedestrian, and vehicular, would be unlikely to cause significant noise and disruption, to the extent that the living conditions of future occupiers of the flats would be harmed, there would also be a pedestrian pathway between them and the new access road.
28. Level access would be capable of being provided to both the proposed ground floor flats and all the houses, the exact details of which could be the subject of a suitably worded condition. The Council has accepted the appellant's reasons for not installing a lift, it would therefore be unreasonable to insist on the 2 no. flats above ground floor level having level access in this case.
29. For these reasons, the proposal would not provide future occupiers of Flat 1 with a satisfactory outlook, and it would not provide satisfactory private amenity space for Houses 1,2 and 3 and thereby conflict with the relevant parts of Policies D3 and D6 of the LP and Policy DM10 of the CLP, that amongst other things, requires development to provide an appropriate outlook for occupiers, the provision of high quality and functional private amenity space, and for development to receive sufficient sun lighting.
30. The Council also referred to the proposal being contrary to Policies D5 and D7 of the LP and Policy SP2.8 of the CLP in terms of this main issue. Policy D5 relates to ensuring safe access for all and no barriers for disabled persons. Policy D7 of the LP and Standard 11 of the Housing Supplementary Planning Guidance to the London Plan (March 2016) (SPG) have similar requirements in respect of requiring 10% of dwellings to be wheelchair user dwellings, and the remainder of the proposals to be accessible and adaptable dwellings. Whilst accepting that there is agreement that a lift is not required for the proposed first floor flats, had I been minded to allow the appeal, appropriately worded conditions could have been imposed to ensure the proposals complied with these requirements in all other respects. Policy SP2.8 is concerned with ensuring new development meets the minimum standards, and following the revised plans there is no dispute in this respect, consequently the proposed development would be capable of complying with this policy.
31. In addition, following the submission of the revised layout plan, the proposed development would comply with the minimum internal sizes required by DCLG Technical Housing Standards - Nationally Described Space Standards (March 2015). The provision of play space within the proposed development would also



comply with Policy DM10 of the CLP and Standard 5 of the SPG that collectively require play space for housing developments with an estimated occupancy of 10 or more children.

*Living conditions – No. 109a Foxley Lane*

32. No.109a has a frontage onto Foxley Lane, in a staggered but roughly side by side relationship with No's 109 and 107 Foxley Lane. The proposal would see it also having a largely side-by-side relationship with the 4 no. flats, which would have their main entrance on the side elevation facing No. 109a. In between the proposed flats and No. 109a, would be a new road that would lead to the 5 no. proposed dwellings to the rear of the appeal site.
33. No.109a has a small space between it and the boundary to the appeal site comprising a hedge in part. On its side elevation nearest the appeal site, it has a small circular window at ground floor level and a small second floor window, its main openings are on its front and rear elevations.
34. Increased pedestrian movements into and out of the proposed flats, vehicular movements along the new access road, as well as movements to the bin storage area said to be 8.5 metres from the rear elevation of 109a, would more than likely create some degree of noise and disturbance for the occupiers of that property. This effect would be partly mitigated by the small separation distance between it and its boundary to the appeal site, and due to it having its main openings away from its side elevation nearest the appeal site. This, together with the appellant's suggested conditions in respect of acoustic fencing along this boundary, and lighting controls, would also further reduce the effects of any noise and disturbance from the proposal. Had I been minded to allow the appeal, conditions could have been imposed requiring an acoustic boundary fence and details of an appropriate lighting scheme to ensure the proposed development would not be harmful to the occupiers of No. 109a, in terms of noise and disturbance.
35. I do not share the Council's view that such a fence would need to be 3.7 metres or so high, to counter noise from bin collection vehicles. Given the low frequency of collections, said to occur every other week, a high fence as suggested to mitigate collection noise and disturbance would not be reasonable or necessary.
36. I therefore conclude that subject to conditions, the proposed development would have a satisfactory effect upon the living conditions of the existing occupiers of No. 109a Foxley Lane, and comply with Policy D3 of the LP and Policies DM10 and DM23 of the CLP, that amongst other things, require development to both safeguard and deliver an appropriate amenity for surrounding users, particularly from noise, and that appropriate mitigation measures are put in place. In addition, the proposal would also comply with paragraph 135 of the Framework insofar as it requires a high standard of amenity for existing and future users.
37. The Council referred to the proposal conflicting with Policy SP6 of the CLP, however, that policy primarily relates to environment and climate change matters, and I did not find it to be directly determinative regarding this living conditions issue.

## **Other Matters**

38. As I am dismissing the appeal for other reasons, it has not been necessary for me to consider the submitted legal agreement in any further detail in this case.
39. I acknowledge the comments about the Council's handling of the planning application, including whether they should have sought amendments and whether information was raised at pre-app stage or not. However, my assessment of the appeal has been determined on the planning merits of the proposal. The Council's handling of the application is a separate matter between the respective parties.
40. It is noted that it is said there would be no unacceptable privacy issues; that the Council has not raised objections in terms of highways safety; and that the site is within the settlement's development limits. However, these are likely to be requirements of any such well-designed scheme and are neutral factors that neither weigh in favour or against the proposal.
41. I acknowledge the objections raised by interested parties, including matters in addition to the above main issues, which I have had regard to. However, as I have found harm regarding the effect of the proposal upon the character and appearance of the area and the living conditions for future occupiers, it has not been necessary for me to consider those matters further.

## **Conclusion**

42. The proposed development would be a small to medium sized housing site, which can usually be delivered quickly, it would make an efficient use of land, contribute towards Croydon's overall housing supply, and there would be economic benefits associated with the construction of the development. However, these benefits would be modest given the scale of the proposal.
43. Whilst I find the proposed development's effect upon the living conditions of the occupiers of No. 109a Foxley Lane to be satisfactory, I also find the proposal would be harmful to the character and appearance of the area, including protected trees, and that it would not provide future occupiers with satisfactory living conditions. As a result, I find there to be conflict with the development plan taken as a whole, and the proposal would therefore not comprise sustainable development. There are no other considerations, including the Framework and the collective benefits raised in support of the appeal proposal, which indicate a decision other than in accordance with the development plan. I therefore dismiss the appeal.

*A Hunter*

INSPECTOR