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# Appeal Decision

Site visit made on 29 May 2024

by **Elizabeth Lawrence BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 June 2024

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## Appeal Ref: APP/L5240/W/23/3334272

### 34A, 34B and rear of 34 Arkwright Road, Croydon, CR2 0LL

- 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 Martyn Avery against the decision of the Council to the London Borough of Croydon.
  - The application Ref 22/04130/FUL, dated 5 October 2022, was refused by notice dated 2 June 2023.
  - The development proposed is described as demolition of existing dwellinghouses at 34A and 34B Arkwright Road and the construction of 9 dwellinghouses 3 storeys in height together with associated parking, access and landscaping.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The first main issue is the effect of the proposal on the character of the local area. The second main issue is the effect of the proposal on the living conditions of the occupiers of the adjoining properties in Ridge Langley, with particular regard to privacy. The third main issue is whether the scheme makes adequate provision for services and infrastructure to meet the requirements arising from the occupation of the development.

## Reasons

3. The appeal site is located within an established residential area within the built-up area of Sanderstead, where in principle planning policies at all levels allow for new housing developments.

## Character

4. Arkwright Road and the immediately adjacent roads are primarily characterised by traditionally designed single, one and half and two storey detached dwellings. The dwellings occupy generous sized, mature landscaped plots, which includes typically generous sized gaps between the dwellings above ground floor level. This together with the grass verges and trees within the highway; the sloping topography that affords views of trees within the rear gardens; and the wooded area at the northern end of Arkwright Road, contributes to the spacious and verdant character and appearance of the locality.

5. To the rear of the appeal site, the development within Ridge Langley is more intensive, comprising a mixture of detached and terraced two storey dwellings from a limited range of designs and consistently shallow pitched roofs. Whilst the dwellings occupy smaller plots, their open plan front gardens, grassed areas within the highway, varied topography and treed setting result in an open suburban character.
6. The appeal site is situated to the rear of Arkwright Road within the well treed, verdant and spacious rear garden environment. Currently the site is occupied by two large detached two storey houses which are accessed by a narrow driveway flanked by grass verges, hedges and trees. These dwellings are informally sited within the northern part of the overall site, which includes numerous trees, shrubs and grassed areas which contributes to the verdant character and appearance of the back garden environment.
7. In 2022 planning permission was refused and an appeal dismissed for the redevelopment of the site for 19 flats, due to its impact on the character and appearance of the area; its housing mix; and its impact on the living conditions of the occupiers of 78 and 80 Ridge Langley (No.78 & No.80. More recently the council has granted planning permission for the redevelopment of the appeal site for six detached houses. In relation to the appeal scheme the council's officers recommended approval. These factors are all taken into account in the consideration of the appeal proposal.
8. Collectively and amongst other things Policy SP2 of the Croydon Local Plan 2018 (LP), policies D3, H1 H2, GG2 & GG4 of the London Plan 2021 (London Plan) and Sections 2, 5, 11 & 12 of the National Planning Policy Framework 2023 (the Framework), support a presumption in favour of sustainable development. They promote the development of small and windfall sites for housing and the efficient and effective use of land, whilst safeguarding and improving the environment. Great weight is given to the benefits of using suitable sites within existing settlements for homes.
9. LP Policies SP2 & DM1 seek to address the borough's need for homes. This includes a delivery target of 10,000 new homes on windfall sites between 2016 and 2036 and for 30% of all new homes to have three or more bedrooms. The supporting text to LP Policy SP2, at paragraphs 4.10, 4.20 & 4.23, advises that the need for larger homes was identified in the Croydon Strategic Housing Market Assessment 2025 and that 50% of the future requirement for market housing is for larger homes.
10. The proposal would deliver nine traditionally designed, three storey family sized dwellings and the intensity of the development would be greater than the existing development on the appeal site and the approved scheme for six dwellings. This is consistent with the objectives of the above policies relating to the location and delivery of homes.
11. However, this is not the end of the matter. As stated in paragraph 125 of the Framework, good design is a key aspect of sustainable development. The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
12. Policies D3 & D4 of the London Plan 2021 (The London Plan) and Policies SP4.1 DM10 of the Croydon Local Plan 2018 (LP), collectively seek to ensure that new development is designed to a high standard, respects and enhances local

character. This includes the character, appearance, materials, built and natural features of the area. LP Policy DM13 states that the location of refuse and recycling facilities should be sensitively integrated into the scheme and are convenient easily accessible and safe. This is consistent with paragraph 135 of the Framework.

13. The dwellings on plots 1–7 are designed to appear as two storey houses with steeply pitched roofs and tall gabled flank walls. At the front the gaps between the dwellings on plots 3 & 4 and 5 & 6 would be narrow and their frontages would be dominated by an expansive parking and turning area. Their rear gardens would be uncharacteristically small, with a notable proportion being used for new boundary tree planting. The rear gardens on plots 2, 3 and 5 would be particularly small.
14. The retained boundary trees together with the proposed new tree planting, if maintained at a height to prevent overlooking the gardens of No,78 & No.80, would have an oppressive and unduly enclosing impact on the rear gardens and outlook from the dwellings on plots 3, 4 & 5.
15. As a result of these factors the proposed development on plots 1 to 7, including the associated parking and turning area would appear uncharacteristically cramped, visually hard and urban.
16. The dwellings on plots 8 and 9 would be more spaciouly sited, although their frontages would be dominated by the parking court and to the rear their gardens would be less than nine metres in depth. The shallow depth of their gardens would be exacerbated by the tall mature shrubs and trees along the rear boundaries of the appeal site.
17. The front of both dwellings and the western flank wall of the dwelling on plot 9 would be dominated by the parking court and large vehicle turning area. The refuse vehicle swept path turning area shown on drawing No. 1808018-TK17 Revision B shows a refuse vehicle overhanging the side gardens and projecting over the cycle store to plot 9. These factors all highlight the cramped and visually hard nature of the appeal proposal.
18. Overall, the proposal would be totally out of keeping and would fail to respect its spacious and verdant rear garden environment and the local area. Its impact on the local area would be exacerbated by the elevated position of the site and the urban design of the proposed access. This harm would materially outweigh the benefits of providing nine family sized dwellings on the site. It is also not something that could be satisfactorily addressed through the imposition of conditions.
19. By comparison, with the approved scheme for six dwellings larger gaps are provided between the dwellings and the dwellings on plots 1–4 have significantly deeper and wider rear gardens. The dwellings on plots 5 and 6 face towards the access track and the parking and turning area is smaller, with more soft landscaping to break it up.
20. The appellant has referred to the recent flat's development at Arkwright Road. Whilst this is a bulky building it sits at a lower level to 32 Arkwright Road, adheres to the front building line along the road and large gaps are maintained between the building and the adjacent dwellings. The flats building also benefits from a large rear garden that is comparable in size to other rear

gardens along Arkwright Road. Its main comparable feature to the appeal proposal is its front parking court, which, despite being smaller than the proposed parking area, has an urbanising impact on the street scene.

21. I conclude on the first main issue that the proposal would materially and unacceptably harm the character of the locality. Accordingly, it would conflict with Policies D3 & D4 of The London Plan, LP Policies SP4, DM10 & DM13 and paragraphs 131 and 135 of the Framework.

*Living conditions*

22. The appellants drawings show that the rear gardens to plots 1–7 would all be at least 10 metres deep and that the separation distances between the dwellings on plots 1–7 and the dwellings opposite at No.78 & No.80 would range between 23.19 metres and 28.93 metres. This does not take into account the rear extension at No.80, which serves a habitable room. At its closest point the proposed dwelling on plot 4 would be approximately 20 metres from the rear extension at No.80.
23. The Mayor of London’s Housing Supplementary Planning Guidance (updated in 2017) (SPG), states that in the past a minimum of 18–21 metres separation was used to secure privacy between the habitable rooms of facing dwellings. Whilst these remain useful yardsticks a more flexible approach is suggested. Design proposals should demonstrate how habitable rooms within each dwelling are provided with an adequate level of privacy in relation to neighbouring property.
24. LP Policy DM10.6 states that the amenity of the occupiers of adjoining properties should be protected. Proposals should not result in direct overlooking at close range or habitable rooms in main rear elevations. They should not result in the direct overlooking of private outdoor space within 10m perpendicular to the rear elevation of a dwelling. Amongst other things policy D3 of the London Plan seeks to deliver appropriate outlook, privacy and amenity.
25. The appellant states in their appeal statement that there is no intention to artificially elevate the buildings or raise their ground level above the natural site levels. However, from my appeal site visit it is apparent that site levels fall to the northwest, north and northeast across the site to various degrees. Within the existing rear garden environment this is clear from the varied heights of the side boundary and retaining wall to the front of the rear patio at No.34a.
26. The existing levels shown on the existing block plan are not readable and are not shown on any other drawings. Also, whilst the finished ground floor levels of all of the proposed dwellings is stated to be 100.20 metres, the finished floor levels of the existing dwellings is not stated. Cross sections A & B shown on drawing No. PL 22-640-20 Rev.E similarly only show proposed levels across the site. Notwithstanding this, it would appear from the various drawings that at minimum the land to the rear of the existing raised patio at No.34a would need to be raised to accommodate the rear part of some of the proposed dwellings and rear patios of the dwellings on plots 4–7.
27. Irrespective of any other ground level changes the proposed dwellings would be in excess of one metre taller than the existing dwellings and would project

- materially closer to the dwellings at No.78 & No.80. They would similarly be sited closer than the approved scheme for six dwellings. Some of the elevated rear patio areas shown on the proposed site and block plans would be sited approximately 18 to 21 metres from the rear elevations No.78 & No.80. Due to their siting and elevation the outlook from the ground and first floor windows and/or rear patios of units 4-7 would be towards the ground and upper floor habitable windows and rear patio at No.80.
28. Without any raising of the ground level, due to their proximity and height the outlook from the first and/or second floor windows of units 2 and 3 would look towards the rear habitable room windows and rear garden area at No.78.
29. The existing planting along the boundary with No78 & No.80 does provide various levels of screening. However, as with the previous appealed scheme it has not been demonstrated that this planting would remain healthy and maintained at a suitable height for the life of the development. The proposed new trees along the boundary with No.78 & No.80 are deciduous and so would provide limited screening.
30. Even with the proposed screening, due to the elevated position of the proposed dwellings and their proximity to the boundary with No.78 & No.80, the proposal would result in a material loss of privacy for the occupiers of No.78 & 80. This would be exacerbated by the mass and proximity of the dwellings and the proposed boundary planting which would dominate the outlook from the rear of their dwellings and gardens. Also, the creation of a continuous tall boundary screen would have both an enclosing impact on the rear gardens at No.78 & No.80 and result in a loss of sunlight within their rear gardens.
31. Having regard to the relative levels, distance and juxtaposition between the proposed dwellings and other dwellings within Ridge Langley, I am satisfied that the proposal would not have a materially adverse impact on the living conditions of the occupiers of other dwellings within Ridge Langley.
32. For these reasons, I conclude on the second main issue that the proposal would result in an unacceptable loss of privacy for the occupiers of No.78 & No.80 Ridge Langley. Accordingly, the proposal would conflict with LP Policy DM10 and policy D3 of the London Plan.

#### *Legal Agreement*

33. The Appellant has submitted a signed, although undated legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (The Act). The agreement ensures that adequate provision is made for highway services, infrastructure and sustainable transport.
34. The submitted legal agreement does not address energy efficiency other than that related to transport. The councils delegated report refers to policy SI2 of the London Plan and its requirement for major developments to be zero carbon. It also states that the submitted energy statement states that the scheme could achieve a 57% reduction in on-site regulated emissions through the use of PV panels and air source heat pumps, with the remainder offset by way of a financial contribution to achieve zero carbon standards.
35. In fact, whilst the energy report does refer to standards for major housing developments, at paragraph 3.3.1 it specifically quotes LP Policy SP6.3 A. It states that developments of fewer than 10 units should achieve the national

technical standard for energy efficiency in new homes (2015), which is set at a minimum of 19% CO2 reduction beyond the Building Regulations Part L (2013). Further, policy SI2 A, B, C, D, E & F relate specifically to major developments or those referable to the Mayor. The appeal proposal is for nine dwellings and so falls below the threshold of major development.

36. For these reasons, the need for the proposal to achieve zero carbon standards and for this to be secured via a legal agreement under S.106 of The Act has not been demonstrated.
37. Finally, had I found in favour of the appellant on the first and second main issues I would have sought further information and views from the main parties regarding the suitability of solar thermal. This is because the appellants energy statement states that solar thermal would not be suitable for the proposed development as it includes a flats development. This is clearly an error. Finally, I note that whilst the legal agreement is signed it is not dated.
38. I conclude on the third main issue that in the absence of a signed and dated legal agreement under S.106 of The Act, the proposal would fail to secure the necessary transport and air quality infrastructure, services and requirements. It would therefore conflict with LP Policies SP6, SP8, DM23, DM29 & DM30 and policies SI1, T1, T2, T4 & T6.1 of the London Plan.

#### **Other matters**

39. The council has raised no concerns regarding on-site parking provision or highway safety. The proposal includes 13 parking spaces that do not appear to be allocated to specific properties and the on-street parking survey has demonstrated low levels of on-street parking stress in the locality. As such I have no reason to come to a different view on this matter.
40. The detailed design and precise siting of the refuse, recycling and cycle stores and surface water drainage are all matters that could be satisfactorily dealt with through the impositions of conditions.
41. Concern has been expressed that the land to the rear of 34 Arkwright Road was to be maintained for a wildlife habitat when permission was granted for the flats development at 34 Arkwright Road. Had I found in favour of the appellant on the first and second main issues, I would have sought clarification from the main parties on this point.
42. Finally, there are a number of inconsistencies relating to soft landscaping on the submitted site and block plans, Landscape Masterplan, Biodiversity Net Gain Plan and the refuse vehicle swept path drawing. Had I found in favour of the proposal in relation to the first and second main issues this is a matter for which I would have sought further details from the appellant.

#### **Conclusion**

43. Having regard to the conclusions on the first and second main issues and having regard to all other matters raised the appeal is dismissed.

*Elizabeth Lawrence*

INSPECTOR