



Appeal Decision

Inquiry held on 23 -25 & 30 April, 1, 2 & 7 May 2024

Site visit made on 2 May 2024

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2024

Appeal Ref: APP/L5240/W/23/3334939

89 Waddon Way, Croydon, CR0 4HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Bellway Homes (Thames Gateway) Limited against London Borough of Croydon.
 - The application Ref is 23/01695/FUL.
 - The development proposed is Demolition of existing structures (excluding Grade II listed diving platform) and comprehensive redevelopment of the site to provide a residential led mixed use scheme in buildings up to a maximum 5-storeys including podium level, flexible Class E floorspace at lower ground level, car parking, cycle parking, access arrangements, public realm, landscaping, services and associated infrastructure. The proposed development comprises 149 residential new residential units, 335.6sqm of flexible Class E floorspace and 214 sqm of resident's facilities.
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Decision

1. The appeal is dismissed and planning permission for Demolition of existing structures (excluding Grade II listed diving platform) and comprehensive redevelopment of the site to provide a residential led mixed use scheme in buildings up to a maximum 5-storeys including podium level, flexible Class E floorspace at lower ground level, car parking, cycle parking, access arrangements, public realm, landscaping, services and associated infrastructure. The proposed development comprises 149 residential new residential units, 335.6sqm of flexible Class E floorspace and 214 sqm of resident's facilities is refused.

Preliminary Matters

2. The appellant's submitted an unsigned Section 106 (S106) to the Inquiry¹. This was discussed at a round table session. The signed version is dated 23 May 2024 and was received by email on 24 May 2024. The agreement would provide for: Affordable housing, sustainable transport contribution, air quality contribution, offsite play contribution, local employment and training, public art, public realm, travel plan, on site car club, restriction on parking permits and season tickets, highway works (s278) and carbon offset contribution.
3. The Council submitted a statement of compliance with the Community Infrastructure Levy Regulations (CIL Regulations)² which set out the justification for the above obligations, including identification of relevant

¹ ID6

² CD.G22

policies in the development plan. The need for the obligations was agreed between the Council and the appellant. I have considered the obligation in light of the statutory tests contained in Regulation 122 of CIL Regulations and as set out in paragraph 56 of the National Planning Policy Framework (the Framework). These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. The obligations comply with Framework and CIL Regulations, and I have taken them into account in coming to my decision.

4. The Purley Way Masterplan (PWM) has not been examined and found sound. As such it remains in draft and there was no dispute that, whilst it is a material consideration, due to its emerging status it attracts limited weight. It was also agreed that it does not represent the only way to develop the site. Nonetheless I am acutely aware that the purpose of the PWM is to ensure that an area much larger than the appeal site can come forward in a comprehensive manner. I have therefore considered the appeal scheme on its merits and will also take into account the context within which it sits, and the overarching aims for it set out in the Croydon Local Plan (CLP)³.
5. The Croydon Local Plan Review is the emerging local plan⁴. It has not yet been examined and found sound. As such the weight to be attached to its policies is limited. I have considered the appeal on this basis.

Main Issues

6. The Council did not determine the application within the requisite period, resulting in the appellant exercising their right to appeal. There is not, therefore, a formal decision of the Council. The evidence⁵ makes it clear that, had it been in a position to determine the planning application, the Council would have refused planning permission. The statement of case identifies six putative reasons. In the period leading up to the Inquiry discussions between the parties were ongoing.
7. Following the case management conference the main parties reached agreement on matters relating to access for pedestrians and cyclists, servicing arrangements, conflicts of movements, the green link for Blocks 2 & 3 (putative reason 4). It was also agreed that the impact of construction on T18 is no longer a matter in dispute⁶. The signed and dated planning obligation addresses putative reason 6.
8. Therefore the main issues in the appeal are:
 - The effect of the scheme on the character and appearance of the area;
 - Whether the scheme would provide an appropriate mix of units, with particular regard to the provision of family sized accommodation and site location; and
 - The effect of the scheme on protected trees on the eastern and southern site boundaries.

³ Appendix 7 CD.D2

⁴ CD.F1

⁵ CD.G7

⁶ CD.G10 3.8.1

Reasons

Character and appearance

Policy

9. CLP policy DM49⁷ refers to Waddon and proposals for redevelopment within the area. Table 11.17 lists proposals for specific sites in Waddon and identifies the appeal site as being suitable for residential development. DM49.2 allocates the sites within Waddon as set out in the table. DM49.1 refers to the need for a cohesive and coordinated approach and the need for a masterplan. In particular the text is clear that due to the number of sites and complexity of issues that a detailed masterplan would support this. The PWM was developed as a holistic design led masterplan for the Purley Way area for integration into the local plan. This approach to development of the Waddon Area is carried through to the emerging plan⁸.

Architecture and design approach

10. The CLP⁹ refers to the local character within which the appeal scheme would be located. It is described as compact homes on relatively small plots and more widely retail, business and leisure uses along Purley Way. The appeal site itself is positioned amongst existing retail and leisure uses and the Purely Way Playing Fields. On the opposite side of Waddon Way are predominantly residential dwellings laid out in streets and with a prominent diagonal route along Houlder Crescent.
11. In the wider Purley Way area the context is influenced by the former Croydon Airport and Merlin House on Purley Way itself. These buildings have a strong art deco form and certainly contribute to the context of the wider area within which the appeal scheme would be located. There is no requirement in planning policy for redevelopment of the appeal site to be overtly art deco. However, the CLP is clear that new development should be of a high quality and respect and enhance the local character of Croydon.
12. The appeal site itself has been last used as a garden centre. Prior to this it is not disputed that it was the site of the Purley Way Lido and the diving platform remains on site¹⁰. The diving platform that remains on the site is Grade II listed¹¹ and this is acknowledged as being a key element of the history and heritage of Waddon Way¹². The platform was listed due to its unique character and fluted design in an art deco style. Sections of the DAS draw out the key historic landmarks and features to be celebrated. In terms of context the analysis supporting the scheme makes it clear that the approach is to pursue an approach inspired by the Art Deco era but with a contemporary take.
13. The key consideration is whether this has been executed in a manner that would meet the requirements of the CLP policies. This will also include consideration of the principles set out in the PWM.
14. The appeal scheme would be formed from three blocks of accommodation. Block 1 would front onto Waddon Way and Blocks 2 and 3 would be located to

⁷ CD.D2

⁸ CD.F1

⁹ CD.D2 Appendix 7

¹⁰ CD.A5 section 2.9, CD.G4 section 7.0, CD.H29

¹¹ CD.H29

¹² CD.A5 2.7

the rear of the site. Access is shown to be taken from Waddon Way alongside the boundary with the Ambulance Station and community centre. A linear park would be created from Waddon Way through to the rear of the site where it would connect with a play space. Within the linear park the listed diving platform would be retained.

15. The proposed layout of the buildings takes the approach of creating urban blocks. All the analysis undertaken draws on an architectural vernacular inspired by art deco. There are notable buildings in the area, including the diving platform itself, but this style by no means dominates the area. Nonetheless, given the unique history of the appeal site I consider that the aspiration set out in the PWM for a 'lido spirit' is reasonable. In this regard the architectural approach should ensure that the diving platform is a focal feature of the overall scheme, and the new buildings allow for its positive integration.
16. Block 1 would be formed from a perimeter block and it would include insets within the key elevations which would also be lower in height. This would break up the massing and provide a variation in height. It would also provide clear symmetry to the massing of the buildings when viewed from Waddon Way and long term within the wider PWM area. To the rear Blocks 2 and 3 would continue the raised heights of the frontage building. Rather than being connected these building would have space between them and around them providing some variation to the layout moving into the site. Overall, in principle this approach to providing blocks of development would be acceptable and the scale and massing would not appear out of place or indeed conflict with the aims of the PWM.
17. The next point to consider is the execution of the approach. There were a number of detailed matters considered at the Inquiry which collectively determine the success or not of the architectural principles.
18. The main material finish shown for the buildings would be red brick with a banding detail shown. I appreciate that the diving platform is white and that the lido typology drawn on shows red brick with white banding and stone banding¹³. In this regard the approach of the appeal scheme would reflect the principles of a lido typology, particularly Block 1. The approach to Blocks 2 and 3 is informed by a Mansion Court typology¹⁴ which would also utilise a variation of brick and a banding detail. Overall this approach to materials and banding for Blocks 2 and 3 would also be appropriate in principle.
19. There are other elements that would contribute to the elevation treatment of the buildings. In particular the approach to windows, balconies and railings, use of chamfered edges on the buildings and the treatment of entrances to buildings. The use of chamfered edges would be on the corners of buildings either in the brick work itself or in the balconies where they are shown to be on corners. There would be variation in the size of these, but they would not be prominent or draw the eye given the overall size and mass of the buildings. As such they would not have a meaningful impact in terms of design approach.
20. The use of balconies across the blocks would be in the form of both inset and projecting forms. In principle this could be acceptable. However the issue in this case is about whether the approach to this detail would support a cohesive

¹³ CD.A32

¹⁴ CD.A32

design approach for the appeal scheme. There would be a substantial number of balconies across the buildings. All of the balconies shown would have a balustrade design and some would be framed with white stone. Inset balconies would have a brick course framing them. The balustrade is shown on the submitted plans and within the DAS as being black. It is suggested that this is influenced by the railing design of the diving platform. However, the photographs demonstrate¹⁵ that the railing detail on the platform is horizontal, wider spaced and curved. As such the detail on the appeal scheme would not emulate this other than in colour. Therefore this detail would not be cohesive in approach.

21. Windows would have a rhythm and uniformity across the buildings. It is fair to accept that the scheme should not fail due to an absence of critical style or curved windows. Nonetheless, the approach outlined in the evidence seeks to use the size and placement of windows on particular art deco buildings as a reference point for the design approach¹⁶. On this point there is some success in regularity and symmetry but subdivision and detail, such as the horizontal bottom pane, are less successful. Overall, the approach is neither art deco nor a fresh approach to the detail of the building. Again it would not be coherent.
22. Block 1 would contain some commercial units at ground floor level. These would provide active frontages to the interface with the adjacent pedestrian route and linear park. The appellant's witness fairly told the Inquiry that the treatment of these unit frontage could change depending on the end users secured. This is not an unreasonable approach particularly for a new building. It may be that this could be appropriately controlled by condition. I do not consider that this element alone fatal to the scheme.
23. The overall elevational approach to the blocks shown on the plans does demonstrate some symmetry in terms of the amount of built development and numbers and locations of windows and balconies. In some places there are attempts to frame the entrances. However, fundamentally none of the elevations would have a strong focal point that signals the entrance to a block.
24. The DAS¹⁷ and proof of evidence¹⁸ provide significant information regarding the detailing that emerges from the analysis. However, in a number of key areas, this does not consistently translate to the design of the appeal scheme in a coherent manner. That said there is no reason in policy terms that the scheme should be specifically art deco approach. The concern I have with the appeal scheme is that it is neither one thing nor the other. In trying to incorporate some art deco influences it does not successfully deliver a clear or contemporary approach to design on the site. Therefore I do not consider that the submitted scheme would deliver high quality design that would enhance local character as required by CLP policies DM10 and SP4 and London Plan (LP) policies D3 and D4.

Layout

25. There would be areas on the west and east elevations of the blocks where it is agreed¹⁹ that there would be limited openings at the ground floor level. The

¹⁵ DAS CD.A32 pages 10,11

¹⁶ CD.G4 7.9.1

¹⁷ CD.A32

¹⁸ CD.G4

¹⁹ CD.G8, 6.11

extent of this is shown within the appellant's evidence²⁰. There is a significant level change across the site which influenced the design response. The consequence of this is that the level change would be utilised to place the majority of servicing and ancillary requirements under the podium of Block 1.

26. The west elevation would contain cross ventilation for Block 1 and there would be a limited blank area to Block 2. Along the east elevation of the same Blocks there would be substation doors on Block 1 and a larger blank area, including access and cross ventilation for parking, for Block 2. In both cases the cross ventilation and doors would be interspersed with windows, doors and other openings. In the case of the blank elements to Block two these would be limited in height and within the wider setting of the site. This would serve to lessen the impact of the absence of openings. Overall the blank or inactive elements of these elevations would be limited and contextually a small part of the wider scheme.
27. The Council also raised concerns about the safety issues that could arise from this element of the scheme. The two frontages in question would face the main pedestrian route through the site in one case and the main vehicular route for the site and its parking area for the other. In addition to this the balconies and windows for other units at both ground and upper floors would face onto these areas. Overall I consider that this element of the scheme is reasonable as in combination these other parts of the scheme would provide surveillance. This is supported by the absence of objection to it from the specialist consultees in this area²¹.
28. The approach of the appeal scheme would be one of a number of urban blocks. This approach would not create the diagonal route envisaged by the PWM. The effect of this would also be that the linkages within the appeal site would be different and the links to the wider area and its redevelopment would also change if a comparison were made to the PWM. The submitted DAS quite clearly considers the connection of the appeal site to the wider area and the site strategy section of the appellant's proof details what the approach would be within the site itself²².
29. The strategy for the appeal scheme would focus on the approach to the site from Purley Way. This would be different from the PWM. Nonetheless, the analysis demonstrates that key routes and linkages were considered as part of the design process. The site has a change in levels which has to be considered carefully when looking at the layout of the scheme. Consideration of levels informed the position of the main vehicular access as well as the servicing route. I appreciate that the diagonal route shown in the PWM does appear to be a natural route from the wider area into the sites that form the PWM area. However, the issue here is that an alternative is proposed and therefore it is incumbent on me to consider the appropriateness of the alternative that forms the basis of this scheme. There are established connections around the site along Waddon Way and beyond for pedestrian, bus and bicycle. The appeal scheme would be able to connect to and benefit from all of these if it went ahead. In this regard the appeal scheme is not an inferior approach to the PWM as the Council assert it is just different.

²⁰ CD.G4 page 53

²¹ CD.G7 Appendix 1 4.11

²² CD.A32, CD.G4

30. The other issue raised related to whether a change in the routes through the site would prejudice future connection of other sites within the wider PWM area. The overarching aim of the PWM is to improve and expand existing vehicular and pedestrian networks²³. The diagonal route is highlighted as being a new connection. The movement and access plan provides an indication of how the area could be connected. Fundamentally the appeal scheme would maintain connections through the site and would not prohibit the connection of future sites that adjoin it.
31. The level change on site is such that the south area of the site is higher than the north. The scheme design approach seeks to address the level transitions within the site without excessive land removal²⁴. The linear park would be designed to either be level or it would gently slope through from Waddon Way to the diving platform²⁵. There would be further level changes from the area containing the diving platform to both the east and south to allow pedestrian access to the areas that would contain Blocks 2 and 3. The proposed solution to address the level changes would be through a series of sloped pathways and a direct stepped route as well.
32. The access and movement diagram²⁶ shows the various routes that would exist through the site if developed. There are two stepped routes shown. These would be located within the two sloped areas where there is an identified level change. Overall, within the context of the whole scheme I do not consider that the use of two stepped routes would be excessive or a poor solution as the Council suggest.
33. The 'zig-zag' routes shown on this plan would be used to provide a route that would be accessible for all users of the site. These areas would be pathways that would include planted terraces, seating and lighting. It was explained at the Inquiry that the resulting maximum gradient would be 1:21, informed by the building regulations²⁷. The routes would also link to the linear open space, play space, diving platform and blocks 2 and 3.
34. I understand that the Council consider that there may be better ways of managing the routes and level changes. However, the scheme before me does not contain the various designs contained in the Council's proof²⁸. It was also suggested that they would appear as a barrier to access across the site. In terms of the requirements of planning policy the test is whether the appeal scheme would propose a design solution of a high quality. Within the context it has been demonstrated that the pathways and steps could be designed to appear attractive and integrated into the site layout.
35. There is no dispute that the appeal scheme would not reflect the layout approach set out in the PWM. Indeed the appellant has not sought to suggest that the scheme would accord with the PWM but that it should be considered on its merits. The aim of the PWM is to place the appeal site and the diving platform at the core of the neighbourhood centre²⁹. The PWM envisaged this being in the form of a square. By contrast the appeal scheme would be

²³ CD.F2 p87

²⁴ CD.G4

²⁵ CD.G5 section 6

²⁶ CD.G5

²⁷ 5.13 CD.G5

²⁸ CD.G14 figure 9

²⁹ CD.F2 pdf p85

developed with a linear park which is intended to provide increased visibility of the diving platform.

36. The approach of the PWM³⁰ to the core of the site is shown with what are described as irregular building forms focused on a core 'Lido Square' that would seek to restore the spirit of the lido by providing a gathering place for leisure. The appeal scheme would not follow this approach. It would not include a centralised main square. The approach proposed would be a linear park with the intention being to showcase the diving board. This would create a long open vista from Waddon Way from which the diving platform could potentially be viewed.
37. Reference is made to the historic setting of the diving platform³¹, the space in front of it and freedom of use. The diving platform is described as being a good example of the new uses and sculptural forms when reinforced concrete was a relatively recent material in the inter war period. In this regard the key views of its curved supports which link the three platforms would be from the east and west. Views from the north and south offer a different perspective³². For this reason they would not, in my view, represent the diving platform in its original setting as the appellant suggests. Overall, the position of the diving platform, as set out above, within the linear park, would not in my view better reveal it in an appropriate manner linked to its original setting.
38. There was discussion of whether the open space areas to form the linear space were fragmented and in fact a series of pocket parks rather than one coherent space. The Inquiry heard evidence from both parties on how the space might be used and interact with the areas around it. The various areas that would be provided offer a choice of spaces for residents and visitors to the area. There are links between them and back to the main pedestrian route that would be in front of the commercial units. In this regard it would be usable for future residents and the wider community.
39. The scheme would provide a quantity of open space in accordance with the requirements of CLP policies DM10.2 and DM10.8. A play space would be provided within the appeal site. The concern raised about this space was that it would be in effect landlocked. This implies that this space would effectively be surrounded without connections. The play space would be in the south west corner of the site close to Block 2. It would be accessible via the pathways and steps around this block and the pathway around Block 3 which links to the wider site. I appreciate that the wider connection would not come to fruition until the surrounding sites are developed. However, development of the appeal scheme would not preclude those future connection as appropriate.

Conclusions on character and appearance

40. The scheme would provide new residential development that would help to meet the need for new homes in the borough. However, detailed aspects of the scheme would not provide a final clear and cohesive design response. This would not lead to a high quality scheme that contributes positively to the public realm and provides architecture that pays attention to detail. In addition to this when considering the key aspects carefully the layout of the scheme would not better reveal the diving platform. I therefore conclude that the scheme

³⁰ CD.F2 page 96

³¹ CD.G14 figure 1

³² CD.A22 page 20

would harm the character and appearance of the area. It would be in conflict with CLP policies SP4 and DM10 and LP policies D3 and D4 in so far as they seek well designed new development which respects local character and distinctiveness.

Mix of Units

41. LP policy H10 seeks to secure a range of unit sizes in schemes. In doing so it sets out that decision makers should have regard to local evidence of need where available and a number of other criteria. CLP Policy DM1.1 was agreed to be applicable to the scheme. In this case the approach in DM1.1 is consistent with the aims and purposes of H10 which leaves this matter to the application of local policies. Indeed it was not in dispute that the requirement of this policy is for the scheme to make provision for at least 60% of the proposed dwellings to be three bedroom or larger³³. The heading to that table is expressed as a minimum percentage. The appeal scheme would make provision of 30% dwellings of three bedrooms or more. This provision would not comply with this policy.
42. Reliance was placed on CLP policy SP2.7 which is a strategic policy. This addresses the delivery of homes and also the mix of dwellings. The policy sets a strategic borough wide target for 30% of all new homes up to 2036 to have three or more bedrooms (SP2.7 a). This strategic target would be met by setting a preferred unit mix for applicable sites of ten or more homes. This is borne out in policy DM1.1 with the two policies working together to deliver an appropriate mix of homes in the borough. Therefore, the acceptability of the housing mix of the appeal scheme should not be assessed against the strategic target but the application of DM1.1. As such there would be conflict with both DM1.1 and SP2.7.
43. The appellant submits that there are particular circumstances in this case that would justify the breach of CLP policies. These are viability of providing a higher proportion of family housing, the approach of the PWM and the application of planning judgement on the issue by officers³⁴. I take each of these in turn.
44. The appeal documents include a statement of common ground on viability matters³⁵(VSO CG). This sets out that as proposed the appeal scheme, with provision of 10.1% affordable housing, would be in deficit. The professional viability evidence offered to the Inquiry³⁶ was clear that a consequence of increasing the provision of three bed units in the scheme to accord with the policy position would worsen the viability position. There was difference across the evidence of witnesses as to whether adjusting the unit types would make a difference a what the values of various permutations might represent for the scheme. The key agreed conclusion was that increasing the quantum of three bed homes would impact the ability for the appellant to deliver the site.
45. The Council's suggestion that the appellant should have sensitivity tested multiple schemes is not wholly relevant in my view. In this case there is a submitted scheme that should be assessed on its merits. The prime

³³ GD.G8, table 4.1; CD D1

³⁴ ID7 paragraph 16

³⁵ CD.G9

³⁶ CD.G9, CD.H59

consideration is whether the adopted policy approach allows for an exception to be made on viability.

46. When considering viability the Planning Practice Guidance (PPG) requires evidence of what may have changed since the local plan was put in place. The appellant has set out the effects of the traumas experienced by the British economy since 2018³⁷. On this point the context is different to when the CLP was prepared. However, part (b) of DM1.1 allowed for a reduction based on viability within three years of the adoption of the plan. This time frame has now passed and so this element of the policy can no longer be applied. I appreciate that the local plan was adopted in 2018 but the evidence demonstrates that the need for provision of family sized homes has not diminished³⁸.
47. The CLP identified the site for delivery between 2021 and 2026. The PWM contains a number of assumptions and relates to the strategy for the Purley Way area as a whole. I appreciate that these are intended to inform and support the emerging local plan (CLPR) which is yet to be examined and found sound. Nevertheless, the approach of the emerging plan³⁹ carries forward the strategic target and emerging policy DM1.2 is aligned with the existing approach of CLP DM1.1. The PWM itself tests the site capacity generally and it also supports the need to provide a mix of homes⁴⁰. The masterplan refers to the provision of housing mix to meet current and future housing needs. The evidence of the Council's witness on planning provided clear and robust evidence of the long standing need for the provision of family homes⁴¹. Therefore, I do not consider that the PWM itself provides a justification for departure from the policies of the adopted development plan on this matter.
48. It was put to the Inquiry that the Council is approaching the provision of family housing flexibly on a case by case basis⁴², that a high proportion of the affordable units would be 3 and 4 bed and that there would not be a strong sales demand for 3 bed market flats. This may be the case and the weight to be apportioned to this matter should be addressed in the planning balance for a scheme. As such in this case the consideration of that weight, mindful of the policy conflict, is a matter for me.
49. Overall, I do not consider that the factors put to me justify a departure from the clear and unambiguous policy position set out in the development plan which is based on a need that has not reduced. I therefore conclude that the scheme would not provide an appropriate mix of units, with particular regard to the provision of family sized accommodation and site location. It would therefore be in conflict with CLP policies SP2.7 and DM1.1 and LP policy H10.

Trees⁴³

Removal of the protected trees on site boundaries

50. There are currently about thirty three Hornbeam trees⁴⁴ which are adjacent to the east site boundary. There are also five Hornbeam trees on the south

³⁷ ID7 paragraph 4

³⁸ CD.H13, CD.H14, CD.H57

³⁹ CD.F1

⁴⁰ CD.F2

⁴¹ CD.H13, CD.H14, CD.H57

⁴² CD.H6 para 6.14

⁴³ CD.G10; CD.A58

⁴⁴ Confirmed in CD.A8

boundary. These are the subject of a Tree Preservation Order (TPO)⁴⁵. It is agreed that the locations shown on the TPO map are indicative. For the purposes of the Inquiry, Appendix A to the Council's Arboriculture rebuttal proof of evidence was agreed to be appropriate to establish the status of the various trees. In order to facilitate the appeal scheme eighteen of the Hornbeam trees on the east boundary would have to be removed. Of this it is agreed that 12 are subject to the TPO⁴⁶. None of the TPO trees on the southern boundary would be removed to facilitate the scheme.

51. The trees are protected and it is agreed that, based on their size and visibility, they contribute to the character of the area⁴⁷. This is borne out through the tree photo viewpoints submitted to the Inquiry⁴⁸, Appendix 4 to the appellant's proof of evidence⁴⁹ and the site inspection. These demonstrate that the trees are visible in the area. This is addressed in the Arboricultural Implications Report⁵⁰ (AIR) which notes that the specimens form significant groups of trees readily visible from adjacent land and that this contributes to the character of the local area. In addition to this the Council raised the cohesive nature of the group and the importance of the group as a privacy screen. This is relevant to the relationship with the adjacent Youth Centre. The appeal scheme would see a reduction of the group by about 42% to allow development of the site. It was agreed within the Statement of Common Ground (SOCG)⁵¹ that the removal of these trees would have some impact on the character of the area.
52. The appeal site sits within the wider area of Waddon Way. There are trees in the wider area, within the Purley Way playing field⁵² and along Waddon Way itself. The trees proposed to be removed are at various points viewed in context with the groups within the Purley Way playing field and I accept that not all 12 are visible or prominent from all directions. Nevertheless, in this context the presence of other trees is not a reason to allow others to be removed. It is in fact the case that both the groups in the playing field and those currently on the appeal site contribute to the overall character of the area.
53. Notwithstanding the SOCG and previous AIR a number of arguments were put to the Inquiry that pertain to an effective reduction to the contribution that the trees make to the character of the area. The appellant's position is that there is evidence pointing toward the trees having previously been a hedge. This is based on the species, their spacing and resultant irregular gaps. More specifically that it was a relict hedge that ceased to be managed and now it is trees. As such the trees have reacted like they would in a forest/woodland. Whilst this may be the case this does not alter their contribution to the character and appearance of the area overall.
54. LP policy G7⁵³ part C sets out that development proposals should wherever possible retain existing trees of value. There is a footnote to this part of the policy which provides guidance on what would be considered a tree of value.

⁴⁵ CD.H20

⁴⁶ CD.G10 3.5.3

⁴⁷ CD.G8 3.3.11

⁴⁸ ID5

⁴⁹ CD.G6

⁵⁰ CD.A8

⁵¹ CD.G10 3.3.12

⁵² CD.A36

⁵³ CD.D1 p329

This includes category A and B trees. This is applicable to the appeal scheme as the relevant trees are all category B trees⁵⁴. The trees on the appeal site are existing trees of value for the purpose of application of this policy. CLP policy DM28 specifically addresses trees. It sets out how the Council will seek to protect the borough's trees. It addresses new development and issues of loss of trees and pruning.

55. Both the LP and CLP approach seek to avoid the loss of trees, both preserved and not, where they make a contribution to the character of the area. Neither policy rules out the loss of trees but both require careful consideration of the issue. The LP wording is seeking retentions wherever possible. CLP DM28 is in conformity with the LP approach but makes the local position clear. In particular it⁵⁵ refers to the occasion where loss of preserved trees which contribute to the character of the area is occasionally unavoidable. In those cases the Council make clear the approach would be to be guided by BS5837⁵⁶.
56. The evidence points to the fact that in order to retain the trees⁵⁷ there would be either a loss of parking or a reduction in unit numbers. More specifically reference is made to a reduction from eleven to five spaces. However, this change is not before me for consideration. I understand the Council's point that a scheme with less car parking would accord with policies T6 and DM30. However, the appeal scheme would be policy compliant and this is agreed⁵⁸.
57. The appeal scheme would include the provision of 79 on site car parking spaces for residents. Of this the majority of spaces would be located within the ground floor podium of block 1. The remaining 25 spaces would be at surface level. The amount of car parking within the scheme is not a matter in dispute⁵⁹. In order for this to be achieved the scheme requires the removal of the 12 protected trees on the east boundary. In addition further spaces would be provided close to the trees that are shown to be retained.
58. As set out on the plans the eastern edge of the car parking spaces would come close to the trunks of the existing specimens. There would be a requirement for excavation for kerbing, soil excavation and other disturbance close to the trunks. This would encroach within the root protection areas and potentially structural root plates⁶⁰. The appellant's own expert acknowledges that the effect on these trees would be likely collapse and decline. Therefore to make the proposed parking spaces usable the plans show the removal of the trees.
59. It was explored whether an engineered solution could be possible to avoid excavation and potentially allow retention of the trees. However, the site layout is such that the parking spaces would go right up to a narrow band of soil for the trees. There was no evidence presented to the Inquiry to demonstrate that this would be a realistic option. Even if an engineered solution could be found then, by the appellant's own admission⁶¹, there would still be a need to prune the trees to provide enough clearance above the parking spaces and provision of additional hardstanding would harm the roots

⁵⁴ CD.G10 3.3.8

⁵⁵ Para 9.41

⁵⁶ CD.H9

⁵⁷ CD.G4

⁵⁸ CD.G8, 6.38

⁵⁹ CD.G8 6.38

⁶⁰ CD.G6 page 30

⁶¹ CD.G6 4.6.2, closings para 118

of the trees. Long term this would be less than optimal and would lead to harm to the trees.

60. Figure 1⁶² sets out an approach to the design and construction process and tree care. I note that this provides a recommended approach and guidance. Nonetheless, the evidence to the Inquiry revealed that the decision to include car parking in the position shown on the site layout was made by the client. At that point the designers had the survey work provided by 'Aspect'⁶³. It is clear that the process was not wholly in accordance with the BS approach. It was explained to me that it was not possible to take a different approach as the scheme was already advanced. However, the material point is that the credible expert advice of the appellant's expert witness was not sought early enough. As such the trees, as a site constraint, could not be considered appropriately. In particular that the need to remove and prune trees would be a reaction to their proximity to the proposed scheme rather than the other way round.
61. LP policy G7 is clear that where a planning permission necessitates tree removal then adequate replacement is required. DM10(e) seeks replacement with semi mature trees of commensurate species, scale and form. It was agreed that whether the mitigation is appropriate or not is not a factor when determining whether the loss would be avoidable or not. The provision of mitigation comes into play after that has been considered. Nonetheless, the planting scheme proposed would be a marked contrast to the existing situation.
62. The overall landscape masterplan⁶⁴ for the site confirms a total of 69 new trees would be planted on the site. This would be 29 large, 26 medium and 14 fastigate trees. Along the boundary with the Youth Centre eight fastigate trees would be in place. Essentially this would provide a partial screen but it is unlikely that it would be as effective as the existing trees on the boundary.

Pruning of the retained trees

63. It is agreed that for the appeal scheme to go ahead that there would also need to be pruning works undertaken to retained trees. This would be 18 trees on the east boundary and 8 on the south boundary. Of these 17 on the east boundary and 5 on the south boundary are covered by the TPO. It is also agreed that the main source of guidance on the pruning of trees is BS3998⁶⁵.
64. The key issues are whether the extent of pruning of protected trees would be excessive, whether the extent of pruning would be necessary and the resultant effect on the character and appearance of the area. There are 12 trees where the Council consider that the pruning required would be excessive.
65. The first concern related to crown lifting of canopies of trees to 5m. There was some debate about what was actually meant by crown lifting and what was in fact proposed. The BS refers to Crown Lifting and that it can encompass both the removal of secondary branches or branch shortening and the removal of branches back to the stem (trunk). The point being it does not necessarily mean removal of branches back to the trunk. In this case the evidence of the appellant's expert is that removal of lower branches would allow clearance beneath them for site use, in this case parking. However, it was not clear from the outset that this was the intended approach and at the Inquiry the witness

⁶² CD.H9 BS5837

⁶³ CD.H24

⁶⁴ CD.A58

⁶⁵ CD.H8

admitted that the table covering this matter could have been clearer. As such it was not unreasonable for the Council to adopt the approach it did within its initial statement of case.

66. The pruning is required to facilitate construction and to accommodate future users of the parking bays. The aim is to design a pruning regime for clearance of the car parking spaces. There is a site history of use of this area of the site for access to the former use and hardstanding is present on site. Nevertheless, this is about what would be necessary for the appeal scheme to go ahead. In addition there would be a need for ongoing works to the trees to allow access to the parking spaces.
67. The appellant's evidence is clear that the objective of the pruning would be to clear the crowns of the trees from the parking spaces. It was suggested that this could be achieved by removing secondary branches and by branch shortening alone. Potentially this would not breach the BS and would not be to all sides of the trees. The Council's expert looked at the trees on site and expressed reservations in so far as he felt that the works needed to achieve the desired clearance would exceed the BS. It was put to the Inquiry that this was an art not a science and indeed it would be possible to provide a specification that would be compliant with the requirements of the BS. Indeed the appellant's position was that having looked at each tree that appropriate pruning could be carried out for use of spaces and compliance with the BS but that there would be a need for a further detailed landscape plan.
68. If planning permission was granted for this scheme, then as it stands, it is ambiguous as to what would be necessary. In addition I cannot be certain it would not be excessive. It was also put to me that a condition could be used. However, I am concerned that there are too many unknown elements for this to be an appropriate approach in this case. Moreover, this is not just about immediate action but also about the ongoing use of the site layout if the scheme went ahead. There are clearly negative consequences of excessive pruning. The BS sets out the potential adverse effects include the development of disease, dieback, decay or future structural problems. The reality is that pruning would be required for the unimpeded use of the car parking spaces shown on the plans for the lifetime of the development. The use of parking spaces in close proximity to the trees and underneath their canopies would lead to pressure for further pruning works or even removal. I am not confident that the layout as proposed would be sustainable long term.

Conclusions on the effect on trees

69. For the appeal scheme to go ahead as designed it is clear that the loss of the trees would be required to facilitate the site layout. The effect of the loss of the trees would be a change in the character of the area. In particular there would be change that would be a direct result of the removal of the 12 trees to allow the site layout to be accommodated.
70. The CLP seeks to protect preserved trees which contribute to the character of the area. It has been established that the trees on site do make a contribution to character. It goes on to address whether the loss of the trees would be avoidable. Whilst on the face of it this policy is permissive the thrust is to avoid loss or excessive pruning and the supporting text highlights that trees are one constraint amongst many when developing a site. Where schemes would lead to one or both of these outcomes then permission should not be

permitted. In this case the scheme would require the removal of the trees to allow for car parking as shown on the layout plan. In addition the use of the parking spaces under retained trees would not be conducive to long term retention of the trees.

71. The consequence of the scheme layout is that trees as a constraint have been poorly considered. Indeed by the appellant's own admission the tree specialist who gave evidence offered advice late in the process. This did not follow the approach advocated in the BS⁶⁶. As such overall it is not possible to conclude that the loss of the trees would not be avoidable as they have not been properly considered and integrated into the scheme.
72. CLP DM10.8 seeks to retain landscape features such as existing trees to ensure that a cohesive approach is taken to the design and management of landscape. This policy has part (e) which sets out that if exceptionally loss of mature trees is outweighed by benefits of a scheme then the trees should be replaced. As it stands there are issues with the appeal scheme in terms of design quality, layout and mix which mean that it would not deliver a scheme of a high quality. Indeed this would not in turn deliver benefits that would exceptionally justify the loss of the trees on the eastern site boundary which contribute to the character of the area.
73. The PWM being carried out in its entirety would present a change with the site and surrounds being more intensely developed. This is not the situation yet with the appeal scheme representing the first part of the Waddon Way area. Even if more of the area were coming forward the relationship to the Purley Way playing field and its groups of trees and the wider street trees on Waddon Way would be important contextually. Within the PWM the draft masterplan for this area does not make any reference to the existing trees on the site⁶⁷. However, this does not alter the existence of the TPO and the need to consider the applicable policies of the development plan.
74. I therefore conclude that the scheme would have a harmful effect on the protected trees on the eastern site boundary. It would be in conflict with CLP policies DM10, DM28 and LP policy G7.

Other Matters

Setting of the diving platform⁶⁸

75. The diving platform is Grade II listed⁶⁹. Its significance derives from its age, communal value, construction and rarity. It is one of only four inter war concrete diving platforms known to survive in England. It is currently experienced in a limited setting, defined by modern built form in most directions. Since the lido closed changes within the immediate surroundings of the platform have reduced visibility of it and appreciation of it from the wider surroundings.
76. Redevelopment of the site would involve the demolition of the redundant buildings on the site. The scheme would introduce buildings onto the site and a linear park and landscape scheme around the platform itself. Whilst the platform would be within the linear park the scheme would also introduce a

⁶⁶ CD.H9

⁶⁷ CD.F2 page 95

⁶⁸ CD.A22, CD.G14 Appendix A

⁶⁹ CD.H29

number of buildings in close proximity to it. These would be significant in height and in close proximity. As such the harm to the asset would be less than substantial in the terms of the Framework.

77. The platform would remain as part of the appeal scheme. It would be publicly accessible, visible from Waddon Way and there would be improvements to the areas of public realm that would be created around it. There would also be public benefits arising from the scheme. Delivery of housings, including affordable homes, accessible open space, in principle improvements to the areas around the platform and accessibility to it that redeveloping the site would bring forward. Taking all this together would be sufficient to outweigh the identified harm in this case. As such heritage impacts do not provide a clear reason for refusing permission. I therefore conclude that the scheme would not be in conflict with CLP policy DM18 which seeks to preserve and enhance the heritage assets of the borough.

Public Sector Equality Duty

78. At the Inquiry I heard from the occupants of the adjacent Youth Centre, Croydon Youth Disability Project. They explained to me that they offer a service for young people aged from 16-25 year olds. In particular they have a pathways programme for young people with sensory impairments and physical needs 6 days a week from 0830-1800. As part of the site inspection I was able to visit the Youth Centre and understand the relationship with the appeal site.
79. In my assessment of this aspect of the appeal, I have had due regard to the Public Sector Equality Duty (PSED) established by section 149 of the Equality Act 2010 (the Act), which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
80. The particular concerns relate to overlooking from new residential units, the effects of the noise from the appeal site on the use of the centre's outdoor area. In particular the impact of loud noises on those with sensory needs. These are matters that would require control to protect the adjacent Youth Centre use. Had I been minded to allow the appeal and the scheme were to go ahead the parties proposed specific measures through the planning conditions⁷⁰. The proposed conditions would take steps to protect the needs of users who have a protected characteristic. It would be a positive action to ensure good relations between appeal site and its adjacent uses ensuring that suitable mitigation would be in place. As such this relationship would not weigh against the scheme.

Planning Balance and Conclusion

81. The scheme would make provision for affordable housing and other infrastructure through the planning obligation. There would also be no conflict with the heritage policies of the development plan.
82. However, I have found that the scheme would have a harmful effect on the character and appearance of the area. In addition to this the removal of the trees to facilitate this scheme would also lead to further harm to the character of the area. There would be conflict with CLP policies SP4, DM10, DM28 and LP policies D3 and D4. There would also be conflict with development plan

⁷⁰ CD.G21

policies that seek to secure an appropriate mix of units, CLP policies SP2.7 and DM1.1 and LP policy H10. I acknowledge that this issue alone might not have tipped the balance had I found all other matters acceptable. However, given my findings on the other main issues, this development plan conflict adds weight to the harm I have found elsewhere.

83. The appeal scheme would be in conflict with policies of the development plan, read as a whole, and planning permission should not be granted. There are no material considerations in this case that would alter or outweigh the harm identified. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Gwion Lewis KC Landmark Chambers, instructed by Savills

He called:

Mr Simon Jones Dip. Arb. (RFS), FArborA, RCArborA

Mr Chris Bath BA (Hons), Dip Arch, MA (Urban Design), PDAP, ARB, RIBA

Mr Mark Fisk BA(Hons) DipLA CMLI

Kieran Wheeler BSc DipTP MRTPI

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Henderson Instructed by Siddhartha Jha, Planning Lawyer at London
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He called:

Mr Robert Goode Cert Arb L2 RFS & Cert Arb L4 ABC

Ms Hannah Martin MA

Mr Chris Stacey BA (Hons) MA

INTERESTED PARTIES

Paul Funnell
Marianne DiClemente
Kyle Barnett
Kezia Painstil

DOCUMENTS SUBMITTED AT THE INQUIRY (ID)

- ID1 List of Appellant appearances
- ID2 Representation to Inquiry from Waddon Youth Centre
- ID3 Opening statement on behalf of the Appellant
- ID4 Opening statement on behalf of the Council
- ID5 Tree photo viewpoints
- ID6 Closing submissions on behalf of the Council
- ID7 Closing submissions on behalf of the Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- ID6 Completed planning obligation

Core document list - [23_01695_FUL-FINAL CORE DOCUMENT LIST-4032941.pdf \(croydon.gov.uk\)](#)

Core documents available to view at - [23/01695/FUL | Demolition of existing structures \(excluding Grade II listed diving platform\) and comprehensive redevelopment of the site to provide a residential led mixed use scheme in buildings up to a maximum 5-storeys including podium level, flexible Class E floorspace at lower ground level, car parking, cycle parking, access arrangements, public realm, landscaping, services and associated infrastructure. The proposed development comprises 149 residential new residential units, 335.6sqm of flexible Class E floorspace and 214 sqm of resident's facilities. | Wyvale Garden Centre 89 Waddon Way Croydon CR0 4HY](#)