



Appeal Decision

Site visit made on 25 June 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/L5240/W/23/3323154

Land adjacent to 185 Brighton Road, Coulsdon CR5 2NH

- 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 Leuzzi (Crown Coast Coulsdon Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 22/02586/FUL.
 - The development proposed is mixed use development comprising 3no residential units and 92sqm of commercial area with associated refuse and cycle storage.
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Decision

1. The appeal is allowed and planning permission is granted for mixed use development comprising 3no residential units and commercial area with associated refuse and cycle storage at land adjacent to 185 Brighton Road, Coulsdon CR5 2NH in accordance with the terms of the application, Ref 22/02586/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. In Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application in the banner heading. However, in my decision I have removed the square metreage of the commercial area, as there is a slight inconsistency with the size of the area marked on the application plans.
3. The National Planning Policy Framework (the Framework) was updated in December 2023, during the course of this appeal. However, insofar as the contents are relevant to this appeal, the Framework has not changed. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on the revised Framework.

Background and Main Issues

4. The Council's third reason for refusal was the absence of a legal agreement between the parties to secure planning obligations. An agreement signed by the parties was submitted during this appeal and the Council has indicated it does not wish to pursue its third reason for refusal under these circumstances. I shall consider planning obligations further under other matters.

5. Consequently, the main issues in this appeal are the effect of the proposal on:
- the character and appearance of the surrounding area, including the setting of the Station Approach Local Heritage Area; and
 - the living conditions of neighbouring occupiers, with particular regard to light.

Reasons

Character and appearance

6. The section of Brighton Road near the appeal site is a local town centre comprising a mix of commercial, community and residential uses. Buildings have a variety of architectural styles. Most have two storeys, but there are slightly taller buildings opposite the site and a short distance away. The appeal site is on the corner with Station Approach, which is a predominantly residential street comprising mostly two-storey residential buildings.
7. 1-21 Station Approach is a terrace of railway cottages of traditional appearance and part of a non-designated heritage asset known as a Local Heritage Area (LHA). Having regard to the document Local Heritage Areas 2016, the terrace's well-preserved architectural features, largely uniform appearance, domestic scale public realm and connection to the history of the area contribute to its significance as a heritage asset. This significance can be appreciated in views along Station Approach in both directions, so viewpoints and sites near the LHA form part of its setting.
8. The proposed development of three storeys would step up gradually from the adjoining two-storey parade on Brighton Road and the nearby two-storey terrace at 1-21 Station Approach. The new building's height and mass would introduce a focal point at the intersection of the roads. This would enhance the appearance of the corner plot from several perspectives, notwithstanding the loss of the tree; and help mark a point of transition between the town centre and its residential hinterland.
9. The development would be comparable in height to the buildings opposite it on two sides and lower than the four-storey blocks somewhat further along Brighton Road, so it would not appear out of place in its surroundings. The building's architectural style would complement the mixed character of the local centre and appropriate materials and finishes could be secured by condition were the appeal to be allowed. Overall, I find the development would respect rather than dominate the prevailing townscape.
10. The area between the new building and 1 Station Approach would be landscaped to become a secure communal amenity and play space for occupiers of the new development, with new boundary treatment and planting along the border of the sites. The gradual step-up of the new building away from No 1's flank wall would add spaciousness to the landscaped gap, facilitate appreciation of the contrasting but complementary building styles, respect the domestic scale of the terrace and help frame it in the street scene. This would improve the appearance of this part of Station Approach and enhance the setting of the LHA.

11. I have considered the previous dismissed appeal for the site¹, which involved a four-storey building with the same footprint as that before me. Whilst a jump from two to four storeys would have been jarring in the previous scheme, the gentle transition from two to three storeys as currently proposed would improve the townscape for the reasons I have outlined. The visual relationship with 1-21 Station Approach would also be enhanced, notwithstanding the contrasting styles and roof forms. I therefore find the reduced height in the current scheme would materially improve its effect on the character and appearance of the surrounding area when compared to the previous proposal.
12. Paragraph 203 of the Framework states that, in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm and the significance of the heritage asset. For the reasons given above, I find the proposal would preserve and enhance the setting of the LHA, with no harm to its significance as a non-designated heritage asset.
13. Taking all this together, I conclude the proposal would not have a harmful effect on the character and appearance of the surrounding area, including the setting of the LHA. Accordingly, I find no conflict with Policies D3 and HC1 of the London Plan (LP) and Policies SP4, DM10 and DM18 of the Croydon Local Plan (CLP). Together, these Policies require development to be of high quality, respond positively to local distinctiveness, respect local character, and preserve and enhance the setting of LHAs. I also find no conflict with the Framework, where it seeks developments that are sympathetic to local character and history, while not preventing appropriate innovation or change.

Living conditions

14. The appellant's Daylight & Sunlight Report (DSR) assesses the effect of the proposed development on daylight and sunlight levels in nearby dwellings, using the Vertical Sky Component (VSC), No Sky Line (NSL) and Annual Probable Sunlight Hours (APSH) tests recommended in Building Research Establishment (BRE) guidelines.
15. Framework paragraph 129c) requires authorities considering applications for housing to take a flexible approach in applying guidance relating to daylight and sunlight, where this would otherwise inhibit making efficient use of a site, as long as the resulting scheme would provide acceptable living standards.
16. According to the DSR, three windows in the flank wall of 1 Station Approach would be affected by the proposed development. However, two of these are secondary windows so the retained light levels in the rooms they serve would meet the BRE criteria. There is no compelling evidence before me to lead me to a different conclusion for these rooms.
17. Only the kitchen within the rear addition of 1 Station Approach, which has one window, would fall below the BRE recommended values. The VSC in the kitchen would be 19.26% or 0.68 times its former value, and the proposed NSL would be 0.58 times its former value. Retained APSH would be 23%.
18. The kitchen is described by the occupants of the dwelling as a kitchen-diner, although it has relatively limited space for a table and chairs. Whether or not this kitchen is large enough to be considered a habitable room, on the evidence

¹ Ref APP/L5240/W/22/3297900

before me there is a door connecting it directly to the habitable room next to it. Therefore, this larger room could be used for eating on some occasions, even if it is not used solely for that purpose. Moreover, on the evidence before me the principal worktop area and sink in the kitchen are in the part of the room next to the window that receives most natural light, even if some food preparation also takes place in the darker part.

19. Furthermore, No 1's kitchen is unusual in its location at the end of the terrace bordering a site currently void of buildings and used as a car park. On the evidence before me, the other houses in the row have similar rear additions, which are close to neighbouring premises. Current light levels in the kitchen of No 1 are therefore likely to be higher than those in the equivalent room in these other houses. Moreover, the separation distance between No 1's kitchen and the proposed development would be greater than that between the flanks of the rear additions in the other houses in the terrace. Consequently, on the balance of probability, I find it unlikely retained light levels in No 1's kitchen would be materially worse than those experienced elsewhere in the terrace.
20. The retained light values for No 1's kitchen would be better than those reported for the same room in the previous dismissed appeal involving a four-storey development on the site.
21. Taking all this together, I find the loss of light in No 1's kitchen would not be so significant as to result in unacceptable living conditions for occupiers of the dwelling. In addition, the development proposed in this appeal would help boost the supply of housing and support the role of the local town centre by making efficient use of a small site in accordance with the objectives of the Framework. Having regard to Framework paragraph 129c), this consideration weighs in favour of the proposal despite the shortfall against BRE numerical values in one room, and notwithstanding the suburban location.
22. The graduated set-back of the development and the additional separation afforded by the tapered shape of the new landscaped area would help mitigate transient over-shadowing of rear gardens in Station Approach, as well as the new amenity space itself. Any 'canyoning effect' would be limited bearing in mind built structures would be no more than one, two or three storeys tall.
23. A document entitled 'Good Quality Homes for All Londoners' has been drawn to my attention. However, on the evidence before me this is draft guidance, so I ascribe it little weight.
24. For the above reasons, I conclude the proposal would not have a harmful effect on the living conditions of neighbouring occupiers, with particular regard to light. Accordingly, I find no conflict with CLP Policy DM10, which supports proposals that do not result in significant loss of existing daylight levels of adjoining occupiers. I also find no conflict with the Framework for the reasons given.

Other Matters

25. Planning permission would not override any legal rights of access. Ownership issues and tenancies are a private matter between the relevant parties and not within my jurisdiction. There is little to substantiate the suggestion that 1 Station Approach has private rights to light. In any event, it is a well-founded

principle that the planning system does not exist to protect purely private interests.

26. Although the new development would adjoin the existing two storey mixed-use block at 177-185 Brighton Road, it would be functionally separate so cannot reasonably be considered as an extension to it. Any proposal for upward extension of this mixed-use block under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) would be subject to prior approval by the local planning authority and, on the evidence before me, no such application has been made. I therefore give this consideration limited weight.
27. Local residents have expressed a wide range of concerns including, but not limited to, the following: inconsistencies in paperwork, impacts on local infrastructure, flooding, drainage, ecology, crime, noise, highways, parking, trees and effects on the privacy and outlook of neighbouring occupiers. These matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, subject in some instances to conditions or planning obligations were permission to be granted. There is no compelling evidence before me to lead me to come to a different conclusion to the Council on these matters. I will consider obligations and conditions below.
28. There is no pertinent evidence to substantiate the suggestions that demand for the proposed residential units would be low, or that the upper floor would be inappropriate for a three-bedroom dwelling.

Planning obligations

29. The parties have completed a s106 agreement in conjunction with the Council, which includes planning obligations to come into effect if planning permission is granted. I have considered these against the tests for planning obligations in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (the statutory tests) and paragraph 57 of the Framework. The obligations relate to the matters set out below.
30. Street Trees Contribution: this is a contribution of £1,200 towards the planting of two street trees and their maintenance for a period of two years thereafter. New trees in the vicinity of the site are necessary to compensate for the loss of a street tree resulting from the development, in accordance with LP Policy G7. This contribution is fairly related in scale and kind to the development and meets the statutory tests.
31. Sustainable Transport Contribution: this is a contribution of £1,500 for each of the three residential units towards sustainable transport initiatives in the vicinity of the appeal site, such as car clubs and pedestrian/cycling improvements. Such measures would mitigate the increased demand on local transport infrastructure resulting from the proposed car-free development, in accordance with LP Policy T4. On the evidence before me, this obligation is necessary, directly related to the development and fairly related in scale and kind, so it passes the statutory tests.
32. Section 278 Agreement: this is an obligation in the form of a covenant between the owner of the site and the Council that there can be no occupation of the development until a Section 278 Agreement has been entered into, encompassing remedial works to the highway made necessary by the

development; and until these works have been completed. I am satisfied this obligation is fairly and reasonably related to the development proposed and passes the statutory tests.

33. Restriction on parking permits: this obligation restricts the owner of the site from applying for a parking permit in connection with occupation of the site or any development unit and requires them to notify each new owner or occupier of the development units of this restriction prior to occupation. The only exception is in the case of an owner or occupier of a unit who holds a disabled person's badge. This obligation relates to the use of land and is necessary to secure the development as car-free. I also find it fairly and reasonably related to the development such that it passes all the statutory tests.
34. Commercial workspace fit-out: in this obligation, the owner of the site covenants with the Council to submit a fit-out specification and marketing strategy for the proposed commercial workspace for the Council's written approval prior to first occupation. This is necessary to meet the requirements of CLP Policy DM4.3(b) in relation to letting of ground floor commercial units in local centres. I am satisfied the obligation passes the statutory tests.
35. Monitoring Fees: this involves payment of £1,500 towards the Council's costs in monitoring compliance with each of the sustainable transport, parking permit and workspace obligations. I am satisfied this fixed monetary fee per obligation is proportionate and fairly and reasonably related in scale and kind to the development.
36. Consequently, I give significant weight to all the planning obligations in the s106 agreement.

Conditions

37. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. I gave both main parties the opportunity to comment on the revised conditions. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
38. The condition requiring a Construction Management Plan and Construction Logistics Plan is necessary for highway safety and to protect the living conditions of neighbouring occupiers. It is a pre-commencement condition because adequate mitigation measures need to be secured before work on site begins. The appellant has agreed to this in writing.
39. The condition on tree protection during construction is necessary to mitigate impacts on trees near the site. The conditions relating to materials and landscaping are necessary to integrate the development with the character and appearance of the surrounding area, and to ensure ongoing maintenance of external areas. The condition on cycle parking is necessary for the effective functioning of the development and to promote cycling. The condition on refuse storage is necessary to achieve good refuse management.
40. The condition relating to accessible and adaptable dwellings is necessary to meet diverse housing needs in accordance with LP Policy D7. The condition restricting water consumption is necessary to comply with LP Policy SP6. The condition securing fire safety measures is necessary for public safety in

accordance with LP Policy D12. The condition requiring obscured glazing is necessary to protect the living conditions of neighbouring occupiers. The condition relating to surface water drainage is necessary to mitigate the risk of surface water flooding at the site.

Conclusion

41. For the above reasons the proposal accords with the development plan, read as a whole. Material considerations, including the Framework, do not indicate that a decision should be taken otherwise than in accordance with it. I therefore conclude the appeal should be allowed.

C Carpenter

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos:
2036-DS-ZZ-00-DR-A-P005/S2 PO Site Location Plan;
2036-DS-ZZ-00-DR-A-P006/S2 PO Block Plan;
2036-DS-01-00 -DR-A-P150/S2 PO Proposed Ground Floor Plan;
2036-DS-01-00 -DR-A-P151/S2 PO Proposed First Floor Plan;
2036-DS-01-00 -DR-A-P152/S2 PO Proposed Second Floor Plan;
2036-DS-01-FF -DR-A-P154/S2 PO Proposed Roof Plan;
2036-DS-01-ZZ -DR-A-P250/S2 PO Proposed South East Elevation;
2036-DS-01-ZZ -DR-A-P251/S2 PO Proposed West Elevation;
2036-DS-01-ZZ -DR-A-P252/S2 PO Proposed North East Elevation;
2036-DS-01-ZZ -DR-A-P350/S2 PO Proposed Section; and
2036-DS-01-00 -DR-A-K065/S2 PO Proposed Landscape Area Sketch.
- 3) No development shall take place until a Construction Management Plan (CMP) and Construction Logistics Plan (CLP) have been submitted to and approved in writing by the local planning authority. The CMP and CLP shall provide for:
the parking of vehicles of site operatives and visitors;
loading and unloading of plant and materials;
storage of plant and materials used in constructing the development;
the erection and maintenance of security hoarding;
wheel washing facilities;
measures to control the emission of dust and dirt during construction;
a scheme for recycling/disposing of waste resulting from construction works;
compliance with Non-Road Mobile Machinery Regulations;

accreditation of vehicles delivering to the site under the Freight Operator Recognition Scheme; and
delivery and construction working hours.

The approved CMP and CLP shall be adhered to throughout the construction period for the development.

- 4) All construction works shall be carried out in accordance with the Tree Protection Plan and Arboricultural Method Statement set out in the Arboricultural Report Ref 220413-PD-11, by Tim Moya Associates, dated April 2022.
- 5) Notwithstanding condition 2, no development above ground level shall take place until:

details and samples of all external facing materials; and

detailed drawings in plan/elevation and section at 1:5 through all typical external elements/details of the façades of the development including all openings in external walls

have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, samples and drawings.
- 6) Notwithstanding condition 2, no development above ground level shall take place until details of cycle parking for the residential units (comprising 8 long stay spaces within the cycle store) and the commercial unit (comprising cycle stands for 2 cycles) have been submitted to and approved in writing by the local planning authority. The cycle parking shall be provided in accordance with the approved details before the building is first occupied and shall be retained thereafter for the parking of cycles.
- 7) Notwithstanding condition 2, no development above ground level shall take place until details of refuse storage, including size and number of bins and dedicated area for storage of bulky waste, have been submitted to and approved in writing by the local planning authority. The refuse storage shall be provided in accordance with the approved details before the building is first occupied and shall be retained thereafter for the storage of refuse.
- 8) Notwithstanding condition 2, no development above ground shall take place until details of both hard and soft landscaping have been submitted to and approved in writing by the local planning authority. These details shall include:

boundary treatments;
hard surfacing materials;
the design of the child play space including any play equipment;
any fixed external furniture;
the location, species, size and density of new planting;
lighting;
an implementation programme; and
a scheme of maintenance/management for all elements of the hard and soft landscaping, including the child play and communal amenity space.

The hard and soft landscaping shall be carried out in accordance with the approved details and approved implementation programme. The hard and soft landscaping shall be maintained and managed in accordance with the approved scheme of maintenance/management. Any plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 9) All residential units within the development hereby permitted shall be constructed and fitted out to comply with Building Regulations 2010 (as amended) optional requirement M4(2) Accessible and Adaptable. The accessible and adaptable dwellings shall thereafter be retained in that form.
- 10) The development hereby permitted shall achieve a minimum water efficiency standard of 110 litres per person per day.
- 11) The development hereby permitted shall be carried out in accordance with the provisions of the Fire Safety Report Ref 2036-DS-00-ZZ-RP-A-P650-S2-P0, by Stephen Davy Peter Smith Architects, dated May 2022. The fire safety provisions shall be retained for the lifetime of the development.
- 12) The building hereby permitted shall not be occupied until the north-facing window of Unit 1 has been fitted with obscured glazing, and any part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened by no more than 150mm. Once installed the obscured glazing and restricted opening shall be retained thereafter.
- 13) The building hereby permitted shall not be occupied until the surface water drainage scheme for the site has been completed in accordance with the approved details in the Flood Risk and Drainage Strategy (Final) Ref 2103520-01A, by Ardent Consulting Engineers, dated June 2022. The surface water drainage scheme shall be managed and maintained thereafter in accordance with the approved details.

End of schedule