

Appeal Decision

Site visit made on 11 September 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Appeal Ref: APP/L5240/W/24/3337680

41 Kingswood Lane, Warlingham, Croydon, CR6 9AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Courtney House Group against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/01987/OUT.
 - The development proposed is described as the “demolition of the existing dwelling and construction of three-storey residential block providing 7 no. flats (comprising 2 x 3-bedroom, 4 x 2-bedroom and 1 x 1 bedroom apartments) with associated access, parking, cycle and refuse storage.”
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with access, layout and scale to be determined at this stage. I have determined the appeal on this basis treating any plans that show the appearance of the building or the landscaping of the site as illustrative in these respects.
3. At appeal stage the appellant submitted a number of revised plans. These include a revised:
 - Site Location Plan and Existing Ground Floor Plan which amend the red edge boundary of the site to include the adjacent access track to No 39 over which the appellant has confirmed they have a right of access.
 - Proposed Block Plan that also changes the red edge boundary, confirms the position of the trees to the rear of the site and changes the disabled parking space to an ordinary parking space;
 - Proposed Ground Floor Plan that removes the pedestrian path along the boundary with No 43 and incorporates this area into the amenity space for the two ground floor apartments;
 - Proposed First Floor Plan that repositions an internal wall in apartment 5 to make bedroom 2 slightly larger; and

- Proposed Third Floor Plan that provides additional annotation regarding the glazing proposed for the windows.
4. I have considered whether it would be appropriate to accept these revised plans, having regard to the guidance in the 'Procedural Guide: Planning Appeals – England (2024)', and the tests given in the 'Holborn Studios' judgement¹. The Procedural Guide makes clear that the appeal process should not be used to evolve the scheme and that in most cases the appeal should be determined on the basis of the plans upon which the Council made their decision and upon which the views of interested parties were sought.
 5. Notwithstanding the fact that the appellant may have right of access over the access track and that they may have served the correct notice on the owners of this track, I consider that the enlargement of the application site, as shown on the revised site layout and block plans is a fundamental change to the application that results in a different scheme than was before the Council. As such, it would not be appropriate for these revised plans to be accepted.
 6. With regard to other revised plans, I consider that the changes they make to the proposal are very minor and so should they be accepted the proposed development before me would essentially be the same as the scheme that was before the Council. Moreover, I am satisfied that the revisions do not amend the proposal to the extent that anyone involved in the appeal would be prejudiced or impacted should I accept them. As a result, I consider that it is appropriate for the other revised plans to be accepted.
 7. The appellant has raised concerns about the Council's handling of the case and in particular the lack of communication during the determination of the application which could have enabled amended plans to be submitted to address some of the Council's concerns. These are matters that would need to be taken up with the Council in the first instance and in determining the appeal I have only had regard to the planning merits of the case.

Main Issues

8. The main issues in the appeal are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether or not the proposal would provide adequate living conditions for future occupiers with particular regard to, privacy, outlook, daylight and sunlight, internal and external space, and accessibility;
 - The effect of the proposal on the living conditions of the occupiers of No 37 and No 43 Kingswood Lane with particular regard to light, outlook and privacy;
 - The effect of the proposal on highway safety;
 - Whether or not the proposal would make adequate provision for cycle parking;

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

- Whether or not the proposal would provide appropriate contributions towards the provision of sustainable transport measures to alleviate traffic impacts; and
- Whether or not the proposal would provide a suitable mix of dwellings having regard to the need for family accommodation in the borough.

Reasons

Character and appearance

9. The appeal site is a long, relatively narrow plot of land that is currently occupied by a detached bungalow. It is located in a residential road that predominantly comprises a mix of bungalows and houses that vary in age, design and materials. Whilst suburban in character at the start, it becomes more semi-rural in character in the vicinity of the site, with the land to the south of the road being open and properties to the north side being set in generous plots. Some plots in the immediate area have been redeveloped with apartment blocks or a number of houses.
10. Policy D3 of *The London Plan (adopted March 2021)* (LP) indicates that developments should seek to optimise site capacity through a design-led approach. In addition, Policy DM10.1 of the *Croydon Local Plan (adopted February 2018)* (CLP) requires that whilst developments should seek to achieve a minimum height of 3 storeys, it should respect various attributes of the area including the development pattern, scale, massing and density.
11. Seeking to accord with these policies, the proposal would replace the existing bungalow on the site with an apartment block that would have accommodation over 4 floors, with the upper two floors shown as being, at least partially within the roof space.
12. To either side of the appeal site are apartment blocks that comprise 3 floors with the top floor being in the roof space. The ridge height of the proposal would be higher than No 43 but the height to the eaves would be similar, whereas in comparison to No 37 the eaves height would be lower but the ridge height similar. The depth of the proposed building would be greater than No 43 and slightly less than the deepest part of No 37.
13. However, whilst being similar in height to the adjacent buildings, these buildings are located on much wider plots. As such, the scale and mass of these buildings fit more comfortably on their respective plots in a way that the appeal scheme would not. In addition, the scale and mass of the houses constructed in the redevelopment at No 45 and No 69 are of a different scale to that proposed here.
14. Despite being a narrower plot, the appeal scheme would be a considerable depth and would have accommodation over four floors not three. A fact emphasised by both the projecting gable feature on the western side of the proposal whose eaves are much higher than No 37, and the height of the roof area. In contrast to the generally spacious character of the surrounding area, the scale and mass of the proposed building on a plot of this size would result in a development that would appear cramped and a site that would

appear over-developed. This would be detrimental to the character and appearance of the area.

15. In contrast to other properties on the road, the main entrance to the building would be located on the side elevation not to the front, which would be out of keeping. In addition, the largely blank area of side elevation that projects in front of No 37 would be an overly dominant feature in the street scene on the approach from the west. In this way it would add to the visual harm already created as a result of the stark contrast between the scale and mass of the original dwellings and the new apartment blocks. In this respect it should be noted that the townscape character which the development needs to respect is not just the buildings either side.
16. Whilst both these apartment buildings have been granted permission in the relatively recent past, there have been changes to the *National Planning Policy Framework* (the Framework) since then which, I agree with the Council, have placed greater emphasis on the need to ensure good design. The Framework's support for making efficient use of land has to be balanced with the fact that it considers it is fundamental that planning and developments should achieve high quality, beautiful and sustainable buildings and places. A similar balance is required by the development plan policies outlined above. In the light of this, whilst I have had regard to these previous permissions, I have only given them limited weight, given the visual harm they cause to the locality identified above.
17. Overall, I consider that the proposed scheme would result in a development that appeared cramped, overly dominant and out of keeping with the surrounding area. Consequently, it would be harmful to the character and appearance of the area. Thus, whilst achieving the minimum height required in Policy DM10, it would not do this in a way that would respect the character and appearance of the surrounding area as required by the policy. Nor in seeking to optimise the site's capacity, has this been done in a way that responds to the local context as required in Policy D3 of the LP. Additionally, it would conflict with Policy SP4 of the CLP that requires developments to respect and enhance local character. Whilst Policy H2 of the LP may support well designed homes on small sites, in being detrimental to the character and appearance of the area, the proposal would conflict with this policy too.

Living Conditions – future occupiers (privacy, outlook, daylight and sunlight, internal and external space, accessibility)

(i) Privacy

18. A number of the apartments would have windows on the side elevation facing No 37. The side elevation of this adjacent property only contains small high-level windows that have obscure glazing, as such there would be no overlooking from these adjacent windows into the kitchen/living/dining room of apartment 3, the bedroom of apartment 4 or bedroom 3 of apartment 6.
19. The balcony of apartment 4 and the windows serving its kitchen/living/dining room and the windows of bedroom 1 in apartment 7 are also side facing and would be on the part of the building that projects in front of No 37. There would be some potential for overlooking of this balcony and these rooms

from the nearest windows on No 37. Such views would be angled and from bedroom windows. Whilst this might result in limited loss of actual privacy, the perception of being overlooked would remain.

20. It has been suggested that the use of obscure glazing could address some of the issues relating to privacy. Whilst this could be secured by condition, it would not address the perception of overlooking of the balcony of apartment 4. Whilst the use of one-way opaque glazing might be able to maintain the outlook of these rooms, I am unclear whether it would impact on the light levels in the rooms. Moreover, that such measures are necessary for main habitable rooms is symptomatic of the over development of the site outlined above. Overall, I am not persuaded that apartments 4 and 7 would be provided with adequate levels of privacy.

(ii) Outlook

21. The side facing windows serving the bedroom in apartment 4 and bedroom 3 of apartment 6 would face the side of No 37. Given the limited distance to the gable wall the outlook from these bedrooms would be poor, even if some angled views would be possible to the front of No 37 from the window in apartment 6. Whilst the bedroom in apartment 6 would also be served by a rooflight, this may help address light levels in the room but would not significantly improve the outlook.
22. It has been stated that the redevelopment at No 43 included ground floor rooms whose outlook was the flank wall of No 45. I do not know the circumstances or factors that led to any such arrangement being considered acceptable. In any event, even if poor living conditions have been allowed on another recent scheme, it does not set a precedent that should be followed or justify further developments that do not provide satisfactory living conditions for occupiers.

(iii) Daylight and sunlight

23. The application was accompanied by a Daylight and Sunlight Assessment. Whilst this shows that overall the development would achieve a high level of compliance with the Building Research Establishment (BRE) guidance, a number of rooms would fall short.
24. Apartment 1 which has mainly north facing windows would fail to meet the guidelines on sunlight. Whilst this to some extent is offset by the fact the rooms would receive adequate daylight and would have an attractive outlook over its own private and the communal garden space, the lack of sunlight would mean a poor environment for future occupiers.
25. In both apartment 2 and 4, the levels of daylight for the kitchen/living/dining room are poor. Given this is the room where future occupiers are likely to spend the majority of their time, this would not provide satisfactory living conditions, even if their respective balconies would enjoy good levels of sunlight. Moreover, the bedroom of apartment 4 would receive poor levels of both daylight and sunlight.
26. Whilst the levels of daylight in apartment 3 are acceptable, the levels of sunlight in the lower floor of the apartment which includes a bedroom and

the kitchen/living/dining room fall below the guidelines, particularly in the bedroom.

27. Whilst the kitchen/living/dining room in apartment 6 would be a relatively long narrow room the roof lights and other windows would ensure satisfactory light levels to this room. However, whilst bedroom 2 in this apartment would receive adequate light, it would receive no sunlight.
28. Although I note the Council's concerns with regard to apartment 5 the kitchen/living/dining room for this apartment would be served by windows and a rooflight and the evidence shows the room would receive adequate daylight and sunlight.
29. I accept that the levels of sunlight may be less important than daylight particularly in bedrooms and that the proposal has sought to maximise as far as possible the available daylight and sunlight. Nonetheless, especially in relation to apartment 4 and the main living room of apartment 2, I consider the proposal would not provide adequate living conditions for future occupiers.
30. Whilst I note the appellant's comments that some of the constraints for developing the site result from the fact that No 43 was not built in the approved position, this does not impact on the light received by apartment 4 or the main living area of apartment 2. Nor does it negate the need to ensure future occupiers have appropriate levels of daylight and sunlight.
31. In support of the appeal, it has been highlighted that in other recent redevelopment schemes along the road some of the rooms in the apartments or houses are solely or heavily reliant on rooflights. Again, I do not know all the circumstances or factors that led to these schemes being considered acceptable such as the daylight and sunlight levels these rooms would receive, but it appears that the rooms that are solely reliant on rooflights are all secondary bedrooms. In any case, in the appeal scheme none of the rooms are solely reliant on rooflights, and I have assessed the proposed scheme on the specific evidence that relates to it.

(iv) Internal and external space

32. It is disputed between the parties whether apartment 4 would just meet the minimum standards in the Nationally Described Space Standards (NDSS) or would fall slightly below it. However, even if it would just meet this standard, combined with poor outlook from the bedroom, and poor daylight and sunlight levels means that future occupiers of this apartment would not be provided with satisfactory living conditions.
33. Three of the apartments would have accommodation split over 2 floors. This might not be ideal, but it would not result in unsatisfactory living conditions for future occupiers. It has been confirmed that bedroom 2 of apartment 3 would have an adequate floor area taking into account head height and the revised plans have amended the position of an internal wall in apartment 5 so that bedroom 2 would now meet the minimum floor area set out in the NDSS.

34. Whilst the kitchen/living/dining room in apartment 7 would be slightly unusual in that the balcony would be cut into the room, this would provide some separation between the kitchen/dining area and the living area and would not result in unsatisfactory living conditions.
35. The Council have confirmed that the amount of outdoor space provided would meet its requirements. Although not directly accessible from within the building, the route along the side of the building is not overly long or convoluted. Moreover, even if the amenity space could be accessed directly from within the building, those living on the upper floors would have to come down the stairs to the ground floor to access it.
36. The path would be adjacent to the vehicular access to No 39 which is situated to the rear of No 41 and which would also be used to access the rear parking spaces for the development, although it is not in the red-line boundary for the site. Ensuring the route can be used by wheelchairs and pushchairs and providing adequate demarcation of the pedestrian and vehicular areas could be achieved as part of the landscaping reserved matters.
37. Thus overall, I am satisfied the development would provide adequate internal and external space for future occupiers.

(v) Accessibility

38. Policy D7 of the LP requires that residential developments should provide at least 10% of dwellings which meet the M4(3) Building Regulation standard and that all other dwellings meet the M4(2) standard. However, the supporting text to the policy does indicate that it may be necessary to apply some flexibility in certain circumstances which include blocks of 4 storeys or less on specific small scale infill developments. In such cases it indicates that M4(2) and (3) dwellings should be provided on the ground floor and on other floors the dwellings should meet the M4(1) standard. The supporting text for Policy H2 of the LP also indicates that whilst homes located on the ground floor on minor developments should meet the requirement of Policy D7, on other floors, where the provision of step-free access would be unfeasible, homes should comply with the M4(1) standard.
39. The appellant has indicated that apartment 1 complies with the M4(2) standard and that apartment 1 is capable of being a M4(3) dwelling, with all the apartments on the upper floors being M4(1) dwellings.
40. As a small scale infill development in a block that is 4 storeys, the proposal is one of the situations where Policy D7 allows a degree of flexibility to be applied. Given the physical size of the plot I agree with the appellant that the provision of a lift within the building would not be feasible. The provision of a M4(2) and a M4(3) units on the ground floor and the other units being M4(1) would comply with the requirements for when the policy is to be applied with flexibility and this could be controlled by a condition.

Conclusion on living conditions for future occupiers

41. Although I consider the proposal would provide adequate living conditions for future occupiers in terms of internal and external space and accessibility, it

would not do so in respect of privacy, outlook and light. As such it would conflict with Policies SP2.8 and DM10 of the CLP and Policies D3, D5 and D6 of the LP which amongst other things require developments to provide adequate standards of amenity for future occupiers including in relation to privacy, outlook, sunlight and daylight.

Living Conditions – existing occupiers (light, outlook, privacy)

No 37

42. The front elevation of the proposed building would project approximately 8m in front of the apartment block at No 37. The side elevation that projects in front of the adjacent building includes part of the projecting gable feature whose eaves are higher than No 37, and the front part of the building that is 2 storey to eaves and has a roof that slopes away from the adjacent building. Between No 37 and No 41 lies the access road to No 39.
43. The part of No 37 that would be closest to the proposed development contains 2 sets of windows at ground and first floor as well as in a dormer window. I understand these all serve bedrooms. Whilst the proposed building would be visible from these windows, this would only be in angled views. As a result, the proposal would not be an overly dominant feature in views from these windows and would not unacceptably harm the outlook from them.
44. In addition, the Daylight and Sunlight Assessment for the neighbouring properties confirms that the proposal would not unacceptably harm the levels of daylight and sunlight in these adjacent apartments or the garden area.
45. Some angled views of these bedroom windows would be possible from the balcony proposed on the side elevation of the appeal scheme and potentially from the living room behind it. Whilst the acute angle of these views would prevent any actual loss of privacy, there could be some perception of being overlooked. However, this would be no greater than that which already exists from the parking area and street in front of No 37.
46. The windows on the side elevation of No 37 are all obscure glazed and so the proposal would not cause any loss of privacy in this respect. In addition, no views would be possible into the rear garden of No 37 due to the existing boundary treatment which would be unaffected by the development.

No 43

47. The proposal would not project beyond the front elevation of No 43 but would project beyond its rear elevation. The side and rear elevation of No 43 closest to the appeal site contain a number of windows. Whilst I understand that No 43 was not built according to the approved plans, consideration has to be given to what currently exists on this adjacent site.
48. The proposal would have a stepped rear elevation, so closest to the boundary much, but not all, of the building that projects beyond No 43 would be single storey in height, with the taller elements being set away from the boundary. This would ensure the proposal would not have an overbearing impact on adjacent occupiers, or adversely affect the outlook of the windows on No 43 closest to the appeal site.

49. The side elevation of the proposal facing No 43 contains a number of windows. These would all have obscure glazing, and this could be secured by condition. As such these would not result in any loss of privacy to neighbouring occupiers.
50. Whilst there are also a number of balconies on the first and second floors which could cause some loss of privacy or the perception of overlooking, the use of privacy screens, which could be secured by condition, would prevent this. As the Daylight and Sunlight Assessment shows the rooms these serve all receive adequate daylight, I am satisfied that the use of such screens would not adversely impact on the living conditions of future occupiers. Nor would they need to be so extensive as to adversely impact on outlook.
51. Some overlooking of the garden area of No 43 would still be possible, but within a suburban environment some overlooking of gardens from upper floors of adjacent properties is not unusual. The current garden of the appeal site is overlooked by windows and balconies on No 43 and the impact of the proposal on the garden area of No 43 would be no different in this respect.
52. The Daylight and Sunlight Assessment for neighbouring properties shows that the proposal would have an adverse impact on some of the rooms on the ground floor – largely the rooms with side facing windows. Although two of the affected windows serve the living/kitchen/dining room of one apartment, the Council acknowledge that as this was approved with only these side facing windows and any redevelopment of the site would affect the light to this room. As a result, they do not object to the proposal in this regard and I see no reason to conclude differently.
53. The other two rooms affected are bedrooms in one apartment. As these are rooms that are less likely to be used during the day, I consider that the impact on the living conditions of the occupier would not be unacceptable, especially as the other bedroom and main living area would still receive adequate day and sun light. The assessment also shows that the proposal would not have an unacceptable impact on either private or communal garden areas at No 43 with regard to sunlight or daylight.
54. Therefore, I consider that the proposal would not unacceptably impact on the living conditions of existing occupiers. Of the policies referred to in this reason for refusal I consider Policies D3 of the LP and DM10 of the CLP to be of most relevance with regard to this matter. Consequently, there would be no conflict with these policies which require, amongst other things, that proposals provide adequate amenity for existing and future occupiers.

Highway safety

(i) Parking

55. The appeal site is located in an area with a Transport for London Public Transport Accessibility Level (PTAL) rating of 1a which indicate it is an area not well served by public transport. As such policy T6 of the LP indicates that a maximum of 10.5 parking spaces should be provided. The proposal would provide 7 spaces: 4 to the front and 3 at the rear of the site. As the adjacent access road is not included within the red line boundary of the site the Council suggest that the spaces at the rear should be discounted. Although

the access road is outside the appeal site no evidence has been put before me to contradict the appellant's assertion that they have a right of access over this private access. So, there is no reason to believe that future occupiers would not be able to access these spaces.

56. Despite the fact that the majority of dwellings have off-street parking the area in the vicinity of the appeal site is one of parking stress. This was confirmed by the parking surveys submitted by the appellant. Even at the time of my site visit, mid-morning on a weekday, I observed that levels of on-street parking were high. Parking restrictions in the form of double yellow lines exist along one side of Kingswood Lane, albeit not continuously and also result from the width of the road. As a consequence, it is necessary to ensure that adequate provision is made for off-street parking so the proposal would not result in an increase in demand for on-street parking.
57. Whilst the provision of 7 spaces could enable 1 space to be provided per apartment, there would then be no provision for any visitor parking. Using census data the appellant has suggested that 7 spaces would be appropriate however the details of how this was calculated has not been provided. The appellant's Transport Note indicates that at most the proposal would result in a potential demand for no more than 1 on-street parking space. However, the Council's own analysis also using census data indicates that 11 spaces would be necessary.
58. Swept path diagrams have been provided to show how cars would access the various proposed parking spaces. For a number of spaces multiple moves would be required to manoeuvre into the spaces as turning space is limited. It is suggested that the spaces at the front could be moved further to the east and those at the rear could be moved further to the north to create more turning space. However, particularly at the front this would further reduce the already limited space available for soft landscaping. Notwithstanding my concerns regarding the ease of accessing some of the spaces, I consider that they are not so difficult to use that future occupiers would be deterred from using them.
59. The levels of on-street parking I observed and as recorded in the parking survey indicates that the low level of public transport accessibility in the area does result in a greater reliance on the private car, and that the limited parking available in the recent new developments in the area does not necessarily act as a restraint for people choosing to buy/occupy properties in the area.
60. Given this, on balance I consider the proposal would be likely to create some overspill parking that would need to be accommodated on-street, and this is likely to be greater than suggested by the appellant. It was noticeable in my site visit that the area with the highest on-street parking was in the immediate locality where more limited parking has been provided in new residential schemes. In an area that is already one of parking stress, it is probable that the creation of additional demand for on-street parking would be detrimental to highway safety.
61. Moreover, leaving the space nearest the road in forward gear would result in the car being at an angle to the road such that visibility would be

compromised. This would also be detrimental to highway and pedestrian safety.

62. I note that Kingswood Lane itself is in the adjacent local authority area. Whilst this Council, as local planning authority, did not object to the proposal, there is no indication that the local highways authority was specifically consulted on the proposal. Furthermore, the fact that it was concluded previously that the double yellow lines would be sufficient for highway safety purposes does not mean that this would still be the case if an additional 6 units were created on this site.

(ii) Proposed access

63. It is proposed that the existing vehicular access to the site from Kingswood Lane would be removed and a new access to the front parking spaces would be provided close to the existing access to No 39. Between the proposed and existing vehicular access would be the pedestrian access to the building. This arrangement would be similar to that found slightly further along the road where the access to No 57 lies immediately adjacent to the access leading to Nos 47-55 that are located to the rear of the other houses and which are used by both pedestrians and vehicles to these properties.
64. There is no evidence to suggest that having these two accesses adjacent to each other at Nos 47-57 causes any highway or pedestrian safety issues. The detailed drawing of the proposed access provided at appeal stage shows that adequate visibility splays can be provided at the junction with Kingswood Lane. Given these factors, I consider the proposed access would not be detrimental to highway or pedestrian safety.
65. Visibility splays have not been shown for the access for the rear parking area. The proposal would increase both the vehicular and pedestrian movements along this access, particularly as pedestrians will be walking along here to access the amenity area, the cycle parking and the bin store. Ensuring the route is safe for pedestrians is a matter that would need to be addressed as part of the landscaping reserved matters. In addition, ensuring adequate visibility can be provided for the rear parking area could be controlled by a condition.

Conclusion on highway safety matters

66. Although I am satisfied the proposed access would be acceptable, due to the potential to increase demand for on-street parking, and inability to exit the closest parking safely, the proposal would still have an unacceptable impact on highway safety. Accordingly, it would be contrary to Policies DM29 and DM30 of the CLP and T4 of the LP which seek to ensure that developments are not detrimental to highway safety and reduce the impact of car parking in areas of existing on-street parking stress.

Cycle parking provision

67. Policy T5 of the LP requires new developments to make provision for cycle parking. Due to concerns raised by the Council with regard to the size of the proposed internal cycle store, a revised plan has been provided at appeal stage to show the provision of 17 cycle spaces in a mixture of the internal

area, the rear parking area and the amenity space. This number of spaces would comply with the policy.

68. Whilst I consider the design of the covered cycle storage in the rear parking area could be controlled by a condition to ensure it was not an overly obtrusive feature, it would partly be located in an area the swept path diagrams show would be needed by cars manoeuvring into the parking spaces. It would also potentially impact on the visibility of vehicles leaving this area. Therefore, I am not sure it would be feasible to provide that many spaces in that location. Moreover, it is unclear how visitors would find or access the proposed visitor cycle parking located within the communal garden area, given this would most likely need to be secure to prevent unauthorised access.
69. Given the limited available space on the site I am not satisfied that additional cycle parking can be provided other than within the communal garden area and whether this would be feasible whilst still making adequate provision of outside space for future occupiers. As a result, I consider this is not a matter that could be left to a condition.
70. Therefore, I am not satisfied the proposal would make adequate provision for cycle parking and so it would be contrary to Policies DM10, DM29 and DM30 of the CLP and T5 of the LP which, amongst other things, seek to ensure that developments make adequate provision for cycle parking and promote measures to increase cycling.

Sustainable transport contributions

71. The Council has indicated that the proposal should make a financial contribution of £1,500 per dwelling towards sustainable transport improvements to alleviate the traffic impacts created by the development. The Council have stated that the contribution would be used to deliver sustainable transport improvements in the area such as on-street car clubs, e-bike hire schemes, bus priority measures and bus stop improvements. Such measures could all help to reduce reliance on private vehicles. Justification for seeking this contribution is given by reference to Policies SP8 and DM30 of the CLP and T6.1 of the LP. These require new developments to, amongst other things, reduce the impact of car parking in areas of existing on-street parking stress and contribute towards the provision of electric vehicle charging infrastructure, car clubs and car sharing.
72. Within the appeal documentation the appellant has provided a signed Unilateral Undertaking (UU) which seeks to secure the Sustainable Transport Contribution sought by the Council. However, they have disputed whether the contribution requested would meet the tests in regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regs). In considering whether or not this is the case I have had regard to the various appeal decisions² and the recent High Court judgment³ referred to by both parties.

² Appeal References APP/L5240/W/21/3276882, APP/L5240/W/22/3296060, APP/L5240/W/21/3267900 & APP/L5240/W/23/3316113

³ Stephen Whiteside v Croydon LBC & Ors [2022] EWHC 3318 (Admin)

73. As outlined above, the appeal scheme would provide off-street parking spaces and some cycle storage. The amount of parking provided is below the maximum permissible by Policy T6 of the LP and I have concluded that the proposal would be likely to increase demand for on-street parking in the area. In addition, I consider the amount of cycle parking proposed would not be adequate. The appellant has highlighted that it is proposed to provide EV charging points for each parking space, which is greater than the development plan policy requirement. However, this is now a requirement of the Building Regulations.
74. Given the site is located in an area with a PTAL rating of 1a, and my conclusions above, I consider that should the appeal be allowed, the contribution sought by the Council would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development.
75. In coming to this conclusion, I have borne in mind the High Court judgement referred to above, and particularly the findings in paragraphs 32, 33 and 37 regarding the appropriateness of the scale of contribution being sought and that the contribution being sought is for a variety of initiatives rather than specific ones. The fact that other developments in the vicinity have already made similar contributions does not negate the need for this scheme to do so. Nor does the fact that Kingswood Lane itself is under the control of a different local authority, and that this authority carried out recent parking measures on the road without using money from planning obligations. To this end the Council have highlighted schemes in the vicinity that future occupiers would benefit from.
76. The appellant has drawn my attention to the fact that in 3 appeal decisions it was concluded that the contribution to sustainable transport did not meet the CIL Regs. However, two of these pre-date the High Court Judgement referred to above, and whilst the other was shortly after it, I do not know whether the Inspector was made aware of it.
77. The UU seeks to make provision to pay the required sustainable transport contribution and was amended during the appeal process to address a number of issues raised by the Council. I agree with the appellant that in this case payment of a monitoring fee to the Council is not appropriate as given the nature of the contribution I am unclear what monitoring by the Council would be necessary. In addition, as the obligation is linked to the implementation date, the UU does not need to address matters relating to the first occupation and/or completion of the development.
78. However, I agree with the Council that it is reasonable and necessary for the wording of Schedule 2 to be amended to show that the works listed do not constitute a closed list, and that indexation provisions should be made within the obligation. Moreover, whilst to address concerns extracts have been provided from the Courtenay House Group Partnership Form, the application form and appeal form both indicate that the applicant/appellant is the Courtney House Group. Additionally, as I have not been provided with evidence of a recent title deed, I am not certain that all relevant parties have signed the UU.

79. As such, I do not consider the UU as submitted would be adequate to secure the necessary contributions.
80. Consequently, the proposal would not provide the appropriate contributions towards the provision of sustainable transport measures to alleviate traffic impacts. It would therefore conflict with Policies SP8 and DM30 of the CLP and T6.1 of the LP outlined above. Although not mentioned in the reason for refusal it would also conflict with CLP Policy DM29 referenced in other reasons for refusal that requires developments to promote measures to increase the use of public transport, cycling and walking.

Housing Mix

81. To help address the borough's need for homes of different sizes CLP Policy SP2 sets a strategic target of 30% of all new homes having 3 or more bedrooms. The proposed development would have two 3 bedroomed apartments which represents 28.6%. It therefore falls short of the requirement, albeit only slightly.
82. The appellant has sought to justify this under provision by highlighting that the scheme would not result in a net reduction in family/3 bedroomed accommodation. It has also been argued that the proposed 3 bedroom accommodation in the appeal scheme represents more than 30% of the total floorspace, the number of habitable rooms and the number of bedrooms, However, the policy does not indicate that proposals simply need to ensure there is no net reduction in the provision of 3 bedroomed units. Nor that the other measures are the way the provision in a development should be calculated. Furthermore, there is no policy justification for including the 2 bedroomed, 4 person unit as part of the calculation.
83. It has been highlighted that 58.6% of the new dwellings created in the other recent developments on Kingswood Lane comprise 3 bedroomed/family accommodation. Whilst the 30% is a strategic target for the borough, the fact that other nearby schemes have provided a larger percentage does not necessarily justify a lower amount on this scheme. If anything, to my mind, it indicates that this is an area where such dwellings are clearly appropriate and desirable. I note too that the Council have indicated that, although the policy target is for 30% of units to be this size, the 2019 Strategic Housing Market Assessment indicates the actual need for properties with 3 or more bedrooms is 50%.
84. Although the shortfall in provision is not great, there is no substantive evidence justifying why the proposed development could not comply fully with the policy requirement especially given this is a suburban area that comprises predominantly family accommodation.
85. Consequently, notwithstanding the fact that the proposal would result in a net addition of one 3 bedroomed dwelling, I consider the proposal would not provide a suitable mix of dwellings having regard to the need for family accommodation in the borough and would conflict with Policy SP2 of the CLP outlined above.

Planning Balance and Conclusion

86. The proposal would result in a net gain of 6 dwellings and so would make a positive contribution to housing supply with the associated social and economic benefits during the period of construction and once the dwellings are occupied. While increasing the supply of housing land from small sites is a strategic priority, the contribution of six additional dwellings to meeting housing need in the Borough through a more efficient use of land in an urban area and the associated benefits are limited by the scale of the development proposed. As such I only give these benefits modest weight.
87. Whilst I consider the proposal would not unacceptably harm the living conditions of existing occupiers, an absence of harm in this regard is a neutral matter.
88. The proposal would be detrimental to the character and appearance of the area, the living conditions of future occupiers and highway safety. In addition, it would not make adequate provision for cycle storage, nor would it provide appropriate contributions to sustainable transport measures, nor provide a suitable housing mix.
89. Overall, I consider the modest benefits of the proposal would not outweigh the harm I have identified and the consequent conflict of these with the development plan as set out above.
90. The proposal conflicts with the development plan when considered as a whole. Material considerations do not indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Alison Partington

INSPECTOR