



Appeal Decision

Site visit made on 30 August 2024

by **A M Nilsson BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Appeal Ref: APP/L5240/W/23/3334453

123 Old Farleigh Road, South Croydon CR2 8QH

- 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 BDH (Farleigh) Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/02390/FUL.
 - The development proposed is the demolition of existing dwellinghouse and outbuildings and erection of 6 houses with associated car parking, cycle and refuse storage and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's eighth reason for refusal states that 'the development has failed to demonstrate that heritage assets (namely the Archaeological Priority Area) would not be harmed.' The appellant has proposed imposing a pre-commencement condition requiring details of a Written Scheme of Investigation be submitted. The Council consider that this would adequately address the reason for refusal and do not wish to contest this in the appeal. I have no reason to form a different view and will determine the appeal based on the other reasons for refusal.

Main Issues

3. The main issues are 1) the effect of the proposed development on the character and appearance of the area, 2) the effect of the proposed development on the living conditions of occupants of surrounding residential properties with regard to outlook and privacy, 3) whether the proposed development would provide acceptable living conditions for future occupants, 4) the effect of the proposed development on highway safety, 5) whether the proposed development would cause an increase in flooding, 6) whether the proposed development would make acceptable provision for sustainable transport improvements and enhancements, and 7) whether the proposed development would make acceptable provision for the relocation of slow worms.

Reasons

Character and appearance

4. The appeal site is located on Old Farleigh Road. It is located opposite Selsdon Nature Reserve. The surrounding area is predominantly made up of residential properties. The majority of these properties are detached dwellings located in spacious landscaped plots. There is an abundance of trees in the surrounding area and within existing plots, including the appeal site. This gives the area a verdant character which positively contributes to its overall character and appearance.
5. Like most of the surrounding properties, the appeal site comprises a detached dwellinghouse in spacious grounds which includes a number of mature trees. These trees are covered by a Tree Preservation Order¹. The site has a notable downward slope from its frontage to the rear. This results in the existing property appearing lower in the street-scene.
6. The proposed development involves the demolition of the existing dwelling and the construction of 6 dwellings. Two of these dwellings would be detached properties at the front, with the remaining 4 being formed of two pairs of semi-detached properties to the rear. An access would be created to serve the properties via a central courtyard area which would include parking. The frontage properties broadly follow the existing building line on Old Farleigh Road.
7. The properties to the rear would sit behind those at the front and span almost the full width of the site. The proposed arrangement of dwellings would be out of character with the general pattern of development in the surrounding area. The properties would be more tightly arranged and would not be reflective of the looser arrangement of properties in the surrounding area which are markedly less compressed and more spacious in character.
8. I have been referred to a development at 3 Kingswood Way which shares a boundary with the appeal site. The development at 3 Kingswood Way is quite different to the proposed development. The pre-existing property, which is to be demolished, was sited at an angle which created a staggered arrangement in the building line. The development at that site has been arranged so that the foremost dwellings sit alongside no. 1 Kingswood Way to continue that building line, with the rearmost dwellings continuing the building line formed by no. 5 Kingswood Way. I therefore do not consider it to be directly comparable. Even if I were to consider it as a true backland development, it is clearly an exception to the general character and make-up of the area, as opposed to something reflective of a more general form in the area.
9. Furthermore, the Council outline how this development was considered against the now revoked Croydon Suburban Design Guide (2019) which the Council outline, would have supported the development. The consent also predates the current London Plan (2021). Therefore, although the development is a material consideration in the appeal, I give it limited weight, and it does not justify departing from considering the proposal against the statutory development plan.
10. The development would require the felling of 19 trees. The Arboricultural Method Statement² submitted with the application identifies that 3 of these trees are Category 'U'. These are trees in such a condition that any existing

¹ Tree Preservation Order No. 104

² Arboricultural Method Statement – David Archer Associates – May 2023

value would be lost within 10 years, and which should, in the current context, be removed for reasons of sound arboriculture management. There is therefore no objection to their removal. Of the remaining trees, 15 are identified as Category 'C'. These are trees of low quality and value; currently in adequate condition to remain until new planting could be established. Of these trees, 12 are Lawson/Leyland Cypress. The Cypress are of limited amenity value, typically planted for screening purposes as opposed to aesthetic value or being representative of quality native species. There is no objection to their removal. The three remaining Category 'C' trees are a Sycamore, Ash and Cherry Laurel. Although their loss is a negative aspect of the development, these trees are of lower amenity value and a suitable replacement may be planted elsewhere in the development.

11. There is one Category 'B' tree proposed to be removed. This is a Sycamore of 15m in height located to the north-western corner of the site. The tree is visible from many surrounding properties and angled views from the street. Its removal is required to provide for amenity space for house 6. This type of tree is identified as being of moderate quality and value, in such a condition as to make a significant contribution. I find that its removal would harm the character and appearance of the area, and this weighs against the development.
12. The most prominent tree on the site is a Copper Beech (T28). It sits beneath the canopy of a larger Copper Beech (T27) which is located in the adjacent property. These trees are in good health and centrally positioned. Together they make a significant positive contribution to the character and appearance of the area.
13. Due to the topography of the site, the development would require significant earthworks to be undertaken combined with the construction of the buildings and retaining walls. This would include works within the root protection areas (RPA). Although conditions can often be imposed in certain situations, I consider that given the tight arrangement of the development, greater assurance and demonstration would be necessary to show how the development can be undertaken without harming the trees. Based on the submitted evidence I cannot be certain that this would be the case.
14. Also, the retention of the trees in such close proximity to the proposed dwellings would lead to increased pressure to prune or remove the trees, particularly given the size and spread of the canopies and the size and position of proposed gardens. Collectively, these matters weigh against the development.
15. I therefore find that the proposed development would be harmful to the character and appearance of the area. It would be contrary to Policies DM10, DM28, SP4.1 and SP7 of the Croydon Local Plan (2018) and Policies D3, D4 and G7 of the London Plan (2021). These policies require, amongst other things, that proposals respect the development pattern and layout of the surrounding area, and that developments retain existing trees and landscape features that contribute to the setting and local character of an area.

Living conditions – occupants of surrounding residential properties

16. There are existing residential properties surrounding the appeal site, including dwellings at 3 Kingswood Way which are currently under construction. The

Council's assessment considered that there would be harm to the living conditions of occupants of no. 5 Kingswood Way, and to the future occupants of the development at no. 3 Kingswood Way, in terms of privacy and outlook.

17. The four dwellings to the rear of the site would broadly sit perpendicular to no. 5 Kingswood Way and would span almost the full width of the appeal site. They would be set back from the boundary with no. 5 by around 7.3m to 8.4m with landscaping proposed on the boundary. The Council considers that there would be no significant harm to the building itself, with the harm being caused to the enjoyment of the garden. Whilst there is no doubt a greater impact than the current arrangement, I consider that a reasonable separation would be maintained and the impact on privacy could be mitigated through boundary treatments, enhanced by landscaping. It is commonplace for an element of mutual overlooking of gardens to exist in urban areas, and this would be the case in the proposed development.
18. In terms of the dwellings under construction at no. 3 Kingswood Way, continuing the building line of no. 5, they also broadly sit perpendicular with the proposed dwellings to the rear of the site. Unlike no. 5 however, these properties do not have generous rear gardens and are significantly shallower.
19. Due to their overall size, scale and siting, the proposed dwellings, particularly house no. 6, would appear prominent and dominant when viewed from the new properties at no.3 Kingswood Way. They would appear overbearing and cause significant harm to the outlook from these properties.
20. Whilst I accept the appellant would question how the Council could find the relationship between the dwellings at no. 3 at the boundary of the appeal site to be acceptable, then find harm with the subsequent arrangement now proposed, the Council's consideration of that development is not before me and does not justify allowing harmful development.
21. The proposed development would therefore have an unacceptable impact on the outlook of existing residential properties, including those currently under construction. It would be contrary to Policy DM10 of the Croydon Local Plan (2018) and Policy D3 of the London Plan (2021). These policies require, amongst other things, that developments protect the amenity of occupiers of adjoining buildings and deliver appropriate outlook.

Living conditions – future occupants of development

22. Policy D6 of the London Plan (2021) aims to ensure, amongst other things, that homes are of an adequate size and fit for purpose. It sets out minimum space standards which applicants are encouraged to exceed. Part F of the policy outlines how all residential accommodation which is self-contained is required to meet the minimum standard, with part 1) setting out that dwellings must provide at least the gross internal floor area and built-in storage area set out in Table 3.1.
23. House 2 is identified as a 4-bedroom, 8-person, 3 storey dwelling. As outlined in Table 3.1 the minimum size for such a dwelling is 130sqm. The evidence shows how the dwelling would be 127.3sqm and therefore would fail to provide the minimum floorspace as is required. I acknowledge that the difference from the amount required in the policy is not a huge amount,

however the policy is clear that these are 'minimum' requirements with an encouragement that they are indeed exceeded.

24. The Council outline how there is no built-in storage space. The policy states that built-in storage areas are included within the overall GIA (Gross Internal Area) and space is identified in each bedroom and on the landing. Whilst this does not address the shortfall in the minimum amount of floorspace required, the appeal does not turn on this matter given that these areas could be conditioned to provide built in storage were the appeal to have been allowed.
25. I acknowledge that a reasonable amount of private outdoor amenity space is provided with the property. The policy however does not allow for an exception to be made on this basis. In any event, although complying with the minimum amount required, the amenity space is largely made up of thin strips to the sides of the property and is of a short depth overall. It does not justify departing from the policy requirement.
26. The Council have raised concerns in relation to the levels of light to the lower ground floor levels of houses 4 and 5. This is due to the fact that this level would be single aspect but with a depth of 9 metres. Although there would be parts of the room that would receive lower light levels, the plans show how there would be large windows to the rear with rooflights also provided in house 5. The living area of the rooms would be closest to the window and receive the greatest amount of light, which would reduce moving towards the dining area then kitchen. It is also pertinent that these rooms would face in a south-westerly direction. Taking these factors into account, and the properties overall, I consider that there would not be unacceptable living conditions in terms of levels of light.
27. Policy D7 of the London Plan sets out that in order to provide suitable housing and genuine choice for London's diverse population, including disabled people, older people and families with young children, residential development must ensure that, at least 10 per cent of dwellings meet Building Regulation requirement M4(3) 'wheelchair user dwellings', and all other dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings'.
28. The Council have raised concerns in relation to the gradient of the access in terms of ensuring suitable access for all. The Council outline how the gradient would be steeper than that allowed under M4(2) and M4(3). The appellant suggests that a condition is imposed which requires details of the access to be submitted. Due to the on-site constraints, not least the topography and trees, I do not consider that it would be appropriate to condition such details as there would likely be implications in relation to other material planning considerations of the development. I therefore consider that this should be demonstrated from the outset.
29. The proposed development would therefore fail to provide acceptable living conditions for its future occupants. It would be contrary to the requirements of Policies D6 and D7 of the London Plan (2021) that all housing is of a minimum internal size and is accessible.

Highway safety

30. The development would involve the creation of a new access from Old Farleigh Road. Whilst there is an existing access, this serves a single dwelling whereas the proposed access would serve 6 dwellings in total. A Transport Technical Note³ was submitted with the application which I have considered.
31. The Council have outlined how the proposed crossover would exceed the width outlined in the guidance note 'Dropped Kerbs and Crossovers'. There is no substantive evidence, however that this would result in an unacceptable impact on highway safety, and I am not convinced that there would be severe impacts as a result of the access width, particularly given the relatively low numbers of vehicles that would use the access.
32. Old Farleigh Road has a speed limit of 30mph. There is a dip in the road close to the appeal site. I observed on my late morning site visit that there was regular passing traffic. The Council have referred to the matter of visibility splays. Although the Technical Note includes a plan with a visibility splay, this is in relation to the existing site layout and does not show how it would be applied to the proposed layout. There is no assessment made of any installations or other features that may be within the visibility splays in the proposed layout, or the impact of the proposed gradient on visibility. It is therefore not clear if the proposed access could operate with an acceptable level of visibility which would not increase the risk of collision.
33. The appeal site has a PTAL (Public Transport Accessibility Level) of 1b (Poor). In such locations, the London Plan outlines that residential parking for dwellings containing three or more bedrooms should be a maximum of 1.5 spaces per dwelling. In the proposed development, 8 spaces in total are proposed with one of these being a disabled parking space. The Council consider that the maximum parking provision should be applied, which in this instance would result in a requirement of 9 spaces.
34. In the proposed layout, a number of bays are located abutting retaining walls and stairs. This would impact on the usability of the spaces. The compact nature of the layout would also likely require significant manoeuvring within the site and the visibility when manoeuvring would be poor. It is questionable that the parking could be optimally used with limited evidence to suggest otherwise.
35. Therefore, solely in terms of the total number of parking spaces that are proposed, I am not convinced that a shortfall of one space would result in severe highway impacts. However, I am not convinced that the layout can be practically or optimally used as intended and there is limited evidence to demonstrate that this would be the case. This could result in a greater shortfall as residents seek to park elsewhere.
36. The Council have also raised concern in relation to the lack of a segregated pedestrian access route, highlighting the impact due to the location of the refuse store. I accept that the layout is not ideal, however given the number of properties and associated vehicle movements, combined with the low speed they would be travelling, I do not consider that this would result in unacceptable impacts. There are measures, such as surface treatments, signage and other installations which could be secured by condition, which

³ YES Engineering Group Limited – June 2023

could be used to ensure that pedestrians are at the top of the hierarchy of users of the space.

37. The refuse storage for units 3 to 6 is proposed to be located to the side of the access route. The Council consider that this location would unacceptably obstruct the access road. Although there would be a restriction when the doors are open during collection times, this would be for a very small timeframe, assumingly on a weekly basis. Given this time and frequency, I do not consider that the impact would be unacceptable.
38. Therefore, in terms of the visibility splay and the parking layout, I am unable to conclude that the proposed development would not have an unacceptable impact on highway safety. As a result, it would be contrary to policies DM29 and DM30 of the Croydon Local Plan (2018). These policies require, amongst other things, that development would not have a detrimental impact on highway safety and ensure that highway safety is not compromised by the provision of car parking.

Flooding

39. The appeal site is located within Flood Zone 1, this is land where there is a low probability of river or sea flooding. The appellant has submitted a Drainage Design⁴. Using the Environment Agency Flood Map for Surface Water, the report identifies that there is a medium risk of surface water flooding for the site. It recommends the use of a SuDS scheme to manage surface water flows from the site and therefore, reduce the risk of surface water flooding to the site. These measures include a combination of permeable paving and cellular storage devices to manage surface water runoff from the impermeable areas of the site. Subject to adopting the recommendations of the report, it is outlined that the scheme will offer significant reductions in runoff rates, compared to the corresponding greenfield runoff.
40. The site is at low risk of flooding and the drainage proposals show greenfield run-off rates. Based on the recommendations, the run-off would be unlikely to exacerbate any surface water flooding issues in the area. Therefore, the development would be acceptable in these respects. I agree, however, that further information would be required, however such technical solutions can be secured by appropriately worded planning conditions.
41. I note the Council's comment that the Drainage Design does not reflect the submitted scheme. The differences are however very minor and would not make the report less valid on this matter.
42. Therefore, based on the submitted evidence and the opportunity to impose appropriate planning conditions, I consider that the proposed development would not result in increased flooding. It would comply with Policy DM25 of the Croydon Local Plan (2018) and Policy SI13 of the London Plan (2021) which aim to ensure that development reduces flood risk and minimises the impact of flooding.

Sustainable transport improvements and enhancements

43. In terms of cycle parking, the Technical Note outlines that a minimum of 3 cycle parking spaces will be provided within the curtilage of each property to

⁴ Drainage Design – RAB Consultants – 19/05/2023 Version 2.0

encourage sustainable travel. Whilst the number of spaces that would be provided would be acceptable in terms of contributing to sustainable travel, I share the Council's concerns in terms of the accessibility of cycle parking in a number of units. It would not be appropriate to expect residents to transport cycles through the inside of the dwelling to access the storage or to negotiate a substantial number of stairs with a cycle.

44. Policy SP8.12 of the Croydon Local Plan seeks to enable the delivery of electric vehicle charging points throughout the borough in order to improve air quality and decarbonise private transportation over the plan period. Policy SP8.13 of the plan requires new development to contribute to the provision of electric vehicle charging infrastructure, car clubs and car sharing schemes.
45. The appellant considers that the Council's request for £1,500 per dwelling towards sustainable transport has not been fully justified. The Council have submitted a high court judgement⁵ where it was found that financial contributions required by Policies SP8.12 and SP8.13 satisfied the statutory tests, and that the amount was reasonable and fairly related in scale and kind to the development. I therefore consider that in this case that the financial contributions sought would meet the statutory tests.
46. The appellant appears to suggest that they would agree to the above payment and has referred to a legal agreement being drafted. At the time of this decision however, no such agreement is before me.
47. Based on the lack of any agreement to secure the appropriate contributions and the cycle parking provision which is proposed, I conclude that the proposed development would not make acceptable provision for sustainable transport improvements and enhancements. It would be contrary to Policy SP8 of the Croydon Local Plan (2018) as set out above.

Slow worms

48. Ecological surveys identified a low population of slow worms at the site. Slow worms are a protected species under the Wildlife and Countryside Act 1981. An Ecological Impact Assessment for the site⁶ recommends translocation to an off-site receptor site. The Council concur with the recommendation subject to the imposition of a condition for the submission of a reptile mitigation strategy and a legal agreement for the long-term management of the off-site receptor.
49. The assessment states that a suitable site has been agreed upon at Selsdon Park Estate, which is around 1.1km west of the appeal site, and is capable of meeting the necessary criteria. The site has been subject to survey by suitably qualified ecologists. The Council however appear to suggest that the agreed site, the grounds of a local hotel, may not be available as the site has entered into administration.
50. Either way, although the appellant states they have no objection to the completion of a legal agreement there is not an agreement before me to secure the long-term management of the off-site receptor and furthermore there is some uncertainty over its availability.

⁵ [2022] EWHC 3318 (Admin) Whiteside, R. (On the Application Of) v The Council of the London Borough of Croydon

⁶ Ecological Impact Assessment – David Archer Associates, July 2023

51. In the absence of the above, the proposed development would conflict with the requirement of Policy DM27 of the Croydon Local Plan (2018) and Policy G6 of the London Plan (2021). These policies require, amongst other things, that developments should manage the impact on biodiversity and have no adverse impact on protected species.

Other Matters

52. I acknowledge the letters of support that have been received to the proposed development. These include reference to the current condition of the site which I observed is of particularly poor quality in terms of the building and the surrounding garden. I am not, however, convinced that the appeal scheme is the sole means of achieving these benefits. Nevertheless, in light of the current condition of the site, I give it moderate weight in favour of the appeal.

Planning Balance and Conclusion

53. The Government's objective as set out in the National Planning Policy Framework (2023) (the Framework) is to support sustainable housing growth. The proposed development would result in a small increase in the Council's overall housing number and would also bring a small number of additional residents to the area who would contribute to the local economy. It would also improve the appearance of a site in poor condition. Collectively, I give these matters moderate weight in favour of the proposed development.

54. However, the harm that I have identified that would be caused to the character and appearance of the area, the living conditions of occupants of surrounding properties, the failure to provide acceptable living conditions for future occupants, highway safety, the lack of sustainable transport improvements and enhancements and biodiversity mitigation attracts significant weight that outweighs the benefits associated with the proposed development.

55. The proposed development would therefore conflict with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.

56. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR