



Appeal Decision

Hearing held on 9 October 2024

Site visit made on 8 October 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/L5240/W/24/3347431

128-130 Frant Road, Thornton Heath, Croydon CR7 7JU

- 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 Bav Patel (Mistique Events) against the decision of the Council of the London Borough of Croydon (LBC).
 - The application Ref is 23/04608/FUL.
 - The development proposed is the demolition of the existing warehouse and the erection of new dwellings (Class C3) with associated amenity, cycle parking, refuse storage, landscaping and associated works.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs has been made by Mr Bav Patel (Mistique Events) against the Council of the London Borough of Croydon, this is the subject of a separate decision.

Preliminary Matters

3. The Deputy Prime Minister and Secretary of State for Housing, Communities, and Local Government issued a Written Ministerial Statement "Building the homes we need" dated 30 July 2024 regarding changes to the planning system, and on the same day consultation was started on "Proposed reforms to the National Planning Policy Framework and other changes to the planning system". The main parties have had the opportunity to make submissions regarding both documents in the context of the appeal proposal, and these have been taken into account in my determination of the appeal.
4. A signed Unilateral Undertaking dated 16 October 2024 (UU), that would provide a financial contribution towards sustainable transport measures, and obligations regarding car free housing has been provided after the close of the hearing. The UU is based on a draft version provided in advance, at the hearing, the Council confirmed that the draft version of the UU, if signed, would address its reason for refusal no.2. The UU is a mirror copy of the draft version; accordingly, the appeal has been determined on this basis, I shall return to the UU later in my decision.
5. The Council confirmed at the hearing, that its references within the conclusion section of its report to there being conflict for future occupiers from the quality

of the proposed accommodation, and from noise and disturbance from an adjoining site, were errors. The appeal has been determined on this basis.

6. The appellant has submitted a marketing report from Huggins Stuart Edwards (HSE), dated 14 June 2024, and an accompanying schedule of enquiries with their appeal, in response to reason for refusal no. 1 on the Council's decision notice. In addition, a further update to the marketing report by HSE dated 8 October 2024 was provided before the hearing. The Council and other interested parties have had the opportunity to comment on the marketing report during the appeal process, and the update contained limited additional information, which the Council had the opportunity to consider in advance of the hearing. I am therefore content that there would be no unfairness to any party by accepting this information and the appeal has been determined on this basis.
7. The submissions made by both parties within their written responses to the appellant's costs application (provided after the hearing), commented on the main issues, and latterly the appellant sought to introduce additional information from HSE. These comments and additional information have not been considered in my determination of the appeal as they were made after the closure of the hearing and outside of the timetable for providing comments. Furthermore, there would be unfairness to the Council by accepting the new information as it has not been able to comment.

Main Issues

8. Taking into account the above and the reasons for refusal, the main issues are:
 - The loss of the employment/industrial use at the appeal site, with particular regard to its marketing; and,
 - Whether sustainable transport measures, particularly obligations contained within the UU relating to i) a contribution towards sustainable transport, and ii) car-free housing, would be reasonable and necessary to make the development acceptable.

Reasons

Loss of the employment/industrial site

9. A large warehouse occupies most of the appeal site, which is located directly behind No's 128 and 130 and is accessed via an archway from Frant Road underneath part of these properties. The warehouse is currently in use by the applicant's business, which is understood to provide equipment hire for events. The site is not an allocated employment site. There is also an existing industrial building adjoining its rear elevation, accessed from Penshurst Road.
10. Policy SP3.2 of the Croydon Local Plan, 2018 (CLP) sets out a 4-tier approach to the retention and redevelopment of industrial/employment sites in accordance with its accompanying Table 5.1, which classifies the appeal site as a Tier 4 scattered employment site. It only permits residential use when there is no demand for employment uses or Class D1 uses at the appeal site, amongst other criteria. Paragraph 5.13 of the supporting text to Policy SP3 helpfully sets out that the site should be marketed for a minimum of 18 months at a price commensurate with its value. It is also noted that the

Council's 4 – tier approach is supported by the LBC's Employment Land Review Update¹, due to the broad mix of sectors across the LBC occupying industrial space, including small scale storage uses, such as the appeal proposal.

11. Furthermore, Policy E4 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP), which the main parties agreed at the hearing was relevant, requires a sufficient supply of industrial land and premises in different parts of London is maintained. In addition, LP Policy E7 states residential development on non-designated employment sites should only be supported when there is no reasonable prospect of the site being used for industry and related services. Paragraph 6.7.5 of the supporting text to Policy E7 requires evidence of vacancy and marketing for 12 months, or a longer period if required by a Local Development Plan Document, to prove there is no reasonable prospect of the site being used for those purposes.
12. Notwithstanding that some of the marketing requirements are set out in their accompanying text, both CLP Policy SP3 and LP Policy E7 are policies of restraint to protect existing employment sites and safeguard their associated economic benefits, they only permit the re-use of such sites for residential use as exceptions, where there is no demand for them.
13. These policies are broadly consistent with paragraph 85 of the National Planning Policy Framework (the Framework) which says decisions should help create the conditions in which businesses can invest, expand, and adapt, and that significant weight should be placed on the need to support economic growth, including local business needs. It is also noted that paragraph 87 also requires that planning policies and decisions should recognise and address the specific locational requirements of different sectors. As the Framework is an overarching policy document, it would not be expected to specify any such marketing requirements, which could differ across parts of the country.
14. There was no dispute between the parties that the Council's Protocol on Good Marketing for Tier 2, 3 & 4 Employment Sites (Protocol) was guidance that supplemented CLP Policy SP3.2, and whilst not part of the development plan, it provides useful marketing information. Furthermore, I was not persuaded that Tier 4 sites should be marketed for any less time than Tier 2 sites, as the purpose in both cases is to test the demand for them on the open market.
15. HSE say they have marketed the appeal site as an employment site continuously for 10 months (since December 2023) for rent of £120,000 per annum (£12 per square foot), or £2,000,000 for the freehold interest (£200 per square foot). The appeal site has not been marketed for D1 uses. HSE has said there have been over 70,000 online views of the marketing information, of these there have been 5 no. enquiries. One of these related to a short-term let, but due to the appellant occupying the unit it did not progress, another enquiry related to a use for catering and food production, but this also did not progress and is said to have required a change of use (although there is no information that this would not be granted). The other three queries are said to relate to residential development. No offers have been made.
16. Notwithstanding the above, the Council have queried the freehold price that the appeal site has been marketed for, saying it has not been independently verified. However, the Council has not provided any evidence to support their

¹ A Final Report, dated November 2020, prepared by Hatch,

view, nor have they provided any independent valuation. As such, based on the information submitted, there is insufficient evidence that the price is unreasonable. Although, to reflect the apparent lack of offers for the appeal site, it is agreed that there does not appear to have been any efforts to address this, consistent with the Protocol, such as a reduction in the asking price. However, it is uncertain that the lack of offers was only due to its price.

17. Turning to the market board issue, it is accepted attaching a marketing board to the building itself would serve little purpose as it is located behind other properties. I saw on my site inspection that the site's access from Frant Road had tall metal gates near to the pavement, which were open during my inspection and there was a flat advertisement sign for Mistique Events attached onto the gates (which are located within the red line area denoted as belonging to the appellant). I was not persuaded by the appellant's arguments that a flat for sale board could not also be fixed onto the gates, like the existing sign, which could be seen from both Frant Road and nearby Meadow View Road, particularly when the gates were closed and help market the site.
18. Furthermore, in response to how a for sale board could affect customers and the business, such a sign could make it clear, that the business is re-locating so they were not in any doubt that the business would continue trading. In any event, potential customers could see the online marketing, and the purpose of marketing is to reach as wide an audience as possible.
19. It is accepted that the appeal site is not vacant, and there are practical difficulties for the appellant having the site vacant when it is marketed. Providing the site is genuinely marketed, with a view to securing a sale or rent and the appellant would relocate to alternative premises, operating a business from it, would not in principle be unreasonable during its marketing. However, as the appellant referred to their difficulty giving a date for vacant possession, which it is said could hinder any sale or rent, then perhaps the appeal site is not genuinely available. Moreover, I have no information to indicate why the appellant could not rent suitable premises elsewhere. Either way this does not lead me to conclude that the appellant's situation is a reason to override the requirement to properly market the appeal site.
20. In view of the above, the marketing undertaken is clearly substantially short of the 18 months required by CLP Policy SP3.2, and there are significant concerns regarding how the marketing has been undertaken, and if the site would be available for prospective users. This inadequate marketing is in direct conflict with the objectives of the development plan policies as set out above, of retaining non-allocated employment sites unless there is proven to be no demand for them. The comments of HSE about the appeal site, market conditions, and the wider area, have been considered carefully, but these points do not provide any certainty that a suitable employment user could not be found if it was marketed for a further 8 months. Nor is there sufficient information to justify why the appeal site could not be used for D1 uses. Ultimately, the site has not been adequately marketed and there is insufficient justification to accept a shortened period of marketing.
21. The appeal site is said to represent some 0.14% of the LBC's overall employment land. In view of my findings above, the loss of the employment floorspace, however small, is still an unjustified loss to the LBC's supply of

employment space, without the required marketing evidence, and collectively, tier 4 sites contribute to LBC's economy.

22. It has been said that the appellant needs to secure a residential development of the appeal site to enable the re-location of the business. No substantive evidence was submitted to justify this, such as a financial appraisal, as such little weight can be attached to this argument. Furthermore, this approach would also indicate that the marketing exercise was more about seeking to justify there being no demand, as opposed to genuinely trying to market the property with a view to securing a sale or let.
23. I therefore conclude that the loss of the employment use and its redevelopment for residential purposes is not justified, as there has been inadequate marketing to properly demonstrate that there is no demand for employment uses or a D1 use at the appeal site. In doing so, I find the proposal to conflict with CLP Policy SP3.2 and LP Policies E4 and E7 insofar as they collectively seek to retain industrial/employment uses and only permit their re-development for residential use where there is no reasonable demand for them, the precise requirements of which, are set out in detail above. The proposal would also conflict with paragraph 85 of the Framework, as set out above. In addition, the proposal would also be contrary to LBC's Protocol for marketing Tier 4 sites.

Sustainable transport measures

24. The main parties agreed at the hearing that CLP Policy SP8 was relevant to this main issue. Notwithstanding the agreement between the parties that the UU would address reason for refusal no.2, I must still assess whether the obligations meet the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regs.), and paragraph 57 of the Framework.

i) Financial contribution

25. Policy SP8.12 seeks to secure electric vehicle charging infrastructure throughout the LBC, and Policy SP8.13 requires contributions from new development towards electric vehicle charging infrastructure, car clubs and car sharing schemes. In addition, CLP Policy SP6 seeks to reduce greenhouse gas emissions and minimise CO2 emissions. Furthermore, LP Policy T5 requires development to help remove barriers to cycling and create a healthy environment in which people choose to cycle, and CLP Policy DM29 supports measures to increase cycling and pedestrian movements.
26. The UU would make a financial contribution of £7,500 (£1,500 per dwelling) prior to the implementation of any permission, which would be used towards on street car clubs with electrical vehicle charging points and/or highway changes such as on street restrictions; car clubs; highway transport initiative measures; removal of residential parking permit entitlement for new residential units; any future Controlled Parking Zones (CPZs) within the area; and pedestrian /cycling improvements.
27. It is noted that a residential proposal that has some similarities to the appeal site, elsewhere in the LBC was the subject of a judicial review² in 2022 regarding the same financial contribution to sustainable transport measures.

² Re. Case No. CO/1225/2022

Although the site in that case may have been in an area which was not as well-connected to public transport as the appeal site, it found that a sustainable transport contribution from residential development such as the scale proposed and based on Policy SP8.12 and SP8.13 can reasonably be required.

28. Against the policies outlined above, the proposed contribution would help to improve sustainable travel in Croydon, through the stated methods set out within the UU. I find the contribution is reasonable and necessary to make the development acceptable and related in scale and kind to it, as such it meets the tests set out in Regulation 122(2) of the CIL Regs, and paragraph 57 of the Framework. In addition, the contribution is necessary to comply with LP Policy T5, and CLP Policies SP6, SP8.12, SP8.13, and DM29 as set out above. I will take the UU into account in my decision.

ii) Car-free housing

29. Frant Road and some of its neighbouring roads are located within a CPZ, with parking restricted at certain times, requiring a resident parking permit or a parking charge to occupy on street spaces. Although only a snapshot in time, I saw on my site inspection that there were plenty of available parking spaces very near to the appeal site, particularly on the side of the road nearest to Streatham-Croydon Rugby Football Club, and on Meadow View Road. I did not see any designated car club parking spaces close to the appeal site.
30. The UU prevents occupiers of the proposed dwellings, except for disabled persons, from applying for, or securing a parking permit that enables them to park within the CPZ, or within the Council's car parks.
31. CLP Policy SP8.15 encourages car free development in locations with a higher Public Transport Accessibility Level (PTAL) than the appeal site (PTAL 5, 6a and 6b) and where there are alternatives such as car clubs. CLP Policy DM30 seeks to reduce the impact of car parking on new development in areas with better transport accessibility (PTAL 4 and above) than the appeal site, or in areas of parking stress. However, LP Policy T6 says that car free development should be the starting point for new development in well-connected areas.
32. There are bus stops near to the appeal site on Brigstock Road and London Road, that provide connections to nearby train stations and tram stops, and Thornton Heath Station can be accessible for most people on foot. However, the appeal site is not in an area that can be regarded as being centrally located or within easy walking distance of a wide range of services and facilities, future occupiers would more than likely find having a car desirable.
33. The Council say the CPZ was likely designated in response to parking stress in the area. However, no parking stress survey has been provided regarding the current situation, and the Council could not confirm that at present there is any parking stress in the immediate area. In view of the site's location and PTAL 3 rating, my own site observations, and the policy background outlined above, I am not persuaded that the proposed development should be car-free.
34. I therefore conclude that an obligation requiring that the proposed development be car-free would not be necessary to make the development acceptable, for the same reasons such obligations would not meet the requirements of Regulation 122(2) of the CIL Regs. In addition, in view of the

appeal site's location and its PTAL rating of 3, a car-free development obligation would not reasonably be required by CLP Policy SP8.15 and DM30, and LP Policy T6, the requirements of which are set out above.

35. In accordance with Clause 2.2 of the UU, which allows any obligations I find not to be necessary to be separated from those that are, I shall not have regard to the car-free obligations in my decision.

Other Matters

36. The Council has said No's 128 and 130 are locally listed buildings. These buildings are two-storey, clad in brick and white painted render, under a concrete tile roof and contain 4 no. flats. In the language of the Framework, these buildings are non-designated heritage assets (NDHAs) and paragraph 209 of the Framework says that a balanced judgement is taken regarding the effect of proposals upon the significance of NDHAs. The scale and modern appearance of the existing warehouse does not positively contribute to the setting of the NDHAs, but it is largely hidden from public view, mainly seen through the archway. The reduced scale of the proposed development, together with its sympathetic design approach, would enhance the setting of the NDHAs, which would be a benefit, that weighs in favour of the proposal. However, this is tempered by the limited public views of both the existing warehouse and the proposed development.
37. Both parties acknowledged at the hearing that the site's access was found to have inadequate sight lines, on an earlier planning application. I saw on my site inspection road markings in front of the access to ensure it is kept free from parking, and although only a snapshot in time there were bins stored on the pavement to either side of it, preventing pedestrians and cyclists from travelling across the pavement immediately in front of the archway. I also saw that due to the narrow width of the access and the short distance between the pavement and the front of the warehouse, vehicle speeds are likely to be very slow, when using the access, and I have not been made aware of any accidents associated with it. Nevertheless, even though the access appears to have been a longstanding arrangement, because of the inadequate sightlines, the closure of the vehicular access would be a public benefit that weighs in favour of the proposal.
38. As an existing business operates from the appeal site, which contributes to the area's economic activity, the support offered by paragraph 127 a) in this case is somewhat limited. In addition, the appellant has cited policies of the development plan, including LP Policy HC2 and other parts of the Framework that are said to support the proposal. These are noted, and although some of these provide support, both the Framework and the development plan must be read as a whole, and complying with certain parts of them does not result in complying with them as a whole, particularly given the above identified conflict. Furthermore, in accordance with paragraph 124 c) of the Framework, substantial weight cannot be given to the proposed re-use of the brownfield site, because the loss of the employment use has not been justified, meaning the site is not a suitable site for housing.

39. My attention has been drawn to a Review of the London Plan³ (RLP) advocating a presumption in favour of residential development on brownfield land, and a letter from the Secretary of State for Levelling up Housing and Communities to the Mayor of London⁴, referring to the recommendations of the RLP and a consultation regarding improving housing supply. These points are noted; however, they are not part of the adopted development plan nor government policy, it is also unclear whether there were significant objections made during any consultation period. As such and noting my findings regarding paragraph 124 c) of the Framework, I attach limited weight to them.
40. There is no dispute between the parties that the Council has a 5-year supply of housing, nor have I been made aware a 4-year supply of housing⁵ would apply due to the Council's emerging plan. It has been said by the appellant that there is an unmet housing need in the LBC, and I have been referred to an appeal decision⁶ from 2022. It states that the actual need in LBC is 42,930 homes by 2036 and the CLP does not seek to meet this due to its minimum target of 32,890 homes, and its limited supply of land. That appeal site was allocated, and although there was no requirement for a school, no harm or conflict with the development plan was identified, it was also for 140 dwellings. Whereas the circumstances on this appeal are very different, and although the parties disagree about whether there is an unmet housing need, it seems to me that this is still likely to be so. Nevertheless, any contribution from the proposal towards unmet housing need would be very minimal in comparison due to its scale and attracts very little weight in this case.
41. Reference has also been made to an appeal decision⁷ where substantial weight was given to the provision of 4 dwellings. Be that as it may, and noting it was disputed about whether the Council had a 5-year supply of housing, it is for the relevant decision maker based on the information before them to attribute weight to the provision of new housing in the planning balance.
42. It is acknowledged the parties agree there are no harmful effects arising from the proposal that cannot be addressed through the imposition of planning conditions regarding its effect on the character and appearance of the area; living conditions of nearby occupiers; biodiversity; flood risk and drainage; bin storage; fire safety; and cycle storage. These are likely to be requirements for any such well-designed development and I regard these points to be neutral factors that neither weigh in favour or against the proposal.
43. No objections or indeed letters of support from interested parties have been made, nor have details of any complaints made to the council regarding the existing business operations at the site been provided. The comments made by the appellant to the contrary are noted, but these are not corroborated by others. Therefore, in the absence of any substantive evidence, the effects of the existing use on the living conditions of nearby occupiers are a neutral factor that neither weighs in favour or against the proposal.

³ London Plan Review Report of Expert Advisers Commissioned by the Secretary of State for Levelling Up, Housing and Communities 15 January 2024

⁴ Re. London Plan Review, dated 12 February 2024

⁵ Referred to in paragraphs 77 and 226 of the Framework

⁶ Appeal Ref: APP/L5240/W/22/3297832

⁷ Appeal Ref: APP/L3245/W/22/3310764

Planning Balance and Conclusion

44. The proposal conflicts with CLP Policy SP3.2 and LP Policies E4 and E7 that protect employment uses to ensure land and buildings are available to support economic development. I regard this to constitute conflict with the development plan as a whole.
45. The factors that weigh in favour of the proposal include the contribution of 5 no. additional dwellings to the LBC's overall supply of housing, including towards any unmet housing need, and helping to meet Government's objective of significantly boosting housing supply. In addition, the proposal would facilitate the development of both a brownfield site and a windfall site, that would comprise a small to medium sized housing site in a location near to transport links. In addition, there would also be economic benefits associated with the construction of the development, and from the contribution from future occupiers to local services and facilities. There would also be a financial contribution towards sustainable transport.
46. In addition, as set out above, the closure of the existing vehicular access would also represent an improvement to highway safety. There would also be an enhancement to the setting of the NDHAs, however as stated above, such enhancement would be minimal from public vantage points.
47. Even taking all of these benefits collectively together, given the scale of the proposed development they attract modest weight at most.
48. Those matters weighing against the proposal relate to the appeal site not being vacant, with a business operating from it, which it is understood has done so for many years. Nor has it been said that the business is unviable, and it is unclear what, if any, other premises have been identified for its relocation. Furthermore, the loss of the small-scale employment site, including its existing levels of employment, and its contribution to the local economy, weigh against the proposal, particularly as the loss of the site would be permanent, preventing new businesses, such as start-ups, from occupying it in the future, which would be harmful to LBC's economy.
49. Furthermore, there is also conflict with paragraph 85 of the Framework that requires conditions for businesses to invest, expand, and adapt, and that significant weight should be placed on the need to support economic growth and productivity, including local business needs. As a result, there is conflict with the economic objective set out in paragraph 8 of the Framework, a key overarching objective of sustainable development that seeks to ensure sufficient land is available in the right places for economic development.
50. I give significant weight to the conflict with the development plan and the identified harm arising from the proposal.
51. I therefore conclude that there are no considerations, including those matters raised in favour of the scheme when considered individually or collectively that outweigh the identified conflict with the development plan, and the Framework. For the reasons given above, the appeal should be dismissed.

A Hunter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sean McGrath BA (Hons) MSc MRTPI

WSP - Director

Tarleen Kaur BSc (Hons) MA

WSP - Assistant Planner

FOR THE LOCAL PLANNING AUTHORITY:

Georgina Betts BA (Hons) Pg Dip MRTPI

LBC - Deputy Team Leader

James Udall BSc (Hons) MA MRTPI

LBC - Senior Planning Officer

Philip Osei-Mensah BSc (Hons) MA

LBC - Planning Policy Officer

DOCUMENTS

Updated Marketing report and schedule of enquiries, prepared by Huggins Stuart Edwards, dated 8 October 2024, provided by email dated 8/10/2024.

Croydon Employment Land Review Update, A Final Report prepared by Hatch, dated November 2020, provided by email dated 7/10/2024.

Proposed submission draft of the Croydon Local Plan review (Part 2), consultation draft, dated June 2024, provided by email dated 7/10/2024.

A signed Unilateral Undertaking dated 16 October 2024, provided by email dated 16/10/24.