
Appeal Decision

Site visit made on 14 January 2025

by **A Hunter LLB (Hons) PG Dip MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **21 FEBRUARY 2025**

Appeal Ref: APP/L5240/W/24/3347611

4 - 6 Coombe Avenue, Croydon CR0 5SD

- 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 Coombe Avenue Investments Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/02325/FUL.
 - The development proposed is the demolition of the existing buildings and erection of 3 storey building comprising 3 x Class E units and 7 flats with associated parking, landscaping, refuse and cycle stores.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the submission of the appeal, the Government published a revised National Planning Policy Framework (the Framework) in December 2024. There have been no significant revisions to the Framework in regard to the matters in dispute between the main parties. Consequently, I have not found it necessary, in the interests of natural justice, to seek further written comments, and no party would be prejudiced by my consideration of the revised Framework in the determination of the appeal. Where references are made to paragraph numbers of the Framework, these are references to the most recent version.
3. The appellant has submitted with their appeal a Biodiversity Net Gain Assessment prepared by Greenspace Ecological Solutions, dated July 2024 (including metric calculations); Protected Species Surveys dated July 2024, prepared by Greenspace Ecological Solutions; and a Landscape and Ecological Management Plan, prepared by Greenspace Ecological Solutions, dated June 2024 in response to reason for refusal no.5. This new information expands on information already provided, and I am content that there would be no unfairness to any party by me accepting it at this stage. The Council has also responded to state that in view of this new information, along with other previously submitted information, they are content, subject to conditions, that the proposal would have acceptable effects on biodiversity (including protected species) and there would be a biodiversity net gain, I see no reason to disagree. Consequently, the appeal has been determined on the basis of reason for refusal no.5 no longer applying.
4. In addition, to try and address reasons for refusal no's 2,3, and 4, the appellant has submitted revised plans regarding cycle parking changes; measures said to improve the safety of movements through the undercroft including a speed bump and convex mirrors; the retention of greater landscaping between the proposal and

existing properties; section drawings to show the proposal in relation to some surrounding properties with comparisons to the existing buildings; and an Arboricultural Implications Report, prepared by SJ Trees, dated June 2024 reflecting retained planting changes. These changes are relatively minor compared with the proposed scheme, the Council has had the opportunity to comment on them, and I am content in this case that there would be no unfairness to the parties by me accepting this new information. The appeal has been determined on this basis.

Main Issues

5. Accordingly, the main issues are the effect of the proposed development on:
- the character and appearance of the area, with particular regard to its siting, scale, design and density;
 - the living conditions of neighbouring occupiers with particular regard to privacy and outlook for those at no 6 Rutland Gardens, no. 11 Caroline Close, and no. 20 Dittoncroft Close;
 - whether the use of the undercroft is safe for vehicles and other uses; and,
 - cycle parking.

Reasons

Character and appearance

6. The appeal site contains two storey buildings without any roof alterations in an 'L' shape arrangement at the end of Coombe Avenue (a cul-de-sac), the buildings are currently said to be used for commercial uses on their ground floors with 3 no. flats at first floor level. It is understood that the buildings have been in situ since at least 1910, and are said to be converted stables and workshops. They have a simplicity to their form and appearance, including some consistent fenestration, they contribute positively to the character and appearance of the area.
7. Much of the appeal site beyond the rectangular and narrow shaped buildings is covered in hard-surfaced areas and used for parking or manoeuvring. The parking areas are close to both of its side boundaries and the appeal site is clearly visible from surrounding roads. Surrounding the appeal site are residential properties on the neighbouring roads (all cul-de-sacs); Rutland Gardens; Dittoncroft Close, Hunters Way; and Caroline Close. Although the surrounding properties have a mixed architectural style and roof forms and include terraced, semi-detached and detached properties, they are mainly two storeys high, albeit some have rooms in their roof spaces.
8. Caroline Close and Hunters Way to one side of the appeal site are located on lower ground levels, with the existing buildings at the appeal site already higher than the closest properties on these roads. Rutland Gardens extends right up to the boundary on another side of the appeal site, affording clear views of the existing buildings. Dittoncroft Close has a row of detached properties that back onto the rear of one of the existing buildings, and there is substantial planting between them.

9. The proposed 'L' shaped building would extend both along and across the end of Coombe Avenue, in a 3-storey form. As a result, it would be higher than the existing buildings it replaces, said to be by some 1 metre or so, it would also be much deeper, occupying a much greater area and significantly increasing the mass and scale of the proposed building in comparison to the siting and scale of the existing buildings. To help disguise some of this increase height, the proposal features an uncharacteristic crown roof form, and from two of its sides, there are window openings at second floor level directly below the proposed roof's flat roof part, which would be visible from outside of the appeal site on Caroline Close. Such views would harmfully contrast against the simple two storey rectangular form of the existing buildings, and the visible flat roof part would appear starkly against the pitched roof of parts of the proposed replacement building.
10. It is acknowledged that there is a change in height between Sussex Villa and Image House, which reflects Sussex House as being a grander property in comparison to the range of what are now converted outbuildings. To raise the height of the roof as proposed, along with the proposal's increased scale and bulk, would challenge this relationship and create an illegible and dominant form of development that would not relate well to the scale and width of the existing buildings, which would be visible from outside of the appeal site. Furthermore, and notwithstanding its location at the end of a private drive and that its roof would not be higher than those properties nearby on Rutland Gardens, its three-storey scale, particularly given its raised ground levels from some viewpoints, along with the proposed openings within its roof, would make the proposal very conspicuous in what is mostly an area of two storey properties with a much simpler appearance.
11. The proposed fenestration, along with the introduction of the proposed dormer roof extensions and balconies at second floor level add to this identified harm, introducing discordant features, partly due to their height but also their bulky designs, which would fail to harmonise with the character and appearance of the adjoining buildings and the surrounding area. The size, shape and number of these proposed roof openings would be much different to the roof extensions of other properties in the area, that have much smaller roofs, so their changes are less significant and extensive.
12. Given the ground floor level and discrete location of the proposed undercroft, its scale and design on its own is not a feature that would be harmful to the character and appearance of the area. Although there are no objections to proposed external materials, these would not address the identified harm above regarding the siting, scale, and design of the proposal.
13. Whilst the appellant has sought to optimise the use of the development site, improve the current accommodation and provide private external amenity space, there is an increase in the residential units proposed (from 3 no. to 7 no.), and the siting, design, and scale of the proposed replacement building has been found to be harmful to the character and appearance of the area. However, in view of the site being previously developed land and the requirement to make an effective use of sites in well-connected areas, I am not persuaded that the density of the proposal would be overly cramped or inappropriate in the context of the surrounding area if a suitable design solution were to be found and other identified harm was suitably addressed.

14. I therefore conclude that for the reasons outlined above, the proposed development would be harmful to the character and appearance of the area and conflict with Policy D3 of The London Plan, The Spatial Development Strategy for Greater London, dated March 2021 (LP) and Policies DM10 and SP4 of the Croydon Local Plan 2018 (CLP), insofar as they require development to be high quality, and respond to local character and distinctiveness and respect the scale height, and massing of the surrounding area.

Living conditions – existing occupiers

6 Rutland Gardens

15. The existing two-storey gabled building at the appeal site abuts the rear side garden of no. 6 and already has some effect upon outlook for its existing occupiers. The proposed new three storey building would also directly abut the side garden of no. 6, however, it would be much deeper at ground and first floor level than the existing building, said to be some 3.2 metres or so deeper at first floor level. Although the proposal would have a hipped roof pitching away from the boundary and it would be no higher than the existing building it replaces, it would introduce a significant increased mass and bulk directly abutting and extending a greater distance along the boundary with no. 6's rear garden. The proposal would also be much closer to the rear elevation of no.6 and appear as a very dominant feature, harmfully enclosing no.6's rear garden. The increased scale and mass of the proposal so close to no.6, notwithstanding the existing planting would have a much greater effect on outlook for the occupiers of no.6 beyond the existing situation, and harm their living conditions.
16. It is accepted that the Council did not raise objection in terms of privacy effects on the occupiers of no.6, as they would not be significantly different to the existing situation. At present there are first floor windows and an external balcony for the residential unit nearest to the boundary with no.6. The proposal would see those replaced with 2 no. first floor bedroom windows and a balcony at second floor, (that would be inset from the boundary between the respective properties). From my own site observations and assessment, including the proposed privacy screens, and noting that the respective properties would be a bit closer, I see no reason to disagree with the Council, as such I do not find unacceptable privacy issues arising beyond the existing situation for the occupiers of no. 6.
17. It has been said that an occupier at no.6 has a health condition and there are concerns at how the proposal, particularly in terms of privacy and construction works, could affect that occupier. Although I have very limited information before me, the information I have indicates to me that the occupier has a protected characteristic.
18. In light of this, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had due regard to the Human Rights Act 1998 (HRA) which at Article 8, requires that decisions ensure respect for private and family life, and the home, Article 8 is also engaged in this case. In reaching my decision, I have kept these interests at the forefront of my

mind. However, they are qualified rights, and interference may be justified in the public interest. The concept of proportionality is key.

19. I recognise the paramount importance of the neighbouring occupiers right to have their home, private, and family life respected and this is a primary consideration. Any adverse effects experienced from the appeal proposal could interfere with the neighbouring occupier's rights in respect of their home, private, and family life. Any such impacts would weigh against the proposal in these respects.
20. Whilst I found the proposal to be harmful to the outlook for the occupiers of no.6, I did not find that there would be other unacceptable privacy effects upon the living conditions of the occupiers at no.6 beyond the existing degree of mutual overlooking. It is accepted that there would be some, albeit temporary disruption to the occupiers of no.6 from construction works associated with the part of the building nearest to it. The use of a construction management plan condition, in the event the appeal were to be allowed, could be imposed to minimise such impacts, particularly in regard to hours of work, noise, disturbance, and dust. Whilst this would not remove the effects of construction works, it is anticipated that it would ensure that they were mitigated as far as reasonably practical.
21. Having regard to the legitimate and well-established planning policy aims in respect of providing housing and protecting living conditions, a refusal of permission for a reason beyond the harm identified above in relation to the occupiers of no. 6 would not be proportionate and necessary on the information before me, or consistent with the requirements of the HRA and my PSED duty contained in Section 149 of the Equality Act 2010.

11 Caroline Close

22. No. 11 is an end terraced property that has its side elevation near to the boundary with the appeal site. I saw on my site inspection that it is located on a lower level than the appeal site, but there was established planting between it and the appeal site. Paragraph 6.80 of CLP Policy DM10 says a minimum separation of 18-21 metres between directly facing habitable room windows on main rear elevations is best practice, it adds that it should be applied flexibly, dependent on the context of the development.
23. The proposed development is said to have a separation distance of 16.5 metres to no. 11. Within the appeal submission the appellant has confirmed that intervening planting (some of which was previously identified to be removed) is to be retained, which in the event I were minded to allow the appeal, could be a condition of any approval. The Council has indicated that the retained planting (understood to also be necessary for biodiversity net gain) would mitigate any harmful effects upon the occupiers of no. 11. From my own site observations, and the respective distances, together with the existing planting outside of the appeal site and the orientation of no.11, I am content that the outlook and privacy effects of the proposed development would not be harmful to the occupiers of no.11.

20 Dittoncroft Close

24. No. 20 is a two-storey detached dwelling, that is said to be located on a lower ground level to the appeal site, it is diagonally aligned with one of the appeal site's side boundaries, it is said that the proposed development would have a separation distance of at least 18 metres between it and the proposed development. I also

saw on my site inspection that there is considerable established planting on the boundary to the appeal site. Whilst the Council say the planting could be removed, much of it is understood to be outside of the appeal site and within the rear garden of no.20 itself, so its owners/occupiers would likely have some control over its retention.

25. Some upper parts of the proposed building, particularly its roof, dormer extensions and balconies, may be seen from no. 20. However, given the existing planting, separation distance, and taking account of the ground level changes and the position of no.20, any such views from within the property are unlikely to be direct. The separation distance is also consistent with that set out within the policy supporting text to CLP Policy DM10. As such, I am persuaded that the proposal would not have harmful effects in terms of privacy or outlook for the occupiers of no.20.

Conclusion

26. In all other respects, I am content that the separation distances, window positions, day light and sun light effects, and potential noise and disturbance from the uses would not be harmful to the living conditions of neighbouring occupiers. It is noteworthy that the Council also found similarly.
27. I therefore conclude that whilst the proposal would not have harmful effects upon most of the neighbouring occupiers, there would be harmful effects upon the outlook for the occupiers of no. 6 Rutland Gardens, and for this reasons the proposal would conflict with LP Policy D3 and CLP Policy DM10 insofar as they require new development to deliver an appropriate outlook and protect the amenity of the occupiers of adjoining buildings.

Use of the Undercroft

28. Coombe Avenue is a narrow road, understood to be a private road, with parking to one of its sides. The proposed 4.5 metre wide undercroft would allow access to a rear parking area for the existing and proposed development. The undercroft would effectively be a sharp and blind approach to the 90 degree turn when travelling along Coombe Avenue or exiting the rear car park area. Due to the arrangement of the proposed buildings, there will be very limited visibility at the entrance and exit from the undercroft. Near to the proposed undercroft would be entrances to existing and proposed commercial and residential developments, parking and cycle spaces, and a bin store. It is noted that currently access to the rear parking area is obtained between buildings 5 and 6, through a much wider space, and without an undercroft feature, which is also at the end of Coombe Avenue. It is not certain on the evidence before me, that the proposal would be an improvement to the existing situation.
29. With their appeal, the appellants have proposed amendments to try and make movements through the undercroft as safe as possible by lowering the speed limit to 5 mph on Coombe Avenue; installing a speed bump immediately before the undercroft; having convex mirrors to either side of the undercroft; and a give way road marking so those entering the undercroft from Coombe Avenue have priority. These proposed changes are within the red and blue line denoting land owned by the appellant and could, in the event that the appeal were to be allowed, be conditioned.

30. The measures proposed by the appellant could slow the speed of some vehicles and improve the safety of movements through the undercroft. However, they would not address the inadequate inter-visibility for users of the undercroft. Those familiar with the proposed convex mirrors may use them, but it would not be certain that they would be used by all. Moreover, visitors, particularly to the commercial premises may not be aware of the convex mirror arrangement, which is not a typical feature.
31. The proposed mirrors may also make it harder to judge vehicle speeds and distances, and they may only be useful when very close to them. Furthermore, whilst some vehicles could be travelling slow, others may not be, and there would also be vehicles travelling towards the end of Coombe Avenue passed the entrance to the undercroft, which could make movements out of the undercroft hazardous, even with the give way measure, because of the lack of inter-visibility and the likely time to respond to oncoming traffic. There would, in addition, be pedestrians and cyclists likely to be going passed or through the undercroft, and the combination of different users, together with the lack of inter-visibility, notwithstanding the additional measures proposed would be likely to create conditions that are unsafe for road users.
32. Whilst vehicle speeds may be slow and two cars may pass one another, this does not fully mitigate against the extremely limited inter-visibility between different users. It is also unclear how the proposed 5mph speed limit would be enforced on the private road. Nor does the low frequency of vehicle movements or there being fewer parking spaces in total compared with the existing situation persuade me that the harm identified above would be acceptable. I can appreciate the efforts that the appellant has gone to with their amendments, however, they have not convinced me that they would adequately address the safety of the undercroft.
33. I do, however, agree with the appellant that the circumstances on the appeal decision¹ cited by the Council where the use of convex mirrors was not deemed to be acceptable is not comparable to the appeal site, and the considerations were much different. Consequently, I have attached very limited weight to it in my decision.
34. I therefore conclude that the proposed development would not provide safe movements through the undercroft area for vehicles, cyclists and pedestrians and there would be conflict with LP Policy T4 and CLP Policies DM29 and DM30, that amongst other things seek to ensure development proposals do not increase road danger, ensure there is no detrimental effects on pedestrians, cyclists and private vehicles, and pedestrians and cyclists are not impeded by car parking.

Cycle parking

35. LP Policy T5 says development proposals should help remove barriers to cycling and secure appropriate provision of cycle parking that is fit for purpose, secure and well-located. It further adds that cycle parking should be provided in accordance with that specified in its Table 10.2. CLP Policy DM29 says development should promote the use of cycling and CLP Policy DM30 requires cycle parking to be provided in accordance with the LP that is secure, and capable of being used for mobility scooters and motorcycles.

¹ Ref. APP/L5810/A/12/2176380

36. The Council has calculated based on the size of the proposed residential development that there is a need for 12 no. long stay cycle spaces and 2 no. short stay spaces. Although it has said conflicting requirements for the proposed Class E uses of 1 space per unit (3 spaces in total) or at least 1 space for all the Class E floorspace (1 space in total). The Council also add that the spaces for the residential and Class E uses should be separate, and both should allow extra space for larger cycles/mobility scooters.
37. There is some discrepancy between the revised plans as they both show different cycle storage arrangements. One plan shows a Sheffield stand in front of a proposed commercial unit and both show different cycle parking layouts, including a stacking system. However, it is clear that the relevant development plan policies do not require precise cycle storage details to be demonstrated at application stage, and in view of the areas shown on the plans, I am content there would be adequate space for appropriate secure cycle storage facilities to be provided for the whole development (even taking into account the Council's greater cycle parking requirements), without interfering with the operation of the commercial units and the swept path for delivery vehicles.
38. I am therefore content that this aspect, in the event I were minded to allow the appeal could be the subject of an appropriately worded condition. Furthermore, this approach would give the Council the opportunity to agree the precise details including adequate consideration of the London Cycle Design Standards, including space around the stands and ensure large cycles and mobility scooters can be accommodated.
39. I therefore conclude that subject to a condition, secure cycle parking could be provided at the appeal site, and the proposal could comply with the relevant cycle parking requirements as set out within LP Policy T5 and CLP Policies DM29 and DM30, the requirements of which are set out above.

Other Matters

40. The Council has referred to a planning obligation being required for a contribution of £1,500 per unit towards sustainable transport initiatives and removal of residents' parking permits in the event a Controlled Parking Zone is introduced in the future. Although the absence of a legal agreement to secure these obligations was not a reason for refusing the application. No legal agreement has been provided by the appellant in this respect. Due to the identified harm above, it has not been necessary for me to consider this aspect further on this appeal.
41. The appellant has referred to the presumption in favour of sustainable development, however I have not been made aware that the Council does not have a 5-year supply of housing, and I note its latest Housing Delivery Test result was 160% (2023). As such, and on the basis of the information before me, the presumption in favour of sustainable development referred to by the appellant and embodied in paragraph 11 d) of the Framework is not automatically engaged in this case.
42. The existing residential units at the appeal site are said to be below relevant national minimum space standards, and the proposal would make a better use of a previously developed site, and the appellant would be seeking to let the new units on assured short hold tenancies to future occupiers. These points are noted and they weigh in favour of the proposal.

43. It is acknowledged that the appellant says the appeal site is not in a Conservation Area, nor is it a listed building; that there are no objections to the principle of the proposed development, including the proposed Class E floorspace; that there would be no unacceptable effects upon trees; that conditions could be imposed to address fire safety, energy, and sustainability matters; that the proposal could satisfy relevant accessibility requirements; that there has been no harm identified in regard to privacy impacts or from any loss of sun lighting or day lighting; and that the proposed development is compliant with required space standards. However, these are mostly requirements of any well-designed development and are neutral matters that neither weigh in favour nor against the proposal.
44. It is acknowledged that pre-application engagement has occurred, it is unfortunate that this has not resulted in an acceptable scheme being submitted. In my determination of the appeal, I have focussed on the planning merits of the appeal scheme.
45. I have also had regard to objections from local residents and others received in addition to the main issues above, including but not limited to, the effect of the proposal on parking provision and highway safety effects on Coombe Road, privacy and potential loss of day light and sun light for neighbouring occupiers, measures to address waste, possible increased pollution, and whether there are empty properties nearby. Whilst I can understand the concerns, subject to planning conditions as appropriate, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Planning Balance and Conclusion

46. Although I found that the proposal would have an acceptable effect on most neighbouring occupiers, and that secure cycle parking could be addressed by a suitably worded condition, these are neutral matters. I also found that the proposal would be harmful to the character and appearance of the area, the living conditions for occupiers at no.6 Rutland Gardens, and the proposed undercroft arrangement would not be safe for users of the proposed development. I have found the proposal to be contrary to policies of the development plan on these matters, and I regard the proposal to constitute conflict with the development plan as a whole, and I attach significant weight to it in my decision.
47. The factors that weigh in favour of the proposal include its contribution to Government's objective of significantly boosting housing supply (a net gain of 4 no. new units), on a small site, that would make an effective and optimum use of previously developed land, in a well-connected area. In addition, the proposal would replace housing that is below the minimum space requirements. Future occupants would likely exercise purchasing power in local shops and services, helping to support its vitality. In addition, its development would create construction jobs and economic activity associated with the new Class E units that would contribute to the local economy, although these benefits would be reduced when the loss of the existing commercial units are taken into account. Even taking all of these benefits collectively together, given the scale of the proposed development they attract modest weight at most.
48. It is noted that paragraph 125 c) of the Framework says substantial weight should be given to using suitable brownfield land within settlements for homes which should be approved, where there is no substantial harm caused. In view of my

findings above, I regard there to be substantial harm identified in this case. Furthermore, paragraph 125 of the Framework should also be read alongside other relevant parts of the Framework, including paragraph 135 that requires development to function well and add to the overall quality of the area, be visually attractive and sympathetic to local character and history, including the surrounding built environment, and paragraph 139 that says development that is not well designed should be refused. Paragraph 135 also requires a high standard of amenity for existing and future users, and paragraph 117 c) says development should create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. As such, I regard there to be conflict with the Framework, when read as a whole.

49. I therefore conclude that there are no considerations, including the Framework and those matters raised in favour of the scheme when considered either individually or collectively that outweigh the identified conflict with the development plan. For the reasons given above, the appeal should be dismissed.

A Hunter

INSPECTOR