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## Appeal Decision

Site visit made on 23 April 2025

**by J Heppell BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13 June 2025**

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### **Appeal A Ref: APP/L5240/W/24/3354928**

#### **12 Godstone Road, Kenley, Croydon CR8 5JE**

- 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 A Steinberg against the decision of the Council of the London Borough of Croydon.
  - The application Ref is 24/02359/FUL.
  - The development proposed is a change of use of the lower ground floor to form an apartment including alterations.
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### **Appeal B Ref: APP/L5240/W/25/3358355**

#### **12 Godstone Road, Kenley, Croydon CR8 5JE**

- 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 A Steinberg against the decision of the Council of the London Borough of Croydon.
  - The application Ref is 24/03733/FUL.
  - The development proposed is a change of use of the lower ground floor to form an apartment including alterations.
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### **Appeal A: Decision**

1. Appeal A is allowed and planning permission is granted for a change of use of the lower ground floor to form an apartment including alterations at 12 Godstone Road, Kenley, Croydon CR8 5JE in accordance with the terms of the application, Ref 24/02359/FUL, subject to the conditions in the attached schedule.

### **Appeal B: Decision**

2. Appeal B is allowed and planning permission is granted for a change of use of the lower ground floor to form an apartment including alterations at 12 Godstone Road, Kenley, Croydon CR8 5JE in accordance with the terms of the application, Ref 24/03733/FUL, subject to the conditions in the attached schedule.

### **Preliminary Matters**

3. As set out above, there are two appeals at this site. They differ only in respect of the evidence presented in support of the proposals. I have considered each proposal on its individual merits. However, to avoid duplication, I have dealt with the two schemes together, except where otherwise indicated.
4. Appeal A was accompanied by a Flood Risk Assessment and Marketing Report. The same two documents formed part of the planning application which constitutes Appeal B. I have therefore determined both appeals having regard to these reports.

5. Appeal B was accompanied by a lease for the ground floor shop unit. I am satisfied that no party has been prejudiced, and I have therefore determined Appeal B having regard to the lease.

### **Main Issues**

6. The main issues in both appeals are:
- the effect of the proposal on the commercial operation of the ground floor business; and
  - the effect of the proposal on flood risk and sustainable drainage.

### **Reasons**

#### *Commercial operation of the ground floor business*

7. The appeal site sits within a parade of shops. The ground floor is used as a lock up shop, currently occupied by a tattoo parlour, and the first floor is a flat. The lower ground floor, which is accessed via the entrance to the flat, is currently empty. By virtue of the fact that the site slopes down towards the rear, the lower ground floor opens out onto a small rear yard. The proposal is to convert it into a studio flat.
8. A report prepared by the property agents who marketed the shop unit highlights that this is a tertiary parade of shops to which traditional retailers, who might require additional space to store stock, are less likely to be attracted. The report confirms that none of the interested parties who inspected the unit, including the tattoo parlour operator, identified a requirement for a basement, and it adds that the basement could put off potential occupiers as it would increase the rent. The report concludes that there would be no difficulty reletting the shop unit in future without a basement. The Council considers the lack of detailed marketing to be a failing of the report, but as the report provided a professional opinion regarding the commercial appeal of the shop unit without a basement, I would not expect it to include details of marketing.
9. The Council has pointed to its duty under policies SD6 of the London Plan March 2021 (LP) and DM4 of the Croydon Local Plan 2018 (CLP) to ensure that the vitality and viability of the borough's town, district and local centres is maintained by not permitting changes of use which result in a net loss of ground floor retail uses within main retail frontages. Given that the appeal site lies within the Godstone Road Kenley Shopping Parade, the appellant has highlighted that a more relevant policy is Policy DM6 of the CLP, which seeks to maintain the vitality and viability of the borough's shopping parades by ensuring that commercial premises remain in either retail or office use. The Council has drawn attention to the site's below average Public Transport Access Level rating of 2 and the consequent need to retain local services within walking distance of residents. However, as the proposal would retain a commercial use at ground floor, it satisfies the policy, thus ensuring that the shopping parade would maintain its viability and vitality.
10. The Council has argued that as Policy DM4 of the CLP predates the change to the Town and Country Planning (Use Classes) Order in 2020, when tattoo parlours were redesignated as Class Ec(iii) uses instead of being sui generis (outside a use class), the policy aim of retaining "Class A" uses (as retail uses were then designated) does not apply to tattoo parlours. However, there is nothing to indicate

that this is how Policy DM4 should be interpreted, and moreover nothing to indicate that tattoo parlours are not appropriate uses within shopping parades.

11. I concur with the appellant's view that this is a tertiary parade of shops which is as well suited to a tattoo parlour as to traditional retailers, and I am moreover satisfied that a basement is not essential to the continuing appeal of the ground floor unit to commercial tenants such as tattoo parlours. This conclusion is reinforced by the fact that there is no direct access from the shop unit to the lower ground floor, meaning that the only way for stock to be moved between the two would be via the lobby serving the upper floor flat, which could lead to conflict. It is also persuasive that several of the other buildings in the parade have converted their lower ground floors to flats, whilst retaining commercial tenants at ground floor.
12. In relation to Appeal B only, the appellant has submitted a lease for the ground floor premises dated 21 November 2024, showing that the lease excludes the lower ground floor. This evidence merely corroborates my conclusion that a change of use of the lower ground floor to a flat would not affect the attractiveness of the shop unit to commercial tenants.
13. I therefore conclude that the proposal would not harm the commercial operation of the ground floor business and would not therefore conflict with either Policy SD6 of the LP or policies DM4 and DM6 of the CLP, the aims of which I have outlined above.

#### *Flood risk and sustainable drainage*

14. Policies SI 12 of the LP and DM25.1 of the CLP require that, in order to reduce flood risk, all sources of flooding be taken into account by steering development to areas with a lower risk of flooding and applying the sequential and exception tests where appropriate. The site is located within Flood Zone 1 where, under Table 8.1 of the CLP, all uses are permitted. The Environment Agency's Groundwater Vulnerability Map identifies the site as being at high risk of groundwater flooding, as a consequence of which the Council has placed the site within a critical drainage area.
15. However, the National Planning Policy Framework exempts changes of use from the sequential test (which Table 8.1 of the CLP would otherwise apply to sites at risk of groundwater flooding); and Table 8.1 does not require the application of the exception test within Flood Zone 1. There is therefore no policy objection on flood risk grounds to the lower ground floor of the premises being converted to a flat.
16. In accordance with the Environment Agency's Standing Advice on Preparing a Flood Risk Assessment, the appellant has prepared a Flood Risk Assessment (FRA). It confirms that as no extension is proposed to the building, the risk of groundwater flooding elsewhere will not be increased. A flood mitigation strategy has been prepared which recommends tanking the lower ground floor to prevent the ingress of groundwater, and installing a pump and sump so that groundwater can drain away.
17. The Council has not contested the effectiveness of the proposed flood mitigation strategy, but has queried whether there is sufficient space within the proposed flat to install the mitigation measures. As tanking involves adding an extra skin to the walls and floor, whilst the pump and sump would be located under the floor, neither would reduce the proposed floorspace of the flat. Other possible measures, such

as suspended floors and raised floors, are identified as optional only. On the basis that tanking and a pump and sump are the preferred options, I am satisfied that effective flood mitigation measures could be implemented which would not affect the size or functionality of the proposed flat.

18. I therefore consider that the appellant's flood mitigation strategy is capable of being appropriately implemented so as to ensure that future residents are not put at risk of flooding. To ensure that the mitigation measures are installed in the most effective and least disruptive manner possible, precise details of the measures would need to be submitted to and approved by the Council.
19. The reason for refusal indicates that the proposal has not provided sufficient sustainable drainage features. The FRA has applied the hierarchy of surface water drainage options set out in Planning Practice Guidance and concluded that the only option is to discharge to the public sewerage system. Noting that the small size of the rear yard limits the scope of sustainable drainage features, the FRA recommends rainwater harvesting, permeable paving and water butts. In light of this constraint, I consider that the proposed sustainable drainage measures set out a realistic range of options in accordance with Policy SI 13 of the LP, and in doing so respond to the circumstances of the site. Details of the measures proposed would need to be submitted to and approved by the Council.
20. I therefore conclude that the proposal would not increase flood risk, and would make appropriate provision for sustainable drainage, in accordance with policies SI 12 and SI 13 of the LP and Policy DM25 of the CLP, the aims of which I have outlined above.

### **Other Matters**

21. There is disagreement between the parties about whether the proposed use is more vulnerable or highly vulnerable, based on the flood risk vulnerability classifications used in Planning Practice Guidance. The appellant considers the accommodation to be on the lower ground floor of the building and therefore more vulnerable, whilst the Council considers the accommodation to be in the basement and therefore highly vulnerable. However, as the site is located within Flood Zone 1 where both more vulnerable and highly vulnerable uses are appropriate, the matter does not have a bearing on the outcome of the appeal.
22. The Council has indicated that its main need is for dwellings of three bedrooms or more, and that there is less need for one and two bedroom dwellings. Based on an overprovision of completed one bedroom dwellings in the Borough, it argues that there is no fundamental requirement for the proposed dwelling that would justify overriding other policies. However, since I consider that the proposal for a studio flat accords with the development plan, no policies of the development plan would be overridden.
23. An interested party has raised the issue of car parking in association with the proposed development, fearing that the proposal will give rise to additional traffic and parking issues, with resultant implications for highway safety. However, although the site has a public transport access level (PTAL) rating of 2, which the appellant describes as below average and the Council describes as poor, the site is within a reasonable walking distance of public transport and local services and facilities. As the Council has not raised an objection on traffic grounds, I have no reason to believe that highway safety would be adversely affected by the proposal.

## Conditions

24. The Council has recommended that seven conditions be imposed in the event that the appeals are allowed. The appellant has not raised objection to any of the suggested conditions. In assessing the need for the conditions, I have had regard to the policy requirements contained in the development plan and the tests set out in the Framework.
25. Standard conditions relating to the three year time limit (No 1) and the list of approved plans (No 2) are necessary.
26. It is essential that details of flood mitigation measures and sustainable drainage features are submitted for approval and thereafter installed and maintained. A pre-commencement condition is necessary so that the measures and features can be fully integrated into the development from the outset (No 3).
27. To ensure that the proposal harmonises with the surrounding area, external materials should match the existing (No 4).
28. In the interest of sustainability, cycle and refuse storage should be provided (No 5) and water efficiency measures incorporated in the development (No 6). (I have amended the Council's suggested wording of condition 5 to make it clear which details the condition refers to).
29. A condition is needed to ensure that the development incorporates suitable fire safety measures in accordance with the London Plan (No 7).

## Conclusion

30. For the above reasons, both proposals accord with the development plan, when read as a whole. Material considerations do not indicate that a decision should be taken other than in accordance with the development plan. I therefore conclude that both Appeal A and Appeal B should be allowed.

*J Heppell*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out entirely in accordance with the following approved drawings:  
24.1442/001  
24.1442/002  
24.1442/003  
24.1442/004  
24.1442/005 Rev A  
24.1442/006  
24.1442/007
- 3) No development shall commence until details of flood mitigation measures and sustainable drainage features, in accordance with the recommendations of the Flood Risk Assessment by WtFR Ltd dated 26.10.2024, have been submitted to and approved in writing by the local planning authority. The approved measures and features shall be installed prior to occupation of the development and retained thereafter in perpetuity.
- 4) Unless stated on the approved drawings, all new external work and work of making good shall be carried out in materials to match the existing on the building.
- 5) The details of cycle and refuse storage shown on drawing no. 24.1442/05 Rev A shall be provided and completed in accordance with this drawing prior to the first occupation of the development and maintained for the lifetime of the development.
- 6) The development hereby permitted shall achieve a minimum water efficiency standard of 110/litres/person/day.
- 7) The development hereby permitted shall be carried out in accordance with the provisions of the Fire Statement by Allen Planning Ltd dated 10.07.2024, unless otherwise approved in writing by the Local Planning Authority.

End of schedule