
Appeal Decision

Site visit made on 15 July 2025

by **L Gardner MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 July 2025

Appeal Ref: APP/L5240/W/25/3362992

Land and garages rear of 48 to 50 Sydenham Road, Croydon CR0 2EF

- 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 MM4 Investments Ltd. against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 24/01791/FUL.
 - The development proposed is construction of a three-storey building (following demolition of garages) to form 6 self-contained flats; private amenity space; communal amenity space; refuse/recycle and cycle provision; hard and soft landscaping and boundary treatment.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's second reason for refusal refers to harm to the living conditions of the occupiers of Flat 5. However, within their statement, the Council confirm that the reference should be Flat 6. The alleged harm detailed within the evidence corresponds with this, notably referring to first and second floor levels which affect Flat 6 rather than Flat 5 (which is proposed to be a ground floor unit). I have assessed the proposal based on the second reason for refusal relating to Flat 6. I am satisfied that neither party has been prejudiced by this approach given that the appellant has had the opportunity to comment through the appeal process.
3. The Council has confirmed that they would withdraw its reason for refusal in relation to refuse storage, subject to an appropriately worded condition, as suggested through the appellant's statement. I am satisfied that if the appeal were to be allowed, then the harm identified by the Council in the reason for refusal could be adequately mitigated by a suitably worded condition. Given that there is no longer dispute between the parties on this matter, I will not address it further.

Main Issues

4. The main issues are:
 - whether the development would provide its occupants with acceptable living conditions, with regard to outlook, daylight, outdoor amenity space and accessibility;the effect of the proposal on:
 - the living conditions of the occupants of 48 Sydenham Road, with particular regard to outlook and privacy;

- protected species, with particular regard to bats;
- the highway network including whether the proposal would make adequate provision for any additional need for sustainable transport improvement arising from the development, and
- the character and appearance of the area.

Reasons

Living conditions for occupiers

5. The proposed building would occupy most of the site area. Nevertheless, I understand that the proposal has evolved since an earlier appeal which was dismissed on the site (reference APP/L5240/W/22/3294658). Unlike the previous appeal scheme where the Inspector referred to high level windows, each of the bedrooms within the ground floor units would have openable, glass doors and the main bedrooms would have a secondary window in the side elevation. These openings would be of a sufficient size to allow the penetration of daylight commensurate to the size of the room which they would serve.
6. Nevertheless, the outlook for the ground floor flat bedrooms with only a single aspect would be dominated by the presence of the site boundary. Despite the increased distance when compared to the previous appeal proposal, the boundary would still be close to a degree that it would create a sense of enclosure leaving the affected bedrooms as unattractive environments in which to spend much time.
7. The main living space for Flat 6 would be on the second floor served by dual aspect windows and would include an external terrace. Beyond the railing for the terrace, it is proposed to install frosted glazing to a height of 1.8m. The set back of this frosted glazing, from both the terrace and the main windows to the living space, would not prevent daylight from entering the unit. However, the height of the glazing would mean that it would be a dominant feature to the outlook for the occupiers of Flat 6, particularly if they were to be sitting on the terrace. This would diminish the quality of the outdoor amenity space for the occupiers of Flat 6 and would create an unattractive living environment.
8. Policy DM10 of the Croydon Local Plan (CLP) (2018) amongst other matters requires proposals to deliver high quality private amenity space. It sets the standards expected for outdoor private amenity space as a minimum of 5m² per 1-2 person units and an extra 1m² per extra occupant thereafter. Notwithstanding the above concerns in relation to the quality of the space for the occupiers of Flat 6, each of the units would be afforded with a level of private amenity space which would meet these standards.
9. I note that the previous Inspector found the areas to the side and the rear of the building (intended to serve the ground floor units) to be less functional. However, these spaces have been increased in size through the appeal proposal before me. They would now far exceed the minimum requirements set by Policy DM10 of the CLP, and their size would hold some meaningful functionality (for example for hanging washing).
10. Given the proximity to the boundaries, the gardens for the ground floor units may not be an overly attractive environment to sit out in, but the communal garden also proposed could serve this function if required. The positioning of the communal

garden has changed since the previous appeal, now proposed to be positioned in the corner of the site, which would provide some respite from the activity around the building accesses.

11. Policy D7 of the London Plan (LP) (2021) relates to accessible housing, specifically compliance with Building Regulations in relation to wheelchair user dwellings and accessible and adaptable dwellings. As set out in the Council's officer report, the application form for the development states that none of the proposed units would comply with the relevant standards. The appellant has not refuted this within the evidence.
12. I note that the previous Inspector found that this matter could be dealt with by condition, but they specifically stated that '*the applicant has indicated that the dwellings would be constructed in accord with Building Regulation.*' This is materially different to the evidence before me and therefore I cannot be satisfied that this matter could be left to condition. The result of this is that the flats would not provide suitable living accommodation for wheelchair users or other users which require specific adaptations.
13. Whilst some aspects of the proposed development would be acceptable, these do not outweigh the overall harm that would result to the living conditions of future occupiers, specifically in regard to accessibility and outlook. I therefore find the proposal contrary to Policy DM10 of the CLP. I note that this policy does not refer explicitly to outlook, but it does relate more broadly to securing high quality living environments. In addition, the proposal would be contrary to Policies D6 and D7 of the LP. Policy D6 of the LP, amongst other things seeks for housing developments to be of high quality which provide comfortable and functional layouts.

Living conditions for neighbours

14. The proposal would introduce development to the rear of both 48 (No 48) and 50 Sydenham Street. No 48 is currently in use as a children's nursery with an area of play space immediately to the rear of the building. I share the view of the previous Inspector that the use of the building for a nursery does not have quite the same considerations as a residential property in respect to living conditions.
15. Nevertheless, the Inspector found that the previous scheme would represent an intrusive structure due to the building position, height and extent of glazing. The appellant's final comments suggest that the previous Inspector accepted oriel windows and obscure glazing as a potential solution to overlooking, and found the height and bulk of the proposal acceptable in the context of this main issue. However, I have not located any part of the previous Inspectors reasoning which leads to this interpretation.
16. Whilst the oriel windows and frosted glazing now proposed for Flat 6 would reduce direct overlooking to a certain degree, the extent of the proposed glazing within the whole building (both clear and obscure) would at the very least still lead to a perception of being overlooked. Moreover, the play area of the nursery would also still be overlooked at oblique lines of sight from the use of the terraces proposed elsewhere within the building.
17. The height of the building is proposed to be three storeys as was the case with the previous appeal scheme. The scale and massing of the development would have a harmful effect on neighbouring outlook despite the proposed boundary treatments

and distances between built form. I acknowledge that the proposed building would be lower than building heights which are established around it (including No 48). However, due to the position of the building to the rear of No 48, users of the external play space would experience a sense of enclosure between existing built form and the proposed building.

18. Based on the above, I conclude that the proposal would have a harmful effect on the living conditions of the occupants of 48 Sydenham Road, with particular regard to outlook and privacy. It would therefore be contrary to Policy DM10 of the CLP, which, in part seeks to protect the amenity of adjoining buildings. It would also be contrary to Policies D3 and D6 of the LP which amongst other matters seek to deliver appropriate outlook, privacy and amenity.

Protected species

19. The proposal includes the demolition of existing garages and the removal of trees. The appellant contends that the site is within a highly urbanised area considered to have very low ecological value and that no evidence of roosting bats has been observed during the last five years of land ownership. This has not been substantiated or evidenced through an ecological appraisal.
20. Based on the evidence before me, it is not possible to define the extent to which protected species may be affected by the proposed development. The appellant has suggested that this matter could be dealt with through a condition. It is stated that there are appeal precedents to this, however, these have not been presented in the evidence before me. Contrary to being standard planning practise, a condition for survey works should not be imposed other than in exceptional circumstances. I have not been presented with, nor have I identified any exceptional circumstances which would justify conditioning survey works relating to protected species.
21. The Council's reason for refusal in relation to this matter refers to Policy SP4 of the CLP which relates to urban design and local character. It also cites Policy DM28 of the CLP and Policy G7 of the LP, both of which relate more generally to trees and woodlands. I cannot find any direct relevance within these policies to the potential ecological harm to protected species.
22. Nevertheless, the National Planning Policy Framework (the Framework) sets out that if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. Based on the evidence before me, I cannot be satisfied that significant harm to biodiversity, specifically bats which are a protected species, would not occur. The provisions of the Framework therefore indicate that the appeal should be dismissed on this basis.

Highway network

23. Policy DM29 of the CLP states in part, that in order to promote sustainable growth in Croydon, development should promote measures to increase the use of public transport, cycling and walking. The site is within an area with a public transport accessibility level (PTAL) of 6b which represents the highest level. Both parties agree that the development would need to be car free, with future occupiers excluded from applying for parking permits for the local area.

24. I note that the previous Inspector had a unilateral undertaking before them to remove future resident's access to parking permits and thereby ensure the development would be car free. No such undertaking is before me through the current appeal proposal.
25. The appellant suggests that this is a matter which could be dealt with through condition, setting out suggested wording within their statement. A copy of an appeal decision which accepts the principle of using a condition to support car free development has also been provided within an associated appendix (APP/B5480/W/23/3331558). To the contrary, the Council have referred to appeal decisions where Inspectors have ruled out the imposition of such conditions, albeit copies of these decisions have not been provided.
26. Planning Practice Guidance states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Whilst it may be appropriate in exceptional circumstances for a negatively worded condition requiring a planning obligation to be entered into before certain development can commence, in this case it has not been demonstrated that an exceptional circumstance exists, such as clear evidence that the delivery of the development would otherwise be at serious risk.
27. I therefore have no reasonable mechanism to ensure that the development would be car free in practice. In the absence of this, the development could lead to additional vehicles seeking to park in a controlled parking area. A lack of available parking spaces could lead to an increased likelihood of illegal or obstructive parking which would have associated detrimental impacts to highway safety through an increased risk of vehicle and pedestrian conflict.
28. Moreover, the Council are also seeking a sustainable transport contribution in line with Policy SP8 of the CLP. This policy states, amongst other matters that new development will be required to contribute to the provision of electric vehicle charging infrastructure, car clubs and car sharing schemes. The proposal would lead to the creation of six flats which could reasonably generate additional demand for initiatives such as car clubs and car sharing schemes.
29. Contributions are therefore required to be secured to mitigate the impact of the development. The Council have set out the planned sustainable transport improvements which include monetary contributions towards car clubs with electric charging points. I am satisfied that the contribution requested by the Council would meet the tests set through paragraph 58 of the Framework.
30. The condition suggested by the appellant does not address this matter nor provide the means to secure the financial contribution warranted by the development. The proposal has therefore failed to demonstrate that it would make adequate provision for a car free development and for the additional need for sustainable transport improvement arising from the development. In this respect, the proposal is contrary to Policies SP8 and DM29 of the CLP. It is also contrary to Policy T4 of the LP which amongst other matters sets out that mitigation will be required for highway improvements where appropriate.

Character and appearance

31. The site is within a dense urban area where back land development is a prevalent form of development. Building heights both fronting Sydenham Street and the existing forms of development to the rear of these buildings, are significant, up to six stories within close proximity to the appeal site. The appellant has provided details of some of the neighbouring developments through appendices to their statement. The proposed building, at three stories in height would be in keeping with the height of neighbouring built form.
32. Whilst the Council continue to raise issue with the scale of the development in context of the size of the site within which it would sit, I note that this was not raised as a cause of concern by the Inspector dealing with the previous appeal proposal on the site. In the appeal scheme before me, the distance to the rear and side boundaries of the site has been increased. Based on this, I see no reason to take a different view from the previous Inspector in relation to the scale and massing of the proposal.
33. The detailing of the proposed building has evolved since the previously dismissed appeal, specifically in relation to the rear elevation. The previous Inspector found that the '*composition of the rear elevation in particular is poor.*' They then go on to reference proximity to the site boundary and the use of high level windows. The window detailing on the rear elevation would now only feature two high level windows (to serve the proposed cycle store). The articulation to the rear of the building would, rather than being generic, be visually more attractive in line with the composed form of the front elevation. In this context, an exploration of options to justify the design rationale is not warranted.
34. As discussed above, it is intended to install oriel windows at the first floor and a frosted glass panel to the front of the terrace for Flat 6 at the second storey. Whilst the panel in particular would appear somewhat as an alien feature to the overall composition of the front elevation, its extent would be modest and would not be so obtrusive to have a material impact on the design of the building as a whole.
35. Landscaping proposed includes a communal play and amenity area, grassed borders around the side and the rear of the building, as well as some areas of landscaping to the side of the access path and along the boundaries. Hardstanding would be restricted to that necessary to serve the accesses to the development and would not be significant to the overall site area.
36. Policy SP4 of the CLP requires, amongst other matters for development to be of a high quality which respects and enhances Croydon's varied local character. Policy DM10 of the CLP, which I consider to be relevant despite the sites position within the Croydon Opportunity Area, also requires proposals to create a high quality built environment which includes requiring proposals to respect the scale, height and massing of the surrounding area. Policy D4 of the LP relates more generally to delivering good design whilst Policy D8 of the LP, amongst other matters seeks for proposals to ensure that the public realm is well designed including in the context of landscape treatment.
37. The Council's reason for refusal in relation to this matter also refers to Policy SP2 of the CLP. This relates to the delivery of homes in a more strategic sense and therefore I find no conflict or direct relevance in relation to this main issue.

38. Based on the above, the evolution of the building design would now mean that the proposal would have an acceptable effect on the character and appearance of the area. In respect to this main issue, it would therefore comply with Policies SP4 and DM10 of the CLP and Policies D4 and D8 of the LP. A lack of harm in respect to this main issue does not overcome the harm that I have identified in relation to the other main issues discussed above.

Other Matters

39. The proposal would lead to the delivery of six additional homes in a sustainable location. The site represents a windfall site and previously developed land, both of which can make an important contribution to the delivery of small and medium sized sites in the context of housing delivery. It is also noted that the site falls within the Croydon Opportunity Area where new housing is specifically promoted. These represent benefits of the proposal to which I have given moderate weight. Nevertheless, the benefits are not sufficient to outweigh the harm which I have identified to living conditions, protected species and sustainable transport.

Conclusion

40. I have found that the proposal would have an acceptable effect on the character and appearance of the area. However, I am unable to conclude that the proposal would provide acceptable living conditions for future occupiers or have an acceptable effect on the living conditions for neighbouring occupiers. I have also found harm in relation to protected species and the highway network. Consequently, for the reasons given above, having regard to the development plan when read as a whole and all relevant material considerations, I conclude that the appeal should be dismissed.

L Gardner

INSPECTOR