
Appeal Decision

Site visit made on 22 May 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 June 2017

Appeal Ref: APP/L5240/W/16/3163378

10 Croham Valley Road, South Croydon CR2 7NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of outline planning permission subject to conditions.
 - The appeal is made by Aventier Land Bank against the decision of the Council of the London Borough of Croydon.
 - The application Ref 16/03530/P, dated 8 July 2016, was approved on 12 September 2016 and planning permission was granted subject to conditions.
 - The development permitted is demolition of existing building; erection of a pair of four bedroom semi-detached houses with accommodation in roof space; formation of vehicular access and provision of associated parking.
 - The condition in dispute is No 11 which states that: Notwithstanding anything contained in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015, or any amendment or replacement thereof, no enlargement of the dwelling (including the erection or enlargement of a garage or any other building or enclosure within the curtilage of the dwelling) shall be carried out without the express permission of the Local Planning Authority.
 - The reason given for the condition is: To protect the amenities of adjoining occupiers and the visual character of the area in accordance with Policies UD2, UD3, UD8 and H2 of the Croydon Replacement Unitary Development Plan (The Croydon Plan 2006) saved Policies 2013.
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Decision

1. The appeal is allowed and planning permission Ref 16/03530/P for the demolition of existing building; erection of a pair of four bedroom semi-detached houses with accommodation in roof space; formation of vehicular access and provision of associated parking at 10 Croham Valley Road, South Croydon CR2 7NA granted 12 September 2016 by the Council of the London Borough of Croydon, is varied, by deleting condition No 11.

Preliminary Matters

2. The Council did not submit a statement of case because it missed the deadline to deposit its submissions. Nevertheless, I have had regard to the decision notice and the Case Officer's report to the Council's Planning Committee dated 8 September 2016.
 3. The planning application was submitted in outline with the appearance and landscaping of the proposed dwellings reserved for future consideration. Indicative drawings have been submitted showing how the dwellings could appear and the plots landscaped. The access, layout and scale of the development were advanced for consideration. I have approached the appeal on this basis.
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Background and Main Issues

4. The planning permission for the semi-detached houses included a condition removing permitted development rights¹ for their enlargement, including the erection of buildings within the curtilage of the dwellings. The reason for the condition, as stipulated on the decision notice, is to protect the amenities of the adjoining occupiers and the visual character of the area. The appellant is seeking the removal of the condition as they consider it is unnecessary and exceptional circumstances that would otherwise justify it have not been demonstrated.
5. Taking the above background into account the main issues are whether the condition is necessary and thus reasonable in the interests of protecting: 1) the amenities of adjoining occupiers: and 2) the character and appearance of the area.

Reasons

The amenities of adjoining occupiers

6. The appeal site encompasses a detached dwelling set back from the road behind a front garden. The front elevation of the existing property is broadly flush with those either side and this creates a discernible building line which is typical of the area. To the rear of the plot is a golf course.
7. The layout and scale of the appeal scheme has been presented for consideration. The semi-detached houses would be positioned broadly in the location of the existing house but would be deeper and taller than it. Due to the site levels the ridge height of the semi would be lower than 12 Croham Valley Road (No 12) but slightly higher than 8 Croham Valley Road (No 8). The rear elevation of the semis would project back past those of Nos 8 and 12.
8. The height and depth of the proposed semi would not dominate the outlook from the adjoining properties or result in an unacceptable loss of day or sunlight. This would be due to the approved position of the semi within the established building line, the acceptable depth of the structure and the spaciousness of the proposed plots and those adjoining them, which would result in the bulk of the rear projection being inset from the neighbouring boundaries. These circumstances are such that it is unlikely that modest extensions, erected by enacting permitted development rights, would harm the outlook from, and level of light entering, the adjoining properties. Nothing of substance has been submitted that would demonstrate otherwise.
9. The appearance of the semi is a reserved matter so the final position and number of windows does not form part of the proposal before me. The privacy of the occupants of the adjoining properties could be safeguarded if careful consideration is given to the position and orientation of the windows within the semi. There is nothing before me to suggest there would be an inherent and unacceptable loss of privacy from the proposal.
10. Any additional upper floor windows inserted in the side elevations of the dwellings could only be permitted development if they were obscured and non-opening or high level. This would safeguard the privacy of neighbours. Boundary treatment secured at the reserved matters stage (under landscaping)

¹ Set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

would prevent a loss of privacy from any ground floor windows in the semi. Any new windows in the rear elevation would only result in overlooking at an oblique angle, which would not be harmful.

11. To be considered permitted development any outbuildings would need to be single storey and could not exceed 4m in height or have an eaves height greater than 2.5m. Due to the size of the plots it is unlikely any outbuildings would need to be inherently located in such a way that they would harm the amenity of neighbours within the development or either side of it.
12. I therefore conclude that the condition is not necessary² in the interests of protecting the living conditions of adjoining occupiers. It is therefore unreasonable. The use of permitted development rights would not inherently harm the living conditions of adjoining occupiers and therefore the occupation of the dwellings with permitted development rights enabling the extension of the dwellings and the erection of outbuildings would adhere to Policies UD2, UD3, UD8 and H2 of the Croydon Replacement Unitary Development Plan (The Croydon Plan 2006) Saved Policies 2013 (UDP).

Character and appearance

13. The Council have approved the scale and layout of the appeal scheme. Sufficient space would be retained around the dwellings to enable them to integrate with the grain and scale of surrounding development. The approved layout would leave few options available for extensions and outbuildings that could be erected as permitted development and be visible from the street. The options available would be modest side extensions, roof extensions and porches. It has not been demonstrated that such extensions would inherently harm the character and appearance of the area although such a conclusion is dependent on the final design of the semi.
14. With the above in mind, there is nothing before me to suggest the Council could not impose a condition removing some permitted development rights once the final appearance of the semi has been submitted - with a condition attached to any approval of the reserved matter. For example, if a hipped roof is ultimately proposed the Council may wish to prevent a hip to gable extension or any other alterations that may unbalance a symmetrical front elevation, such as porches. However, the final appearance is unknown and therefore it would be premature to remove permitted development rights at this stage.
15. I therefore conclude that the condition is not currently necessary in the interests of protecting the character and appearance of the area. It is therefore unreasonable. The occupation of the dwellings with permitted development rights enabling the extension of the dwellings and the erection of outbuildings would adhere to Policies UD2, UD3, UD8 and H2 of the UDP.

Other Matters

16. Paragraph 017³ of the Planning Practice Guide states that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Moreover, it

² When applying Paragraph 206 of the National Planning Policy Framework and the guidance in the Planning Practice Guide Paragraph 003 Reference ID: 21a-003-20140306

³ Reference ID: 21a-017-20140306

states that the scope of such conditions needs to be precisely defined. The Council have not outlined the exceptional circumstance behind the condition, which is wide in scope. The absence of this lends weight to my conclusion that the condition is unreasonable.

Conclusion

17. From a consideration of the information presented I conclude that the planning permission without Condition 11 would adhere to the development plan and should therefore be varied. Accordingly, I conclude the appeal should be allowed.

Graham Chamberlain
INSPECTOR