
Appeal Decision

Site visit made on 22 October 2018

by Nicola Davies BA DipTP MRTPI

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

Decision date: 31st October 2018

Appeal Ref: APP/L5240/W/18/3195629

32 Hartley Down, Purley CR8 4EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Nowsad Gani of Ganco Asset Management Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref 17/05486/FUL, dated 3 November 2017, was approved on 18 January 2018 and planning permission was granted subject to conditions.
 - The development permitted is Alterations; Conversion to form 6 units following previous approval to convert this single dwelling house to 5 units granted permission under 16/02462/P.
 - The condition in dispute is No 6 which states that: The first floor roof area of the structure hereby permitted shall not be used as a balcony, roof garden or similar area and notwithstanding any contained in Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, or any amendment or replacement thereof no alterations shall be carried out to create access to it.
 - The reason given for the condition is: To protect the privacy of adjoining occupiers.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.
3. The Croydon Local Plan 2018 has also been adopted since the planning permission was granted. This has replaced the Croydon Plan 2006. This appeal has been lodged subsequent to the adoption of the Croydon Local Plan 2018. Both main parties have had the opportunity to comment on the relevance of the 2018 Plan within their appeal submissions.
4. The Council has indicated in its Appeal Statement that the policies relevant to this appeal are Policies SP4.1 and DM10 of the Croydon Local Plan 2018, Policy SP4.1 of the Croydon Local Plan: Strategic Policies 2013 and Policies 3.5, 7.1, 7.4, 7.5 and 7.6 of the London Plan (Consolidated with Alterations since 2011). The Council advise that Policy DM10 has replaced those previously relevant Policies H2, UD2 and UD3 of the Croydon Plan 2006 referenced by the Council in its delegated report.

Background and Main Issues

5. Planning permission has been granted by the Council to convert the single dwelling house at 32 Hartley Down to 6 residential units. Condition 6 has placed a limitation on this planning permission to restrict the use of the first floor roof area at the rear of the property as a balcony or roof garden or similar area. The appellant seeks to remove this condition and make a change to the development by proposing a privacy screen around the first floor flat roof area. The change would also include a dividing screen that would create two outdoor areas upon the first floor roof area to facilitate this area's use as an outside balcony or terrace associated with the two first floor residential units.
6. I consider the main issue is the effect removing the condition would have on the living conditions of adjoining occupiers.

Reasons

7. The appellant contests that with the new screens the privacy of the adjoining occupiers would not be compromised. Photographic images with imposed screens have been provided to assist in demonstrating how the screens would appear.
8. The Council explains that the condition is necessary owing to the land levels of the site, which fall away from south-east to north-west. It is considered that any private amenity terrace at first floor level would significantly overlook not only the adjoining occupiers but also the future occupiers of the ground floor units within the development. As such, the Council considers the condition is necessary to protect the living conditions of the adjoining occupiers having regard to the tests set out at paragraph 55 of the revised Framework.
9. It is clear to me that without any privacy screens unobstructed overlooking would take place of adjoining occupiers' outdoor living space and this would create harmful overlooking to take place. However, although not pursuing the variation of condition 1 that relates to the approved drawings, the appellant seeks to provide privacy screens with the aim of preventing unrestricted observation from taking place.
10. The privacy screen proposed by the appellant would be 1.8m at both ends of the roof terrace or balcony and would be 1.2m along its north-western elevation. If the first floor flat roof were to be used as outdoor living space I do not consider that a 1.2m high screen would be of sufficient height to prevent observation from this elevated outdoor living space toward the private rear gardens of the adjoining properties either side. It would also not prevent direct overlooking of the outdoor living environments of the terraces relating to flats 1 and 2 at ground floor.
11. The appellant contends that the garden to the south west is already overlooked by existing windows with or without the use of the terrace and the north-east garden is obscured by tall trees. It is possible that such overlooking from existing windows could take place from time-to-time. However, in order to gain any clear view of neighbouring gardens it would be necessary to stand within very close proximity to windows, therefore, observation would need to be actively sought. I accept that the existing tall trees along the north-eastern boundary would reduce views into the adjoining garden. Nonetheless, I

observed at my visit that views into the adjoining garden could be achieved over a 1.2m screen and that the trees would not fully prevent observation of the rear garden.

12. I, therefore, consider observation of adjoining occupiers' outdoor living environments would take place. This would create an invasion of privacy and would substantially diminish the enjoyment of the outdoor living environments of the adjoining occupiers. I find that this would result in harm to the living conditions of adjoining occupiers.
13. The appellant contends that by not providing private outdoor amenity space for occupiers this would be detrimental to the future occupiers overall health and wellbeing and considers this goes against policies of the Croydon Local Plan. DM10 of the Croydon Local Plan requires all new residential development to provide private amenity space but it also requires the amenity of the occupiers of adjoining buildings to be protected.
14. I accept that a private outdoor living space would be beneficial to the future occupiers of first floor flats 3 and 4 and that it would improve their living conditions. Nonetheless, this does not make it acceptable to create a poor living environment for other existing and future occupiers. In my judgement the benefit to the future occupiers of flats 3 and 4 would not outweigh my above concerns or justify the proposed development.
15. It is also contested that if the roof area is not utilised as a terrace or balcony this would raise maintenance issues relating to trapped leaves, debris and pigeon foul. It is put forward that by utilising this roof area as a terrace or balcony the occupiers would have access to this area and would keep it maintained. However, I have not been directed to any substantive evidence that might suggest that these issues would be likely to create significant problems, therefore, I afford these matters limited weight in favour of the proposal.
16. There is the possibility that future occupiers might disregard condition 6 and use the roof area as a terrace on an ad hoc basis by climbing over the Juliet balconies. Whilst this is indeed possible, I consider the open and unenclosed nature of the roof area, as permitted, would discourage this as this outdoor area would not feel safe. Furthermore, the Juliet balconies would be of some height and climbing over these would not provide easy access to the roof area. I therefore consider these factors would discourage the roof area being used as a terrace. I also afford this little weight in favour of the proposal.
17. I conclude, for those reasons set out above, that the condition is reasonable and necessary to be retained in the interests of the living conditions of adjoining occupiers. The proposed development would not protect the amenity of the adjoining occupiers and therefore the proposal would be contrary to Policy DM10 of the Croydon Local Plan 2018 that seeks, amongst other matters, to protect amenity. The proposal would also conflict with the Framework as the condition is necessary and reasonable. I also consider the condition takes due regard of the conditions tests set out in the Framework and the National Planning Practice Guidance.

Conclusion

18. For these reasons given above, I conclude that the appeal should be dismissed and the condition retained in its present form.

Nicola Davies

INSPECTOR