



Appeal Decisions

Site visit made on 25 October 2018

by D Guiver LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 December 2018

Appeal Ref: APP/L5240/W/18/3197984

64 Foxley Lane, Purley, Surrey CR8 3EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Richard Wellesley Cole against the decision of the Council of the London Borough of Croydon.
 - The application Ref 17/00746/FUL, dated 13 February 2017, was refused by notice dated 19 September 2017.
 - The development is minor amendment to create basement for approved development "13/03311/P, Alterations; conversion of three existing flats to form 3 two bedroom and 2 one bedroom and 1 studio flats; erection of single/two storey side/rear extension and dormer extensions in roof slopes; siting of parking turntables and provision of associated parking".
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Appeal Ref: APP/L5240/W/18/3198032

64 Foxley Lane, Purley, Surrey CR8 3EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to permit a non-material amendment following a grant of planning permission.
 - The appeal is made by Mr Richard Wellesley Cole against the decision of the Council of the London Borough of Croydon.
 - The application Ref 17/03646/NMA, dated 13 July 2017, was refused by notice dated 14 September 2017.
 - The non-material amendment proposed is:
 1. Replace 4No. windows to door/side light at first floor
 2. Replace 2No. windows to door/side lights at ground floor
 3. Change of rear extension roofs from pitched to flat construction.
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Decisions

1. Appeal A is allowed and planning permission is granted for minor amendment to create basement for approved development 13/03311/P at 64 Foxley Lane, Purley, Surrey CR8 3EE in accordance with the terms of the application, Ref 17/00746/FUL, dated 13 February 2017, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Ordnance Survey Location Plan; 9174_14; 9174_16; 9174_17; and 9174_18.
 - 2) The basement room hereby permitted shall not be used for any purpose other than a communal ancillary space for the occupiers of the dwellings permitted in planning permission ref. 13/03311/P dated 28 November 2013.

- 3) None of the dwellings permitted in planning permission ref. 13/03311/P dated 28 November 2013 shall be occupied until works for the disposal of sewage and mitigation of sewage flood risk shall have been provided on the site to serve the basement room in the development, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
 - 4) The details of works for the disposal of sewage and mitigation of sewage flood risk shall be submitted to the local planning authority within three months of the date of this planning permission.
2. Appeal B is dismissed.

Preliminary Matters

3. The appellant is described as Mr Richard Cole in the application subject to Appeal A and as Mr Richard Wellesley Cole in the application subject to Appeal B. I am satisfied that the appellants in these appeals are the same person and for consistency I have adopted the full name used in Appeal B. For consistency I have also adopted the same site description for both appeals.
4. The application subject to Appeal A is described in the application form as a minor amendment to an existing planning permission but is a material addition to the extant building and therefore is a stand-alone application for planning permission separate from the permission for the approved development. I have accordingly removed the details of the extant permission from my decision above.
5. The application subject to Appeal A was made for retrospective permission and from my site visit it was apparent that the application subject to Appeal B had been implemented and I have considered these appeals accordingly. However, this has not had any effect on my decision.
6. Since the date of the Council's decision, the National Planning Policy Framework 2018 (the Framework) has been published and has effect. As final comments were received after the publication of the Framework I am satisfied that the parties have had the opportunity to comment on its effect and have taken any comments into consideration in reaching my decision.

Main Issues

Appeal A

7. The main issues are:
 - a) the effect of the development on:
 - the character and appearance of the area; and
 - the living conditions of the occupiers of neighbouring dwellings; and
 - b) whether the development is appropriate having regard to flood risk.

Appeal B

8. The main issue is whether the Council's decision is amenable to an appeal.

Reasons

Appeal A

Character and Appearance

9. The appeal site comprises a large semi-detached building in a predominantly residential area located on the slope of a hill. The property is set back from the road by ten metres or so and has been modified with extensions to the side and rear of the building, the addition of dormer windows, and a separate annex block in the rear garden. The gradient of the front garden requires a landing and stair built perpendicular to the front elevation to provide access to the main ground floor entrance.
10. A basement room has been created with external access via an exterior stair to the door which sits at 90° to the front elevation. The stairwell also serves as a light-well to the glass-panelled door and a window in the front elevation. The door is concealed beneath the exterior landing and the window is largely hidden from sight as it is partially below the ground level of the front garden and the gradient of the garden further reduces its visibility.
11. Railings along the landing and stairs would not be out of character with the area as there is an eclectic mix of boundary treatments in the vicinity, including railings to the front of the neighbouring property at 62 Foxley Lane and 55A Foxley Lane opposite. The window, door and light-well are not visually prominent or intrusive into the street scene and have no harmful effect on the character and appearance of the building or the surrounding area.
12. Therefore, the proposal would accord with Policy SP4.1 of the Croydon Local Plan: Strategic Policies 2013 (the Local Plan), Policies UD2 and UD3 of the Croydon Replacement Unitary Development Plan 2006 (the UDP) and Policies 3.5, 7.1, 7.4, 7.5 and 7.6 of the London Plan 2016, which seek to ensure that developments take account of, respect and reinforce local character and the pattern and grain of existing spaces.

Living Conditions

13. Because the window, door and light-well are not visually prominent and do not overlook any neighbouring land or buildings they have no detrimental impact on the living conditions of the occupiers of neighbouring properties with regard to form, scale, depth or siting.
14. Therefore, the proposal would accord with Policy UD8 of the UDP and Policy 7.6 of the London Plan 2016, which seek to ensure that developments respect the privacy and amenity of neighbouring residential occupiers and not cause unacceptable harm. The proposal would also comply with the advice in Supplementary Planning Document No. 2: Residential Extensions and Alterations in reference to visual intrusion and loss of privacy.

Flood Risk

15. The Council's decision notice states that the submitted Flood Risk Assessment (FRA) is adequate in terms of mitigating flood risks but then states this would contribute to local flood risks. The Council has identified this as a typographical error in the decision notice which should have referred to the FRA being inadequate.

16. Policy 5.12 of the London Plan 2016 seeks to ensure that developments comply with the flood risk assessment and management requirements of the Framework which advises that development should be directed away from areas at the highest risk of flooding. The appeal site is located in Flood Zone 1 and it is common ground that the appeal site is in a low risk area.
17. Policy SP6.4 of the Local Plan states that a FRA would be required only for major developments in Flood Zone 1. As the scheme is a minor development, there is no policy requirement for a FRA. Policy 5.13 of the London Plan seeks to ensure that developments utilise sustainable urban drainage systems unless there are practical reasons for not doing so. The appeal site largely comprises an established building connected to the existing foul and surface water drainage systems.
18. However, the Council's Surface Water Management Plan (SWMP) addresses the risk of surface water flooding. Presumably as a result of the site's hillside location, the SWMP identifies sewer flooding as the principal risk in Foxley Lane. The Council's evidence also identifies sewer flooding as the main risk for the basement. No compelling evidence has been provided to show an existing or increased risk of surface water flooding at the site as a result of the development. The appellant has proposed a number of potential mitigation solutions to sewer flooding but has not made definite proposals. However, identification and approval of an appropriate solution could be secured by a condition.
19. Therefore, subject to a condition requiring implementation of appropriate measures for sewage risk management the proposal would accord with Policy SP6.4 of the Local Plan and Policies 5.12 and 5.13 of the London Plan 2016. The proposal would also be in accordance with the advice in the Mayor of London's Sustainable Design and Construction Supplementary Planning Guidance 2014.

Appeal B

20. The appeal site benefits from planning permission¹ for the conversion of an existing residential property to provide for three two-bedroom flats, two one-bedroom flats and a studio flat, together with side, rear and dormer extensions and alterations to the parking provision. The appellant applied for a non-material amendment to the planning permission to permit replacement of some approved fenestration on the ground and first floors with doors and side lights, and for the structure of the roof to the approved rear extension to change from a pitched roof to a flat roof.
21. Non-material changes may be made to planning permissions and permissions in principle pursuant to section 96A of the Town and Country Planning Act 1990 (the Act) where the local planning authority is satisfied that the change is non-material. The Council was not satisfied that the alterations proposed were non-material amendments and determined that the alterations to the scheme required full planning permission.
22. Section 78 of the Act provides that an applicant may appeal the refusal of, a grant subject to conditions for, or a failure to determine an application for planning permission, permission in principle, consent required by conditions or

¹ 13/03311/P dated 28 November 2013

approval under a development order. There is no scope in section 78 and no authority elsewhere in the Act for an appeal against a local planning authority's conclusion that it was not satisfied that the alterations proposed were non-material amendments. Therefore, I am unable to address the relative merits of any party's arguments. Accordingly, Appeal B is misconceived and must fail.

Conditions

23. The conditions imposed are based on those suggested by the Council. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with the advice in the Planning Practice Guidance.
24. I have not imposed the standard conditions in respect of time limits as the application for planning permission was considered retrospectively. For certainty I have imposed a condition requiring compliance with the plans. To prevent use as an additional residential unit, which given its location and size would result in substandard accommodation, I have imposed a condition restricting the use of the basement to uses ancillary to the residential units in the remainder of the building.
25. To ensure that an adequate and appropriate sewage drainage system and mitigation measures against sewer flooding are provided for the basement at the appeal site I have imposed a condition restricting first occupation until a scheme is approved and installed.

Conclusion

26. Accordingly, for the reasons given above, and taking into account all other material considerations, I conclude that the Appeal A should succeed and Appeal B should be dismissed.

D Guiver

INSPECTOR