
Appeal Decision

Site visit made on 13 March 2019

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2019

Appeal Ref: APP/L5240/W/18/3210228

102 Foxley Lane, Purley, CR8 3NB

- 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 Frankham Developments Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref 18/01828/FUL, dated 12 April 2018, was refused by notice dated 18 July 2018.
 - The development proposed is the demolition of the existing house and garage and the erection of a three-storey building comprising six two-bedroom and three three-bedroom flats, with the formation of a vehicular access and provision of associated parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Frankham Developments Ltd against the Council of the London Borough of Croydon. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are the effects of the proposed development on:
 - the optimising of housing delivery in the borough, and
 - the living conditions of the occupiers of No 100 Foxley Lane by way of outlook and privacy.

Procedural Matters

4. For the purpose of clarification, Drawing P4 appears to show the east elevation marked as "west" and vice versa. Also the portion of roof above the rear gable does not appear on the drawing of the front elevation although, as the highest part of the roof, it would project above the level of the front portion of the roof.
5. There has been some debate as to the ownership status of the site and its relationship to a neighbouring development site at No 104 Foxley Lane. This issue will be considered in the main body of this decision letter, but for the avoidance of doubt a number of key events and dates are listed below in chronological order.

- Option Agreement for Frankham Developments to purchase No 104 Foxley Lane – dated 27 January 2017
- Planning application by Frankham Developments relating to development of nine flats at 104 Foxley Lane – dated 11 August 2017
- Planning permission granted for development at 104 Foxley Lane – dated 20 September 2017
- Option Agreement for Frankham Developments to purchase No 102 Foxley Lane – dated 26 October 2017 (stated intention being to develop nine residential dwellings on the property and the neighbouring property)
- Feedback from Croydon Council following pre-application discussions on a proposal by Frankham Developments to develop the joint sites of Nos 102 and 104 Foxley Lane for 24 flats – dated 23 January 2018
- Planning application relating to the current proposal at No 102 Foxley Lane – dated 14 April 2018
- Deed of assignment relating to No 104 from Frankham Developments to Greenwood Developments – dated 27 April 2018
- Planning refusal relating to the current proposal at No 102 Foxley Lane – dated 18 July 2018

Reasons

6. No 102 is a detached house on a large plot, situated on the northern side of Foxley Lane. There is a pair of large, wide-fronted semi-detached houses to the east of the appeal property, and the property to the west, No 104, is currently undergoing construction work to erect a block of nine flats. The plots along this part of Foxley Lane are irregular in shape, such that the dwelling at No 102 is angled slightly away from the adjacent No 100, and follows the line of the boundary between the two properties.
7. The proposed development would involve the demolition of the existing house and the erection of a three-storey block of flats. The block would be set back a little further from the front of the plot and would extend significantly further into the plot at the rear. It would also be somewhat wider than the existing house.

Effect on housing delivery

8. Policy SP2.2 of the Croydon Local Plan 2018 (CLP) indicates that the Council aims to provide a choice of housing for people in Croydon. This will be achieved by, among other things, ensuring that land is used efficiently and that development addresses the need for different types of homes in the borough. Policy 3.4 of the London Plan (LP) notes that development should optimise housing output for different types of location, taking into account local context and character. Policy H2 of the Draft London Plan (DLP) recognises that small sites, which could each provide up to 25 homes, should play a greater role in housing delivery.
9. Paragraph 1.3.1 of the Mayor's Supplementary Planning Guidance on Housing (SPG) states that one of the key themes of the London Plan is the recognition that, while the best use should be made of development opportunities, proper

account must be taken of the range of factors which have to be addressed to "optimise," rather than simply maximise, housing potential. In this context, for the purposes of the LP, 'optimisation' can be defined as 'developing land to the fullest amount consistent with all relevant planning objectives'.

10. In this case, the Council contends, in its first reason for refusal, that the development would fail to address the site's potential for optimising housing delivery and contributing to the boroughs need for affordable homes. The reasoning for this would appear to be that the appellants had pre-application meetings with the Council before the current application was submitted, in which a proposal for development of the combined sites of Nos 102 and 104 Foxley Lane was discussed. This would have resulted in the development of 24 flats, whereas the development of nine flats on the plot of No 104, as had previously been permitted in September 2017, along with the currently proposed nine flats on the plot of No 102, would result in an overall reduction of six units.
11. The appellants contend that Nos 102 and 104 represent separate sites and that they held options to purchase each site separately from the respective owners. On this basis, they claim that the first reason for refusal is misguided in that it is based upon an assumption that development of both sites together as one project was a feasible approach for the appellants to follow throughout the process of discussions and during the consideration of the subsequent planning application for the development of the plot at No 102. In addition, the appellants reject a claim by the Council that developing each site separately is a mechanism for avoiding the need to provide a proportion of affordable housing.
12. From the evidence before me, it would appear that the appellants had an option to purchase No 104 well before acquiring a similar option at No 102. In the meantime, the appellants applied for, and received, planning permission for the demolition of No 104 and erection of a new building containing nine flats. Subsequent to receiving this planning permission, the appellants acquired the option to purchase No 102, and from the option deed it would appear that the stated intention was to apply for planning permission for a development of nine residential dwellings on the site.
13. It would appear that the observations provided by the Council, following pre-application discussions, advised the appellants regarding concerns on a number of matters. In addition to stating requirements relating to affordable housing, the observations noted that a number of the flats did not meet internal space standards required by the government's Technical Housing Standards, and that there were design concerns that could require the proposed building to be reduced in width or split in two. On this basis it is not possible to determine on what basis the appellants may have chosen not to pursue the possibility of erecting a single building containing 24 flats on the combined site, but instead to return to the option of erecting a separate building containing nine flats.
14. The net effect of developing Nos 102 and 104 as two separate sites is that there would notionally be six fewer units on the sites than if a combined development of 24 units were to be constructed. However, as noted above, it is not possible, from the evidence available, to determine whether it would be possible to achieve a high quality development involving the erection of a single building containing 24 flats. Moreover, to achieve the optimum

developments on these plots is not the same as achieving the maximum number of units. Other planning objectives, including providing a high quality development that respects the character and appearance of the area, must also be taken into account. In this case, I find that development of two buildings, one on each of the two separate plots, would, arguably, better reflect the prevailing character of the area, which is generally typified by detached or semi-detached houses on individual large plots, with spaces in between.

15. In conclusion on this issue, therefore, I find that the proposed demolition of a single house on the appeal site and the construction in its place of a block of nine flats could be considered an optimisation of the housing delivery in the borough, taking into account the character and appearance of the surrounding area. It would not, therefore, conflict with Policy SP2.2 of the CLP, Policy 3.4 of the LP, or with guidance in the London Mayor's SPG.

Living conditions

16. The Council contends that the development would be detrimental to the amenities of the occupiers of adjoining property by reason of its size and siting resulting in visual intrusion. From the officer's report it would appear that the concerns are regarding the relationship of the proposed new building to the existing dwelling at No 100 Foxley Lane. In the report, the Council indicates concerns that, given the extensive rear projection, the three storey massing and the orientation of the sun, the proposed development would result in an overbearing form of development and would harm the residential amenities of No100 by virtue of visual intrusion. Furthermore, the presence of windows on the flank elevation would only exacerbate the overbearing nature of the development.
17. The appellants contend that the Council refused the application on 'size and siting' of the proposed development, despite acknowledging in the delegated report that the size, massing and design of the proposed development would be acceptable. However, it would appear that the Council acknowledged the acceptability of the size and siting from the perspective of the townscape and visual amenities of the area. This is not the same as acceptability from the perspective of the impact on the living conditions of neighbouring occupiers.
18. In this case, the existing house projects beyond the rear elevation of No 100 by just a few metres along the line of the boundary between the two properties, although it is angled away from the line of the rear elevation by virtue of the shape of the sites. The proposed block of flats would project significantly further back into the appeal site, also along the line of the boundary, at a distance of around 2.5 metres at the southern end, and around 5 metres at the northern end, where there is a small set-back.
19. The appellants note that the proposed building would not encroach beyond a 45 degree angle from the nearest window in the rear elevation of No 100. This may well be the case. However, there would be a long section of two-storey side wall, with a high sloping roof above, projecting beyond the rear elevation of No 100, and this would have habitable room windows within it, overlooking the private amenity space at the rear of that property. There would then be a further 5 metres of three-storey "walled gardens" projecting beyond that length of side wall. While this would be glazed, the appellants acknowledge that the use of obscured glass would be needed to ensure an adequate degree of privacy for the occupiers of No 100. This obscure glazing, which would need to

extend above eye level on each floor and for each flat, would continue the somewhat oppressive nature of the long side elevation of the proposed block of flats, very close to the boundary.

20. Beyond the glazed "walled gardens", there would be a further 4 metres of three-storey blank wall, although this would be set back by around 2.5 metres from the main side elevation. In total this would equate to nearly 20 metres of side elevation of the proposed block that would extend alongside the boundary with No 100 at a very close distance. This would be around half the length of the back garden of No 100, and given that the back garden narrows a little towards the rear, I find that the proposal would be visually dominant and represent an intrusive outlook for the occupiers of No 100. Furthermore, given the proximity of the habitable room windows located in the side elevation of the proposed block, there is also the potential for overlooking into the private amenity space immediately adjacent to the rear elevation of No 100, adding to the overbearing nature of the proposal.
21. In the light of the above, I conclude that the proposed block of flats, would be harmful to the living conditions of the occupiers of No 100 Foxley Lane by way of creating an oppressive outlook. On this basis, it would conflict with Policy DM10.6 of the CLP, which indicates that developments should ensure that the amenity of the occupiers of adjoining buildings is protected, and that they do not result in direct overlooking of such private outdoor space that is within 10 metres of the rear elevation of a dwelling.

Conclusion

22. I find that the proposal would not conflict with policies requiring the optimisation of the housing delivery in the borough, taking into account the character and appearance of the surrounding area. However, it would result in harm to the living conditions of the occupiers of the adjacent property at No 100 by way of outlook and privacy. Accordingly, I dismiss the appeal.

J D Westbrook

INSPECTOR