



Appeal Decision

Site visit made on 12 October 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2021

Appeal Ref: APP/L5240/W/21/3274178

Land at the rear of 45-47 Outram Road, Croydon CR0 6XG

- 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 Marc Gabriel of Mideon Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref 20/03729/FUL, dated 19 August 2020, was refused by notice dated 5 November 2020.
 - The development proposed is erection of two semi-detached one and a half storey three bedroom houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal application was determined, the London Plan has been adopted (March 2021) and the Government has published the revised National Planning Policy Framework (the Framework) (July 2021). Where relevant, the parties have been provided with an opportunity to comment on the implications of the policy changes. Consequently, no prejudice has occurred and the decision has been made taking into account the updated policy context and any comments received in relation to such.

Main Issues

3. The main issues are:
 - the effects of the proposal, including the loss of trees, on the character and appearance of the area and whether it would preserve or enhance the character or appearance of the East India Estate Conservation Area (CA) and settings of Locally Listed Buildings at Nos 45-47 Outram Road;
 - the effects of the proposal on the occupiers of the flats within the host buildings in terms of loss of outdoor amenity space; and
 - whether the proposal would be harmful to the living conditions of future neighbouring occupiers to the north in terms of overlooking.

Reasons

Character and appearance

4. The appeal site is formed from some space and garden to the rear of Nos 45 and 47 Outram Road which are internally subdivided into flats. The host properties are identified as 'Locally Listed' within the East India Estate

Conservation Area Appraisal and Management Plan SPD¹ (CA SPD) and are good examples of semi-detached dwellings which retain much of their original character. The site is also within the East India Estate Conservation Area (CA) which, under Section 72(1) of the Listed Building and Conservation Areas Act 1990, means that I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.

5. The special qualities of the CA derive from the dense concentration of historic buildings of a high architectural quality, which are formally laid out within a strong urban 'ladder' structure made up of six parallel roads. There is a degree of architectural variation within the well-defined layout, but it maintains a distinctive local character. The 'ladder' structure is evident and generally, gardens back onto gardens between the terraces with very limited intervening development save for small domestic outbuildings.
6. The appeal site is situated at the far end of the garden of two properties and sits within the well-defined back-to-back arrangement. The development of the end of the rear garden to No 45 would undermine the existing spacious character of the area through developing on to a site which has a clear identity as a garden between two opposing terraces and, partly owing to which, positively contributes to the character of the CA. The CA SPD indicates that development in back gardens will not generally be permitted due to the potential disruption to the area's special character and loss of green spaces.
7. The development of the end of the rear garden of No 47 could have a less harmful impact in a spatial sense owing to its relationship with the adjacent site which hosts some aged garage buildings. In this sense, the appellant's claim that the site is 'unique' is understood, although relating only to a part thereof. Although it is not currently proposed, the incorporation of this part of the site would 'square off' that adjacent site and could be accessed through a manner other than via a pedestrian route alongside No 47. However, this area plays host to a greater density of trees and vegetation which collectively contribute positively to the appearance of the CA, even in spite of their limited individual values, and which would be entirely lost to the development.
8. Consequently, whilst the harm from the form and siting of the proposal would be partly related to the manner in which it would subsume a rear garden that contributes to the area's and CA's identity, and partly through the loss of a green area of trees and vegetation which has a collective value to the area's appearance, particularly in views from Mulberry Road and from dwellings that back on to the site, it would be harmful when considered as a whole. As the proposal would not impact the well-preserved character of Nos 45 or 47 Outram Road themselves, would not be visible in context with them within the streetscene, and would be a sufficient distance to the rear of them, there would not be harm to them or the reasons for which they are identified as Locally Listed.
9. Whilst the design of the proposed dwellings would be unobjectionable insofar as they would include design features that are found in nearby buildings, and would be of an appropriate scale relative to the size of the site, the manner in which they would be accessed via a narrow pedestrian route alongside No 47 without any form of street frontage of their own, would result in a contrived

¹ East India Estate Conservation Area Appraisal and Management Plan Supplementary Planning Document (2014)

form of backland development that could not be held to constitute good design and which would undermine the character and appearance of the area and CA.

10. Whilst the appellant raises that the materials of construction would be sympathetic to the surrounding area and that replacement trees and vegetation could be planted, these matters, particularly in relation to the absence of real space within which replacement trees could be planted, do not overcome my concerns from the harm that would be caused.
11. In view of the above, the proposal would harm the character and appearance of the area and would fail to preserve the character and appearance of the CA. It would therefore conflict with, in particular, Policy HC1 of the London Plan and Policies SP4, DM10 and DM18 of the Croydon Local Plan (2018). These Policies collectively seek to secure high quality design and, where affecting a heritage asset, must integrate with and make a positive contribution to the historic environment. For similar reasons, the proposal would conflict with guidance in the CA SPD which seeks to preserve the special character of the CA.
12. Under the terms of the Framework, the level of harm to the CA, as a designated heritage asset, would be 'less than substantial' (paragraph 202). Such harm should be weighed against the public benefits of the proposal; a matter to which I return below.

Loss of outdoor amenity space

13. To the rear of No 47, there is a dedicated garden area and a separate fenced area beyond that in which trees and vegetation have established over a considerable period. Though the purpose of this surplus space is unclear, from the evidence and my own findings, it does not appear that the space has been available to residents of No 47 as garden and thus, could not be strictly lost to the development.
14. The situation with No 45 is different as its rear garden extends all the way back to the shared boundary with the dwellings on Havelock Road and is not deliberately subdivided as at No 47. The large area of garden is relatively flat, enclosed by trees and laid to lawn.
15. Policy DM10.4 of the Local Plan states that in the case of development in the grounds of an existing building which is retained, a minimum length of 10m and no less than half or 200 sqm of the existing garden area (whichever is the smaller) is retained for the host property, after the subdivision of the garden. The appellant's evidence indicates that the garden to be retained for No 45 would be over 140 sqm and at least more than half of the total available space.
16. In view of the above, the proposal complies with, in particular, Policy DM10.4 of the Local Plan in relation to the requirements to preserve adequately sized gardens as part of subdivision proposals.

Loss of privacy

17. The appeal proposal would be situated adjacent to and opposite some small garage buildings which are located around the outside of an area of parking and turning space. These garages are situated in an area between Outram and Havelock Roads and are accessed via a lane leading from the latter.

18. The Council's decision notice refers to the loss of privacy from land to the north, but there are no current occupiers of the site that have any levels of privacy that would be lost as a result of the proposal. It appears from the limited evidence provided that other applications relating to the redevelopment of that site have been submitted to the Council, although the outcome of the most recent of these and the interaction between it and the appeal proposal are unclear. Should any firm redevelopment proposal receive permission, then the potential effects of any development of the appeal site could be more readily assessed, but until then, there would be no particular harm from the appeal proposal having views towards the garage buildings.
19. It is also asserted that the proposal would have advantages from a crime and safety perspective by offering natural surveillance over the garages for the duration of their existence. Given the suggestion on the plans that the existing 1.7 metre wall would be retained between the garages and appeal dwellings, I consider there would be limited prospects for any crime deterrent benefits to be realised from such a relationship.
20. In view of the above, the proposal would not conflict with, in particular, Policy DM10.6 of the Local Plan which seeks to ensure that the occupiers of adjoining buildings are protected.

Other Matters

21. The appellant raises that the reduction in maintenance costs of the garden to the occupiers of flats within No 45 would be welcomed. I have seen little evidence to support the suggestion that such costs, presumably involving the cutting of grass and occasional tree works, are onerous in any event.
22. I have taken into account the supportive comments from a number of neighbouring residents which suggest that the regeneration of the site should be considered positive, with some wishing to benefit from an improved outlook over a maintained, rather than overgrown site.
23. I note that the proposed dwellings would be dual aspect and would have both sufficient internal floorspace and external amenity space to provide good standards of living conditions for future occupiers. Though, as already identified, the manner in which they would be accessed via a narrow, pedestrian passageway would not be acceptable for reasons relating to the quality of the development and safety of future occupiers.
24. The appellant has drawn my attention to another backland development to the rear of 68 Havelock Road, which itself is a Grade II listed building. Given the limited details provided, I have not been able to draw any useful comparisons and can only reaffirm that in the absence of such, all proposals must be treated on their own respective merits.

Planning balance and conclusion

25. Whilst the proposal would not result in a harmful quantitative loss of garden space or result in harmful overlooking of the presently unoccupied site to the north, it would harm the character and appearance of the area and the East India Estate Conservation Area. These harms bring the proposal into conflict with the development plan as a whole.

26. In terms of the public benefits of the proposal, it would result in the provision of two new three-bedroom dwellings, for which there is an identified need in the area, in a location that is considered sustainable. There would be resultant economic benefits, from the construction phase and post-occupation phase with new residents becoming reliant on local shops and facilities. There would also be social benefits, from increased access to aforementioned three bed houses.
27. However, these public benefits do not outweigh the less than substantial harm to the CA as a designated heritage asset, nor indicate that a decision should be taken other than in accordance with the adopted development plan.
28. Consequently, for the reasons set out above, the appeal is dismissed.

Hollie Nicholls

INSPECTOR