



Appeal Decision

Site visit made on 14 March 2022

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2022

Appeal Ref: APP/L5240/W/21/3275592

164 Pampisford Road, South Croydon, CR2 6DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Joy Madhavan against the decision of London Borough of Croydon.
 - The application Ref 20/03198/CONR, dated 21 July 2020, was refused by notice dated 23 November 2020.
 - The application sought planning permission for Alterations; conversion to form 1 three bedroom, 5 two bedroom and 3 one bedroom flats; erection of single/two storey side/rear extensions, dormer extensions in front, side and rear roof slopes, rooflights in front and side roof slopes and detached double garage at rear; formation of vehicular access onto Barnards Place (without compliance with conditions 8 of planning permission 18/01785/CONR) without complying with a condition attached to planning permission Ref 18/03025/CONR, dated 24 September 2018.
 - The condition in dispute is No 8 which states that: The development shall be carried out entirely in accordance with the following documents and approved drawings: 16385 Rev A; 17429/01; 17429/02 Rev A; 17429/03 and Site Location Plan.
 - The reason given for the condition is: To ensure an acceptable standard of development.
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Decision

1. The appeal is allowed and planning permission is granted for Alterations; conversion to form 1 three bedroom, 5 two bedroom and 3 one bedroom flats; erection of single/two storey side/rear extensions, dormer extensions in front, side and rear roof slopes, rooflights in front and side roof slopes and detached double garage at rear; formation of vehicular access onto Barnards Place (without compliance with conditions 8 of planning permission 18/01785/CONR) without complying with a condition attached to planning permission Ref 18/03025/CONR, dated 24 September 2018 at 164 Pampisford Road, South Croydon, CR2 6DA in accordance with the terms of the application, Ref 20/03198/CONR, dated 21 July 2020, without compliance with condition number 8 previously imposed on planning permission Ref 18/03025/CONR, dated 24 September 2018, subject to the conditions set out in the attached schedule.

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 parties have been provided an opportunity to comment. I have had regard to the revised Framework in reaching my decision.

3. A new London Plan has been adopted since the Council made its determination. This supersedes Policy 8.3 of the 2016 London Plan. The Council indicate that Policy DF1 of the 2021 London Plan is now applicable.

Background and Main Issue

4. Planning permission was granted at appeal, planning ref: 11/03013/P, on 24 May 2012 for the erection of single/two storey side/rear extension, dormer extension in side and rear roof slopes, rooflights in front and side roof slopes and detached double garage at rear and formation of vehicular access onto Barnards Place.
5. A subsequent planning permission was granted, planning ref: 13/01330/P, on the 3 October 2013 for the conversion to form 1 three bedroom, 5 two bedroom and 3 one bedroom flats; erection of single/two storey side/rear extensions, dormer extensions in front, side and rear roof slopes, rooflights in front and side roof slopes and detached double garage at rear and formation of vehicular access onto Barnards Place.
6. The proposal seeks to vary conditions 8 (approved plans) subject to a variation permission planning ref: 18/03025/CONR. That variation permission amended a previous variation permission planning ref: 18/01785/CONR which in turn amended planning permission ref: 13/01330/P, the planning permission referred to in the above paragraph.
7. The appellant proposes to add plan ref: 11212/08 to show that the building was built in accordance with the planning permission granted at appeal, planning ref: 11/03013/P, to condition 8 of permission planning ref: 18/03025/CONR, which differs from the existing plans as approved under planning ref: 13/01330/P. The revised drawing is 11212/08.
8. The Government has introduced the Community Infrastructure Levy (CIL), a charge which local authorities can levy on most types of development to help fund infrastructure needs to support the development of an area in line with local development plans. From 1 April 2012 the Mayor approved a charging schedule for Crossrail. CIL would also contribute to education, health care and community facilities, public open space, public sports and leisure. The Mayoral CIL is also subject to Croydon's CIL. London Plan Policy DF1 supports Boroughs developing their CIL Charging Schedule to determine the infrastructure that will be funded through Borough CIL.
9. Planning permission ref: 13/01330/P that was granted on 3 October 2013 is CIL liable. However, the applicant claims that the works were carried out in accordance with planning ref: 11/03013/P that was granted prior to the introduction of CIL and therefore the development should not have the CIL liability.
10. If drawing number 11212/08 is to be incorporated into condition 8, the approved plans, this would concede that the works were carried out in accordance with planning permission ref: 11/03013/P and would therefore not qualify for CIL liability as that permission pre-dated the introduction of the CIL charging regime. In order to set CIL aside, the appellant would need to demonstrate that the development that has taken place has been undertaken in accordance with the planning permission ref: 11/03013/P.
11. The main issue raised in this appeal is whether or not to vary Condition 8.

Reasons

12. The Planning Statement that supported the application says the development was undertaken as approved under planning permission ref: 11/03013/P that was approved on appeal 24 May 2012. A Work Commencement Notice was provided to the Council on 14 May 2015 stating that the works relating to planning permission ref: 11/03013/P would be commencing on 15 May 2015.
13. An email dated 2 October 2016 from London Building Control confirming some works had been completed. However, this email does not indicate whether those works related to planning ref: 11/03013/P or 13/01330/P.
14. A further Work Commencement Notice was provided to the Council on 2 October 2016 stating that the works relating to planning permission ref: 13/01330/P had started. This Notice also indicated that the works only related to the flat conversion covered by planning ref: 11/03013/P only.
15. I have been provided with email letters between London Building Control and the appellant. Letter 20 April 2015 indicates that the Council had advised that work relating to planning ref: 11/03013/P had to commence before 24 May 2015 to comply with the 3 year timeframe for commencement of works and that builders would be instructed to do some part of the work before 24 May 2015. Dated photographs show security boarding had been erected at the site by that date.
16. There is an invoice for site inspections but this only shows confirmation of a payment. There is also a list of details to enable an estimate for the whole project to be prepared but the list of works indicates these to relate to planning permission ref: 13/01330/P. There is a schedule of building work payments but this does not indicate to which planning permission the works would relate. There are other building control related emails, one of which dated 15 October 2020 confirms a commencement of works date to have been 23 December 2015. However, a letter from ESP Developments Limited dated 8 December 2020 contradicts this commenting that the works started middle of May 2015. This letter also refers to undertaking contracted works relating to both planning ref: 11/03013/P and 13/01330/P.
17. I have had sight of a CIL payment invoice and other related CIL correspondence. The Council's CIL complaint response letter dated 20 January 2019 says *"I have viewed the planning application made in 2013 and can see that the plans of the existing building were submitted without the extension that was applied for in 2011. This would strongly indicate that the works to extend had not been completed and that the extension of the building, along with the conversion were completed under the planning application of 2013, making it liable for CIL payment."* However, there is correspondence relating to an ongoing complaint between the appellant and the Council relating to procedural errors around rectifying the withdrawal of the CIL liability. This cast doubt as to the correctness of the content of the Council's letter dated 20 January 2019.
18. I have also had sight of correspondence relating to a freedom of information (FOI) request between the Council and the applicant (now the appellant). The Council's formal FOI response dated 8 October 2020 states *"On 02/10/2016, you received this 'Works Commence Notice' of planning 13/01330/P, clearly informing you that this notice was only for a 'Flat Conversion' part work of that*

approved planning; the other approved part - extensions –all of those were already built and 'existing' at the time of this 'Work Commencement Notice' of 13/01330/P. All those extensions approved in 13/01330/P are exactly the same as which were approved with the earlier planning 11/03013/P, so those were already built under 11/03013/P with 'residential Extensions' which has no CIL liability; because 11/03013/P was approved well before the CIL introduction. When we informed you of these details along with the Work Commencement Notice of 13/01330/P on 02/10/2016, you were well informed with formal documentary evidences [Evidence (1), (2) & (3)] that 'all those proposed extensions in 13/01330/P were already built with 11/03013/P and 'already existing' at the time of Work Commencement Notification of 13/01330/P, furthermore no further extensions need to be built with 13/01330/P."

19. This is the most compelling evidence that is before me that indicates and confirms that the development granted under planning ref: 13/01330/P were already built as per that of the earlier planning permission ref: 11/03013/P. The local planning authority has not provided any comment in respect of the Council's FOI correspondence. On this evidence I find that the works were carried out in accordance with planning permission ref: 11/03013/P and, as such, would therefore not qualify for CIL liability as that permission pre-dated the introduction of the CIL charging regime. Therefore, this would not give rise to conflict with the development plan in respect of complying with CIL. With regard to Condition 8, as I have concluded that the works were carried out in accordance with planning permission ref: 11/03013/P, drawing number 11212/08 can be incorporated into Condition 8.

Other Matters

20. The Council has referred to a judicial review relating to a different planning application (planning ref: 20/04314/CONR) within its administrative area that related to a proposal to vary a condition imposed on an approved planning permission. That ruling appears to have related to a case in which the works would not have accorded with the original planning permission and, as such, retrospective planning permission should have been sought. However, in this case the Council's FOI response sets out the works were not different and, as such, are not seeking to retrospectively change a planning permission. I have had regard to the Lawson Builders and R (Wilkinson) v Rossendale BC cases in relation to this matter. I do not consider that this matter would amount to an additional reason for refusal.

Conditions

21. The Council has provided a list of conditions that it considers relevant. These relate to compliance conditions. Compliance conditions remain relevant as allowing this appeal would grant a new planning permission. As the development has been implemented the need to reattach a start date condition is unnecessary. The planning conditions suggested by the Council mostly reflect those imposed upon of permission planning ref: 18/03025/CONR. As I am granting a new planning permission I consider it prudent to reinstate all those conditions previously imposed.
22. I have considered the planning conditions in light of paragraph 56 of the Framework and the advice in the Planning Practice Guidance. Landscaping and materials conditions are necessary in the interests of the visual appearance of the area. To ensure the development is to an acceptable standard condition 2

is necessary. In order to protect privacy a condition controlling windows within the south-west facing side elevation at or above first floor level is necessary. To ensure appropriate highway safety is secured conditions requiring the existing western-most access from Pampisford Road to be closed and visibility splays to be provided are necessary.

23. The Council has suggested the imposition of different drawing numbers. However, the appellant's proposal is to add plan ref: 11212/08 to condition 8 of permission planning ref: 18/03025/CONR. I therefore consider the drawing numbers as set out in planning ref: 18/03025/CONR should be reinstated, and for those reasons set out above, drawing number 11212/08 should be included.
24. The Council has suggested a condition relating to materials and colours of equipment/apparatus but it is not clear what equipment/apparatus this would relate to. Given I am unclear as to the purpose of the condition and what it seeks to achieve, I do not consider such a condition should be imposed.

Conclusion

25. For the reasons set out above, I have concluded that the works were carried out in accordance with planning permission ref: 11/03013/P and drawing number 11212/08 can be incorporated into condition 8. The works were carried out in accordance with planning permission ref: 11/03013/P and, as such, would therefore not qualify for CIL liability as that permission pre-dated the introduction of the CIL charging regime. I will grant a new planning permission subject to the modification of the disputed condition, together with the imposition of those conditions considered appropriate above.

Nicola Davies

INSPECTOR

SCHEDULE OF CONDITIONS

1. The details of both hard and soft landscape works shall be carried out in accordance with the details as approved under planning reference 13/04257/RES.
2. Unless otherwise previously agreed by the Local Planning Authority in writing the following shall be provided as specified in the application (Permission Planning Ref: 18/03025/CONR), before any part of the development is occupied and those in Section A shall be retained for so long as the development remains in existence.

Section A

- a) Parking and turning arrangements
- b) Garden and communal areas
- c) Vehicular access and drive

Section B

- d) Refuse collection facilities
- e) Cycle storage facilities

3. Details of visibility splays shall be carried out in accordance with the details as approved under planning reference 13/04257/RES.
4. All new external work and work of making good shall be carried out in materials to match the existing.
5. The existing planting specified in the application as being retained shall not be felled, lopped, topped or otherwise removed during the course of development or within five years after completion, without the prior written consent of the Local Planning Authority; any planting which is removed without consent, or dies or is severely damaged or becomes seriously diseased before the end of that period shall be replaced with planting of such size and species as may be agreed with the Local Planning Authority; this condition shall not be construed as overriding the requirements to obtain consent under any Tree Preservation Order or the legislation concerning trees in Conservation Areas.
6. No window shall be formed in the south-west facing side elevation at or above first floor level other than as specified in the application, and those specified shall be provided in obscure glass and be fixed shut below 1.7m above floor level and shall be retained in that form.
7. The existing western-most access from Pampisford Road shall be closed as specified in the application (Permission Planning Ref: 18/03025/CONR) or before any part of the development is occupied.
8. The development shall be carried out entirely in accordance with the following documents and approved drawings: 16385/03 Rev A; 17429/01; 17429/02 Rev A; 17429/03; 11212/08 and Site Location Plan.