



Appeal Decision

Hearing held on 15 March 2022

Site visit made on 15 March 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref: APP/L5240/W/21/3275309

72 Lower Addiscombe Road, Croydon CR9 6AB

- 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 N Gani against the decision of London Borough of Croydon.
 - The application Ref 20/03806/FUL, dated 19 August 2020, was refused by notice dated 20 November 2020.
 - The development proposed is described as 'Extensions to building to deliver nine new dwellings'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr N Gani at the hearing against the London Borough of Croydon. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the council's decision, the London Plan 2021 (LP 2021) has been published and supersedes the policies of the London Plan 2016 referred to in the council's decision. The Statement of Common Ground confirms the policies of the LP 2021 that the main parties consider to be relevant to the appeal. At the Hearing the council also confirmed that the Local Plan review was still at an early stage of preparation and that there have been no other significant changes to the development plan since its decision. Therefore, the Local Plan Review carries limited weight and I have considered the appeal against the adopted policies of the development plan including the LP 2021.
4. The appellant's appeal submission includes drawings showing window-to-window distances between the development and neighbouring residential properties on Lower Addiscombe Road (Drawing No 1178/16 Rev A) as well as the provision of oriel windows to the proposed flats identified as A1 and A3 (Drawing No 1178 dated 17 May 2021). These drawings are not listed amongst the plans considered on the council's decision notice. In any case, given that they do not substantively alter the design or layout of the proposal, I have taken them into account as part of my assessment and I am satisfied that no party would be prejudiced by me doing so.
5. The main parties agreed at the Hearing that the council is able to demonstrate a 5-year housing land supply and that the council has also met its Housing Delivery Test (HDT) requirements over the last three years with a HDT

measurement of 128%. Accordingly, Paragraph 11d of the National Planning Policy Framework is not engaged.

6. Prior to the hearing, I sought clarification on discrepancies between the ground floor plan and elevation drawings in respect of walls adjacent to a cycle storage area. A revised drawing was provided prior to the hearing showing open railings adjacent to this area. At the hearing the appellant also confirmed that notwithstanding the detail on the west (side) elevation, the western wall adjacent to the refuse and cycle storage area would be a solid wall.
7. The reasons for refusal on the council's decision notice include the effect of the proposal on the outlook of future occupiers of flats '2, 10 and 11' within the host building. However, at the hearing, there was discussion under the third main issue about the potential effects of the proposal on the privacy of neighbouring residential occupiers with the appellant suggesting this could be dealt with through the provision of obscure glazed windows and screens to balconies serving Flats A1 and A3. In considering the appellant's suggested solution, it has therefore also been necessary to consider whether there would be any consequential impact on outlook for future occupiers of these respective proposed units.
8. At the hearing, the appellant contended that the parking layout subject to discussion under the fourth main issue was only included in response to advice provided at the pre-application stage and that their preference would be for a car free development. However, I advised that I must assess the appeal on the basis of the drawings that were before the council when it made its decision. The provision of a drawing at this late stage removing the previously proposed parking may deprive those who should have been consulted with the opportunity to comment on such a change. There may also be other legal requirements relating to car free development that I have not been made aware of. For these reasons I have assessed the appeal on the basis of the parking layout that was before the council at the time of its decision.
9. During discussions at the hearing, there was disagreement between the parties in respect of the relevance of Policy DM35 (Addiscombe) of the Croydon Local Plan (2018) (CLP). The policy sets out three specific instances where the policy applies, these being 'Addiscombe District Centre' which is identified in Figure 11.2 of the CLP, 'the area between Addiscombe Railway Park & Lower Addiscombe Road (Section between Leslie Park Road & Grant Road)' and specified allocated sites. Based on the evidence presented to me, the appeal site and its location do not fall within any of these three instances. Therefore, this policy has not been material to my assessment.
10. The appellant brought a model of the proposed development and surroundings buildings to the hearing. However, given this was new evidence and the relative scale and position of buildings on the model has not been verified by the council, this has not been material to my assessment.
11. The main parties agreed at the hearing that the documents listed 1 – 4 inclusive under 'Documents submitted after the hearing' were relevant to my considerations and a copy of these has since been circulated between the main parties and myself.

Main Issues

12. The main issues are:

- i) The effect of the proposal on the character and appearance of the area;
- ii) The effect of the proposal on the living conditions of future occupiers of the host building with particular regard to outlook, light and access;
- iii) The effect of the proposal on the living conditions of neighbouring residential occupiers on Lower Addiscombe Road with particular regard to privacy and light;
- iv) Whether the proposed parking layout would be safe, secure and efficient; and
- v) Whether the proposal makes adequate provision for any necessary developer contributions arising from the development.

Reasons

Character and appearance

13. The existing building on the appeal site is a flat roofed building previously in office use but with prior approval under the General Permitted Development Order¹ (GPDO approval) for conversion to 11 flats. It sits behind and is accessed between buildings ranging between two and three storeys which front Lower Addiscombe Road. To the west of the site and facing the junction with Cherry Orchard Road is the Grade II Listed C19 Leslie Arms Public House. The four-storey flat roofed apartments at Kirby House are sited to the east of the site. Properties on Leslie Park Road including the communal garden of the flats at Mistral Court and the beer garden of The Builder's Arms Public House are situated beyond the southern boundary of the site. Taller buildings within Croydon town centre are visible looking through the site from Lower Addiscombe Road. Together these factors give the area a close-knit urban character of mixed scale and design.
14. The proposed extensions would result in a building with a blockier profile than the pitched roofed buildings to its immediate foreground. It would also be notably taller than the two-storey buildings at Nos 64 – 70 Lower Addiscombe Road. Even so, the council confirmed at the hearing that it accepted that a building of greater height could potentially be accommodated on the site. Indeed, there is support within the development plan to optimise site densities and to seek minimum heights of 3 storeys.
15. At the hearing, I heard the council's concerns in respect of the proposed elevational treatment including in respect of materials, window reveals and its overall reservations as to whether the development could be successfully integrated with the fabric of the existing building and its surroundings. I acknowledge that Policy D4 (Delivering Good Design) of the LP 2021 includes amongst other things that maximum detail appropriate for the design stage is provided to ensure scheme quality is not adversely affected by later decisions including those made in respect of materials. The discussions at the hearing also confirmed that details relating to the window reveals and balcony balustrade materials had not yet been finalised.

¹ LPA Ref 19/02171/GPDO

16. Notwithstanding the above, on the site visit I saw that the built environment surrounding the appeal site does not have a consistent rhythm of height, massing and building design. I also noticed the variety of facing materials and window detailing in the area including to the buildings close to the road junction where the appeal site is situated. Whilst substantial sections of the building would be screened by the frontage development, in views from Moorland Road the proposal would be appreciated as being of a comparable scale to other neighbouring buildings including those at Nos 74 - 80 Lower Addiscombe Road, Kirby House and The Leslie Arms Public House.
17. The substantive architectural composition of the proposal can be clearly understood from the drawings. London stock bricks would be the main wall facing material and this would help to reinforce one of the predominant building materials of the wider local vernacular. The window proportions and balcony positions shown would give consistency and a general symmetry to the building. The development would subsume the existing front elevation of the existing building and, as the precise detailing in terms of window profiles, widow reveal depths and balustrade design could be carefully controlled by condition, I am satisfied that the building would have a cohesive appearance in views from the street. As a result, from a visual perspective the development would sit comfortably amongst buildings of comparable scale and would add further individuality to Lower Addiscombe Road's built environment.
18. The significance of the Grade II Listed Leslie Arms Public House derives from the attractive Arts and Crafts influenced architecture to its front elevation. Given that the development would sit behind and would be offset from the frontage of the Leslie Arms Public House, the proposal would not detract from, nor reduce the ability to appreciate, the distinctive architecture to its front elevation. On this basis, I concur with the agreed position of the main parties that the significance of this Grade II Listed Building, including its setting, would be preserved.
19. I conclude, the development would have an acceptable effect on the character and appearance of the area. In that regard it would comply with the design, local context and conservation requirements of Policies D3 (Optimising site capacity through the design-led approach) and D4 (Delivering Good Design) of the LP 2021 and Policies SP4 (Urban Design and Local Character) and DM10 (Design and Character) of the CLP. For the same reasons it would also comply with the guidance in The Croydon Suburban Design Guide Supplementary Planning Document (2019) (SPD).

Living conditions of future occupiers of the host building

20. At the hearing, the appellant summarised the findings of their 'Daylight and Sunlight' report which indicates amongst other things that, of the 54 habitable rooms in the development, all would meet the Building Research Establishment (BRE) criteria for 'Average Daylight Factor' the respective room types. This included the rooms within flats 2, 10 and 11 specifically identified in the council's decision.
21. There would be a total of 20 living rooms within the host building. The appellant explained that the BRE guidance recognises that for multi-unit buildings it is unlikely that all windows could be aligned to have a southern aspect. Indeed 5 of the 20 living rooms would have north facing windows and it is reasonable to expect that these rooms would not receive optimum levels of

sunlight. Of the 15 living rooms with east, south or west facing windows all are shown to meet BRE criteria for sunlight other than windows serving lounges in flats 1, 2, 7, 8 and 9. These are ground floor level windows all of which sit close to the rear boundary and sit within the part of the development comprising the extant GDPO approval. Of these only flat 2 was identified in the council's decision notice which is understandable given the development would not materially alter the built environment to the rear aspect of the other flats when compared with the GDPO approval.

22. At the hearing, the council questioned the modelling for flats 2, 10 and 11 and specifically whether trees close to the southern and western boundaries, as well as the wall to the boundary with Mistral Court to the south, had been taken into account. I heard from the appellant that the wall as a solid construction would have formed part of the assessment. During my site visit, I also noted that due to their relative stature the trees referenced did not form a dense screen. In any case, the council has not provided any detailed objective evidence of its own to dispute the overall findings of the survey.
23. I am mindful that Paragraph 125 of the National Planning Policy Framework states amongst other things that when considering applications for housing, a flexible approach should be taken when applying policies or guidance relating to daylight and sunlight where they would otherwise inhibit making efficient use of a site as long as the resulting scheme would provide acceptable living standards. When the appellant's detailed daylight and sunlight calculations are considered together, I am persuaded that the overall levels of light for future occupiers of the building including for flats 2, 10 and 11, would be acceptable in this instance.
24. The proposal would bring more substantial built form much closer to some of the windows serving flats 2, 10 and 11 than would be the case under the existing GDPO approval. This would include the walls, overhanging ceiling and pillars of the proposed undercroft as well as the plantroom and structures associated with the refuse and cycle storage areas. I acknowledge that lightwells would be provided between the building footprint, that there would be open sections between some of the pillars of the undercroft and that there would be an opportunity for a modest amount of planting. Even so, these factors would only provide limited relief to the cumulative mass of the various built elements, which given their very close proximity to windows serving these flats, would be likely to create a heightened sense of enclosure. Consequently, the proposal would result in an oppressive and poor means of outlook for occupiers of these flats.
25. Flats 10 and 11 would be accessed via a shared entrance door adjacent to the rear boundary of the site. Even though this would already be the case under the existing GDPO permission, the development would result in a narrower and more enclosed route through the proposed undercroft. This would include a pinch point between the refuse and cycle storage area. In combination with the position of these flats largely hidden from the street and behind the front aspect of the building, this would create a secluded approach to these flats whether that be in the day or during hours of darkness. Therefore, even if low level lighting could be provided, I am not persuaded that the proposal would provide an appealing access route for future occupiers of, or visitors to, Flats 10 and 11. Taken together with the poor levels of outlook, these factors

persuade me that the overall living conditions for future occupiers of these flats would be unacceptable.

26. I conclude, the development would not provide acceptable living conditions for future occupiers of flats 2, 10 and 11 within the host building with particular regard to outlook and access. In that regard it would conflict with the amenity requirements including to deliver appropriate outlook, to achieve indoor and outdoor environments that are comfortable and inviting for people to use and to enhance social well-being in Policy D3 (Optimising site capacity through the design-led approach) of the LP 2021 and Policies SP2.8 (Quality and Standards), SP4 (Urban Design and Local Character) and DM10 (Design and Character) of the CLP. For the same reasons it would also conflict with the guidance in the SPD.

Living conditions for neighbouring residential occupiers on Lower Addiscombe Road

27. During the hearing the appellant set out the parameters for their daylight and sunlight assessment in respect of neighbouring residential properties, including those referred to in the council's decision on Lower Addiscombe Road. In that regard, in some limited instances there would be a reduction in the Vertical Sky Component (VSC) for windows in the lower ground of Nos 74 - 80 Lower Addiscombe Road as well as a reduction in daylight distribution to two lower ground floor rooms. There would also be a single ground floor room at Nos 64 - 70 Lower Addiscombe Road and two bedrooms at Kirby House, 82 Lower Addiscombe Road which would experience reductions in either or both VSC and daylight distribution.
28. Notwithstanding the above, I noted on my site visit that the respective lower ground floor windows at Nos 74 - 80 sit within enclosed areas and close to features including decking and balustrades and in one instance under a canopy. High boundary treatments also enclose the small areas that these windows face on to. The respective windows at Nos 64 - 70 and at Kirby House are also isolated instances where the surrounding built context already means levels of light are below optimum levels. Therefore, even though the survey indicates that as a result of the development the readings provided for these rooms would fall slightly below BRE guidance criteria, I agree with the appellant that these are in only a limited number of instances where there is already some inherent sensitivity. Overall, I am satisfied that daylight and sunlight appropriate to this context would still be provided in accordance with Policy D6 (Housing quality and standards) of the LP 2021.
29. The appellant's drawings show that in several instances the window-to-window distances between the north facing elevation of the proposed building and Nos 74 - 80 Lower Addiscombe Road would be approximately 16.0m and therefore less than the guidance in the SPD which sets out that an 18.0m separation distance between a new development and a 3rd party dwelling should be provided. This includes first and second floor windows serving proposed flats A1 and A3 respectively as well as two windows serving 'balcony' areas in flats A2 and A4.
30. Furthermore, where the front elevation of the building projects forward, some windows serving flats A1 and A3 would only sit approximately 12.8m away from some of the windows on these neighbouring properties. In that regards, angled windows are proposed on the revised drawings dated 17 May 2021 (referred to in the preliminary matters of this decision) to serve the lounge

areas but not to the 'kitchenettes'. There would also be balconies serving flats A1 and A3 within the front projection which would be closer still to neighbouring windows.

31. Given the number of windows and balconies in this section of the north facing elevation, their relative alignment with and close proximity to windows serving residential properties at Nos 74 - 80, it is likely that occupiers of these neighbouring properties would feel very overlooked.
32. At the hearing there was some discussion about these windows and balconies. The fact that the close position of these windows and balconies to neighbouring residential windows would result in privacy concerns was acknowledged by the appellant's representatives at the hearing who confirmed that, other than the angled windows in the front projection, all windows to the north elevation facing Nos 74 - 80 would be obscure glazed. The appellant also suggested that balustrades could be provided of a sufficient height to prevent overlooking from the balconies serving flats A1 and A3. These suggestions are not shown on the drawings provided. However, I acknowledge that such provisions could theoretically be secured by condition.
33. The appellant's suggested solutions to protect the privacy of neighbouring residential occupiers weren't in themselves opposed by the council. However, it is my judgement that this would result in several habitable rooms within Flats A1 and A3 where the outlook would be very poor. Even though the obscure glazing would primarily relate to bedrooms, future occupiers should still expect to be provided with an acceptable level of outlook. Furthermore, the balcony areas would have ceilings and the acknowledged requirement for high screening means these areas would be substantively enclosed. The balcony screening would also sit in very close proximity to the forwardmost windows serving the lounge and kitchenette areas in these flats. Cumulatively, these factors would result in an oppressive internal and external living environment for occupiers of Flats A1 and A3.
34. The poor means of outlook that would be provided for future occupiers of flats A1 to A3 adds to the harm to living conditions for future occupiers of the host building that I have already identified under the second main issue. In the absence of an acceptable solution to mitigate the potential for harmful overlooking impacts on the occupiers of Nos 74 - 80 Lower Addiscombe Road, there would be harm to the living conditions of these neighbouring properties.
35. I conclude, the development would have a significantly harmful effect on the living conditions of neighbouring residential occupiers at Nos 74 - 80 Lower Addiscombe Road with particular regard to privacy and an acceptable solution to this is not before me. Therefore, the proposal would conflict with the amenity requirements including to deliver appropriate privacy and enhance social well-being in Policy D3 (Optimising site capacity through the design-led approach) of the LP 2021 and Policies SP2.8 (Quality and Standards), SP4 (Urban Design and Local Character) and DM10 (Design and Character) of the CLP. For the same reasons it would also conflict with the guidance in the SPD.

Whether the proposed parking layout would be safe, secure and efficient

36. At the hearing the council set out its safety concerns relating to the four parking spaces under the front projection. Specifically, this relates to the potential for the pillars next to these spaces to impede inter-visibility between

pedestrians and drivers. The council also clarified that the references to 'secure' and 'efficient' within its reason for refusal were meant in the context of the usability of the spaces and whether vehicles could be manoeuvred without any impediment.

37. Whether or not the visibility splays from these spaces would meet the council's usual standards for a parking space, I agree with the appellant that such an arrangement often occurs in private areas that are located away from the boundary with an adopted highway and which are shared by vehicles and pedestrians, for example in multi-storey car parks. Vehicle speeds within the site and more specifically for vehicles pulling out of spaces would be low and the council verbally confirmed its assessment did not take this into account. Furthermore, the appellant confirmed that they would be willing to set back the pillars further under the overhanging element of the building and that they were not opposed to tactile paving or some other form of delineation to differentiate the parking spaces from pedestrian routes. Such provisions would further ensure that the spaces would function safely and could be secured by condition.
38. I conclude, the proposed parking layout would be safe, secure and efficient. In that regard it would comply with the layout, movement and safety requirements of Policy D3 (Optimising site capacity through the design-led approach) of the LP 2021 and Policies DM29 (Promoting sustainable travel and reducing congestion) and DM30 (Car and cycle parking in new development) of the CLP.

Developer contributions

39. The council confirmed at the hearing that the Unilateral Undertaking (UU) provided by the appellant would adequately address the requirements arising from the development for a financial contribution towards sustainable transport initiatives in the vicinity of the site. From the evidence before me, this contribution is necessary to alleviate traffic generation that would be created by the development. Therefore, there is no longer a dispute in respect of this main issue. The UU would also include restrictions relating to the ability of future occupiers of the development to apply for parking permits. From the evidence before me, I am satisfied that the provisions within the UU would be justified, would be adequately secured and would meet the relevant tests at Paragraph 56 of the Framework and Regulation 122 of the CIL Regulations.
40. I conclude that the UU provided would ensure the sustainable transport initiatives contribution necessary to make the development acceptable would be provided. In that regard it would comply with the transport infrastructure and sustainability requirements in Policies T4 (Assessing and mitigating transport impacts) and T9 (Funding transport infrastructure through planning) of the LP 2021 and Policies SP6 (Environment and Climate Change), DM29 (Promoting sustainable travel and reducing congestion) and DM30 (Car and cycle parking in new development) of the CLP.

Other Matter

41. The appellant contends that the level of parking provision requested by the council at the pre-application stage was excessive having regard to the now published policies of the LP 2021. Whether or not this is the case, the council did not refuse the planning application on the basis of the level of parking

provision indicated and I have also found that the parking layout would be acceptable under the fourth main issue. Consequently, this matter does not alter my overall conclusion.

Conclusion

42. In accordance with the requirements of s38(6) of the Planning and Compulsory Purchase Act (2004), the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 of the Framework specifies that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted unless material considerations in a particular case indicate that the plan should not be followed.
43. I have concluded that the development would result in significant harm to living conditions for future occupiers of the extended appeal building with regards to outlook and access and the living conditions of neighbouring residential occupiers with regards to privacy. In that regard, the proposal would conflict with the development plan as a whole and would not amount to sustainable development. There are no other considerations, including the policies in the Framework that would outweigh this conflict. Therefore, for the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

M Russell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nowsad Gani – Ganco Ltd	Appellant
Janine Banks	Agent
Ian Dias BSc (Hons) MRICS	Shroeders-Begg Chartered Surveyors
Martin Eagles	The J S Partnership
Brett Littlewood	Sandersons Associates Ltd
Karen Smith	Sandersons Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Dean Gibson BA (Hons) TP Planning Officer – London Borough of Croydon

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Policy SI 5 (Water Infrastructure) of the LP 2021 and Policy SP6 (Environment and Climate Change) of the Croydon Local Plan (2018)

2. Signed Heritage Note Agreed Statement
3. Expanded 'Table 3 – Self-test Average Daylight Factors (ADFs)' – addendum to 'Daylight & Sunlight Report (October 2020) Ref: 2127/E REV 05'
4. Correction to 'Window Map' to the rear elevation of Nos 74 – 80 Lower Addiscombe Road - addendum to 'Daylight & Sunlight Report (October 2020) Ref: 2127/E REV 05'