



Appeal Decision

Site visit made on 13 July 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th August 2022

Appeal Ref: APP/L5240/W/21/3285504

106 Bensham Lane, Thornton Heath CR7 7ES

- 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 Simon Widdowfield against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/00528/FUL, dated 4 February 2021, was refused by notice dated 21 May 2021.
 - The development proposed is described as excavate a basement and erect a three storey single family dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - The provision of employment land;
 - The living conditions of the future occupants with particular reference to outlook, access to the dwelling and light;
 - The living conditions of the neighbouring occupants with particular reference to outlook;
 - The character and appearance of the area; and
 - Highway safety.

Reasons

Employment Land

3. The appeal site is designated as a Tier 4 Scattered Employment Site. Policy 3.2 and table 5.1 of the Croydon Local Plan 2018 (the Local Plan) state that these sites are protected for industrial and warehousing uses, with an allowance for community uses in more accessible locations.
4. Table 5.1 of the Local Plan also states, amongst other things, that limited residential development may be acceptable if it can be demonstrated that there is no demand for the existing premises and a residential use would not harm the wider location's business function.

5. The evidence suggests the site was marketed from December 2018 with little interest forthcoming. After the asking price was reduced the appellant bought the site in December 2019.
6. Although I find 12 months to be a suitable time-period for the marketing assessment, the details are vague. For instance, I have not been provided with the particulars of the asking price and how that was benchmarked. The methods of marketing and channels used to promote the site are also not before me nor are details about the expressions of interest. On this basis I cannot be satisfied that reasonable measures have been taken to demonstrate that no demand exists for the existing and permitted uses.
7. The nature of the site including its size and its surroundings together with the restricted vehicle access could limit its use for employment and community uses. However, as indicated above it has not been shown that all reasonable measures have been taken to prove this and show that no demand exists for the existing and permitted uses.
8. Consequently, it has not demonstrated that the redevelopment of employment land would accord with the relevant provisions of Policy SP3.2 and table 5.1 of the Local Plan. In the absence of compelling evidence that there is no longer demand for the permitted uses, the proposal would cause an unacceptable loss of employment land.

Living Conditions of Future Occupiers

9. The only outlook from the basement bedroom would be into and across the internal courtyard to parts of the proposed building beyond. Given the modest separation across the courtyard, the three-storey building would dominate views from this window. This would have an overbearing impact, creating a poor outlook for occupants that would be detrimental to the enjoyment of this room.
10. The kitchen dining area and ground floor bedroom would also look out across the courtyard area. A further small lightwell would be provided to the kitchen dining area. The ground floor bedroom would have no other outlook. While there would be one additional floor above each of these windows, for the same reasons as the basement bedroom, the modest separation across the courtyard and height of the proposed building beyond the courtyard would dominate the views from these windows creating an overbearing impact and poor outlook. The setback of the upper floor and the small additional lightwell serving the kitchen dining area would not mitigate this harm.
11. External private amenity space would be provided within the courtyard and an additional lightwell in the basement. While courtyards can work on constrained sites, in this case, the courtyard would be surrounded by two floors of accommodation to three of its sides and three floors to the remaining side. The other lightwell would also be limited in size.
12. Views from the courtyard would therefore be enclosed with a surrounding outlook of the building up to three storeys in height. This would be the only outlook from inside this external space. While the floor area of the courtyard would comply with space standards, given the height of the proposed building surrounding the courtyard to all its sides, this would dominate any views from this external space creating an overbearing impact and poor outlook. The small

additional lightwell serving the kitchen dining area or the set back of the upper floor would not mitigate this harm.

13. The appellant considers the contemporary design features with an inward-looking sense of intimacy across a courtyard to be an acceptable design response. They also consider that basement accommodation is common in London and people will make a choice if they wish to live in such a dwelling. Additionally, the Croydon Suburban Design Guide SPD 2019 (the Design Guide) also suggests the use of Courtyards on constrained sites may be acceptable. However, I have made an overall assessment based on the merits of the development proposal before me as set out above. However, in the circumstances of this case, I have found the outlook to be materially harmful to the future occupiers of the dwelling. This harm carries substantial weight.
14. The appellant suggests that additional space would be available to the front of the property should future occupiers require more external amenity space. This has not been formally identified as external amenity space as part of the application and falls outside the red line. This area also provides access to garages / lockups which, the evidence also suggests, are not in the appellant's ownership. As such I do not consider this to be a suitable location for additional outdoor amenity space.
15. Access to the dwelling would be either off Bensham Lane or through Frederick Gardens to the rear. While a snapshot in time, during my site visit, the access was in use as people walked through to either access Frederick Gardens from Bensham Lane or the other way round. I also observed the access to the dwelling had a reasonable level of natural surveillance.
16. Lighting is, however, limited and there is also evidence of fly tipping and abandoned vehicles. While these are outside the red line appeal site, it is understood that the appellant has approached the landowner in this respect. It is also not unusual for dwellings to have rights to cross third-party land. In these cases, there would be a reasonable expectation for the land to be appropriately maintained by the owner. If the proposed development had been acceptable in all other regards a condition to agree the details of lighting and their retention could have been imposed. I therefore find the access would be acceptable.
17. The appellant's daylight analysis demonstrates that acceptable levels of daylight can be achieved with white tiled surfaces facing into the courtyard and lightwell. I am satisfied that the daylight analysis is robust and thus there would be no undue harm to living conditions in this respect.
18. While I have found that the proposed dwelling would provide an appropriate level of daylight to the external amenity area and the access would also provide a safe walkway to the dwelling from the street, the proposed development would have an unacceptably harmful effect upon the living conditions of its future occupiers with particular reference to outlook. The proposal is therefore contrary to the relevant provisions of Policies SP2.8 and DM10 of the Local Plan, Policies D3 and D6 of the London Plan, the Mayor of London's Housing Supplementary Planning Guidance 2016 (the Mayor's Housing SPG) and the Design Guide. These, amongst other things, address the need for high quality design therefore respecting the living conditions of residential occupiers.

Living Conditions of Neighbouring Occupiers

19. Views of the proposal, including its two storey sections, would be possible from the rear garden and rear facing windows of 27 Frederick Gardens. Although the ground floor would be considerably screened by the existing boundary fence, the first floor of the proposal would significantly project above this fence close to the shared boundary. This section of the proposal would extend a significant width across the rear boundary and when viewed from both the rear garden area and rear windows of No 27, it would dominate these views. This would create an overbearing impact unacceptably harmful to the outlook enjoyed by the occupants of this existing dwelling.
20. While the occupier of No 27 has not objected to the proposed dwelling, this does not absolve me from making an assessment as I have done so above. The proposed dwelling would consequently have an unacceptably harmful effect upon the living conditions of 27 Frederick Gardens with particular reference to outlook. The proposal is therefore contrary to the relevant provisions of Policies SP4.1 and DM10 of the Local Plan, Policy D3 of the London Plan and the Design Guide. These, amongst other things, address the need for high quality design therefore respecting the living conditions of neighbouring occupiers.

Character and Appearance

21. The appeal site, as a previous storage yard, is broadly open. It is set behind the more traditionally designed two storey terraced buildings which front Bensham Lane and it also shares a boundary with the more modern designed dwellings in Frederick Gardens. Given this existing layout, the site has a transitional nature between these modern and traditional buildings.
22. The site is largely concealed from public vantage points in Bensham Lane and Frederick Gardens. Additionally, its transitional location allows development to be more varied allowing for interpretation of the existing character. The flat roofed design and use of zinc and brick would be appropriate nods to both the modern and contemporary surroundings, including the mansard roof at Fredrick Gardens.
23. The ground floor side and rear blank elevations would face onto boundaries. The front elevation incorporates interest and detailing with a recessed porch area, the front door and further windows. While the remaining parts of the ground floor frontage do not feature detailing, this element of the frontage would be screened behind the existing garages.
24. The change in materials and window variation between the ground floors and upper floors would be of interest and appropriate given its modern design. The first floor to the sides and rear elevations would also feature windowless elevations. However, given the more modest footprint of the first floor coupled with the limited visibility from public vantage points, this element of the proposed dwelling would not be unduly harmful.
25. I therefore find that the development would not cause unacceptable harm to the character and appearance of the area. Accordingly, there would be no conflict with the relevant provisions of Policies DM10 and SP4.1 of the Local Plan, Policy D3 of the London Plan 2021 and the Design Guide all of which seek, amongst other things to ensure that development is sympathetic to the character and appearance of the area.

Highway Safety

26. The Council is concerned that a proposed gate along the access road would prevent existing users parking on the access road or in the existing garages along the access road therefore causing overspill parking on the highway.
27. The proposed development would be car free and the location of the gate would be outside the red line. Rights of access across third party land are largely a private matter. Nevertheless, the appellant confirms that access would be provided through the gate, and this has been agreed with the existing residents who have access to the garages. Had the development been acceptable in all other regards a condition to agree the details of access arrangements could have been imposed. I am therefore satisfied that the development as proposed is acceptable in terms of vehicular parking.
28. Therefore, I have not been provided with persuasive evidence that the development would lead to any additional parking stress on the surrounding streets or unacceptable risks to highway or pedestrian safety. It has not been demonstrated that the proposed development would conflict with the relevant provisions of Policies DM29 and DM30 of the Local Plan which, amongst other things, seek to ensure development proposals do not detrimentally impact upon highway safety.

Other Matters

29. The development would offer potential benefits in terms of providing a new dwelling on brownfield land to the housing stock. The dwelling would be car free and delivered on a small site in a largely residential area. The proposal would also address localised fly tipping.
30. Some rooms would be dual aspect, and there is no objection in respect to space standards, daylight and sunlight levels, ventilation, the sizes of the internal and external spaces, refuse arrangements, or impact upon neighbours in Queens Road or those on Bensham Lane. I have also found that the development proposed would not be harmful to the character and appearance of the area, highway safety or the living conditions of future occupiers in respect to light and access to the dwelling. However, these are neutral matters which neither weigh for or against the development proposal.
31. I have found that the proposal would have unacceptable effects on the living conditions of the neighbouring occupants at 27 Frederick Gardens and the living conditions of the future occupants with particular reference to outlook. I also find the proposal has not adequately demonstrated that the loss of employment land is acceptable.
32. Given the limited scale of the development proposed, the weight attributable to the benefits set out above is modest and is not sufficient to outweigh the harm that I have identified and the conflict with the policies I have referred to.

Conclusion

33. As such, the proposal is contrary to the development plan as a whole and there are no other material considerations of sufficient weight to indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

N Praine

INSPECTOR