



Appeal Decision

Site visit made on 5 October 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 DECEMBER 2022

Appeal Ref: APP/L5240/W/22/3293516

19 Ashburton Road, Croydon CR0 6AN

- 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 Marlpark Homes Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/04945/FUL, dated 27 September 2021, was refused by notice dated 28 January 2022.
 - The development proposed is alterations to the building at the rear of the site as part of the proposed change of use from storage and leisure into a self-contained dwelling.
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Decision

1. The appeal is dismissed.

Application for Costs

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

Preliminary Matters

3. The Council has revoked the Suburban Design Guide SPD 2019 (the SDG) referred to in its reasons for refusal. Both main parties have been given the opportunity to comment on this.
4. The description of development on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. The appellant has confirmed that they have agreed to the amended description and I have therefore used it within this decision.

Main Issues

5. The main issues in this appeal are:
 - The effect of the proposal on the living conditions of residents of 19 Ashburton Road with regard to privacy;
 - The effect of the proposal on the living conditions of future residents in respect of outlook, privacy and disturbance; and
 - Whether the proposal would provide suitable accessibility for disabled persons.

Reasons

Living Conditions - No 19

6. The appeal site consists of a large outbuilding located to the rear of No 19, which is a building that has been converted into flats.
7. Windows which serve the open plan kitchen/dining/living area of the proposed dwelling would look directly onto the communal garden area which serves No 19. Due to the nature of this view immediately onto the communal garden, this would lead to an intrusive degree of overlooking with significant harm to the privacy that residents of No 19 could reasonably expect when using this amenity area.
8. Reference has been made to the use of smart glass mirrored glazing. However, this would enable a view from the proposal directly into the communal garden without users of the garden being aware that they were being observed. This would add unacceptably to the perception of being overlooked from the proposed dwelling. Although traditional features such as curtains or blinds may also have a similar effect, I do not consider that the perception of the surreptitious nature of the view would be to the same degree as that enabled by mirrored glazing.
9. The matter of glare from reflections in the mirrored glazing could be addressed through the use of appropriate non-reflective treatment, and this matter does not therefore weigh against the proposal.
10. The appellant refers to Policy DM10.6(c) of the Croydon Local Plan 2018 (the Local Plan) which seeks to avoid direct overlooking of private outdoor space, with the exception of communal open space. However, this is within the context of overlooking within 10m perpendicular to the rear elevation of a dwelling. This therefore does not mean that communal space should be disregarded in respect of the wider consideration of overlooking and privacy. Indeed, Policy DM10.6(a) refers to protection of the amenity of adjoining buildings, which I consider includes communal open space used by residents of those buildings.
11. There is some benefit in the overlooking of communal space with regards to security, and I am mindful that the communal garden area is overlooked by the existing flats. However the flats do not have the same intrusive views as would be enabled by the appeal proposal. Furthermore, the existing degree of overlooking means that surveillance from the proposal would be of minimal benefit.
12. I conclude that the proposal would lead to unacceptably intrusive overlooking of the amenity space of No 19, with significant harm to the living conditions of residents with regards to privacy. The proposal would therefore be contrary to Policy DM10 of the Local Plan and policies D3 and D6 of the London Plan 2021 with regards to amenity, privacy and functional layout.

Living Conditions of Future Residents

13. The open plan kitchen/dining/living room would have an extensive area of glazing looking onto a private courtyard. However, this courtyard would be of limited size and would create an unduly enclosed outlook for residents, even allowing for the windows which would look onto the adjacent communal

garden. Given that this would be the principal living area for the dwelling, I consider that this would result in an unacceptable outlook leading to an unduly oppressive and enclosed living area for residents.

14. As described previously, the windows which serve the open plan kitchen/dining/living area of the proposed dwelling would look directly onto the communal garden of No 19. The appellant refers to the use of smart glass which would prevent views from the communal area into the appeal proposal at all times. However, residents of the proposal would have direct views of activity within the adjacent communal garden during the day, with commensurate harm to their perception of privacy. This harm would be exacerbated by noise and disturbance from the communal garden adjacent to this main habitable room, and I am not persuaded that measures such as double glazing would be effective in mitigating this to a suitable degree.
15. Bedroom windows of the proposal would look onto a private garden. However, this would also be of a limited size and would be enclosed by high walls, including those of adjacent garages. Nevertheless, given the nature of the occupancy of these bedrooms, I do not consider that this would be sufficient reason to withhold planning permission.
16. Notwithstanding my conclusion in respect of the bedroom windows, I conclude that the accommodation provided by the proposed open plan kitchen/dining/living area would lead to significant harm to the living conditions of future residents in respect of outlook, disturbance and privacy. The proposal would therefore be contrary to Policy D6 of the London Plan with regards to a comfortable and functional layout of housing development.
17. I find no conflict with Policy DM10 of the Local Plan as this does not refer to the matters raised in respect of future residents of development. However, this does not negate the harm I have identified on this main issue.

Accessibility for a Disabled Person

18. The submitted plans indicate that the dwelling would be occupied by a wheelchair user. The plans also show an accessible bedroom and a carers bedroom. The original description of development also referred to the proposal as being for accessible accommodation, although this was removed from the amended description.
19. The Council refers to the standards of Building Regulation M4(3), and that the gap for the access to the building would be too narrow to comply with this.
20. However, the appellant submits that the intended use was for an accessible dwelling, and not specifically a disabled wheelchair user. Furthermore, they emphasise that the description of the development has been changed to remove reference to accessible accommodation, and the proposal should be assessed as being for a standard self-contained dwelling.
21. Therefore, on the basis of the amended description of development, I conclude that the proposal relates to a standard dwelling. The consideration of Building Regulation M4(3) does not therefore weigh against the proposal. On that basis, Policy D7 of the London Plan is not relevant to my consideration of this appeal.

Other Matters

22. The site is within the East India Estate Conservation Area (CA). However, the Council has concluded that the proposal would not harm the character or appearance of the CA, and based upon what I have seen and read I have no reason to disagree.
23. The appellant refers to previous proposals for this site, including those which were dismissed at appeal. However, based on the evidence before me the layout of the proposal in these cases was different from that before me, and they do not therefore represent such a parallel to the appeal proposal as to lead me to a different conclusion based upon my own observations.
24. I have also had regard to the various consented schemes on other sites referred to by the appellant. However, despite the details submitted by the appellant, it has not been demonstrated that these schemes represent a direct parallel to the appeal proposal, including in respect of layout or whether they were considered against the same policies and advice, such as the now withdrawn SDG. In any event, I have determined this appeal on its own merits.
25. I am mindful of the benefits of the proposal, including the contribution to the supply and mix of housing and that it would bring a building back into a productive use. However, the benefits arising from a single dwelling would be very limited. The poor state of repair of the building is a matter for the property owner, and this should not be used as a reason to justify an otherwise unacceptable development.
26. A lack of harm on matters including character and appearance is not a benefit, and are a neutral consideration in this appeal.

Conclusion

27. Notwithstanding my conclusions on access for a disabled person, I have concluded that the proposal would lead to significant harm to the living conditions of future and neighbouring residents. The proposal would therefore conflict with the policies of the development plan as a whole in respect of the amenity, privacy and functional layout of housing.
28. There are no material considerations of such weight that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

David Cross

INSPECTOR