



Appeal Decision

Site visit made on 20 December 2022

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/L5240/W/22/3295455

222 Livingstone Road, Thornton Heath CR7 8JW

- 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 Ms Ruby Nelson against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/06336/FUL, dated 18 December 2021, was refused by notice dated 17 February 2022.
 - The development proposed is change of use from nursery to residential, proposed hip to gable to facilitate loft conversion, internal reconfiguration, conversion into 2no. flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has indicated that they only wish to appeal the change of use of the premises from a nursery to residential use, retaining the layout of the property as existing. A site plan, elevation drawings and a floor plan of the existing building have been provided.
3. I have considered the appellant's requested amendments to the scheme, having regard to the Wheatcroft High Court judgement¹. An integral part of this is the issue of fairness to third parties. Ultimately, it is important that what is considered at appeal is essentially what was considered by the Council, and on which interested people's views were sought.
4. The proposed amendments would fundamentally change the nature of the development and its description, from that which third parties were consulted on. I therefore do not consider it appropriate at this stage to accept the proposed amendments. The appellant remains free to make a fresh planning application to the Council if they so wish. In the banner heading, I have therefore referred to the description of the proposal from the application form.
5. I understand that the Croydon Suburban Design Guide Supplementary Planning Document 2019 was revoked on 25 July 2022. This document is therefore no longer relevant.
6. The Council has indicated that they are currently undertaking a review of the Croydon Local Plan 2018 (the Local Plan), though it is yet to be submitted for independent examination. I am advised that a revised approach to intensification is to be taken in amendments to Policy DM10. However, copies

¹ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

of the proposed amendments to this policy, or other relevant policies, are not before me. Furthermore, details of the outcome of the Regulation 19 consultation, including any unresolved objections, have not been provided. I have little information to confirm when the amended plan will be adopted or if any policies will be modified further. I have therefore determined the appeal based on the development plan policies that are currently in place as provided by the Council and have not given any weight to potential future amendments.

7. Policy T7 of the London Plan March 2021 concerns freight movements, provision of hydrogen refuelling and electric vehicle charging at logistics and industrial locations, consolidation and distribution facilities, deliveries and servicing, and access for people walking or cycling during the construction phase of development. I have therefore not identified any direct conflict with this policy in respect of the main issues.
8. Paragraph 6.5 of the Council's Officer Report (OR) indicates the site has a Public Transport Accessibility Level (PTAL) of 3. However, all other references to the PTAL of the site within the OR indicate it has a PTAL of 1b. This is also verified by the representations of the Council's Transportation Team. Paragraph 6.5 of the OR confirms the site is 1km from the nearest train station and is not considered to be in a highly sustainable location. The reference to the higher PTAL therefore appears to be erroneous and I have considered the appeal having regard to the lower PTAL.

Main Issues

9. The main issues are:

- Whether the proposed change of use is acceptable, having regard to the provisions of the development plan that seek to protect community facilities;
- The effect of the proposed development on the character and appearance of the existing building and surrounding area;
- The effect the development would have on car parking conditions and highway safety; and
- Whether the proposal would provide adequate refuse facilities and an acceptable level of cycle parking.

Reasons

Change of Use

10. The appeal property was granted planning permission for change of use from a single 2-bed dwelling to a nursery in 2008, and I understand it is currently in use as such. The Council considers that this use is a form of community facility, and the appellant does not appear to dispute this. The proposal would result in the change of use of the nursery into two self-contained flats.
11. The appellant maintains that the nursery is now too small and is becoming unprofitable and unattractive to prospective investors. Furthermore, staff shortages in the industry have made it more difficult to operate, could impact on the quality of care and have put undue pressure on the appellant. Attempts have been made to market the property as a commercial unit, but the appellant considers this is not a viable option due to its lack of appeal to

prospective investors. I am also advised there are several nurseries nearby, that have affected the viability of the business, and that the area is saturated with childcare settings.

12. Policy DM19 of the Local Plan indicates that the Council will permit the loss of existing community facilities where it can be demonstrated that there is no need for the existing premises or land for a community use and that it no longer has the ability to serve the needs of the community. Policy SP5 of the Local Plan also states that the Council and its partners will encourage the creation of healthy and liveable neighbourhoods by protecting existing community facilities that still serve, or have the ability to serve, the needs of the community.
13. No supporting evidence such as business accounts, staffing numbers and turnover, or changes in the number of children attending the nursery have been provided. I could see there was a similar nursery close by during my site visit, also within a converted residential property. However, there is no further information before me regarding this or other local nurseries, their capacity, or the availability of spaces for children.
14. I recognise the property may have been marketed for commercial use. However, there is otherwise no further details of the marketing process before me. It is therefore unclear when or for how long the site was on the market, whether it was marketed as a nursery, at what price it was valued, whether this value was commensurate with its permitted use, or what level of interest was expressed by others in its ongoing use as a nursery.
15. There is therefore no substantive evidence to demonstrate there is no need for the existing premises and that it no longer serves, or has the ability to serve, the community. Accordingly, I conclude that the proposed change of use would not be acceptable, having regard to the provisions of the development plan that seek to protect community facilities. The proposal is contrary to Policies SP5 and DM19 of the Local Plan which, as I have set out more thoroughly above, seek to prevent the unjustified loss of community facilities.

Character and Appearance

16. The surrounding area is characterised by a variety of dwelling types and sizes, of differing ages and styles, with varying finishing materials. Pitched roofs and chimneys are common features. In the immediate vicinity of the site, there is a mix of primarily two and three storey dwellings and flatted development, in terraced or semi-detached arrangements. There are also several detached dwellings scattered around the area, however bungalows are infrequent. There is a notable change in topography locally, with the land and properties to the rear of the appeal site appreciably higher in elevation. In this context, I consider that the site could in principle accommodate a larger building without considerable harm to the character and appearance of the area.
17. The appeal site sits in a relatively prominent position, close to the junction of Livingstone Road and Moffat Road. The south facing side elevation of the existing building is largely screened by the neighbouring dwellings in views from further along Livingstone Road. However, the openness of the junction and adjacent corner plots allows clear views across to the appeal site and to the north facing side elevation from both streets. Furthermore, the topography

of the area provides views down to the rear of the site from neighbouring Beauchamp Road.

18. The appeal proposal would include alterations to the roof of the existing bungalow to change it from a hipped to a gable roof, with a large full width first floor extension to the bungalow, projecting beyond the existing rear roof slope. This extension would have a flat roof, with a height just below that of the main roof of the building. The proposed materials and finishes are indicated to be timber framed walls with dark hanging tiles, contrasting with the light render of the existing bungalow.
19. The finish of the proposed rear extension would therefore be akin to that of a dormer roof extension. Given its considerable size however, it would dominate the rear elevation and roof slope. The building would therefore appear as a two-storey flat roof structure from the rear. The side elevation of the extension would be clearly visible from the street, given its prominent position. The hip to gable element of the extension would respect the finish and proportions of the existing building however it would result in the loss of the existing chimneys. The first-floor rear projection would appear as a conspicuous mass, out of keeping with the host property. It would give the otherwise modest bungalow a bulky, top-heavy appearance when viewed from the street.
20. The proposal would therefore be harmful to the character and appearance of the existing building which, in turn, would have a harmful effect on the character and appearance of the area. The proposal is therefore contrary to Policies DM10 of the Local Plan and D3 of The London Plan. These policies, amongst other things, seek to ensure development proposals positively respond to local distinctiveness, are of a high quality, do not result in the loss of architectural features that contribute to the character of existing buildings and ensure the design of roof-forms are sympathetic to the local context and contribute to the character of the area.

Car Parking and Highway Safety

21. Policy DM30 of the Local Plan requires parking provision in new development to comply with the standards set out in the London Plan. The Council confirm that in this case the London Plan states up to 1.5 parking spaces should be provided, and this does not appear to be disputed by the appellant. I note that Policy T6 of the London Plan indicates these are maximum standards. However, the site has a low PTAL, demonstrating poor access to public transport and so reliance on the private car is likely to be high.
22. The proposal includes the provision of one car parking space for each flat, accommodated on the existing driveway. The existing driveway is long enough to park two vehicles, one behind the other, however it is single width only with no passing place. The vehicle parked furthest into the driveway would therefore not be able to exit the site unless or until the vehicle behind is moved. Given that the proposal is for two independent units, this arrangement would make parking vehicles on the driveway difficult and would encourage more reversing manoeuvres than necessary, increasing the likelihood of conflict between vehicles and pedestrians.
23. Were only one space provided, combined with the area's low PTAL, this would result in parking overspill on surrounding streets. While there appeared to be some on street parking available at the time of my site visit, this provides only

a snapshot of the parking situation locally. No parking survey has been provided to demonstrate that surrounding streets could accommodate additional on street parking. Additional parking pressure may also adversely affect the living conditions of surrounding occupiers or the wider neighbourhood.

24. It is also noted that the Council's Transportation Team recommended refusal of the application on highway safety grounds due to inadequacy of the proposed parking provision and the lack of information to demonstrate there is sufficient on street parking to accommodate overspill from the site.
25. I therefore conclude that the development would have a harmful effect on car parking conditions and highway safety. It is therefore contrary to Policy T6 of the London Plan and Policies DM29 and DM30 of the Local Plan. These policies, amongst other things, seek to manage the provision of car parking having regard to levels of public transport accessibility and connectivity, ensure development does not have a detrimental impact on highway safety, and reduce the impact of car parking in areas of existing on-street parking stress.

Refuse Storage and Cycle Parking

26. The proposed plans indicate cycle parking and refuse storage facilities would be accommodated within the front garden area. The space to the front of the site is modest, and at the time of my site visit was partly screened by landscaping. The site itself is a reasonable size however, and there is a commensurate amount of rear garden space with access on both sides. While the full details of refuse storage and cycle parking arrangements are not before me, I am satisfied that there is sufficient space across the site to accommodate these, particularly to the rear of the site, were the front garden space not appropriate.
27. The Council has raised concerns regarding access to the rear garden for the upper floor flat given the narrowness of the driveway. However, even if this were not a feasible location for refuse storage and / or cycle parking, I am satisfied there would be ample space to the front to accommodate refuse storage and cycle parking for one of the flats without precluding any landscape screening deemed necessary.
28. I am therefore satisfied this issue could be overcome using planning conditions to secure details of appropriate refuse storage and cycle parking facilities. The proposal would therefore provide adequate refuse facilities and an acceptable level of cycle parking. It is in accordance with Policy T5 of the London Plan and Policies DM10, DM13, DM29 and DM30 of the Local Plan. These policies, amongst other things, seek to promote measures to increase cycling and secure provision of appropriate levels of cycle parking that is fit for purpose, secure and well-located. They also require developments to sensitively integrate refuse and recycling facilities, use visual screening and provide facilities that are safe, conveniently located and easily accessible.

Conclusion

29. I recognise that the proposal would result in the provision of two additional dwellings that would contribute towards the local housing supply. The Council acknowledge there is significant housing need within the Borough. However, up to date 5-year housing land supply (5YHLS) and housing delivery test (HDT) figures for the Borough have not been provided.

30. Paragraph 11(d) of the National Planning Policy Framework (the Framework) applies where policies which are most important for determining the application are out-of-date. This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a 5YHLS or the HDT indicates that the delivery of housing was substantially below the housing requirement over the previous 3 years. In such cases, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
31. The Framework seeks to significantly boost housing supply. It highlights that small sites can make important contributions to housing requirements and encourages the optimal use of underutilised land. The proposal would provide a temporary boost in employment during construction, reuse previously developed land, and contribute to housing delivery in the borough. Additional residents may also contribute to the local economy and vitality of the community. These benefits would be modest however given the small scale and context of the development.
32. On the other hand, the Framework also highlights that good design is a key aspect of sustainable development and seeks to ensure development is sympathetic to local character and the surrounding built environment. It also advocates against the loss of valued facilities and seeks to avoid unacceptable impacts on highway safety. As above, the proposal would result in the unjustified loss of a community facility and would harm the character and appearance of the existing building and surrounding area, car parking conditions and consequently highway safety.
33. Even if paragraph 11(d) were applicable, it is therefore my view that the adverse impacts identified above would significantly and demonstrably outweigh the modest benefits when assessed against the policies in the Framework taken as a whole. The proposal therefore would not benefit from the presumption in favour of sustainable development.
34. While the proposal may comply with other parts of the development plan or national policy, including in respect of refuse storage and cycle parking facilities, the absence of development plan conflict with respect to other relevant matters is neutral and weighs neither for nor against the proposal.
35. I have found no material considerations that indicate the proposal should be determined other than in accordance with the development plan, taken as a whole. Consequently, I conclude that the appeal should be dismissed

Ryan Cowley

INSPECTOR