



Appeal Decision

Site visit made on 20 March 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2023

Appeal Ref: APP/L5240/W/22/3301793

Rear of 1023 London Road, Thornton Heath CR7 6JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Mohamed Thouheed Maricar of Cake Walk against the Council of the London Borough of Croydon.
 - The application Ref 21/04520/FUL, is dated 29 August 2021.
 - The development proposed is the erection of a single-storey building in rear yard to provide ancillary space for existing cake shop (Use Class E), associated alterations, and erection of 3.6m high canopy to form covered path to existing building.
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Decision

1. The appeal is dismissed and planning permission for “the erection of a single-storey building in rear yard to provide ancillary space for existing cake shop (Use Class E), associated alterations, and erection of 3.6m high canopy to form covered path to existing building” is refused.

Procedural Matters

2. The description of development in the banner heading and my formal decision above is taken from the appeal form. The description on the planning application form read “erection of a single storey, flat roofed building at the land to the rear of 1025 London Road, to provide a kitchen, storage and staff facilities for the use of the cake shop at 1025 London Road”; I have used the revised version as it provides a fuller description of the scheme, including details of the proposed canopy.
3. The site address given on the planning application form, as repeated in the original description of the proposal, was 1025 London Road. Later submissions explained that No 1025 had been given as the site address in error, and the appeal proposal relates to the land at the rear of No 1023. I have therefore used the correct address in the heading above.
4. The “red line” boundary on the submitted site plan¹ did not include all of the area of the proposed development, omitting the narrow area where the proposed canopy would be sited. I have not pursued this matter with the main parties as it would not alter my overall decision.

¹ Drawing A100, dated 23 August 2020

Background and Main Issues

5. The appeal is against the Council's failure to determine the planning application prior to the appeal being lodged. The Council had prepared an officer report in respect of the application; along with a further statement (and suggested conditions in the event of the appeal being allowed) this made up the Council's appeal submission.
6. The Council's evidence indicated that planning permission would have been refused for three reasons. These therefore form the basis of the main issues in this appeal, which are:
 - The effect of the proposed development on living conditions for occupiers of the adjacent ground floor flat at No 1023 London Road, with particular regard to noise disturbance and loss of privacy;
 - Whether the proposed development makes provision to ensure adequate fire safety; and
 - The effect of the proposed development on highway safety, with particular regard to parking, and access to and egress from the site.

Reasons

7. The appellant's business operates from the two shop units, Nos 1023 and 1025 London Road; No 1023 is at the end of the terrace block, and on the corner plot at the junction of London Road and Headcorn Road. The shop unit at No 1023 is at the front of the building, and there is a self-contained two-bedroom flat on the ground floor at the rear of the building, accessed from Headcorn Road. The appeal site consists of the rear yard of No 1023 (the proposal also encompasses the small strip of land at the side of the rear return containing the ground floor flat though, as I have explained above, this was not included within the "red line" boundary for whatever reason).
8. The rear yard is currently hardstanding, and includes a single-storey demountable building. The proposed development is the demolition or removal of the existing building in the yard, and the erection of a chevron-shaped shaped single storey outbuilding to provide additional ancillary space (kitchen, storage and staff facilities) for the shop. At present there is no direct connection between the shop unit No 1023 and the rear yard; a new door opening would be made on the rear elevation of the shop, and a canopy installed to create a covered walkway between the shop and the new outbuilding. A new vehicle gateway to Headcorn Road would also be created; the rear yard would provide two vehicle parking spaces, as well as a refuse storage area.

Living conditions

9. The covered walkway connecting the shop and outbuilding would pass immediately by a window in the ground floor flat; this is the only window serving the flat's living room. The creation of an access way to the shop where currently there is none would inevitably lead to an increase in the numbers of people passing through the area; in turn, this would be highly likely to increase noise disturbance for occupiers of the ground floor flat.

10. I note the appellant's comment that the walkway would only be used for making deliveries to the shop, and that staff would not be allowed to congregate there. However, this does not seem to me to be a matter which could realistically be controlled by a condition and, in any event, there would still be likely to be noise disturbance caused by staff passing by.
11. As the walkway would be right next to the living room window, it would also allow people passing to and fro to see into the flat, which would severely diminish privacy for the occupiers. The appellant has indicated that the lower part of the window would be changed to obscure glazing. However, this does not seem to be to be an appropriate solution for the only window serving a living room. In any event, the use of obscure glass would do little to mitigate a *perceived* loss of privacy as anyone using the walkway would still be likely to be seen (if in a less well-defined form than would be the case with clear glazing) and heard from within the flat. Given the narrow confines of the space at the side of the ground floor flat, the appellant's alternative suggestion that a railing could be installed to keep people away from the window would also do little to alleviate the potential loss (or perceived loss) of privacy.
12. I therefore conclude that the noise disturbance and loss of privacy which would result from the development would cause significant harm to living conditions for the occupiers of the ground floor flat at No 1023 London Road. The proposal therefore conflicts with Policy DM 10.6 of the 2018 Croydon Local Plan ("the CLP"), and with Policies D3, D6, D11 and D14 of the London Plan 2021. Together, and among other thing, these policies seek to ensure that development is well-designed and provides a high standard of amenity, including for the occupiers of adjoining buildings, and with regard to noise disturbance and privacy.

Fire safety

13. Policy D12 of the London Plan 2021 requires that all development proposals must achieve the highest standards of fire safety; this includes ensuring that they identify suitable outdoor space for fire appliances and assembly points; incorporate appropriate fire safety features; minimise the risk of fire spread; provide suitable and convenient means of escape (including a robust strategy for evacuation); and suitable access and equipment for firefighting.
14. The appellant indicated that this information could be submitted and prepared on request². However, none has been provided. In the absence of such information, I cannot be satisfied that the development makes provision to ensure adequate fire safety. The proposal therefore conflicts with Policy D12 of the London Plan 2021, the relevant requirements of which I have just described.

Highway safety

15. The rear yard would include two vehicle parking spaces; a new gateway would be provided (which would be slightly closer to London Road than the existing gateway) with an electric sliding gate. Vehicles entering or leaving the site would have to cross over the footway on the north side of Headcorn Road.
16. The Council's particular concerns in respect of highway safety included whether or not vehicles could conveniently and safely enter and leave the two parking

² E-mail to Planning Inspectorate dated 8 August 2022

spaces independently, whether the sliding gate could be operated in a way which would avoid drivers waiting to enter the site needing to do so in a position where their vehicle would obstruct the flow of traffic on Headcorn Road, and whether acceptable pedestrian and vehicle visibility splays could be provided. The Council also noted that details of the proposed footway crossover had not been provided, contrary to the advice set out in its 2021 *Vehicle Crossovers* guidance note and that there would not be sufficient space between the outbuilding and the proposed parking spaces to ensure that the building could be evacuated (and safely entered by the emergency services) if the need arose.

17. The matters highlighted by the Council represent significant shortcomings in terms of the potential effects of the proposal on highway safety. The appellant has not addressed these points during the course of the appeal. In the absence of further evidence in respect of the likely impacts of the scheme, I cannot be satisfied that the development could go ahead without causing unacceptable harm to highway safety.
18. The proposed development would therefore conflict with Policies DM16, DM30 and SP8 of the CLP, and with Policies T2, T3, T4, T6 and T6.1 of the London Plan 2021. Together, and among other things, these policies seek to ensure that active travel and the use of sustainable means of transport is supported, that appropriate levels of car-parking spaces are provided without impeding the movement of pedestrians, cyclists, public transport or the emergency services. For the same reasons, it has not been demonstrated that the development would comply with the provisions of Chapter 9 of the 2021 National Planning Policy Framework, which seek to promote sustainable transport.

Other Matters

19. The proposed development would allow the appellant to expand his business, and create employment. It would also result in the physical improvement of what is at present a somewhat neglected yard space. These are matters in favour of the scheme. Given the scale of the proposal I consider that they carry moderate weight in its favour; this is not sufficient to outweigh or mitigate the significant harm which I have found

Conclusion

20. The development would cause harm to neighbours' living conditions, and it has not been demonstrated that it would make appropriate provision in respect of either fire safety or highway safety. It would therefore conflict with the development plan taken as a whole.
21. I have considered the benefits of the scheme which have been put to me, but there are no material considerations which indicate that the decision should be made other than in accordance with the development plan. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector