



Appeal Decision

Site visit made on 2 March 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 MAY 2023

Appeal A Ref: APP/L5240/W/22/3299735

5 Brighton Road, Croydon, CR2 6EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).
 - The appeal is made by Inspire Property Investments against the decision of London Borough of Croydon.
 - The application Ref 22/00260/GPDO, dated 21 January 2022, was refused by notice dated 22 March 2022.
 - The development proposed is the erection of a two storey upward (rooftop) extension to form 11 no. self-contained residential units.
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Decision

1. The appeal is allowed, and prior approval is granted for the erection of a two storey upward (rooftop) extension to form 11 no. self-contained residential units at 5 Brighton Road, Croydon, CR2 6EA in accordance with the terms of the application, Ref 22/00260/GPDO, dated 21 January 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans and supporting documents: 6841-PA05-AA REV A; 6841-PA106-AA REV A; 6841-PA107-AA REV A; Daylight Report (25 May 2022) Covering Letter (21 January 2021) Transport Statement (21/6078/TS January 2022).
 - 2) Prior to first occupation of any dwelling, full details of the following shall be submitted to and approved in writing by the Local Planning Authority. a) Full details of short and long stay cycle parking provision including the number and type of cycle stands. b) A Refuse Management Plan to include full details of the refuse stores, including the size and number of bins, collection arrangements, as well as a dedicated area for the storage of bulky waste. The development shall only be implemented in accordance with the approved details and thereafter retained for so long as the development remains in existence.
 - 3) The development hereby approved shall be carried out strictly in accordance with the recommendations contained within the Flood Risk Assessment (HLEF82384 December 2021).
 - 4) No development shall commence until details/samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the local

planning authority. Development shall be carried out in accordance with the approved details / samples.

- 5) Notwithstanding the approved plans, the roof terrace shall not be used until details of screening have been submitted to and approved in writing by the local planning authority. The approved screening shall be installed prior to first use and shall be retained as such at all times thereafter.

Preliminary Matters

2. Article 3(1) and Schedule 2, Part 20, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order), permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a detached building which is in a commercial use.
3. Where any development under Class AA is proposed, development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for prior approval of the authority as to, amongst other things, the transport and highways impacts of the development, and the provision of adequate natural light in all habitable rooms of the new dwellinghouses.
4. The Council refused prior approval as they considered that the proposed accommodation would fail to provide sufficient natural light and that there would be unacceptable transport and highways impacts.
5. Having regard to the level of natural light, since the Council's decision, the appellant has submitted amended plans showing revised fenestration and a revised Daylight Report. As this is a minor amendment, and the Council's concerns on the original set of plans are clear in their evidence, I do not consider that their interests would be prejudiced if I take these amended plans into account. I shall therefore determine the appeal on the basis of the plans 6841-PA107_AA Rev A and 6841-PA106_AA Rev A.
6. The Council have considered the amended plans and the revised report. They are of the view that the consideration of these plans in the appeal would not be prejudicial to their interest and have commented that they no longer contest the appeal in relation to the matter of natural light. I have no reason to form a different view.
7. Development plan policies and the National Planning Policy Framework (the Framework) can be considered relevant in prior approval cases, but only insofar as they relate to the development and prior approval matters. I have proceeded on this basis.
8. On the 25 July 2022 the Council revoked their Suburban Design Guide Supplementary Planning Document 2 (SPD2). This document, as referred to in the Council's decision notice, therefore has no weight in the appeal.

Main Issue

9. The main issue is therefore whether or not prior approval should be granted having regard to the transport and highways impacts of the proposed development.

Reasons

10. The appeal property is a three-storey office building. It is located in Brighton Road which is a busy street made up of commercial and residential properties. The property has an undercroft access to the rear where there is an existing hardstanding area.
11. It is outlined that the site has a PTAL (Public Transport Accessibility Level) rating of 6a which indicates that it has extremely good connectivity. The site is within a Controlled Parking Zone (CPZ) and there is a single yellow line on the road in front of the property and much of Brighton Road around the appeal site with double yellow lines elsewhere. There is a bus route and cycle route in front of the property.
12. At the time of my visit, there was no on-street parking occurring on Brighton Road. There are parking bays for permit holders on Nottingham Road which is close to the appeal property.
13. The proposed development would involve the construction of a two-storey upward extension to form 11 no. self-contained residential units.
14. The Council refused to grant prior approval as they considered, amongst other things, that insufficient details were submitted in relation to waste management to ensure that there would not be unacceptable transport and highways impacts arising from the proposed development.
15. The proposed site plan shows that refuse and recycling storage containers would be sited in a recessed area of the undercroft. An access to the rear of 2.8 metres in width would remain. The appellant has set out how the capacity that would be provided would be sufficient to serve the proposed development. There is no substantive evidence that the capacity that would be provided, to be stored in this location, would have unacceptable transport and highways impacts.
16. The Council consider that the potential storage of containers on the highway would lead to conditions prejudicial to highway safety due to the possible conflict with road and footpath users. I agree that were this scenario to play out, there would indeed be a potential conflict. To this end, I consider that it would be reasonable and necessary to impose a planning condition requiring the submission of a refuse management plan to outline how refuse collection and storage would operate, to ensure that this does not cause unacceptable transport and highways impacts. This condition may also include bulky waste storage.
17. The Council refused to grant prior approval for, amongst other reasons, the transport and highways impacts due to the absence of a legal agreement to prevent increased car usage in the Controlled Parking Zone (CPZ).
18. The appellant has submitted a Unilateral Undertaking (UU) which would prevent future occupants from obtaining residential parking permits. It is necessary for me to consider in the planning balance whether or not the agreement provides the necessary mitigation measures to prevent the refusal of prior approval due to its transport and highways impacts.

19. The Council have reviewed the UU and confirmed that they are happy with the document which has been collaboratively drafted between them and the appellant and reflects what was agreed between the parties.
20. Based on the submitted evidence, and for the reasons given above, I therefore conclude that the proposed development would not result in unacceptable transport or highways impacts. It would comply with the requirement of the Framework that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. It would also comply with the relevant aims of Policies D6, SI7, T1, T2, T4, and T6 of the London Plan (2021) and Policies DM10, DM13, DM29 and DM30 of the Croydon Local Plan (2018) in terms of ensuring developments do not have unacceptable transport impacts.

Other Matters

21. Although not forming part of the Council's reasons for refusal, the Council considered that the provision of a roof terrace would harm the privacy of nearby occupants due to the insufficient height of the balustrade. I acknowledge the potential impact in terms of privacy. This could be overcome through the installation of an appropriately sized screen, the details of which could be secured by condition.
22. I note representation received in relation to the mix of uses across the building and that it would be preferable to see a single proposal for the whole building to prevent potential future conflict or confusion. There is no substantive evidence of any harm that would however arise from having a mixed use and I therefore give this limited weight in the appeal.
23. Comment was also received that there are no internal details of flats shown on the submitted plans. This is not however a requirement under Class AA.

Conditions

24. Any development under Class AA is permitted subject to the condition that it must be completed within a period of 3 years starting with the date prior approval is granted.
25. Any development under Class AA is permitted subject to the condition that before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated. The Council's suggested condition relating to the submission of a Construction Logistics Plan is therefore not necessary.
26. Any development under Class AA is permitted also subject to the condition that following the development, every dwellinghouse in the building must remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.
27. It is not necessary to repeat the conditions as set out above in this decision.

28. Paragraph W.13 allows conditions reasonably related to the subject matter of the prior approval to be imposed.
29. In the interests of certainty, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans as amended.
30. In the interests of transport and highway safety, conditions relating to refuse management and cycle parking are necessary. In the interests of protecting development from flood risk, or an increase in flood risk, a condition requiring compliance with the recommendations of the flood risk assessment is also necessary.
31. In the interests of the character and appearance of the area a condition requiring the submission of details of external materials is necessary. It is not however necessary for detailed drawings at a scale of 1:5 to be submitted as recommended by the Council as the building is not listed or in a conservation area. In the interests of the amenity of neighbouring premises in terms of privacy, a condition requiring details of screening to the roof terrace is necessary.
32. Although contamination risks in relation to the building is a relevant matter for consideration in the application for prior approval, the proposed development is for the construction of two additional storeys with associated cycle parking and refuse storage. The appellant has highlighted that none of the proposed works will involve any intrusive groundworks or significant landscaping. On this basis a condition relating to submission of a land contamination report is not necessary.
33. The fire safety impacts are applicable when a development meets the fire risk condition which, due to the overall building height, is not applicable in this instance. Therefore, the condition suggested by the Council in relation to a fire statement is not necessary.
34. Whilst the impacts of noise from commercial premises on the intended occupiers of the development is a relevant consideration, there is no substantive evidence to suggest that this is a pertinent matter in this appeal that would warrant the imposition of the sound insulation condition specified by the Council. Furthermore, this matter would be covered by other legislation as outlined in the Council's suggested condition.
35. Other conditions suggested by the Council, or its consultees are not reasonably related to the subject matter of the prior approval and therefore I have not imposed them.

Conclusion

36. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed, and prior approval should be granted.
37. Whilst I have found the proposed development on its own to comply with the relevant and necessary requirements and limitations of the Order, in light of my appeal decision¹ at the appeal site relating to Class MA, the appellant's

¹ Appeal Decision APP/L5240/W/22/3299731

attention is drawn to Paragraph AA.1.(za) of Part 20 Class AA which states that 'development is not permitted by Class AA if the permission to use the building as a dwellinghouse has been granted only by virtue of Class MA of Part 3 of this Schedule'. This may or may not have implications for the deliverability of the development hereby allowed.

A M Nilsson

INSPECTOR