



Appeal Decision

Site visit made on 5 June 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 JUNE 2023

Appeal Ref: APP/L5240/W/22/3306361

135A North End, Croydon CR0 1TN

- 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 Topspot Investing Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref 21/06147/FUL, dated 12 January 2022, was refused by notice dated 25 July 2022.
 - The development proposed is conversion of shop to 2 shops, conversion of upper floors to flats, erection of an additional storey, three storey extension at the rear to create a total of 6 flats with associated refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development as stated on the Council's decision notice rather than that given on the application form, as this is more precise and includes all elements of the development proposed. The appellant has used that description in their appeal form and statement.
3. The appellant submitted amended plans as part of the appeal. The appellant says that the amended plans relate to a subsequent application which proposed five flats and retained the ground floor level as one commercial unit. The amended plans are materially different to the scheme that the appellant has appealed against and which the Council made its decision upon. I am not aware that all those who should have been consulted on the proposed changes have been given the opportunity of such consultation. In addition, the amendments would no longer reflect the description of development as originally applied for.
4. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals. Having regard to the Wheatcroft principles¹, I consider that this appeal must be determined on the basis of the plans submitted to the Council and upon which it based its decision, which have been subject to consultation and not the amended scheme. To do otherwise could prejudice unacceptably the interests of interested people who would not have been consulted on the amended plans and who may have observations to make.
5. The appellant has also submitted swept path analysis drawings with the appeal. I have had regard to these in determining the appeal as they do not change the substance of the proposed development.

¹ Wheatcroft (Bernard) Ltd v Secretary of State for the Environment (1982) JLP 37

Main Issues

6. The main issues are:

- the effect of the proposed development on the vitality and viability of the Croydon Metropolitan Centre and Main Retail Frontage;
- the effect on the character and appearance of the area including whether the proposal would preserve or enhance the character or appearance of the Central Croydon Conservation Area;
- the effect on the living conditions of the neighbouring occupiers of Jessop House, with particular regard to outlook, light and privacy;
- whether the proposal would provide satisfactory living conditions for future occupiers of the proposed flats, with particular regard to external amenity space, privacy and outlook;
- whether the proposal would appropriately facilitate and encourage future occupiers to cycle, with regard to cycle parking;
- whether the proposal would provide an appropriate mix of housing; and
- the effect of the proposal on highway safety, with particular regard to access and refuse storage.

Reasons

Vitality and viability of Metropolitan Centre and Main Retail Frontage

7. The appeal site lies within Croydon Metropolitan Centre and a Main Retail Frontage. Within this area, Policy DM4 of the Croydon Local Plan (2018) (the Local Plan) seeks to maintain the vitality and viability of the centre by not permitting new development which would result in a net loss of ground floor Class A uses within Main Retail Frontages. Development proposals on the ground floor must accord with the uses detailed in Table 5.3 of the Local Plan. Residential use is not one of the specified activities.
8. The proposal would involve the subdivision of the ground floor retail unit to create two separate retail units and the creation of a separate access from North End to provide access to the proposed flats on the upper floors.
9. According to the Council, the residential access would result in the loss of 30 square metres of Class E floorspace. This figure has not been disputed by the appellant. I acknowledge that most of the ground floor would remain available for retail use. However, the loss of part of the retail space would be likely to impact on the viability of the ground floor and deter potential retail operators. Moreover, the subdivision of the ground floor unit and the provision of the new residential access would result in two very long, narrow retail units. Given the awkward layout of these units it is unclear to me how these would be able to operate viably as retail units.
10. The appellant has outlined that the current use, which now falls within use class E, could change to a number of other uses including office use, without the need for planning permission. It is not clear, however, given that the proposed development seeks to retain retail use at ground floor level, why the

potential for any fallback to change the existing use to other uses within Class E is relevant to this main issue. I therefore give this argument limited weight.

11. The appellant has also referred to a fallback position potentially offered by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which indicates that development consisting of a change of use from a Use Class E use to a use falling within Use Class C3 (dwellinghouses) does not require planning permission.
12. However, such a change of use is subject to various limitations and conditions, which include that the developer must apply for prior approval in connection to a variety of specified matters prior to commencing development. I am not aware that a prior approval application has been submitted in this regard. It has not been clearly demonstrated that this route would represent a realistic or viable fallback position for the appellant bearing in mind that the prior approval process would need to have been followed. I therefore attribute limited weight to this consideration.
13. For the above reasons, in the absence of substantive evidence to demonstrate otherwise, I conclude that the proposal would cause harm to the vitality and viability of the Metropolitan Centre and Main Retail Frontage. Accordingly, it would be contrary to Local Plan Policy DM4, as set out above.

Character or appearance

14. The appeal site is located within the Central Croydon Conservation Area (the CA). The appeal building is a three storey brick built structure which forms part of a parade of shops with glazed shopfronts at ground floor and large windows at first and second floor levels separated by a horizontal band of panelling. The scale and form of the building, together with its external materials, broadly reflect the general character of properties along North End. The building is identified within the Central Croydon Conservation Area Appraisal and Management Plan (the CAAMP) as making a neutral contribution to the area.
15. The significance of the CA is derived from it forming the commercial and civic heart of Croydon, with a historic street layout, and retains much of its historic fabric and plan form, representing many phases of Croydon's economic and commercial development. North End comprises a busy pedestrianised shopping street, with a varied mix of buildings representing several architectural periods and styles. The buildings are generally three storeys in height, abutting the back edge of the pavement.
16. The Council considers the proposed three storey rear extension to the building to be acceptable in design terms. This would be largely enclosed at the rear of the site and relatively well screened from public views. Consequently, I consider that this element of the scheme would have an acceptable impact on the character and appearance of the area, including the CA.
17. An additional storey is proposed to the main roof of the building. This would take the form of a mansard rooftop extension which would extend across the width of the appeal building and from the front to the rear of the building with a void section in the centre. The roof extension would rise above the height of the neighbouring buildings on either side. I acknowledge the mixed character and appearance of the surrounding area and the variety of roof forms and heights. However, I consider that the roof extension would be at odds with the

adjoining buildings. This is because the resulting difference in roof heights would create a discordant visual relationship which would consequently make the buildings appear disjointed.

18. Although the roof extension would be set behind the parapet wall edges of the building, it would nevertheless be partially visible from various points along North End, particularly from its junction with Poplar Walk. Consequently, the scale, height and design of the proposed roof extension would result in a form of development that I consider would be harmful to the character and appearance of the area, including the CA.
19. The original application proposed the use of olive green zinc cladding to replace the existing panels located between first and second floor levels on the front elevation of the appeal building. This material, also proposed to be used on the roof extension, would be unlikely to provide a precise match to the existing panels located on the existing and adjoining buildings. In the grounds of appeal the appellant has suggested alternative materials comprising grey cladding to the roof extension. The use of different or other materials would not overcome the harm arising from the scale and form of the roof extension.
20. For the above reasons, I conclude that the proposal would significantly harm the character and appearance of the area and fail to preserve or enhance the character and appearance of the CA. Consequently, it would conflict with Local Plan Policies DM10, DM18 and SP4, Policies D3 and HC1 of the London Plan (2021) and the CAAMP which, amongst other things, seek to ensure that development positively responds to local distinctiveness and preserves and enhances heritage assets. It would also not comply with the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 concerning the desirability of preserving or enhancing the character or appearance of the CA.
21. The harm to the significance of the CA would, in the context of paragraph 202 of the National Planning Policy Framework, result in less than substantial harm. This harm still however carries great weight and any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. The development would offer potential benefits in terms of providing six additional flats in a sustainable location. Given the modest scale of the development proposed, I give this factor moderate weight in the proposal's favour. The proposal would also have economic benefits through employment opportunities created during the construction phase and spending in the local area by future occupants. However, these economic benefits would be offset to some extent by the harm arising to the vitality and viability of the Metropolitan Centre and Main Retail Frontage. I find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset.

Living conditions of neighbouring occupiers

22. The appeal site is within close proximity of the rear of Jessop House which is a five storey building containing 34 flats. The distance between the rear of the appeal building, as extended, and Jessop House would be around ten metres. Currently, the rear part of the appeal building closest to Jessop House is restricted to two storey height. This part of the building would be extended upwards to five storeys.

23. I consider it likely that the proposal, due to its proximity and significant height, would have an overshadowing impact on the rear windows of the flats at Jessop House. The proposal would be dominant and visually overbearing when viewed from these flats, particularly those located at the lower levels, and result in loss of outlook and an unacceptable sense of enclosure for the neighbouring occupiers, to the detriment of their living conditions.
24. I acknowledge that outlook and light in relation to the rear flats at Jessop House is already likely to be affected to a degree by the scale and massing of adjacent buildings, including the appeal building. However, the proposed rear extension would unduly exacerbate this impact due to its significant height, massing and proximity.
25. The proposed flats to the rear part of the appeal site would contain a number of high level windows and doors leading out to rear terraces. Due to their elevated position, and the limited separation distance between the appeal building and Jessop House, the windows and terraces to the rear elevation of the appeal proposal would allow direct views towards the windows of the neighbouring flats at unacceptably close range.
26. The appellant suggests that the level of mutual overlooking would be expected in this constrained urban context. However, given the current good levels of privacy enjoyed by the occupiers of the rear flats at Jessop House, the effects on the privacy of these neighbours would be marked and adverse.
27. I note that the appellant would be willing to fit the rear windows with obscure glazing. However, a number of the rooms would be habitable rooms which would rely on the rear windows as their only source of outlook. The use of obscure glazing to these windows would likely result in a poor outlook from these rooms, which I consider would not provide satisfactory living conditions for future occupiers of the development. Furthermore, the use of obscure glazing would not address the potential for overlooking from the rear terraces.
28. For the reasons set out above, I conclude that the proposal would result in significant harm to the living conditions of the neighbouring occupiers of Jessop House in relation to its effects on outlook, light and privacy. It would be contrary to Local Plan Policy DM10 and London Plan Policy D3 which, amongst other things, seek to ensure that development protects the amenity of neighbours. Although the Council also refers to a conflict with Local Plan Policy SP4.1, this relates to respecting and enhancing local character and is of limited relevance to this main issue.

Living conditions of future occupiers

29. The communal outdoor amenity space for the development would consist of a central courtyard located at first floor level. Whilst this space would be of a reasonable size, it would be hemmed in by high walls and so very confined in nature with likely poor levels of natural light penetration. It would be unlikely to provide a high quality outdoor space to cater for the future occupiers' needs.
30. Occupiers of the flats would also have access to their own terraces which would meet the size standards for private amenity space set out in Local Plan Policy DM10.4. Even so, Policy DM10.5 requires that, in addition providing private amenity space, flatted development should incorporate high quality communal outdoor amenity space that is designed to be flexible, multifunctional,

accessible and inclusive. Therefore, the private amenity spaces would not compensate for the unsatisfactory provision of communal amenity space.

31. Moreover, the use of the communal amenity space by occupiers of the development would be likely to result in direct, intrusive overlooking of the windows to the main living area, bedroom and terrace serving Flat 1 and the living area and smaller bedroom to Flat 2. I am not satisfied that the use of obscure glazed balustrades and planted screens would address the privacy issue and these would be likely to reduce the outlook from the windows of these flats, to the detriment of the occupiers' living conditions.
32. The proposed flats to the front of the appeal building would have windows facing towards North End which would provide a reasonably open outlook. However, the outlook from the windows serving the main living areas and bedrooms of the rear flats would be very restricted due to the proximity and height of Jessop House. This would create an oppressive and confined living environment for occupiers of the rear flats, particularly those located at first and second floor levels, and would be unlikely to provide an adequate standard of accommodation for future occupiers. The appellant contends that the occupiers of the flats at Jessop House share the same outlook, but the rear extension to the appeal building would create an uncomfortably close relationship between the proposal and the neighbouring flats.
33. For the above reasons, I consider that the proposal would fail to provide acceptable living conditions for future occupiers, having regard to external amenity space, privacy and outlook. In this respect, the proposal would conflict with Local Plan Policy DM10 and London Plan Policies D3 and D6, which seek, amongst other things, to ensure that development is of high quality design which provides adequate internal and external amenity space.

Cycling parking

34. Cycle parking would be provided in storage cupboards in each of the flats. In addition, the appellant indicates that two cycle parking spaces would be provided at ground floor level for use by visitors. In order to move bicycles to and from the flats, future occupiers would have to negotiate flights of stairs and corridors. This provision would be a considerable distance from the public highway and would not be well located in terms of accessibility or convenience. It is unclear whether the cycle parking provision could be positioned elsewhere within the site given its relatively confined nature. Accordingly, it would not be appropriate to leave such matters to planning conditions.
35. I conclude that the proposal would fail to facilitate and encourage cycling with regard to the proposed cycle storage arrangements. It would conflict with Local Plan Policies DM29 and DM30 and London Plan Policies T4 and T5, where these seek to promote sustainable travel and remove barriers to cycling.

Housing mix

36. Local Plan Policy SP2.7 relates to mix of homes by size and sets out that the Council will seek to ensure that a choice of homes is available in the borough that will address the borough's need for homes of different sizes, and that this will be achieved by, amongst other things, setting a strategic target for 30% of all new homes up to 2036 to have three bedrooms or more.

37. The proposal would provide six new flats comprising four 1-bedroom units and two 2-bedroom units. Thus, it would not provide any units with three or more bedrooms. However, Policy SP2.7 is expressed as a strategic target rather than a site specific requirement. I do not have details of whether the 30% overall target in Policy SP2.7 will be met from allocated sites, or what percentage has thus far been delivered. No other substantive evidence has been provided to demonstrate an overriding need for 3-bed dwellings in this case.
38. Furthermore, the supporting text to Local Plan Policy DM1.1 recognises the need to take into account existing character and accessibility, indicating that more central locations with higher density development will not be so compatible to accommodating larger units. Given the location of the proposed flats above retail units within the busy, densely built up Croydon Metropolitan Centre, the location is not particularly suitable for larger units. In this context, the proposed housing mix is not unreasonable. It would make a positive contribution to the choice of housing and address the borough's need for homes of different sizes.
39. For the reasons given above, I conclude that the proposal would provide an appropriate housing mix. As a strategic target I do not find the shortfall in provision of 3-bedroom units would conflict with the Council's housing mix objective for the borough as whole. The proposal would be in general conformity with Local Plan Policy SP2.7. The reason for refusal also refers to a conflict with Local Plan DM1.1, however as that policy relates to sites of ten or more dwellings the appeal proposal would not conflict with it.

Highway safety

40. The refuse store would be located at the rear of the site adjacent to the rear elevation of the appeal building. I am satisfied that there would be enough space at the rear to provide sufficient refuse storage for future occupiers of the development. The appellant's swept path analysis demonstrates that the location of the refuse store would be unlikely to hamper vehicles accessing or manoeuvring within the car park at the rear of Jessop House. Precise details of the refuse storage could have been secured by condition had I been minded to allow the appeal.
41. I conclude that the proposals regarding refuse storage would be satisfactory and would not result in harm to access or highway safety. In this respect the proposal would comply with Local Plan Policy DM29 and London Plan Policies T4 and T6 which collectively seek to ensure that development proposals do not harm highway safety and secure adequate refuse and servicing provision. The Council has referred to London Plan Policy T6.1 in the reason for refusal. As that policy relates to parking and maximum parking standards, I find it to be of little relevance to this main issue and I have no identified no conflict with it.

Other Matters

42. I note the appellant's concerns with the way the Council has handled the application. However, that is a procedural matter which does not impact on my assessment of the planning merits of the case.

Conclusion

43. Whilst I have found that the appeal scheme would provide an appropriate housing mix and would not adversely affect highway safety, I have also

identified that it would cause harm to the vitality and viability of the Metropolitan Centre, the character and appearance of the area including the CA, and the living conditions of neighbouring occupiers, and it would fail to provide satisfactory living conditions for future occupiers and cycle storage facilities. I am satisfied that despite the benefits of the scheme, as outlined above, that these would be significantly outweighed by the adverse impacts.

44. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR