



Appeal Decision

Site visit made on 30 May 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2023

Appeal Ref: APP/L5240/W/22/3312544

Rear of 95 Church Street, Croydon CR0 1RN

- 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 Nowsad Gani, Ganco Ltd against the decision of the London Borough of Croydon.
 - The application Ref 22/03795/FUL, is dated 12 September 2022.
 - The development proposed is demolition of existing outbuilding and erection of a two storey two bedroomed house.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing outbuilding and erection of a two storey two bedroomed house is refused.

Preliminary Matters

2. The description of development on the appeal form differs slightly from that on the application form. No confirmation has been provided of an agreed change in description therefore I have used that as set out on the application form.
3. The council has provided a report detailing putative reasons for refusal, which together with all of the evidence submitted has informed the framing of my main issues in this appeal.
4. As the proposal is in a conservation area and relates to the setting of a listed building, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

5. The main issues are:
 - whether the proposal would preserve or enhance the character or appearance of the Church Street Conservation Area;
 - whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to privacy, outlook, and levels of sunlight and daylight;
 - the effect of the proposal upon the living conditions of neighbouring occupiers at 91, 93, 95, and 97 Church Street, with particular regard to privacy, outlook, and levels of sunlight and daylight; and
 - the effect of the proposal upon features of archaeological interest that may be present on the site.

Reasons

6. The host building, 95 Church Street (No.95) is a two-storey terraced brick building fronting the tram line in Church Street within Croydon town centre. It is located within a terrace of primarily retail and commercial uses. The appeal site is situated to the rear of the commercial unit at the ground floor and comprises a single storey building serving as ancillary storage space to its host. It is accessed by a private drive from Church Road via an undercroft with a controlled entry system.

Conservation Area

7. The appeal site is located within the Church Street Conservation Area (CA). The Church Street Conservation Area Appraisal and Management Plan: Supplementary Planning Document 2014 (CAMP) sets out the significance of the CA as an area of transition between the historic core of the old town and the Victorian retail core. The route is medieval in origin and includes surviving buildings of the 17th and 18th century origin, converted into retail premises. The adjacent building at 91 and 93 Church Street is Grade II Listed. Church Street wraps around the corner towards Church Road, which is also within the CA.
8. The existing flat roofed rendered single storey building is proposed to be demolished. Due to its poor-quality construction, and lack of architectural merit, the main parties agree that this building does not make a positive contribution to the character or appearance of the CA, and I find no reason to consider otherwise.
9. The proposed dwelling would be very close to the two-storey building at the rear of 97 Church Street (No.97), which serves as ancillary storage/access to either the neighbouring commercial use at No.97, or the host building. It would also be very close to the existing two-storey dwelling at 3b Church Road (No.3b). The ground floor of the proposed dwelling would be set back in order to maintain a rear fire exit serving the host property at No.95, and also to provide external access to a proposed cycle store within the building footprint. These factors would result in a top-heavy, unbalanced and cramped appearance to the proposed dwelling. The fact that only half of its front elevation would be visible emphasises the cramped nature of the site, and the computer-generated images submitted only serve to demonstrate this.
10. The lack of public visibility of the site has limited bearing on my considerations, as I am duty bound to consider the character or appearance of the CA as a whole. Likewise, whilst I agree with the appellant that there is an existing 'ad-hoc jumble of extensions' this does not justify the addition of a building which would result in further harm.
11. Views of the proposed dwelling would be largely limited to those from the rear elevations of surrounding neighbouring properties and immediate neighbours. Whilst there has been some erosion of characteristic features over time, including unsympathetic alterations and extensions, the rear elevations of surrounding properties have clearly retained elements of interest which contribute to the significance of the CA overall, including pitched tiled roof forms, architectural detailing and brick elevations.
12. The ground floor of the proposed dwelling would be finished in brick, with little in the way of detailing. The upper floor would be zinc clad. The proposed flat

roof, the extensive use of cladding materials and the absence of detailing would not conform to the key architectural features detailed in the CAMP. The use of cladding would exacerbate the top-heavy appearance of the dwelling. Thus, the proposed design would be in sharp contrast to the key characteristics of the CA, many of which are displayed on the host building and neighbouring properties on both Church Street and Church Road. Views towards the wide rear elevation of the proposed dwelling from the rear of surrounding properties would include the extensive cladding, an uncharacteristic material within the CA which is discouraged by the CAMP (section 8.9). The use of a condition to allow an alternative material would not provide the certainty required to assess the impact of the proposal upon the CA.

13. Consequently, the siting, form, design and materials of the proposed dwelling would combine to result in an unsympathetic and cramped development that fails to respect the key character and appearance of the CA as a whole.
14. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. Given the above, I find that the proposal would fail to preserve the significance of the CA. I find the harm to be less than substantial in this instance given its siting to the rear of Church Street, but nevertheless of considerable importance and weight. Under such circumstances, the harm must be weighed against any public benefits of the proposed development.
15. While the proposal would support the government's objectives to use land efficiently and boost the supply of homes, this would be of limited scale in the form of one dwelling. Compliance with housing standards would be a requirement and not a benefit as such. Any benefits that may arise from the use of materials that require a form of low maintenance (which is unevidenced) would be a private benefit.
16. Given the above and in the absence of any substantiated public benefits, I conclude that the proposal would fail to preserve or enhance the character or appearance of the Church Street CA and would cause less than substantial harm to its significance as a designated heritage asset. This fails to satisfy the requirements of the Act and paragraph 197 of the Framework. It conflicts with Policies SP4.1, SP4.12, SP4.13, DM10, and DM18 of the Croydon Local Plan 2018 (CLP), and Policies D3, D4, and HC1 of the London Plan 2021 (LP), and the guidance within the CAMP. Taken together, these policies and guidance seek to ensure high quality development that respects and enhances the character of Croydon, including heritage assets; and that development preserves or enhances such assets and their settings.

Living conditions – future occupiers

17. The principal elevation of the proposed dwelling includes a window to serve the proposed living area/kitchen, which would face the existing private drive. A rear door from No.95 would remain to serve as a fire exit. There is also a further door within the rear elevation of the two-storey building to the rear of No.97, which might serve as access and/or storage to either No.95 or No.97.

The private drive also facilitates access to a small area serving the rear of the flats at 3 Church Road, and also the private amenity space of No.3b.

18. Whilst I agree with the council that there would be no defensible space in front of the proposed dwelling, this would not be dissimilar to the situation at No.3b, which also has a window to its front elevation. Therefore, pedestrian movements and any existing vehicle movements to service the area would not unreasonably harm the privacy of future occupiers in this regard. The existing controlled access would assist in preventing anti-social behaviour.
19. The proposed window would be the only window serving the ground floor of the proposed dwelling, and thus the ground floor would not be dual aspect. Due to the size and position of the window, the outlook would comprise the tall fencing and trellis along the access route, with an upper view towards the rear of properties at 109, 109a and 109b Church Street at some distance. However, the outlook would be severely restricted by the proximity of the rear two storey building at the rear of No.97. Consequently, future occupiers would have a very limited and uninviting outlook from the ground floor.
20. The proposed dwelling would also be served by further windows to the principal elevation which comprise two tall but relatively narrow windows to the principal elevation to serve the two first floor bedrooms, and a small window serving a bathroom. There would also be patio doors to the second floor on the northerly elevation to allow access to a terraced area. As such, the upper floor would be dual aspect. While the principal elevation is west facing, the size of these windows together with the proximity to the tall building at the rear of No.97 would result in limited levels of daylight and sunlight to the proposed dwelling, and I am not persuaded by the appellant's submissions which attempt to demonstrate otherwise.
21. I therefore conclude that the proposal would not provide acceptable living conditions for future occupiers, with particular regard to outlook and levels of sunlight and daylight. It would conflict with Policies SP2.8 and DM10 of the CLP and Policy D6 of the LP. Taken together, these policies seek (among other things) to ensure that development is of a high-quality design that meets specific standards and guidance including those concerning outlook and levels of daylight and sunlight, in order to safeguard the health of future occupiers.
22. I note that the council referred to Policy SP2.6 of the CLP in its putative reasons for refusal. However, this policy refers to commuted sums for affordable housing, which is not of relevance to this issue.

Living conditions – neighbouring occupiers

23. The proposed northerly elevation would include patio doors which would be very close to the rear elevations of 91, 93, 95 and 97 Church Street (Nos.91-97), with a separation distance of about 6.4m at its closest point. The patio doors would lead to a proposed terrace, which would have a separation distance of about 1.9m to the rear of these properties. While the appellant suggests the proposed patio doors do not serve a habitable room, they do serve a significant area of internal space from which views would be available towards the rear of these properties. Views would also be available from the proposed terraced area.

24. Although I was unable to see all of the rear of these properties at my visit, it is clear that the upper floors include residential uses, with windows that would offer an outlook towards the proposed dwelling, as well as commercial uses. There is also a rear terrace serving the first floor flat at No.95 that would abut the proposed terrace serving the new dwelling.
25. Consequently, the proposal would result in overlooking, a much-diminished outlook and an increased sense of enclosure to the neighbouring residential occupiers within the upper floors of Nos.91-97. The proposed 1.2m high fence to the proposed terrace would not sufficiently safeguard the privacy of neighbouring occupiers in this regard. A condition requiring a taller boundary treatment would result in an increased sense of enclosure.
26. While the council suggests that due to its height, the proposed dwelling would result in overshadowing and loss of light to the rear of Nos.91-97, there is little evidence before me to demonstrate that by itself it would be significant. The appellant's evidence demonstrates that the closest rear window at No.93 would pass a '25 degree test'. However, having regard to the nature of surrounding built form, there would likely be an increase in the cumulative impact of built forms upon the levels of daylight and sunlight afforded to neighbouring occupiers in this regard, and there is little evidence to demonstrate otherwise.
27. I therefore conclude that the proposal would harm the living conditions of neighbouring occupiers at 91, 93, 95, and 97 Church Street, with particular regard to privacy, outlook and levels of sunlight and daylight. It conflicts with Policy DM10 of the CLP, which seeks, among other things to ensure that development proposals protect the amenity of occupiers of neighbouring buildings.

Archaeological interest

28. The appeal site lies within an area of known archaeological interest as set out within the CAMP, and the response from Historic England indicates that the appeal site is located within a Tier 2 Archaeological Priority Area, which represents medieval and post medieval settlement. Policy HC1 of the LP clearly sets out that development proposals should identify assets of archaeological significance and use this information to avoid harm or minimise it through design and appropriate mitigation.
29. There is a lack of evidence before me to demonstrate that any proposed excavations for the proposed two storey dwelling would be of the same scope as that previously undertaken to construct the existing single storey building. If there is any reasonable prospect of archaeological remains within the site that could be adversely affected by development, then assessment and, if necessary, evaluation should take place before a planning application is determined. This is in order to be able to predict the presence of any remains and assess their potential significance.
30. Consequently, and having regard to comments from Historic England, a precautionary approach is justified in this case. The presence of non-designated archaeological remains need not prevent development when considered in isolation. However, I would not be content to leave such matters to a condition, given the known archaeological significance of the locality.

31. Accordingly, potential effects on archaeological assets have not been demonstrated and the proposal conflicts with Policy HC1 of the LP and Policy DM18.9 of the CLP. Taken together, these policies seek, amongst other things, to ensure development protects, conserves or enhances the significance of non-designated heritage assets, including those of archaeological interest. The proposal also conflicts with paragraph 194 of the Framework, which requires developers to submit an appropriate desk-based assessment in such circumstances.

Other Matters

32. The adjacent building at 91 and 93 Church Street is Grade II listed and section 66 of the Act requires me to have special regard to the desirability of preserving its setting. The listed building entry details a pair of timber framed houses, with the shopfronts being modern, rendered above with a parapet, and an old tile roof with central dormer, rear wing with stack at the junction with the main range. The building is in the same terrace as the host property, and it has been subject to a number of modern external alterations. Whilst no further information on the significance of the listed building has been submitted, I am satisfied that the effect on its setting would be neutral given that the appeal site is physically and visually separated by the intervening rear extensions and due to the height and flat roof of the proposed dwelling, it would not detract from the setting of the rear roofscape of the listed building.
33. The appeal site is located within an area assessed as having a high public transport accessibility level and the proposal was submitted and considered as a car free development, and as such it would accord with Policy T6 of the LP and Policy SP8.15 of the CLP. While the Council seeks a legal agreement to address this matter, there is no legal agreement before me. The appellant is willing to enter into such an agreement and suggests this could be secured by a condition. However, as I am dismissing the appeal on the main issues, it is not necessary for me to address this matter further.
34. The appellant claims that the council did not undertake a site visit, nor request a legal agreement to secure car free development. The handling of the planning application is not a matter for me to consider within the scope of this appeal. I have assessed the proposal on my own observations and the evidence before me.

Conclusion

35. For the reasons given, I conclude that the proposed development conflicts with the development plan, read as a whole. No material considerations have been shown to carry sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, the appeal is dismissed and planning permission refused.

J Moore BA (Hons) BPL MRTPI

INSPECTOR