



Appeal Decision

Site visit made on 21 September 2023

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26.10.2023

Appeal Ref: APP/L5240/D/23/3322044

82 Hartley Down, Purley CR8 4EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Mac Mahendran against the decision of the Council of the London Borough of Croydon.
- The application Ref 22/02324/CONR, dated 18 May 2022, was refused by notice dated 5 May 2023.
- The application sought planning permission for construction of a first floor, single/two storey front/side extensions to form a two storey dwelling. Construction of a rear roof extension with installation of 4 front and 2 rooflights to each side roof slope and associated alterations, without complying with conditions attached to planning permission Ref 19/04864/HSE, dated 14 February 2020.
- The conditions in dispute are Nos 1, 5 and 6 which state:
Condition No 1: The development shall be carried out entirely in accordance with the documents and approved drawings 82/MM/08A REV A Jan 20; 82/MM/09A REV A Jan20; 82/MM/10A REV A Jan20; 82/MM 11A REV A Jan 20; 82/MM 12A REV A Jan 20; 82/MM/13A REV A Jan 20; 82/MM/14A REV A Jan 20; 82/MM/15; Flood Risk Report 2019; 82/MM/01; 82/MM/02; 82/MM/03; 82/MM04; 82/MM/05; 82/MM/06; 82/MM/07.
Condition No 5: The approved railings / balustrades to rear window openings at first floor level shall be installed and permanently retained thereafter.
Condition No 6: The rear first floor flat roof area of the structure hereby permitted shall not be used as a balcony, roof garden or similar area and notwithstanding anything contained in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015, or any amendment or replacement thereof no alterations shall be carried out to create access to it.
- The reasons given for the conditions are:
Condition No 1: To ensure an acceptable standard of development.
Condition No 5: To safeguard the amenity of neighbouring residents.
Condition No 6: To protect the privacy of adjoining occupiers.

Decision

1. The appeal is dismissed.

Preliminary Matters, Background and Main Issues

2. Planning permission was granted in 2020¹ for extensions and alterations to the existing dwelling to form a larger dwelling set across four levels, including a lower ground floor at the rear and accommodation in the roof space. I saw on my site visit that, while externally the development appears largely complete, some internal work was still ongoing.

¹ Council Ref 19/04864/HSE

3. The submitted application form only sought removal of condition Nos 5 and 6 of the 2020 permission. However, the appeal scheme includes the provision of obscure glass screens and is accompanied by amended plans, which would necessitate the variation of condition No 1 of the 2020 permission. The Council amended the description of the application to include this variation, and the appellant has also included this as part of the description contained within the appeal form. Accordingly, I have considered the appeal on this basis.
4. Condition No 1 sets out the approved plans for the development. Condition Nos 5 and 6 sought to ensure that approved railings / balustrades were installed and retained to rear window openings at first floor, and the rear first floor flat roof area of the structure could not be accessed, nor used as a balcony, roof garden or similar area.
5. The appeal is seeking to vary condition No 1 and remove condition Nos 5 and 6 to allow use of this rear first floor flat roof area as an external terrace, including the provision of 1.8-metre-high obscure glass screens.
6. The Council refused planning permission as it considers the amended development is detrimental to the visual amenity of the locality and the character of the townscape by reason of its design and dominance.
7. The Council concluded that loss of privacy to neighbouring properties would not warrant a reason for refusal. However, condition Nos 5 and 6 were applied to safeguard the amenity of neighbouring residents and to protect the privacy of adjoining occupiers, respectively. Furthermore, several objections have been received from interested parties in respect of this matter.
8. The main issues are therefore the effect of the variation of condition No 1 and removal of conditions Nos 5 and 6 on (i) the living conditions of the occupiers of neighbouring properties, with particular regard to privacy, and (ii) the character and appearance of the area.

Reasons

Living conditions

9. The appeal site comprises a detached dwelling on a residential street and its associated curtilage. The street is primarily characterised by a mix of detached and semi-detached dwellings of traditional design. These typically appear two storeys in height when viewed from the front. However, on the appeal site's side of the road, owing to the topography of the area, some dwellings feature a lower ground floor level, terraced gardens and/or accommodation at roof level.
10. The host dwelling features an existing ground floor level terrace on top of the lower ground floor extension, with obscure glass screens to either side. The rear first floor flat roof area, which the appeal scheme proposes for use as an external terrace, was approved as part of the original permission and is already in place. However, obscure glass screens to either side of this area have been installed, and access onto it from the first-floor level has been created.
11. Concerns have been raised by interested parties in respect of loss of privacy for the occupiers of neighbouring properties through overlooking. I saw during my site visit that, due to the topography of the area, the rear first floor flat roof area is substantially elevated, with views across several neighbouring gardens.

12. With the obscure glazed screens in place, direct views towards the private patio and terrace areas immediately to the rear of neighbouring properties have been considerably restricted, particularly when stood back from the roof edge.
13. Nevertheless, the roof area still provides largely unobstructed views across the majority of the neighbouring gardens to either side at 80 and 84 Hartley Down, including areas of garden close to their rear elevations, particularly when stood towards the roof edge. Given the elevated position of the roof area, views northwards can also be achieved into the rear gardens of 78 Hartley down and, to a lesser extent, 76 Hartley Down. Views southwards towards 86 Hartley Down are however largely screened by vegetation.
14. The development therefore results in substantial overlooking of neighbouring gardens, which has a deleterious effect on the privacy of the occupiers of neighbouring properties. I saw on my site visit that the provision of the obscure screens to either side is insufficient to overcome this harm. Consequently, I find that condition Nos 1, 5 and 6 in their original form are necessary.
15. The Council concluded that loss of privacy to neighbouring properties would not warrant a reason for refusal. This appears to have been solely based on the previous appeal decision². The previous Inspector found that obscure panels at first floor would provide adequate privacy for neighbours. However, the current appeal relates to removal of planning conditions applied with the specific purpose of protecting the amenity and privacy of neighbours. I have formed my own view on this matter, based on my observations during my site visit and the evidence before me now.
16. My attention has been drawn to other examples of existing and approved first-floor terraces at 22 and 32 Hartley Down. However, the full details of these cases and the circumstances that led to those decisions are not before me. Notably both sites are a considerable distance further along the street and thus do not sit within the same context. Ultimately, each case must be considered on its merits, and my decision is based on the circumstances of this case.
17. I recognise that removal of the obscure screens that have been installed would reinstate views from first floor rear facing windows within the host dwelling, towards the neighbouring gardens. Views towards neighbouring gardens can also be achieved from the second-floor rear facing dormer and a degree of overlooking into neighbouring gardens to either side can already be achieved from the existing ground floor terrace area. Likewise, the existing patio area of No 84 allows overlooking of the garden of the appeal site to some extent.
18. A degree of intervisibility between properties in this area is not uncommon however and is characteristic of this type of suburban layout. Nonetheless, opportunities for overlooking from rooms within the host dwelling are more restricted, and views from ground floor terraced areas at the appeal site and neighbouring properties are less elevated. Ultimately, these other vantage points are not comparable to those provided by an expansive and substantially unenclosed first floor external terrace. They therefore do not provide justification for the additional overlooking and identified harm in this instance.
19. Access to the roof area for maintenance would be infrequent and overlooking at these times would be transient, thereby not comparable to the appeal scheme.

² Appeal Ref: APP/L5240/D/21/3289019

Whether such access would conflict with the conditions of the original permission would be a matter for the Council to consider in their enforcement of these conditions.

20. I conclude that the variation of condition No 1 and removal of conditions Nos 5 and 6 would have a harmful effect on the living conditions of the occupiers of neighbouring properties, with particular regard to privacy. In respect of this main issue, the appeal scheme is therefore contrary to Policies SP4 and DM10 of the Croydon Local Plan 2018 (the Local Plan). These policies, among other provisions, seek to ensure that developments protect the amenity of the occupiers of adjoining buildings and do not result in direct overlooking of private outdoor space within 10m perpendicular to the rear elevation of a dwelling.
21. The appeal scheme also conflicts with paragraph 130 of the National Planning Policy Framework (the Framework) which states that decisions should ensure that development creates places with a high standard of amenity for existing and future users.

Character and appearance

22. The rear elevations of dwellings in the immediate vicinity of the appeal site are typically of a simple design with modest rear offshoots. Rear balconies at first floor level are not common. However, as above, there is an example of similar development at No 32, which includes the use of obscure glass screens. While that example can be glimpsed in the gap between dwellings, it is otherwise not a prominent feature in the street scene.
23. Physically, the appeal scheme does not significantly alter the approved development, save for the omission of balustrades to rear window openings at first floor and the provision of obscure glass screens to either side of the first-floor roof area. These screens would be modest in scale and similar to those already installed at ground floor.
24. Due to their location to the rear, the screens are not prominent within the street scene along Hartley Down. Though they are elevated, there are limited public views of the rear of the property, and partial screening is provided by mature vegetation in distant views. The use of this area as an external terrace and the associated screens therefore does not significantly harm the character and appearance of the area.
25. I recognise the Inspector in the previous appeal decision came to the view that balconies linked to the first and second floor had materially altered the scale and appearance of the property, and ultimately concluded that the development in that case would be harmful to the character and appearance of the surrounding area. However, the appeal scheme before me does not include a large second-floor balcony and so is materially different to the previous proposal. Thus, this does not lead me to a different conclusion on this matter.
26. I conclude that the variation of condition No 1 and removal of conditions Nos 5 and 6 would not have a harmful effect on the character and appearance of the area. In respect of this main issue, I therefore do not find any conflict with Policies SP4 and DM10 of the Local Plan. These policies, among other provisions, seek to ensure development respects the development pattern, layout, siting, scale, height, massing and appearance of the surrounding area.

Other Matters

27. While paragraph 120(e) of the Framework indicates that decisions should support opportunities to use the airspace above existing residential and commercial premises, this relates to the provision of new homes and therefore is not relevant to the appeal scheme.
28. The appellant contends that some comments made by interested parties contain mischaracterisations and inaccuracies. While comments of interested parties have been considered in determination of this appeal, the decision is based on the planning merits of the case only.

Conclusion

29. The proposal would result in significant harm and development plan conflict with respect to its effect on the living conditions of the occupiers of neighbouring properties, with particular regard to privacy. While I have not found any harm with respect to the effect of the proposal on the character and appearance of the area, this does not outweigh the identified development plan conflict. I therefore find that the proposal would be contrary to the development plan, taken as a whole.
30. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal should be dismissed.

Ryan Cowley

INSPECTOR