



Appeal Decision

Site visit made on 13th October 2023

by Megan Thomas K.C. Barrister-at-Law

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Appeal Ref: APP/L5240/D/23/3325009

8 Southern Avenue, South Norwood, Croydon SE25 4BT

- 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 Mrs Hyacinth Rose against the decision of the London Borough of Croydon.
 - The application Ref.22/03575/HSE, dated 24 August 2022, was refused by notice dated 31 March 2023.
 - The development sought is a two-storey side extension with front bay window, one front rooflight and one window to the flank wall, front porch extension, single storey rear extension, glass balustrade to the rear at ground and first floor, raised decking in rear garden with basement storage below and new brick wall to enclose rear garden.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development has already taken place. An enforcement investigation by the Council is in train. Neither of these matters has led me to treat the appeal any differently to an appeal for prospective development.
3. The name given on the Planning Application Form is Mrs Hyacinth Rose Euphena. However, this appears to be an error, so I have used the name Mrs Hyacinth Rose in the box heading above as this accords with most of the proffered documentation.
4. The description of development on the planning application form is given as
"retention of dormer/loft conversion including window to flank wall, glazed panels above ground floor extension (not to be used as balcony), glazed panels at ground floor level to the rear of the property behind ground floor decked area including privacy walls to both flanks with steps leading down to the garden, storage area under decking and brickwall to enclose garden to rear to all sides. retention of small bay to small extension at the front of the property."

However, in the box above I have used the description given by the Council on the Decision Notice as it appears to be the most accurate. I have omitted the words "retention" as the Town and Country Planning Act 1990 treats applications for development which has already taken place as applications for retrospective development rather than "retention" of development.

5. The Appellant makes reference to the possibility of the "4-year enforcement rule" applying to part of the appeal property. The Appellant is at liberty to make an application for a Certificate of Lawful Development to the Council if she wishes to establish whether any part of the disputed development is immune from enforcement. It is outside my remit to decide such matters. There is a statutory regime under the Town and Country Planning Act 1990 which allows landowners to seek to establish such matters as immunity from enforcement, supported by appropriate and targeted evidence. My remit is to consider the appeal before me under s.78 of the 1990 Act.

Main Issues

6. The main issues in the appeal are the effect of the development on the character and appearance of the host dwelling, its semi pair and the wider area and the effect on the living conditions of occupants of 6 Southern Avenue with regard to outlook and, in relation to the first floor roof terrace, on the living conditions of occupants of 6 and 10 Southern Avenue with regard to noise and disturbance and privacy.
7. Whilst the two-storey side extension, its front bay window, a front rooflight and a front porch extension are referred to in the box heading above there are no material planning concerns that arise from their construction. The same applies to the small flank window looking towards no.10 Southern Avenue in the two-storey side extension, and to the rear extension building (with the exception of the use of its flat roof). The main issues are therefore focussed as set out in paragraph 6 above.

Reasons

Character and appearance of Host Dwelling and Wider Area

8. The appeal property is located on the south-eastern side of Southern Avenue just outside the South Norwood Conservation Area. It is a semi-detached dwellinghouse with a rear roof dormer. To its south-west is no.6 Southern Avenue (its semi-pair) and to its northeast is no.10 Southern Avenue.
9. At the rear there is a raised deck/patio which leads off a single storey rear extension. The deck/patio is about 2.5m deep and spans across the full width of the site. It also has a central projection with a set of steps leading down to the rear garden. The steps are orientated broadly southwest/northeast and are made mainly of brick. At the time of my site visit there was a balustrade made of thick planks of timber along the front of the rear patio/deck and a timber banister down the steps into the rear garden. At the ends of the deck/patio on each common boundary with the Southern Avenue neighbours a brick wall has been constructed. Broadly speaking the walls are about 1.7m above the patio/deck level and are about 2/2.5m in depth.
10. Below the rear patio, the rear garden has been excavated to create storage spaces with openings where the Appellant indicates that doors will be fitted to keep out animals and pests. I consider this area can fairly be described as a 'basement' even though it is apparently accessed from only the exterior of the property. Around the rear garden a high brick wall has been built, which varies in height.
11. The roof of the single storey full width rear extension is flat with some rooflights inserted into it. It is about 3.4m deep and about 28 sqm in area. The flank

brick walls of the rear extension are built higher so that they provide some enclosure for the flat roof. On top of each flank brick projection a metal balustrade with translucent polycarbonate panels has been fitted. Metal balustrades and translucent polycarbonate panels have also been fitted along the entire front of flat roof. There are patio doors facilitating access to the flat roof. It is clear that it has been set up as a roof terrace.

12. The full width rear deck/patio, the steps, the flank brick ends to the deck/patio, the protruding upstanding flank brick walls at first floor level, the timber balustrades and the creation of the basement all combine to result in the rear of the appeal property appearing significantly over developed, with a mass and bulk that is seriously detrimental to the original character of the host dwelling. The metal balustrades and polycarbonate panels at first floor level around the roof terrace exacerbate the bulk and massing of the rear of the property. The resulting design is poor leading to a rear elevation which is wholly out of keeping with the dwelling's neighbours and, in particular, significantly unbalances the appearance of the paired semi-detached dwellings.
13. The excavation that has taken place has, in part and amongst other things, created a basement storey which adds to the appearance of an incongruously large semi-detached dwelling at odds with the grain and pattern of residential development in the area.
14. I have noted what other types and heights of boundary treatment have been used in nearby rear gardens and find that these are generally sympathetic to the area. In contrast, the brick wall which has been erected on three sides of the rear garden is of a combined size, extent, height and material that results in a domineering and unrelenting structure. It significantly harms the character and appearance of the host dwelling and the surrounding area.
15. Owing to the scale, bulk, massing and design of the rear elements I have identified above, the rear of the appeal dwelling appears dominant, squeezed in and significantly out of scale with the pattern of development in the area.
16. I have borne in mind that the property was granted planning permission (application ref. 16/02378/P and application ref. 14/03951/P) for development in 2014 and 2016. The Council has supplied the approved plans for these permissions as part of the appeal documentation and a comparison with what was approved at the rear of the property with what has been built demonstrates that the works at the rear of the site have not been carried out in accordance with the approved plans for either planning permission. Even if both those previous schemes were to be viewed as valid fallback development, they are less harmful to the character and appearance of the host dwelling and wider area and less harmful to neighbours' living conditions (which I refer to under issue 2 below), than what has been created and built at the rear of the dwelling. I have borne in mind the precise nature and extent of those previous planning permissions and the fact that they were granted by the Local Planning Authority, nevertheless, neither planning permission actually reduces the significant harm I have identified. Similarly, the Appellant gives some reasons why some of the development has been carried out without compliance with the approved plans, but these reasons do not mitigate the actual harm that I have identified above.

17. Consequently, I find that the development would significantly harm the character and appearance of the host dwelling, its semi-pair and wider area. It would be contrary to policy D3 of the London Plan 2021 and policies DM10 and SP4 of the Croydon Local Plan 2018.

Living Conditions of Neighbours

18. The occupants of no.6 Southern Avenue have a half-width rear extension on the common boundary with no.4 Southern Avenue. No.6 has not been extended adjacent to the appeal site at the rear and has patio doors on its original rear elevation at ground floor level adjacent to the appeal site boundary. The raised patio/deck which has been built at the appeal site and the high brick boundary wall taken cumulatively with the single storey rear extension at the appeal site create a deep and high façade beyond no.6's main rear elevation and this is visually intrusive and overbearing for the occupants of no.6 when either inside the room served by their patio doors or when outside in their rear garden proximate to their dwelling. This gives an unacceptable sense of enclosure and a loss of outlook for them.
19. On my site visit to the appeal property, I was given access to, amongst other areas, the first-floor rear roof terrace. This confirmed that even with the translucent polycarbonate panels in place, extensive views at close proximity of the rear gardens of nos 6 and 10 Southern Avenue were available. I was also able to note views out of other rear windows at the appeal site including from rooms on the first floor and from the rear dormer structure. Whilst parts of the rear gardens could be seen from these upper floor windows, views were less extensive and from an increased distance than views from the first-floor roof terrace. The views from the roof terrace allowed considerably more overlooking and interference with privacy for both sets of neighbours at 6 and 10.
20. The roof terrace is very close to neighbours' bedroom windows and its size is sufficiently large to be put to amenity use. Its use is highly likely to cause undue noise and disturbance to occupants of nos 6 and 10, particularly in the summer when their bedroom windows are open for ventilation. I have noted the Appellant's evidence which asserts that there is no intention to use the space as a roof terrace and that it has not actually been put to that use. However, I am obliged to consider potential use by future occupants of the appeal site in addition to any likely use by existing occupants and so I judge it to be an element of the development which would cause unacceptable living conditions for neighbours at 6 and 10 Southern Avenue by reason of noise and disturbance. The brick wall upward projections, metal balustrades, translucent polycarbonate panels and patio doors all facilitate future use as an amenity roof terrace.
21. I acknowledge that access to the flat roof of the rear extension may be needed for a number of reasons not related to its use as an amenity terrace, but such access can be reasonably achieved by means other than doors out from rooms on the first-floor rear elevation of the property.
22. On this second issue, I conclude that the development has resulted in unacceptable harm to the living conditions of the occupants of no.6 Southern Avenue by reason of loss of outlook and it has resulted in or would result in unacceptable living conditions for the occupants of nos 6 and 10 Southern

Avenue by reason of significant loss of privacy. There is therefore conflict with policy D3 of the London Plan 2021 and policy DM10 of the Croydon Local Plan 2018.

23. I have borne in mind the personal circumstances described by the Appellant and whilst I have considerable sympathy for the events which led to her not being involved in the planning and enforcement matters queried by the Council, they do not override my conclusions of harm. The Appellant makes reference to the time it took the Council to make its decisions and the changes to the description of development that have taken place. However, again these factors do not override my conclusions of harm. It is perhaps useful to note that it is not unusual for a town planner to refer to a development being built without planning permission when the development permitted has been built not in accordance with the permission's approved plans. I do not agree with the Appellant that the manner in which information is presented "appears to be bias".

Conclusion

24. Having taken into account all representations made, including those by the Appellant and neighbours, for the reasons given above, I dismiss the appeal.

Megan Thomas K.C.

INSPECTOR