



Appeal Decision

Site visit made on 4 October 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14.11.2023

Appeal Ref: APP/L5240/D/23/3324570

14 Ashburton Avenue, Croydon CR0 7JE

- 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 Sharon Zachariah against the decision of the Council of the London Borough of Croydon.
- The application Ref 23/01032/HSE, dated 13 March 2023, was refused by notice dated 18 May 2023.
- The development proposed is Retention of raised patio at rear. Erection of raised planter and raised privacy screen.

Decision

1. The appeal is allowed and planning permission is granted for *Retention of raised patio at rear. Erection of raised planter and raised privacy screen* at 14 Ashburton Avenue, Croydon CR0 7JE in accordance with the terms of the application, Ref 23/01032/HSE, dated 13 March 2023, and the plans submitted with it, subject to the following condition:
 - 1) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 - 2) Within 3 months of the date of this permission, a fire strategy or reasonable exception statement shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Preliminary Matters

2. The planning application was submitted as a party retrospective development. The Council considered the proposal on this basis, and so shall I.
3. The description of development as originally stated on the planning application form is *Application for retention of raised patio at rear. New raised planter and raised privacy screen*. However, in my banner heading above, I have used the description of development as stated on the Council's decision notice as I consider this to be a clearer description of the appeal proposal.
4. The appellant draws my attention to a lack of clarity in the decision notice with regard to the first sentence of the reason for refusal: "*The proposed development would constitute an unneighbourly form of development that would harm the amenity of No.16 Ashburton Avenue by way.*" Having regard to the evidence before me, it is clear that the Council's report upon the planning application addresses the impacts upon neighbouring amenity, and I am satisfied that no party has been prejudiced in this regard.

5. The appellant refers to the Council's Supplementary Planning Document SPD2 Suburban Design Guide. However, I am aware that this SPD was revoked in July 2022, prior to the date of determination. Therefore, this document has no bearing on my consideration of this appeal. I am satisfied that no party has been prejudiced in this regard.

Main Issue

6. The main issue is the effect of the proposal upon the living conditions of neighbouring occupiers at 16 Ashburton Avenue, with particular regard to privacy.

Reasons

7. The appeal property is a mid-terrace dwelling in an established residential area and benefits from a rear extension (planning permission ref: 21/06364/HSE). The terraced row is formed from long and relatively narrow plots, with rear gardens falling slightly towards the rear of the plot.
8. Due to this development pattern and topography, occupiers of the terrace already experience views of the rear amenity spaces of their neighbours, the degree of which is mitigated by side boundary treatments and planting. Consequently, there is an existing degree of mutual overlooking from openings within the rear elevations of the terrace, as the appellant suggests.
9. Furthermore, the appeal property and 16 Ashburton Avenue (No.16) include rear dormers with openings towards the rear amenity spaces of the terrace. The rear dormer at No.16 includes a Juliet style balcony with doors and side glazing. In this regard the occupiers of the appeal property and No.16 experience views towards the rear amenity spaces of neighbouring rear amenity spaces along the terrace from an elevated position.
10. The rear extension to the appeal property occupies the full width of its rear elevation and extends well beyond the narrower rear extensions of the adjoining neighbours at No.16 and 12 Ashburton Avenue (No.12). Both neighbours have patio areas adjacent to their rear elevations/extensions. The patio at No.16 projects to a point close the outside edge of the raised patio. The patio at No.12 extends well beyond that point.
11. The raised patio is about 500mm above ground level and occupies the full width of the rear elevation at its inner edge, and it is about 3.7m deep, with further projecting steps leading to the remaining garden. The appellant states that the previous patio was about 300mm, and thus the raised patio is about 200mm higher, which would represent a fairly modest increase to the previous situation. The neighbouring patio areas of the adjoining properties of Nos.12 and 16 are about 225mm above ground level. Consequently, the raised patio is about 275mm higher than that of its adjoining neighbours.
12. From the evidence before me, it is clear that the Council's concerns are confined to overlooking from the raised patio into the neighbouring rear private amenity space of No.16.
13. Importantly, the Council's report upon the planning application states that "*the impact of the raised patio on No.12 is considered acceptable due to the existing boundary treatment mitigating issues surrounding overlooking*". The side boundary to No.12 is a fence of about 1.65m height above the level of the

- raised patio. There is no existing vegetation along the edge of the raised patio which abuts the fence towards No.12, nor any existing or proposed planter that would impede the ability of occupiers to be close to the fence.
14. In regard to No.16, the submitted plans detail an existing boundary wall along the side boundary of the raised patio, at a height of about 1.32m and a depth of about 3m. The proposed timber panel above the wall would be about 0.48m, resulting in a combined height of about 1.8m. Clearly, the proposed boundary treatment towards No.16 would be higher than that serving No.12. Thus, views from the rear patio at the appeal property looking back towards the rear patio area and towards the rear garden at No.16 would be highly restricted in this regard.
 15. Furthermore, the proposed planter would project about 1m from the side boundary to No.16, and this would impede the ability of occupiers to be close to the side boundary to No.16 on the raised patio.
 16. Given that the Council found the proposal acceptable in regard to any potential overlooking towards No.12's rear amenity space, the Council's position appears somewhat inconsistent with regard to No.16 when comparing respective boundary treatments and relationships to adjoining properties.
 17. The side boundary to No.12 includes planting alongside the long rear side boundary which provides screening. The fence along this boundary becomes an undulating form with open trellis above. The side boundary to the rear garden of No.16 also includes tall fencing, together with planting alongside the boundary which also provides screening. To my mind, the side boundaries of the appeal plot to No.12 and No.16 are not fundamentally that dissimilar, except for the presence of a tree located within the host's rear garden close to the outer edge of the raised patio adjacent to the side boundary to No.12. In this regard, the tree screens views towards the rear garden and deep patio of No.12, but this would be to a much lesser extent when not in leaf.
 18. Consequently, and having regard to all of the above, I find that the proposal would not result in significant overlooking towards the rear amenity space of No.16, and certainly not to the extent that it would be of such a degree to be considered unacceptable.
 19. The appellant suggests that the rear patio would be about 200mm higher than that allowed under permitted development rights, but there is little substantive evidence before me to demonstrate this. If it were demonstrated, this would represent a fallback scheme, and due to a lower height, such a scheme would likely to be less harmful than the appeal scheme. In any event, the appellant suggests that the remedial works to comply with the permitted development right would be high, but this is unevidenced. Therefore, the fallback position might not be a realistic one. I therefore afford the potential fallback position little weight.
 20. I therefore conclude that the proposed development would not unacceptably harm the living conditions of neighbouring occupiers at 16 Ashburton Avenue, with particular regard to privacy.
 21. The proposed development accords with Policies Policy D3 and D4 of the London Plan 2021, and Policies SP4, DM10 of the Croydon Local Plan 2018. Taken together, these policies see to ensure that development is of high-

quality design that protects the amenities of the occupiers of neighbouring buildings.

Other Matters

22. The main parties agree that the appeal scheme would not harm the character and appearance of the area, and I find no reason to consider otherwise. There is no compelling evidence before me to demonstrate that the proposed development would result in an unacceptable loss of daylight or sunlight to neighbouring properties or their rear amenity spaces.

Conditions

23. I have considered the conditions suggested by the Council and comments from the main parties, and in light of the Framework and Planning Practice Guidance.
24. I have referenced the plans submitted with the planning application in my decision, and therefore a separate condition is unnecessary. As the development has already commenced, a condition specifying the time limit for commencement is not necessary.
25. The external walls of the raised patio match existing, and the surface is paved to tone with the existing property, and therefore I am satisfied that the materials for the raised patio match the existing. The timber panel is detailed on the plans. However, the materials for the proposed planter are not specified, and it is not yet implemented. Therefore, a matching materials condition is necessary to control its external appearance.
26. I have imposed a condition requiring a fire strategy or reasonable exception statement in order to ensure compliance with the requirements of Policy D12 of the London Plan 2021 in the interests of public safety.

Conclusion

27. For the reasons given, I conclude that the development accords 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, and therefore the appeal is allowed and planning permission should be granted.

J Moore

INSPECTOR