



Appeal Decision

Site visit made on 2 November 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal Ref: APP/L5240/W/23/3316328

2A Addiscombe Avenue, Croydon CR0 6LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Marlpark 2a CR2 Ltd against the decision of London Borough of Croydon Council.
 - The application Ref 22/03604/OUT, dated 27 August 2022, was refused by notice dated 23 January 2023.
 - The development proposed is demolition of existing house and buildings and construction of 2 semi detached houses and a detached house.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by Marlpark 2a CR2 Ltd against the London Borough of Croydon Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application sought planning permission in outline, with only details of layout and scale submitted for consideration. This is reiterated in the appellant's appeal statement. The supporting drawings are not marked as illustrative or indicative, however, I have treated them as such insofar as they relate to matters of access, appearance and landscaping. I have had regard to relevant case law in adopting this approach¹.
4. The appellant has submitted additional supporting documents with the appeal and the Council and third parties have been given the opportunity to review this information. I have taken into account any responses received.

Main Issues

5. The main issues are the effects of the proposal on: (i) protected species and habitats, (ii) the character and appearance of the area, (iii) the living conditions of occupants of nearby properties, with particular regard to the outlook of nos. 2-10 Everton Road, (iv) highway safety and parking, and (v) whether the proposal would provide a suitable standard of accommodation for future occupiers, with particular regard to natural lighting and outlook, accessibility, cycle and refuse storage.

¹ Crystal Property (London) Ltd v SSCLG & LB Hackney EWCA Civ 1265 [2016]

Reasons

Protected Species and Habitats

6. The appeal site includes a private garden which comprises elements of soft landscaping as well as a garage and lean-to, and the site adjoins a Site of Importance for Nature Conservation (SINC) which runs along the tramline to the rear. The combination of these features results in a reasonable likelihood that protected species, in particular bats, could be affected by the proposal.
7. The appellant states that ecological information has previously been submitted to the Council which found a low possibility of roosting bats in the existing buildings, but accepts that these documents did not accompany the outline application which is the subject of this appeal. Instead these documents formed part of earlier applications on the site and for Button Court to the south. In any event, while I note the summaries contained in the appellant's comments, details of those ecological reports, including their methodologies, findings and importantly their survey dates, have not been put before me as part of this appeal. As such I am unable to assess whether the information they contain is adequate to comply with the relevant development plan policies, or to demonstrate the effects of the proposal on protected species would be acceptable.
8. Despite earlier prior approval applications, there is not sufficient certainty based on the information before me to demonstrate the ecological position is the same. While ecological effects of the development at Button Court may have been accepted, there is not evidence before me to demonstrate that these sites are comparable in terms of their existing structures or ability to accommodate protected species. Investigations surrounding that site would also have been carried out some time ago. As such, the Button Court development does not provide assurances that protected species would not be adversely affected by the appeal scheme.
9. I have considered whether this matter could be adequately addressed by condition. Given the circumstances of the site, I have found there to be a reasonable likelihood of protected species being present and Planning Practice Guidance advises that the full impact of the proposal on protected species needs to be considered before the grant of planning permission. For these reasons, I do not consider it would be reasonable to delay submission of information until after the grant of planning permission. A condition for an ecologist to oversee demolition would also not provide the necessary assurances as it would remain the case that the extent of the effects would not be known.
10. In conclusion on this main issue, on the basis of the evidence before me, it cannot be established with certainty that protected species would not be adversely affected by the proposal. As such the proposal would conflict with policies G6 of the London Plan 2021 (the LP), DM27 and SP7 of the Croydon Local Plan 2018 (the CLP) which relate to protection of biodiversity and require proposals to have no adverse impacts on protected species. There would also be conflict with the objective of the National Planning Policy Framework (the Framework) to protect and enhance biodiversity.

Character and Appearance

11. The area surrounding the appeal site is predominantly residential, comprising long terraces of two storey houses, sometimes including rooms within the roofspace, set on narrow plots. There is some evidence of back land development in the area and taller buildings and commercial uses line Lower Addiscombe Road to the south. The appeal site occupies a corner position on a right angle bend in Addiscombe Avenue. As a result of its position, the existing more spacious site layout is different to, and not characteristic of, those prevailing in the surrounding area.
12. The proposal would substantially increase the amount of built form on the site, and result in the loss of much of the open space which currently exists around the building. As such the proposed layout would appear more cramped. However, given the site is an outlier from the prevailing character of dense residential development, the proposal would not cause unacceptable harm to the overall character and appearance of the area. In addition, due to the irregular shape of the plot and narrow street frontage, the development would not appear visually prominent in views from the street.
13. While matters of appearance are not for consideration at this stage, the proposal clearly includes two storeys with rooms in the roofspace. There are other properties in the area of a similar scale and details of the appearance and treatment of those floors would be dealt with at a later stage.
14. Insofar as matters of layout and scale are concerned, the proposal would be compliant with policies D3 and D4 of the LP, and policies DM10 and SP4 of the CLP which together require development to respect a site's context and display high design quality. The proposal would also comply with the Framework where it requires development to be sympathetic to local character and, in the absence of harm to the local area, I do not find conflict with paragraph 71. I find that compliance with the development plan on this issue would arise irrespective of the status of the Council's Suburban Design Guide 2019.

Highway Safety and Parking

15. LP Policy T6 states that car-free development should be the starting point for all development proposals in places that are well-connected by public transport, with developments elsewhere designed to provide the minimum necessary parking. Associated Table 10.3 sets out a maximum parking provision of up to 0.75 spaces for dwellings in outer London areas with a Public Transport Accessibility Level (PTAL) of 4. The policy states development should not exceed the maximum standard.
16. Even though matters of access are not for consideration at this stage, it is clear that the site layout would not allow for any off-street parking within the proposal. As such, the proposal would not be in breach of the maximum standards of the LP and would accord with the objectives of the relevant London Plan policies above, through promoting walking, cycling and use of public transport.
17. At the time of my site visit in the middle of the day I observed the roads nearest the appeal site to have very little capacity for additional on-street parking, particularly on the streets without parking restrictions. The appellant has also carried out a parking survey which acknowledges limited capacity, particularly if adjustments were made to the methodology as per the Council's suggestions. As such this is an area of existing on-street parking stress, and

one where CLP Policy DM30 states development must reduce the impact of car parking. It is relevant, however, that Policy DM30 pre-dates the LP, which states that an absence of on-street parking controls should not be a barrier to new development, and that boroughs should look to implement these controls wherever necessary to allow existing residents to maintain safe and efficient use of their streets.

18. The development would be a very short walk from public transport with bus and tram services available from Lower Addiscombe Road. A number of services and facilities, including shops, also exist nearby and would be easy for future occupants of the site to walk or cycle to. I note the dispute surrounding the PTAL of the site, which may be lowered in the future. However, the proximity to facilities and public transport, together with the quantum of the additional development proposed here, lead me to conclude that the proposal would be unlikely to have adverse effects on the existing local parking conditions. As such, I find that the nature of the development and its location would be adequate to reduce its impacts on existing parking.
19. A draft Unilateral Undertaking has been submitted with the appeal documents which relates to the eligibility of future residents to parking permits. This is incomplete and would not take effect if the appeal were allowed. However, even if it did, this would only prevent parking in resident's bays, which do not include those unrestricted areas closest to the appeal site. For the reasons above I do not find this agreement necessary to mitigate for the effects of the development.
20. For the reasons given, the proposed absence of off-street car parking would be acceptable. Insofar as this main issue is concerned, the proposal would comply with policies T2, T3, T4, T6 and T6.1 of the LP, insofar as they seek to restrict car parking and promote more sustainable means of transport, and policies DM30, DM16 and SP8 of the CLP, which seek to reduce the impacts of car parking, support pedestrian movements and promote healthy communities.

Living Conditions of Neighbouring Occupiers

21. The Council's concerns in respect of living conditions relate specifically to numbers 2 to 10 Everton Road. This is a row of two storey terraced properties to the south west of the site. They have rear gardens extending towards the appeal site and a number of windows in their rear elevations which would appear to serve a combination of habitable and non-habitable rooms. The most southerly properties of this group enjoy outlook beyond their rear gardens and over the private garden of the appeal site.
22. The proposal would result in additional built form on the site, up to two and a half storeys in height and close to the boundaries of those adjoining rear gardens. As such, a change in their outlook and sense of enclosure would inevitably occur. However, the proposed site layout shows the orientation of the new buildings would result in them being at oblique angles to the properties on Everton Road, and the appellant states there would be a distance of between approximately 20 and 25 metres between the buildings. These attributes would preserve an acceptable outlook and sense of enclosure from the back of the properties. I also note the proximity of numbers 8 and 10 Everton Road to the two storey flank wall of the existing building and that this distance would be increased.

23. The rear gardens may experience a greater sense of enclosure, however given the height and nature of the existing boundaries, together with the angled walls of the new development, the effects would not cause unacceptable harm to the living conditions of those occupants.
24. As a result of these factors, the proposal would not cause an unacceptable loss of outlook nor harmful increase in their sense of enclosure. I am mindful of the findings of case law in this respect, which found that a private view from a window is not itself regarded as a planning matter², and do not find the loss of the view over the garden of the appeal site or to the tree line beyond in itself to be unacceptable.
25. In conclusion on this main issue, the proposal would be acceptable in terms of its effects on the living conditions of the occupants of those properties on Everton Road. In this respect, the proposal would comply with policies D3 and D6 of the LP, and DM10 of the CLP insofar as they relate to the amenity of surrounding housing. It would also comply with the objectives of the Framework insofar as it relates to healthy living conditions. Matters relating to the final external built form and appearance of the development, and any associated effects, would fall to be considered at the reserved matters stage.

Standard of Accommodation- Lighting and Outlook

26. The Council's concerns relate to the amount of light received by the central sections of the combined living, kitchen and dining areas of the proposed semi detached houses. These are shown to be located at the ground floor level and served by windows in three different elevations.
27. The appearance of the development, including its external built form, would be considered at the reserved matters stage, and this would affect the quality of accommodation within the buildings. Nonetheless, the appellant has provided a lighting report which gives an indication that satisfactory levels of sunlight and daylight could be achieved by those spaces given the number and orientation of the windows shown. These would also give adequate outlook for future occupiers given their orientation.
28. The proposal would be capable of providing suitable levels of sunlight, daylight and outlook, compliant with LP Policy D6 and CLP Policy DM10 insofar as they relate to the conditions of future occupants. I see no reason why it would not also be capable of adhering to the London Plan Guidance: Housing Design Standards Consultation Draft 2022 in respect of these issues.

Standard of Accommodation- Cycle Storage

29. Policy T5 of the LP sets out cycle parking standards, and requires it to be designed and laid out in accordance with the guidance contained in the London Cycling Design Standards. The main parties agree that the proposal should provide six cycle storage spaces. Despite the Council's concerns, the site layout demonstrates that areas would continue to exist around the proposed buildings which could be used to accommodate cycle storage, including opportunities for larger cycles within private amenity spaces if needed. As such, a policy compliant solution is likely to be possible. Final details of the storage facilities, including their external appearance, could reasonably be secured by condition.

² Laura C and Others v London Borough of Camden, The Secretary of State for the Environment Transport and The Regions [2001] EWHC Admin 1116

I see no reason why these could not be fit for purpose, secure and well located for future occupants, and help to promote cycling as an attractive means of transport.

30. I have had regard to the findings of an Inspector in an appeal relating to 2 and 4 Kenley Lane³ in respect of cycle parking. I do not have details of that site layout nor how constrained it was. However, that appeal related to a greater quantum of flats as well as a new doctor's surgery. Overall I cannot be satisfied that the circumstances are the same as the appeal before me.
31. The proposal would be capable of achieving an appropriate quantum and quality of cycle parking facilities, compliant with policies T1, T2, T4 and T5 of the LP, as well as DM16, DM29, DM30 and SP8 of the CLP insofar as they relate to cycle storage and encouraging sustainable means of transport. I am also satisfied that the provisions of the Local Cycling Design Guide 2014 and Cambridge Cycle Parking Guide 2010 could be adhered to.

Standard of Accommodation- Refuse Storage

32. Similarly to cycle storage, given the remaining spaces around the site including private garden areas, it is likely that a policy compliant position could reasonably be achieved. There is not convincing evidence which would lead me to conclude that there is no solution. The appellant considers that other options exist for the storage of bulky waste, including shared facilities, and these could be explored. It would be reasonable to ensure that such details were submitted at a later date if the appeal were otherwise allowed. The proposal would be capable of providing adequate waste facilities, to accord with policies D6, S17 and T7 of the LP and policies DM10, SP4 and SP6 insofar as they relate to servicing and arrangements for waste.

Standard of Accommodation- Accessibility

33. The reason for refusal states that none of the proposed dwellings could meet the required accessibility levels, while the officer report focuses on the preclusion of step free access to one of the dwellings due to the position of cycle storage.
34. As above, given the likelihood of an acceptable solution for cycle and refuse storage, details of their final location and nature could reasonably be secured for a later date. The appearance of the proposed dwellings, including their means of access to the front doors, currently indicated to include steps, could also fall under consideration at the reserved matters stage.
35. Overall the proposed houses could provide an acceptable standard of accommodation in respect of accessibility, compliant with policies D5, D6, D7 and GG4 of the LP which require accessible housing and inclusive design, as well as the objectives of the Framework relating to inclusive and accessible places.

Other Matters

36. The appellant asserts that a two storey rear extension could be added to the rear of the existing property, in line with a recently granted lawful development certificate⁴. While this may be a legitimate fall back position for the appellant, it

³ APP/L5240/W/22/3302354

⁴ 23/03461/LP

would not provide justification for the harm found in respect of biodiversity impacts, which would be different as a result of that fall-back scheme.

37. The proposal would contribute to the national objective to boost the supply of homes, and these would be in a sustainable location and could be family sized homes. There would be some economic benefit arising from the construction process and local expenditure by future occupants. However, the weight of these benefits would be limited by the scale of the development, and would not outweigh the harm identified, which would be in conflict with both local and national policy.

Conclusion

38. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is dismissed.

C Shearing

INSPECTOR