



Appeal Decision

Site visit made on 3 April 2024

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th May 2024

Appeal Ref: APP/L5240/W/23/3331234

518 Purley Way, Croydon CRO 4RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Shujat Khan, Envision Contracting Ltd against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/00733/FUL.
 - The development proposed is provision of six additional skylights.
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Decision

1. The appeal is allowed, and planning permission is granted for the provision of six additional skylights at 518 Purley Way, Croydon CRO 4RE in accordance with the terms of the application, ref: 23/00733/FUL, subject to the following condition:
 - 1) a) Within twelve months of the date of this decision, the skylights on the south-facing and west-facing roof slopes shall have been removed, and the roof slopes shall have been reinstated to their previous condition, unless the skylights are fitted with obscure glazing within nine months of the date of this decision.
 - b) Details of the aforementioned obscure glazing shall have first been submitted to and approved in writing by the Local Planning Authority within six months of the date of this permission.
 - b) Upon implementation of the approved scheme specified in this condition, the obscure glazed skylights shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

2. At my site visit, I saw the six skylights that are the subject of this appeal had already been installed in the positions shown on the plans. It follows that planning permission is sought for the development on a retrospective basis.
3. The appellant submitted revised plans with the appeal which show more than six skylights. However, with regard to principles established by the Courts in the case of *Holborn Studios Ltd*¹, I cannot consider development which is materially different to that which the interested parties were consulted upon. In

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

the interests of fairness, I have determined the appeal based on the same plans and description of development which were before the Council.

4. The appellant has also submitted a Daylight and Sunlight Study² (DSS) and an acoustic assessment³ (AA) in support of this appeal and in response to concerns expressed by interested parties. The Council and interested parties have had an opportunity to comment on these documents and so I shall take them into account insofar as they are relevant to the original and not amended plans. Although not specifically referred to in the Council's reasons for refusal, having reviewed the evidence, including the Council Officer's report and comments of third parties, I have included noise and disturbance and privacy in my main issue in relation to living conditions.
5. The owner of neighbouring land and property requested that I view the appeal site from their land, and I was able to do so at my site visit.

The Use of the Appeal Building

6. In January 2021, planning permission was granted via Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for development consisting of a change of use of a building or land from a use falling within Class B1(a) (offices)...to a use falling within Class C3 (dwellinghouses). This 'permitted development right' was subject to condition O.2(1) that, before beginning the development, the developer must apply to the local planning authority for a determination as to whether their prior approval will be required as to specified matters.
7. A prior approval application (ref: 21/00099/GPDO) was submitted to the Council in January 2021 "*....for the change of use [of the appeal building] from offices (Use Class B1(a)to provide 8 self-contained flats (5no. studios and 3no. two-bed flats). All of the proposed habitable rooms will have windows that will provide adequate natural light*". The Council failed to determine the application within the statutory 56 day period, and it follows that prior approval for the change of use was deemed to be granted.
8. The building is now in use as 5 x studio and 3 x two-bedroom flats. I have no remit to determine the lawfulness or the merits of that use, because this appeal concerns the provision of skylights. Strictly for the purposes of this decision, I shall assume that the residential use is lawful, as it will be if the change of use was carried out in accordance with the submitted prior approval plans as required by Part 3, paragraph W.(12) of the GPDO.
9. I have noted that the appellant has already inserted the skylights as well as carried out the change of use. The Council also raise a concern that the internal layout of the building has been changed. If there is any question as to the lawfulness of the flat use, then, it is open to the Council to investigate that matter and/or for the appellant to apply for a determination of the existing lawful use under s191 of the Town and Country Planning Act 1990.

² Daylight and Sunlight Study (within development), Smith Marston Building Surveyors, 19 September 2023

³ Assessment of Sound Intrusions Through New Windows to a Residential Development, ACA Acoustics, 6 July 2023

Main Issues

10. The main issues in the appeal are the effect of the development on:

- the living conditions of occupiers of the building, with particular regard to a) daylight and sunlight, ventilation, outlook and privacy and b) noise disturbance; and,
- the viability of nearby businesses or employment uses.

Reasons

Living conditions

Daylight, Sunlight, Ventilation, Outlook and Privacy

11. The appeal site is located along busy Purley Way (A23), close to its junction with Stafford Road (A232) and Denning Avenue. The building is set back from the road behind a low brick wall with railings and a short forecourt that provides limited parking space. The building is single aspect with windows on the east elevation of the building at ground and first floor which face Purley Way.
12. The skylights provide the only source of natural light to two bedrooms in ground floor Flat 1, two bedrooms and a kitchen/living room in Flat 2, and one bedroom in Flat 3. I saw that these habitable rooms are nonetheless dark and gloomy and light did not spread across the room, because the skylights are angled and recessed high into the roof plane, well above the existing internal ceiling levels and because of the height and proximity of the adjoining buildings. The DSS does not demonstrate that the existing skylights would provide adequate daylight or sunlight without additional windows being installed. The existing rooms would not have any windows apart from the skylights. However, if I refuse planning permission for the proposed development, the outcome would be that these habitable rooms have no natural light at all.
13. Clearly, the occupation of a habitable room without any natural light offers an extremely poor standard of accommodation. It would be severely oppressive for people using these rooms, which could cause both physical and psychological distress. Given both bedrooms in Flat 1 would have no natural light, one bedroom in Flat 3 and no habitable room at all in Flat 2 would have natural light, all of these flats would fall short of what would be required in terms of natural light without the six skylights and would result in unacceptable living conditions for occupants of those flats.
14. Moreover, from what I saw and the evidence before me, there would be no ventilation to the affected rooms without the skylights. I therefore acknowledge that the skylights deliver important wellbeing and health benefits to occupiers of the ground floor flats.
15. The skylights also afford the occupiers of the ground floor flats some outlook where they had none before. Even as things stand, however, the outlook afforded by the skylights is severely restricted and poor, because these openings face the sky from a height significantly above the ceiling of the ground floor rooms they serve. I also saw at my site visit that, again because of their height and angle, the skylights would enable users of a first floor gym

in the adjoining building at 516 Purley Way to look directly into Flat 1 and the users of an adjoining the portacabin office to look into Flat 2. While views into the appeal building would be limited to a small area within the habitable rooms, this would nevertheless be unacceptably harmful to occupiers of the flats.

16. However, a condition could be imposed to require obscure glazing to these skylights to prevent overlooking, should the appeal be allowed. I have considered whether this would be reasonable, since the obscure glazing would remove outlook for occupants of the affected rooms. Nonetheless, the outlook even with the skylight is restricted and poor, and there would be no outlook at all if planning permission is refused.

Noise and Disturbance

17. As noted above, the skylights are on the south and west side of the appeal building. The adjoining property on the south side is two storeys high and used for various purposes including vehicle repairs, a decorating centre and a gymnasium/fitness studio. The adjoining property to the west (and north) includes an open yard and elevated portacabin office which are used for a tyre-fitting business, and which also adjoin another vehicle repair workshop and a petrol filling station and shop that trade 24 hours a day.
18. Given these adjoining uses, and the proximity to the site of the busy A23 and A232 roads, I consider that levels of background noise around the appeal building will be consistently high. The uses will generate various types of fluctuating and sometimes sudden noises from early in the morning until well until the evening from vehicular traffic, pedestrian movements and conversation, industrial noise and music.
19. The AA concluded that sound levels over a 24 hour period within one ground floor flat with the skylight closed were within BS4142:2014 and World Health Organisation guidelines. However, the AA provides no information about noise levels in the other two ground floor flats that also include the skylights, or whether the adjacent gym was being used with music at the time of the survey. Keeping windows closed to produce a suitable noise environment internally would, to my mind, create an oppressive living environment.
20. I also consider it highly unlikely that occupiers would keep the skylights closed at all times, particularly in the warmer months of the year when the skylights might be open for ventilation, and during early morning or evening when occupants may reasonably expect a level of peace and quiet. It would be unreasonable to require that the skylights are fixed shut, to overcome the harm, because that would deprive the occupiers of the flats of adequate ventilation.

Conclusion on Living Conditions

21. I conclude that the skylights cause harm to the living conditions of occupiers of the appeal flats through increased exposure to noise and disturbance, which could not be reasonably avoided by requiring that these openings are fixed shut. In that respect, the development conflicts with Policy DM10 of the Croydon Local Plan 2018 (CLP) and Policy D6 of the London Plan 2021 (the London Plan) which together seek, amongst other things, high quality development. It would also conflict with the guidance and objectives of the Mayor of London's Housing Supplementary Planning Guidance 2016 and

paragraph 135(f) of the Framework which both seek that development provides a high standard of amenity for users of development.

22. However, the skylights cause no unacceptable harm in relation to the privacy or outlook of the occupiers, subject to a condition to require obscure glazing. And the skylights have a positive effect on living conditions through the provision of some daylight, sunlight and ventilation which the occupiers would otherwise be harmfully deprived of. I attach substantial weight to this consideration but will address whether the benefits of the skylights outweigh the disadvantages in my overall conclusion below.

Existing Employment Uses

23. Given my finding that the skylights would increase noise within the flats with skylights open, it follows that they would also increase the risk of flat occupiers making complaints about the nearby existing businesses. Paragraph 193 of the Framework says planning decisions should ensure that existing businesses should not have unreasonable restrictions placed on them because of development permitted after they were established. Therefore, I must be satisfied that the installation of the skylights will not serve to undermine or conflict with the operation of the surrounding businesses.
24. The AA was undertaken with the skylights in one flat closed and only over 24 hours. Thus it does not demonstrate to me that all the skylights would not result in pressure for unreasonable restrictions being placed on the operations of nearby businesses. Although I am not aware, from the submissions before me, of any noise complaints being made in this regard since the skylights were installed, I consider that such pressure could likely be brought to bear.
25. It is suggested that the potential for redevelopment of the adjacent commercial sites would be stifled as a result of the proximity to the skylights. I acknowledge that the appeal site and surrounding area is located within the 'Five Ways Triangle' zone of the Council's Purley Way Masterplan. Any redevelopment of this zone could include buildings of considerable height with the potential to tower above the flats served by the skylights. Nevertheless, the appeal site itself could also be redeveloped and I have not been provided with any evidence to demonstrate the likely nature or timescale for any redevelopment proposals in the area. I cannot, therefore, give any weight to this prospect at the current time.
26. Nonetheless, I conclude that the skylights would be likely to increase the exposure of flat occupiers to noise so that they would seek unreasonable restrictions being placed on the operations of nearby businesses. Thus, the development conflicts with the Framework as outlined above, and with Policy D13 of the London Plan which seeks, amongst other things, that development is designed to ensure established noise and other nuisance-generating uses remain viable and can continue to grow without unreasonable restrictions being placed on them.

Other Matters

27. The Council's reasons for refusal refer to conflict with Policies D11 and D12 of the London Plan. Policy D11 relates to safety, security and resilience to emergency and no reason has been provided by the Council to substantiate why the skylights would conflict with this policy. Policy D12 relates to fire

safety. However, matters concerning fire safety are related to the use of the building which, as set out above, is not within my remit in this appeal.

28. I have already explained that the lawfulness of the change of use of the building to flats is outside of my remit. The Council and other interested parties have expressed concern that the works to insert the skylights were not authorised, but the Town and Country Planning Act 1990 empowers me to grant planning permission retrospectively. I cannot comment on whether any other operational development not subject to this appeal should be or is already permitted.
29. I have had regard to other concerns raised by interested parties, including matters regarding stepped access into the building, amenity space, parking, provision of cycle/mobility scooter/motorcycle and bin storage facilities. Access in relation to Part M is a matter for Building Regulations. As the appeal relates only to the provision of skylights, matters regarding outdoor amenity space, parking, cycle and bin storage are not relevant to the consideration of the development before me.
30. I have been referred to a Judicial Review in relation to 54 Arkwright Road, Croydon but have not been given sufficient details of that case to consider its implications for the appeal before me. My decision is based on the merits of the skylights and relevant planning policies.

Planning Balance

31. I have found that the skylights expose occupiers of the appeal flats to harmful noise and disturbance, which in turn risks harm to the operation of nearby businesses. In those respects, the development conflicts with CLP Policy DM10, London Plan Policies D6 and D13, the Framework, and the Mayor of London's Housing Supplementary Planning Guidance 2016.
32. I have also found that, subject to a condition, the skylights would cause no unacceptable harm in relation to the privacy or outlook of the occupiers. More importantly, I have found that the skylights have a positive effect on the living conditions of occupiers of the flats through the provision of some daylight, sunlight and ventilation.
33. Even with the skylights, it cannot be said that the appeal flats have ample daylight or sunlight. However, the fallback position is that the flats are served by fewer windows, not more. I am satisfied that, without the skylights, the flats would be unacceptably dark and unpleasantly claustrophobic places to live. However, as outlined above, I cannot now consider the merits of the use of the building as flats.
34. The layout of the ground floor flats is such that even the modest increase in light, and the increased ventilation afforded by the skylights must provide such wellbeing and health benefits to the occupiers as to carry substantial weight in favour of the appeal. In my view, this consideration indicates that planning permission ought to be granted for the skylights, despite the conflict with the development plan outlined above.

Conditions

35. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the Framework and the Planning Practice Guidance in terms of

the use of planning conditions. Given that the development is already in place, the Council's suggested statutory time limit condition is not necessary. For the same reason, the suggested plans condition is not necessary.

36. However, in order to ensure that no overlooking occurs from occupiers of neighbouring properties towards the skylights on the southern and western roof slopes, I consider it necessary to impose a condition requiring that these skylights are obscurely glazed. Condition 1 is imposed to ensure that the details of obscure glazing for the relevant skylights are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of obscure glazing before the development takes place.
37. The condition will ensure that the development can be enforced against if the details of obscure glazing are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with the relevant timescale. A generous timescale for the approval of details has been given to allow the local planning authority sufficient time to consider. Similarly, a generous timescale for implementation or removal of skylights has been provided as the building is occupied.
38. The Council's proposed condition relating to the fire statement is not required as it is not relevant to the determination of this appeal. I have not imposed the Council's suggested condition in relation to the AA as the AA was limited in its scope and provided no recommendations for noise attenuation.

Conclusion

39. For the above reasons, in the particular circumstances of this case, the provision of natural light and ventilation to occupiers of the flats as a result of the six skylights outweighs the conflict with the development plan.
40. Therefore, for the reasons given and having had regard to all other matters raised, the appeal should be allowed.

A Veevers

INSPECTOR