



Appeal Decision

Site visit made on 22 July 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2024

Appeal Ref: APP/L5240/W/23/3334873 24 Church Hill, Purley, Croydon CR8 3QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Curzon Developments Kenley Ltd against the Council of the London Borough of Croydon.
 - The application Ref is 23/01618/FUL.
 - The development proposed is alterations and extensions to provide: 2 x 1 bed flats, 3 x 2 bed flats, 1 x 3 bed flat with associated parking and amenity area.
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Decision

1. The appeal is dismissed and planning permission for alterations and extensions to provide 2 x 1 bed flats, 3 x 2 bed flats, 1 x 3 bed flat with associated parking and amenity area is refused.

Preliminary Matters

2. The appeal is against the non-determination of a planning application. The Council's appeal statement indicates that it would have refused planning permission for reasons relating to character and appearance, future living conditions, access and parking arrangements, impacts on protected species, habitats and trees, fire safety and sustainable transport. The main issues below reflect the Council's position.
3. A draft National Planning Policy Framework was published in July 2024. The proposed changes would not materially affect the main issues in this case, so the parties were not invited to make further comments. As the draft document is currently subject to consultation, it carries very little weight.

Main Issues

4. The main issues in this appeal are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the development would provide acceptable living conditions for future occupants, with particular regard to internal space, outlook, light and external amenity space;
 - the effect of the proposed development on road user safety and the free flow of traffic, with particular regard to access, turning and parking arrangements;
 - the effect of the proposal on protected species, habitats and trees;

- whether the development would expose future occupiers to an unacceptable fire safety risk; and
- whether the proposal would make appropriate provision for sustainable transport.

Reasons

Character and appearance

5. The appeal site comprises a two-storey detached building accommodating three flats, within a predominantly residential area. It is a pitched roof structure with roofspace accommodation and a large mainly two storey rear projection. The dwellings along Church Hill are varied in type, style and design but are typically large, pitched and hipped-roof dwellings with generous gardens.
6. The proposed extensions and alterations would accommodate six flats over three levels. The development would be no higher than the existing structure, set in from the side boundaries of the property and designed to reflect the style and appearance of the existing dwelling.
7. Nevertheless, the rear extension would be almost the same length again as the existing large two storey projection. Its significant length combined with its two-storey height would result in a bulky and disproportionate addition to the host property. Further, the sizeable crown roof would fail to reflect the domestic scale hipped and pitched roof forms which prevail in the area. The siting of the appeal property forward of 22 Church Hill, the gap between those properties and the scale of the proposed scheme mean that the large rear extension would be visible from the street.
8. The existing garden is enclosed by tall boundary hedges and rear outbuildings and the proposed scheme would subdivide this to provide private amenity space for five flats. Although not visible from the public realm or adjoining properties due to the boundary planting, the subdivision of the rear garden would give it a cramped and partitioned character, at odds with the large open gardens prevalent in the area.
9. The appellant refers to developments at Woodcote Drive and Green Lane where the Council allowed larger scale developments than previously existed on those sites. However, these were for the redevelopment of those sites to provide flats in purpose-built structures rather than a sizeable extension to an existing building. Therefore, they are not comparable to the appeal scheme.
10. There is also reference to nearby housing development at 21-23 Church Hill and 2c Peaks Hill Rise which have taken place on garden land. Whilst these have resulted in smaller gardens and plot sizes than previously, they are not equivalent to the proposed subdivision of the garden on the appeal site.
11. Therefore, I conclude that the proposal would harm the character and appearance of the area. This would be contrary to Policy D3 of the London Plan 2021 (London Plan) and Policies DM10 and SP4 of the Croydon Local Plan 2018 (Local Plan). Together, these require developments to respond to local distinctiveness and respect local character, scale and massing.

12. Policy D4 of the London Plan relates to processes and actions required to deliver good design. As it does not directly link to the harm identified, I find no specific conflict with Policy D4 in reaching my conclusion.

Living conditions

13. Policy D6 of the London Plan requires at least 75% of the gross internal floor area of dwellings to achieve a minimum floor to ceiling height of 2.5m. The parties agree that the proposed units would meet the minimum gross internal floor area requirements set out in the nationally described space standards. However, as flats 5 and 6 would be within the roof space and in the absence of section drawings, I cannot be certain that the height of the living space would be adequate for the future occupiers of these units as required by Policy D6.
14. Flat 5 would only have rooflight windows, including to the kitchen and living room. I acknowledge that the existing second floor unit only has rooflights, but the proposal would alter the internal layout and number of flats in the building. Due to the reliance on rooflight windows for proposed flat 5, there would be a restricted and unacceptable outlook for the future residents of this unit. Although the main living area of this flat would be north facing, because of the narrow room width and the proposed three large rooflights evenly spaced along the length of the room, there would be adequate light for future occupants.
15. There would also be rooflights in the bedrooms of flat 6. Given the large size of these relative to the small size of the bedrooms, there would be satisfactory light for occupants of these rooms. The living room would include windows and large, glazed patio doors providing access to the terrace. Although the balcony would be enclosed and despite the limited outlook from the bedroom windows, given the amount of glazing to the living room and its position facing the rear gardens, there would be an acceptable degree of outlook from flat 6. Further, the extent of the living room windows and doors and their south facing aspect would ensure that there would be an acceptable amount of light to this room.
16. The occupiers of each flat would have their own dedicated outdoor amenity space. The five amenity areas in the rear garden would be narrow and enclosed, providing poor quality spaces. Further, the outdoor areas for units 3, 4 and 5 would only be accessible by walking downstairs and around the perimeter of the building and amenity space for flat 2, mainly along a narrow path. Thus, these would not be convenient or practical for use by residents of those flats. There is reference to a scheme elsewhere for four flats, each with its own private garden, granted planning permission by the Council¹. However, as this provided fewer external amenity spaces with a more direct route to them than currently proposed, it is not comparable to appeal scheme.
17. There is a reference to householders being allowed to erect sheds and outbuildings on up to 50% of the garden. However, the legislation² only applies this permitted development right to dwellinghouses and not to buildings containing flats.
18. Local Plan Policy DM10.4 requires all flatted development to provide a minimum of 10m² per child of new play space. However, as the scheme would create only three additional units with most having only one or two bedrooms,

¹ Planning application ref: 17/02544/FUL

² Under Schedule 2 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

the lack of play space provision would not cause undue harm to future residents in this instance.

19. Therefore, whilst the development would provide adequate light, I conclude that it would provide unacceptable living conditions for future occupants, with particular regard to internal space, outlook and external amenity space. This would be contrary to Policies D3 and D6 of the London Plan and Policies SP4 and DM10 of the Local Plan. Together these require development to enhance well-being, including by providing adequately-sized rooms with comfortable layouts, appropriate outlook, and high quality, functional private amenity space, amongst other things.

Road user safety and free flow of traffic

20. There is currently an informal parking arrangement in front of the building and two vehicular accesses onto Church Hill, alongside which are boundary hedges. A footway lies adjacent to the site with a narrow grass strip separating it from the road.
21. The proposed development would include six parking spaces and retention of a single access onto Church Hill. There would be new areas of planting alongside the proposed front parking area and the appellant indicates that the existing high frontage hedge would be replaced with a lower one.
22. There is no indication of how vehicles could turn within the site to enable drivers to exit in forward gear and, given the limited area between the proposed parking spaces, drivers may have to reverse cars to egress the site. Further, it is not shown how pedestrian and vehicular sightlines would be achieved. Even with low front planting, the neighbouring boundary hedges and cars parked within the site would potentially obstruct visibility for drivers of vehicles exiting the site of pedestrians using the footway and cyclists and cars travelling along the road.
23. Thus, given the lack of information on turning areas and visibility splays, there has been a failure to demonstrate that the proposal would not create an unacceptable risk of accidents and, therefore, harm to the safety and movement of road users. The appellant suggests that these matters could be dealt with by a condition but, in the absence of details, I cannot be satisfied that such provision could be made.
24. The size and location of some proposed parking spaces adjacent to planting may make it difficult to get in and out of vehicles, effectively reducing the amount of usable parking spaces on the site. However, while only a snapshot in time, there appeared to be plenty of space available for parking in the road at the time of my visit. Therefore, even if the proposal resulted in additional parking on-street, I do not consider that this would harm highway safety and the free flow of traffic on Church Hill as there would be sufficient space to accommodate extra vehicles on the street. As such, it would not conflict with the car parking standards set out in Policy T6 of the London Plan.
25. Consequently, whilst the amount of car parking would be acceptable, I conclude that the access and turning arrangements would harm road user safety and the free flow of traffic. This would be contrary to Policy T4 of the London Plan and Policy DM29 of the Local Plan. Together, these require development to not increase road danger nor have a detrimental impact on

highway safety for pedestrians, cyclists and private vehicles, amongst other things.

Protected species, habitats and trees

26. There are hanging tiles on the front and sides of the existing building, boundary hedges, and trees in neighbouring rear gardens. The Council's ecological consultant states that hanging tiles are often highly suitable for roosting bats and the gardens form an ecological link to nearby open spaces. Therefore, the consultant considers that a preliminary roost assessment, as well as an assessment of impacts on protected and priority species and habitats and identification of appropriate mitigation measures is required.
27. Bats are a European Protected Species protected by law³ and public authorities have a statutory duty to conserve biodiversity⁴. Although the roof space is already occupied by habitable rooms, the proposed scheme would include a side extension and other alterations to the existing building which would affect the hanging tiles.
28. The Council did not request an ecological report and it is indicated that the boundary hedgerows would be retained, with some areas of proposed new planting. However, in the absence of a preliminary roost or other assessment of impacts on protected species and habitats, the presence of bats cannot be ruled out and I cannot be certain as to the extent to which they may be affected. Further, if protected species were affected, I cannot be certain as to what mitigation, if appropriate, may be required.
29. The appellant considers that a condition requiring an ecological impact assessment could be imposed. However, this would not be appropriate in this case given that potential impacts on protected species and habitats need to be investigated and it should be demonstrated from the outset that the proposal would not have an adverse impact on them.
30. The plans do not show the removal of any trees and the appellant confirms that the proposed extension and areas of excavation would be some distance from the trees in adjacent gardens. Therefore, I am satisfied that the proposal would not adversely affect existing trees and is not likely to lead to future pressure for them to be removed. In this respect, it would comply with Policy G7 of the London Plan and Policies DM10 and DM28 of the Local Plan where they seek to retain existing trees.
31. Consequently, whilst the proposed development would not cause harm to trees, I conclude that there is insufficient evidence to demonstrate that it would not have an adverse effect on protected species and habitats. As such, it would fail to accord with Policy G6 of the London Plan and Policy DM27 of the Local Plan. Together, these require development proposals to manage impacts on biodiversity, including having no adverse impact on protected species, amongst other things.

³ Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981

⁴ Section 40 of the Natural Environment and Rural Communities Act 2000

Fire safety

32. Policy D12 of the London Plan requires all proposals to achieve the highest standards of fire safety to ensure the safety of all building users. It states that developments should be designed to incorporate appropriate features which reduce the risk to life and of serious injury in the event of a fire and should be constructed to minimise the risk of fire spread. Proposals should also provide suitable and convenient means of escape and suitable access and equipment for firefighting, amongst other things.
33. The appellant refers to retaining and adapting the existing protected staircase and installing additional fire doors, with alternative means of escape being available for the ground floor flats. Nevertheless, the proposal would include significant internal alterations and a large extension to create three additional flats and, due to the limited fire safety information provided, I cannot be certain that it would meet the requirements of Policy D12.
34. It has been put to me that outstanding fire safety matters could be dealt with by condition. However, design changes that are not accommodated in the appeal proposal may be necessary to provide adequate fire safety measures. Therefore, it would not be reasonable to impose a condition in this respect.
35. Consequently, I conclude that it has not been demonstrated that the development would not expose future occupiers to an unacceptable fire safety risk. Therefore, I find conflict with Policy D12 of the London Plan.

Sustainable transport

36. The site has a PTAL of 1a which means it has relatively poor access to public transport. London Plan Policy T5 sets out the requirements for cycle parking which for the proposed development would amount to 11 cycle spaces for residents and two visitor cycle spaces. This is reiterated in Policy DM30 of the Local Plan. The proposal would not include provision for cycle parking, but the appellant indicates that there could be a condition requiring provision of cycle stores for flats 3-6 within the retained rear outbuildings. It is unclear how provision could be made for units 1 and 2 and for visitor cycle parking.
37. The London Cycling Design Standards require cycle parking to be well located, close to the entrance of the property and to avoid narrow doorways (less than 1.2m wide). The proposed cycle spaces would be located at the end of the rear garden, a significant distance from the front entrance to units 3-6 and only accessible via a narrow path beside the existing building. Therefore, even if sufficient cycle parking could be provided, this would not be well-located relative to the proposed flats which would discourage future residents and visitors from using cycles as a mode of transport.
38. Policy SP8 of the Local Plan requires new development to contribute to the provision of electric vehicle charging infrastructure, car clubs and car sharing schemes, amongst other things. Local Plan Policy DM29 states that development should promote measures to increase the use of public transport, cycling and walking. Policy T6.1 of the London Plan recognises that car club spaces may be considered appropriate in lieu of private parking and that these should have active charging facilities.
39. The Council states that a financial contribution of £1,500 per unit would be required to contribute towards sustainable transport initiatives in the local area.

This would be used towards measures including traffic orders, signage, lining car club bays, electric vehicle charging point provision, and extensions and improvements to walking and cycling routes.

40. No planning obligation to secure the contribution towards sustainable transport initiatives has been submitted and the appellant considers that this matter could be resolved via a condition. However, there is no mechanism to positively require a financial contribution by planning condition⁵ and therefore a planning obligation would be necessary. This would ensure that there is the necessary legal certainty that the required contribution would be paid in a timely manner.
41. Therefore, I conclude that the proposal would not make appropriate provision for sustainable transport. As such, it would conflict with Policies T5 and T6.1 of the London Plan and Policies DM29, DM30 and SP8 of the CLP.

Other Matters

42. The proposal would provide a mix of flat sizes, making more efficient use of land within an existing residential area and contributing three additional dwellings towards the local supply of housing. There is no substantive evidence to demonstrate that the Council is failing to meet the needs for housing in its area which tempers the weight I have attached to housing delivery. Nevertheless, the provision of three additional mixed sized flats is still a limited benefit to be factored into the planning balance.
43. The proposed scheme would extend and refurbish an existing building, generating significantly lower carbon emissions compared to a similar sized new build development. However, given the relatively small scale of the proposal, this benefit would be limited.
44. The Council does not find harm or development plan conflict in relation to several other matters, including the principle of a residential extension, living conditions of neighbouring occupiers, flood risk, accessibility and mix of housing, space for bin stores, and energy and water efficiency. However, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposal.
45. The appellant's general concerns about how the Council processed the application is a matter between those parties and it does not in this instance have any bearing on my determination of this appeal.

Planning Balance and Conclusion

46. I have found that the proposal would harm the character and appearance of the area, provide unacceptable living conditions for future occupants and harm road user safety and the free flow of traffic. It has also not been demonstrated that the proposed development would not adversely affect protected species and habitats and not expose future occupiers to an unacceptable fire safety risk. Further, the proposal would not make appropriate provision for sustainable transport. These are planning harms which attract considerable weight. The delivery of housing whilst minimising carbon emissions attracts limited weight and the remaining matters only neutral weight, which accordingly do not outweigh the harm I have found.

⁵ Planning Practice Guide Paragraph: 005 Reference ID: 21a-005-20190723

47. For the reasons given above, the proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed, and planning permission is refused.

A Wright

INSPECTOR