



Appeal Decision

Site visit made on 16 July 2024

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2024

Appeal Ref: APP/L5240/W/24/3337344

43 Cross Road, Croydon CR0 6TE

- 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 Saife Dungereella (Sama Enterprises Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/03612/FUL.
 - The development proposed is alterations and modifications to ground and first floors including a change of use to form two nos self-contained flats.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have added the appellant's name in the banner head above as it appears on the appeal form.
3. The appellant has submitted an amended plan as part of their appeal (reference no 2095_P04 Rev B) which shows a first-floor rear terrace. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
4. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
5. The amendments would substantially alter the layout and appearance of the development, when compared to those upon which the Council made its decision. These are material matters affecting the determination of this appeal. The changes have not been consulted upon. I find that neither part of the necessary test set out in the relevant case law has been satisfied and so I will not accept the amendments. Accordingly, I have determined the appeal having regard to the same proposal on which the Council made its decision.

Main Issues

6. The main issues are:

- The effect of the proposed development on the provision of scattered employment sites in the Borough;
- Whether the proposed development would provide adequate living conditions for the future occupiers of 43 Cross Road with particular regard to light, outlook, privacy and outside amenity space; and
- The effect of the proposed development on highway safety.

Reasons

Employment site

7. No 43 Cross Road is a two-storey building with part single part two-storey rear elevations. It also features a first-floor side extension with an undercroft at ground level. A warehouse is located to the rear of the site and directly abuts the two-storey building. On my site visit, I observed that the premises were vacant and formerly used as an office.
8. Policy SP3 of the Croydon Local Plan (2018) (LP) seeks to protect industrial and warehousing activities at scattered employment sites in the Borough. It states that planning permission for limited residential development will be granted if it can be demonstrated that there is no demand for the existing premises or for a scheme comprised solely of the permitted uses. Policies E4 and E7 of the London Plan (2021) are broadly consistent with Policy SP3 insofar as they seek to protect non-designated industrial uses and related purposes.
9. I acknowledge that the proposal would not lead to the loss of an industrial/warehousing use. However, the proposed residential conversion would sever the link between the front office building and the rear warehouse. This would erode the viability of the use of the warehouse as it would remove space capable to be used for the management and administrative functions of an industrial business. This would diminish the attractiveness of the warehouse premises and jeopardise its continued use.
10. The appellant states that there is no demand for the premises and that the site has been marketed for employment use by two commercial agents in recent years. However, I have not been provided with any evidence of this and therefore I am not satisfied it has been demonstrated there is no reasonable prospect of the site being used for industrial and related functions.
11. Given this, the proposed development would have an adverse effect on the provision of scattered employment sites in the Borough. It would therefore conflict with Policy SP3 of the LP which seeks to protect industrial and warehousing activities at scattered employment sites in the Borough and Policies E4 and E7 of the London Plan which seek to protect sites used for industrial and related purposes.
12. The proposal also conflicts with paragraph 85 of the National Planning Policy Framework (2023) (the 'Framework') insofar as it seeks to ensure planning decisions help create the conditions in which businesses can invest, expand and adapt in order to build a strong and competitive economy.

Living Conditions

13. Bedroom 1 of the ground floor flat would have a window directly facing the side elevation of the neighbouring property at No 41. The neighbouring wall is

located in close proximity to the appeal building and therefore Bedroom 1 would have very poor access to natural daylight and sunlight. Furthermore, the window would be obscure glazed and therefore the outlook from this bedroom would be inadequate. Similarly, Bedroom 2 of the ground floor flat would only have one flank window facing the undercroft area of the site. Given this location, it would have poor access to light and unacceptable outlook. It would also be located next to the entrance to the warehouse as well as to 45 Cross Road. This would lead to privacy issues as neighbouring residents and employees could easily peer through the ground floor window.

14. The living room and kitchen area of the ground floor flat would have front windows facing the street as well as an obscure glazed flank window facing the side elevation of No 41. The plans do not show a defensible space to the front of the property adjacent to the public footway. The Council opine this would lead to the future occupiers erecting blinds which would lead to poor access to light. However, due to the easterly orientation of the windows, the generous extent of glazing, and the likely use of conventional translucent blinds or curtains, the living room and kitchen area would receive an adequate level of light.
15. Whilst the flank window would be obscure glazed, the outlook from the living/dining room and kitchen area would not be too dissimilar to other properties on the street that, typically, have living rooms facing the street. I therefore do not find that the outlook would be unacceptable. Notwithstanding this, the lack of a defensible space in the form of a small front garden or patio area enclosed by a wall or fence, would mean that members of the public could directly pass the front windows. This would erode the privacy of the future occupiers.
16. Furthermore, the proposed outside amenity spaces would be detached from the proposed flats as they would be located to the rear of the site and adjacent to the existing warehouse. This would be an awkward and impractical arrangement as the future occupiers would have to exit the front of their properties and walk through the undercroft to the rear of the site to gain access to the amenity space. The side windows of the warehouse would also face the amenity areas and would thus erode the privacy of the future occupiers.
17. The appellant states that many neighbouring occupiers do not have access to amenity space. However, most properties in the vicinity have rear gardens. In any case, all occupiers in new proposals for residential development are entitled to adequate outside amenity space.
18. Given this, the proposal would fail to provide adequate living conditions for the future occupiers of 43 Cross Road with regards to light, outlook, privacy and outside amenity space. It would conflict with Policy DM10 the LP and Policy D6 of London Plan which together seek to ensure that proposals are well-designed and protect the amenity of future occupiers.

Highway Safety

19. The site has good access to public transport links and is located in a Controlled Parking Zone. In order to ensure that the development is car-free, the Council has sought the submission of a Section 106 agreement to remove the rights for occupants to apply for parking permits and to provide funds for sustainable

transport. The appellant states that they are not in a position to complete a signed legal agreement and appear unaware that this was required. Without measures demonstrating the site can be car-free, I am not satisfied the proposal would not adversely impact parking and highway safety in the area.

20. The development would not provide four appropriate cycle parking spaces within an enclosed, weatherproof and secure store with lighting. Furthermore, the proposed cycle store would be shared, which is not policy compliant as each bike should be accessed and egressed independently or secured separately. The Council also highlight that one of the spaces should be wider for adapted bikes and that electric sockets would be required for e-bikes and e-scooters.
21. Given this, the proposal would have an adverse impact on parking and highway safety and would not provide adequate cycle parking. It would conflict with Policies SP8, DM29 and DM30 of the LP and Policies T4 and T6 of the London Plan insofar as they seek to ensure car-free developments are deliverable in places that are well-connected by public transport. They also require proposals provide adequate cycle parking.

Other Matters

22. The appellant states that the proposal would not negatively affect the character and appearance of the appeal building or streetscene. This is a neutral factor which does not outweigh the harm I have identified. Furthermore, the proposal would optimise an existing site for the provision of two residential units in a sustainable location. This attracts limited weight in favour of the appeal but would not outweigh the significant harm I have identified.

Conclusion

23. 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.
24. For the reasons given above the appeal should be dismissed.

Thomas Courtney

INSPECTOR