
Appeal Decision

Site visit made on 18 October 2016

by I Jenkins BSc CEng MICE MCIWEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 November 2016

Appeal A-Ref: APP/T5720/W/16/3150312

2 Church Lane, Wimbledon, London, SW19 3NY

- 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 Mr A Ansari against the decision of the Council of the London Borough of Merton.
 - The application Ref 15/P3917, dated 23 November 2015, was refused by notice dated 26 January 2016.
 - The development proposed is demolition of the existing 2-storey building and the erection of a mixed-use 3-storey building with basement level for the provision of a day nursery at basement and ground level, and 4x1 bedroom and 3x2 bedroom flats on the upper floors with separate refuse store.
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Appeal B-Ref: APP/T5720/W/16/3150319

2 Church Lane, Wimbledon, London, SW19 3NY

- 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 Mr A Ansari against the decision of the Council of the London Borough of Merton.
 - The application Ref 16/P0350, dated 19 January 2016, was refused by notice dated 27 April 2016.
 - The development proposed is demolition of the existing 2-storey commercial building and the erection of a 3-storey residential building with a mix of 1 and 2 bedroom apartments and a separate refuse store.
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Decision

1. Appeals A and B are dismissed.

Procedural matters

2. In its appeal statement for each of the appeals the Council confirmed that it wishes to withdraw its reason for refusal related to the provision of Affordable Housing. I have taken this into account and have not considered the associated reasons for refusal: appeal A reason for refusal no. 6; or, appeal B reason for refusal no. 4.
 3. Whilst the Council's Planning Permission Decision Notice associated with appeal B makes reference to the London Plan 2015, as does the earlier notice associated with appeal A, that plan was superseded by *The London Plan-The Spatial Development Strategy for London Consolidated with Other Alterations Since 2011* in March 2016 (LP). This is a matter upon which the Council and appellant have had an opportunity to comment. I have taken account of the
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more recent plan, a matter which I consider would be unlikely to prejudice the interests of anyone.

Main Issues

4. I consider that the main issues associated with both appeals A and B are the effect on: the living conditions of neighbouring residents, with particular reference to outlook, light and privacy; the character and appearance of the surroundings, within the John Innes Merton Park Conservation Area; the living conditions of future residents of the appeal site, with regard to outlook, light and space; and, the safety and convenience of highway users. Furthermore, whether adequate provision would be made for cycle storage facilities.
5. In addition, in relation to appeal A the main issues also include: the effect on the living conditions of neighbouring residents and future residents of the appeal site, with regard to noise and disturbance.

Reasons

Living conditions of neighbouring residents

6. No. 2 is a detached 2-storey building that fronts onto the southwestern side of Church Lane. The northwestern side boundary of the appeal site is separated from Andridge Court, which is a 3-storey block of flats, by the width of that property's driveway. That driveway leads to the car park for Andridge Court, which adjoins the rear boundary of the appeal site. The appeal site shares the front section of its southeastern side boundary with No. 85 Church Lane and the rear section forms part of the rear boundary of No. 14 Langley Road.
7. The 2-storey element of No. 2, which has a pitched roof and side gable walls, is set well back from the front, rear and northwestern side boundaries of the site. A predominantly flat roofed, single storey offshoot wraps around the front, northwestern side and rear elevations of the 2-storey element. Therefore, while the building occupies a large proportion of the site, being set back from its side and rear boundaries by short distances, the 2-storey element occupies a relatively limited proportion of the overall footprint of the building.
8. In the case of both proposals, the existing structure would be replaced by a 3-storey building, with second floor level accommodation contained within the roof space, which would have a predominantly hipped profile. In comparison with the existing 2 storey element of No. 2, the proposed 3-storey structures would be taller and would have a much larger footprint. Whilst proposal A would have a basement, proposal B would not and its main roof would be slightly lower than that of proposal A.
9. The northwestern elevation of No. 85 is separated from the side boundary shared with No. 2 by a narrow gap. The northwestern elevation of No. 14 is set back from the appeal site beyond a narrow rear garden, occupied in part by single-storey outbuildings. These elevations of both neighbouring properties contain habitable room windows.
10. A ground floor bedroom at the northeastern end of No. 14 is served by French windows set within the northwestern elevation of the dwelling. The outlook from, and light received by, this room is restricted to an extent by the existing 2 storey element of No. 2, to the north, and trees within the curtilage of

Andridge Court, to the west. Consequently, it benefits greatly from the relatively open aspect above lower planting and the flat roofed single-storey rear offshoot of No. 2, to the northwest of the window. In both cases, the proposed 3 storey building would extend part way across the footprint of the single-storey rear offshoot of No. 2. Due to their close proximity, height and bulk the 3 storey proposals would be overdominant and unneighbourly when seen from No. 14. They each would be likely to significantly reduce the outlook from and light received by the neighbouring ground floor habitable room that I have identified.

11. The potential for overlooking of No. 14 from the existing first floor rear windows of No. 2 is limited by the oblique angle, the intervening distance and planting within the appeal site, albeit sparse. As a result, the potential for overlooking the rear windows and garden of No. 14 from No. 2 is small at present. In contrast, proposal A would include a first floor rear balcony positioned towards the southwestern corner of the building, from where it would be possible to look more directly towards No. 14 over a shorter distance, to the detriment of the privacy of residents of that neighbouring property. There would also be a second floor level terrace, which would be likely to have a similar impact. Proposal B would include a side screen on the first floor balcony and the second floor terrace, which would satisfactorily reduce the potential for overlooking from those vantage points. However, the first floor level screen would also increase the profile of the building as it is seen from No. 14, thereby adding to the detrimental impact of the proposed development with respect to outlook and light.
12. The northwestern side slope of the roof of No. 85, facing towards the appeal site, contains 3 roof lights, one of which serves a bedroom. In a northwesterly direction, the outlook from and light received by this habitable room window is restricted to a degree by the nearby southeastern gable of No. 2. Views to the north are more open. However, the proposed 3-storey building would, in both cases, extend forward beyond the existing front building line of the 2-storey element of No. 2. As a result it would greatly reduce the outlook from, and light received by, this neighbouring habitable room.
13. The southeastern roof slope of proposal A would contain 2 roof lights serving a bedroom. As a result it is likely that it would be possible to look down into the bedroom window of No. 85 that I have identified over a short distance, to the detriment of the privacy of the residents of that property. Whilst Proposal B would include roof lights in a similar position relative to the bedroom window of No. 85, the cill level of the proposed windows would be higher. However, although this would reduce the potential for overlooking, it appears to me that the cill level would not be so high as to prevent overlooking when standing in the bedroom served by those windows. Furthermore, in the case of both proposals, there is likely to be a strong perception amongst residents of No. 85 of being overlooked, due to the close proximity of the roof lights which would be clearly visible from their bedroom. It would be possible to mitigate this harm by glazing the proposed windows with obscured glass, as is proposed in relation to other windows included in proposal B. However, that would not be appropriate, as the proposed roof lights would be the only windows serving a bedroom and so such a solution would unacceptably limit the outlook of future residents.

14. From the more southerly of the front balconies included in proposal A, it would be likely to be possible to look directly into the dining room window contained in the northwestern elevation of No. 85 over a short distance. This adds to my concerns regarding the impact of the scheme on the privacy of neighbouring residents.
15. It would be possible to ensure that the windows contained within the northwestern side elevation of both proposals would not harm the privacy of residents of Andridge Court, by imposing a condition requiring them to be glazed with obscured glass. Habitable rooms served by those windows have another window in the front or rear elevation of the proposed building to maintain a reasonable level of outlook. The potential for overlooking of Andridge Court windows from the nearest first floor rear balcony and second floor rear terrace of proposal B would be satisfactorily limited through the provision of privacy screens. The same detail could be required, by condition, in relation to proposal A.
16. Nevertheless, I conclude overall, that proposals A and B would both be likely to have a significant detrimental impact on the living conditions of neighbouring residents, with particular reference to outlook, light and privacy. In this respect they would conflict with Policy DM D2 of *Part of Merton's Local Plan Sites and Policies Plan and Policies Map 2014* (SPP) and LP Policies 7.4 and 7.6.

Character and appearance

17. No. 2 and the surrounding properties are situated within the John Innes Merton Park Conservation Area. The appellant has indicated that Merton Park was an early example of a garden suburb. The Conservation Area is generally characterised by a variety of styles and sizes of buildings set back from the highway beyond landscaped gardens, which give the area a verdant character. This is a description that fits the immediate neighbours of the appeal site.
18. The *National Planning Policy Framework* (the Framework) indicates that whilst decisions should not attempt to impose architectural styles or particular tastes, it is, however, proper to seek to promote or reinforce local distinctiveness. It confirms that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
19. There is no dispute that the existing appeal building, which is set back from the highway beyond an area of hardstanding, is of little architectural merit. However, in my view, it is not a particularly obtrusive feature of the street scene, not least as the front element of the building is single-storey, and whilst it detracts from the character and appearance of the Conservation Area, its impact in this regard is small.
20. Some details of the front elevations of the proposals would reflect the 'Arts and Crafts' aesthetic displayed by a number of other properties within the Conservation Area. Furthermore, the 3-storey scale of the proposals would not be unique in the Conservation Area and in both cases the roof height would sit part way between the heights of the properties on either side, No. 85 and Andridge Court. However, the frontages of the proposed 3-storey blocks would project well forward of the front building line of the 2-storey element of No. 2 and would extend across almost the entire width of the site. In the case of

proposal A, the space between the building and the highway would be taken up for the most part by 2 prominent light wells enclosed by handrailing, car parking spaces and cycle racks. Proposal B would not have light wells. However, in addition to the parking facilities, the frontage would be taken up by a substantial flat roofed timber structure housing refuse bins. The privacy screen attached to one side of each front balcony, in the interests of safeguarding the privacy of neighbouring residents, would add to the cluttered appearance of the frontage of proposal B. In both cases, there would be little opportunity for planting to soften the appearance of the development.

21. Proposal A would be likely to result in the loss of a number of trees at the rear of the site, adjacent to the car park of Andridge Court. Nonetheless, due to the backland location of those trees, at the back of No. 2, they do not make a material contribution to the character or appearance of the Conservation Area. Furthermore, it appears to me that the proposal A works would be unlikely to disturb the hedging along the southeastern boundary of the frontage of No. 2, which makes a positive contribution to the verdant character of the Conservation Area. However, the proposal B works, which include a cycle stand alongside that section of side boundary, would be likely to result in the loss of that hedging, to the detriment of the character and appearance of the Conservation Area.
22. I consider overall that both proposals A and B would have an overdominant, stark and obtrusive appearance, which would detract from character and appearance of the Conservation Area to a greater extent than the existing property.
23. I conclude that proposals A and B would harm the character and appearance of the appeal site surroundings and the Conservation Area. They would conflict with the aims of Policies CS13 and CS 14 of the *London Borough of Merton LDF Core Planning Strategy 2011* (CS), SPP Policies DM D2, DM D4 and DM O2, as well as LP Policies 7.4, 7.6 and 7.8. Between them these Policies seek to ensure that development: conserves the significance of heritage assets; is informed by the surrounding historic environment; contributes to a positive relationship between urban structure and natural landscape features; is of a proportion and scale that enhances the public realm; and, complements the character of the wider setting. In both cases, whilst the harm to the significance of the Conservation Area would be less than substantial, it adds to the factors weighing against the schemes in the planning balance.

Living conditions of appeal site residents

24. The proposal A first floor balconies would fall short of the minimum standard of 5 m² of private outdoor space set out in the LP *Housing Supplementary Planning Guidance, 2016*. This amounts to poor quality design, which weighs against that proposal.
25. The appellant has indicated that all of the proposal B flats would be served by glazing that equates to 20% of the floor area of the room. This is disputed by the Council, with reference to one of the proposed second floor bedrooms, a criticism also levelled at proposal A. To my mind, this is a matter that could, in both cases, be resolved through the imposition of a condition that secures provision of the required level of glazing. Under these circumstances, the Council's concern in this respect does not weigh against the schemes.

26. The Council has suggested that proposal B second floor flats would fall short of the London Plan's space standards. However, the Council's assessment was made on the basis that a ceiling height of 2.5 metres is required throughout and areas taken up by features such as cupboards should be deducted from estimations of gross internal area. It appears to me, with reference to LP Policy 3.5, that these are not requirements of the LP and so I give the Council's concern in this respect little weight.
27. To my mind, the provision of adequate insulation to prevent unacceptable levels of noise being transferred between units of accommodation within the proposed buildings is likely to be provided for by adherence to the Building Regulations. I give little weight to the Council's concern in relation to this matter.
28. Each of the proposed kitchen/living/dining rooms would be served by a large glazed opening. Notwithstanding that this may provide the only external aspect for the room in some cases, I consider that it would provide adequate levels of outlook and light.
29. I conclude overall that the effect of proposals A and B on the living conditions of future residents, with respect to outlook, light and internal space would be acceptable. In this respect they would not conflict with the aims of CS Policies CS 9 and CS 14, SPP Policy DM D2 and LP Policy 3.5. However, the limited provision made by proposal A for external amenity space on the first floor balconies would harm the living conditions of future occupants of those units and would amount to poor quality design, contrary to the aims of CS Policies CS 9 and CS 14, SPP Policy DM D2 and LP Policy 3.5. Whilst the Council's reasons for refusal in relation to this issue cite LP Policies 3.3 and 3.4, they deal with housing supply and density, and appear to be of little relevance.

The safety and convenience of highway users

30. The frontage of No. 2 is relatively open, such that the intervisibility between drivers leaving the site and pedestrians approaching along the adjacent footway is likely to be sufficient to ensure that conflicts are avoided. The same cannot be said in relation to the proposal B parking arrangements and in particular the proposed space alongside the fenced garden/refuse store, features which would severely limit intervisibility, to the detriment of the safety of approaching pedestrians.
31. The appellant has indicated that as the building was last in class D1 use, it could be used to accommodate a nursery without planning permission. This is acknowledged by the Council. Under these circumstances, I give little weight to the concerns raised with respect to the potential impact of traffic associated with the proposal A nursery use on the safety and convenience of highway users.
32. I conclude that whilst proposal A would be acceptable in relation to this issue, proposal B would be likely to harm the safety and convenience of highway users, contrary to the aims of CS Policy CS 20.

Cycle storage facilities

33. In relation to proposal A, the appellant has indicated that provision of at least 6 external cycle storage spaces would be made for the nursery use and at least

4 m² of internal cycle storage space would be provided for the proposed flats. The Council has confirmed that the nursery provision would fall short of the level of provision required by standards set out in the LP by 2 spaces. This is not disputed by the appellant. Furthermore, based on the standard requirement of 1 space per studio flat and 2 for all other properties¹, I agree with the Council that the cycle storage space included in proposal A would be unlikely to be large enough to cater for the needs of the proposed flats. Proposal B's provision of 10 spaces would also fall short of the 13 spaces required to serve the needs of the proposed 5 one bedroom and 4 two bedroom units, based on the same standards.

34. I consider that it would be possible to ensure that the proposal A internal cycle store remains accessible in perpetuity, by requiring, through the imposition of a condition, that arrangements are put in place for access across the necessary area of land outside the appellant's control before development proceeds.
35. Nonetheless, I conclude overall that proposals A and B would not make adequate provision for cycle parking, contrary to the requirements of CS Policy CS 18, LP Policy 6.9 and the LP *Housing Supplementary Planning Guidance, 2016*. CS Policy CS 20, which does not refer specifically to cycle storage appears to me to be of little relevance in relation to this particular issue.

Noise and disturbance

36. In relation to proposal A, future residents of the appeal site would have chosen to live there knowing of the proposed nursery use. Furthermore, according to the planning application form, the nursery would only be open between the hours of 07:30 to 18:30 Mondays to Fridays. To my mind, it would be closed during the periods when most people are likely to be at home and could reasonably expect their surroundings to be relatively quiet. Therefore, it would be unlikely to cause unacceptable harm to the living conditions of future residents of the appeal site, with reference to noise and disturbance.
37. Given that No. 2 could be used to accommodate a nursery without planning permission, I give little weight to concerns raised regarding the potential effect of noise associated with the nursery use on the living conditions of residents of properties neighbouring the site.
38. I conclude that the proposed nursery use would be unlikely to have an unacceptable effect on the living conditions of local residents, with particular reference to noise and disturbance. In this respect it would not conflict SPP Policy DM C2.

Other matters

39. The Council has confirmed that the demolition of the vacant appeal property, which was last occupied by a doctors' surgery, would not conflict with the aim of the LP Policy 3.16 to retain social infrastructure, as the surgery was relocated to the nearby Nelson Hospital. Furthermore, the proposals would contribute towards meeting the housing supply needs of the Borough, which are set out in CS Policy CS 9 and LP Policy 3.3. Proposal A involves a mixed use development, in relation to which the Framework gives some encouragement. However, the Council's 'Early Years Team' has confirmed that

¹ The London Plan-Housing Supplementary Planning Guidance, 2016.

there are a number of established child care facilities in the area and no particular need for more. I have not been provided with evidence to the contrary and under these circumstances, I give little weight to the appellant's assertion that proposal A would provide a valuable nursery facility in the area.

40. I do not share the concern of the Council that the proposal A rear refuse store, which would utilise bins with lids, would be likely to have a material detrimental effect on the living conditions of future residents of the site, with particular reference to odours.
41. Nonetheless, in my judgement, neither these, nor any other matters raised are sufficient to outweigh the considerations which have led to my conclusions on the main issues.

Conclusions

42. I have found that some aspects of the schemes, raised as a concern by the Council, would be acceptable and not contrary to Policy. Nevertheless, I conclude on balance, that the harm likely to be associated with proposals A and B would, in each case, significantly and demonstrably outweigh the benefits and they would conflict with the Development Plan taken as a whole, which appears to me to be consistent with the aims of the Framework. Furthermore, having regard to the economic, social and environmental impacts of the schemes, neither would amount to sustainable development under the terms of the Framework.

I Jenkins

INSPECTOR