
Appeal Decision

Site visit made on 19 June 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 7th July 2017

Appeal Ref: APP/T5720/W/17/3169893
35 London Road, Morden, Surrey SM4 5HT

- 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 Golfrate against the decision of the Council of the London Borough of Merton.
 - The application Ref 16/P4426, dated 14 January 2016, was refused by notice dated 8 February 2017.
 - The development proposed is a 3 storey build to the rear of the site to accommodate 2 x 1 bedroom apartments, with bins and bike store on ground floor and private amenity space on first floor and a communal roof amenity space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are;
 - the effect of the proposed development on the living conditions of the occupiers of the maisonette above the shop at No 35 with regard to outlook and privacy and whether the scheme in terms of privacy would provide acceptable living conditions for future residents of the proposed development;
 - whether adequate refuse and servicing arrangements would be made; and,
 - the effect of the proposed development on local parking.

Reasons

3. 35 London Road is located within a terraced parade of shops in Morden town centre. On the ground floor is a grocer's shop that includes a butchery. Above the shop is a two storey maisonette.
4. Policy CS3 of the Merton Core Planning Strategy seeks to regenerate Morden through more intensive development in and around the town centre. The principle of intensifying development on the site in principle therefore is acceptable.
5. A previous scheme for a similar development was dismissed on appeal¹. The proposal in the scheme before me has been revised in response to the concerns identified.

Living conditions

¹ Appeal ref APP/T5720/W/15/3087226

6. Of the development plan policies cited in relation to this issue, I consider policy 7.6 of the London Plan and policy DM D2 of the Merton Sites and Policies Plan to be the most relevant. These policies require that new development provides a good standard of living conditions and amenity.
7. The maisonette's entrance door, hallway, kitchen and a bedroom are located within the rear elevation of the building. To the rear the buildings along Abbotsbury Road are a significant distance away. As a result, at present, there is no material overlooking of the maisonette from this direction. The outlook towards Abbotsbury Road, although partly enclosed by a two storey building at the back of No 37, is otherwise also open.
8. The proposed building would occupy the rear yard serving No 35. It would have the same number of storeys as the existing building and would be a similar height. In the elevation facing the maisonette would be lounge windows. On the roof would be a communal roof garden. Private outdoor amenity space serving flat one would be at the same level as the existing building's flat roof.
9. The Council's supplementary planning guidance 'New Residential Development' (SPG) states that in order to protect privacy a minimum separation distance of 20m between windows of habitable rooms and kitchens is required. As this guidance has been formally adopted following public consultation, I attach significant weight to it. Even allowing for the highly urban nature of the location, the separation distance between the maisonette and the proposed flats at 13m would be considerably substandard. Whilst I note that obscure glazing in the side facing part of the lounge windows of each flat would prevent overlooking of the footway to the maisonette, the angled lounge windows would only reduce overlooking of the rooms within the maisonette to a limited extent. If the development went ahead, it is unreasonable to expect residents of the maisonette to close their curtains or blinds to protect privacy, as suggested by the appellant.
10. I therefore find that the proposed development would have a significant adverse effect on the privacy of the occupiers of the maisonette. The scale and proximity of the proposed building would also have a dominant and overbearing effect on the outlook from the rear of the maisonette.
11. In the unlikely event that the reference to obscure glazing on the submitted drawing was meant to refer to the whole of the lounge windows in both flats this would overcome the issue of overlooking. However, this would be at the expense of both lounges in the proposed scheme having no outlook which would result in unacceptable living conditions for future occupiers of the proposed development.
12. In terms of privacy in the proposed development, as I have noted the angled design of the lounge windows would only reduce overlooking to a limited extent. Furthermore, the private outdoor amenity space serving flat one would be approximately 9m away from the rear elevation of the maisonette. Bamboo planting is proposed to screen this private outdoor amenity space from overlooking. However, unless it was at such a height as to further harmfully enclose the outlook from the maisonette this would not prevent overlooking from the first floor rear bedroom of the existing property.
13. Although a bedroom is not occupied throughout the day, it is likely to be in use in the morning and later in the evening. During fine weather, a private outdoor amenity space is likely to be in use during these times also. The presence of

an elevated habitable room window so close by directly facing this private amenity space would therefore result in material overlooking.

14. For the reasons given above, I therefore conclude that the proposed development would result in unacceptable living conditions due to the loss of privacy and poor outlook that would be experienced in the maisonette and overlooking of the proposed development. The scheme would therefore be contrary to policy DM D2 of the Merton Site and Policies Plan and policy 7.6 of the London Plan.

Refuse and servicing arrangements

15. At present refuse bins are located to the rear of the shop in the yard area and, if free of parked vehicles, there is space for delivery and refuse vehicles to park clear of the service road to access the shop and refuse area. The proposed building would occupy the whole of the yard removing this facility.
16. However, on road parking restrictions allow for unloading for much of the day on this quiet service road and there is adequate storage space to the rear of the proposed building for commercial bins to be put out for collection. I therefore find that although it would result in the loss of on-site parking for service and delivery vehicles in relation to the shop, it would not adversely affect the public highway and so on-site parking for refuse collection and deliveries is not necessary.
17. Refuse bins for the shop and proposed flats would be located in separate storage rooms on the ground floor next to the entrance to the building. A narrow corridor from the entrance to the building past the refuse storage rooms would give access to the back of the shop and the staircase to the flats. The corridor would be used by residents and for moving deliveries and refuse into and out of the shop. Although an unconventional arrangement, the shop is not large and as only two, one bedroom apartments are proposed the number of residents would be small. As a result, the corridor would not be in constant use and it is a reasonable expectation that on the occasions that residents or shop keepers meet along it, one would give way to each other.
18. Given that food waste would be kept in the retail waste storage room the potential for odour and pests exists. The appellant has suggested that conditions should be attached to ensure that a chiller is installed and that the room is capable of being easily cleaned. In my view, such conditions would allow the shop keeper to manage the store so that odour and pests are prevented. Should he fail to do so the Council has statutory environmental health powers to require that he does.
19. For all of these reasons, I therefore conclude that adequate refuse and servicing arrangements would be provided to the shop and flats above without causing material harm to the living conditions of future residents. The proposal would therefore accord with policies CS.7 and CS.20 of the Core Strategy which support development in town centres that respects its character and that adequate provision is made for servicing and delivery.

Local parking

20. Owing to the town centre location of the appeal site and its close proximity to the start of the Northern underground line, there are considerable on road parking pressures in the area. In response a Controlled Parking Zone has been established by the Council which allows local residents to obtain permits to

- park on the road. Even so, during the site visit I did not see any vacant on road parking spaces in the locality.
21. Policy CS20 of the Core Planning Strategy seeks to implement effective traffic management, by among other measures, managing the amount of parking available for private cars in town centres. This includes the use of agreements to secure permit free developments.
22. The proposed development would create two additional dwellings. Although the flats would have cycle storage and excellent access to public transport, future occupiers would be entitled to apply for resident's car parking permits. If this right was exercised it would add to the already high pressure on parking in the area to the detriment of the amenities of existing residents. In accordance with policy CS.20 of the Core Planning Strategy, I therefore find that a section 106 agreement preventing future residents from applying for parking permits is necessary to make the development acceptable in planning terms, is directly related to it and is fairly and reasonably related in kind to the proposal. The agreement sought therefore accords with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 204 of the National Planning Policy Framework. An obligation for this purpose could be formulated that would be enforceable.
23. In the absence of such an agreement, the proposed development would therefore unacceptably increase pressure on parking provision to the detriment of existing residents, contrary to policy CS.20 of the Core Planning Strategy.
24. The absence of such an agreement could not be dealt with by a negatively worded condition. This is because Planning Practice Guidance advises that such a condition, limiting the development that can take place until a planning obligation has been agreed, is unlikely to be appropriate other than in exceptional circumstances, such as in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would be put at risk². Such circumstances do not exist in this case.

Conclusion

25. A presumption in favour of sustainable development is at the heart of the Framework. The site is in a highly accessible location with services and facilities within easy reach on foot, or by sustainable modes of transport. The proposal would make a small contribution towards addressing housing need in accordance with the targets set in the London Plan. This would be achieved by intensifying residential development in the town centre in compliance with policy CS.3 of the Core Planning Strategy. The proposed accommodation has a contemporary design and would provide accommodation at the cheaper end of market rents. It is stated that it would have a high standard of security and safety, be constructed to the lifetime homes standard, use local sourced sustainable materials and have a high standard of energy efficiency.
26. However, I have found that it would cause unacceptable harm to living conditions and would unacceptably increase pressure on local parking, contrary to policy DM D2 of the Merton Site and Policies Plan, policy 7.6 of the London Plan and policy CS.20 of the Core Planning Strategy.

² Planning Practice Guidance ID 21a-010-20140306

27. Taking all these matters into account, I therefore conclude that the proposal would be contrary to the development plan as a whole and so would not constitute a sustainable development. The appeal should therefore be dismissed.

Ian Radcliffe

Inspector