



Appeal Decision

Site visit made on 3 June 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2019

Appeal Ref: APP/T5720/W/19/3223835

18 Arras Avenue, Morden SM4 6DF

- 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 Apex Investment Management Limited against the decision of the Council of the London Borough of Merton.
 - The application Ref 18/P3617, dated 14 September 2018, was refused by notice dated 24 January 2019.
 - The development proposed is: Conversion of existing redundant former Wyvern Youth Centre into six residential units (2x 1 Bed Units, 1x 2 Bed Unit, 3x 3 Bed Units) to include reroofing, skylights, new door and window openings and facade cleaning. With associated parking, refuse, landscaping and cycle storage.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of existing redundant former Wyvern Youth Centre into six residential units (2x 1 Bed Units, 1x 2 Bed Unit, 3x 3 Bed Units) to include reroofing, skylights, new door and window openings and facade cleaning. With associated parking, refuse, landscaping and cycle storage at 18 Arras Avenue, Morden SM4 6DF in accordance with the terms of the application, Ref 18/P3617, dated 14 September 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Apex Investment Management Limited against the London Borough of Merton. This application is the subject of a separate Decision.

Main Issue(s)

3. The main issue is the effect of the development on the living conditions of the occupiers of neighbouring properties and future occupiers of the development due to overlooking, noise and disturbance.

Reasons

4. The appeal property (the property) is a former church hall, most recently used as a youth centre, situated within a residential suburb of Morden. To either side of the property are 2 storey semi-detached houses with long rear gardens. At the rear of the disused building is an area of overgrown land which borders onto houses at Connaught Gardens. On one side of the property there is a sub

station although I was unable to see this on my site visit due to the dense vegetation.

5. The site has been subject to a number of planning applications. In February 2018 planning permission was granted for the conversion of the property to provide 6 flats¹. Although similar to the proposal in the appeal, the approved scheme was different in a number of respects. The mix of units was the same, but 2 units were located at the front of the property, 2 to the rear, and 2 central units configured in an interlocking L shape. Front door access to the properties was divided, access to 3 units via a footpath to one side; and the remaining 3 properties via a footpath to the opposite side of the property. Bin storage was split into 2 areas, each adjacent to the footpaths at the front of the property linking with the street.
6. The appeal proposal is different in that only one 2 bed unit (F) would be provided at the rear of the property; two 1 bed units (D and E) and a 3 bed unit (C) within the centre part of the building; and one 3 bed unit (B) with its ground floor accommodation within the central part of the building but with bedrooms at first above the front ground floor unit (A) also with 3 beds, facing onto Arras Avenue.
7. Each unit would have a side garden facing towards no 20, and front door access would be from a footpath along the side boundary with no 16. In the case of unit F, the access would be from the rear elevation of the building and it would appear it could also be accessed via the footpath on the opposite side of the building. Units A – E would have detached garden areas at the rear of the plot. Unit F would have its own attached garden. There would be also be a footpath along the boundary with no 20. Bin and cycle stores would be alongside the footpath on the other side of the property, adjacent to no 16. The proposals result in a small reduction in the total number of bedspaces compared with the approved scheme.
8. An application was made for non-material amendments² in June 2018. The Council considered that the changes raised significant issues and refused the application, resulting in the proposal forming the subject of the appeal.
9. The focal point of the dispute is whether the redesign of the scheme would have an adverse and unacceptable effect on the living conditions of the occupiers of no 20 due to the gardens and rear doors close to the boundary, and the occupiers of no 16 who would have front doors, bin stores and cycle stores close to their boundary.
10. The appellant considers that the amended scheme is superior in terms of the internal layout for future occupiers, works better with the structure of the building which includes steel trusses in the upper part of the roof, and should not be regarded as unacceptable in any event as there is the fallback position of the previous planning permission.
11. The property is unusual in its configuration and its conversion to residential use will inevitably have some effect on the living conditions of the residents closest to the building given that some flats will inevitably face toward the adjacent properties.

¹ Local Planning Authority Ref. 17/P4387

² 18/P2396

12. The occupiers of both no 16 and no 20 could potentially experience some disturbance under either scheme, dependant on the good neighbourliness of future occupiers of the flats. Any disturbance could be slightly different in nature due to the concentration of the patio gardens on the side adjacent to no 20, and front doors, bin stores and bike stores adjacent to no 16. For example, in the case of the entrances to the flats there could be late night comings and goings, whereas on the side of the property within the patio gardens there could be activity in the evening such as barbecues in good weather.
13. In both cases there is a footpath separating the side gardens of each house from the appeal property, and the provision of substantial eye level boundary enclosures could provide further mitigation. I am unable to see a clear rationale that the approved proposals would give rise to less potential for disturbance by having entrances and patio gardens on either side of the proposed flats rather than the split between access and patio gardens proposed in the appeal. The siting of all bin stores in a single area adjacent to the access to the flats and the boundary with no 16 is a potential concern, however I consider that a suitable height and robust boundary enclosure would screen the bin store effectively from the front of the neighbouring property. Such screening would be required even if the number of bin stores were reduced to 2, as in the approved scheme
14. With regard to overlooking, the Council's concern is that there could be problems with mutual overlooking between the garden or patio areas at the rear of the flats and no 20. Such overlooking could be avoided by the use of eye level boundary enclosures and I have made this matter subject to a planning condition. There is some limited potential for overlooking from a second floor window in no 20, which could permit view into the rooflight windows of some flats. Whether or not that is case, similar potential existed under the approved scheme, the Council does not raise the matter as part of its reasons for refusal, and the views would be at an angle which would limit the impacts on privacy within the flats.
15. The Council directs me to Policies 7.4 and 7.6 of the London Plan in support of its points on the effect of the development on living conditions, although not included in the reasons for refusal. These policies seek to ensure that developments have a positive relationship with the surrounding area and do not harm amenity and I agree they are of relevance.
16. The so-called fallback position is a material planning consideration. It is not disputed that the planning permission granted in February 2018 remains extant and potentially provides an alternative development were the appeal to be dismissed. In order for me to attach weight to that the fallback position I must be satisfied that there is a more than theoretical possibility that the approved scheme could be carried out. Whilst the proposed scheme works better with the structure of the building, I have no evidence before me that the approved scheme is incapable of implementation. The possibility that the approved scheme could be carried out is therefore more than theoretical.
17. The Council considers that the approved scheme is superior in respect of the arrangement of the outdoor spaces, but that alone is not a good reason to dismiss the appeal. For the reasons given, I consider the differences between the approved scheme and the proposed to be broadly neutral in terms of the

potential to affect the living conditions of nearby residents. I therefore attach significant weight to the existence of the fallback position in my decision.

18. I therefore conclude that the proposal would not give rise to unacceptable harm to the living conditions of the occupiers of neighbouring properties due to overlooking, noise and disturbance, or the future occupiers of the development. It would comply with Policies 3.5, 7.4 and 7.6 of the London Plan³ and Policy DM.D2 of the Merton's Local Plan Sites and Policies Maps⁴ (the LPSPM) which seek amongst other things to ensure that new development is of high quality and provides acceptable living conditions for the occupiers of future and existing occupiers of property.

Other Matters

19. There is concern that the proposed parking provision on site will be insufficient to cater for the needs of the development, which could lead to increased competition for on-street parking and potentially compromise highway safety. A total of 4 off road parking spaces would be provided to the front of the property, and the appellant's transport statement identifies that there is sufficient capacity to accommodate 2 cars on street. Cycle storage would be provided. The site has relatively good accessibility to public transport even with a PTAL rating of 2 and is close to a designated cycle route. The Council raises no objection on highway safety grounds and I have no reason to reach a different conclusion.
20. There is a dispute relating to access through the site to a scout hut. At the present time access is not possible through the site. I have been provided with limited information in relation to this matter but there appears to be a right of access leading from the front of the site, by the boundary with no 20, to a point towards the rear of the site and on the other side of the property. An interested party suggests that although the route of the access is incorporated into the proposals, it is not wide enough. The Police Designing Out Crime officer comments that the right of way for the scouts is an important emergency exit. The Council takes the view that the right of access is not a planning matter. The Planning Practice Guidance (PPG) advises that what constitutes a material planning consideration is can be wide in scope⁵ and I do not dismiss it as being of little importance. However, based on the information before me the proposal seeks to accommodate the right of access and any final resolution of the issue will be a private matter between the Scout Group and the appellant.
21. The adequacy of the amenity space to be provided for each flat has been questioned, given the separation of the areas into what I have termed the patio gardens and the detached gardens for 5 of the 6 units. Having regard to Policy DM D2 of LPSPM and its supporting text it is clear that for flatted development, the proposal far exceeds the stated requirements for amenity space.
22. The roof of the building would be covered with artificial slate tiles. At present the roof has clay tiles, which are purple-red in colour. Whilst red clay tiles are the predominant roof finish in the area, some properties have slate roofs,

³ Adopted March 2016

⁴ Adopted July 2014

⁵ Planning Practice Guidance Paragraph 008 Reference ID:21b-008-20140306

including some opposite the site. The use of an artificial slate for the roof would therefore be acceptable in visual terms.

Conditions

23. I have considered the conditions suggested by the Council against the tests of the Framework and advice provided by the PPG. I find the majority to be reasonable and necessary in the circumstances of this case; however some have been edited for precision and clarity.
24. For certainty I attach the normal planning condition limiting the period of the consent to 3 years and requiring the development to be carried out in accordance with the approved plans.
25. In the interest of achieving a visually attractive development, I attach condition requiring details of external materials, gates and boundary enclosures to be approved. In the case of boundary enclosures, these details are also required to ensure that satisfactory arrangements are put in place to prevent intervisibility between the development and neighbouring properties, and to provide security.
26. In order to minimise the disturbance to existing residents during construction, I limit construction times to 8am to 6pm weekdays, 8am – 1pm Saturdays and at no time on Sundays or Bank Holidays. For similar reasons I also attach a condition requiring that the details of any construction compounds, arrangements for the loading and unloading of vehicles, storage of plant and materials, to be agreed in order to minimise disturbance.
27. In the interests of achieving a visually attractive development I attach conditions requiring a scheme for landscaping to be agreed and for the protection of trees to be retained within the development site. With regard to the loss and replacement of the street tree, the Council has requested a condition which would require the appellant to enter into an agreement under the Highways Act. The PPG is clear that planning conditions requiring compliance with other statutory processes do not meet the test of necessity and I do not attach such a condition. I leave the matter to be agreed between the appellant and Council under works affecting the highway.
28. In the interests of the living conditions of existing future occupiers, I attach a condition requiring a lighting scheme to be agreed.
29. In order to ensure that adequate provision is made for the parking of vehicles and the storage of cycles I attach conditions requiring the proposed provision to be completed before any units are occupied. This shall include the removal and replacement of the redundant pavement crossovers, and in the case of cycle storage, full details of this provision is to be agreed with the Council.
30. For the same reason as that referred to above, the condition requested by the Council requiring the developer to enter into an agreement under Section 278 of the Highways Act for a new pavement crossover is not necessary.
31. In the interests of sustainability, conditions requiring that the development achieves a 35% uplift on Part L of the Building Regulations; and means to ensure that water usage does not exceed 105 litres per person day, and that hardstandings are permeable, or arrangements are made to direct surface water to a suitable permeable area, are attached.

32. In order to ensure that satisfactory provision is made for the storage of refuse and collection of recycling materials a condition is attached requiring the details of the bin stores to be submitted to the Council for approval.

Conclusion

33. For the above reasons and taking account of other matters raised, the appeal is allowed.

Tim Wheeler

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site/Location Plan Drawing No 0373/F/0/001/00
 - Existing Ground Floor Plan Drawing No 0373/F/0/100/00
 - Existing Roof Plan Drawing No 0373/F/0/101/00
 - Existing North and South Elevations Plan Drawing No 0373/F/0/200/00
 - Existing East and West Elevations Plan Drawing No 0373/F/0/201/00
 - Existing Section Drawing No 0373/F/300/00
 - Proposed Ground Floor Plan Drawing No 0373/3/D/2/100/02
 - Proposed First Floor Plan Drawing No 0373/3/D/101/02
 - Proposed Rooftop Plan Drawing No 0373/3/D/2/102/00
 - Proposed North Elevation Drawing No 0373/3/D/2/200/00
 - Proposed East Elevation Drawing No 0373/3/D/2/202/00
 - Proposed South Elevation Drawing No 0373/3/D/2/201/01
 - Proposed West Elevation Drawing No 0373/3/D/2/203/00
 - Proposed Section AA Drawing No 0373/3/D/2/300/00
 - Proposed Landscaping Plan Drawing No 0373/3/D/2/400/00
 - Design and Access Statement by Base Associates Rev 00.
 - Transport Statement by Transport Planning Practice November 2017.
- 3) No development other than site preparation works shall take place until details of and samples of all external facing materials, including window frames, doors, windows and tiles have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) The residential use hereby approved shall not commence until details of all boundary walls or fences including methods for the temporary security of the site during construction as well as details of security gates are submitted in writing for approval to the Local Planning Authority. The development shall not be occupied until the details are approved and works to which this condition

relates have been carried out in accordance with the approved details. The walls and fencing shall be permanently retained thereafter.

- 5) No demolition or construction work or ancillary activities such as deliveries shall take place before 8am or after 6pm Mondays - Fridays inclusive, before 8am or after 1pm on Saturdays or at any time on Sundays or Bank Holiday.
- 6) No demolition or construction work or ancillary activities such as deliveries shall take place before 8am or after 6pm Mondays - Fridays inclusive, before 8am or after 1pm on Saturdays or at any time on Sundays or Bank Holidays.
- 7) The development shall not commence until details of the provision to accommodate all site workers', visitors' and construction vehicles, loading /unloading and storage arrangements of construction plant and materials during the construction process have been submitted to and approved in writing by the Local Planning Authority. The approved details must be implemented and complied with for the duration of the construction process.
- 8) The residential use shall not commence until full details of a landscaping and planting scheme has been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved before the commencement of the use or the occupation of any building hereby approved, unless otherwise agreed in writing by the Local Planning Authority. The details shall include on a plan, full details of the size, species, spacing, quantities and location of proposed plants, together with any hard surfacing, means of enclosure, and indications of all existing trees, hedges and any other features to be retained, and measures for their protection during the course of development.
- 9) No development shall commence until an Arboricultural Method Statement and Tree Protection Plan, drafted in accordance with the recommendations and guidance set out in BS 5837:2012 has been submitted to and approved in writing by the Local Planning Authority and the approved details have been installed. The details and measures as approved shall be retained and maintained, until the completion of all site operations.
- 10) Any external lighting shall be positioned and angled to prevent any light spillage or glare beyond the site boundary.
- 11) The vehicle parking area shown on the approved plans shall be provided before the commencement of the buildings or use hereby permitted and shall be retained for parking purposes for occupiers and users of the development and for no other purpose.
- 12) The residential use shall not commence until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority.
- 13) The residential use shall not commence until evidence has been submitted to, and approved in writing by, the Local Planning Authority confirming that the development has achieved CO2 reductions of not less than a 35% improvement on Part L regulations 2013.

- 14) The residential use shall not commence until it has been demonstrated that all dwellings have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new dwelling shall be constructed to ensure that an internal water usage rate of not more than 105 litres per person per day.

The residential use shall not commence until a scheme for the storage of refuse and recycling has been submitted in writing for approval to the Local Planning Authority. No works which are the subject of this condition shall be carried out until the scheme has been approved, and the development shall not be occupied until the scheme has been approved and has been carried out in full. Those facilities and measures shall thereafter be retained for use at all times from the date of first occupation.Decision

Reasons

Costs Order [where awarding costs]Decision

Reasons

Costs Order [where awarding costs]