



Appeal Decision

Site Visit made on 16 March 2021

by Paul Clark MA MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 29th March 2021

Appeal Ref: APP/T5720/W/20/3255284

Land rear of 8 Preshaw Crescent, Lower Green West, Mitcham, CR4 3GA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Kevin Plicio against London Borough of Merton.
 - The application Ref 19/P4118, is dated 20 November 2019.
 - The development proposed is erection of 9 dwellings in two blocks of two and three storeys, new access road from Russell Road, car parking and associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 9 dwellings in two blocks of two and three storeys, new access road from Russell Road, car parking and associated landscaping at Land rear of 8 Preshaw Crescent, Lower Green West, Mitcham, CR4 3GA in accordance with the terms of the application, Ref 19/P4118, dated 20 November 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Except where specified by other conditions, the development hereby permitted shall be carried out in accordance with the following approved plans: A165:P:1000, A165:P:1001, A165:P:1002 Rev A, A165:P:1003, A165:P:1004, A165:P:1005, A165:P:1006 and the Tree Protection Plan and Tree Protection Measures included within the Arboricultural and Planning Integration Report by GHA Trees dated 7 October 2019, reference GHA/DS/124160:19
 - 3) No development above ground level shall take place until samples of all external facing materials 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) No replacement or removal of existing boundary walls or fences shall take place until details of replacement boundary walls or fences are submitted to and approved by the local planning authority in writing nor shall any occupation of any dwelling hereby approved commence until details of replacement walls or fences to the boundary of the site with numbers 23 Harwood Avenue and 24 Russell Road have been submitted to and approved in writing by the local planning authority and all approved new boundary walls and fences have been completed in accordance with the approved details.
 - 5) Notwithstanding the details shown on the approved drawings, the southernmost flat on the first floor of the development hereby approved

shall not be occupied until a privacy screen has been erected on the southern edge of its balcony in accordance with details which shall have been submitted to and approved in writing by the local planning authority. The screen shall thereafter be retained in place at all times from the date of first occupation.

- 6) Notwithstanding the details shown on the approved plans, no development above ground level shall take place until a scheme for the storage of refuse and recycling has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. The approved refuse storage and recycling facilities shall thereafter be retained for use at all times from the date of first occupation.
- 7) No external lighting shall be installed without the prior approval in writing of the local planning authority.
- 8) No dwelling hereby permitted shall be occupied until it has been provided with and connected to soil and surface water drainage, details of which shall have been previously submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details which shall be retained in use for their intended purpose at all times from the date of first occupation.
- 9) No part of the development hereby approved shall be occupied 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 19% improvement on Part L regulations 2013, and internal water consumption rates of no greater than 105 litres per person per day.
- 10) No part of the development hereby permitted shall be occupied until the landscaping scheme shall have been completed in accordance with details shown on submitted plan no. A165:P:1004 and any trees which die within a period of 5 years from the completion of the development, are removed or become seriously damaged or diseased or are dying, shall be replaced in the next planting season with others of the same approved specification
- 11) No part of the development hereby permitted shall be occupied until the access, car parking spaces and cycle parking spaces have been completed in accordance with the details shown on the approved plans. These facilities shall be retained for their intended purpose by occupants of the development at all times from the date of first occupation.
- 12) Notwithstanding the submitted Framework Construction Management Plan, no development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. Amongst other measures which may be required to control the process of construction the Statement shall provide for:
 - i) limitations on the size of vehicles to be accepted at the site during the construction process,
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;

- iv) storage of plant and materials used in constructing the development;
- v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- vi) wheel washing facilities;
- vii) measures to control the emission of dust and dirt during construction;
- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- ix) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 13) No demolition/development shall take place on the site until details of a Written Scheme of targeted archaeological evaluation trenching in the footprint of the proposed building shall have been submitted to and approved in writing by the local planning authority and carried out in accordance with the approved details.

Procedural Matters

- 2. The development proposed includes the demolition of an existing garage on site.
- 3. Although the address of the property is given as land rear of 8 Preshaw Crescent, the site has been divorced from that property and is accessed from Russell Road, between numbers 24 and 26.

Main Issues

- 4. By reference to previous proposals for development at this site, it appears that the main issues are the effects of the proposal on
 - The character and appearance of the area, including the Mitcham Cricket Green Conservation Area
 - The living conditions of neighbouring properties in terms of light, privacy and outlook
 - The living conditions of potential future residents
 - The storage and collection of refuse
 - The capacity of the road network

In relation to the current proposal, the Council advises that it would have granted permission, had it remained within its jurisdiction, but third parties continue to pursue the points above.

Reasons

Character and appearance

- 5. The Mitcham Cricket Green Conservation Area is extensive. It covers an area of approximately 0.52sq km. It is focused on two greens; the Lower Green and

Cricket Green around which six character areas can be separately identified. The most dominant feature within the conservation area is the visual impact of the large areas of green space. Built form is clustered around the greens forming well defined edges. Ages, styles and materials of buildings are mixed, however, the dominant physical layout unifies the area. Buildings are fairly modest in scale and the predominantly residential development is arranged in short terraces, semi-detached pairs and occasional detached cottages facing on to the village greens. There is a contrast between buildings occupying relatively small plots and the scale and openness of the common land. An historic network of lanes and footpaths create a sense of permeability across the conservation area.

6. Although the edges of the Conservation Area are quite clearly defined, as mixed character, more recent development around its boundaries gives way to more closely defined historic character, its actual boundaries follow the happenstance of historic property boundaries. Thus, the site falls within the Conservation Area boundary as it once formed part of the curtilage of 8 Preshaw Crescent which fronts onto Lower Green. But in fact it now has very little relationship with the rest of the Conservation Area as it is bounded to the east and north by properties which lie outside the Conservation Area and, to its west is Beadle Court, a mid-twentieth century development which has two-storey cottages fronting onto Lower Green but extends into the backland with three storey flats which have little or no relationship with the rest of the Conservation Area other than that they are linked to it by a footpath characteristic of the Conservation Area.
7. The architectural appearance of the building is consistent with the mixed ages, styles and materials of buildings within the Conservation Area as is its relatively tight fit on a small plot, all characteristics noted above. But, whatever view is taken of the building's aesthetic merits, the physical detachment of the site from the rest of the Conservation Area leads me to conclude that its development will have little or no effect on the significance of the heritage asset. It will be seen and experienced in the context of Russell Road, Harwood Avenue, Beadle Court and the rear of Preshaw Crescent.
8. This is an area of transition between the three storeys of Beadle Court, the two storeys with high pitched roofs and dormers of Preshaw Crescent and the rather more modest two-storey terraces of Russell Road and Harwood Avenue. In this context, the proposed mix of two and three storeys would be appropriate. It would comply with policies CS13(e) and CS14 of Merton's Core Strategy (2011) and policies DMD2(a) (i) and (ii) and DMD4 of Merton's Sites and Policies Plan July 2014 which require proposals for new dwellings in back gardens to be justified against the local context and character of the site and for development to be designed to accord with the Council's published Conservation Area appraisals, to respect, reinforce and enhance its local character, to relate positively and appropriately to the siting, rhythm, scale, density, proportions, height, materials and massing of surrounding buildings and the existing street patterns, historic context, urban layout and landscape features of the surrounding area and to use appropriate architectural forms, language, detailing and materials which complement and enhance the character of the wider setting.

Living conditions of neighbours

9. The position of the building on site, and its distance from nearby buildings with windows requiring light means that, with one exception, it would not cause an unacceptable loss of light or outlook to neighbours. The immediately adjoining properties abutting the site, numbers 24 and 26 Russell Road, and the nearby Beadle Court largely present blank flank walls to the site. Only 26 Russell Road has a ground floor flank window facing into the site. Its outlook and light would be obscured by the side elevation of the northern two-storey wing of the proposal but it appears to be a secondary window and so the resulting harm would be of less consequence.
10. At ground floor level, the site is bounded by close boarded fencing about 2m high on all sides except to the rear garden of number 24 to its north. This would provide adequate privacy to neighbours from flats at ground floor level where the building would approach close to the boundary on its south and west sides. A condition (4) can require the submission of boundary details which can be required to provide boundary treatment of adequate height to provide privacy to the rear garden of number 24 Russell Road.
11. At first floor level, the north elevation is to be provided with a design of oriel window which would preclude views directly northwards and would confine the outlook from the first floor flats facing the rear gardens of the properties in Harwood and Russell Roads to sidelong views. This would provide adequate privacy to neighbouring dwellings.
12. To the west, the upper floors would face over the car park of Beadle Court, which is open to the public in any event, towards the blank flank wall of Beadle Court. Consequently, no issue of privacy or overlooking would arise. At the southern end of the west façade of the proposal, it would face the further end of the garden of White Cottage at close range. Here, obscured glazing to the secondary windows facing White Cottage's garden would provide privacy.
13. To the south, facing the retained rear garden of number 8 Preshaw Crescent, the proposal would have a balcony at first floor level. It would be located about 16-18m from the nearest part of the rear façade of number 8 Preshaw Avenue but would face into its garden at a distance of less than 1m which would be very intrusive indeed. From the same viewpoint about 4m from the boundary with White Cottage it would be possible to look into the part of that property's rear garden which lies closest to its living quarters, although, perversely, a solid panel about 2m high on the western edge of the balcony would prevent overlooking due west into the more remote reaches of White Cottage's garden. It would also be possible to look east towards the garden of 7 Preshaw Crescent at a distance of about 5m but the sightline would be sidelong and to the rear part of that garden and so, not dissimilar to the view into any neighbour's garden from the upper floor of any neighbouring house in a suburban area.
14. After consultation, the appellant accepts that a condition (5) could require a privacy screen along the southern edge of this balcony. This, together with a condition (2) requiring compliance with drawings which indicate the installation and retention of other privacy features designed in to the development would mean that it would have an acceptable effect on neighbours' privacy. With these conditions in place, I conclude that the proposal would have an acceptable effect on the living conditions of neighbours and so would comply

with Local Plan policy DMD2(a(v)) which, amongst other matters, seeks to ensure provision of appropriate levels of sunlight and daylight and privacy, to adjoining buildings and gardens.

Living conditions, potential future occupants

15. As the Council's report confirms, the proposed units all meet and exceed minimum internal space standards. The proposal would provide more amenity open space than the equivalent of 5 sqm per 1-2 person flat plus 1sqm for each additional occupant. Some would be in the form of west- or south-facing private areas about 32 sqm in extent. Some would have south or west-facing balconies. There would also be a single, useably configured, south-facing area of communal open space.
16. I therefore conclude that the proposal would provide adequate living conditions for potential future occupants. It would comply with Local Plan policies DMD2(a(iv) and (v)) which, amongst other matters, seek to ensure appropriate provision of outdoor amenity space, whether public, private or communal which accords with appropriate minimum standards and is compatible with the character of surrounding areas and to ensure provision of appropriate levels of sunlight and daylight, quality of living conditions, amenity space and privacy, to both proposed and adjoining buildings and gardens.

Refuse collection

17. The secluded location of the site means that so little of it would be within the 10m maximum "drag" distance from the highway required for the collection of communal refuse bins that it would not be serviced from the street in this way. The diminutive size of the site does not allow for the entry, turning and exit of refuse collection vehicles. Accordingly, the proposal is for a refuse store housing individual bins for each flat, which can be provided within the 15m maximum "drag" distance for this type of refuse storage container.
18. The Council doubts that the refuse store proposed would be an adequate size to house the number of bins of different purposes required for individual household collection. It suggests that the matter can be resolved by a condition requiring further details to be submitted. I observe that the layout plan shows an area of land on the northern side of the access, backing onto the flank wall of the garage of 24 Russell Road where additional refuse storage could be located. I therefore concur that the matter can be resolved by condition. With this condition (6) in place, I conclude that the proposal would have adequate facilities for the storage and collection of waste. It would comply with Merton's Core Strategy policies CS17(e) and CS20(j) which require provision for refuse storage and collection and the provision of integrated, well-designed waste storage facilities that will include recycling facilities for all new developments where appropriate.

The capacity of the road network

19. Russell Road is narrow. It is, in effect a cul-de-sac because the road that it leads to, Love Lane, is closed by traffic management measures a short distance either side of its junction with Russell Road. Russell Road has very little off-street parking and so cars park within its narrow carriageway, restricting passage for larger vehicles.

20. I have no doubt that, for the duration of the construction of the development, there will be inconvenience to those who currently use the street for parking, even if construction access to the site is managed in the way suggested by the appellant's Framework Construction Management Plan, which can be required by condition (12). But, as Chief Justice Ellenborough observed in the well-known case of *R v Cross* (1812), "The King's highway is not to be used as a stable yard." Although vehicles may stop to load or unload passengers or goods, "private premises must be procured for the coach to stop in during the interval between the end of one journey and the commencement of another." Free passage can be enforced by those responsible for the management of the highway. Consequently, there is no sound basis for concluding that, because it is currently used for car parking, the access to the development is inadequate for construction purposes.
21. Many of those objecting to the development do so on the grounds that it proposes six off-street parking places for nine flats and that every household in the street has two cars. The latter assertion seems implausible, not least because there are 35 houses within the street but only space for about 24 cars to be parked on street, indicating that physical constraints would restrict car ownership to an average of about 0.7 cars per household. Census data shows a more realistic picture, indicating that, in 2011, for typical flats in the area (as proposed in the development, in contrast to houses which typify the street at present) car ownership rates which averaged less than 0.5 cars per household were the reality. Thus, the proposal, which would provide for a car ownership rate averaging just under 0.7 cars per flat, seems quite adequate, even allowing for changes in car ownership rates since 2011.
22. The appellant's Transport Statement finds that the proposed development will generate approximately 2 two-way vehicle trips in both the AM and PM peak periods with a reduced impact at all other times. This is not expected to create a material impact on the local highway network and shows that the use of the new access will be minimal. I find this analysis convincing and so conclude that the road network would have adequate capacity to serve the development. With the recommended condition (12) in place to manage construction traffic, the proposal would comply with Merton's Core Strategy policies CS20 (d) and (e) which require that development will not adversely affect pedestrian and cycle movements, safety, the convenience of local residents, on-street parking and traffic management and will provide car parking in accordance with the Council's current parking standards and with policies DMD2(a(xiii)), DMT2 and DMT3 to ensure that the traffic and construction activity do not adversely impact or cause inconvenience in the day to day lives of those living and working nearby and do not harm road safety or significantly increase traffic congestion, to ensure that the level of residential parking and servicing provided is suitable for its location and managed to minimise its impact on local amenity and the road network and that development is sustainable and has minimal impact on the existing transport infrastructure.

Conditions

23. The council suggests that twenty-four conditions and several informatives would be necessary in the event of the appeal being allowed. I have considered these in the light of the tests set out in paragraph 55 of the National Planning Policy Framework, national Guidance and the model

conditions set out in Appendix A of the otherwise cancelled Circular 11/95, *the Use of Conditions in Planning Permissions*.

24. In addition to the statutory limit on the validity of the permission and the conventional condition identifying the reference number of the drawings to be followed in the construction of the development, a condition is necessary to identify, in greater detail than given on the application form, the materials to be used in the external appearance of the proposal. The reason for the conditions requiring the retention of boundary walls and fences and the provision of new ones on the northern boundary and the provision of a screen on the balcony at the southern extremity of the scheme has been explained earlier.
25. The Council's suggested condition limiting the installation of service runs on facades facing the highway is not imposed because this proposed development would have no facades facing a highway. The need for a condition requiring further details of refuse storage has been explained earlier. The need for a condition to control the installation of external lighting is because no details are shown on the application as submitted. Likewise, a condition requiring the submission of drainage details is required because none are shown on the application as submitted.
26. The submitted drawings show the inclusion of solar panels. The Council's suggested condition is necessary to ensure that they would be effective in reducing carbon dioxide emissions and to ensure water savings.
27. There is no reason to impose a condition requiring the submission of a landscaping scheme because one was submitted with the application and I have no convincing information to indicate that it would be inadequate or unsatisfactory but a condition is required to ensure its implementation. Nor is it necessary to impose a separate condition concerning the Arboricultural Method statement and Tree Protection Plan because that is encompassed within condition (2).
28. I have not imposed a condition requiring the submission of details of a proposed vehicular access because it is my understanding that an existing access is to be used. In any event, the proposed access is adequately shown on the drawings A165:P:1000 and A165:P:1001, compliance with which is required by condition (2); all that is necessary is a condition requiring the completion of the access and car and cycle parking spaces before occupation. It is not clear why a scheme of parking management needs to be submitted for the Council's approval and so no such condition is imposed but I have included a requirement that the facilities be retained for the benefit of the occupants of the development.
29. Similarly, it is not clear why a Delivery and Servicing Plan, a Construction Logistics Plan, a working method statement and a s171 Highways Licence Agreement are all separately necessary but I have imposed a condition for a Construction Method Statement which can refine the Framework Construction Management Plan initially submitted by the appellant and encompass these matters.
30. The site lies within an identified archaeological priority area. An archaeological desk-based assessment has been submitted. There is no information to indicate that its recommendations are unacceptable, so there is no need for a

condition to do more than to secure the implementation of its recommendations. Although this is framed as a precondition of development commencing, the appellant has not been consulted on the condition because it derives from the recommendations of the appellant's own supporting material.

Conclusion

31. For the reasons given above I conclude that the appeal should be allowed.

Paul Clark

INSPECTOR