



Appeal Decision

Site visit made on 21 February 2022

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/T5720/W/21/3283758

38 Lyveden Road, Tooting, London, SW17 9DU

- 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 Morningside Real Estate 38LR Ltd against the decision of the London Borough of Merton Council.
- The application Ref 21/P1988 dated 14 May 2021, was refused by notice dated 9 September 2021.
- The development proposed is conversion of the existing self-contained dwelling house (Class C3) to provide 5 self-contained flats (Class C3) including extensions at ground and first floor levels, excavation and extension of the existing basement, rear roof dormer, front rooflights and associated landscaping (including demolition of the existing structures in the garden), refuse and cycle parking.

Decision

1. The appeal is allowed and planning permission is granted for conversion of the existing self-contained dwelling house (Class C3) to provide 5 self-contained flats (Class C3) including extensions at ground and first floor levels, excavation and extension of the existing basement, rear roof dormer, front rooflights and associated landscaping (including demolition of the existing structures in the garden), refuse and cycle parking at 38 Lyveden Road, Tooting, London, SW17 9DU in accordance with the terms of the application ref: 21/P1988, dated 14 May 2021, subject to the following conditions:
 - 1) The development to which this permission relates must be begun not later than the expiration of three years, beginning with the date of this decision;
 - 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the following approved plans: 015_240b; 015_241a; 015_242; 015_202b; 015_250c; 015_209c; 015_210c; 015_211c; 015_212d; 015_213c; 015_220b; 015_221c; 015_222c; 015_223c; 015_224d; 015_225c; 015_230c; 015_001;
 - 3) No development above ground level shall take place until details of particulars and samples of the materials to be used on all external faces of the development hereby permitted, including window frames and doors (notwithstanding any materials specified in the application form and/or the approved drawings), have been submitted to the Local Planning Authority for approval. No works which are the subject of this condition shall be carried out until the details are approved, and the development shall be carried out in full accordance with the approved details.
 - 4) Notwithstanding condition three, no installation shall take place until details of the raised ground floor level glazed sliding doors have been provided, these

details shall show an internal Juliet balustrade to provide a barrier between the upper ground floor level and flat roof of the extension, and these shall be submitted to the Local Planning Authority for approval. No works which are the subject of this condition shall be carried out until the details are approved, and the development shall be carried out in full accordance with the approved details and retained thereafter;

- 5) Prior to the commencement of development, a detailed scheme for the provision of surface and foul water drainage shall be submitted to and approved in writing by the local planning authority for both phases of the development. This should include but not limited to the incorporation of passive measures for drainage around the basement structure;
- 6) Prior to basement excavation works, a detailed scheme for the provision of surface and foul water drainage shall be submitted to and approved in writing by the local planning authority for both phases of the development. This should include but not limited to the incorporation of passive measures for drainage around the basement structure;
- 7) No development shall commence until (A) a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) has been appointed for the duration of building works and their appointment confirmed in writing to the Local Planning Authority, and (B) the name, and contact details of the person supervising engineering and construction on site for the duration of building works have been confirmed in writing to the Local Planning Authority.

In the event that either the Appointed Engineer or Appointed Supervisor cease to perform that role for whatever reason before the construction works are completed, those works shall cease until a replacement chartered engineer of the afore-described qualification or replacement supervisor has been appointed to supervise their completion and their appointment confirmed in writing to the Local Planning Authority. At no time shall any construction work take place unless an engineer and supervisor are at that time currently appointed and their appointment has been notified to this Authority in accordance with this condition.

- 8) Prior to the commencement of development a working method statement shall be submitted to and approved in writing by the Local Planning Authority that shall include measures to accommodate: the parking of vehicles of site workers and visitors; loading and unloading of plant and materials; storage of construction plant and materials; wheel cleaning facilities; control of dust, smell and other effluvia; measures to control noise and vibration; measures to control dust and dirt; a scheme for recycling and disposing of waste from demolition and construction. No development shall take place that is not in full accordance with the approved method statement;
- 9) No development shall take place until a final basement construction method statement has been submitted to and approved in writing by the Local Planning Authority. No development shall take place that is not in full accordance with the approved final basement construction method statement;
- 10) No development shall take place until full details of a landscaping and planting scheme, including green roof, 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;

- 11) 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 day;
- 12) The development hereby permitted shall not be occupied until the cycle parking shown on the plans hereby approved has been provided and made available for use. These facilities shall be retained for the occupants of and visitors to the development at all times;
- 13) The development hereby approved shall not be occupied until the refuse and recycling storage facilities shown on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times. In addition, refuse bins shall not be placed on the public highway at any time either during or after collection;
- 14) Access to the flat roof of the development hereby permitted shall be for maintenance or emergency purposes only, and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area;
- 15) Any external lighting shall be positioned and angled to prevent any light spillage or glare beyond the site boundary;
- 16) The hardstanding hereby permitted shall be made of porous materials, or provision made to direct surface water run-off to a permeable or porous area or surface within the application site before the development hereby permitted is first occupied or brought into use;
- 17) No construction shall take place within 5m of the water main, unless otherwise agreed in writing with the local planning authority in consultation with Thames Water. Should piling be proposed, information detailing how the applicant intends to divert the asset/ align the development, so as to prevent the potential for damage to subsurface potable water infrastructure, must be submitted to and approved by the local planning authority in consultation with Thames Water. Any construction must be undertaken in accordance with the terms of the approved information. Reason: The proposed works will be in close proximity to underground strategic water main, utility infrastructure. The works has the potential to impact on local underground water utility infrastructure.

Procedural Matters

2. Though not included within the decision notice I note the Council refer to a lack of a Unilateral Undertaking (UU). As part of the appeal the appellant has submitted a signed UU to secure four of the five flats as being parking permit free. I am, therefore, satisfied that this overcomes the issues raised with regard to parking as outlined in other matters.

Main Issues

3. The main issues are the impact of the proposal upon i) the appearance of the host building and neighbouring buildings and ii) the amenity of neighbouring occupiers with regard to loss of privacy, overbearingness and unneighbourly presence.

Reasons

Appearance of the host building and neighbouring buildings

4. The appeal site is a two storey detached residential property. I noted at the time of my site visit that the site is largely unaltered in its present state, however, lean-to extensions to each side at rear ground floor level can be seen from within the garden of the site. The site is located within a mainly residential area with a car park beyond the rear boundary to the south.
5. The submissions before me confirm that the principle of the proposal, adding four residential units, is acceptable subject to relevant policy considerations and supplementary planning documents. The appeal proposal is a resubmission of previously refused application 21/P0113. The Council have submitted their delegated report and the drawings from this previous application; however, I attribute limited weight to refusal of this previous decision due to the fact the proposal before me is an evolved scheme which has reduced the projection and removed a roof terrace. The revised proposal should be considered upon its own merits against the main issues within this appeal.
6. No part of the refusal reason raises issue with the use of the appeal site as five units or overdevelopment as such, the refusal is based upon design, height siting and massing only. The Council's statement of case confirms that no objections are raised towards the alterations to the front of the building, including the proposed cycle and bin stores. The refusal reason, part a), therefore raises issue with the overall level of built form and is thus based upon the proposed changes to the rear. The proposal seeks to add ground and first floor extensions and a rear roof extension. The proposal is also noted to include proposals for excavation and extension to basement level.
7. At the time of my site visit I found that when stood within the appeal site there are several examples of extensions and roof extensions visible on surrounding properties. Some of these were notably boxy in design in terms of their flat roof extensions. The Council also acknowledged, in their committee report, that other neighbouring properties along Lyveden Road, have been modified extensively at the rear with projections at ground, first and loft level and this is shown in figure 3 of the appellant's statement of case. The proposal would, I find, be consistent with this regardless of whether the other examples were built a number of years previous or assessed under differing policy. They remain as part of the character of the surrounding area. The proposed dormer extension would be recessed from the lower eaves of the main roof and I find would it result in the roof line of the original building still being read so as not to be of detriment to the appearance of the existing building.
8. The upper ground floor rear extension would replace existing extensions at this level of the site. The new massing at this level would have less depth than the current mono-sloped extension near the boundary with no. 40. On the

- opposite boundary the extension would finish level with the flank wall of the neighbouring building at no. 36 which would not be unduly imposing or unneighbourly when taking into account the existing scale and massing already on site.
9. I find that the appeal proposal would result in the most substantial changes at ground and lower ground floor level. These would, however, be on areas of the building which are of limited visibility from external areas. The extensions have been designed to consistently step in from the rear and sides of the site from bottom to top, and thus preserve a sense of hierarchy present in the original elevations. Not bringing development at higher levels up to the boundary I find would reduce visual bulk towards neighbours and results in the massing of the scheme being broken up and prevents stark visual transition. I do not find the proposal would result in a pronounced jarring impact on the host building or how it assimilates with neighbour properties nor would it result in overdevelopment.
 10. I find that the external alterations would strike an appropriate balance between the creation of floor space, to provide an additional four homes in line with policy, whilst being of a design and scale that appropriately responds to the building's traditional architectural form. The front elevation of the building would be retained as existing with preservation of its original features which would allow the uniformity of the street to be retained. It is noted that the front courtyard area is relatively large with sufficient space for refuse and cycle storage to be located for the intended density.
 11. I do not find the design, height, siting or massing would result in an incongruous and inappropriate form of development which would be visually dominant or intrusive. I do not find the proposal would fail to complement the appearance of the existing building or neighbouring buildings. The proposal would be consistent with Sites and Policies Plan 2014 (LP) Policy DM D1 which seeks to ensure high quality design of buildings and place and LP Policy DM D2 which requires proposals to relate positively and appropriately to the siting, rhythm, scale, density, proportions, height, materials and massing of surrounding buildings and existing street patterns and use appropriate architectural forms, language, detailing and materials.
 12. The proposal would also be consistent with LP Policy DM D3 that states that incremental densification should be actively encouraged by Boroughs to achieve a change in densities in the most appropriate way and Core Planning Strategy 2011 (CS) Policy 14 which requires conversion of existing single dwellings not to result in an adverse impact on the suburban characteristics of the streetscape.
 13. The proposal would be consistent with London Plan 2021 (LDN) Policy D3 that requires proposed to make the best use of land by following a design-led approach that optimises the capacity of site, respond to existing character and be of high quality with architecture that pays attention to detail and LDN Policy D4 which seeks to deliver good design.

Amenity of neighbouring occupiers with regard to loss of privacy and overbearingness

14. The refusal reason, part b), concerns the built form discussed in the first main issue with specific regard to loss of privacy, overbearingness and neighbourly

- presence to the detriment of neighbouring living conditions. Taking each of the elements of built form the ground floor extension would replace the existing extensions, noted above, at this level of the site. It would project modestly past the neighbouring houses but this is not at a level which I would consider to be detrimental to neighbouring occupiers. The lower ground floor, due to its position, would have no impact upon neighbouring occupiers.
15. The first floor extension would not break the 45-degree code to the centre pane of the neighbouring first floor windows. Whilst the code is guidance, where proposals comply with such guidance, it is hard to justify why the proposal would warrant refusal due to a lack of impact as a result of compliance. Having considered the proposal when stood within the appeal site at the time of my site visit I do not consider that the extension at first floor level would enclose neighbouring properties or appear visually dominant given none of this element would be built directly on the boundary. The dormer extension would, by its nature, be above existing roof level. It would not create enclosing bulk or massing which would impact upon neighbouring amenity. Overall I do not find the proposal would result in a dominant rear projection.
 16. The Council reference Merton's Council's Small Site's Toolkit Supplementary Planning Document 2021 but only submit extracts from this document within this appeal. Based upon my findings above I find the proposal is consistent with this guidance which requires that massing be not overly dominant to neighbouring properties. The appellant has provided a daylight/sunlight report which I find evidences that the proposal would not reduce light levels received by neighbouring properties or gardens. Sufficient interior daylight and sunlight would be maintained and all gardens and open spaces would meet the relevant recommendations (as also noted within the Small Site's Toolkit SPD).
 17. In considering the proposed windows in the additional built form I find that these offer similar views to that of the current windows in the existing property. There is of course potential for increased activity as a result of the intensified use but I do not find that the proposed windows would create potential for greater overlooking compared to the current layout of residential development. Additional/new openings are set in from the side of the rear elevation which results in no close views towards garden spaces of neighbouring properties.
 18. No additional side openings are proposed. There is already a high degree of overlooking and general impacts upon privacy as a result of the existing layout in an urban setting. There are no raised amenity spaces and conditions can be utilised to control use of the flat roofs as terraces and provide a barrier between the upper ground floor and the roof of the extension.
 19. Based upon this assessment, and the imposition of conditions, I find that the proposal would not result in a loss of privacy for neighbouring occupiers which would warrant refusal. The proposal would be consistent with LP Policy DM D1 which requires proposals to impact positively on the character and quality of the public realm, LP Policy DM D2 which seeks to protect existing development from visual intrusion, noise, vibrations or pollution so that the living conditions of existing and future occupiers are not unduly diminished.
 20. The proposal would also be consistent with LP Policy DM D3 which seeks to ensure that noise, vibrations or visual disturbance do not diminish the living conditions of existing or future residents and LDN Policy D3 which requires

proposals to deliver appropriate outlook, privacy and amenity and LDN Policy D4 which seeks to deliver good design.

Other Matters

21. A number of objections to the proposal are noted at both application and appeal stage. Several matters raised including the previous scheme, parking pressure, character of the Victorian property, overlooking, loss of light and garden shading have been dealt elsewhere within this decision. I acknowledge information regarding health issues including mental health and disabilities but matters such as noise during construction would be covered and monitored by the Council's Environment and Health Team, and all work would be expected to adhere to the Council's Construction Code of Practice. A condition can be placed on any permission granted regarding the basement and requirements for a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) to be appointed for the works as well as requiring a construction management plan. Damage and stability of neighbouring properties is a private matter.
22. Comments regarding other proposals and fear of a precedent are noted, however, I can only consider the proposal before me on its own merits based upon the evidence available. I have dealt with matters relating to character and appearance within the main body of this decision. The proposed basement does not exceed 50% of either the front, rear or side garden of the property. No objection is raised in relation to the standard of accommodation proposed. I have no evidence to conclude differently on either of these points. There have been no objections from statutory consultees with regard to sewage or flooding subject to conditions. The Council's refusal reasons raise no issue with public and private amenity space, surface water flooding or asbestos.
23. There is no evidence that the proposal would impact upon green space or wildlife which is protected under the Wildlife and Countryside Act. No objections have been raised by the Council with regard to bin or cycle storage provision within the context of the streetscene. Private views are not a planning consideration and no loss of outlook has been included in the refusal reason before me where I have considered amenity with regard to being unneighbourly.
24. I note that the transport officer raises no objection to the proposal subject to a Unilateral Undertaking (UU) which would restrict future occupiers of four units from obtaining an on-street residential parking permitted to park in the surrounding controlled parking zones. I have before me a completed deed of UU dated 8th February 2022 has been signed by the appellant, Victoria Capital Trust and Eldee Property Services Limited which secures this required mechanism. The proposal would not therefore contribute to on street parking pressures.

Conditions

25. The Council have suggested a number of conditions which were set out, fully worded, in the original planning committee report as well with further amendments in a committee modification. The appellant notes these within their statement of case and thus I have taken this as agreement to the stated conditions – particularly those which are pre-commencement conditions. I

have undertaken some minor editing to some conditions with particular regard to timings only.

26. A condition requiring the development to be in accordance with the approved plans is required in order to control and define the development which is granted consent. A time condition is attached to comply with section 51 of the Planning and Compulsory Purchase Act 2004. Conditions relating to the materials to be utilised is required to ensure a satisfactory appearance for the lifetime of the development. Conditions relating to drainage and hardstanding are required to ensure a satisfactory means of surface water drainage and to reduce the risk of flooding. Conditions relating to appointment of an appropriately qualified engineer and a basement construction method are required to safeguard the neighbouring residential amenity. A working method statement is required to ensure the safety of pedestrians and vehicles and the amenities of the surrounding area.
27. A landscaping and planting condition is required to enhance the appearance of the development in the interest of the amenities of the area, to ensure the provision sustainable drainage surfaces. A condition relating to CO2 emissions and water consumption is required to ensure that the development achieves a high standard of sustainability and makes efficient use of resources. Cycle parking, refuse and recycling is required by condition to ensure satisfactory facilities are provided. Prevention of the flat roof being utilised as a roof garden, terrace, patio or similar amenity area is required, as a condition controlling lighting, to protect neighbouring amenity. A condition regarding construction in and around the water main is required to protect the strategic utility infrastructure.

Conclusion

28. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Eleni Randle

INSPECTOR