



Appeal Decision

Site visit made on 21 March 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2022

Appeal Ref: APP/T5720/W/21/3282340

3 Mitcham Park, Mitcham CR4 4EN

- 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 Zahoor Ahmed against the decision of the Council of the London Borough of Merton.
 - The application Ref 19/P0546, dated 31 January 2019, was refused by notice dated 17 May 2021.
 - The development proposed is the erection of a two-storey rear extension and rear roof extension in connection with the change of use from residential rehabilitation centre (class C2) to a 10 room HMO (class Sui Generis).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development was described on the planning application form as a "proposed 2-storey rear extension, loft conversion to include small rear dormer and change of use to a HMO consisting of 11 rooms". The scheme was amended while the planning application was being determined, with changes including a reduction to 10 bedrooms. The decision notice described the development as "the erection of a two-storey rear extension and rear roof extension in connection with the change of use from residential rehabilitation centre (class C2) to a 10-room HMO (class Sui Generis)". I have used this amended wording in the banner heading above, as it accurately describes the proposal as it was considered by the Council and as it now is before me.
3. The decision notice referred to "the London Plan 2020". The Publication London Plan was issued in December 2020, but the final version was published and became part of the development plan on 2 March 2021. As the relevant policies were not changed between those two dates this has had no practical bearing on this appeal, but for accuracy I have referred to the London Plan 2021 in my reasons below.
4. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. This was after the Council had made its decision, but before the appeal was submitted. Given this timing, the main parties were able to consider the revised Framework as part of their appeal representations, and I have not therefore separately sought comments on it. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

Main Issues

5. The decision notice gave two reasons for which the proposal was refused planning permission. However, the first of these was broadly-drafted, and in fact encompassed three separate matters; the effect of the proposal on the character of the Mitcham Cricket Green Conservation Area ("the MCGCA"), the effect of noise and activity on amenity, and the quality of the proposed accommodation for future occupiers. I therefore consider that the main issues are:
- Whether or not the proposed development would preserve or enhance the character or appearance of the MCGCA;
 - The effect of the proposed use on living conditions for occupiers of neighbouring properties, with particular regard to noise and disturbance;
 - Whether or not the proposed accommodation would provide acceptable living standards for future occupiers, with particular regard to security arrangements and provision of adequate space for cooking facilities; and
 - Whether or not the proposal makes adequate arrangements for the storage and collection of refuse and recycling.

Reasons

6. The appeal site is a two-storey semi-detached property on the north-western side of Mitcham Park. It has a hard surfaced front forecourt, and a rear garden. The surrounding area is predominantly residential, although the appeal site backs onto the nearby SS Peter and Paul RC Primary School. The proposed development is the change of use of the property from a residential rehabilitation centre to a House in Multiple Occupation ("an HMO") with ten bedrooms. It would also include a two-storey rear extension, above and beyond an existing rear outrigger, and a dormer type addition to the rear roof, as well as the installation of additional rooflights on the front, rear and side roof slopes.
7. Notwithstanding that the original planning application described the proposal as including a change of use, the appellant commented in the appeal statement that "there is overwhelming evidence that the subject site has previously been in use as HMO", and that "the description of the proposed development as a change of use is incorrect, the right description of the proposal based on the site history is continuous use of building as 10 persons HMO following the addition of two more bedrooms".
8. The use of the appeal property as a "rehabilitation centre" stemmed from a grant of planning permission in 1992 for a development described as "change of use of existing dwelling to form a group home for eight people living together involving the erection of a part one, part two storey rear extension and a conservatory extension at the rear"¹. The Design and Access Statement for this proposal described the property as a "former residential care home", and the Council's officer report explained that it was used by the Merton and Sutton Alcohol Project and Equinox Care to provide "accommodation and rehabilitation for alcohol and substance abuse for up to 8 persons".

¹ LPA Reference 92/P0478

9. The Use Classes Order² ("the UCO") defines "residential institutions" within Class C2 as, among other things, providing "residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses))". Care is defined as "personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs". I have not been provided with the full details of the 1992 planning permission, but by either party's description the subsequent use of the property would clearly fall within Class C2.
10. The Council indicated that the use of the property as a care home had ceased "in recent years", but no more accurate information is before me as to when that means. At the time of my site visit, while some rooms within the building were clearly occupied as private bedrooms, the property also retained (in the rear ground floor rooms) an office in keeping with its use as a residential institution. There is no provision within the General Permitted Development Order³ for a change of use from a residential institution within Class C2 to any of a Class C3 dwellinghouse, a Class C4 HMO for up to six residents, or a *sui generis* larger HMO. In the absence of any evidence to indicate that such a change of use has been permitted or regularised, it is appropriate for me to determine the appeal on the basis that the proposed development involves a change from the last lawful use within Class C2.
11. The proposed development would provide a double kitchen with utility room, a shared shower room/WC and two reception rooms on the ground floor, with a shared bathroom on the first floor. There would be 10 bedrooms within the appeal property (three on the ground floor, five on the first floor, and two at loft level), all with an ensuite shower room/WC. The smallest bedroom, bedroom 3 on the ground floor, would have a gross internal area of 13.3m² (by the Council's calculation) and would only be suitable for single occupancy. The others (again by the Council's calculations, although these have not been disputed by the appellant) would range from 15.6m² up to 31.5m²; the Council has therefore taken the view that 9 of the 10 bedrooms would be capable of double occupancy, and that the property would have the potential to accommodate 19 adults. The appellant, on the other hand, has described the proposal as being for a 10-bedroom, 10 person HMO, and considers that the potential occupancy has been "exaggerated by the Council" in an "attempt to discredit the appeal proposal".
12. There is no suggested condition before me which would limit the number of residents in the property. In any event I am not satisfied that such a condition would comply with the all of the requirements of paragraph 56 of the Framework. Given the size of the appeal property, and in particular the generous size of most of the proposed bedrooms, it is therefore appropriate for me to consider the impacts of the development on the basis of there being as many as 19 adults resident within the property.

Conservation Area

13. The appeal site lies within the MCGCA, and I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the Framework states that they should be conserved in a manner

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

³ The Town and Country Planning (General Permitted Development) (England) Order 2015

appropriate to their significance (paragraph 189). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 200) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 202).

14. The MCGCA is centred on Mitcham Lower Green, south of Mitcham town centre. It is bounded by Mitcham Common to the east, and the churchyard of Mitcham Parish Church to the west. The Mitcham Park area of the MCGCA runs south west from the Cricket Green itself towards the tram line and Mitcham Tramlink stop. The MCGCA contains large areas of green space and mature trees, while buildings are generally modest in scale and traditional in style. These factors combine to give the area a pleasant, spacious and verdant suburban character. The significance of the MCGCA is derived from, among other things, the way it illustrates the growth and evolution of the townscape from the mediaeval period to the 20th century.
15. The Mitcham Park part of the MCGCA displays a consistent Edwardian suburban character; the street contains many L-shaped semi-detached properties with relatively modest front façades but considerable depth behind (of which the appeal property is one). The formal layout of the street reflects its planned development as a desirable residential area in the early part of the 20th century. Some buildings have been converted to flats and care or retirement homes, and this intensification of use is reflected in (for example) a loss of front gardens to forecourt parking, along with a proliferation of signage, utilities boxes, and storage of rubbish bins. The Mitcham Park part of the Conservation Area retains its traditional townscape of family residences and a family residential character, although the changes to some of the properties in the area mean that this is somewhat finely balanced. Nevertheless, it continues to contribute to the distinctive character and identity of the MCGCA as a whole.
16. The potential occupation of the property by up to 19 adult residents would represent a significant intensification of the use of the building when compared to its use as a family dwelling, as originally built, or its most recent use as a Class C2 residential institution for up to 8 residents. There would be likely to be a much greater number of comings and goings than was previously the case. The use of the rear garden by up to 19 adult residents (plus, potentially, their visitors) would also be likely to be far more intensive than previously.
17. The use of the property as a large HMO would also be likely increase the transience of the population in the area; while I acknowledge that this would also have been the case with the previous care home use, the impact of the larger number of residents who could be housed in such a large HMO would be much greater. The combination of these factors would mean that the proposal would risk upsetting the finely-balanced family residential character of Mitcham Park, and the character and identity of the MCGCA as a whole.
18. The Council considered that the physical works proposed to the appeal property would be acceptable, and so the appearance the MCGCA would not be harmed. None of the evidence before me or my observations on site lead me to a different view. However, for the reasons I have set out above I conclude that the proposal would not preserve the character of the MCGCA. In the Framework's terms, the harm to the heritage asset would be less than substantial, and must therefore be weighed against the public benefits of the scheme.

19. The proposed development would add to the supply of residential property in an area with high demand for housing. Future occupiers would be likely to provide some economic support for local businesses. I note also the appellant's comment that the scheme would provide affordable accommodation to key workers on low incomes, although there is nothing before me which would assure this. In any event, the public benefits which have been identified would be relatively limited, and carry only modest weight in favour of the scheme. They would not outweigh the harm to the heritage asset, to which I must attribute great weight.
20. The proposal conflicts with Policy CS14 of the 2011 Merton Core Strategy ("the MCS"), Policies DM D2, DM D4 and DM H5 of the 2014 Merton Sites and Policies Plan ("the MSPS"), and Policy HC1 of the London Plan 2021. Together, and among other things, these policies seek to ensure that development relates positively to its surrounding area, conserves or enhances heritage assets, and protects residential character and amenity. For the same reasons I find conflict with the provisions of the Framework in respect of good design and protecting the historic environment.

Neighbours' living conditions

21. The use of a property as a large HMO would, as I have already described in paragraph 16 above, be likely to result in many more comings and goings, and a more intensive use of the rear garden, than would be the case either with a family home or a relatively small residential institution (or, indeed, a much smaller HMO). This would result in there being a far greater potential for noise and disturbance to surrounding occupiers.
22. I note the appellant's suggestion that the nearby primary school and other uses such as flats would generate similar noise and comings and goings to the appeal property. However, the use of the appeal site would not be time limited in the way that would be the case (in particular) with a school. Disturbance caused by residents and visitors arriving and leaving the appeal property would be difficult to control, and would not be limited to particular times of day. Use of the rear garden would be likely to take place late into the evening during the warmer months, and although the appeal property backs on to the school site, there would be a considerable risk of unacceptable noise disturbance to the occupiers of Nos 1 and 5 Mitcham Park on either side.
23. I conclude that the development would be harmful to living conditions for the occupiers of neighbouring properties, as a result of noise and other disturbance. The proposal therefore conflicts with Policies DM D2 and DM H5 of the MSPS, which among other things seek to ensure that development functions well and is not detrimental to residential character and amenity.

Standard of accommodation

24. Policy DM H5 of the MSPS requires that the development of housing with shared facilities "complies with all relevant standards for that use". Although I have not been provided with full information about the Council's HMO standards, I understand from the evidence before me that they include a requirement of a minimum of 3m² of kitchen space per occupier.
25. The proposed kitchen would have a double set of fittings (sinks, cookers, fridges etc), and a gross area by the appellant's calculation some way above

30m²; it would meet the Council's HMO standard for 10 people. However, for the reasons I have set out in paragraph 12 above, I consider it appropriate to assess the proposal on the basis that it could provide accommodation for up to 19 adults. I have not been provided with a precise measurement for the kitchen area, but it is apparent (and accepted by the appellant) that it falls well short of the 57m² which would be required for 19 occupiers.

26. The appellant has commented that "not all the residents would be using the kitchen at the same time"; I agree that that is likely. However, the space is not simply required for residents themselves, but to ensure that there is sufficient storage for their food, crockery and utensils, as well as other necessary paraphernalia. On the basis of the evidence before me, I am not satisfied that the proposal would provide adequate kitchen space and facilities to serve the potential number of occupiers.
27. The Council identified a number of concerns about security within the property; notably that it is not clear how mail and deliveries would be kept separate and secure for residents, that there are no security measures proposed to protect the building's interior, and that there is no method for securing the shared areas. However, were the proposal acceptable in all other respects I am content that that these security matters could be addressed by a suitable condition along the lines the Council suggested.
28. Because of the shortfall in respect of the cooking facilities, the development would not provide acceptable living standards for future occupiers. The proposal therefore conflicts with Policy DM H5 of the MSPS, the relevant provisions of which are set out in paragraph 24 above.

Refuse and recycling

29. Policy CS17 of the MCS requires development to include "integrated, well-designed waste storage and recycling facilities"; Policy SI7 of the London Plan 2021 sets out a similar requirement for "adequate, flexible and easily accessible storage space and collection systems that support, as a minimum, the separate collection of dry recyclables [...] and food".
30. The submitted drawings show a "bin storage" area along the access path at the side of the appeal property. This shows 8 bins in total, although no dimensions are shown and it is not in fact clear whether the bins shown are of the standard size used in the borough. Having regard to the potential for the property to accommodate up to 19 adults, it is also not clear that this would be sufficient to cope with the quantity of refuse and recycling likely to be generated. At those properties elsewhere on the street where there was a large number of bins and recycling containers, their detrimental impact on the quality of the streetscape was noticeable.
31. The Council commented that "for developments of more than 10 units a Eurobin is required". Although I have not been provided with more details of the Council's guidance in this respect, nor the size of bins which would be necessary, I understand these to be substantial pieces of equipment. The appellant has stated that refuse facilities need not be provided only at the front of the building, and that the site is "capable of providing sufficient [...] refuse facilities wherever it is appropriate". However, the side path to the rear garden is narrow and may not be suitable for the passage of very large bins, while

storage of such equipment at the front would be likely to be visually intrusive and harmful to the character and appearance of the Conservation Area.

32. I am not therefore satisfied that the proposed development would make adequate arrangements for the storage and collection of refuse and recycling. As such, it conflicts with Policy CS17 of the MCS and Policy SI7 of the London Plan 2021, the principle relevant requirements of which are set out in paragraph 29 above.

Other Matters

33. The appellant drew my attention to several cases elsewhere in Merton where the Council had granted planning permission for larger HMOs. However, I do not know the details of each case, and while the appellant has suggested that they represent similar development, there is no substantive evidence before me to indicate that they are directly comparable. They do not set a precedent, and do not carry significant weight in favour of the appeal proposal.
34. The Council referred to two appeals in respect of No 39 Mitcham Park from 2020⁴ and 2021⁵, although I was not provided with the full decisions. Nevertheless, on the basis of the submitted evidence my findings in this case appear to be consistent with the conclusions of the Inspectors in both of those earlier cases.

Conclusion

35. The proposal would result in some benefits, including the provision of a number of modernised residential rooms. However, it would cause harm to the character of the MCGCA and to neighbours' living conditions, would not provide adequate cooking facilities for the potential number of occupiers, and would conflict with the development plan taken as a whole. There are no material considerations, including those of the Framework, which indicate that the decision should be made other than in accordance with the development plan.
36. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector

⁴ PINS Ref: APP/T5720/W/20/3254265

⁵ PINS Ref: APP/T5720/W/21/3272488