

Appeal Decisions

Hearing Held on 24 and 25 May 2022

Site visit made on 24 May 2022

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2022

Appeal A Ref: APP/T5720/W/21/3275985

Land to the rear of Dawlish Avenue, London SW18 4RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Goldcrest Land against the decision of the Council of the London Borough of Merton.
 - The application Ref 20/P1665, dated 15 May 2020, was refused by notice dated 18 February 2021.
 - The development proposed is demolition of existing industrial workshop buildings and telecommunications tower and erection of a part two/part three/part four storey building with 406m² of flexible Class B1 employment floorspace and 16 residential units with roof terrace and associated parking.
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Appeal B Ref: APP/T5720/W/21/3275987

Land to the rear of Dawlish Avenue, London SW18 4RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Goldcrest Land against the decision of the Council of the London Borough of Merton.
 - The application Ref 20/P1675, dated 15 May 2020, was refused by notice dated 18 February 2021.
 - The development proposed is demolition of existing industrial workshop buildings and telecommunications tower and erection of a part two/part four storey building to provide 23 residential units with roof terrace and associated parking.
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Decisions

1. Both appeals are dismissed.

Procedural matters

2. As set out above, there are two appeals on this site. The proposals differ as set out in the respective descriptions. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated. Both applications were for outline planning permission with access, layout, scale and landscaping to be determined at this stage. Appearance is reserved for future consideration. Two planning obligations were submitted and discussed at the hearing; I return to these below.

Main issue

3. The reasons for refusal in both of the Council's decision notices relate to access lane safety (reason 1), parking and sustainable transport (reason 2), emissions

targets (reason 3), affordable housing viability review (reason 4), and infrastructure contribution (reason 5). The Council's appeal statement confirms that provision of the planning obligations resolved the concerns identified in reasons 2 to 4, and that it no longer intended to defend reason 5.

4. On that basis, the main issue is whether or not the proposal would provide a safe and secure environment for pedestrians, cyclists, vehicles and other visitors to and from the appeal site.

Reasons

5. The appeal site is a strip of land of some 0.17 hectares between the Durnsford Road Recreational Ground to the east and the railway line embankment to the west. A long and narrow building on the site is subdivided into three workshops. A gravelled access lane links the building with Dawlish Avenue to the north. The access lane is some 100 metres long, of width between 3.2 and 3.94 metres with one point widening to 5.31 metres¹, and with high fencing and walls tight to the boundary for much of the length. Five existing residential properties also take access from the lane. A further right of access to the site currently exists to the south, through the Wellington Works industrial estate.
6. Appeal A is for a building of up to four storeys in height containing 16 dwellings and 6 class B1 office/industrial units (the Mixed Use Scheme). Appeal B is also up to four storeys but is wholly residential, with 23 dwellings (the Residential Scheme). Both schemes are proposed to be car free, with on-site disabled parking spaces, on-site cargo bike hire, resident car club, and resident and visitor cycle parking. A turning area would be provided on site for delivery and servicing vehicles, and the access to Wellington Works would be closed to all pedestrians and vehicles except emergency access.
7. The proposal would generate less vehicle trips than the site could under its current use, although pedestrian trips along the lane would increase as a consequence. The dispute turns on the likelihood and severity of any incidents, and whether the access would provide both a safe and secure environment.

Likelihood and severity of incidents

8. The Dawlish Avenue access lane is not wide enough to comfortably allow all vehicles and pedestrians or cyclists to pass each other, notwithstanding the existing accesses to Nos 40a, 40b and 42a Dawlish Ave which currently act as informal passing places but are in separate ownership. The effective width of the lane would be slightly reduced by the proposed lighting columns, even though the small bollard style columns would allow vehicle wing mirrors to over sail. There is no proposal to widen the access lane.
9. Using TRICS trip generation analysis, the Mixed Use Scheme would generate 140 walking or cycling movements throughout a typical day, the Residential Scheme around 110 movements. Given that both developments would be car-free, some 2 taxi movements and 2 to 4 delivery/servicing movements would also be generated. On that basis, the likelihood of vehicles meeting pedestrians or cyclists would be low. Nonetheless, this could still be up to some 3 or 4 times a day². The likelihood of one vehicle meeting another vehicle is lower still, with the appellant arguing that the number of times two vehicles would

¹ As shown in Figure MA5 of Mr Axon's POE

² Response to Transport Team Comments, by Vectos dated 20 September 2020, para 28

meet is zero, to 98.8% probability. However, that does not mean vehicles will never meet.

10. These figures are contested by the Council and local residents. They argue that the appellant's suggested movements pre-date Covid-19 and the change in home delivery habits for shopping and eating, particularly for a car-free development. However, no firm alternative figures have been provided. Nonetheless, even if a very substantial adjustment to the trip figures were necessary, such as a tripling of the TRICS generated vehicular movements, the overall likelihood of a vehicle meeting a pedestrian or cyclist (up to some 9 cases per day³) would still remain a relatively low proportion of all trips taken.
11. Given the restricted width of the access lane, reasonable drivers are likely to be travelling very slowly along it. As such, the risk of collisions is correspondingly also likely to be low. Although the appellant argues that the effect of any such collision is likely to be negligible or minor, a collision would nonetheless be of serious concern to any pedestrian or cyclist involved.

Safe and secure environment

12. In dismissing a previous appeal at the same site⁴, the Inspector concluded that the Dawlish Avenue access lane would be an "attractive, accessible and appropriate gated entrance" to the site. Indeed, with the proposed resurfacing and bollard lighting, the access lane could be made attractive and accessible.
13. However, that previous conclusion was reached on the basis of the access lane being gated, and with the main vehicular access being taken via Wellington Works. The current proposal indicates shared use between pedestrians, cyclists and vehicles on an ungated access lane, with the access at Wellington Works closed, and no other access to the site.
14. A typical car has a width of some 1.8 metres (2.0 metres with wing mirrors), and a typical pedestrian requires about 0.75 metres of space. At the narrower parts of the access lane, there would be extremely limited buffer spaces between fences, lighting bollards, car and pedestrian. As argued by the appellant, reasonable drivers would simply slow down or stop. Indeed, this would allow a car and an able-bodied pedestrian to pass closely by each other. However, that represents the best-case scenario. The restricted width of the lane would mean that such a manoeuvre would be unreasonably tight for parents with toddlers or buggys, persons with limited mobility, wheelchair users, and cyclists, all of whom would require a wider passing space.
15. Neither cyclists nor pedestrians, including more vulnerable users, would be able to comfortably pass any larger vehicles such as refuse or delivery trucks, typically of some 2.5 metres width (2.7 metres with wing mirrors), even if the vehicle stopped or was travelling at slow speed. In these circumstances, the meeting parties would have to stop and negotiate which one was to move out of the way, and by how far, with those on foot potentially having to retrace their steps to find an area of safety where passing could take place.
16. In the event that a vehicle did meet another vehicle, one vehicle would have to reverse. Reasonable drivers should be expected to exercise this manoeuvre

³ Response to Transport Team Comments, by Vectos dated 20 September 2020, para 28.

⁴ APP/T5720/W/18/3193054 for a building of up to four storeys, and containing 22 dwellings and 307sqm of employment floorspace

with care and caution, as occurs in many ordinary circumstances on roads and car parks. But for most of this access lane, unlike those ordinary scenarios, there would be insufficient space for any pedestrians, cyclists or more vulnerable users to easily side-step to safety. Instead, they may potentially have to retrace their steps at a quicker pace than the reversing vehicle.

17. In the previous appeal, the Wellington Works access lane had been proposed as the primary shared access lane for vehicles and pedestrians. There, the Inspector found that pedestrians and cyclists would have to “accept a degree of risk” and “navigate around such deliveries” which would add to “the perceived or realistic unsafe nature of this primary access into the site”.
18. The current proposed Dawlish Avenue access lane would be a less busy and better lit route than that previously proposed along Wellington Works. However, the Dawlish Avenue access lane is also narrower in places, with restricted visibility such that when setting out along the lane, it is not clear whether or not a vehicle has entered it from the other end. Therefore, when leaving or returning to the proposed developments, residents, occupiers and visitors would potentially have to accept a degree of risk in navigating around any such vehicles, as in the previous appeal. Unlike the previous appeal, which proposed three different accesses, the current proposal would not offer another route in or out of the site.
19. S149 of the Equality Act 2010 requires that, in determining these appeals, I have due regard to the need to eliminate discrimination, and advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. In this case, the relevant protected characteristics are age, disability, pregnancy and maternity. For the above reasons, I find that the proposals would have significant negative impacts on persons with these protected characteristics.
20. The appellant responds that disabled parking would be provided; that exclusion of 3-bed units would limit the number of children on the site; that there would be decreased traffic movements from existing levels; and that design improvements would enhance accessibility. Even taken together these proposed measures would not sufficiently advance equality of opportunity or provide adequate mitigation to overcome the harm I have found.
21. Although the appellant’s submitted road safety audit and risk matrix indicates that the proposed development does not give rise to any highway safety concerns, my above findings conclude otherwise for the reasons given, even when accepting that a degree of risk must be accepted in normal everyday life. Whilst narrow shared surfaces elsewhere have been cited, the examples shown appear wider than the appeal access lane and, in any case, I must assess the appeals on their merits. Technical standards do not need to be slavishly followed on shared surfaces such as proposed in order to achieve high quality environments, and there is no reason why motorised and non-motorised users cannot share such a surface in principle. However, the restricted width of the access lane in this case is such that it would not provide a safe and secure environment for navigation and passing.

Fallback

22. Due to changes to the Use Classes Order after the applications had been submitted, the use of the existing building would now fall within use class E

which provides for a wider range of uses than under previous use class B1. This would theoretically allow use as a children's nursery, with up to 239 traffic movements. However, there is no substantive evidence to suggest that this, or any other, fallback proposal would be implemented. In practice, such a sensitive and intensive use of the site would be unlikely, in my judgement, given the logistical difficulties and safety concerns that would arise from using the access lane to this extent. Put more generally, the alternative permitted uses of the existing building are likely to be largely self-limiting by the existing constraints of the access lane. I therefore give the potential fallback position limited weight.

Conclusion on main issue

23. The likelihood and severity of any incidents occurring on the lane is low, however, pedestrians and cyclists could nonetheless still meet vehicles on the lane up to several times a day. When they do, the proposals would not provide a safe and secure environment for pedestrians, cyclists, vehicles and other visitors to and from the appeal site.
24. Both proposals would be contrary to policies CS14, CS18 and CS20 of the Merton Core Planning Strategy (2011), policies DMD1, DMD2, DMT2, DMT3 and DMT5 of the Merton Sites and Policies Plan and Policies Map (2014) and paragraphs 110, 111 and 112⁵ of the National Planning Policy Framework (2021)(the Framework). Together these policies require that development should, amongst other things, prioritise the access and safety of pedestrians and other active transport modes, including those with restricted mobility, protect vulnerable road users, reduce conflict between pedestrians and other transport modes, and create places that are safe, secure and inclusive.

Other matters

25. Both planning obligations are deeds of agreement made under s106 of the Town and Country Planning Act 1990 and are signed and dated 17 May 2022. The Residential Scheme obligation would secure two affordable housing units, which the Council are satisfied represents the maximum viable contribution. This obligation is necessary, directly related to the development and fairly related in scale and kind. It complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework. Accordingly, affordable housing is a benefit I shall take into account in my conclusions. Viability reviews would secure further contributions should the position become more favourable in future for either proposal. Other obligations are proposed for car parking permits, car club, travel plan and financial contributions; however, there is no need for me to reach a finding on these as I am dismissing the appeals for other reasons.

Planning balance

26. The Framework emphasises the importance of the delivery of housing. The Council's Housing Delivery Test (January 2022) indicated that it had only delivered 80% of its housing target, falling 310 dwellings short. Consequently, paragraph 74 of the Framework requires the Council to include a buffer of 20% to its supply of deliverable sites in order to improve the prospect of achieving the planned supply. When the buffer is applied, the Council cannot

⁵ Former paragraphs 108, 109 and 110 as set out in the Council's decision notices.

demonstrate the required five year supply of deliverable sites, with the parties agreeing a range of some 4.5 to 4.6 years supply.

27. The provision of 16 homes for the Mixed Use Scheme and 23 homes for the Residential Scheme would make a considerable contribution to that supply, and this attracts significant weight in both scenarios. I also attach significant weight to the delivery of two affordable housing units, including any viability review. Moderate economic benefits would derive from the improved and modernised employment facilities in the Mixed Use Scheme, and from both schemes providing wider economic benefits in terms of construction and local spending by residents. That the fallback position on the site could cause greater harm attracts limited weight in favour of the proposal. The sustainable location and accessibility of the site are neutral in the planning balance.
28. However, the proposals would cause harm through failure to provide a safe and secure access to the developments, such that the proposals would cause conflict with the development plan, and to which I afford substantial weight.
29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework also makes it clear that the planning system should be genuinely plan-led. As the Council cannot demonstrate a five year supply of deliverable housing sites, the relevant policies for determining the application should be considered out of date according to paragraph 11(d) of the Framework. The so called 'tilted' balance is therefore triggered, and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. Drawing together the benefits and harms, the adverse effects of the proposed developments would significantly and demonstrably outweigh the benefits of the proposals, when assessed against the policies in the Framework taken as a whole. The proposals would not comply with the development plan taken as a whole and there are no other material considerations that indicate decisions other than in accordance with it.

Conclusion

31. For the reasons given above, and having had regard to all other matters raised, I conclude that both appeals should be dismissed.

Patrick Hanna

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Tim Bryson	Area Team Leader
Calum McColloch	Planning Officer
Sarath Attanayake	Transport Planner

FOR THE APPELLANT

Kevin Goodwin	KG Creative
Mike Axon	Vectos
Stephen Eyton	Vectos
Amanda Brodie	Russell Cooke

INTERESTED PARTIES

Pamela Healy	Wimbledon Park Residents Association
Chris Beech	Local resident

DOCUMENTS SUBMITTED DURING HEARING

1. Photographs of site taken by Ms Healy of the Residents Association
2. Email dated 24 May 2022 relating to rewording of suggested condition 22