



Appeal Decision

Site visit made on 20 July 2022

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/T5720/W/22/3292315

63 Monkleigh Road, Morden SM4 4EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Christopher Ubah of Chi and Ike Investments Ltd against the decision of the Council of the London Borough of Merton.
 - The application Ref 21/P3766, dated 15 October 2021, was refused by notice dated 13 December 2021.
 - The application sought planning permission for the *demolition of existing side extension, erection of rear extension and erection of two single storey dwellings at the rear* without complying with a condition attached to planning permission Ref 20/P0824, dated 27 July 2021.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan, drawings 01B, 02 & 03B.*
 - The reason given for the condition is: *For the avoidance of doubt and in the interests of proper planning.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing side extension, erection of rear extension and erection of two single storey dwellings at the rear, at 63 Monkleigh Road, Morden SM4 4EN in accordance with the application, Ref 21/P3766, dated 15 October 2021 without compliance with condition number 2 previously imposed on planning permission Ref 20/P0824, dated 27 July 2021, subject to the conditions listed at Schedule 1.

Preliminary Matters

2. The approved drawings from the original planning permission were not in the initially submitted evidence. I requested that these plans were provided by the Council and I have had regard to them in determining this appeal.

Background and Main Issues

3. Planning permission was granted for the erection of two single storey dwellings at the rear of 63 Monkleigh Road, including the demolition of an existing side extension to provide access to the rear. Condition 2 of the original permission specified the approved drawings for the proposed development, including Nos 01B and 03B.
4. The appellant sought to alter Condition 2 by replacing these drawings with new ones, Nos 01C and 03C, which show the two single storey dwellings enlarged. There is disagreement between the main parties as to whether the width of the

proposed dwellings has increased, which I will address in my reasons, but it is common ground that the length of each new dwelling would increase by some 2.0 metres to the rear, with consequent effects upon the internal floorspace, layout, plans and elevations.

5. The Council is concerned that the enlarged dwellings would be overly dominant and visually intrusive and would adversely affect both future and nearby occupiers.
6. The Government's Planning Practice Guidance¹ states that in deciding an appeal such as this one, under section 73 of the Town and Country Planning Act 1990 (the Act), only the disputed condition(s) can be considered; it is not a complete re-consideration of the original planning application.
7. Therefore, the main issues are the effect of the proposed enlarged dwellings on the living conditions of future occupiers, with particular regard to the use of outdoor space; on the living conditions of nearby occupiers, with particular regard to outlook and natural light, and on the character and appearance of the area.

Reasons

8. 63 Monkleigh Road is a traditional 2-storey dwelling, with a single storey side extension, at the southern end of a short terrace. It has a rear garden that is wider than the building, extending in part to the rear of No 65, at the northernmost end of the terrace to the south of the appeal property.

Living conditions of future occupiers

9. I note the Council's position that the width of the proposed dwellings shown on the revised drawings has increased, thereby narrowing the access passageways for the dwellings. I also note the appellant's strong disagreement and statement that the width of the buildings and access passageways remains unaltered from the original drawings.
10. With reference to the scaled drawings 01B and 03B from the original approval and the scaled drawings 01C and 03C submitted with the proposal that is subject to this appeal, the width of the building footprints and roofs have both manifestly increased, as the Council has identified. I find the appellant's position to be inexplicably wrong in this regard.
11. I note the Council's concerns regarding the reduced functionality of these passageways and a reduction in natural light. However, all of the proposed passageways would be greater than 1.0 metres wide, not dissimilar to the widths previously approved. No compelling evidence has been provided that the small increase in the width of the proposed dwellings, and the consequent small decrease in the width of the access passageways to the side of and between the proposed dwellings would not be satisfactory, for the use of future occupiers.
12. Increasing the length of both proposed dwellings would provide additional internal floorspace but would correspondingly reduce the size of the rear gardens. Whilst the reduced garden size would be to the detriment of future occupiers, the increased floorspace would be to their benefit. Furthermore,

¹ Planning Practice Guidance – Use of Planning Conditions
Paragraph: 031 Reference ID: 21a-031-20180615 Revision date: 15 06 2018

both rear gardens would still be sufficiently large to be usable, such as for sitting out in, and would be likely to have a similar level of natural light to those originally approved; I also note that both dwellings would have separate front gardens.

13. For the reasons set out above, the proposal would not significantly affect the living conditions of future occupiers, with particular regard to the use of outdoor space. It would, therefore, accord with Policy D3 (optimising site capacity through the design-led approach) contained in the London Plan 2021² and with Policy DM D2 (design considerations in all developments) contained in the Merton Sites and Policies Plan 2014.

Living conditions of nearby occupiers

14. The height and general design of the roofs of the new dwellings would be unaltered from that previously approved. The small increases in width, together with an increase in length of some 2.0 metres to the rear, would result in increases to the size and massing of both dwellings. This would make them more visually prominent, including to the occupiers of the existing properties to the side and rear of 63 Monkleigh Road.
15. However, the increased size and massing of the proposed dwellings would not be large, either individually or cumulatively. I do not consider that the effects of the proposed dwellings on the living conditions of nearby occupiers would be significantly different to the effects caused by the dwellings previously approved by the Council.
16. For the reasons set out above, the proposal would not significantly affect the living conditions of nearby occupiers, with particular regard to outlook and natural light. It would, therefore, accord with Policy D3 (optimising site capacity through the design-led approach) contained in the London Plan 2021 and with Policy DM D2 (design considerations in all developments) contained in the Merton Sites and Policies Plan 2014.

Character and appearance

17. Both the approved development and the proposed development would entail substantial changes to the existing rear garden of No 63, including the removal of much of the existing vegetation, much of which is well established, if somewhat overgrown. No substantive evidence has been provided to demonstrate that the proposed development would require significantly more of this vegetation to be removed than the approved development.
18. The increased size and massing of the proposed dwellings would not be large, either individually or cumulatively, compared to those previously approved. The design and position of the proposed dwellings would be very similar to those previously approved, albeit with minor changes to account for the increased size.
19. Given the two dwellings that were previously approved by the Council to the rear of No 63, I do not consider the enlargement of the proposed dwellings and any consequent additional loss of vegetation, would cause significant harm to the character and appearance of the area.

² The Spatial Development Strategy for Greater London 2021

20. For the reasons set out above, the proposal would have an acceptable effect on the character and appearance of the area. It would, therefore, accord with Policy D3 (optimising site capacity through the design-led approach) contained in the London Plan 2021 and with Policy DM D2 (design considerations in all developments) contained in the Merton Sites and Policies Plan 2014.

Other Matters

21. I note the comments made by various interested parties objecting to the proposed development, many of which I have addressed in my reasons above. There will be some loss of wildlife habitat from the proposed development, as well as increased noise and disruption to nearby occupiers particularly during the construction period. However, the small increase in scale of the proposed development, in comparison with the previously approved scheme, would not significantly worsen these adverse effects.
22. Reference is made to a Landscape Plan submitted to discharge a condition attached to the July 2021 planning permission. This plan is not in the evidence before me and in any event concerns a different development proposal to the one before me now.
23. Reference is also made to a restrictive covenant that is said to prohibit more than one dwelling being erected on the land. This document is not in the evidence before me and so I can have no regard to it in reaching my decision. In any event, such a covenant would be outside of the planning process and of no relevance to my determination of this appeal.
24. The Council states that the appeal proposal reverts to the originally submitted scheme, which the appellant was previously advised was not acceptable to the Council. Previous advice from the Council is not binding on the appellant who has chosen to test the proposals through a planning application and now at appeal; this matter has no bearing on my decision.
25. I also note the comments from the Council that the Gross Internal Area (GIA) of the proposed development would now be sufficient for 3 bedroom - 5 person dwellings, rather than the 2 bedroom - 4 person dwellings approved. The proposed layout on drawing 03C shows 2 double bedrooms in each of the proposed new dwellings. Consequently, this matter has no bearing on my determination of this appeal.

Conditions and Conclusion

26. The Government's Planning Practice Guidance³ states that in granting permission under section 73 of the Act, new conditions may be imposed, provided they do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.
27. For the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect.

³ Planning Practice Guidance – Use of Planning Conditions
Paragraph: 040 Reference ID: 21a-040-20190723 Revision date: 23 07 2019

28. The Council has provided a list of conditions which it has suggested are attached to any grant of planning permission, were the appeal to be allowed. I have considered these conditions with regard to the Government guidance set out above and in relation to the use of planning conditions, including the six tests for conditions listed at paragraph 56 of the National Planning Policy Framework, and have amended them accordingly.
29. I have given both main parties the opportunity to comment on my suggested conditions and no responses were received by the specified deadline. However, the appellant has given their written agreement to the imposition of four pre-commencement conditions, in accordance with Section 100ZA(5) of the Act.
30. With reference to S73(5) of the Act, planning permission must not be granted so that it has the effect to change a condition subject to which a previous planning permission was granted by extending the time within which development must be started. I have consequently amended the standard commencement condition to require that development must be started within 3 years of the date of the original grant of planning permission.
31. Conditions specifying the approved drawings and requiring the facing materials to be consistent with the details contained therein would be necessary for reasons of certainty and to protect the character and appearance of the area.
32. Pre-commencement conditions requiring the written approval of hard-surfacing details, and a landscaping and planting scheme, and their subsequent implementation, would be manifestly necessary to protect the character and appearance of the area and the living conditions of future and nearby occupiers.
33. A pre-commencement condition requiring the written approval of a Construction Method Statement, and adherence to it throughout the construction period, would be manifestly necessary to protect the living conditions of nearby occupiers.
34. A pre-commencement condition requiring the written approval of details of drainage from the dwellings and site, and their implementation would be manifestly necessary to protect the living conditions of future and nearby occupiers.
35. Conditions requiring the written approval and implementation of boundary treatments, refuse and recyclable waste storage and bicycle storage areas prior to the first occupation of the proposed dwellings would be necessary to protect the living conditions of future and nearby occupiers.
36. A condition requiring the written approval and construction of the vehicle access to the site prior to the first occupation of the proposed dwellings would be necessary to protect the living conditions of future and nearby occupiers and to protect highway safety.
37. A condition restricting the clearance of the vegetation on the development site to times outside of the bird nesting season would be necessary to protect biodiversity.
38. However, from the evidence before me, conditions restricting cables, wires, aerials, pipeworks, meter boxes or flues, and external lighting would not be necessary or reasonable.

- 39. Pre-commencement conditions concerning Parking Management Strategies, a Delivery and Servicing Plan and a Construction Logistics Plan would not be necessary, reasonable or relevant to the development approved.
- 40. Conditions concerning CO₂ reductions and water usage, ground investigation works, and a green roof would not be necessary, reasonable or relevant to the development approved.
- 41. Informative conditions would not be necessary.
- 42. For the reasons given above, I conclude that the appeal is allowed.

A Parkin

INSPECTOR

Schedule 1 - Conditions

- 1) The development to which this permission relates shall be commenced not later than the expiration of 3 years from 27 July 2021;
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: 01C, 02 & 03C;
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drawing 03C;
- 4) No development shall take place until details of the surfacing of all those parts of the site not covered by buildings or soft landscaping, including any vehicle access and parking areas or footpaths have been submitted to and approved in writing by the Local Planning Authority. The single storey dwellings hereby approved shall not be occupied until the approved details have been implemented in full. The vehicle access and parking areas shall be permanently retained for these uses by occupiers or visitors to the development hereby approved, and for no other purpose.
- 5) No development shall take place until full details of a landscaping and planting scheme have been submitted to and approved in writing by the Local Planning Authority. The details shall include plans showing any existing trees, hedges and other features to be retained, and measures for their protection during the course of development, together with full details of the size, species, spacing, quantities and location of proposed planting. The approved scheme shall be carried out in the first planting season following the first occupation of the single storey dwellings hereby approved, or the completion of the development, whichever is the sooner; any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) 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. The Statement shall provide for:
 - i. Parking of vehicles of site workers and visitors;
 - ii. Delivery, demolition and construction working hours;
 - iii. Loading and unloading of plant and materials;
 - iv. Storage of construction plant and materials;
 - v. Wheel cleaning facilities;
 - vi. Measures to control the emission of dust and dirt during construction;
 - vii. A scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii. Measures to control surface water run-off.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 7) No development shall take place until full details for the removal of sewage, wastewater and surface water run-off from the proposed dwellings have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of any of the proposed dwellings and permanently retained thereafter.

- 8) Prior to the first occupation of any of the proposed dwellings, details of the size, design, position and materials for all boundary treatments within the appeal site, and between the appeal site and adjacent properties, shall be submitted to and approved in writing by the Local Planning Authority. The single storey dwellings hereby approved shall not be occupied until the approved details have been implemented in full and shall be permanently retained thereafter;
- 9) Prior to the first occupation of any of the proposed dwellings, full details of the storage areas for refuse and recyclable waste containers for each dwelling on the appeal site shall be submitted to and approved in writing by the Local Planning Authority. The single storey dwellings hereby approved shall not be occupied until the approved details have been implemented in full and shall be permanently retained thereafter;
- 10) Prior to the first occupation of any of the proposed dwellings, full details of bicycle storage areas for each dwelling on the appeal site shall be submitted to and approved in writing by the Local Planning Authority. The single storey dwellings hereby approved shall not be occupied until the approved details have been implemented in full and shall be permanently retained thereafter;
- 11) Prior to the first occupation of any of the proposed dwellings, full details of the proposed vehicle access to the appeal site from Monkleigh Road shall be submitted to and approved in writing by the Local Planning Authority. The single storey dwellings hereby approved shall not be occupied until the approved details have been implemented in full and shall be permanently retained thereafter;
- 12) No vegetation clearance shall take place during the bird nesting season between March and August inclusive, unless evidence from a qualified ecologist demonstrating that no nesting birds would be affected by the works, has been submitted to and approved in writing by the Local Planning Authority.