



Appeal Decision

Site visit made on 11 February 2025

by **T Bennett BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28th February 2025

Appeal Ref: APP/T5720/W/24/3349304

1 Lambourne Avenue, Merton, Wimbledon SW19 7DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Shakouri against the decision of the Council of the London Borough of Merton.
 - The application Ref is 24/P0777.
 - The application sought planning permission for demolition of the existing dilapidated house and erection of a new house including landscaping at the front and the rear garden without complying with a condition attached to planning permission Ref 23/P1053, dated 20 February 2024.
 - 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: [210-P-GE02-P4, 210-P-GE01-P4, 210-P-GA01-P4, 210-P-GA00-P4, 210-P-GA03-P4, 210-P-GA02-P4, 210-P-GE03-P2, 210-X-Site-P1, 210-P-GS01-P6, 210-P-Site-P6]."
 - 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 demolition of the existing dilapidated house and erection of a new house including landscaping at the front and the rear garden at 1 Lambourne Avenue, Merton, Wimbledon SW19 7DW in accordance with the application Ref 24/P0777, without compliance with condition number 2 previously imposed on planning permission Ref 23/P1053 dated 20 February 2024, and subject to the conditions set out in the attached schedule.

Procedural Matters

2. Since the determination of the application, a revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. However, as the parts relevant to the main issue in this appeal have not substantially changed, I have not gone back to the parties to seek further submissions. I consider no party has been prejudiced by this approach.
3. During the course of this appeal, the Council adopted the Merton Local Plan 2024-2037-38 (MLP) on 20 November 2024. This replaced the Sites and Policies Plan (2014) and Core Planning Strategy (2011). In light of this, the main parties have been given the opportunity to provide comments on the new MLP in relation to their cases. I have had regard to the comments received and have considered the proposal against the relevant policies in the MLP.

Background and Main Issue

4. The application subject of this appeal seeks an amended design to a new dwelling approved in February 2024. The amendments, amongst others, includes Juliette balconies and a partial increase in the rear depth and width of the property at the first and second floor.
5. The main issue is the effect of the amendments on the living conditions of neighbouring occupiers at 3 Lambourne Avenue (No 3) with particular regard to light, outlook and privacy.

Reasons

6. No 3 is located to the north of the appeal site. The increase in the rear depth and width of the proposed property at the first and second floor, closest to No 3, would infill a small section that was inset from the rear and side elevations in the previously approved scheme. The rear elevation at the first and second floor would extend to a similar depth as the existing single storey rear extension at No 3. I observed that the roof of the single storey extension at No 3 appeared to be used as a terrace, indicated by the glass balustrading and tall privacy screen sited close to the boundary with the appeal site.
7. The proposed increase in width and depth at the first and second floor would not be significant and would still ensure an approximate 2.9 metre offset from the shared boundary with No 3, with No 3 also set away from the shared boundary. The appellant indicates that the increase would satisfy the 45 degree rule in relation to No 3. This is a commonly used approach in assessing the acceptability of such building relationships. From the submitted plans, I have no reason to dispute this. Whilst the eaves of the proposed dwelling would be higher than that of No 3, given the separation distance, accordance with the 45 degree rule and the presence of the tall privacy screen at No 3, the proposal would not have a materially overbearing presence nor would it visually intrude on the outlook of the occupiers of No 3 over and above the approved scheme.
8. The appellant has also submitted an impact and shadow report which compares the extant permission with the proposed modifications and the impact of these on No 3. Whilst the rear of No 3 is north east facing, the report demonstrates that any impact from the proposed increase in width and depth would be minimal insofar as any loss of light from overshadowing at No 3. It also shows that the proposed Juliet balconies would not have any material impact on light received by the occupiers of No 3.
9. The occupiers of No 3 have raised concerns that the proposed Juliette balcony would lead to overlooking of their kitchen and patio. However, the first floor window closest to No 3 would have a fixed panel across it, with no access to the roof. Considering this and the distance from the shared boundary, any possible views would be orientated towards the rear of the garden at No 3 and would not be dissimilar to overlooking that could occur in a typical residential setting. The use of obscure glazed side panels on the proposed balcony, secured by a condition, would also prevent any overlooking into the kitchen and rear patio of No 3.

10. For the reasons above, I conclude that the amendments proposed would not have a detrimental effect on the living conditions of the neighbouring occupiers at No 3 with regard to light, outlook and privacy. The development would therefore accord with Policies D12.3 and D12.4 of the MLP. These, amongst other matters, seek proposals that ensure a high standard of amenity and that acceptable light and outlook are available to surrounding occupants and that there is no significant impact on amenity through overshadowing. It would also accord with Policy D3 of the London Plan (2021). Among other things, this seeks development that is well-designed which ensures the provision of appropriate levels of outlook, privacy and amenity.
11. Policy D4 of the London Plan (2021) has been cited on the decision notice. This solely focus on design and thus I have not found it determinative on this main issue.

Other Matters

12. The occupiers of No 73 Arthur Road have raised concerns that first floor windows proposed in the side elevation would lead to overlooking of their garden, bedroom and bathroom. However, the proposed windows, which will serve bathrooms, would be obscure glazed and top hung, secured by condition.
13. The appeal site is in the Wimbledon North Conservation Area (CA). I have a statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the designated area.
14. The significance of the CA appears to be derived, in part, from its verdant character, with the presence of the parkland and mature trees. Lambourne Avenue has a verdant character and the straight alignment of the road, combined with the arrangement of properties with a regular set back from the frontage of the road facilitates views towards and over the parkland. Lambourne Avenue thus contributes positively to the character and appearance of the CA. The appeal proposal would maintain the prevailing building line and would not impede on any views towards Wimbledon Park. As such, the proposal would not have an adverse effect on the significance of the CA and would preserve its character, resulting in no harm to this heritage asset.

Conditions

15. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The Council have supplied a list of conditions which is based upon the original permission. I have no information before me about the status of the other conditions imposed on the original planning permission. Therefore, I shall impose all those that I consider relevant and in accordance with the tests set out in the Planning Practice Guidance. In the event that some conditions have been discharged, that is a matter which can be addressed by the parties.
16. 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.

17. I have amended the plans condition to take account of the revised plans. This condition is necessary for certainty.
18. The Council put forward a number of pre-commencement conditions. It was apparent on site that the original house has been demolished and therefore the original development has commenced. Consequently, I have reworded the relevant conditions by amending the triggers.
19. Conditions seeking details of external materials, boundary treatments and a scheme of hard and soft landscaping is necessary in the interests of the character and appearance of the area and to ensure an acceptable external appearance.
20. To ensure the satisfactory provision of refuse and recycling facilities a condition is necessary. The Council had imposed two conditions in the original permission (Condition 7 and 8). However, No 8 largely duplicated condition No 7. The condition I have imposed is based on No 7.
21. In the interests of sustainable transportation provision, a condition is necessary to ensure suitable facilities and location for cycle parking. To ensure no adverse impact on public and highway safety a condition is necessary requiring details of a construction logistics plan. A condition requiring details of surface and foul drainage is necessary to reduce flood risk.
22. Given the sensitive nature of the location and the relationship with adjacent properties, a condition removing permitted development rights is necessary in the interests of safeguarding residential amenity and the character and appearance of the area.
23. To safeguard the living conditions of neighbouring occupiers, conditions are necessary requiring obscure glazing to the side windows, installation of a privacy screen, prohibiting the use of the flat roof part of the development (except for the approved roof terrace) and restricting construction times.
24. A condition requiring details of the air source heat pump and submission of a noise report is necessary to ensure no adverse effect on living conditions.
25. To safeguard existing trees and to maintain the character and appearance of the area, conditions are necessary to ensure works are carried out in accordance with the approved tree protection measures.
26. To promote sustainable development and minimise water use, a condition limiting the water consumption rate within the proposed dwelling is necessary. To ensure a biodiversity gain, a condition is necessary requiring details of ecological enhancements to be submitted and then implemented.

Conclusion

27. For the reasons given above, the appeal is allowed and condition 2 is varied in accordance with the schedule attached to this letter.

T Bennett INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates shall be commenced not later than the expiration of 3 years from the date of 23/P1053.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 210-X-Site-P1, 210-P-GE01-P5, 210-P-GA01-P5, 210-P-GA00-P4, 210-P-GA03-P5, 210-P-GA02-P5, 210-P-GS01-P7, 210-P-GE02-P5, 210-P-Site-P7, 210-P-GE03-P2.
- 3) No construction of the replacement dwelling shall take place until details and samples of the materials to be used in the construction of the external surfaces 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 and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) No construction of the replacement dwelling shall take place until details of all boundary walls or fences have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details and completed before the development is first occupied and retained thereafter.
- 5) No construction of the replacement dwelling shall take place until details of hard and soft landscaping and planting scheme have been submitted to and approved 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.
- 6) All hard and soft landscaping works including planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and 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.
- 7) No construction of the replacement dwelling shall take place until details of a scheme for the storage of refuse and recycling have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details and completed before the development is first occupied. Those facilities and measures shall thereafter be retained for use at all times from the date of first occupation.
- 8) No construction of the replacement dwelling shall take place until details of secure cycle parking facilities for the occupants of, and visitors to, the development shall be submitted in writing to the Local Planning Authority. Thereafter, once the details have been approved in writing by the Local Planning Authority, the approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and thereafter retained for use at all times.

- 9) No construction of the replacement dwelling shall take place until a working method statement and construction logistics plan have been submitted to and approved in writing to the Local Planning Authority. The details shall include:
- (i) Hours of operation
 - (ii) Parking of vehicles of site operatives and visitors;
 - (iii) Loading and unloading of plant and materials;
 - (iv) Storage of construction plant and materials;
 - (v) Wheel cleaning facilities
 - (vi) Control of dirt, dust, smell;
 - (vii) Control of surface water run-off.
 - (viii) Measures to control the emission of noise and vibration during construction/demolition.
 - (ix) The erection and maintenance of any security hoarding including decorative displays.
 - (x) A scheme for recycling/disposing of waste resulting from demolition and construction works.

The approved method statement and logistics plan shall be adhered to throughout the construction period for the development.

- 10) No construction of the replacement dwelling shall take place until a detailed scheme for the provision of surface and foul water drainage has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme will dispose of surface water by means of a sustainable drainage system (SuDS) at the agreed runoff rate (no more than 1.0l/s, with no less than 14.25m³ of attenuation volume), in accordance with drainage hierarchy contained within the London Plan Policy (SI 13 and SPG) and the advice contained within the National SuDS Standards. The drainage plans shall include pipe sizes and direction of flow. The development shall not be occupied until the details have been approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details and completed before the development is first occupied and retained thereafter.
- 11) No construction of the replacement dwelling shall take place until details of the Air Source Heat Pump, together with a noise report have been submitted to and approved in writing by the Local Planning Authority. No works which are the subject of this condition shall be carried out until the details are approved. The works shall be carried out in accordance with the approved details and completed before the development is first occupied.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no extension, enlargement or other alteration of the dwellinghouse as set out under Class A, B, C, D and E in Schedule 2, Part 1 of the General Permitted Development Order 2015 (As amended) shall be carried out without planning permission first obtained from the Local Planning Authority.
- 13) Prior to first occupation of the development hereby approved, the windows in the 1st floor side elevations shall be glazed with obscure glass, and non-opening below an internal height of 1.7m and shall be permanently maintained as such thereafter.
- 14) 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 internal water consumption rates of no greater than 105 litres per person per day.

- 15) The development hereby approved shall not be occupied until a plan for ecological enhancements, to secure a biodiversity net gain, has been submitted to and approved in writing by the Local Planning Authority. The agreed enhancements shall be implemented prior to the first occupation of the development hereby permitted and maintained thereafter.
- 16) Access to the flat roof of the development hereby permitted (apart from the designated roof terrace) 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.
- 17) The screening or enclosure to the balcony as shown on the approved plans shall be implemented before the development is first occupied and retained permanently thereafter.
- 18) Demolition or construction works shall take place only between 08:00 and 18:00 on Monday to Friday and 08:00 and 13:00 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.
- 19) The details of the approved 'Arboricultural Impact Assessment and Method Statement' shall include the retention of an arboricultural expert to monitor and report to the Local Planning Authority not less than monthly, the status of all tree works and tree protection measures throughout the course of the site works. A final Certificate of Completion shall be submitted to the Local Planning Authority at the conclusion of all site works. The works shall be carried out in accordance with the approved Arboricultural Method Statement and Tree Protection Plan.
- 20) The details and measures for the protection of the existing trees as specified in the hereby approved document 'Arboricultural Impact Assessment and Method Statement' reference 'Rev.4' and dated Monday, 11 December 2023' and drawing number shall be fully complied with. The methods for the protection of the existing trees shall fully accord with all of the measures specified in the report and shall be installed prior to the commencement of any site works and shall remain in place until the conclusion of all site works.

****End of conditions****