



Appeal Decision

Site visit made on 21 November 2024

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 24 MARCH 2025

Appeal Ref: APP/T5720/W/24/3341242

338 Garth Road, Merton, Morden SM4 4NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Ion Maximciuc against the decision of the Council of the London Borough of Merton.
 - The application Ref is 23/P3384.
 - The development proposed is the erection of outbuilding at rear garden.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of outbuilding at rear garden at 338 Garth Road, Merton, Morden SM4 4NW in accordance with the terms of the application, Ref 23/P3384, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan Location Map (Drawing Number 701); Proposed Plans and Elevations (Drawing Number 201 Revision1).
 - 3) No development shall commence until details of the materials to be used in the construction of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 4) Prior to the commencement of development, details, plans and elevations demonstrating methods for controlling and managing the impacts of rainfall and surface water runoff so as to mitigate the impact on neighbouring properties, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented and retained thereafter.

Preliminary Matters

2. The appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice. However, the Council has submitted a written statement, which, had they made the decision, recommended that planning permission should be refused. I have had regard to the Council's Statement and their recommendation, insofar that it provides clarity in terms of the reasons the Council would have considered had it been able to do so.

3. Following the submission of the Council's Statement, a new local plan was adopted on 20 November 2024, which superseded the Merton Sites and Policies Plan 2011. As the Merton Local Plan 2024 (the MLP) is now the Statutory Development Plan for the Borough, I have determined the appeal on this basis. Additionally, the National Planning Policy Framework (Framework) was updated in December 2024 and subsequently amended on 7 February 2025. The main parties have had an opportunity to comment on both these changes in circumstances during the appeal process.

Main Issue

4. Taking into account the above background, evidence from the parties and my observations onsite, the main issue is the effect of the proposed development on surface water drainage and flood risk in the area.

Reasons

5. The appeal site is a ground floor maisonette within a semi-detached style building located on Garth Road. The property has no extensions, and the rear garden space is subdivided between the two maisonettes. Although the site is in Flood Zone 1, it is adjacent to Rosebery Close, an area that is prone to flooding, including zones designated as Flood Zone 2 and 3 due to a number of different flooding risks.
6. Policy F15.8 (4) of the MLP requires that a sequential approach is taken to the site layout, locating the most vulnerable elements of a proposed development within areas at lowest risk of flooding. The appeal site is located in Flood Zone 1, and there is no evidence to suggest that it is within 5 meters of an ordinary watercourse. Therefore, the site layout is considered appropriate for an area classified as low flood risk.
7. Policy F15.8 (6) of the MLP permits appropriate development within Flood Zone 1 and does not set any restrictions on land use. For the appeal site, a drainage strategy is not needed, as the proposed development does not involve the construction of a new dwelling or a Major Development (indicated within the MLP to be 10 or more dwellings). In line with the Merton SFRA¹, a Flood Risk Assessment is not required for the development site, as it is less than 1 hectare and will not be affected by sources of flooding other than rivers, as identified in the SFRA.
8. The proposed development would introduce a new impermeable area, reducing the garden's ability to naturally absorb and dissipate rainwater, which could potentially increase flood risk. The Council's flood risk engineer emphasised that any runoff from the proposed development should be managed on site. In response to these concerns, the appellant submitted a plan drawing of a soakaway. However, this did not include a sectional or elevational drawing to demonstrate the soakaway's depth.
9. The proposed development would result in a limited increase in impermeable ground in a sensitive location. Given the lack of detailed information, the proposed development has the potential to increase the risk of flooding within the area. Nonetheless, the Council's flood risk engineer did not identify any inherent issues

¹ London Borough of Merton Strategic Flood Risk Assessment

with the principal of the proposal, but did advise that the appellant should aim to maintain pre-development runoff levels from the site. To ensure this, the engineer requested further information regarding drainage, while indicating that the issue could be overcome.

10. The plans indicate that there is sufficient space within the rear garden to provide a soakaway. It is possible for the details regarding its depth and dimensions to be agreed prior to the commencement of development. There is no evidence before me to indicate that a condition for the above works cannot be provided on site, as well as being successfully implemented. As such, I am satisfied that a planning condition can be imposed to ensure that any surface water runoff is appropriately controlled. On that basis, given that the appeal site is located within Flood Zone 1, the potential rise in flood risk is unlikely to be significant, provided that the appropriate mitigation measures and planning conditions are in place.
11. In conclusion, the proposed development would not have a harmful effect on surface water drainage and flood risk in the area. It would ensure that flood risk is minimised and mitigated, while addressing any residual risk, in compliance with Policy 12C of the London Plan 2021. A planning condition is used to secure flood risk mitigation and sustainable drainage measures, mitigating flooding from different flood sources, in compliance with Policy F15 of the MLP. It would not increase flood risk elsewhere and would be safe for its lifetime, in compliance with chapter 14 of the Framework.

Other Matters

12. I have considered representations from interested parties regarding the height and size of the outbuilding. However, the proposed development would be limited in height as a single storey structure, and the plans indicate that the majority of the garden area would remain undeveloped. Additionally, the Council considered these points when they assessed the application, and they did not raise any concerns. Based on the evidence before me, I see no reason to disagree.
13. Interested parties have also raised concerns regarding the height of an erected fence. Regardless, my attention is directed toward the matters which have been applied for in the planning application, specifically the erection of the outbuilding. Any other issues regarding enforcement that fall outside of the planning application would need to be considered between the Council and those interested parties.

Conditions

14. The Council has suggested a number of conditions which I have considered against advice in the Framework and Planning Practice Guidance. I have undertaken some minor editing of the conditions proposed by the Council in the interests of precision and clarity. The parties have been consulted and have submitted their responses regarding the revised conditions.
15. In addition to the standard time limit, a plans condition is necessary to provide certainty. A materials condition is also necessary to safeguard the locality's visual amenity.
16. The appellant has expressed some concerns regarding the necessity of condition 4, arguing that the proposed development is minor and that imposing such a condition could set a precedent, potentially burdening similar developments with

additional costs. Nonetheless, the scheme has been addressed on its individual merits and the appeal site is located adjacent to areas with a higher flood risk. Accordingly, to address potential flooding concerns, it is necessary to impose a suitable condition requiring the demonstration of methods for controlling and managing the impacts of rainfall and surface water runoff. Policy F15.8 of the MLP states that planning conditions may be used to secure flood risk mitigation. Such a condition would be precise, reasonable and would comply with the relevant tests in the Framework.

Conclusion

17. For the reasons given above, the appeal should be allowed.

S Lo

INSPECTOR