



Appeal Decision

Site visit made on 31 March 2025

by **L C Hughes BA (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Appeal Ref: APP/T5720/D/24/3353208

65 Homefield Gardens, Mitcham, Merton CR4 3BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Amrik Sandhu against the decision of the Council of the London Borough of Merton.
 - The application Ref is 24/P0781.
 - The development proposed is erection of an outbuilding in the rear garden with use ancillary to the main dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for erection of an outbuilding in the rear garden with use ancillary to the main dwelling at 65 Homefield Gardens, Mitcham, Merton CR4 3BZ in accordance with the terms of the application, Ref 24/P0781, and the plans submitted with it, subject to the conditions below.
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with drawing nos: Site Location Plan dated 20 March 2024 and Existing and Proposed Plans AS.P.001.
 - 3) The development hereby permitted shall be constructed in the external materials specified in the application form unless otherwise agreed in writing by the local planning authority.
 - 4) The development hereby permitted shall implement the flood mitigation measures as submitted with the proposal, titled Flood Risk Assessment, dated May 2024. These measures shall thereafter be retained in perpetuity.
 - 5) Access to the flat roof of the development hereby permitted 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.
 - 6) Demolition, construction work and deliveries shall only take place between 0800 and 1800 hours on Monday to Friday, between 0800 and 1300 hours on Saturdays and not at any time on Sundays or on Bank or Public Holidays.
 - 7) The development hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as 65 Homefield Gardens.
 - 8) 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 fences, gates, walls or other means of enclosure shall be erected within the curtilage of the dwelling known as 65 Homefield Gardens, rearward of the rear elevation of the existing dwelling, without planning permission first obtained from the local planning authority.

Applications for costs

2. An application for costs was made by Mr Amrik Sandhu against the Council of the London Borough of Merton. The costs application is the subject of a separate decision.

Preliminary Matters

3. Since the original decision, The Merton Local Plan 2024-2038 (MLP) was adopted by the Council in November 2024. This replaces the Merton Core Planning Strategy 2011 and Merton Sites and Policies Plan 2014, which were cited in the reasons for refusal and which both main parties referred to in their appeal submissions. The main parties were given the opportunity to provide observations on the replacement plan. This appeal must be determined in accordance with the development plan in place at the time and, as such, it is the new Local Plan policies to which I have had regard in reaching my conclusions below.

Main Issues

4. The main issues are:
 - whether the proposed development would be ancillary to the host dwelling unit and whether any harm would be caused to the living conditions of neighbouring occupiers and highway safety;
 - whether the proposed development would increase the risk of flooding; and
 - the effect of the proposed development on biodiversity.

Reasons

Whether ancillary

5. The appeal property is an extended semi-detached dwelling located in a residential street comprising dwellings of similar size and design. There are other outbuildings of various sizes in the rear gardens of properties in the locality.
6. The evidence before me indicates that the proposal would have a gross internal area slightly larger than the recommended minimum size for a 1-bedroom 1-person dwelling as detailed in the London Plan 2021 (LonP) and in the Nationally Described Space Standards. However, the appeal property benefits from a fairly long rear garden. The proposal would sit comfortably within the plot and would allow for an appreciable amount of garden space to be retained, given the length of the plot and its practical shape.
7. Whilst the footprint of the proposed outbuilding might be of a similar scale to the host property, it would be of a smaller volume and lower height and the simple design and materials would give it an understated appearance. It would be separated from the host property by an appropriate distance, facing towards the host property with a degree of intervisibility. There is no subdivision of the plot

proposed. I consider that the proposal would be subservient to the host property, appearing as an obvious ancillary outbuilding to the main residence.

8. It is not unusual for the proposed uses of a studio and office to be included in an outbuilding, nor is it unreasonable to have toilet or showering facilities in a home office building. There is nothing to demonstrate that the proposal would not be used for the purposes described or that it would not be ancillary to the host property.
9. As such, the proposal would not lead to an intensification of use to such an extent to harm the living conditions of neighbouring occupiers. The proposal would be single storey, with a flat roof, and separated at some distance from neighbouring dwellings. It would not be visually intrusive, and would not overshadow or dominate the outlook from neighbouring properties. Due to its proposed use and separation from neighbouring dwellings, it would not harm the living conditions of neighbouring properties with regard to noise and disturbance.
10. As I have found that the proposal would be ancillary to the main dwelling, there is no evidence before me to indicate that the proposal would result in an increase in traffic movements, or have a harmful effect on the free flow of traffic to the detriment of highway and pedestrian safety.
11. The proposal would be ancillary to the main dwelling and would not therefore result in an intensification of use that would harm the living conditions of neighbouring occupiers and harm highway and pedestrian safety. The proposed development would therefore conform with the principles of policies D12.1, D12.2, D12.3 and D12.4 of the MLP and D4 of the LonP, which seek to ensure that development is high quality, responds positively to the site context and that impacts of proposals in terms of noise and pollution are minimised.

Flood risk

12. The appeal site is within Flood Zone 2 and at risk of Ground Water Flooding, Surface Water Flooding and within a Critical Drainage Area.
13. The appellant has submitted a Flood Risk Assessment (May 2024) which proposes flood mitigation measures including the installation of flood resistant doors; installation of anti-flood air bricks; and the installation of bespoke barriers fitted externally across doors and low windows and/or the provision of filled sandbags.
14. Whilst the flood mitigation measures have not been integrated into the design of the proposed outbuilding, paragraph 56 of the National Planning Policy Framework (the Framework) indicates that decision-takers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. As such, I consider that conditions could be imposed to ensure that the mitigation measures detailed in the Flood Risk Assessment are undertaken.
15. With the proposed flood mitigation measures, the scheme would not increase the risk of flooding. The proposal would therefore conform with LonP Policy SI 13 and Policies F15.7, F15.8 and F15.9 of the MLP which seek to ensure that flood risk is managed and reduced.

Biodiversity

16. At the time of my site visit the area that the proposed outbuilding would occupy predominantly comprised paving slabs or was bare earth with little vegetation or grass present. The value of this part of the garden to biodiversity is in my judgement likely to be limited and I am satisfied that the proposal would not result in significant adverse impacts on biodiversity.
17. The proposal would therefore not conflict with Policy G6 of the London Plan which states that proposals should manage impacts on biodiversity. As a householder application it is exempt from the statutory requirements of the Environment Act 2021 which requires developments to secure biodiversity net gain. It would also not conflict with Policies O15.3 and O15.4 of the MLP which require development to contribute at least 10% in net gains in biodiversity, when in accordance with statutory requirements and national guidance and to protect trees and other landscape features.

Other Matters

18. Although not cited as a reason for refusal, the Council have specified that the appellant enters into a legal S106 agreement to secure the use of the outbuilding as an ancillary accommodation to the existing dwellinghouse in perpetuity.
19. However, Paragraph 56 of the Framework states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Whilst recognising that other outbuildings in the area have been used as living accommodation, any intent to use the building as an independent dwelling would require a separate planning application which would fall to be considered on its own merits. In this instance, a planning condition could reasonably be used to ensure that the building would remain as ancillary to the main dwelling to avoid any undue impact upon neighbours' living conditions or highway safety, or any other harm or conflict with the development plan that may arise from its independent use.
20. The appeal site is adjacent to the Wandle Hall Conservation Area. Due to the proposed single storey design of the proposal, and its location to the rear of the host property which would screen the proposal from view, the proposal would not affect the setting of the Conservation Area.

Conditions

21. I have considered the conditions suggested by the Council, having regard to the Planning Practice Guidance on conditions. I have amended a number of the conditions in the interest of clarity.
22. In addition to the standard timeframe condition, it is necessary to impose a condition requiring the development to be carried out in accordance with the submitted plans in the interest of certainty (conditions 1 and 2).
23. To ensure the appearance of the development, a condition is imposed to require that the external materials comply with those detailed on the application form (condition 3).
24. Condition 4 relates to flood risk mitigation and is imposed to safeguard the risk of flooding. I have included condition 5 ensuring that the flat roof is not used as an

amenity area, and condition 6 ensuring that construction work is undertaken at reasonable times, in order to protect the living conditions of neighbouring occupiers.

25. The Council suggested a condition requiring that a formal legal agreement be entered into in order to secure the use of the outbuilding as ancillary to the main dwelling. However, I consider that a planning obligation is not necessary, as a condition can be imposed which would achieve the same aim. I have therefore imposed condition 7, which ensures that the development shall not be used at any time other than for purposes ancillary to the main dwelling, in order to safeguard the living conditions of neighbouring occupiers and the free flow of traffic.
26. Condition 8 restricts the erection of boundary treatments to prevent the sectioning of the outbuilding for uses not ancillary to the main dwelling house, and is necessary to safeguard the living conditions of neighbouring occupiers, and prevent any other harm or conflict with the development plan.
27. The Council suggested a condition requiring the submission and implementation of a biodiversity enhancement plan. However, householder developments, such as the appeal scheme, are currently exempt from biodiversity net gain requirements. Accordingly, I do not consider such a condition would be reasonable or necessary and would not meet the tests, as set out in Paragraph 57 of the Framework.

Conclusion

28. For the reasons given above, the proposal would comply with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
29. As a result, the appeal should be allowed.

L C Hughes

INSPECTOR