



Appeal Decision

Site visit made on 6 June 2025

by **S Poole BA(Hons) DipArch MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 June 2025

Appeal Ref: APP/T5720/W/25/3360370
27 Florence Avenue, Morden SM4 6EX

- 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 Ghlen Capuyan against the decision of the Council of the London Borough of Merton.
 - The application Ref is 24/P3296.
 - The application sought planning permission for the erection of a single storey rear extension, first floor side/rear extension and hip-to-gable roof conversion with associated roof dormer extensions and conversion of the extended house into 2 x 3 bedroom dwellinghouses without complying with a condition attached to planning permission Ref 24/P2117, dated 15 October 2024.
 - The condition in dispute is No 4 which states that: *"The development hereby approved shall solely be used as a 3 Bed 4 Person Residential unit for Dwellinghouse A and as a 3 Bed 4 Person Residential unit for Dwellinghouse B for the site known as 27 Florence Avenue, Morden, SM4 6EX"*.
 - The reason given for the condition is: *"To accord with terms of this application, safeguard local road and parking conditions and residential amenity of nearby occupants"*.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey rear extension, first floor side/rear extension and hip-to-gable roof conversion with associated roof dormer extensions and conversion of the extended house into 2 x 3 bedroom dwellinghouses at 27 Florence Avenue, Morden SM4 6EX in accordance with the application Ref 24/P3296, without compliance with condition number 4 previously imposed on planning permission Ref 24/P2117 dated 15 October 2024 and subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Ghlen Capuyan against the decision of the London Borough of Merton and this is the subject of a separate Decision.

Procedural Matters

3. The Merton Local Plan 2024-2038 (MLP) was adopted by the Council on 20 November 2024. This replaced the Merton Core Planning Strategy 2011 and Merton Sites and Policies Plan 2014. The Council's reasons for refusal refer to policies in both the MLP and now superseded Plans. The latter are no longer a relevant consideration.

Background and Main Issues

4. Planning permission was granted in October 2024 for extensions to the appeal property and its conversion into a pair of 3-bedroom family dwellings with rear gardens and off-street car parking spaces at the front. At the time of my site visit this approved development was in the process of being carried out.
5. Condition 4 of the 2024 planning permission, the subject of this appeal, stipulates that the pair of dwellings shall solely be used as 3 bedroom, 4 person residential units. The reason given for this restriction is to “safeguard local road and parking conditions and residential amenity of nearby occupants”. In its first reason for refusal Council suggests the removal of condition 4 would eliminate the mechanism to control the design and quality of the internal layout, the standard of accommodation, the number of occupiers who could use adequately sized rooms and the provision of adequate external amenity spaces for the two dwellings.
6. The main issues are therefore whether condition 4 is necessary and reasonable to:
 - (i) protect the living conditions of future occupiers of the approved development, with particular regard to internal and external space provision; and
 - (ii) limit the effects of on-street car parking on highway safety and the living conditions of occupiers of neighbour properties.

Reasons

Living Conditions – future occupiers

7. The planning permission requires the development to be carried out in accordance with the approved drawings which show kitchen/living areas, dining rooms and reception rooms on the ground floor and 3 bedrooms and a “loft study” on the upper floors of both houses. The pair of dwellings would provide ample internal space to comfortably accommodate families comprising two adults and 2 children.
8. However, I recognise that at some point in the future the internal layouts of the dwellings could be altered and/or studies and reception rooms could be used as bedrooms. This would allow for larger families, perhaps with 3 or 4 children, or for 3 generations of the same family, to occupy the dwellings. Family circumstances change over time and restricting flexibility in this respect is unreasonable and not necessary to safeguard the living conditions of future family occupiers given both dwellings far exceed the minimum space standards for 4 occupiers. I am also satisfied that the gardens would be adequate for larger families.
9. In the absence of any evidence to the contrary I believe the dwellings would benefit from permitted development rights allowing them to be used as small Houses in Multiple Occupation (C4 Use Class) (HMO) with not more than 6 unrelated people sharing. Subject to the number of occupiers, such a use would require a licence and therefore the level of occupation can be controlled to ensure future occupiers benefit from acceptable levels of internal living conditions. The use of the properties for more than 6 unrelated people sharing would require planning permission and can therefore be controlled.
10. In respect of this matter, I conclude that condition 4 is not necessary. The proposed deletion of this condition therefore accords with MLP Policy D12.3 and

Policy D6 of the London Plan (2021) (LP) which seek to ensure high quality design with comfortable and functional layouts which are fit for purpose.

Car Parking

11. The appeal properties occupy a corner site next to the junction between Florence Avenue and Williams Lane. Many of the properties in the vicinity of the appeal site have off-street car parking spaces and therefore the level of on-street car parking capacity is low and largely limited to the section of Williams Lane where there are no crossovers. At the time of my visit these on-street spaces were in use, and I am conscious that demand for spaces is likely to be higher outside normal working hours.
12. The occupation of the approved dwellings by larger or extended families is unlikely to lead to an increase in demand for on street car parking in the area that would cause material harm to highway safety. However, the use of one or both of the dwellings as a small HMO could result in a significant increase in on-street car parking and therefore harm to highway safety and residential amenity, particularly in Williams Lane. Such harm would be contrary to MLP Policies T16.2 and T16.3, which seek to manage and mitigate impacts on the transport network.
13. Having consulted the Council and Appellant I am satisfied however that this harm can be addressed by the replacement of condition 4 with a condition that removes permitted development rights under Class L of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. The imposition of this condition would mean that planning permission would be needed to convert the dwellings to C4 use (no more than 6 unrelated people sharing). With this condition in place the aims of the aforementioned policies are accorded with. This condition would also overcome some of the enforceability issues that are inherent in condition 4.

Other Matters

14. Concerns have been raised by local residents that the dwellings could be used as holiday accommodation. There is nothing before me to indicate that there is a likelihood of this occurring. In any case, the permanent use of the properties for holiday use would require planning permission and can therefore be controlled.

Conditions

15. As the development has been commenced it is not necessary to impose the standard 3-year implementation requirement. In the absence of any information confirming that pre-commencement conditions have been discharged, these conditions are re-imposed. Although the works are at an advanced stage not all the exterior finishes are in place and therefore the condition relating to facing materials remains necessary.

Conclusion

16. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

S Poole INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1 of 9, 2 of 9 Revision No. 1, 3 of 9 Revision No. 3, 4 of 9 Revision No. 2, 5 of 9 Revision No. 2, 6 of 9 Revision No. 1, 7 of 9, 8 of 9 Revision No. 1, 9 of 9 Revision No. 1, 10 of 15 Revision No. 2, 11 of 15 Revision No. 2, 12 of 15 Revision No. 2, 14 of 15, 15 of 15, Energy Statement issued July 2024, Water Calculation Compliance Report July 2024, Design and Access Statement, Fire Statement, Parking Stress Survey, Planning Statement, Biodiversity Net Gain Statement, Air Quality Neutral (AQN) Statement July 2024.
- 2) The facing materials to be used for the development hereby permitted shall be those specified in the application form unless otherwise agreed in writing by the Local Planning Authority.
- 3) 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 development permitted by virtue of Class L of Part 3 of Schedule 2 to the Order shall be undertaken.
- 4) 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.
- 5) No demolition or construction work or ancillary activities such as deliveries shall take place before 8am or after 6pm Mondays - Fridays inclusive, before 8am or after 1pm on Saturdays or at any time on Sundays or Bank Holidays.
- 6) All hard and soft landscape works shall be carried out in accordance with the approved details as shown in (Proposed Landscape Plan A Drawing No. 10 of 15 Revision No. 2 and Proposed Landscape Plan B 11 of 15 Revision No. 2 Amended 02/10/2024). The works shall be carried out in the first available planting season following the completion of the development or prior to the occupation of any part of the development, whichever is the sooner, and any trees which die within a period of 5 years from the completion of the development, are removed or become seriously damaged or diseased or are dying, shall be replaced in the next planting season with others of same approved specification, unless the Local Planning Authority gives written consent to any variation. All hard surfacing and means of enclosure shall be completed before the development is first occupied.
- 7) The development must be carried out in accordance with the measures outlined in the approved Flood Risk Assessment and SuDS Strategy prepared by Innervision Design Ltd July 2024 for the provision of flood proofing measures and surface water drainage.
- 8) Prior to the commencement of the use, the applicant shall provide details of all domestic gas-fired boilers installed demonstrating that they achieve dry NOx emission levels equivalent to, or less than 40 mg/kWh, in writing for the approval of the Local Planning Authority.
- 9) The development hereby approved shall not be occupied until the refuse and recycling storage facilities shown on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.

- 10) No development shall commence until details of the proposed vehicular access to serve the development have been submitted in writing for approval to the Local Planning Authority. No works that are subject of this condition shall be carried out until those details have been approved, and the development shall not be occupied until those details have been approved and completed in full.
- 11) The development hereby approved shall not be occupied until the proposed vehicle access has been sited and laid out in accordance with the approved plans.
- 12) The development shall not be occupied until the existing redundant crossover/s have been removed by raising the kerb and reinstating the footway in accordance with the requirements of the Highway Authority.
- 13) Prior to the occupation of the development 2 metre x 2 metre pedestrian visibility splays shall be provided either side of the vehicular access to the site. Any objects within the visibility splays shall not exceed a height of 0.6 metres.
- 14) The development hereby permitted shall not be occupied until the cycle parking shown on the plans hereby approved has been provided and made available for use. These facilities shall be retained for the occupants of and visitors to the development at all times.
- 15) The development hereby approved shall allocate 1 on-site car parking space to Dwellinghouse A and 1 on-site car parking space to Dwellinghouse B for the site known as 27 Florence Avenue, Morden, SM4 6EX.
- 16) The development shall be constructed in accordance with the Construction Management Plan (dated 16 October 2024) hereby approved for the duration of the construction process.