



Appeal Decision

Site visit made on 31 July 2025

by **Jonathan Edwards BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 August 2025

Appeal Ref: APP/T5720/W/25/3363178

109 Lyveden Road, Tooting, Merton, London SW17 9DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr Chiraz Assoula (CD Homes Management Limited) against the decision of the Council of the London Borough of Merton.
 - The application Ref is 24/P0778.
 - The development proposed is originally described as “retrospective application for sub division of granny annex to create two flats”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the header above is taken from the planning application form. The Council’s decision notice and the appeal form give a different description that reads “*retrospective application for the erection of two storey side extension, rear dormer, creation of x2 roof parapets and erection of boundary treatments to create 2 x self-contained flats*”.
3. This revised description is used by both main parties in the appeal submissions. Also, it more closely reflects the details as shown on the appeal drawings than the original description. Therefore, the amended description forms the basis of my assessment. It follows that the development has commenced.
4. In 2022, the Council granted planning permission for the erection of a 2 storey extension at the appeal property to accommodate a granny annexe. Plans have been submitted that show the development that has been permitted (hereafter referred to as the approved scheme). On my visit I saw a 2 storey extension has been added to the side of the appeal property. However, it is materially different in appearance to the development allowed under the approved scheme. Instead, the external appearance of the extension I saw was more consistent with the details shown on the “as built elevation” drawing.
5. Furthermore, as part of the appeal the appellant has provided revised drawings showing a “proposed development”. These show a extension that is similar in external appearance to that shown on the “as built elevation” plan but with different internal room arrangements for the flats. Also, additional plans have been submitted that show landscaping and features within the gardens to serve the flats. These drawings were not with the Council at the time of its decision but it has had the opportunity to comment on them through the appeal process. The proposed

development plans do not fundamentally change the scheme and so no injustice would be caused by basing my assessment on the amended drawings.

6. Moreover, a small site biodiversity metric (the metric) and a flood risk assessment (FRA) has been provided with the appeal. Again, these were not with the Council at the time of its decision but there has been the opportunity to comment on them through the appeal process. I have had regard to the metric and the FRA in my assessment.
7. A unilateral undertaking under section 106 of the Act (the UU) has been provided by the appellant. This includes planning obligations in respect of zero carbon emissions, restrictions on applications for parking permits, biodiversity net gain (BNG) and management monitoring and affordable housing financial contributions. I have invited the Council's comments on the UU and it has informed my consideration of the appeal.
8. The Merton Local Plan 2024 (the LP) has been adopted since the Council's decision on the planning application leading to this appeal. This replaces the Council's Sites and Policies Plan and Policies Map adopted 2014 and Core Planning Strategy 2011. I have had regard to the policies of the LP given that it now forms part of the development plan for the area. Furthermore, my assessment has been informed by a revised version of the National Planning Policy Framework (the Framework) that has been published since the Council's decision.

Main Issues

9. The Council's eighth refusal reason raises concern over the absence of a soft landscaping scheme and a claimed failure to comply with policy G5 of the London Plan 2021 (the LonP). A proposed planting plan has been provided with the appeal and the Council acknowledge that a landscaping scheme could be secured through the imposition of a planning condition. As such, this is not a main issue in my assessment of the appeal.
10. Whilst not raised as a specific concern by the Council, I have invited comments from the main parties on whether the appeal development accords with the flood risk sequential test (the ST). In light of this matter and the Council's refusal reasons, I consider the main issues are (i) flood risk, (ii) the development's effect on the character and appearance of the area, (iii) its effect on living conditions at nearby residences including 109 Lyveden Road (No 109), (iv) whether the development provides satisfactory living conditions for occupiers, (v) safety, security and crime prevention, (vi) the effect on biodiversity, and (vii) the effects of the development on street parking and car usage.

Reasons

Flood risk.

11. Comments from the Environment Agency (the EA) and the FRA confirm the side extension is partly located within flood zones 2 and 3, which is land that has a medium and high probability of fluvial flooding. This relates to a watercourse that flows just outside the appeal site boundaries.
12. LP policy F15.8 states the ST should be applied for all development within flood zones 2 and 3, unless one of the exceptions under LP paragraph 15.8.11 is relevant. This policy is generally consistent with the Framework that also states a

sequential risk-based approach should be taken to development proposals in areas known to be at risk of flooding. Paragraph 174 of the Framework explains the aim of the ST is to steer new development to areas with the lowest risk of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas of lower flood risk. Paragraph 176 of the Framework explains that some minor development and changes of use should not be subject to the ST.

13. At paragraph 2.17, the FRA states that the appeal development could be considered a change of use and so it is exempt from the ST. However, this contention is based upon the appeal seeking planning permission for the sub-division of an annexe to 2 flats. Instead, my assessment is based upon the revised description of development and that permission is sought for the erection of a side extension to create 2 flats. The erection of a building that contains new residential units does not fall within the definition of minor development as referred to in paragraph 176 and footnote 62 of the Framework. Also, the appeal development does not fall within the exceptions set out at paragraph 15.8.11 of the LP. As such, the ST is applicable in the assessment of the appeal scheme.
14. I am conscious that the approved scheme would also involve the erection of a building on parts of the site within flood zones 2 or 3. However, in that case, the proposal was described as a granny annexe, presumably to provide residential accommodation to be used as part of No 109. The Framework states the ST is not applicable for householder developments such as the approved scheme. The current appeal clearly does not relate to a householder development as it provides a new building that contains self-contained residences separate from No 109.
15. The FRA fails to provide evidence that the ST has been applied. As such, the development does not comply with part 7c of LP policy F15.8. There is no evidence to demonstrate a lack of reasonably available sites with a lower flood risk that could accommodate the 2 flats. Therefore, the FRA and the appeal submissions as a whole fail to show the development accords with the ST.
16. The EA has raised concerns over the FRA as it has not been convincingly demonstrated that the finished floor levels (FFLs) of the development are at least 300mm above the modelled event flood level of 16.3m AOD. The FRA estimates the FFLs are at 16.69m AOD and so 90mm above the required level. It is unclear why the FFLs for the development have not been firmly established given that it has been constructed. In any event, it would seem that this matter could be addressed through the imposition of a condition as suggested by the EA on FFLs, even if it requires some further internal works. Therefore, I am satisfied the accommodation within the extension is not at flood risk.
17. Furthermore, the FRA provides details on how compensatory flood storage would be provided on the site by gradually lowering ground levels. The extent of flood storage works proposed is based upon the difference between the footprint of the appeal development compared to the development allowed under the approved scheme. This is appropriate given the approved scheme provides a realistic fallback position in the event of the appeal being dismissed. Therefore, the evidence indicates the development would not increase the risk of flooding elsewhere, provided the ground levels are altered in accordance with Figure 17 of the FRA. Such works could be secured by planning condition.

18. As such, the FRA shows the development could be made safe from flooding without increasing flood risk elsewhere. However, the Planning Practice Guidance¹ (PPG) states that avoiding flood risk through the ST is the most effective way of addressing the issue. Even when considering the conclusions of the FRA, the ST still needs to be satisfied.
19. Therefore, I conclude the development does not accord with LP policy F15.8 and the provisions of the Framework and the PPG on flood risk. Amongst other things, these look to direct development to areas of lower flood risk and to not accept development in areas of higher flood risk unless the ST is met.

Character and appearance of the area.

20. The appeal site is at the end of a line of houses that face towards a footpath that runs from the end of Lyveden Road over a nearby railway line to Longley Road. The houses in the row are linked to each other and are similar in appearance with gable fronted projections and small front gardens. The uniformity in the appearance, form and layout of the houses is replicated in the row of residences further down Lyveden Road. As a result, the street scene has a pleasing rhythm. No 109 contributes to this pattern, although its visibility within the street scene is limited as it is at the end of the row and off the footpath rather than the road.
21. The side extension has a similar eaves and ridge height to No 109. Also, the fenestration on its principal elevation generally follows the size and arrangement of windows on the front of the other houses in the line. The extension has been painted white to match the colour of the adjoining properties and its front elevation is set back behind the front projection to No 109. The extension is fairly wide and it is bulkier compared to the addition allowed under the approved scheme. Even so, when seen from the front the extension is sympathetic in appearance to No 109 and the row of houses. It does not dominate nor overwhelm the host property.
22. The flank elevation of the addition is unusual as it is chamfered rather than straight. Moreover, it includes an element to the rear that extends horizontally out at the full height of the building. Consequently, the side wall appears quite tall and it fails to reflect the shape of a traditional dual-pitched roof. However, the side elevation is not as obvious from the footpath as the front of the extension as it is partially obscured by trees on the adjoining land. Even from the elevated position of the bridge over the railway, the appeal property is partly screened by trees. As such, the flank of the extension has an insignificant effect on the visual qualities of the row of houses and the local area in general.
23. The rear dormer is large and takes up most of the roof slope. However, there are no public vantage points to the back of the appeal site that allow sight of the dormer addition. An aerial photograph provided by the appellant (figure 5.3 of the appeal statement) indicates that a number of nearby properties on Lyveden Road have rear dormers of a similar size and appearance. As such, the rear dormer that forms part of the appeal development does not appear out of keeping with the area.
24. The Council is concerned over the quality of the materials used in the construction of the extension. However, in overall terms, the development is sensitive to the

¹ Planning Practice Guidance, Flood risk and coastal change section, Paragraph: 023 Reference ID: 7-023-20220825, Revision date: 25 08 2022.

design of No 109 and the line of houses. By being at the end of the row and off the footpath, the extension avoids appearing obtrusive and it does not unduly disrupt the pleasing regularity to the front of houses along Lyveden Road.

25. The proposed planting plan indicates new bushes along the frontage and on my visit I saw these in place. Such greenery adds to the visual qualities of the footpath. I also noted fencing to the front of the site and between the extension and No 109 as well as around the side garden that serves one of the flats. However, this fencing is not indicated on the proposed development drawings. As such, it would be inappropriate to arrive at a view on the acceptability of the fencing as it does not form part of the development for consideration.
26. For these reasons, I conclude the development has an acceptable effect on the character and appearance of the area. In these regards, it would accord with LP policies D12.1, D12.3 and D12.4 as well as policies D3 and D4 of the LonP. Amongst other things, these policies seek to ensure development is of a high quality that responds to local character.

Effect on living conditions at nearby residences.

27. The Council is concerned that without sufficient details on boundary features it is unable to assess the impact of the development on living conditions at the neighbouring residences. However, the Council has failed to clearly explain how it envisages any boundary treatments could be harmful in these regards. In any event, it would be reasonable to impose a planning condition on any planning permission that requires details of boundary features to be submitted and approved.
28. The rear dormer is visible from the back gardens of No 109 and the neighbouring property 107 Lyveden Road. However, it is only noticed if looking upwards and in such views it is seen alongside the roofs of houses in the terrace. It does not affect views out of the rear windows in nearby properties and so it is not visually intrusive or overbearing.
29. Therefore, I conclude the development has an acceptable effect on living conditions at nearby residences, including No 109. In these regards, it accords with LP policy D12.3 and LonP policy D6. Amongst other things, these policies seek to ensure development maintains acceptable outlook at existing properties so that a high standard of amenity is provided.

Living conditions within the appeal development.

30. Both of the flats exceed the minimum internal floorspace standards as set out in Table 3.1 of the LonP. The Council's refusal reason on this matter raises concerns with the size of the kitchen/living and dining areas of both flats as well as functionality of the layouts. However, these concerns are based upon the plans provided with the planning application and not the proposed development plans submitted with the appeal. These revised drawings show the living areas for both flats would be larger than the minimum requirements suggested by the Council of 21m² for flat 1 and 27m² for flat 2. Also, the revised internal layouts show sufficient space within each of the apartments for furniture, fixtures and fitting as well as circulation.

31. The Council has also raised concerns over the enclosed nature of the external space to serve flat 2. However, this objection appears to be based upon the boundary features that have already been provided on the site but that are not shown on the submitted plans. A requirement for details on boundary treatments to be submitted and approved could be secured through the imposition of a planning condition. This would ensure the garden to flat 2 does not feel enclosed.
32. As such, I conclude the development provides satisfactory living conditions for its occupants. In these respects, it accords with LP policy D12.3 and LonP policy D6. These seek to ensure development provides internal and outdoor space that is fit for purpose and of high quality design.

Safety, security and crime prevention.

33. The Council's refusal reason states the planning application leading to this appeal does not address objectives in terms of crime prevention and secure design. Reference is made in the appeal submissions to paragraph 12.3.27 of the LP that explains how good quality lighting at its basic level is required to provide an appropriate level of safety and security.
34. The footpath leading to the appeal site is unlit and it is overhung by tree branches from the site opposite the row of houses. I would envisage the path would be quite dark at night-time although lights from the front windows of the houses may provide a degree of illumination. The development itself provides extra surveillance of the path and the appellant has suggested that lighting to the front of the appeal site could be secured through the imposition of a condition. As such, the development pays due regard to the issue of crime prevention and security.
35. Whilst not a refusal reason, the Council's appeal statement claims a fire safety strategy is needed to show compliance with policy D12 of the LonP. However, this policy only requires a fire statement to be provided with major development proposals. A statement is not needed for the appeal scheme as it represents a minor development. Moreover, the Council officer's report on the planning application leading to this appeal states that fire safety would be a matter controlled under the building regulations process.
36. Consequently, I conclude the development appropriately takes account of crime prevention, security and safety. In these respects, it would accord with part k of LP policy D12.3 and LonP policy D12.

Biodiversity.

37. Schedule 7A of the Town and Country Planning Act 1990 (as amended) (section 7A) introduces a statutory framework for biodiversity net gain (BNG). The application form states the development if granted planning permission would not be subject to the mandatory BNG condition as it is retrospective. However, even if this is accepted, part D of LonP policy G6 states that development proposals should manage impacts on biodiversity and aim to secure BNG. This should be informed by the best possible ecological information and addressed from the start of the development process.
38. The metric submitted with the appeal states the appeal site at the baseline date contained vegetated garden land measuring 128.5m². This is noted as having a biodiversity value of 0.03 habitat units. However, the metric fails to include

information on any habitats to be created or enhanced. Therefore, the headlines tab within the metric indicates the BNG targets are not met. Nonetheless, it would appear there is scope to provide habitats of biodiversity value either within the appeal site or on land associated with No 109.

39. A planning obligation within the UU requires the submission of a BNG statement to the Council for written approval within 6 months of the grant of planning permission. However, the obligation does not require the implementation of measures that are required to achieve BNG and it does not explain the consequences of the Council failing to approve the required statement. Therefore, the planning obligation does not guarantee the development would lead to BNG and so it attracts no weight in my overall assessment.
40. However, this matter could be appropriately addressed through the imposition of a planning condition. The mandatory BNG condition, even if applicable, would be unreasonable as it prevents the commencement of development until a biodiversity gain plan is approved and the appeal seeks retrospective planning permission. As an alternative, a similar planning condition could be imposed that requires the submission and approval of a biodiversity gain plan within a period following the grant of any planning permission. Such a condition could be worded to ensure the approved BNG measures are implemented.
41. Therefore, I conclude that the development would have an acceptable effect on biodiversity, subject to the imposition of a planning condition. In these respects, it would accord with LonP policy G6.

Street parking and car usage.

42. No private parking is proposed to serve the development. As such, it could potentially lead to extra street parking. Parking on Lyveden Road is restricted to permit holders on Mondays to Fridays between 8.30am and 6.30 pm. The UU includes a planning obligation that would prevent any occupant of the appeal development from applying for a parking permit. It also sets out measures to ensure occupants are aware of this restriction. This planning obligation would be effective in ensuring that parking demand generated by the development is limited so as to avoid any unacceptable effect on the public highway. The obligation and the provision of cycle stores as part of the development would also help ensure occupants are not reliant on private car travel.
43. Therefore, I conclude the development does not unacceptably increase street parking and it promotes sustainable modes of travel. In these regards it would accord with LonP policy T6 and LP policies T16.1 and T16.2. Amongst other things, these policies seek to ensure development is car free so as to reduce parking dominance on streets and to encourage active travel modes.

Other Considerations and Planning Balance

44. I have found the development is acceptable or could be made acceptable through the imposition of planning conditions in respect of most of the main issues. However, it does not accord with LP policy F15.8 on flood risk and so it is contrary to the development plan when read as a whole. It follows to consider whether any other factors justify granting planning permission.

45. The approved scheme provides a fallback position in the event the appeal is dismissed. However, the erection of an extension to provide accommodation used in connection with No 109 would not be contrary to LP policy and the Framework in flood risk terms as the ST would not be applicable. As such, the fallback position would be less harmful than the appeal development with regard to conflict with flood risk policies. Therefore, the fallback position attracts only limited weight in my overall assessment.
46. The UU contains a planning obligation that requires the submission and approval of documents that seek to show the development achieves zero carbon emissions. If this cannot be shown, the same obligation would require the payment of a carbon offset contribution. Through this planning obligation, the development would minimise greenhouse gas emissions in line with LP policy CC2.2. Acceptability in these regards is a neutral factor in my overall assessment.
47. The UU includes a planning obligation on the payment towards the costs of administering and monitoring the other obligations. The PPG advises that such charges can be sought by local authorities and so I find this obligation is fair, reasonable and necessary. Again, this is a consideration of neutral weight.
48. The UU also contains a planning obligation that requires the payment of an affordable housing contribution. This is in line with LP policy H11.1 that requires a financial contribution equivalent towards 20% affordable housing provision for schemes of 2 to 9 houses. The £30,000 payment would accord with the Council's requirements and I find the planning obligation is fair, reasonable and necessary in light of LP policy H11.1. The contribution attracts positive weight in my overall assessment of the appeal, particularly as paragraph 11.2.21 of the LP notes a pressing need for affordable housing in all parts of Merton.
49. The development would lead to minor enhancements to biodiversity. I am unconvinced it constitutes the redevelopment of previously developed land as the relevant definition within the Framework explicitly excludes residential gardens in built up areas. Nonetheless, it makes a more effective use of urban land by providing new homes where residents would have good access to services and public transport links. Also, it makes a minor contribution to the housing stock. There is no convincing case from the appellant that undermines the Council's claim that it is able to demonstrate in excess of 5 years supply of housing land as required under the Framework. Even so, the identified benefits add weight towards allowing the appeal.
50. On my visit I saw the flats are occupied. A decision to dismiss the appeal may put at risk the occupation of the development. This would represent an interference with the occupants' rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998. However, these rights are not unfettered and can be interfered with by a public authority in accordance with law in a number of circumstances.
51. The failure to show the development accords with the ST attracts significant weight as the relevant LP policy is consistent with the Framework and the PPG. Overall, I find the advantages of the scheme and other factors in support fail to justify granting planning permission contrary to the development plan. There is a legitimate and established policy aim to direct development away from areas of risk of flooding unless it is demonstrated there is no available land at lower flood

risk. This policy approach serves the wider public interest as it places the least reliance on measures such as flood defences and flood warning. As such, dismissal of the appeal is proportionate and so it does not violate the residents' human rights. The protection of the public interest cannot be achieved by means that are less interfering with their rights.

Conclusion

52. For the reasons given above, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR