



Appeal Decision

Site visit made on 31 July 2025

by **P Burley BA (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 September 2025

Appeal Ref: APP/T5720/W/25/3362410

360-364 London Road, Mitcham, Surrey CR4 3ND

- 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 Simon Holmes (Featherstone Homes Ltd) against the decision of the Council of the London Borough of Merton.
 - The application Ref is 24/P1387.
 - The development proposed is the change of use of the previously-approved flexible commercial floor space at ground floor level into 3 No. self-contained apartments and associated development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal application was determined, the Council has adopted a new local plan – the Merton Local Plan (November 2024) (MLP). I must determine this appeal in accordance with the policy in force at the time of my decision. Before determining this appeal I sought the views of the main parties in respect of this change in circumstances.
3. The appellant has submitted revised plans (1273-1-08 Rev G and 1273-1-09 Rev B) which illustrate privacy screening and planters on the London Road façade of the appeal site and the location of cycle parking. I have dealt with the appeal on the basis of these plans which do not materially change the substance of the proposals and would not prejudice any party.
4. One of the reasons for refusal related to the absence of flood risk information. The Council has confirmed that, following the submission of information as part of this appeal, this issue can be removed from the list of reasons for refusal.

Main Issues

5. The main issues are:
 - whether it has been demonstrated that there is no realistic prospect of a commercial use occupying the commercial floorspace;
 - whether the appeal scheme would provide acceptable living conditions for the future occupiers of the proposed apartments;
 - whether the proposed development would secure a net biodiversity gain; and

- whether there is capacity in the local area to accommodate additional car parking demand.

Reasons

Commercial Use

6. MLP Policy EC13.3 states that proposals that result in the loss of scattered employment sites to residential uses will be resisted except where it has been demonstrated that there is no realistic prospect of employment or community use on the site in the future. This may be demonstrated by full and proper marketing of the site at reasonable prices for a period of 18 months. Guidance relating to the scope of the marketing exercise is set out in an appendix to the local plan. The criteria include evidence that the property was marketed at a reasonable price that genuinely reflects the market value, including independent professional valuations from at least three agents to confirm the price was reasonable.
7. Whilst the submitted Commercial Feasibility Report (CFR) states the price at which the appeal site was marketed, it does not explain any factors that were taken into account in setting that price, for example the location, size and condition of the premises and, therefore, whether the price was reasonable.
8. In their response to the appeal application, the Council's Business and Economy Manager considered the asking rent to be on the high side, especially given the location of the site, and noted examples of lower rent elsewhere. An undated response from the marketing agent explains why properties that have been advertised at lower rents than the appeal site are not directly comparable. It also notes that it is challenging to compare the subject property to something like for like as there are little to no shell and core units within the area and, therefore, that weight must be given to professional opinion.
9. In respect of the lack of interest in the appeal site, the CFR notes that any party looking to let or buy a commercial property in the area has a lot of choice as there is currently a large number of available units and the vacancy rate is still rising. However, it does not explain whether any consideration was given to adjusting the asking price in response to the level of competition in the market. The CFR also states that those who enquired about the property had not been put off by the asking price for rent or for purchase but instead cited the secondary location within the local area. However, it could be the case that some parties did not make an enquiry in the first place because the price was not sufficiently attractive to them.
10. Thus, whilst the premises were marketed for the required 18 months, given the lack of justification for the asking price (for example by way of comparable properties / transactions) or corroborative valuations, I consider there to be insufficient evidence to demonstrate that the appeal site was marketed at a reasonable price that genuinely reflects the market value. Therefore, the appeal scheme does not comply with MLP Policy EC13.3.

Living Conditions

11. The Council has confirmed that the appellant's post-determination changes to the proposed development have addressed its objection relating to deficient floor space and accepts that the proposed apartments meet minimum space standards.

12. The majority of the fenestration in the proposed apartments would be on the south-eastern / London Road elevation, comprising windows to bedrooms and living rooms. These would be set back from the street, behind inset balconies and planters. Lower sections of the windows would have obscure glazing for privacy and there would also be adjustable slatted screens in response to concerns about privacy.
13. In the southernmost apartment, labelled '1C' on the submitted drawings, the only other window would be in a kitchen facing the entrance to adjacent apartments and a gas meter cupboard. There would also be a kitchen window on the north-western façade of apartment 1B and a bedroom window on the north-western façade of apartment 1A.
14. To protect the future occupiers from poor air quality, mechanical ventilation would be provided in the apartments.
15. Together I consider that the proposed mitigation measures would result in a poor-quality living environment. Even if they still allowed sufficient natural light into the apartments and contributed to the privacy of occupiers, the solid planters and associated planting, the slatted screens and the obscure glazing would all affect the outlook from the apartments. Whilst such arrangements are not necessarily objectionable as a matter of principle, the layout of this site means that some affected rooms would not have alternative windows with a reasonable outlook, particularly the lounge / kitchen / diners in apartments 1C and 1A but also apartment 1B where the kitchen window is close to the entrance door to apartment 1A, raising privacy issues which may also necessitate some form of mitigation such as window blinds. Although the appellant has stated that the slatted screens could be repositioned to achieve an improved outlook, I consider that privacy and outlook should not be mutually exclusive.
16. My attention has been drawn to other examples of existing housing which is located close to the appeal site and which is adjacent to London Road. However, I have not been provided with any information relating to the layout of those buildings to enable me to make an informed comparison. Whilst there are ground floor flats adjacent to the commercial floorspace that is the subject of this appeal, these face Broadway Gardens which is a quieter side street and not directly comparable to London Road.
17. Overall, I consider that the proposed apartments would provide unacceptable living conditions for the future occupiers and therefore would be contrary to Policy D3 of the London Plan (2021) (LP) and MLP Policy D12.3 which relate to high quality design, including in respect of living conditions.

Biodiversity

18. LP Policy G6 says that development proposals should aim to secure net biodiversity gain. Examples given by the Council include bird and bat boxes, hedgehog tunnels and log piles. Given the scale and nature of the appeal scheme, the appellant has said that such measures could be secured by way of a planning condition. While the Council has said that the use of a condition could be problematic given its experience of non-compliance with conditions on this site, this is not an issue that can have a bearing on my conclusions and I agree that this matter could be satisfactorily addressed by way of a planning condition.

Car Parking

19. The reason for refusal relating to car parking was based on the absence of a parking survey to demonstrate that there is capacity in the locality to accommodate the additional parking demand. A Highways Appeal Statement (HAS) has been submitted with this appeal. It is based on surveys that were undertaken on 24 and 25 February 2025 and which concluded that the overall parking stress in the local area is below the 85% threshold which, according to the methodology used for the surveys, would typically represent 'high' parking stress.
20. The Council's Statement of Case includes photographs of some of the public highway that was surveyed for the HAS. These show double-yellow lines which are not marked on the drawings and which affect a number of the parking spaces illustrated in the HAS. The appellant has updated its calculations, showing parking stress levels of 91% and 89% on the survey dates. It has then argued that due to the relatively high parking stress in the area the proposed development would more likely appeal to prospective residents who choose to live without cars, also bearing in mind the availability of public transport nearby.
21. However, in the absence of any way to control future occupiers' ownership of cars there is no way to guarantee that the appeal scheme would not add to the high level of parking stress in the local area and without any mitigation I consider the appeal scheme to be in conflict with MLP Policy T16.4 and LP Policy T6 which seek to manage car use and parking.
22. The appellant has also argued that when considering the parking impact of the proposed use against the permitted commercial use the proposed development would likely represent a reduced parking impact. However, and notwithstanding the wide range of uses that could occupy it, information relating to the potential parking demand and impacts associated with the consented commercial floorspace is not before me.

Other Matters

Effect on Designated Heritage Assets

23. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision-maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
24. The appeal site is close to four listed buildings – the Burn Bullock Public House, a drinking fountain and horse trough, the White Hart Inn, and 346 & 348 London Road. However, given the nature of the works proposed in the appeal scheme I do not find that there would be any harm to the settings, and thus to the significance, of these designated heritage assets. The appeal site is also in the Cricket Green Conservation Area (CA). The design of the appeal scheme is in keeping with the host building and, therefore, I consider that it would have a neutral effect on the

CA. As such, the appeal scheme would preserve the character and appearance of the CA.

Impact on Local Economy

25. The appellant has argued that the boarded-up frontage of the appeal site detracts from the street scene and does not contribute to the local economy. In the absence of satisfactory marketing evidence in relation to the commercial floorspace, I do not attach any material weight to this argument. Similarly, I do not attach any material weight to the appellant's suggestion that a commercial use on the appeal site could impact the vitality and viability of Mitcham town centre; the Council has already considered the existing lawful use of the appeal site and found it to be acceptable.

Use of Brownfield Land

26. The appellant has argued with reference to paragraph 125 c) of the National Planning Policy Framework (the Framework) that the appeal site is brownfield land and that 'substantial harm' needs to be demonstrated in relation to a proposal for housing on brownfield land for planning permission to be refused. However, paragraph 125 of the Framework also supports the development of under-utilised land and buildings for housing, including the conversion of existing space – a situation that is broadly analogous with the appeal scheme. Thus, there is a clear distinction between the use of buildings and brownfield land in this paragraph of the Framework and therefore I do not agree that policy relating to brownfield land should be taken into account in this case.

Housing Provision

27. The Council has a five-year supply of housing sites. Nevertheless, the appeal scheme would deliver 3 dwellings.

Planning Balance

28. I attach significant positive weight to the delivery of 3 new homes and neutral weight to compliance, by way of a planning condition, with policy relating to securing a net biodiversity gain.
29. However, I consider that it has not been demonstrated that there is no realistic prospect of a commercial use occupying the commercial floorspace. This is a matter to which I attach significant negative weight. I also attach significant negative weight to the poor quality living conditions for the future occupiers of the proposed apartments.
30. Furthermore, in light of evidence of parking stress that has been provided by the appellant, I consider that the appeal scheme is contrary to policies relating to parking. However, I also acknowledge the appellant's argument that future occupiers may not own cars given the availability of public transport in the local area. On that basis, I attach a small amount of negative weight to this matter.
31. Overall, I consider that the appeal scheme does not accord with the development plan when taken as a whole and that there are no material considerations which indicate that an alternative decision should be reached.

32. Whilst I have already explained that I do not agree with the suggestion that the site should be treated as brownfield land, even if it was treated as brownfield land this would not lead me to reach a different conclusion.

Conclusion

33. For the reasons given above the appeal should be dismissed.

P Burley

INSPECTOR