



Appeal Decision

Site visit made on 23 October 2025

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 November 2025

Appeal Ref: APP/T5720/W/25/3368173

The Trafalgar, 23 High Path, Colliers Wood, Merton, London SW19 2JY

- 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 Adenbuild Construction Ltd against the decision of the Council of the London Borough of Merton.
 - The application ref is 24/P1338.
 - The development proposed is described as 'demolition of the existing building and erection of a new 4 storey building (including basement) to re-provide a public house (sui generis) at ground floor level and residential units (C3) at floors 1-3 including refuse storage provision, cycle parking and associated works.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 20 November 2024 the Council adopted a new Local Plan for the period 2024-2037/38, which replaced the Core Strategy 2011, the Sites and Policies Plan 2014 and the Merton Estates Local Plan 2018. The Council based its decision on its former development plan policies since they were relevant at the time the application was validated. This appeal decision assesses the proposal in light of the development plan at the time of this decision, which includes the Merton Local Plan 2024 (the MLP) and the main parties have referred to the relevant policies in their evidence.
3. The appellant's final comments included three additional technical reports relating to heritage and townscape, flood risk, and viability. The appeal Start Letter sets out the timetable for the appeal and states that no late evidence which has not previously been the subject of consultation will be accepted at the final comments stage. This is consistent with the Appeal's Procedural Guide¹ which makes clear that all supporting documents should be submitted with the appeal and that the appeal process should not be used to evolve a scheme.
4. Due to being submitted at the final comments stage, those reports were not available for the Council or third parties to view at the time that they were invited to comment on the appeal. To take those documents into account in the determination of the appeal would therefore deny the Council, its consultees, and third parties of the opportunity to comment on them. The Council's Statement of Case did not give rise to new issues which would have necessitated this response and neither has the appellant provided any substantive evidence of a material

¹ Procedural Guide: Planning appeal- England updated 30 June 2025

change in circumstances, nor exceptional circumstances, which prevented the submission of these documents at an earlier time, within the time limits of the appeal. The Procedural Guide makes clear that, to ensure the effective and efficient administration of appeals, the appeal timetable will not be paused to permit further consultation. Accordingly, to accept these documents would cause procedural unfairness and cause a breach of natural justice, as established by relevant case law². Therefore I have not taken those reports into account in determining the appeal.

5. An undated Unilateral Undertaking was submitted with the appeal (the UU). This has been taken into account and is discussed further below.

Main Issues

6. The main issues are:
 - The acceptability of the loss of the existing building, with particular regard to the use and heritage effects;
 - Whether the proposal would be acceptable in terms of drainage and flood risk;
 - Effects on highway safety, with particular regard to on-street parking pressure.

Reasons

Loss of the Existing Building

7. The Council set out that the existing building should be considered a non-designated heritage asset (NDHA). Based on the evidence before me, the existing building dates back to 1854, being a public house since 1868. It has historic interest as one of few surviving Victorian buildings which previously characterised the wider area. While it has clearly undergone alterations over time, its compact scale and traditional public house vernacular reflect the built forms at the time, when the area was otherwise known for its cramped and damp housing. As such it contributes to the understanding of the historic development and social evolution of the area. I observed that its stark contrast with the larger scale and modern developments which now emerge around it, further accentuate its historic interest in the townscape.
8. The function of the public house has provided a long standing source of social cohesion and local identity. The building remains in use and representations received in response to the application and appeal demonstrate the pub remains a highly valued facility and an important source of social interaction. This social value would appear to be derived at least in part from the building's age and character, which provides a source of shared experiences and identity to its users.
9. As a result of these factors the Council consider the building to have moderate communal and historic value, having regard to relevant guidance. I have no strong reason to reach a different view and have considered the building as a NDHA as a consequence of its local heritage significance. The lack of any listed status in the past does not demonstrate the building should not be treated as an NDHA for the purposes of this appeal.

² Ashley, R (on the application of) v SSCLG & Ors [2012] EWCA Civ 559, Akhtar v SSCLG & LB Barking and Dagenham

10. The appeal scheme would result in the comprehensive removal of the existing building and demolition of the NDHA. The scale of the loss would therefore be substantial. The appellant suggests the replacement public house could be afforded the same name, however I am not satisfied that this would meet the relevant tests for a planning condition, or that this would be effective in ensuring the historic value of the site would be appreciated or maintained.
11. Notwithstanding the above findings in respect of heritage, the proposal would provide a new public house at the ground floor level, with ancillary space below. The proposed public house would be larger than the existing, offering greater capacity and potential for a more diverse range of services and community functions. While I note the Council's concerns relating to its size and the lack of kitchen facilities shown on the plans, the existing operation demonstrates that a valuable use can be achieved despite these factors. The absence of outdoor space or associated staff accommodation could provide a restraint to some potential occupiers, however it has not been substantiated that these are necessary for a successful or viable public house.
12. The new public house would not have the same intrinsic character and the continuity and connection with the site's historic value would be effectively lost. That said, I acknowledge that the success of a public house relies in part on factors beyond the scope of the planning process, and I have no strong reason to doubt that it could be capable of providing a valued community facility, albeit different to the existing and without historical connections. The proposal would not conflict with Policy TC13.8 of the MLP, which includes criteria relevant to the loss of public house uses generally.
13. Nonetheless, given the historic value which would be lost, the proposal would conflict with Policy HC7 of the London Plan, which seeks to protect public houses where they have heritage, economic, social or cultural value to local communities. Insofar as the loss of the NDHA is concerned, the National Planning Policy Framework (the Framework) states at paragraph 216 that a balanced judgement will be required, having regard to the scale of harm or loss and the significance of the heritage asset. I return to this matter below.

Drainage and Flood Risk

14. The appellant's Surface Water Management Report³ relates to a different development proposal and refers to discharge of surface water to the sewer and use of rainwater harvesting, permeable paving, raingardens and underground water storage on the site. The development now proposed would be unlikely to be able to accommodate these same measures due to the footprint of the proposed building, which would cover the vast majority of the red line boundary. Therefore it has not been demonstrated how the proposed development would implement appropriate sustainable urban drainage systems, as required for all developments under Policy F15.9 of the MLP. It has not been suggested that this be dealt with by condition, however, given the footprint and design of the proposed development, and what would appear to be limited scope for inclusion of other drainage methods, I am not satisfied that it would be reasonable to delay submission of such details for consideration at a later time.

³ Surface Water Management Report dated March 2024 Revision A by Flo Consulting Engineers

15. At the time of its decision the Council described the site as being within Flood Risk Zone 2 and this was not disputed within the appellant's Statement of Case. MLP policy F15.8 sets out that a FRA will be needed for all development proposals in this zone and a sequential test required for all development unless exceptions outlined in the justification apply. Based on the information on which this decision is based, it cannot be established with certainty that the development would not be at risk from flooding.
16. For the reasons given, the proposal would not be acceptable in terms of its risk from flooding and treatment of surface water drainage. The proposal would conflict with policies F15.8 and F15.9 of the MLP which relate to these matters.

Highway Safety

17. Through introducing additional residents to the area, the proposal has the ability to contribute to on-street parking pressures. The additional pressure created by the development could contribute to conditions prejudicial to highway safety and the Council report a long-term intention for a CPZ in the area in connection with the wider regeneration.
18. The UU intends to ensure that future residents would not be entitled to permits for the CPZ, thereby removing the scope for parking pressures and encouraging the use of sustainable travel. The Council considers the UU addresses this concern. However, the UU is undated, refers to a red line plan which is not attached and refers to planning permission granted by the Council, which would not be the case here if the appeal were to be allowed. For these reasons I cannot be certain that the UU would take effect or be capable of securing the obligations it sets out.
19. As a consequence it cannot be established with certainty that the proposal would not cause harm to highway safety by increasing on street parking pressure. The Council's reason for refusal in this respect refers to policies which have been replaced by the MLP and no relevant current development plan policy has been provided. The proposal would nonetheless conflict with the Framework insofar as it refers to unacceptable impacts on highway safety.

Other Matters

20. In respect of the effects on the NDHA, the Framework at paragraph 216 states that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. A balancing exercise is therefore required.
21. As above, the proposal here would entail the total and permanent loss of the NDHA. The scale of the loss would be substantial and, having regard to the significance of the asset and the evidence before me, this attracts significant weight.
22. It is acknowledged that there would be benefits arising from the proposed development. It would provide six new residential units of varying size which would contribute towards the local supply and to the national objective to boost the supply of homes. These would be on a brownfield site and in an area with good accessibility to services and facilities as well as public transport. The Framework acknowledges the important contribution which sites of this size can make to meeting an area's housing requirement, and that they can often be built out

relatively quickly. There would also be some economic benefit arising from the construction process and ongoing expenditure into the local economy by future occupants. Notwithstanding the harm arising from the loss of the existing building, the replacement public house floorspace could offer the possibility of increased capacity and functions, as well as potential additional employment. While acknowledging these as important factors, given the scale of the development, together they attract moderate weight.

23. The appellant considers the existing building to be inadequate for modern day use and there are undoubtedly restraints to the capacity and function of the existing building as a result of its physical characteristics. However, it is apparent that the pub is currently in use and is valued despite those restraints. The appellant describes the existing use as not economically viable, particularly having regard to the condition of the building and costs of required refurbishment. For the reasons set out above, I have not taken account of the late evidence in this respect, and in the absence of substantive supporting information I give this consideration limited weight.
24. Given the concerns above relating to the loss of the existing building, I do not give additional weight to the alleged benefit of improving the street scene. Where the proposal may be policy compliant in other respects, these are neutral matters and do not add weight in favour of the development. Having regard to the benefits of the scheme set out above and the weight ascribed to them, they would not outweigh the harm to the NDHA.
25. The Council assert that the provisions of paragraph 11d) of the Framework are not relevant, given it is meeting its five year land supply. There is no evidence before me which would lead me to doubt this or reach a contrary view and accordingly the presumption in favour of sustainable development is not considered further.
26. Given the findings above, the proposal has been found to conflict with the development plan and there are not material considerations of sufficient weight which indicate that a decision should be made other than in accordance with it.

Conclusion

27. For the reasons given, the appeal is dismissed.

C Shearing

INSPECTOR