



Appeal Decision

Hearing held on 24 November 2009

Site visit made on 24 November 2009

by **P W Clark MA MRTPI MCMl**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
15 December 2009

Appeal Ref: APP/T5720/A/09/2109245 360 London Road, Mitcham, Surrey CR4 3ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Majorlink Ltd against the decision of the Council of the London Borough of Merton.
- The application Ref 08/P2129, dated 28 July 2008, was refused by notice dated 30 April 2009.
- The development proposed is the demolition of an existing commercial unit and the development of a part two, part three and part four storey building comprising two ground floor B1 commercial units, one first floor B1 commercial unit, eleven (4 x 3 bedroom and 7 x 2 bedroom) self-contained flats and three terraced properties (2 x 3 bedroom and 1 x 2 bedroom) along Broadway Gardens.

Application for costs

1. At the Hearing an application for costs was made by Majorlink Ltd against the Council of the London Borough of Merton. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and grant planning permission for the demolition of an existing commercial unit and the development of a part two, part three and part four storey building comprising two ground floor B1 commercial units, one first floor B1 commercial unit, eleven (4 x 3 bedroom and 7 x 2 bedroom) self-contained flats and three terraced properties (2 x 3 bedroom and 1 x 2 bedroom) along Broadway Gardens at 360 London Road, Mitcham, Surrey CR4 3ND in accordance with the terms of the application, Ref 08/P2129, dated 28 July 2008, the plans numbered jw357-101, 102, 103b, 104d, 105c, 106e, 107b, 108e, 109c and 110c and the details of materials and finishes submitted on 23 October 2008, subject to the conditions appended to this decision.

Procedural matters

3. The application was amended during its consideration by the Council. At the hearing, amended plans were submitted to reconcile inconsistencies in the drawings previously submitted. Following the hearing, further amended plans were submitted to correct an error in the earlier amendments. As these simply resolve errors without introducing any matter not included in the plans previously submitted to the Council, nobody would be prejudiced by my basing my decision on the amended plans, so I have considered the case and taken the decision accordingly.

4. Prior to the hearing, a signed and dated planning obligation was submitted. It provides for affordable housing and payments for education provision, children's play facilities, open space improvements, consultation on and possible implementation of an extended controlled parking zone (cpz), sustainable transport improvements and for monitoring the implementation of these provisions. I have taken this into account in reaching my decision.
5. Both parties agree that a previous appeal on this site was for a scheme so different to that now proposed that that appeal decision is not relevant to the current case. I have no reason to disagree. Both parties agree that the reference to policy BE3 in the Council's reason for refusal is an error and that BE1 is meant.

Main issue

6. The one main issue is the effect of the proposal on the character and appearance of the area including views into and out of the Mitcham Cricket Green Conservation Area.

Reasons

Character and appearance

7. Both parties are agreed that the existing buildings on site detract from the character and appearance of the conservation area. Conservation Area Consent has been granted for their demolition subject only to the provision of a screen around the site pending redevelopment. Even with the existing buildings in place, the blank gable end of the adjoining terraced house in Broadway Gardens and the raw materials of its rear extension are exposed to public view. Demolition and screening of the site would not remedy that circumstance and would expose to view aspects of other surrounding buildings not designed to be seen from a public viewpoint. Although the demolition of the existing buildings is a precondition for enhancing this element of the appearance of the conservation area, further development is necessary to complete the enhancement, which the development proposed would provide.
8. The Council's Mitcham Cricket Green Conservation Area Design Guide published in November 1996 is dated but its definition of the conservation area as more a collection of distinct localities than a specific place still rings true. It accurately points out that the range, age and character of the buildings contained within the conservation area is surprisingly and refreshingly diverse. It explains that the character and diversity of these buildings is one of the particular features which merit the area's designation as a conservation area. The more recent conservation area appraisal, issued for public consultation in 2007, also comments on the range and variety of building styles around the green. I concur with its comment that their diverse scale and form combine to create the attractive character of the area.
9. These include a number of buildings which are good examples of their type and time such as the three storey 1960s police station and the four storey red brick 1930s Bramcote Court. In this context, the modern style of the current proposal and the materials chosen for its external appearance would be entirely appropriate. Its height and the dimensions which define its bulk and mass are consistent with others which contribute to the character of the area.

10. On London Road, its siting is at the back edge of the pavement. This is consistent with adjacent buildings and is a feature of the south side of Cricket Green and Lower Green West noted in the 2007 conservation area appraisal. The return elevation to Broadway Gardens is set back from the pavement in the same manner as the rest of that street. In similar fashion, the scale of the proposal would change appropriately from that in London Road, consistent with the job centre building opposite, to the domestic scale of the three terraced houses in Broadway Gardens. Their repeated rhythm would be similar to that of the other houses in Broadway Gardens.
11. From certain viewpoints on the east side of Cricket Green, the proposal would close an existing view out of the conservation area but so would any development of the site which did not retain the open forecourt and single storey building height of the previous use. However, the London Borough of Merton Unitary Development Plan (the UDP), adopted in October 2003, designates the site within an urban village area. Policies U1 and U4, amongst others, apply in such areas and require new development to provide a mix of uses including a minimum density of housing. The form and intensity of development proposed on the appeal site is consistent with those policies. In any event a view south along London Road, out of the conservation area, would still remain from points further north along the east side of Cricket Green.
12. For the same reason, the development would close the reverse view, from Broadway Gardens across the site into the conservation area, but there is no special significance in such a view. Its closure would tend to benefit Broadway Gardens by increasing its seclusion from the noise and bustle of London Road. When viewed along London Road from the south, the position of the proposal, set back slightly behind the building line of buildings to its north, would mean no reduction in the clear view into the conservation area. Rather, its form and size would balance the job centre building on the opposite side of the street to form a gateway into the conservation area beyond.
13. I conclude that the proposal would have a beneficial effect on the character and appearance of the area and so would preserve or enhance the Mitcham Cricket Green Conservation Area. It would be consistent with UDP policies BE1 and BE22 which require developments to preserve or enhance the character or appearance of conservation areas and to respect the siting, rhythm, scale, density, proportions, height, materials and massing of surrounding buildings.

Conditions and other matters

14. The Council expressed concerns that the affordable housing would not be provided in an easily managed cohesive unit, that the unilateral undertaking made the transfer of the affordable units conditional on an agreement as to price, which might not be reached, and that if an agreement on price was not reached within 6 months, then the affordable units could be sold on the open market.
15. Although it was demonstrated at the hearing that the affordable housing could be provided in a coherent and manageable group, the unilateral undertaking does not identify the affordable housing by reference to a plan as would be usual. Clause (3) of the schedule attached to the undertaking does not make clear the timing of provision. Clauses (4), (5) and (8) would leave much room

for dispute over valuation of the units. The undertaking lacks an arbitration provision. Clause (6) would allow the release of the affordable housing units to the open market in the event of disagreement persisting. As the formulation of the undertaking leaves a risk of disagreement persisting, I am not convinced that the requirements of the undertaking, taken in the round, are robust enough to ensure that the affordable housing would be provided in accordance with policy 3A.9 of the London Plan February 2008. For these reasons, and notwithstanding the existence of the undertaking, I impose condition (3), as discussed at the hearing.

16. The other provisions of the unilateral undertaking are not challenged by the Council. They would be necessary to provide for the effects of the development on local infrastructure in accordance with UDP policies C13, L8, L9, LU5 and ST36. The sums have been calculated with reference to published formulae which lead to figures proportionate to the assessed impact of the development and are therefore reasonable. Mechanisms are in place to ensure that the sums provided would be spent for their intended purpose. I am therefore content that in these respects the undertaking complies with government guidance and policy.
17. The Council suggested that a number of conditions would be necessary in the event of the appeal being allowed. I have considered these in the light of government advice set out in circular 11/95, *the use of conditions in planning permissions*, preferring the wording of the model conditions therein, where appropriate.
18. Details of materials, hard surfaces, boundary fencing, refuse storage and recycling, cycle and car parking facilities and the access and turning provision are included with the application; all that is needed is conditions requiring that they be carried out as shown, keeping pedestrian visibility splays clear of obstruction and, in the case of the car parking, appropriately managed. Third parties are concerned about traffic generated by the development but I have no evidence to show that this would be any greater than that generated by the previous use.
19. Details of the soft landscaping of common parts, measures to provide on-site renewable energy, noise insulation and noise emission from any plant installed in the B1 units, ground decontamination, external lighting and archaeological works are not provided with the application. These measures would be needed to comply with various UDP policies. Limitations on the hours of operation of the business units would be needed to accord with government advice contained in Planning Policy Guidance Note 24 but I am not convinced that construction or demolition method statements would be necessary in view of their likely duplication of other legislation. I have no information to justify any condition requiring measures to deal with air pollution.

P. W. Clark

Inspector

Conditions

- 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 the details of external materials, hard surfacing and boundary treatment shown in the illustrations submitted on 23 October 2008 and in the approved drawings.
- 3) Notwithstanding the provisions of the unilateral undertaking dated 16 November 2009 the development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of PPS3 or any future guidance that replaces it. The scheme shall include:
 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than three three-bedroomed units and four two-bedroomed units;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 4) The development hereby permitted shall not be occupied until the facilities for refuse storage and recycling, car and cycle parking, access and turning have been constructed in accordance with the details shown on the approved drawings. The facilities shall thereafter be retained for their intended purpose.
- 5) Prior to the occupation of any part of the development details of the management of the parking spaces shall be submitted to and approved in writing by the local planning authority. The parking spaces shall thereafter be managed in accordance with the approved details.
- 6) No gate shall be erected across the vehicular access to the site.
- 7) Within pedestrian visibility areas on either side of the access measured 2m along the back edge of pavement and 2m along the kerb line of the access no object shall be permitted to exceed a height of 0.6metres.
- 8) No external lighting shall be installed without the prior written approval of the Local Planning Authority.
- 9) No development shall take place until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been approved in writing by the local planning authority.

- 10) No development shall take place until full details of soft landscaping to communal areas have been submitted to and approved in writing by the local planning authority. The details shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme. These works shall be carried out as approved prior to the occupation of any part of the development or in accordance with the approved programme.
- 11) No development shall take place until details of measures to achieve a 20% reduction in carbon dioxide emissions from the use of on-site renewable energy production (which must be compatible with the London Borough of Merton's monitoring system) have been submitted to and approved in writing by the local planning authority. The baseline for such calculations is to be the current Building Regulations at the date of this permission together with the carbon dioxide emissions associated with other energy uses not covered by the Building Regulations. The development shall be constructed in accordance with the approved details which shall be permanently retained thereafter.
- 12) Construction work shall not begin until a scheme for protecting the proposed dwellings from noise from the external environment has been submitted and approved in writing by the local planning authority; all works which form part of the scheme shall be completed before any dwelling is occupied.
- 13) Before any plant and/or machinery is used in any of the B1 units approved, it shall be enclosed with sound-insulating material and mounted in a way which will minimise transmission of structure borne sound in accordance with a scheme to be approved in writing by the local planning authority.
- 14) The level of noise emitted from any B1 unit shall not exceed 2dBA above the background noise level, L90dBA (5 minute measurement period), as measured at the nearest residential property and there shall be no increase in one third octave band dB between 50 Hz and 160 Hz.
- 15) Prior to the commencement of development; a detailed site investigation shall be completed to survey and assess the extent of potential ground contamination on the site and from the surrounding environment (including any controlled waters), considering historic land use data and the proposed end uses; the site investigation report (detailing all investigative works and sampling, together with the results of analysis, risk assessment to any receptors and proposed remediation strategy detailing proposals for remediation) shall be submitted to and approved in writing by the local planning authority. The approved remediation measures/treatments shall be implemented in full prior to the first occupation of any residential unit hereby approved.
- 16) No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the B1 units outside the following times 08.00 – 23.00.

APPEARANCES

FOR THE APPELLANT:

Christine Sullivan BSc MRTPI
Jason Watkins RIBA

Principal, Sullivan Land and Planning
jdw architects

FOR THE LOCAL PLANNING AUTHORITY:

Eben van der Westhuizen
Joyce Ffrench
David Maples

Case officer, London Borough of Merton
Planning technician, London Borough of Merton
Senior Housing Development Officer, London
Borough of Merton

DOCUMENTS

- 1 Notification of date, time and place of hearing
- 2 Extracts from Mitcham town centre development brief
- 3 Mitcham Cricket Green Conservation Area Design Guide Nov 1996
and extract from Conservation Area appraisal 2007
- 4 Merton UDP policy U3



Costs Decision

Hearing held on 24 November 2009
Site visit made on 24 November 2009

by **P W Clark MA MRTPI MCMI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
15 December 2009

Costs application in relation to Appeal Ref: APP/T5720/A/09/2109245 360 London Road, Mitcham, Surrey CR4 3ND

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Majorlink Ltd for a full award of costs against the Council of the London Borough of Merton.
- The hearing was in connection with an appeal against the refusal of planning permission for the demolition of an existing commercial unit and the development of a part two, part three and part four storey building comprising two ground floor B1 commercial units, one first floor B1 commercial unit, eleven (4 x 3 bedroom and 7 x 2 bedroom) self-contained flats and three terraced properties (2 x 3 bedroom and 1 x 2 bedroom) along Broadway Gardens.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for Majorlink Ltd

1. The claim is made because of the Council's failure to substantiate the single reason for refusal. The decision was made contrary to officer recommendation and contrary to advice from almost all consultees. Circular 03/2009 paragraph B20 (which has superseded Circular 8/93, Annex 3 paragraph 9) advises that when this happens, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects.
2. The Council's concern appears to be that the proposal would appear discordant. Through the application process the applicant has been at pains to respond to concerns from the Council and has made amendments so as to ensure that the building proposed would not be discordant in context. In its appeal statement, the Council's elaboration of its ground for refusal is descriptive of the site but does not demonstrate or explain how the proposal would be more discordant than the current situation.

The Response by the council

3. The refusal is reasonable, specifying in detail why the application should be refused. During the appeal the Council has elaborated on the reason given and will continue to demonstrate its points on site.
 4. Assessment of character and appearance may be objective but assessment of harm is subjective. The Council has behaved reasonably in refusing the scheme as part of the democratic process. Its Design Review Panel is not a statutory body and the Council has the right to accept or to reject its advice.
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Conclusions

5. I have considered this application for costs in the light of Circular 03/2009 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
6. The Council's reason for refusal emphasises the effects of the proposal on views into and out of the conservation area. My site visit showed that from certain viewpoints, existing views would be blocked. Although I have come to the conclusion that these are not significant to the character and appearance of the conservation area and that the proposal has other positive effects which would preserve or enhance the conservation area, the evidence of my eyes shows that the Council's concerns were factually based. It follows that the Council has not behaved unreasonably and so no award of costs is justified.

Formal Decision

7. I refuse the application for an award of costs.

P. W. Clark

Inspector

