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## DEVELOPMENT AND PLANNING APPLICATIONS COMMITTEE

14 NOVEMBER 2024  
(7.16 PM - 9.11 PM)

PRESENT Councillor Stuart Neaverson (in the Chair), Councillor Matthew Willis, Councillor Edward Foley, Councillor Susie Hicks, Councillor Mike Brunt, Councillor Martin Whelton, Councillor Sheri-Ann Bhim, Councillor Billy Hayes, Councillor Dan Johnston, Councillor Nick McLean

ALSO PRESENT Jonathan Berry (Head of Development Management and Building Control), Tim Bryson (Development Management Area Manager), Calum McCulloch (Principal Planning Officer), Tara Butler (Programme Manager), Eben Van Der Westhuizen (Policy Planner), Jayde Watts (Democratic Services Officer)

PRESENT James Felton (Lawyer)  
ONLINE

### 1 APOLOGIES FOR ABSENCE (Agenda Item 1)

Apologies for absence were received from Cllr Barlow with Cllr McLean in attendance as substitute and Cllr Butcher with Cllr Brunt in attendance as substitute.

### 2 DECLARATIONS OF PECUNIARY INTEREST (Agenda Item 2)

There were no declarations of interest.

### 3 MINUTES OF THE PREVIOUS MEETING (Agenda Item 3)

RESOLVED: That the minutes of the meeting held on 15 August 2024 were agreed as an accurate record.

### 4 TOWN PLANNING APPLICATIONS (Agenda Item 4)

The Committee noted the amendments and modifications to the officer's report. The Chair advised that the agenda would be taken in the published agenda order.

Please note that members of the public, including the applicant or anyone speaking on their behalf, are expressing their own opinions and the Council does not take any responsibility for the accuracy of statements made by them.

### 5 10 PITT CRESCENT, WIMBLEDON PARK, SW19 8HS (Agenda Item 5)

The Planning Officer presented the report.

The committee received representation from two objectors who raised points including:

- This was not a family home, non-family members come and go.
- An outside laundry was created that could only be entered from outside of the house through a side door.
- Questioned why an elaborate office was required for a house that was not a family home but an open shared site.
- Number 8 and Number 10 formed one site.
- There were no buildings in the area beyond 30 square metres. If permitted, it would set a precedent.
- Was supposed to be a home office but was now a self-contained accommodation which was not a permitted development.
- If the applications were looked at in their entirety previously, it would not have come to committee and should not be considered as an acceptable development.
- Applicant also owned Number 8 and it was improbable that they needed the extra space for a family of 4.
- Do not have evidence of other people living on the premises but this was outside the permitted development.
- No other properties in the area had living accommodation at the end of their gardens.

The committee received representation from Cllr Jil Hall who raised points including:

- The building constituted overdevelopment and was far too big for the allocated plot.
- Initially built as garden offices but were now self-contained accommodation which was in breach of the planning rules.
- Understood that a condition of a legal agreement could be issued so that the accommodation could not be rented out but how would this be enforced. Notice of a planning enforcement inspection would be given which would allow for arrangements to be made to make it look as if the accommodation was being used by family members.
- This was a separate self-contained living accommodation that was being used and rented out on a commercial basis, which set an awful precedence for the area.
- The application did not meet the requirement set out in the Merton Council Small Site Toolkit.
- The applicant made changes in the knowledge that it could be used as an unlicensed HMO.

In response to questions raised by the committee, Planning Officers advised:

- Conditions were attached previously to similar applications, but they now used legal agreements which held more weight and was self-reinforcing. They could take enforcement action and if required, a legal injunction.

- A local planning authority could impose a condition which necessitated certain enforcement processes, which the applicant could appeal against. A legal agreement would be harder to challenge as the applicant would be a signatory who knew the exact terms and it would not be imposed by the local planning authority like a condition. The legal agreement carried greater weight than a planning condition with potentially more severe penalties and there was a general willingness from courts to enforce S106 agreements. Due to the nature of this application, a legal agreement felt necessary and would be defended if further evidence was received of the agreement not being complied with.
- The sanction available for the breach of a legal agreement was an injunction action taken by the courts.
- Enforcement complaints were received and been responded too. A planning contravention notice was served to seek more information and some of the enforcement challenges were challenged by the landowners. This was part of the reason they felt that a legal agreement was required, which the applicant has agreed to. Normal evidence were logs kept of arrivals and where possible footage, which was received but they were trying to put themselves in a different situation.
- The S106 agreement went with the land and building as approved. As long as the building was there the S106 would apply. The lifetime of the S106 would match the lifetime of the development.
- Previously, if a building was constructed without the correct consent, the local planning authority would have to enforce within 4 years or it would become immune. The government has changed this to 10 years which means they were well within the enforcement time. Before, if an outbuilding was constructed for residential purposes it had to be ancillary and still does, but ancillary used to require shared facility, such as a bathroom, that was missing from the outbuilding and provided by the main house. This became complicated over the years due to case law which allowed outbuildings to be ancillary with the full set of facilities. This has made it more difficult to police which has led to the situation of what was being proposed today was as good as they could do due to the lack of clarity and the need to assess on a case by case basis. When visiting the premises, it had a gym instead of a bedroom but could essentially have all facilities and be ancillary.
- Officers were unsure when the development was built but to the best of their knowledge it was at least a year ago.
- In relation to a query on damages, the legal advisor informed members that the normal remedy would be an injunction and if that wasn't complied with the landowner could ultimately be jailed. Damages would be unlikely here as very difficult to assess - they are more appropriate where for instance sums due under an agreement aren't paid/works are undertaken in default by the Council following a breach of an agreement.
- It was acknowledged that there was not a clearly defined boundary between the two sites but they were ultimately two separate properties and would be judged on the merits of two individual applications.
- In terms of neighbouring amenity, there would be an increase to intervisibility between the outbuilding and neighbours on either side. It was slightly more intrusive and as highlighted within the report, this was a relationship tested at

an appeal and was now considered acceptable. The boundary fencing did provide some mitigation.

- If this was an application for an independent dwelling on each property, the officer's recommendation would be for refusal. The current recommendation was very much based on this being ancillary and people living on the site as one unit so there wouldn't be excessive noise. If this was for two more dwellings at number 8 and 10, they would be asking members to refuse planning permission.
- Officers served a planning contravention notice with extensive questions which were answered. Inaccuracies would be an offence, they have to be factored into the balance of next steps which was to bring before members with the associated legal agreement.
- As there were two dwellings, the lack of a boundary would not be sufficient for an inspector to look at the overall impact and would be treated separately on the basis that a fence could be put up and if under 2 meters it wouldn't require planning permission. Officers have taken their approach as they believe that at appeal they would be treated as two separate units in association with two separate dwellings.
- Each application was treated on their individual merits so both applications would not need the same outcome but with similar application there would have to be a material reason on why one was allowed and the other was refused. Officers felt that there was not a strong enough reason to win at appeal if one was refused and the other granted permission.
- If refused, there was a risk that an inspector may consider conditions to be sufficient rather than a legal agreement. There was a willingness from the applicant to sign the legal agreement. If one was refused, they could submit details of the approved application and argue that it was a material planning consideration.
- As part of the appeals process, the planning inspector would allow planning officers to put forward conditions which could be similar to the legal agreement.

The Chair moved to the vote on the Officers' recommendation including the legal agreement: Votes For – 8, Against – 2, Abstentions – 0.

**RESOLVED:** That the Committee GRANTED permission subject to conditions and legal agreement.

6      8 PITT CRESCENT, WIMBLEDON PARK, LONDON, SW19 8HS (Agenda Item 6)

The Planning Officer presented the report.

The committee received representation from two objectors who raised points including:

- Evidence of current use indicated that the outbuilding was used as a separate dwelling and relying on a legal agreement to ensure proper use would be inappropriate.
- The development for No8 and No10 should be considered as a single site as the applicant and family were the same. The back building was accessed separately to the main dwelling via a shared keypad gate erected between the two houses.
- The applicant treated this as a single site despite two applications made.
- Point 313 of the officer's report in relation to self-use, this was evidence that could be disagreed with as opposed to a fact.
- The utility room was actually a bedroom, the building had separate access from the road, enclosed by a 6ft fence and accessed through a separate keypad operated gate. The gate was removed for the inspection and replaced 2 days later, evidence of this was sent and acknowledged by Planning.
- Couple have lived there for 18+ months and come and go separately from the main house which has been seen on camera. They move through the garden from No10 to No8.
- Have already mentioned the independent laundry for usage by a number of households at No10.
- The applicant runs a building company and knows the building rules and regulations but has ignored them.
- Should not fall on residents to observe compliance with a legal agreement they are unaware of.
- Requests that the committee view the unlawful back builds in conjunction with a major land development of the main house at No8, including a huge basement.
- The reluctance of a party wall agreement created doubt of compliance of a legal agreement.
- The combined site of No8 and No10 constituted a major overdevelopment for purely business purposes.
- What was built was not permitted development and consists of a living accommodation which was not there before, the first development of this type in Pitt Crescent.
- The building was in breach of planning regulations and should not have been allowed to progress to this stage. Retrospective planning permission was not acceptable.
- Despite resident concerns raised in August 2022, the garden brick building at No8 and No10 was still used as living accommodation. Enforcement action did nothing.
- Amenities were impacted due to noise and smoking.
- Lack of due process and transparency with local residents they felt frustrated and misled with no assistance from Planning Officers.
- There was a conflict of interest as the applicant was an employee of Merton Council.
- The applicant owns a building company and knows what was and what was not permitted development
- Have no faith in a legal agreement.

- The use of the house was not for a family dwelling but to double the size of the existing dwelling, adding a sub-basement and roof space; why do they need all this space, it was purely a development for rental income via an HMO.

The committee received representation from Cllr Jil Hall who raised points including:

- Understand this was a complex issue and appreciated the work taken by Planning.
- The garden properties were being used separate to the owners for rent and created an unlicensed HMO.
- Neither had an appropriate address, not subject to Council Tax or separate utility bills although being used as separate living accommodation.
- Could imagine the owner of No8 renting out the property and advising the renter on what to do if a planning officer came to visit. If this was done, Merton Council could not stop this.
- Very difficult to enforce.
- No10 do access the house to use the laundry room. This had outside access at the side but no further access to the house, did this make it ancillary?

In response to questions raised by the committee, Planning Officers advised:

- The conflict of interest was why the application came to committee to be heard in public.
- The approach taken by officers would give the strongest possible position should enforcement reach the court.
- Both facilities were capable of being lived in independently.

The Chair moved to the vote on the Officers' recommendation including the legal agreement: Votes For – 7, Against – 3, Abstentions – 0.

**RESOLVED:** That the Committee GRANTED permission subject to conditions and legal agreement.

## 7 PLANNING APPEAL DECISIONS (Agenda Item 7)

The report was noted.

## 8 PLANNING ENFORCEMENT - SUMMARY OF CURRENT CASES (Agenda Item 8)

The report was noted.

In response to questions raised by the committee, Planning Officers advised:

- Burn Bullock involved complex and serious discussions as the police investigation was still ongoing.
- The last officers heard was in August 2024, where the owner's legal advisers acknowledged that scaffolding was necessary as well as a temporary roof.

The architect advised that a design specialist and engineer had been on site and were going to come up with a specification and quotes, but they have heard nothing since.

- Although structurally sound, they feared from a building control perspective that the winter months would not help. The compliance period to get all of the unauthorised activity off of the site expired yesterday so the next step was to complete a compliance check. They have backing from the inspectorate to take it to court if needed.
- The White Hart was also of concern, they have now granted permission for commercial use on the ground floor and residential use above.

## 9 NEW LOCAL PLAN INTRODUCTION (Agenda Item 9)

The Programme Manager introduced the report.

In response to questions raised by the committee, the following was advised:

- New policies on HMO's have been included. The key thing was that adopting the plan helped to move forward with HMO guidance which complimented the existing Article 4 direction.
- The council is legally obliged to review plans every 5yrs. This plan has a 15yr life plan which runs until 2038 and would be reviewed within that time.
- Cabinet Members already committed the Council to do a Design Code for site CW2. When looking at Design Codes, officers reviewed the surrounding area but the site that the Design Code would focus on would be site CW2 as this was the only site in Colliers Wood allocated for a taller building. The power lines in Colliers Wood inhibit taller buildings so unless the powerlines went underground, which was not the plan, it was likely that Colliers wood would stay at the current levels.
- Thanks to residents, in planning terms South Wimbledon had been updated and although this may not filter through to the electoral register, it would be correctly referred to in planning terms.
- On the strategic height diagram in the Local Plan, in general Local Plans trump guidance such as SPD's but it was worth noting that the strategic heights diagram for Wimbledon was very much based on the Wimbledon SPD which went through substantial consultation.
- The Council's position was that Britannia Point should have remained the pinnacle which was not held up by Inspectors. Representation for Morden was received that asked for the Council building to be the pinnacle. This was not something that was in the local plan and wasn't the position taken. The Morden Policy did have a strategic heights diagram which looked at building heights in Morden, but they proposed regeneration of Morden and rather than expanding the town centre out, taller buildings will be proposed in the area.
- The work done for Morden did look at taller buildings, but it didn't measure by storeys as storey heights could be misleading, instead it was measured at 71meters.
- Cabinet Members have tasked the team to produce a design code for the active site at the land south of Britannia Point which was a priority moving

forward. The Inspectors were clear that national policy allowed provision for either the Council or applicant to do design codes so it didn't slow down development. They would then look at what else needed design codes, it was important to note that nationally design codes were now focussed on areas of change instead of everywhere in the borough. They would have to come back to members to confirm timescales and whether the Council led on every design code that came forward.

- The plan would only be adopted by resolution of Full Council on 20<sup>th</sup> November 2024. Tonight's report looked at whether this committee would recommend to resolve at the upcoming Full Council meeting.
- The submitted plan had more than 9 months of consultation by the time it was submitted to the Secretary of State in December 2021. Once with the Planning Inspectors, they were in charge and set the boundaries for consultation and engagement. At this point the Council were no longer able to modify the plan without the Inspectors say so. The examination went on for 3 years with 5 weeks of hearings, 7 weeks of post hearing consultations plus another 4 weeks on the map. On top of the 9 months, there was substantial consultation. Although the policy on Wimbledon Park was decided by the Inspector in the last year of the hearings, it still allowed for consultation for 7 weeks. Officers position was that there was substantial scope for engagement on the plan.
- The Council have to review plans every 5 years. This did not mean that the whole plan would be revised but each policy would be reviewed and assessed.
- Aware of concerns from Wimbledon Park Residents Association in regard to their consultation response. Consultation finished on 22<sup>nd</sup> March, their full response is on the website and was submitted to the Planning Inspectors by 16<sup>th</sup> May. Members can be assured that the Wimbledon Park Residents Association and everyone who participated in the consultation that full responses were received by the Inspectors and the Inspectors report made comments which stated that all representation were considered.
- After the 5 weeks of hearings, the Inspectors were clear that they wanted to see a site allocation for the existing AELTC site and a policy for Wimbledon Park. All representations were received by the Inspector and they would have reviewed them when coming to their conclusion.

The following recommendations were proposed and seconded:

**Recommendation C:** *That Full Council notes that in 1.2.43, once the new local plan is adopted, tall buildings should be deemed to be appropriate, if at all, only in those locations identified within the plan. DPAC note that Merton has not had a policy on tall buildings and will rely on new chapter D12.6, plus a range of impending design guides/codes for each site allocation to ascertain appropriate heights. As these could be prepared either by applicants or the council, we suggest that the preparation of these be a priority and that the borough looks to creating a Supplementary Planning Document on tall buildings as soon as possible.*

After discussion, Recommendation C was voted on as follows:

For - 2, Abstentions - 1, Against - 7



**RESOLVED:** That the Committee REFUSED the recommendation.

**Recommendation D:** *Development and Planning Applications Committee notes that the national requirement for 10% Biodiversity Net gain in planning applications will now be reflected in the Local Plan. It recommends Merton's Biodiversity Net Gain Group should have its membership reviewed every year to ensure that it contains officers with the correct and most up to date environmental expertise with which to contribute to strategy.*

After discussion, Recommendation D was voted on as follows:  
For - 2, Abstentions - 1, Against – 7

**RESOLVED:** That the Committee REFUSED the recommendation.

**Recommendation E:** *Council notes that the plan will run until 2038 and whilst there were four consultation rounds, policies like N8.1 were only able to be commented on for the first time in 2024. We therefore recommend that Merton adapt policies in the plan as things change, including through the use of supplementary planning documents, and that the borough does not commit any site to any one development.*

After discussion this recommendation was withdrawn.

**Recommendation F:** Acknowledge that it is important that residents trust the planning process and DPAC recommend engaging with ward councillors and resident groups from the pre-app stage where possible to facilitate schemes that come with community support.

After discussion this recommendation was withdrawn

The Chair moved to the vote on the Officers' recommendation: Votes For – 9, Against – 0, Abstentions – 1.

**RESOLVED:** That the Committee GRANTED that, considering the Cabinet recommendation on 4th November 2024, the Development and Planning Applications Committee advises that full council (20th November 2024):

- A. Adopts Merton's Local Plan and Policies Map to replacing Merton's Core Planning Strategy 2011 and Merton's Sites and Policies Plan 2014.
- B. Delegates authority to the Executive Director of Housing and Sustainable Development in consultation with the Cabinet Member for Housing and Sustainable Development to approve all the necessary adoption documents and other consequential matters in accordance with the appropriate Regulations permission subject to conditions and legal agreement.

11 MODIFICATION SHEET (Agenda Item 11)