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## Appeal Decision

Site visit made on 9 May 2017

by **Richard S Jones BA (Hons) BTP MRTPI**

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

Decision date: 14 June 2017

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### **Appeal A Ref: APP/T5720/W/16/3166164**

**218 Morden Road, South Wimbledon, London SW19 3BY**

- 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 Goldcrest Land (UK) Ltd against the decision of the Council of the London Borough of Merton.
  - The application Ref 16/P3254, dated 15 August 2016, was refused by notice dated 18 October 2016.
  - The development proposed is the demolition of the existing garages and redevelopment of the site to provide 4 x two storey residential Houses, including private amenity space, cycle parking and associated landscaping.
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### **Appeal B Ref: APP/T5720/W/16/3166166**

**218 Morden Road, South Wimbledon, London SW19 3BY**

- 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 Goldcrest Land (UK) Ltd against the decision of the Council of the London Borough of Merton.
  - The application Ref 16/P3252, dated 11 August 2016, was refused by notice dated 18 October 2016.
  - The development proposed is the demolition of the existing garages and redevelopment of the site to provide 4 x three storey residential Houses, including private amenity space, cycle parking and associated landscaping.
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## Decisions

Appeal A Ref: APP/T5720/W/16/3166164

1. The appeal is dismissed.

Appeal B Ref: APP/T5720/W/16/3166166

2. The appeal is dismissed.

## Preliminary matters

3. I have a working draft Statement of Common Ground for each of the appeal schemes, which have not been signed by either party. I have not therefore considered them further.
  4. At the time of responding to the Council's appeal statement, the appellant provided a signed Unilateral Undertaking (UU) for each of the appeal schemes. The Council was offered opportunity to comment on each. No response was received.
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5. The Council has subsequently confirmed that the third reason for refusal for both schemes incorrectly refers to Policy DM D20 of the Sites and Policies Plan and Policies Map (SPP) rather than Policy CS 20 of the LDF Core Planning Strategy (CPS). The appellant has been given opportunity to comment. No response has been received.

### **Main Issues**

6. The main issues for both appeals are:
- the effect of the development on the living conditions of neighbouring properties with particular reference to outlook, privacy, light and sunlight;
  - whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to the provision of external living space; and
  - whether a Section 106 Obligation is necessary to restrict future occupiers from obtaining parking permits.
7. A further main issue relating to Appeal B is whether the proposed development would provide acceptable living conditions for future occupants in terms of internal living space.

### **Reasons**

#### *Existing occupiers' living conditions*

#### Appeals A and B

8. The appeal proposals relate to alternative designs for the same backland site situated to the rear of Nos 214 to 218 Morden Road and Nos 49 - 53 Daybrook Road, which is currently occupied by two rows of garages. The appeal site also runs directly alongside part of the garden areas of 55 Daybrook Road and 206 Morden Road. Consequently, with the exception of the Church at 214 Morden Road, the appeal site is surrounded on three sides by residential gardens.
9. Appeal A seeks to redevelop the site for four, two-bedroom, two-storey terraced houses. Appeal B seeks planning permission for four, three-bedroom, three storey terraced houses.
10. I acknowledge that in both cases there may be an overall reduction in the built footprint and less hardstanding and that the existing outlook onto the garages is not attractive. Nevertheless, the garages are relatively low level and subservient in scale thereby allowing surrounding residents to easily see above them both from their dwellings and garden areas. Moreover, the existing extent of ground level hardstanding would unlikely be appreciated or affect neighbouring occupiers.
11. I also appreciate that efforts have been made to reduce the bulk of both schemes, particularly in respect of Appeal A, with the removal of one storey. Nevertheless the schemes would introduce built form of significantly greater scale and massing and imposing presence than existing.
12. The garden area of No 55 Daybrook Road would be most affected, as the full two or three storey built form of House 4 would immediately abut its side
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boundary. Here, the north east corner and blank side wall of even the two storey scheme would have a significant visual presence and its overall size and proximity would amount to a visually obtrusive, overbearing and oppressive structure which would dominate the outlook from that space in a manner which would be substantially worse than the existing situation. It follows that the harm would be significantly exacerbated by the three storey scheme of Appeal B.

13. I accept that the building would partly adjoin an existing shed in the rear part of the garden of No 55 and that the full depth of the building would be shared with the boundary to No 206. However, the majority of the building would be positioned alongside the garden of No 55 and notwithstanding the permanence of the existing shed, the access and approach to it would be dominated by the mass of the appeal schemes.
14. There would be some benefit to the occupants of No 55 by moving the existing built form further back into the appeal site. However, this would be minimal as in contrast to the appeal proposals the existing garages do not significantly protrude above the existing boundary wall. Consequently the existing garages have limited effect on the outlook from this garden area. Moreover, the effects of a 2m fence erected under permitted development rights would not be comparable to a two or three storey building.
15. Due to the lesser extent of the building immediately abutting the boundary of No 206 and the positioning of the trees within that garden, the effect on the occupiers of this property would not be as severe. This particularly applies to the three storey scheme which would step down in height at this point. Nevertheless, the harm would be material.
16. I accept that the overall scale of the two storey scheme is less than that of the surrounding residential properties, whilst the three storey scheme is of comparable scale. However, the comparison is with dwellings which front onto Morden Road and Daybrook Road, which are not backland in nature. It does not therefore follow that the same scale is appropriate in a backland position where there are many more competing and restricting aspects. Moreover, it would not be appropriate to use the commercial scale of the neighbouring car garage to justify the scale and massing for the proposed residential schemes with the associated harm I have described.
17. I acknowledge that no windows are proposed in the northern elevation of either scheme and that there has been a reduction in the glazing from the pre-application schemes. I also accept that the enclosures to the upper floor terraces of the three storey Appeal B scheme would prevent overlooking from the same. Nevertheless, despite the slightly oblique angles, the northernmost first floor bedroom windows of House 4 of Appeal B would look down the boundaries of the gardens of No 55 and No 206. Although those garden areas will already experience a level of mutual overlooking which is common to such areas, the appeal scheme would more obviously and more conspicuously announce the possibility of overlooking than that which presently takes place. It would not be appropriate to rely upon the conventional relative time of use of a garden and bedroom for the acceptability of overlooking as this would only be within the control of future occupants.
18. Whilst not sufficient on its own to warrant withholding planning permission, the loss of privacy in combination with the harm that would be experienced in

terms of outlook, would substantially reduce the attractiveness and enjoyment of both neighbouring garden spaces and No 55 in particular.

19. The same first floor windows for the Appeal A scheme would serve bathrooms and as such could be obscure glazed. Although this would overcome concerns regarding loss of privacy, my concerns regarding outlook for Appeal A would remain and this would be sufficient on its own to warrant withholding planning permission.
20. I have noted the appeal decision<sup>1</sup> referred to by the Council relating to No 35 Borough Road, however, the site plan submitted by the appellant demonstrates that layout of that scheme materially differs to that currently before me.
21. The next closest garden to the appeal site is that of No 214 Morden Road, but, as noted, this serves a church rather than a residential property. The proposals would not therefore cause unacceptable harm to users of that space. The gardens of Nos 216 and 218 Morden Road would be separated by their rear parking area and associated garages and would not be unduly affected. Moreover, the nearest parts of the rear gardens of Nos 49 to 53 would be separated to the main built form of the appeal proposals by the depth of the gardens of the appeal dwellings. Given also the viewing angles, unacceptable harm would not arise in terms of outlook or overlooking.
22. Given the separation between the appeal dwellings and the rear of the dwellings along Morden Road and Daybrook Road, no unacceptable harm would arise in terms of outlook or overlooking from within those dwellings. Moreover, the supporting Daylight and Sunlight Reports confirm that the neighbouring dwellings will continue to receive good levels of natural daylight and sunlight, above the Building Research Establishment Guidelines<sup>2</sup>. I find no reason to disagree with these conclusions. However, because of the height and proximity of the proposals to the garden of No 55 in particular, it is inevitable that the proposals would result in some additional overshadowing but this would not be to an extent that would warrant withholding planning permission.
23. Any reduction in disturbance arising from the use of the existing garages would not outweigh the above stated harm to the living conditions of the occupiers of the neighbouring properties.
24. I therefore find that the proposal would amount to an unneighbourly form of development which would unduly diminish the living conditions of neighbouring residents, contrary to Policies 7.4 and 7.6 of the London Plan, CPS Policy CS 14 and SPP Policy DM D2. These policies seek, amongst other matters, to ensure appropriate levels of privacy, to both proposed and adjoining buildings and gardens and to protect existing development from visual intrusion.
25. The Council has confirmed that Policy DM D3 (alterations and extensions to existing buildings) is incorrectly referred to and no longer forms part of its first reason for refusal. I have not considered this policy further. The appellant makes reference to compliance with London Plan Policy 7.2 however, this relates to accessible and inclusive design and therefore has limited relevance to this main issue.

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<sup>1</sup> Appeal Ref: APP/T5720/W/16/3156860

<sup>2</sup> Building Research Establishment Guidelines, Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice, 2011

*Future occupiers' living conditions*

26. London Plan Policy 3.5 states that housing development should be of the highest quality internally and externally. SPP Policy DM D2 expects, amongst other matters, proposals for all development to ensure appropriate provision of outdoor amenity space, whether public, private or communal which accords with appropriate minimum standards and is compatible with the character of surrounding areas. Paragraph 6.17 of the SPP explains that the council will seek a minimum garden area of 50m<sup>2</sup> as a single usable regular shaped amenity space.

Appeal A

27. The appellant states that the rear garden areas would be 41m<sup>2</sup> for House 1 and 43m<sup>2</sup> for Houses 2-4. These figures are not exactly the same as those provided by the Council but the differences are not significant. House 4 would also benefit from a 14m<sup>2</sup> front garden.

28. None of the Houses would therefore meet the 50m<sup>2</sup> requirement of SPP Policy DM D2 in a single amenity space. Nevertheless, all of the Houses would benefit from a flat, relatively private garden of conventional shape and positioning at the rear. Moreover, the appellant has provided a layout to demonstrate that the rear garden would be physically capable of meeting the reasonable day to day needs and expectations of occupants by accommodating clothes drying facilities, play equipment as well as seating and facilities for outdoor dining, along with reasonable levels of circulation space.

29. Whilst the spaces at the front of the dwellings cannot be considered **private** amenity space, they would, nevertheless, provide dedicated space for cycle storage and refuse storage, which would not therefore eat into the main rear garden space. The appeal site is also located opposite the extensive area of Morden Hall Park. I appreciate that this does not amount to private amenity space provision, but its relative ease of access and range of facilities is material and further weighs in favour of the appeal proposal on this issue.

30. The appellant has also made reference to the London Plan Housing Supplementary Planning Guidance (Housing SPG) Standard 26 which states that a minimum of 5m<sup>2</sup> of private outdoor space should be provided for 1-2 person dwellings and an extra 1m<sup>2</sup> should be provided for each additional occupant. The appeal proposal would therefore more than meet the requirements of Standard 26. Although the Housing SPG does not form part of the development plan, it is nonetheless a material consideration which weighs in favour of the appeal proposal.

31. The Council has made reference to an appeal decision<sup>3</sup> at 164 London Road, however the evidence provided by the appellant demonstrates that size and usability of that scheme is materially less than that currently before me. Similarly, the appellant's evidence in relation to the decision relating to 18 Arras Avenue<sup>4</sup> demonstrates that the overall amount of outdoor amenity space would be materially less than the appeal scheme. I have also noted the appeal decision referred to by the Council at Wyke Road<sup>5</sup>. However, the plans submitted by the appellant show that the amenity spaces for that scheme were

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<sup>3</sup> Appeal Reference: APP/T5720/W/16/3158068

<sup>4</sup> Appeal Reference: APP/T5720/14/2228863

<sup>5</sup> Appeal Reference: APP/T5720/W/16/3149922

split to such a degree that they would not be of sufficient size or quality. Accordingly I do not find that the decisions referred to by the Council's support its position in the particular circumstances of this case.

32. I have also had regard to the other appeal decisions<sup>6</sup> and planning permissions<sup>7</sup> granted by the Council and other London Councils as referred to by the appellant. However, I have limited details of these schemes and therefore cannot be certain that comparable circumstances exist. In any case, I have determined the appeal on its own merits.
33. Therefore, in the particular circumstances of this case, I am satisfied the Appeal A scheme would provide an appropriate provision of outdoor amenity space and as such would provide acceptable living conditions for future occupants. Accordingly, I do not find unacceptable conflict with Policy 7.6 of the London Plan, CPS Policy CS 14 or SPP Policy DM D2, insofar as these policies seek to ensure appropriate provision of outdoor amenity space.

#### Appeal B

34. The Appeal B scheme would provide three bedroom accommodation and as such would likely be more attractive to families. The appellant states that the rear garden areas would be 40m<sup>2</sup> for House 1 and 41m<sup>2</sup> for Houses 2-4. Again, these figures are not exactly the same as those provided by the Council but the differences are not significant. An additional 10m<sup>2</sup> of amenity space would also be provided in the form of second floor terrace areas for each of the houses. House 4 would also benefit from a 14m<sup>2</sup> front garden.
35. In overall terms therefore the 50m<sup>2</sup> requirement of SPP Policy DM D2 would be met, although it would not be provided as a single amenity space as envisaged by SPP paragraph 6.17. Nevertheless, the appeal proposal would provide the majority of its amenity space by way of a flat, relatively private garden of conventional shape and positioning at the rear. Moreover, the appellant has also provided a layout to demonstrate that the rear garden would be physically capable of meeting the reasonable day to day needs and expectations of occupants by accommodating clothes drying facilities, play equipment as well as seating and facilities for outdoor dining, along with reasonable levels of circulation space. The rear gardens would also be supplemented by the terrace areas and the usability of the overall amenity space provision would not be unduly affected by its physical separation.
36. The same considerations set out above for Appeal A relating to dedicated cycle and refuse storage at the front of the property, the proximity of Morden Hall Park and the compliance of the scheme to Housing SPG Standard 26, also apply to Appeal B and in doing so, further weigh in its favour. I also draw the same conclusions for Appeal B as I have for Appeal A regarding the appeal decisions referred to by the Council and the appellant.
37. In terms of the internal accommodation, London Plan Policy 3.5 sets out the minimum space standards for new developments, adopted from the nationally described space standard<sup>8</sup>. The minimum standard for a three bedroom, six person, three storey dwelling is a gross internal floor area of 108m<sup>2</sup>. The shortfall of Houses 2-4 would therefore be less than 1m<sup>2</sup> and in the particular

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<sup>6</sup> Appeal References: APP/T5720/W/16/3147821; APP/T5720/W/16/3147830; and APP/U5930/A/13/2204225.

<sup>7</sup> Planning permission references: 16/P0004; 14/P4287; 14/P4288; and 15/P2177

<sup>8</sup> DCLG. Technical housing standards - nationally described space standard. 2015

circumstances of the appeal proposal would not be sufficient to warrant withholding planning permission. House 1 would exceed the minimum space standards. I am satisfied therefore that the proposal would provide adequate internal living accommodation.

38. Nevertheless, the appellant has provided amended floorplans to illustrate that the third bedroom for Houses 2-4 would fall below 12m<sup>2</sup> and as such should be considered as a five person dwelling. The Council say that they have not seen these plans and are unable to comment on them. In any case, in my view the amendments would not materially affect the opportunity to provide accommodation for six persons. Therefore, whilst I am satisfied that the scheme is essentially that considered by the Council and on which interested people's views were sought, given my findings for the scheme as submitted to the Council, it is not necessary to consider whether or not the amended plans should be accepted.
39. Accordingly, I conclude that the Appeal B scheme would provide acceptable living conditions for future occupants and in this regard would not result in unacceptable conflict with Policies 3.5 and 7.6 of the London Plan, CPS Policy CS 14 or SPP Policy DM D2.

#### *Parking*

#### Appeals A and B

40. There is no scope within the appeal site for car parking and Morden Road is a designated 'red route', where vehicle stopping is prohibited. Nevertheless, the site has a very good Public Transport Access Level (PTAL) 6a rating and the Council acknowledge that the site is ideally suited to a 'car-free' scheme. I agree. However, the Council's third reason for refusal is that in the absence of a UU which would restrict future occupiers of the houses from obtaining parking permits in controlled parking zones (CPZ) which operate within the locality, the proposal would have a detrimental impact on the safety and convenience of other road users and the free flow of traffic.
41. The appeal site itself does not fall within a CPZ and neither is it conveniently located to the nearest provision along Dorset Street, so as to make it attractive for future occupiers to seek to park in that location. Limited evidence is provided by the Council as to why in these circumstances the alleged harm would arise. Also the Council did not respond to the opportunity to comment on the UU's provided by the appellant for both appeal schemes which would covenant to make the developments permit-free. Therefore on the basis of the evidence before me I do not find conflict with CPS Policy CS 20 or London Plan Policy 6.13, which state, amongst other matters, that permit-free developments in areas within CPZ's benefiting from good access to public transport, facilities and services and/or a town centre location, will be supported.
42. It follows that the UU's are not necessary to make the development acceptable in planning terms. As such, they would not accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework. I have not therefore taken the UU's into account in reaching my decision.

### **Other matters**

43. The Council consider that the principle of residential development at this site is acceptable and I find no reason to disagree.
44. Taken in isolation the design of the proposed dwellings are acceptable and as such would not be harmful the character and appearance of the area. Moreover, I take no issue regarding the density levels of the proposed scheme, which in accordance with London Plan Policy 3.4 would optimise housing output for this brownfield site. I also acknowledge the benefits of the provision of energy efficient homes. In addition, the site benefits from a highly sustainable location and it is likely that future occupants would make a positive, albeit modest contribution to supporting the local economy and the utilisation of local services. These are all positive aspects which contribute towards the environmental and economic dimension of sustainable development.
45. The proposal would also result in a boost housing supply and would add family homes to the housing stock. However, the effect on the living conditions of the occupants of neighbouring properties would outweigh the benefits I have identified such that the proposal would not, in overall terms, meet the social objectives of sustainable development. Accordingly, the proposal would not amount to sustainable development, having regard to the advice at paragraphs 7 of the Framework. Not being sustainable development, it follows that no such presumption, as anticipated by paragraph 14 of the Framework, applies.
46. The second reason for refusal for both appeals comprises a note to the applicant, rather than a reason for refusing planning permission. I have noted the appellants' concern regarding the way in which the planning applications were handled by the Council with reference to paragraphs 186 and 187 of the Framework and the Council's response to the same. However, these are not matters for these appeals which I have determined afresh and on their planning merits.

### **Conclusion**

47. For the reasons explained, and taking all other matters into consideration, I conclude that the appeals should be dismissed.

*Richard S Jones*

INSPECTOR