
Appeal Decision

Hearing held on 17 June 2014

Site visit made on 17 June 2014

by **Kenneth Stone Bsc(Hons) DipTP MRTPI**

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

Decision date: 4 August 2014

Appeal Ref: APP/T5720/A/14/2216963

34-40 Morden Road, London SW19 3BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Gareth Jones (Jones Granville) against the decision of the Council of the London Borough of Merton.
 - The application Ref 13/P1898, dated 18 February 2013, was refused by notice dated 25 October 2013.
 - The development proposed is described as an 'application for outline planning permission considering access and scale for the demolition of the existing two storey buildings (providing 1 two bedroom house, 2 no. 1 bedroom flats and 7 studio flats) at 34-40 Morden Road and erection of a 8 storey building providing an "aparthotel" consisting of 31 serviced apartments (10 studio units, 19 1 bedroom units and 2 no. 2 bedroom units) providing short term accommodation together with 9 residential flats (4 no. 1 bedroom, 4 no. 2 bedroom and 1 no. 3 bedroom flat).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline. The appellant's statement of case refers to layout as a matter to be determined at this stage however it was clarified at the hearing that this was not the case and that the proposal was as identified on the application form which made it clear that approval is sought at this stage for the matters of access and scale, but not for landscaping, appearance or layout.
3. The application was also accompanied by a number of plans providing a site plan, floor layouts of the proposed building, a side elevation, a section and a street scene. These have been referred to as illustrative by both the appellant and the Local Planning Authority albeit that there is no such annotation on the plans. At the hearing it was clarified that they should be treated as illustrative as the matter of layout was not a matter to be determined at this time. The appellant confirmed the plans show the approximate location of the building footprint, its building lines along The Path and Morden Road, the point of access into the site and an illustration of how the floor plate of the upper floors could be laid out to demonstrate how the scheme could be accommodated on the site. I have dealt with the appeal on that basis treating the floor layout plans, elevation and section as illustrative.

4. The description of development I have used in the banner heading is taken from the appeal form which reflects that on the decision notice. This more accurately describes the scale, quantum and nature of the development. At the hearing the appellant confirmed that fundamentally there was no change to the development, that this was an appropriate description and that there was no confusion over the nature and form of the development. The Local Planning Authority and interested parties agreed. I have dealt with the appeal on the basis of this description of development.
5. At the hearing the appellant submitted a copy of a signed s106 Unilateral Undertaking primarily in respect of parking and parking permit holders. I return to this matter below.
6. The appellant also provided at the hearing a signed copy of a Statement of Common Ground and I have had regard to this in my consideration of this appeal.
7. I have had regard to the Government's recently published Planning Practice Guidance (PPG) but its provisions have not materially affected my considerations in this case.

Main Issues

8. The main issues in this appeal are the effect of the proposed development on:
 - The character and appearance of the surrounding area; and
 - The living conditions of the residents of surrounding properties with particular regard to outlook.

Reasons

Character and appearance

9. The appeal site presently accommodates a two storey terrace of modest 19th Century houses in residential uses. It is located on the western side of Morden Road, which at this point forms part of the heavily trafficked A219, and the junction with The Path, a short residential cul-de-sac that also provides access to Nelson Trade Park, a designated industrial area that lies to the south. Opposite the site, to the south east, is Nelson Gardens a small public park and beyond which lies an extensive industrial area, Morden Industrial Area, identified as a Strategic Industrial Location (SIL). To the north Morden Road is fronted by predominantly four storey buildings, which on its eastern side are in the form of residential mansion blocks set back from the road frontage while on its western side are a mix of building forms and designs accommodating residential and commercial uses.
10. The proposed building would be substantially taller than the surrounding buildings. In the immediate vicinity of the site those fronting Morden Road provide a strong visual sense of scale which in my view is characterised by buildings of up to four storeys. The hinterland beyond particularly to the west dropped to two storey residential streets and in this context the introduction of an eight storey building, albeit that the top floor may be recessed, in such a prominent location would be particularly intrusive and out of keeping.
11. The location of the building on a line taken from the frontage of Spur house, which is some distance to the north, would place the building closer to the

highway than the immediately neighbouring buildings and than the existing properties. This forward position would accentuate the scale of the building on this prominent corner location and increase the dominance of the building in the context of the immediately adjacent buildings.

12. Whilst the Nelson Trade Park accommodates larger buildings these are similarly scaled in terms of height to those existing on Morden Road and are set back from the road such that they do not significantly change the overall height of buildings in the area. There are residential tower blocks on the High Path estate some distance to the east, whilst they are visible in longer views and in the skyline they are read as discreet elements that do not directly affect the appearance of the Morden Road street scene. The church spire of St John the Devine Church was also drawn to my attention however this is of limited scale in comparison and is screened by trees, albeit less so in winter months.
13. Much has been made of a recent appeal decision for Spur House¹ where permission was granted for a 9 storey building and where the appellant contends that the Inspector found such a building acceptable in a similar context. However, from my reading of that decision it appears the Inspector gave significant weight to the existing building which was already taller than those surrounding, the negative impact it had on the character and appearance of the area and to the benefits associated with the replacement or refurbishment of that building. None of these factors are relevant in this appeal. Even so I have considered the impact of that permission in changing the character of the area but see this as an isolated building located closer to a commercial centre which does not significantly change the relatively homogenous four storey scale of buildings fronting Morden Road in the location of the appeal site.
14. Concern has been expressed about the impact of the proposed building on Nelson gardens. However, given the separation across Morden Road and the urbanised location, although the building would be visible especially in winter months, it would not harm the function or nature of that space.
15. The London Borough of Merton Core Strategy, July 2011 (CS) Policy CS14 – Design, includes reference to tall buildings. Notwithstanding the Council Officer's report I viewed the proposed building as a building with greater vertical emphasis, almost twice the height of the tallest of those surrounding buildings, and therefore in my view 'substantially' taller. The proposed building would therefore qualify as such in terms of this policy. The policy directs tall buildings to the town centres of Colliers Wood, Morden and Wimbledon subject to criteria related to the protection of the townscape and wider heritage. The following justification section at paragraph 22.22 however also notes that designated industrial locations are sensitive areas of the borough where taller buildings may be appropriate. The appellant contends that given the proximity of Nelson Trade Park and Morden Industrial Area, designated industrial areas, that tall buildings could be located in these locations and which would therefore mean that the proposed building was not out of keeping. However, the justification includes a caveat that the presence of these buildings should not have a detrimental impact on the areas outside the designated industrial area. There are no significantly taller buildings presently in the industrial areas that affect the character of the area surrounding the appeal site and where there

¹ APP/T5720/A/09/2118978

are larger buildings these are well within the industrial location of the Morden Industrial Area and have limited impact on the surrounding area.

16. The site lies within the 'Wandle Valley Sub-Area' as identified on Figure 8.1 Key Diagram in the CS and which Policy CS5 identifies as a strategic fulcrum linking the east and west of Merton. Point d of CS5 has the objective of maximising business and employment opportunities and the appellant contends that this will add to the pressure for increases in building heights in appropriate locations in this area. However, as stated above this will be within the context of other policies in the plan namely CS14 and that if tall buildings are proposed they would need to support the industrial or business function and have regard to the surrounding distinctive character.
17. For the reasons given above I conclude on this main issue that the proposed development would result in material harm to the character and appearance of the surrounding area. It would therefore conflict with policies 3.5 and 7.4 of the London Plan 2011, Policy CS14 of the CS and Policies BE16 and BE22 of the Merton Unitary Development Plan, 2003 (UDP). Collectively these seek to ensure developments respect and reinforce the local distinctive patterns of development and character which contribute to Merton's sense of identity. This is consistent with the National Planning Policy Framework (the Framework) and in particular paragraphs 17, 56 and 60 which require high quality design that reflects local distinctiveness.

Living conditions

18. The appeal site is separated from the properties fronting The Path by a narrow unmade access road. The proposed building would be sited close to the rear boundary and at this point would accommodate a service yard area with two floors of accommodation above; the roof of which it is illustrated would be used as a terraced area. It was suggested that a screen could be added to the terrace to reduce overlooking however this would add further to the height and impact of the likely bulk of the building. The height and bulk of this part of the building sited so close to the boundary would dominate the views from the rear gardens of the adjoining properties in The Path and would be particularly obtrusive and oppressive. Whilst it is illustrated that the main part of the building would be stepped back before rising to 5 and then 8 storeys the building would be only slightly more than 3m away at three storeys stepping back to some where slightly in excess of 10m at 5 storeys. Given these short distances the siting of a building of the scale proposed would dominate and be overbearing for the occupants of those properties significantly harmful to the outlook they presently enjoy.
19. The impact on the outlook of the occupiers of 30 Morden Road would not be affected to the same degree given the relationship of that building with the proposed building. Whilst there may be some intrusion into their views this would not be so significant as to warrant resisting the scheme.
20. At the hearing residents reiterated their concern about the impact of the development on their living conditions and in particular matters related to noise, light pollution, daylighting, sunlighting, privacy and parking. The Council had not identified these matters as reasons for refusal and had addressed the issues in the officer's report to Committee. I am satisfied that the proposed use as an apart-hotel and residential flats would not introduce an activity that would add significantly to the local noise environment. The site is adjacent to a

heavily trafficked road and an industrial location and the comings and goings associated with a residential and quasi - residential use would not to my mind introduce unacceptable noise and disturbance. The intensity of activity may be greater than presently exists but the parking and servicing area is enclosed and the terraced areas and open windows of residential or serviced apartments would not be unduly disturbing in this context.

21. No evidence was provided with regard to light pollution and no specific concern identified it appeared more an assertion that more light would come from the windows of the properties. Given the lighting in this urban area and general street lighting this would not be excessively intrusive. With regard to daylighting and sunlighting again the concern was expressed primarily through assertion. The appellant had submitted with the application a report by GIA entitled Daylight, Sunlight and Overshadowing which demonstrated that there would be no substantial breaches of daylight or sunlight to any of the surrounding properties. During the site visit I was satisfied that this was a reasonable conclusion.
22. Given the relationship with the adjoining properties and the orientation of the proposed development, with the likely aspect for the scheme to be to the front and rear, privacy could be adequately secured through appropriate design measures. The terrace areas could similarly be secured and privacy screens designed and provided to ensure there was no significant impact on the privacy enjoyed by occupiers of adjoining properties.
23. I deal with the issue of parking below.
24. For the reasons given above, whilst I have found that there is no significant harm to matters of daylight, sunlight, noise and light pollution I have found that the proposed development would result in material harm to the living conditions of the occupants of the neighbouring properties 2a and 4a The Path with particular reference to outlook. Consequently it would conflict with policy BE15 of the UDP which expects developments to protect amenities from visual intrusion. This is consistent with the Framework and in particular paragraph 17 which requires a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

25. The appellant submitted a signed Unilateral Undertaking (UU) at the Hearing. This sought to restrict the occupation of the development to prevent people with a parking permit occupying the development. Parking in the immediate locality of the site and in the surrounding streets is limited to parking permit holders. There is limited parking available at the development. In effect the obligation makes the development car free which given the high public transport accessibility level (PTAL) is not unreasonable. The UU is directed at a restriction on the occupation of the land and appears suitably drafted to be within the context of sec 106. The obligation will ensure that occupiers of the development would not utilize existing parking spaces allocated for permit holders and would not therefore affect local residents or highway safety. I am satisfied that the obligation is necessary, directly related to the development and reasonable. In this regard I am satisfied the obligation is compliant with regulation 122 of the CIL Regulations and paragraph 204 of the Framework.

26. Whilst I have taken account of the obligation it seeks to mitigate a consequence that would only result from the development and as such is not a direct benefit to be positively weighed in support of the development.
27. The appellant has identified a number of positive benefits that it is contended would support the appeal, these can be grouped into issues. Firstly those related to the re-development of the site for a more intense form of development. The proposal would replace aging residential stock with a residential and apart hotel use. Whilst there is some benefit associated with the re-use of urban land this needs to be appropriate in context and in keeping with the character of the area which I have concluded above this proposal is not.
28. Secondly, it is a more sustainable development both in terms of the building construction and the reliance on other modes of transport than the private car. Given the PTAL level and the modern standards of construction required of new development this would be expected of any development and would be required to meet normal planning criteria. I have not therefore afforded these benefits significant weight. Thirdly, the economic benefits associated with the development. Given the limited employment opportunities and levels of occupation these benefits are not significant. Fourthly, it is stated the development would introduce passive surveillance with on-site security and CCTV. This is of limited benefit as it would only address the immediate environs of the new development.
29. It is also contended that there would be no material increase on public services however the lack of harm is not a benefit. Finally it is suggested there would be an improvement to the street scene this is obviously a subjective assertion and one with which I do not agree given my conclusions above.

Conclusions

30. For the reasons given above I conclude that the development would conflict with the development plan and result in material harm. None of those matters identified as benefits of the scheme outweigh that harm and therefore the appeal should be dismissed.

Kenneth Stone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Justin True BA (Hons), Dip TP,
MRTPI

John Atkinson Dip Arch, RIBA DMWR Architects Ltd

Gareth Jones Jones Granville

FOR THE LOCAL PLANNING AUTHORITY:

Leigh Harrington BA (Hons), Planning Officer London Borough of Merton
MA.

INTERESTED PERSONS:

Councillor Andrew Judge Abbey Ward Councillor, London Borough of
Merton

Andrew Boyce Local Resident, Flats at 30 Morden Road.

Christine Hart Local Resident, The Path.

Derek Manning Local Resident, The Path.

Peter Barry Local Resident, Melbourne Road.

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of a signed and executed Unilateral Undertaking submitted by the appellant.
2. Original copy of a signed Statement of Common Ground submitted by the appellant.
3. Copy of e-mail correspondence from City of London regarding their classification of 'apart-hotels' submitted by the Local Planning Authority
4. Extracts from the London Borough of Merton Core Strategy, July 2011 providing Key Diagram 8 (page 32) and Policy CS5 - Wandle Valley Sub-Area and the following justification (pages 70 to 75) submitted by the appellant.

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