

Committee: Planning Applications

Date: 17<sup>th</sup> September 2015

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Wards: All

## **Subject:** Planning Appeal Decisions

Lead officer: Head of Sustainable Communities

Lead member: Chair, Planning Applications Committee

Contact officer: Stuart Humphryes

### **Recommendation:**

**That Members note the contents of the report.**

#### **1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 For Members' information recent decisions made by Inspectors appointed by the Secretary of State for Communities and Local Government in respect of recent Town Planning Appeals are set out below.
- 1.2 The relevant Inspectors decision letters are not attached to this report, but can be seen on the Council web-site with the other agenda papers for this meeting at the following link:

[http://www.merton.gov.uk/council/committee.htm?view=committee&com\\_id=165](http://www.merton.gov.uk/council/committee.htm?view=committee&com_id=165)

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## **DETAILS**

Application Number: **15/P0188**  
Site: 1A Gordondale Road, London SW19 8EN  
Development: Partial demolition of B1 building and erection of C3 2 bed dwelling  
Recommendation: Refuse Permission (*Delegated Decision*)  
Appeal Decision: DISMISSED  
Date of Appeal Decision: 2<sup>nd</sup> September 2015

### **Link to Appeal Decision**

[http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000087000/1000087510/15P0188\\_Appeal%20Decision%20Notice.pdf](http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000087000/1000087510/15P0188_Appeal%20Decision%20Notice.pdf)

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Application Number: **14/P3885**  
Site: 34 Lewis Road, Mitcham CR4 3DE  
Development: Erection of first floor rear extension and conversion into 2 x flats  
Recommendation: Refuse Permission (*Delegated Decision*)  
Appeal Decision: **ALLOWED**  
Date of Appeal Decision: 3<sup>rd</sup> September 2015

### Link to Appeal Decision

[http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000086000/1000086538/14P3885\\_Appeal%20Decision%20Notice.pdf](http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000086000/1000086538/14P3885_Appeal%20Decision%20Notice.pdf)

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Application Number: **15/P0604**  
Site: 122 Beverley Way, New Malden SW20 0AQ  
Development: Erection of first floor side and rear extension  
Recommendation: Refuse Permission (*Delegated Decision*)  
Appeal Decision: **DISMISSED**  
Date of Appeal Decision: 6<sup>th</sup> August 2015

### Link to Appeal Decision

[http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000087000/1000087914/15P0604\\_Appeal%20Decision%20Notice.pdf](http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000087000/1000087914/15P0604_Appeal%20Decision%20Notice.pdf)

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Application Number: **15/P0950**  
Site: 30 Chatsworth Avenue, Wimbledon Chase SW20 8JZ  
Development: Erection of single storey rear extension  
Recommendation: Refuse Permission (*Delegated Decision*)  
Appeal Decision: **ALLOWED**  
Date of Appeal Decision: 6<sup>th</sup> August 2015

### Link to Appeal Decision

[http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000088000/1000088245/15P0950\\_Appeal%20Decision%20Notice.pdf](http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000088000/1000088245/15P0950_Appeal%20Decision%20Notice.pdf)

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Application Number: **14/P3767**  
Site: Unit 1, Menin Works, Bond Road, Mitcham CR4 3HG  
Development: Prior Approval for change of use of second floor from offices to residential  
Recommendation: Refuse Permission (*Delegated Decision*)  
Appeal Decision: **DISMISSED**  
Date of Appeal Decision: 7<sup>th</sup> August 2015

### Link to Appeal Decision

[http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000086000/1000086424/14P3767\\_Appeal%20Decision%20Notcie.pdf](http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000086000/1000086424/14P3767_Appeal%20Decision%20Notcie.pdf)

### Link to COSTS Decision

[http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000086000/1000086424/14P3767\\_Appeal%20Costs%20Decision.pdf](http://planning.merton.gov.uk/MVM.DMS/Planning%20Application/1000086000/1000086424/14P3767_Appeal%20Costs%20Decision.pdf)

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Application Number: **15/P0406/INVALID**  
Site: 24 Greenwood Close, Morden SM4 4HX  
Development: Retention of existing detached 1 bed annexe  
Recommendation: Refuse Permission (*Delegated Decision*)  
Appeal Decision: **DISMISSED**  
Date of Appeal Decision: 1<sup>st</sup> September 2015

**Appeal decisions are not on-line for invalid applications. Please see appendix at rear of report for a copy of the appeal decision notice.**

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### Alternative options

- 3.1 The appeal decision is final unless it is successfully challenged in the Courts. If a challenge is successful, the appeal decision will be quashed and the case returned to the Secretary of State for re-determination. It does not follow necessarily that the original appeal decision will be reversed when it is re-determined.
- 3.2 The Council may wish to consider taking legal advice before embarking on a challenge. The following applies: Under the provision of Section 288 of the Town & Country Planning Act 1990, or Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990, a person or an establishment who is aggrieved by a decision may seek to have it quashed by making an application to the High Court on the following grounds: -
  1. That the decision is not within the powers of the Act; or
  2. That any of the relevant requirements have not been complied with; (relevant requirements means any requirements of the 1990 Act or of the Tribunal's Land

Enquiries Act 1992, or of any Order, Regulation or Rule made under those Acts).

## **1 CONSULTATION UNDERTAKEN OR PROPOSED**

1.1. None required for the purposes of this report.

## **2 TIMETABLE**

2.1. N/A

## **3 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

3.1. There are financial implications for the Council in respect of appeal decisions where costs are awarded against the Council.

## **4 LEGAL AND STATUTORY IMPLICATIONS**

4.1. An Inspector's decision may be challenged in the High Court, within 6 weeks of the date of the decision letter (see above).

## **5 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

5.1. None for the purposes of this report.

## **6 CRIME AND DISORDER IMPLICATIONS**

6.1. None for the purposes of this report.

## **7 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

7.1. See 6.1 above.

## **8 BACKGROUND PAPERS**

8.1. The papers used to compile this report are the Council's Development Control service's Town Planning files relating to the sites referred to above and the agendas and minutes of the Planning Applications Committee where relevant.



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## Appeal Decision

Site visit made on 27 August 2015

by **S J Papworth DipArch(Glos) RIBA**

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

**Decision date: 1 September 2015**

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**Appeal Ref: APP/T5720/W/15/3005323**

**24 Greenwood Close, Morden, Surrey SM4 4HX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr & Mrs Sanjiv Pothunnah against the Council of the London Borough of Merton.
  - The application Ref 15/P0406/INVALID, is dated 24 January 2015.
  - The development proposed is one bedroom annexe.
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### Decision

1. I dismiss the appeal and refuse the application for planning permission.

### Main Issues

2. These are;
  - Whether the Householder Application should be regarded as being valid. and if so;
  - The effect of the development on the living conditions of neighbouring residential occupiers with particular regard to outlook and privacy.
  - The effect of the development on the aims of policies on the reduction of CO<sub>2</sub> emissions and sustainable forms of development.

### Reasons

#### *Validity*

3. The appellant made a householder application to the Council and paid the applicable fee. On 10 February 2015 a letter was sent by the Council listing the need for a further £213 and a full planning application form as being deficiencies in the original application that had prevented it being validated. Subsequently, the appellant submitted the appeal against the Council's failure to give notice within the prescribed period.
4. The householder planning regime is set out in the *Town and Country Planning (Development Management Procedure) (England) Order 2015* and is defined as an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse, and does not include proposals for additional dwellings.

5. The application was for a '*one bedroom annexe*', as set out in the heading above. The Council's letter of February 2015 describes the proposal as '*the retention of existing 1 bed, detached self contained bungalow*'. There had been a permission granted on 11 January 2012 for '*demolition of bicycle shed; remodelling, extension and conversion of existing garage to form a one bedroom annexe*' (Ref: 11/P1996) which included the condition '*The development hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 24 Greenwood Close, Merton SM4 4HX*'. The reason for approval was that '*the proposed annexe, duly conditioned to ensure that it remains ancillary to No 24 Greenwood Close, does not present an unduly dominant structure due to its close proximity to No 52A Thurleston Avenue*', with various policies listed as being accorded with. That permitted building was a single-storey pitched roof structure containing a bedroom, a bathroom and a sitting room/study.
6. The building now in place is larger, contains more accommodation and a different arrangement of windows or rooflights, and these are matters for the second main issue. The appellant submitted the appeal application seeking to regularise the situation. However, two matters in particular appear to have prompted the Council's stance that the householder regime is not appropriate. The first is that the appellant has registered a separate title to the rear part of the garden containing the building, and the second is that the building now contains a kitchen. It is also claimed that the appellant has obtained the number 24A for the building and access by licence through the grounds of The Oaks to the rear.
7. The application was clear that it was for an annexe and it is not for the Council to alter the description without agreement; the Appeal Form states that no change has occurred. The previous grant of permission was for an annexe and the condition ensured that this was what would remain. The addition of a Kitchen in the appeal scheme does not, in itself, make the building a separate dwelling, neither does the postal numbering or the access licence, and a '*granny annexe*' may include such self contained features provided that it remains ancillary, or part of the main residential use of the site. The use of a condition would have ensured this as much now as when the previous permission was granted.
8. With regard to the change to the title of the land, there was no demarcation on the ground at the time of the site inspection and the curtilage should be regarded as being the whole of the land from the Greenwood Close frontage to the boundary with the properties either side, with properties in Thurleston Avenue and with The Oaks. There is no evidence of there being more than the one planning unit as there is only the single use of land and the condition referred to above would ensure that only a single planning unit remains. There is no physical or functional separation and the planning unit would remain in single family occupation, continuing to function as a single household, so that no material change of use is involved.
9. As a result, and having regard to the wording of the 2015 Order, the proposal is for development within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse, and does not include proposals for an additional dwelling. It is concluded that the Householder regime is applicable to this application. In view of the consultation that the Council undertook in relation to a full application for the same development

(Ref: 14/P0329) which was refused permission, it is applicable to continue now to determine the appeal in terms of the following two main issues, the reasons for refusal of the full application and the policies cited by the Council.

### *Living Conditions*

10. The building is set close to a substantial building on the adjoining land of a dwelling in Thurleston Avenue and that proximity prevents the appeal building appearing isolated in views along the rear access at The Oaks. However, the building is significantly larger than that found acceptable previously by the Council and in views from private gardens to both Greenwood Close and Thurleston Avenue the building and its roof would appear dominant and more intrusive than would be the case with the previous permission, to the point of being harmful to the outlook from those dwellings.
11. The introduction of a rooflight at what is now the first floor bedroom has allowed a harmful elevated overlooking view of an adjacent garden that was not possible when there was no building in place, and would not be possible with the previously permitted single storey design. It is accepted that the other two rooflights are in shafts that serve the ground floor and cause no such harm. It is also accepted that the views available towards The Oaks are of more communal areas that would not be harmful in planning terms
12. In conclusion on this issue, the inclusion of a first floor and a greater bulk of roof has resulted in a building that would appear out of place and discordant in the views from neighbouring gardens and would cause a harmful reduction of privacy in an adjoining garden, such that the development does not reach the standard of design sought in the Policies DM D1 and DM D2 of the Adopted Sites and Policies Plan and policy CS 14 of the Core Strategy.

### *Carbon Dioxide Emissions*

13. The reason for refusal refers to a failure to demonstrate compliance with requirements, but the original grant of permission addressed this by condition. Whilst this is now retrospective, and so the condition put forward by the Council would need to be amended, there does not appear to be any reason why a condition should not result in sufficient information being provided. An inspection of the store-cupboard at first floor level indicated construction to a recognised standard, so that compliance would appear a matter of the provision of further information.

### **Conclusions**

14. The use of a householder application and fee appears applicable in line with the requirements of the 2015 Order, but the building as now erected differs to such a degree from that which was granted permission previously that it now causes unacceptable harm to the living conditions of neighbouring residential occupiers through an over dominance of their outlook and a loss of privacy. For the reasons given above it is concluded that the appeal should be dismissed and planning permission refused.

*S J Papworth*

INSPECTOR

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