



Appeal Decisions

Hearing and site visit
held on 8 July 2009

by **Paul Jackson** B Arch (Hons) RIBA

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

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Decision date:
7 August 2009

Appeal A: APP/T5720/A/09/2099306 **71 Dora Road, London SW19 7JT**

- 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 Paul Riley against the decision of the Council of the London Borough of Merton.
- The application Ref 07/P3692, dated 28 November 2007, was refused by notice dated 11 December 2008.
- The development proposed is demolition of existing dwelling house and erection of a three storey semi detached house comprising 1 x 4 bedroom house and 1 x 3 bedroom house with work space and recreational room.

Appeal B: APP/T5720/A/09/2098386 **71 Dora Road, London SW19 7JT**

- 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 Paul Riley against the decision of the Council of the London Borough of Merton.
- The application Ref 08/P0468, dated 14 February 2008, was refused by notice dated 24 December 2008.
- The development proposed is demolition of existing dwelling house and erection of a three storey detached house comprising 5 bedrooms with recreational room.

Preliminary matter

1. The Council described the development subject of appeal A as 'Erection of a three storey semi-detached building, comprising two houses (one of which includes work space and recreational room) involving demolition of existing dwelling house and relocation of electricity substation.' I regard this to be a more accurate description.
2. At the Hearing, the appellant agreed with a third party that the north point on the drawings was incorrect by 90 degrees; and that references to compass directions in the representations should be read with that in mind. A correct OS map extract was provided by the Council. I have considered the appeals on the basis of the correct compass point.

Decisions

3. For the reasons given below, the appeals are dismissed.

Main issues

4. Following from the reasons for refusal, the main issues in both appeals are as follows:
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- The effect of the proposed development on the character and appearance of the area;
 - The effect of the proposed development on the living conditions of neighbouring occupiers, in terms of outlook; and
 - The effect of the proposed development on the living conditions of future occupiers, in terms of amenity space (and outlook, in appeal A only).
5. I have also considered 2 other issues. Representations were made by the Council in respect of the need for a Section 106 (S106) undertaking with the effect of providing contributions for education and transport improvements. Neighbours have a strong concern that the proposal in both schemes to integrate the existing electricity sub-station at the rear of the garden within the fabric of the new dwellings would have health implications for themselves and future occupiers. At the Hearing, the appellant agreed that this is a material consideration.

Reasons

6. Most of the houses in Dora Road are terraced and semi-detached dwellings of Edwardian origin and they possess a remarkable degree of similarity. The immediate area around the appeal site is different; here, a number of late 20th century houses and flats noticeably alter the character of the road. The appeal property is a particularly prominent, tall and narrow detached house of late 20th century design.

Character and appearance

7. The proposals involve its replacement with a building of unashamedly contemporary appearance containing either an unequal pair of semi-detached dwellings (A) or a single dwelling (B). In my opinion, the site provides an opportunity for a new building that responds better to the prevailing scale of surrounding houses. The existing building blends with nothing else in Dora Road and both replacement schemes would fit better into the street scene. I consider this would be the case although the 'eaves' (that description less appropriate where flat roofs are concerned) would not be continuous with neighbouring properties.
8. A recreation room would be provided in both schemes approximately in the location of the existing substation. Both schemes also include a semi-enclosed courtyard. In principle, I do not regard the proposal to extend the living accommodation towards the rear to be unacceptable on this site. The adjoining flatted property at No. 69 has an unusual feature, a vehicle access way along the boundary leading to a group of garages at the rear. To my mind, this justifies a different approach to development on the appeal site because there are no private gardens along the southern boundary.
9. The new recreation room would be approximately the same height as the existing substation and the garages. Although the rear garden in both appeal proposals would be split between areas of courtyard and grass, with level changes, I do not regard that to be unacceptable. It would be quite common for a conventional garden to be split between intimate and private sitting areas and parts used for planting or games. Whilst other gardens in the road may

not have substantial structures in the rear gardens, that does not mean that in the particular circumstances of an individual site that it would be out of character. I consider that is the case here.

Outlook

10. Whilst the rear outlook from the main living area of one of the dwellings in appeal A would be restricted to the side, I do not consider this would be unacceptable. The space would have extensive glazing opening to the garden and would also have a large window facing the street.
11. With regard to the outlook from No. 73, the rear extension to the appeal property in both cases would be on the opposite side of the rear garden and despite the inaccuracy in the position of the substation shown on the plans that I noticed at the site visit, would not be so noticeable as to harm outlook unacceptably. I appreciate the concern that similar extensions in other garden areas would change the character of the area substantially but the appeal property is unique for reasons referred to earlier. It does not form a precedent for others.

Amenity space

12. The amount of external amenity space provided complies with guidance provided by the Council and whilst it may not be provided in a manner that is regarded as conventional or common in the street, I do not regard the courtyards and level changes proposed to be unacceptable in what would be a rather unusual property in any case. They would simply provide a variety of spaces in a more defined way than in most gardens where planting is used for a similar effect.

S106 obligation

13. In respect of the additional 3 bedroom dwelling proposed as part of appeal A, the Council requests contributions towards education and sustainable transport and an undertaking that future residents would not be entitled to parking permits. Supplementary Planning Document (SPD) *Planning Obligations* provides the justification for financial contributions. This has been subject to consultation and I give it significant weight.
14. An updated guidance note *Supply and Demand of School Places for Section 106 Agreements* and a discussion paper *Increased Demand for Primary Roll Places to 2011/12* indicate a rising trend in births in the locality that will lead to a requirement for additional educational provision. There is an existing shortfall in school places within the area. Children are likely to occupy the new 3 bedroom dwelling proposed as part of appeal A. The SPD indicates that a payment of £6844 is required. Having regard to the recommendations contained in Circular 05/2005 *Planning Obligations*, I consider this is fairly and reasonably related in scale to the proposed development and is necessary to make the development acceptable. I give little weight to the idea that it is necessary for the Council to specify whether that should be by means of new schools or expanding existing schools, or whether such provision would be temporary or permanent- the point is that additional provision needs to be made.

15. The appellant pointed out in subsequent correspondence that the existing dwelling is converted into 3 flats, a 1 bed and 2 x 2 bed units, referring to the submitted plans and providing copies of an alteration to the valuation list, a Council tax bill and a record of 3 separate electricity meters. However, previous applications for conversion to flats had been refused and there is no record before me of planning permission having been granted for sub-division. The appellant's hearing statement and the officers' reports all refer to a single dwelling house existing and nothing contrary was said at the Hearing nor drawn to my attention at the site visit. As it has not been established whether the existing units have the benefit of planning permission, it would be wrong to conclude that a S106 undertaking would not be necessary in respect of an educational contribution for an additional dwelling.
16. Turning to the need for a contribution to sustainable transport measures, the Council identify no schemes or improvements within the vicinity of the development proposal but suggests that the money could be pooled and used in the near future. Guidance in the Circular suggests that where money is pooled there should be clear evidence of need and a direct relationship between the development and the infrastructure. No purpose has been put forward in this case beyond a general desire to improve the environment in the locality; there are no details of any of the specific measures, for instance any of those mentioned in the SPD. The Council suggest the purpose can be identified at the point when the S106 is provided but I see little reason why a more firm indication should not be provided now. In these circumstances I consider the requirement too vague; no proper justification for such a contribution has been provided.
17. The provision of a car free development can be assured by means of a condition requiring an arrangement to be agreed with the Council; such a condition does not necessarily require the payment of money. I accept that there is significant parking pressure in Dora Road which is close to public transport. If I was otherwise minded to allow appeal A, a condition would have dealt with this matter.

The effect on health

18. Interested parties raise the potential of an adverse health effect caused by the electromagnetic field (EMF) around the repositioned substation. The neighbouring occupiers draw attention to the proposed close proximity of the repositioned substation to their daughter's bedroom, more particularly in appeal B. This is a special concern to them because of a previous occurrence of a rare form of cancer. It is common ground that the potential for an adverse effect on health is a material factor that needs to be given weight. Fear of an adverse effect is also capable of being a material planning consideration, even if there is no objective evidence to support such a fear¹.
19. According to a letter provided in support of the neighbouring occupiers by a hospital consultant, although there is some controversy about whether a true effect exists and its magnitude, there is evidence that extremely low frequency electric and magnetic fields are a possible carcinogen and might contribute to an increase in childhood leukaemia. Based on comparative EMF readings taken

¹ Newport v SSW (1997)

around the existing substation, there is a reasonable assumption that EMFs in the neighbouring house and in the bedrooms of the proposed developments are likely to rise substantially if the substation is moved in the way proposed.

20. Whilst EMFs diminish rapidly with distance and are commonly experienced in many domestic situations and at places of work, the substation in this case would be within a few metres of sleeping accommodation where long term exposure would be likely to occur. The circumstances would be likely to cause concern not only to the existing and future occupiers of the family house at No. 73 but also future occupants of the proposed developments, where bedrooms would be within a very short distance indeed of high voltage cabling and equipment.
21. The evidence provided suggests that there are no practicable means of restricting or limiting the low frequency EMFs that are emitted by substations. Whilst objective evidence of harmful effects on health is limited, there is sufficient to persuade me that future occupants of the developments and neighbouring occupiers would be fearful of a raised level of low frequency EMFs, which would be likely to lead to a great deal of anxiety.
22. I conclude that the fear of harmful effects from EMFs caused by the close proximity of the substation to sleeping accommodation in either of the appeal proposals is a significant factor that in both cases, indicates that planning permission should not be granted. It is not obvious that relocating the substation is necessary in order to redevelop the site in a manner that would provide the benefits that the appellant seeks.

Conclusion

23. I have taken account of all the other matters raised, including the potential for parts of the buildings to be used for business purposes and the amount of sunlight and daylight enjoyed by future occupiers. Use of part of a house for business purposes by the occupier would be acceptable within certain limits and I consider that nearby residents would notice if those limits were breached, allowing the Council to take any action necessary. With regard to natural light, there would be no unacceptable impact in what is a fairly densely developed area. I have had regard to the previous appeal decision regarding a proposal for 3 flats but it is unclear what representations were made on the substation then; I have considered this proposal on its own planning merits.
24. Whilst the appeal developments would not conflict with the design quality or amenity objectives of policies HS.1, BE.15, BE.16 and BE.22 of the London Borough of Merton Unitary Development Plan, the proposal subject of appeal A would not be acceptable because of the lack of a contribution to education in the Borough; and both appeal proposals would lead to a significant fear of harmful effects on health from low frequency EMFs, which would not conform to the aims of national and local planning policy that new development should provide a safe residential environment.

Paul Jackson

INSPECTOR

DOCUMENTS

- 1 Letter of notification.
- 2 *Supply and Demand of School Places for Section 106 Agreements* guidance note of January 2009, and *SPD Planning Obligations*, supplied by the Council.
- 3 OS extract of Dora Road showing correct orientation, supplied by the Council.
- 4 Calculation of Education Contribution, supplied by the Council by email received on 10 July 2009.
- 5 *Increased Demand for Primary Roll Places to 2011/12-Discussion Paper* supplied by the Council by email received on 10 July 2009.
- 6 Letter from WS Planning dated 13 July 2009.