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## Appeal Decision

Site visit made on 12 November 2019

**by Martin Small, BA (Hons), BPI, DipCM, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23<sup>rd</sup> January 2020**

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**Appeal Ref: APP/T5720/W/19/3234799**

**188 - 194 The Broadway, London, SW19 1RY**

- 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 Mr Stephen Woodcock (Woodcock Holdings Ltd.) against the decision of the Council of the London Borough of Merton.
  - The application Ref: 18/P2918 dated 24 July 2018, was refused by notice dated 10 May 2019.
  - The development proposed is the "demolition of existing building and erection of six storey office building".
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building and erection of six storey office building at 188 - 194 The Broadway, London, SW19 1RY in accordance with the terms of the application, Ref: 18/P2918 dated 24 July 2018, subject to the conditions set out in the attached schedule.

### Procedural Matters

2. The site address and description of development provided by the application form have been updated by subsequent documents including as a result of amended plans submitted before the Council made its decision. I have adopted the site address and description provided by the appeal form accordingly in the interest of certainty of the proposal before me. I am satisfied that no parties would be prejudiced by these changes.
3. The appellant refers to the "Draft London Plan showing Minor Suggested Changes", which was published in August 2018. Since then, the "Draft London Plan – Consolidated Suggested Changes" version was published in July 2019, which incorporates the Mayor of London's Further Suggested Changes. However, there are no further changes to paragraphs 2.1.25 or 6.1.6 or, in respect of Wimbledon, to Table 2.1 to which the appellant refers.
4. The Panel Report was published on 21 October 2019 and the Mayor issued his intention to publish the new London Plan, incorporating changes in response to the Panel Inspectors' recommendations, to the Secretary of State on 9 December 2019. There are no further changes to those parts of the new Plan to which the appellant refers other than paragraph 2.1.25 has been renumbered as 2.1.27. In accordance with paragraph 48 of the Framework, I afford the emerging new London Plan substantial weight.

5. The appellant also refers to the emerging new Local Plan for the Borough; Local Plan 2020. From the evidence before me, this has been through one round of public consultation with the Council's Local Development Scheme indicating that another round of consultation will take place in the autumn of 2020. The Plan is therefore still at an early stage of preparation and I give it only limited weight.

### **Main Issues**

6. The main issues are the effect of the proposed development on i) the living conditions of the occupiers of neighbouring properties, with particular regard to No. 180 The Broadway and its private amenity space in relation to matters of outlook and ii) local highway conditions, with particular regard to parking arrangements.

### **Reasons**

#### *Living conditions*

7. The appeal site currently accommodates a 2-storey commercial unit and one half of a pair of semi-detached properties. Both semi-detached properties have single-storey extensions to the front with commercial units at ground floor level with flats on the upper floors of the original building. No. 180 The Broadway (No. 180) is a flat occupying the upper floors of 186 The Broadway and forms the other half of the semi-detached property. It is therefore immediately adjacent to the appeal site. It also benefits from the use of a garden at the rear of the building.
8. Clause a) v of Policy DM D2 of the Sites and Policies Plan (the SPP) expects proposals for all development to "ensure provision of appropriate levels of sunlight and daylight, quality of living conditions, amenity space and privacy to both proposed and adjoining buildings and gardens".
9. The north-facing rear elevation of No. 180 has four windows overlooking the garden. From the evidence before me, the two windows that would be furthest away from the flank wall of the proposed development serve a stairwell whilst the two windows that would be closest to the flank wall serve a living / dining room and an attic bedroom.
10. The Daylight and Sunlight Report submitted with the application demonstrates that with the proposed development completed the rear garden would still receive at least 2 hours of sunlight over 50% of the garden on 21<sup>st</sup> March which would accord with the Building Research Establishment's (BRE) guidance. From the evidence before me, the living / dining room has a dual aspect with a window to the front elevation so the proposed development would not result in an unacceptable loss of daylight for this room.
11. Although there would be some loss of daylight to the attic bedroom window, the Daylight and Sunlight Report concludes that this would not be material. As the rear elevation is north-facing, the proposed development would not result in a material loss of sunlight. Whilst the occupiers of No. 180 are concerned about the loss of daylight and sunlight, I have no evidence to demonstrate that the loss would be significantly harmful. I note that the Council accepted the conclusions of the Report and the loss of either daylight or sunlight does not form part of the reason for refusal.

12. The proposed development would not affect the level of amenity space available to No 180 and, with no windows proposed in the flank wall and internal blinds proposed for the rear elevation, the development would not result in a loss of privacy for the occupiers of No. 180.
13. The effect of the development on the outlook from the windows serving the stairwell would not be harmful to the living conditions of the occupiers of No. 180 as they serve a non-habitable room. The window of the living/dining room does not face directly onto the flank wall so it would not be visible from deeper in the room. However, the flank wall would be clearly visible from close to the window. As this window serves a habitable room and has a view over the garden it is likely that the occupiers of No. 180 would wish to enjoy the view from it. The height, depth and resultant massing of the flank wall of the proposed development would result in its being oppressive and harmful to the outlook from that window.
14. The window to the attic bedroom is a dormer with restricted access. Nevertheless, the photographs received from the Council on 13 February 2019 submitted by the appellant indicate that this window is openable and the positioning of a desk and keyboard in front of it suggest that the occupiers of No. 180 may spend some time within the dormer close to the window. The height, depth and resultant massing of the flank wall of the proposed development would thus also be harmful to the outlook from this window.
15. The proposed development would extend along the boundary of the garden for approximately half its length and, from the evidence before me, would be approximately 21.2 m high. It would therefore present a very substantial bulk of flank wall immediately adjacent to the garden for a significant proportion of its overall length. Although there would be a more open area to the end of the garden and it would be possible to face away from the flank wall, there would be no escaping its presence as it would be immediately obvious when entering the garden from the flat. The entrance to No. 180 is located in the north elevation and the flank wall would dominate this entrance.
16. Occupiers of Viscount Point, the residential apartment complex opposite the site on the south side of The Broadway, are concerned about the potential loss of light, privacy and views resulting from the proposed development. I note the dissatisfaction with aspects of the Daylight and Sunlight Report expressed by some third parties. However, no evidence has been provided to me that disputes the calculations in the Daylight and Sunlight Report and the reduction in daylight for some of the occupiers of Viscount Point does not form part of the Council's reasons for refusal. Nevertheless, it is my view that these reductions in daylight and consequent effect on the living conditions of the occupiers of these properties weigh against the proposed development.
17. Although there would be lines of sight from the proposed offices to the flats in Viscount Point, from the evidence before me, the two would be approximately 21 m apart across The Broadway. This distance is such that there would not be a significantly harmful loss of privacy for the occupiers of the flats in Viscount Point. Whilst the development would result in the loss of views to the north for the occupiers of some of the flats, the planning system does not operate to protect private views.
18. Occupiers of dwellings on South Park Road are also concerned about a loss of light and privacy, and also potential light pollution. Objections from other

interested parties also include matters of privacy. However, the Daylight and Sunlight Report demonstrates that there would not be an unacceptable loss of daylight or sunlight for the properties on South Park Road, and the proposals include internal blinds for the rear elevation which would reduce the potential for overlooking and light pollution. Accordingly, I do not consider that the proposed development would result in unacceptable harm to the living conditions of the occupiers of dwellings on South Park Road.

19. The demolition and construction phase of the proposed development would inevitably give rise to noise and other disturbance to nearby residents. However, this disturbance would be temporary and would be mitigated by a Demolition and Construction Method Statement which could be the subject of a planning condition were planning permission to be granted. Given that the appeal site is within a town centre with traffic and other activity I am not persuaded that the proposed development would, when occupied, cause harmful additional levels of noise.
20. With the exception of No. 188 The Broadway, the application site forms part of Site Proposal 62 (Wimbledon YMCA) as defined in the SPP. Site Proposal 62 is an allocation for a range of mixed uses, including offices. However, the policy simply establishes the principle of the redevelopment of the site; it does not set any parameters for that redevelopment in terms of built form.
21. The Future Wimbledon Masterplan (FWM) indicates that the appeal site would be appropriate for a building up to 7 storeys high. From the evidence before me the FWM is a Supplementary Planning Document that has been subject to one round of public consultation but has yet to be adopted. Furthermore, it is only guidance and does not form part of the development plan. I therefore give it only limited weight.
22. Accordingly, I conclude that the proposed development would be harmful to the living conditions of the occupiers of No. 180 due to being overbearing as a consequence of its height, depth and resultant massing and proximity to both the windows to habitable rooms in the rear elevation and to the rear garden of that property. It would also cause limited harm to the living conditions of some of the occupiers of properties in Viscount Place due to a partial loss of daylight. The proposed development would be contrary in this respect to clause a) v of Policy DM D2 of the SPP which, amongst other things, protects the quality of living conditions of the occupiers of adjoining buildings and gardens.
23. In reaching the above conclusion, I find no conflict with Policy DM D3 of the SPP as this policy relates to extensions and alterations to existing buildings. Nor do I find any conflict in this respect with Policy CS14 of the Merton Core Planning Strategy 2011 (the MCPS) which relates to design quality rather than living conditions.
24. However, the proposed development would be contrary in this respect to clause f) of paragraph 127 of the National Planning Policy Framework (the Framework), which requires planning decisions to ensure that developments create places that have a high standard of amenity for existing users.

*Local highway conditions*

25. The proposed development does not include any provision for on-site parking. Notwithstanding that the appeal site is easily accessible by public transport, the

proposed development therefore has the potential to increase pressure on parking in the area. From the evidence before me and as I observed during my site visit, Wimbledon Town Centre is subject to a number of Controlled Parking Zones and on-street parking is already very limited. The potential effect on parking in the locality was raised as a concern by third parties.

26. With the high degree of accessibility by public transport, the proposed development would be suitable to be a car / parking permit free development which would need to be ensured by a legal agreement. In the absence of such an agreement, the proposed development would increase parking pressure in the area to the detriment of local highway conditions. In this respect it would also conflict with Policy CS20 of the MCPS, which seeks to implement effective traffic management by, amongst other measures, supporting permit-free developments within Controlled Parking Zones with good access to public transport, facilities and services.
27. However, since the refusal of the application, the appellant has submitted a planning obligation in the form of a unilateral undertaking which precludes any business occupier from being entitled to a Business Parking Permit unless the occupier is or becomes entitled to a Disabled Person's Badge. I am satisfied that the undertaking accords with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and would ensure that the proposed development would not be harmful to local highway conditions. The Council has confirmed that this obligation overcomes its first reason for refusal of permission for the proposed development which related to additional pressure on parking<sup>1</sup>.
28. Concern has been raised by third parties that the proposed development would increase traffic levels in the area. However, the occupation of the development would not give rise to harmful increased traffic levels as it is in a location highly accessible by public transport and incorporates facilities for cyclists in accordance, from the evidence before me, with the standards of the London Plan for cycle parking. Future employees would be prevented from applying for a Business Parking Permit by the planning obligation submitted by the appellant.
29. Although the proposed development would not include any parking provision for disabled staff, the planning obligation allows those entitled to a Disabled Person's Badge to apply for a Business Parking Permit. I have no persuasive evidence that parking pressure on the surrounding streets would be unacceptably exacerbated as a result of this exemption.
30. I note the concern that the proposed development does not include any parking provision for motorcycles or provision for taxis to drop off / pick up visitors, but I do not consider these to be sufficient reasons for not granting planning permission. The Council has not expressed any concerns in these respects. The lack of rear access for servicing and consequent need to service the property from The Broadway could result in some obstruction of the highway, but I have no persuasive evidence that this would be significantly harmful to highway safety. The Council is satisfied with the proposed servicing and refuse collection arrangements.

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<sup>1</sup> Email from Council dated 5 December 2019

## Other Matters

31. The principle of the redevelopment of this site for offices would accord with, in addition to Site Proposal 62 of the SPP, Policies CS6 and CS12 of the MCPs, Policy DM E2 of the SPP and Policies 4.1 and 4.2 of The London Plan (2016)<sup>2</sup>. From the evidence before me there is a recognised need for offices within Wimbledon, particularly for medium to large floorplate modern offices. Being within the town centre and with good accessibility to public transport facilities it is an appropriate location for office development, as the Council accepts. There is also support for the principle of the development within the new London Plan, which identifies Wimbledon / Colliers Wood / South Wimbledon as an Opportunity Area; a significant location with development capacity to accommodate new commercial development.
32. The appellant estimates, based on the Homes and Community Agency's 2015 Employment Density Guide, that the proposed development would provide between 109 and 142 new employment opportunities. These would provide opportunities for the local community and support local facilities and services.
33. The National Planning Policy Framework (the Framework) also supports economic growth and productivity and the vitality of town centres, with significant development focused on sustainable locations in terms of access and making effective use of land. The development would help achieve the economic, social and environmental objectives for the planning system as set out in paragraph 8 of the Framework.
34. The proposed development has nevertheless given rise to a number of objections. The Wimbledon Society and others have expressed concern about the height and / or design of the proposed building. However, within the context of the town centre and existing buildings of similar height to which the appellant draws my attention and as I saw for myself during my site visit, in my judgement the proposed building is of a suitable height and massing and is of an appropriate design and appearance in terms of townscape. I note that the proposed design was amended during the course of the determination of the application to include a brickwork frame to help the building respond to the character of the area. The Council considers the design of the proposed building to be acceptable.
35. Concern has also been expressed about the potential harm to the character and appearance of the South Park Gardens Conservation Area. The South Parks Gardens Conservation Area Character Assessment (2005) explains that the significance of the Conservation Area lies in its being a good example of a late Victorian layout around a landscaped garden.
36. The appeal site lies outside the boundary of the Conservation Area which, from the evidence before me, is some way to the north of the site along the middle of Prince's Road. The Conservation Area is therefore separated from the appeal site by the properties on both sides of South Park Road and on the south side of Prince's Road. Given this degree of separation relative to the height of the proposed development, I consider that the development would not harm the setting or the significance of the Conservation Area and I therefore find no conflict in this respect with paragraphs 193 – 196 of the Framework which relate to designated heritage assets.

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<sup>2</sup> The Spatial Development Strategy for London Consolidated with Amendments since 2011

37. The existing buildings on the site represent part of the history of this part of Wimbledon and are not without character. However, from the evidence before me they enjoy no special protection and not been identified as making a special contribution to the townscape. The proposed development would represent a very substantial change from the current situation, but change is to be expected as the majority of the site is allocated for redevelopment. In this respect the proposed development would not set a precedent for future taller buildings on the adjacent YMCA site as this also forms part of Site Proposal 62.
38. Comments have been made by third parties regarding the environmental sustainability of the proposed development. However, from the evidence before me, I am satisfied that the proposed development would meet the minimum sustainability requirements of Policy CS15 of the MCPS and Policy 5.2 of The London Plan.
39. Concern has also been expressed about the development leading to further pressure on local infrastructure. However, I have no evidence that the local infrastructure would be unable to cope with the proposed development.

### **Planning Balance**

40. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the development plan is the starting point for decision making. I have found conflict with the development plan in respect of the harmful effect upon the living conditions of the occupiers of neighbouring properties as set out in the conclusion on that main issue.
41. However, in the particular circumstances of this case, the majority of the site lies within a site allocated for redevelopment in the SPP and its height would conform with the emerging FWM. In that context, both the adopted and emerging development plan emphasise the delivery of new office development within Wimbledon Town Centre. The proposed development would provide significant employment opportunities in a highly accessible location which are benefits of the proposal to which I afford considerable weight.
42. When having regard to the above, on balance, the compliance of the proposed development with other policies of the adopted and emerging development plan, and the extent of the benefits of the proposal that I have identified which constitute material considerations, together outweigh the harm to the living conditions of the occupiers of neighbouring properties and the conflict with the associated policy of the development plan in that respect.
43. It follows that, in the particular circumstances of this case, I am satisfied that the application for planning permission should be determined other than in full accordance with the development plan. Planning permission should, therefore, be granted subject to the conditions I have set out and as justified below.

### **Conditions**

44. The Council has suggested a number of conditions, on which the appellant has had the chance to comment. I have considered these against the tests for conditions set out in the Framework, reordered them slightly for consistency and logic and made minor revisions to avoid unnecessary repetition and to reduce the number of pre-commencement conditions.

45. Planning permission is granted subject to the standard 3-year time limit condition. It is also necessary in the interests of certainty that the development shall be carried out in accordance with the approved drawings. The appellant has explained that Drawing No. 0101 P5 Site Plan was amended to show the recess at ground and first floor level rather than the roof plan. The amended drawing was renumbered 0101 P6. I have included this in the list of approved drawings in Condition 2 as the most recent version.
46. A Demolition and Construction Plan is necessary to safeguard the living conditions of the occupiers of neighbouring properties and in the interests of the safety of the public and the highway. It is necessary for this to be a pre-commencement condition to ensure that the demolition and site clearance is managed in a satisfactory way. A restriction on the hours of working and ancillary activities such as deliveries is necessary to safeguard the living conditions of the occupiers of neighbouring properties.
47. Conditions requiring details of materials, boundary treatment and hard and soft landscaping are necessary to ensure that the development has a satisfactory appearance and to ensure the provision of sustainable drainage surfaces. A condition relating to drainage from the proposed hardstanding is necessary to reduce surface water run-off and to reduce pressure on the surrounding drainage system.
48. Conditions requiring the provision of the refuse and recycling storage facilities and of cycle parking are necessary to ensure their satisfactory and timely provision in the interests of the character and appearance of the area, the living conditions of the occupiers of neighbouring properties and encouraging travel by means other than the private car.
49. A condition requiring a Post-Construction Review Certificate is necessary to ensure that the development achieves a high standard of sustainability and makes efficient use of resources. Conditions regarding external lighting, the provision of the internal blind system and the use of the flat roof are necessary to safeguard the living conditions of the occupiers of neighbouring and nearby dwellings.
50. The Council has suggested a condition requiring evidence that the development has been designed to enable connection an existing or future district heating network. However, I have no evidence that such a network exists or is planned to which the development could connect. I therefore consider this condition to be unnecessary and unreasonable and so I have not attached it.

### **Conclusion**

51. For the reasons given above, and having regard to other matters, I conclude that the appeal should be allowed and planning permission granted subject to conditions.

*Martin Small*

INSPECTOR



### Schedule of Conditions

1. The development hereby permitted shall be begun before the expiry of 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings: 0100 P5, 0101 P6, 0110 P6, 0111 P5, 0112 P5, 0113 P5, 0120 P5, 0130 P6, 0131 P5 and P0140 P5.
3. No development shall take place until a Demolition and Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the demolition and construction period.

The Statement shall provide for:

- hours of operation
  - the parking of vehicles of site operatives and visitors
  - loading and unloading of plant and materials
  - storage of plant and materials used in constructing the development
  - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - wheel washing facilities
  - measures to control the emission of noise and vibration during construction.
  - measures to control the emission of dust and dirt during construction/demolition
  - non road mobile machinery emission compliance
  - a scheme for recycling/disposing of waste resulting from demolition and construction works.
4. No demolition or construction work or ancillary activities such as deliveries shall take place before 8am or after 6pm on Mondays - Fridays inclusive, before 8am or after 1pm on Saturdays or at any time on Sundays or Bank Holidays.
  5. No development above slab level shall take place until details of particulars and samples of the materials to be used on all external faces of the development hereby permitted, including window frames and doors (notwithstanding any materials specified in the application form and/or the approved drawings), have been submitted to the Local Planning Authority for approval. No works which are the subject of this condition shall be carried out until the details are approved, and the development shall be carried out in full accordance with the approved details and permanently retained thereafter.
  6. No development above slab level shall take place until details of all boundary walls or fences are submitted in writing for approval to the Local Planning Authority. No works which are the subject of this condition shall be carried out until the details are approved, and the development shall not be occupied / the use of the development hereby approved shall not commence

until the details are approved and works to which this condition relates have been carried out in accordance with the approved details. The walls and fencing shall be permanently retained thereafter.

7. No development above slab level shall take place until full details of a landscaping and planting scheme has been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved before the commencement of the use or the occupation of the building hereby approved, unless otherwise agreed in writing by the Local Planning Authority. The details shall include on a plan, full details of the size, species, spacing, quantities and location of proposed plants and indications of all existing trees, hedges and any other features to be retained, and measures for their protection during the course of development. The soft landscape works shall be carried out in the first available planting season following the completion of the development or prior to the occupation of any part of the development, whichever is the sooner, and any trees which die within a period of 5 years from the completion of the development, are removed or become seriously damaged or diseased or are dying, shall be replaced in the next planting season with others of same approved specification, unless the Local Planning Authority gives written consent to any variation.
8. No development above slab level shall take place until details of the surfacing of all those parts of the site not covered by buildings or soft landscaping, including any parking, service areas or roads, footpaths, hard and soft have been submitted in writing for approval by the Local Planning Authority. No works that are the subject of this condition shall be carried out until the details are approved, and the development shall not be occupied / the use of the development hereby approved shall not commence until the details have been approved and works to which this condition relates have been carried out in accordance with the approved details. The approved surfacing shall be permanently retained thereafter.
9. The hardstanding hereby permitted shall be made of porous materials, or provision made to direct surface water run-off to a permeable or porous area or surface within the application site before the development hereby permitted is first occupied or brought into use.
10. The development hereby permitted shall not be occupied until the refuse and recycling storage facilities shown on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
11. The development hereby permitted shall not be occupied until the cycle parking shown on the plans hereby approved has been provided and made available for use. These facilities shall be retained for the occupants of and visitors to the development at all times.
12. Unless otherwise agreed in writing by the Local Planning Authority, no part of the development hereby approved shall be used or occupied until a Post-Construction Review Certificate issued by the Building Research Establishment or other equivalent assessors confirming that the development has achieved a BREEAM rating of not less than the standards

equivalent to 'Very Good', and evidence demonstrating that the development has achieved not less than a 35% improvement in CO<sub>2</sub> emissions reduction compared to Part L 2013 regulations, has been submitted to and acknowledged in writing by the Local Planning Authority.

13. The development hereby permitted shall not be occupied until full details of the internal blind system have been submitted to and approved in writing by the Local Planning Authority. The system shall be installed in accordance with the approved details and shall be permanently maintained as such thereafter.
14. Any external lighting shall be positioned and angled to prevent any light spillage or glare beyond the site boundary and thereafter maintained as such.
15. Access to the flat roof of the development hereby permitted shall be for maintenance or emergency purposes only, and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.

End of Schedule

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