The Planning Inspectorate

Appeal Decision

Site visit made on 2 November 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 1 December 2016

Appeal Ref: APP/T5720/C/16/3146653
Land and property at 3 Aberconway Road, Morden, Greater London, SM4 5LN

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mushtaq Ahmed Spaul against an enforcement notice issued by the Council of the London Borough of Merton.
- The notice was issued on 4 February 2016.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of a single storey side extension on the Land.
- The requirements of the notice are:
  - 5.1 Remove the Extension; and
  - 5.2 Make good any damage caused arising from compliance with step 5.1 above; and
  - 5.3 Remove from the Land all associated debris arising for the compliance of steps 5.1 and 5.2 above.
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the ground set out in s174(2)(a) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Decision

1. The appeal is dismissed and the enforcement notice is upheld; and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Preliminary matters

2. It had been intended that the site visit would be undertaken on an accompanied basis. However, there was no representative from the Council in attendance. The appellant provided access for me and I was able to undertake the inspection. I am satisfied that I have the information necessary to proceed to a decision and that no party's interests have been prejudiced by the Council's absence.

The appeal on ground (a) and the deemed application

Planning policies and statutory requirement

3. The development plan policies to which I have been referred comprise policies DMD3 of the Merton Sites and Policies Plan 2014, CS14 of the Merton Core Planning Strategy 2011 and the London Plan policy 3.5. Taken together these

policies seek to achieve high quality design which reinforces and respects the local character of the area and contributes to a sense of place and identity including by complimenting the design and detailing of the original building and respecting the context, layout and landscape features of the surroundings.

4. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise[1].

5. Reference has also been made to the St Helier Estate Design Guide and Supplementary Planning Guidance –Residential Extensions, Alterations and Conversions. These documents provide guidance in more detail for how good design is to be achieved at local level within the borough of Merton and are further material considerations for this appeal.

Main issue

6. Having regard to the planning policies and submissions made by the parties I consider the main issue in this appeal to be the effect of the development upon the character and appearance of the area.

Effect upon the character and appearance of the area

7. The site is within the St Helier Estate which (I am told) was developed between 1929 and 1935. The estate's layout is influenced by the "garden city" concept having a formality of design with dwellings set in gardens defined by privet hedges, tree lined streets and green open spaces. The built form is largely of residential terraces of brick construction with slate, tile or pantile roofs. There is limited variety of architectural style and a strong sense of coherence and unity in design and materials. Between the runs of terraces are gaps through which there are glimpses of rear gardens adding to the verdant and spacious quality of the area. Shared open spaces are characteristically found at the chamfered street corners.

8. The appeal site is positioned at a chamfered street corner although the main public views of the extension are from Aberconway Road where it is seen (partly behind a fence) together with the front of the appeal property and the adjacent terrace.

9. Whilst the extension is set back from the front elevation of the main dwelling, when compared to the width of the main dwelling the extension is disproportionately wide. It does not have due subservience to the host property and detracts from the presence of its simple double fronted principal elevation.

10. Additionally, at this width, the extension compromises views through the gap between the appeal property and the adjacent terrace, such gaps being defining features of the estate layout. Whilst set back from the front of the terrace, and a distance of some 2.69m from the flank wall of the terrace, the extension nevertheless has an undesirable impact upon the spacious character of the estate and the appearance of openness and greenery which underpins its design.

11. The prevailing roof form of the area is of dual pitches with hips. Flat roofs are not characteristic of the area. The flat roof of the extension appears discordant

[1] S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

and is a further element of its design which detracts from the sense of place and identity of the area.

12. For these reasons, on this main issue, I find that the extension is harmful to the character and appearance of the area and does not accord with the cited policies of the development plan.

Other matters

13. My attention has been drawn to other side extensions in the area including that at 21 Bardney Road. In that case the extension is to an elevation which faces the road, not within an existing built frontage. To that extent it is distinguishable from the appeal development. I do not know the full planning circumstances of other side extensions and, in any event, I must decide the appeal case on its individual planning merits. The existence of other side extensions is not a consideration which weighs heavily in favour of the development in my decision.

14. It is suggested that loss of privacy arises from the side and rear facing windows. However, these windows look out onto the tall fence which surrounds the property and do not overlook neighbouring gardens. The absence of harm in this regard counts neither in favour nor against the scheme.

15. Whilst there is no appeal made expressly on ground (c)[2] reference has been made to the possibility that the extension could be permitted development. However, I cannot see that any permitted development rights would apply in the circumstances of this case[3]. I do not need to take this matter further.

16. I understand that the appellant sought pre-application advice from the Council before commencing the development. However, such advice does not pre-empt the statutory planning application process and is not binding upon the Council or other decision maker. This is not a consideration which alters my conclusion on the main issue.

17. Reference has been made to fencing erected around the appeal site, a rear extension and various maintenance and tenancy issues. However, these are not matters before me in this appeal.

Conclusion

18. When taking into account all matters raised I find that there are no considerations which indicate a decision other than in accordance with the development plan. For all the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Susan Wraith

Inspector

[2] An appeal brought under s174(2)(c) of the Act is that the matter alleged does not constitute a breach of planning control.

[3] Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) sets out the permitted development rights for enlargements, improvements or other alterations to a dwellinghouse. In the case of a side extension (single storey) the width is limited to no greater than half the width of the original dwellinghouse [(j)(iii)]. Limitations also apply to rear extensions and conditions require prior notification to the Council and neighbour consultation for larger rear extensions.