
Appeal Decisions

Site visit made on 22 February 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/T5720/C/16/3156632 & 3156633
21 Merton Hall Gardens, London SW20 8SN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Prashant Mansharamani and Ms Swati Patil against an enforcement notice issued by the Council of the London Borough of Merton.
 - The enforcement notice was issued on 9 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a wooden bike store on the Land.
 - The requirements of the notice are to:
 1. Demolish the wooden bike store structure; and
 2. Remove all surplus materials and debris from the Land caused arising from the compliance with step 1.
 - The period for compliance with the requirements is one month.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

2. On the appeal form submitted, the Appellants brought their appeal on grounds (a), (e) and (f) by ticking the relevant boxes. However, I note from a subsequent e mail from Mr Mansharamani dated 17 October 2016 that he intended to include arguments under grounds (b) that the matter alleged has not occurred; (c) that if it has occurred it does not constitute a breach of planning control; and (d) that it was too late to take enforcement action.
3. These can be briefly dealt with. In the first place a new timber bike store has been erected in the front garden of the appeal property. Thus the matter alleged has occurred as a matter of fact and any appeal brought on ground (b) would have failed.
4. I note that there was a pre-existing shed and that the Appellants say that they replaced that with a new one as similar as possible. Whilst that might be so it is not the case that the replacement of one building with another does not require planning permission. The erection of the new shed amounts to a building operation defined as development within s55 of the Act for which planning permission is required. No permission has been granted either expressly or by way of the Town and Country Planning (General Permitted

Development) (England) Order 2015 and thus a breach of planning control has occurred. An appeal brought on ground (c) would have failed.

5. The Appellants say there has been a bike shed on the site for more than four years. However, in order for it to be too late to take enforcement action, the existing bike shed would have had to have been substantially complete more than four years before the enforcement notice was issued (s171B(1) of the Act). It plainly was not and thus it was not too late to take enforcement action against the new bike store. An appeal brought on ground (d) would have failed.

The appeals on ground (e)

6. The ground of appeal is that the notice was not served on everyone with an interest in the land. A list of persons served is included at the end of the enforcement notice and includes both Appellants. There is no indication that anyone else should have been served, other than those listed, and the Appellants have brought no relevant evidence in relation to this ground. The appeals on ground (e) fail.

The appeals on ground (a)

7. The ground of appeal is that planning permission should be granted. The main issue is the effect of the store on the Merton Hall Gardens street scene.
8. Merton Hall Gardens is a pleasant residential street lined with terraced houses with shallow front gardens. The timber store extends the full depth of the front garden close to its northern boundary with No.19. It rises well above the front boundary wall and also a substantial amount above the cill of the ground floor front windows. As such it appears overly bulky for this limited open area; dominates the small front garden; and detracts from the setting of the house. In views along the street I found it to be a prominent feature and unduly intrusive. Its utilitarian appearance, more typical of a shed one might expect to find in a back garden, jars with the formal frontage pattern of development along the street.
9. I conclude that the development damages the Merton Hall Gardens street scene. In so doing it conflicts with Core Strategy policy CS14 which requires development to be designed to respect, reinforce and enhance local character and with Sites and Policies Plan policy DMD2i and ii which, in short, require development to relate positively to its particular setting.
10. The Appellants say "every other house in Merton has bike sheds in their front gardens". Whilst that is patently not the case, I did see other bike sheds in the area including quite a number along Merton Hall Gardens. They vary in shape and design and in their degree of prominence depending upon the size and nature of the front garden and the amount of screening that can be achieved. Of those I saw along Merton Hall Gardens, the store at the appeal property is by far the most prominent and whilst painting it might go some way to helping it blend in; that would not overcome the damage I have identified. The presence of others does not justify the harmful store on the appeal property.
11. The Council also suggests that the store results in a loss of outlook for, and light to, the adjoining property, No.19 but I do not agree. It is not of such a size as to be likely to have any material effect on the amount of light reaching the front windows of No.19 and, in addition, a good part of the structure is

screened from view from that property by the occupiers' own front storage shed. The Appellants say their immediate neighbours have no objection to the store but that does not overcome the harm identified.

12. The Appellants say they feel they are being "hounded", but the Council has a responsibility to apply its policies consistently. If it is not doing so, that is a matter for the Appellants to pursue with them.

The appeals on ground (f)

13. The ground of appeal is that the steps required to be taken by the notice are excessive. The Appellants propose no lesser steps than those set out, other than to paint the store which I have already found would not overcome the harm. The requirements of the notice, in seeking to have the store demolished and removed go no further than remedying the breach of planning control which has occurred. That is a legitimate purpose that a notice can seek to achieve. Thus the requirements are not excessive and the appeals on ground (f) fail.

B M Campbell

Inspector