
Appeal Decision

Site visit made on 11 July 2017

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 20 July 2017

Appeal Ref: APP/T5720/C/16/3161358
34 St Barnabas Road, Mitcham CR4 2DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mirza Ahmad against an enforcement notice issued by the Council of the London Borough of Merton.
 - The enforcement notice, numbered 15/E0109, was issued on 30 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised increase in depth of the single storey rear extension from 5 metres to 8.4 metres.
 - The requirements of the notice are:
 - (a) Reduce the depth of the single storey rear extension from an overall depth of 8.4 metres to a depth of no more than 5 metres.
 - (b) Remove all resultant debris from the land as a result of requirement (a).
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds in part on ground (g) only. Otherwise the appeal is dismissed. I direct that the enforcement notice be varied by the deletion of 3 calendar months and the substitution of 12 calendar months as the period for compliance. Subject to this variation; the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (a)

2. The main issues in this case are the effect of the extension upon the character and appearance of the host building and local area and upon the living conditions of occupiers of nearby properties.

Character and appearance

3. The appeal property lies to the south of St Barnabas Road, a residential street characterised by terraced properties. Along this side and section of the road the terraces are blocks of four or five joined by ground floor links such as the garage between Nos 36 and 38. Rear gardens adjoin those of properties in Gorrington Park Avenue and views across all the rear gardens are extensive and available from the rear of all the properties.

4. Whilst there are a large number of rear extensions and rear garden buildings within the vicinity, varying in style size and width, none of them extends into the rear garden as far as the extension at No 34.
5. Nevertheless, I accept the appellant constructed the extension in good faith understanding it not to require planning permission and he has endeavoured to obtain permission through the correct channels at great expense. I also accept the extension was built out of necessity rather than vanity.
6. However, it is without doubt, given its depth, unlike any other extension in view. That is further exacerbated by the fall of the land away from the house such that the extension, particularly the part embraced by the notice sits higher than the garden buildings nearby. Its length is also at odds with the scale of the house and terrace and it has no design features that reflect that of the host building. An incongruous addition that draws the eye and leads the viewer to question how it came to be.
7. For these reasons I find the combination of these factors has led to unacceptable harm to the character and appearance of the host building and the area. That is at odds with Policy DM D2 of the Merton Sites and Policies Plan 2014 which seeks high quality design and expects developments to, amongst other things, relate positively to the surrounding area. That is reflected by Policy CS14 of the Merton Core Planning Strategy 2011 which requires development to respect the local character, as does the thrust of Policy 7.6 of the London Plan.

Living Conditions

8. I accept that the occupiers of the neighbouring properties have raised no objections to the development. However, I must consider all future occupiers and to that end, given the length and height of the extension extending along the mutual boundary with No 36, it is inevitable that the extension has led to unacceptable harm to the outlook from the rear habitable windows of the property. The extension appears as a solid, featureless, blank elevation extending the majority of the length of the garden, the addition of the bathroom has increased that elevation, at a higher level, resulting in an overbearing feature which has harmed the outlook from and the living conditions of, occupiers of No 36.
9. Given the orientation of the dwellings I fail to see how the extension has resulted in unacceptable harm to the amount of daylight or sunlight reaching the neighbouring properties. Although that does not outweigh the harm I have found. For these reasons I also find the extension has led to unacceptable harm to the living conditions of occupiers of No 36 which is contrary to the aforementioned planning policies insofar as they seek to protect the quality of living conditions.

Other matters

10. There is no doubt in my mind that the appellant and his wife require easy access to bathroom facilities given his disabilities. These are well documented and not under dispute and I have a great deal of sympathy for his predicament and needs. However, in general the courts have taken the view that planning is concerned with land use in the public interest, so that personal circumstances seldom outweigh planning harm.

11. Furthermore, it is not clear whether the use of the bathroom in the extension is the only option available to the appellant or if other ways of adapting the premises, such as easier access to the first floor, to meet his needs have been investigated. In that light the personal circumstances of the appellant do not outweigh the harm I have found to the public interest.

The appeal on ground (f)

12. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. The requirements of the notice in this case seek the reduction of the extension to 5 metres. That covers everything in the alleged breach of planning control.
13. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. Given the purpose of the notice is to remedy the breach of planning control, it falls within s173(4)(a). The appellant suggests that lesser step would be to require the extension to be demolished upon his death or prior to the sale of the property. These are not lesser requirements but would extend the time for compliance and I deal with that under the ground (g) appeal. The appellant has not put forward any lesser steps and the appeal on ground (f) must fail.

The appeal on ground (g)

14. The appellant considers the time set out under the ground (f) appeal or a period of 5 years is required due to exceptional circumstances. Furthermore alternative arrangements would need to be made to either modify the home or find alternative accommodation.
15. The appellant's health issues are undisputed and his disability is something which needs proper consideration. I have no doubt the current arrangements suit him and his family in dealing with the daily challenges he finds. However, as set out above it is not clear if other arrangements have been investigated. Therefore, it seems to me that 12 months, given the appellant's particular circumstances, would be a more appropriate time to allow the appellant to make further arrangements and undertake the required works to comply with the notice.
16. To that extent the appeal on ground (g) succeeds and I shall vary the notice.

Conclusion

17. For the reasons given above and having considered all matters raised. I conclude that, save for part success on ground (g), the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Richard Perrins

Inspector