



Appeal Decision

Site visit made on 7 July 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2020

Appeal Ref: APP/T5720/C/19/3237183

Land at 47 Edgehill Road, Mitcham CR4 2HY

- 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 Ms Denise Monique Ranger against an enforcement notice issued by the Council of the London Borough of Merton.
 - The enforcement notice was issued on 14 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection on the land of a single storey rear extension.
 - The requirements of the notice are:
 - a) Demolish the single storey rear extension.
 - b) Remove from the land all materials and debris resulting from compliance with (a) above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection on the land of a single storey rear extension at Land at 47 Edgehill Road, Mitcham CR4 2HY and subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following plan: Drawing No. 47 EDGR P2_R2.

Preliminary Matters

2. The house is mid-terrace and the garden slopes slightly away from the house. Two prior approvals¹ have been granted for a single storey rear extension which fills the width of the garden. The extension as built does not accord with either of these permissions. In particular, the extension is taller and a parapet has been added to each side of the roof, with an internal gutter. Further works are required to finish the extension, including the addition of facing materials to the blockwork facing materials. Planning permission² has been refused for the retention and completion of the extension as built.

¹ Refs 17/P3732 and 17/P4045

² Ref 19/P1795

The appeals on grounds (b) and (c)

3. These grounds of appeal are that the matters stated in the notice have not occurred, and if they have occurred, that they do not constitute a breach of planning control. I have dealt with them together as the appellant's case is the same for both grounds.
4. The appellant asserts that the extension is not yet complete, and that it could be rectified to comply with prior approval ref 17/P4045. However, the appellant does not dispute that the extension has been built. I saw on my site visit that it is at an advanced stage of construction and the matters stated in the notice have occurred.
5. The appellant does not dispute that the extension as built does not accord with the plans approved with the two prior approvals and therefore it does not comply with the limitations and conditions of Class A Schedule 2 Part 1 of the GPDO³. It does not benefit from deemed or express planning permission and therefore it constitutes a breach of planning control. The appeals on grounds (b) and (c) fail.

The appeal on ground (a) and the deemed application

6. This ground of appeal is that planning permission should be granted. Having regard to the reasons for issuing the enforcement notice, the main issue is the effect of the development on the living conditions of the occupiers at 45 and 49 Edgehill Road, with regard to outlook, daylight and sunlight.
7. The neighbouring property at No 45 has a single storey extension that is lower in height and does not extend as far rearwards as the extension on the appeal site. Although the extension at No 47 is tall and built up to the side boundaries, due to the existing extension at No 45 and the relatively wide garden, the extension does not have an overly dominant effect on the outlook from No 45 or its garden. Any effect on daylight or sunlight to the garden or habitable rooms at No 45 is not significant due to the width of the garden and the orientation of the rear elevation.
8. The dwelling at No 49 has a rear extension but it does not extend the full width of its rear elevation. As a result, there is a small area of garden that is enclosed on two sides by the flank elevations of the extension at No 47 and the extension at No 49, and the outlook from a ground floor rear window is therefore restricted. The extension to No 47 has also reduced the amount of daylight and sunlight reaching the ground floor room served by the window.
9. I am mindful however that No 49 has a large rear garden that is largely unaffected by the extension. The main outlook to the rear is from the dining room which is served by French windows, and this is largely unaffected by the extension at No 47 due to the distances involved. The appellant has provided drawings indicating that the affected window serves a small kitchen, and considers that this is not a main habitable room. I agree with this assessment, as the dining room and the living room are large rooms that have their main outlook to the front and the rear of the property, while the kitchen is small. I therefore conclude that any effect on the outlook, daylight and sunlight is not significantly harmful to the living conditions of the occupiers of No 49.

³ Town and Country Planning (General Permitted Development) (England) Order 2015

10. For these reasons, I conclude that the development is not harmful to the living conditions of the occupiers of 45 and 49 Edgehill Road, with regard to outlook, daylight and sunlight. There is therefore no conflict with Policy 7.6 of the London Plan 2016, or Policies DMD2 and DM3 of the Merton Local Plan Sites and Policies Plan and Policies Maps 2014, insofar as they seek to ensure that new development achieves high quality of design, does not harm the residential amenity of neighbours, ensuring appropriate levels of sunlight, daylight, and quality of living conditions to occupiers.

Conditions

11. The Council has suggested a condition requiring that the facing materials to be used for the development should be those specified in the application form submitted with application reference 19/P1795, but the form does not specify the facing materials to be used. Such a condition would not therefore be sufficiently precise.
12. However, the rear elevation of the main house is finished in painted render, and Drawing No. 47 EDGR P2_R2 which was submitted with the application indicates that that the rear and side elevations of the extension would be finished to match the main rear elevation of the house. As the development has not yet been completed, I shall impose a condition requiring that the extension is carried out in accordance with the details shown on the application plan.

Conclusion

13. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The appeals on ground (f) and (g) do not therefore fall to be considered.

N Thomas

INSPECTOR