



Appeal Decision

Site visit made on 8 June 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2020

Appeal Ref: APP/T5720/C/19/3242689

155 Canterbury Road, Morden SM4 6QG

- 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 Adam Kolodziejski against an enforcement notice issued by the Council of the London Borough of Merton.
 - The enforcement notice was issued on 5 November 2019.
 - The breach of planning control as alleged in the notice is the development of an outbuilding to the rear of the Land.
 - The requirements of the notice are;
 - (a) Demolish the unauthorised rear outbuilding; and
 - (b) Clear debris and all other related materials resulting from compliance with (a) above from the Land.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) 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.
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Decision

1. The appeal is dismissed, 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.

Procedural matters

2. The appeal has only been advanced on ground (a), that planning permission should be granted for the development. However, some of the evidence relates to disagreement with the Council, regarding the interpretation of rights conveyed by Schedule 2 Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO).
3. These are matters that should more appropriately be considered under ground (c), that those matters alleged in the notice, do not constitute a breach of planning control. I therefore intend to deal with these under the appropriate ground, and the appeal is therefore proceeding on grounds (a) and (c). This is reflected in the above heading.

Ground (c)

4. This is a legal ground where the onus is on the appellant to make out the case that there has not been a breach of planning control. It is common ground that the building complies with the other provisions of Schedule 2 Part 1, Class E of

- the GDPO. The main area of disagreement is whether the building meets the height limitation set out in Class E (e), (ii), that the height of the building should not exceed 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse.
5. The plan dated 15.07.19, annotated 1, indicates that the overall height of the building is approximately 2.419m to the rear and 2.584m from the top of the patio/terrace. The terrace is raised some 0.424m higher than the remaining garden.
 6. The Permitted Development Rights for Householders, Technical Guidance (2017) (the Guidance) gives further information about the interpretation of the GDPO. This makes it clear that the height of the building, enclosure or container should be measured from the highest ground level immediately adjacent to the building, enclosure, or container to its highest point. Moreover, if any part of the building, container or enclosure is within two metres of the boundary of the curtilage of the house, then the height limit for the total development is restricted to 2.5m, if it is to be permitted development.
 7. Accordingly, as the outbuilding exceeds 2.5m in height, and is sited within 2 metres of the boundary, it does not benefit from permitted development rights conveyed by the GDPO, and the appeal on ground (c) fails.

Ground (a) the deemed planning application

Main Issue

8. The main issue is the effect of the development on the character and appearance of the area.

Reasons

9. The site is located within a predominantly residential area, characterised by small terraces of two storey dwellings set within modest plots. The appeal property lies at the end of one of these terraces.
10. The outbuilding has been sited in the rear garden, which slopes up towards the rear boundary. There is a raised and walled terrace and the building has been sited on top of this terrace, spanning almost the entire width of the garden. As a result, the height, scale and the raised position of the building, within this modest back garden, makes it appear overly dominant when compared with the host property.
11. It was clear from my visit, that the building can be seen from the highway, due to the adjacent terrace being set considerably further back from the carriageway by a wide grassed area. Moreover, it is clearly visible from the gardens and rear windows of the adjacent dwellings, the properties to the rear of the site and those to the south.
12. For the above reasons, I find that a building on this scale is not a feature commonly repeated in the area. Its scale and height fails to respect or enhance local character, and gives it an overly dominant and incongruous appearance when considered in the context of the surrounding area. Accordingly, I find that it conflicts with policy 7.6 of The London Plan (2016), policy CS 14 of the London Borough of Merton LDF Core Planning Strategy (2011), and saved policy DM D2 of the Sites and Policies Plan and Policies Maps (2014). In

summary these policies when taken together, seek to ensure that new development achieves high quality design that respects, reinforces and enhances the local character of the area.

13. It is acknowledged that there are a number of other outbuildings in the rear gardens of neighbouring properties, and I was able to view several of these at my visit. However, these are generally significantly smaller than this and their presence does not lead me to a different decision.

Conclusion

14. For 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 application deemed to have been made under section 177(5) of the 1990 Act as amended

Hilary Orr

INSPECTOR