



Appeal Decisions

Site visit made on 30 April 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

Appeal A Ref: APP/T5720/C/22/3308093

Appeal B Ref: APP/T5720/C/22/3308094

Land at 28 Oakleigh Way, Mitcham CR4 1AL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Jones Opoku and Appeal B by Mrs Kwartema Opoku against an enforcement notice issued by the Council of the London Borough of Merton.
 - The notice was issued on 13 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised conversion of the single-storey rear extension to the dwelling on the Land to a self-contained dwelling and the erection of a rear canopy attached to the single-storey rear extension.
 - The requirements of the notice are to:
 - (a) Cease the use of the rear extension as a self-contained residential unit.
 - (b) Remove all those fixtures and fittings that facilitate the unauthorised use of the rear extension including the permanent removal of the facilities in use including the kitchen facilities, including sink, cooker, hob, microwave and any other cooking or preparation of food facilities.
 - (c) Completely remove the rear canopy attached to the rear extension.
 - (d) Remove from the land all debris and building materials resulting from the above works.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(d) and (a) of the Town and Country Planning Act 1990 (as amended).
 - Appeal B is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees have not been paid within the specified period, Appeal B on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

1. It is directed that the enforcement notice is corrected by the deletion of the word *conversion* after *unauthorised* in section 3 of the enforcement notice (the breach of planning control alleged) and its substitution with the words *material change of use*.
2. Subject to the correction, Appeal A 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.
3. Subject to the correction, Appeal B is dismissed, and the enforcement notice is upheld.

The Enforcement Notice

4. I have a duty to get the notice in order, and I have wide ranging powers under Section 176(1)(b) of the 1990 Act to correct the notice, provided no injustice would be caused to the parties.
5. The allegation refers to the conversion of the extension. However, it seems to me, based on the Council's limited submissions, that rather than operational development, the Council is alleging a material change of use of the extension to a self-contained dwelling. I shall correct the allegation to reflect that is the development that has occurred. Since such a correction does not change the substance of the allegation but clarifies that it is a material change of use, there is no injustice to either main party.

Appeal A and Appeal B on ground (d)

6. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
7. By virtue of section 171B(2) of the 1990 Act, where there has been a breach of planning control consisting of a material change of use of a building to a dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
8. In respect of the canopy, by virtue of section 171B(1) of the 1990 Act where there has been a breach of planning control consisting of the carrying out of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach, being the date the canopy was substantially completed.
9. Consequently, in order to succeed on this ground, the appellants would need to demonstrate, on the balance of probabilities, that the use of the extension as a dwelling began and has been ongoing on a substantially uninterrupted basis for not less than four years before the material date, being the date of the issue of the notice 13 September 2022. And, that the canopy was erected more than four years before the material date.
10. Planning permission was granted for the extension on 13 January 2021 and on the appeal form it is stated that the notice was issued over 18 months after occupation of the rear extension on 1 March 2021. Since the extension was not erected four years before the material date and it was not occupied until 1 March 2021, its use as a dwelling cannot have begun nor been ongoing for the requisite period, and the canopy could not have been erected. Accordingly, the appeals on ground (d) cannot succeed.

Appeal A on ground (a) and the deemed planning application

11. The main issues are (i) whether the dwelling provides acceptable living conditions for occupiers, with particular regard to the size of the accommodation and the provision of secure cycle parking; and (ii) the effect of the canopy on the character and appearance of the property and area generally.

Reasons

Living conditions

12. The accommodation consists of a modest kitchen area, bathroom, bedroom, and a further room containing a desk and fridge/freezer. The bedroom is very cramped with the door opening close to the bed and negligible storage space. Notably there is no lounge or amenity space in which occupiers could relax and watch TV for example. The small room with the desk is very restricted in size and could not provide an acceptable sized amenity space. Overall, the dwelling is excessively small such that the living conditions in the dwelling are cramped, to the detriment of the living conditions of occupiers.
13. Moreover, there is no evidence that the occupiers have access to secure cycle parking or that this could be provided, contrary to Policy T5 of The London Plan 2021.
14. For the reasons given, I conclude that the dwelling does not provide satisfactory living conditions for occupiers. It is not good quality design and is contrary to Policy DM D2 of Merton's Local Plan Sites and Policies Plan and Policies Maps 9 July 2014 and those principles of the National Planning Policy Framework, which together seek to ensure good quality design and a high standard of amenity for existing and future occupiers of buildings.
15. The Council referred to Policy CS14 of the London Borough of Merton Core Strategy 2011 (Core Strategy) which requires that residential development should comply with the most appropriate minimum space standards. However, since no such standards were provided, I cannot conclude there is conflict with this policy.

Canopy

16. The canopy is a rudimentary construction, consisting of poor-quality materials including plastic corrugated sheeting. It has been built up to and has an awkward relationship with the eaves line of the extension and does not represent high quality design.
17. Whilst the canopy is not prominent in wider public views, it will be visible from the upper floor windows of neighbouring dwellings. In such views, the canopy will appear as a discordant feature.
18. Consequently, whilst localised in its extent, the canopy adversely affects the character and appearance of the host property with consequent harm to the character and appearance of the surrounding area. This is contrary to Policy CS14 of the Core Strategy and Policies DM D2 and DM D3 of Merton's Local Plan Sites and Policies Plan and Policies Maps 9 July 2014. Together these require high quality sustainable design with detailing and materials which complement and enhance the character of the wider setting; and external materials that are appropriate to the original building and its surroundings.

Other Matters

19. Whilst I note the appellant's cooperation with the Council's building control department, this is a separate regulatory regime which has no bearing on the planning merits of the development. That there have been no complaints from

the occupiers of 26 Oakleigh Way, is a neutral matter which cannot outweigh my findings.

20. I acknowledge third party representations regarding lighting. However, the enforcement notice is directed at the use of the extension as a dwelling and the erection of a canopy. Moreover, the Council identified no harm in respect of light pollution, because of the use of the extension as a dwelling or from the erection of the canopy.

Conclusion

21. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).
22. Appeal B should not succeed.

Felicity Thompson

INSPECTOR