



# Appeal Decision

by Andrew J Davenport

**A person appointed by the Secretary of State  
for Communities and Local Government**

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Date: 21 January 2010

**Appeal Ref: APP/T5720/C/09/2113450**

**Land at 28 Abbotsbury Road, Morden, Surrey, SM4 5LQ**

- 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 brought by Mr Fawad Rahimi against an enforcement notice issued by London Borough of Merton.
- The Council's reference is 41461
- The notice was issued on 21 August 2009.
- The breach of planning control as alleged in the notice is "without planning permission, the erection of a timber outbuilding to the rear of the property."
- The requirement of the notice is to: "demolish the wooden outbuilding in its entirety and remove all resulting debris from the site to an authorised place of disposal."
- The period for compliance with the requirements is "2 months from the date this notice takes effect."
- The appeal is made on ground (g) set out in section 174(2) of the 1990 Act, as amended.

**Summary of decision: the appeal is dismissed and the notice is being upheld without variation.**

## Procedural matters

1. The Inspectorate's letter of 27 October 2009 confirmed that, because the correct fee was not paid within the specified period, the deemed application for planning permission had lapsed. The planning merits of the development cannot therefore be considered. I shall accordingly deal only with the appeal on ground (g).
2. I have considered the grounds on which the appeal was made, together with the Council's written statement. As these representations have been made available to the parties, I do not intend to summarise them in detail. They have been carefully considered.

## Background

3. In 2002 permission was granted for a change of use of the premises from mixed use Classes A1 and B1 to a hot food takeaway shop. In May 2007 a complaint was received by the Council that an outbuilding had been erected without permission to the rear of the premises. The Council made site visits in May 2007 and again in December 2008 at which visits the owner expressed the intention to submit a planning application. No application was received and the Council considered they had evidence to contradict the appellant's argument that the building had been there in excess of four years and was therefore lawful. Further

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discussions in 2009 did not result in a planning application and enforcement action was taken by issuing an enforcement notice in August 2009.

### **The ground (g) appeal**

4. The ground (g) appeal was made on the basis that, the appellant had been in touch with the Council in September 2009, at the time of his appeal with the intention of applying for planning permission, and was waiting for the forms to come through. These would then be completed, signed and sent off as soon as possible. Extra time was requested for this process to be completed. The Council argue that the appellant has in effect had two years in which to apply for planning permission. Throughout that period the appellant had been made aware that planning permission was unlikely to be granted and extending the period further was therefore unjustified. Nevertheless the Council had offered him a further month to comply but this offer had not been taken up.
5. I have carefully considered all the points made during the appeal. I note that the appellant has had sufficient time both before enforcement and since his appeal was made to make any application for planning permission. Against his wish to keep the unauthorised building on the land must be balanced the Council's understandable concern to remedy what the notice identifies as a breach of local planning policies resulting in a development that does not reach the accepted standards of design and is detrimental to the character and appearance of the neighbouring area.
6. Bearing all these points in mind, and in view of the time that has elapsed since the appeal was made, I do not consider that an extension of the compliance period would be justified in this case. Two months should be long enough to dismantle and remove the wooden outbuilding and all associated debris from the site. The ground (g) appeal fails accordingly.
7. However, while I am dismissing the appeal, I note that the Council have the power, under section 173A(1)(b) of the amended 1990 Act, to extend the compliance period themselves, if they see fit. Whilst this is entirely a matter for the Council's discretion, it would be open to the appellant to ask for a further short extension of time, should that prove necessary.

### **Formal decision**

8. For the reasons given above, and in exercise of the powers transferred to me, I hereby dismiss the appeal and uphold the enforcement notice.

### **Right of appeal against decision**

9. This decision is issued as my determination of the appeal before me. The leaflet, which is enclosed for those concerned, sets out the right of appeal to the High Court.

*Andrew J Davenport*