



Appeal Decision

Site visit made on 6 April 2010

**by M A Champion BSc CEng FICE
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an Inspector appointed by the Secretary of State
for Communities and Local Government

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**Decision date:
21 April 2010**

Appeal Ref: APP/T5720/C/09/2118317

Land at 5 Ashtree Avenue, Mitcham, CR4 3DS.

- 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 Cathy Hart against an enforcement notice issued by the London Borough of Merton Council.
- The Council's reference is 42780.
- The notice was issued on 29 October 2009.
- The breach of planning control as alleged in the notice is:
Without planning permission the erection of a single storey rear extension on the Land.
- The requirements of the notice are:
(a) Demolish the single storey rear extension and remove all resulting debris from the site.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in sections 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with variation.

The appeal on ground (a) and the deemed application

Main Issue

1. The main issue is the effect of the development on the living conditions of the residents of 7 Ashtree Avenue with particular regard to visual impact.

Policies

2. Saved Policies BE.15 and BE.23 of the London Borough of Merton Unitary Development Plan 2003 (UDP) deal with design of new development, and alterations and extensions to buildings. These are supported by Supplementary Planning Guidance Note: *Residential Extensions, Alterations & Conversions* (SPG).

Reasons

3. The appeal site lies in a residential area and is a mid-terrace house. In 2007 planning permission was granted for a full width rear extension 3 metres deep. The constructed extension is of lesser width, being attached to the rear projection only, but is 3.6 metres deep.
4. I support the Council in its aim of preventing harm to the surrounding area and neighbouring residents by limiting the size of rear extensions. However the cited policies contain no figures for the maximum size of extensions. Neither does SPG give specific dimensions, but relies on the building orientation and the proximity of neighbouring properties to derive likely maximum acceptable

- depths. This method is primarily concerned with ensuring that the extension does not unacceptably reduce daylight and sunlight for the neighbouring property, which is not, in the current case, a reason for objection by the Council.
5. Having regard to the size of the extension and its siting and orientation in relation to No 7, I concur with the Council in this respect. However the increased depth results in a dominant appearance and is likely to have an overbearing visual impact when viewed from the garden of No 7.
 6. The Council states, and the appellant does not dispute, that the remaining rear garden area is some 40 square metres, which is less than the minimum 50 square metres advised by SPG. However the difference in garden area between the approved and constructed schemes is not significant, and I do not, therefore, consider this sufficient reason to warrant refusal.
 7. My attention has been drawn to the alleged encroachment of the extension onto the neighbouring property. Disputes between neighbours are covered by other legislation, but as the side property boundaries to the rear of the houses in this part of the road are set at an angle to the rear building line (in this case away from the appeal site towards No 7), the encroachment, if any, is likely to be less than alleged.
 8. I conclude, therefore, that the development adversely affects the living conditions of the residents of No 7 by way of visual impact, contrary to Policies BE.15 and BE.23.
 9. Although the appellant has not pleaded ground (f) it is not necessary to remove the whole extension to overcome the harm caused. Planning permission has already been given for an extension 3 metres deep, and one of the same depth could be constructed as permitted development. I shall vary the notice accordingly.

Conclusions

10. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice and refuse to grant planning permission on the deemed application.

Formal Decision

11. I direct that the enforcement notice be varied by the deletion from paragraph 5 of the words "(a) Demolish the single storey rear extension and remove all resulting debris from the site" and substitute therefor the words
"EITHER
(a) Demolish the single storey rear extension and remove all resulting debris from the site;
OR
(b) Reduce the single storey extension to a depth not exceeding 3.0 metres and remove all resulting debris from the site."

12. Subject to this variation I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M A Champion
INSPECTOR