



Appeal Decision

Hearing held on 12th August 2003

Site visit made on 12th August 2003

by **Dennis Bradley BSc(Econ) DipTP MRTPI**

an Inspector appointed by the First Secretary of State

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Date

20 AUG 2003

Appeal Ref: APP/T5720/C/03/1113174

11A Love Lane, Mitcham, Surrey, CR4 3AU

- 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 P.V. Phillips against an enforcement notice issued by the Council of the London Borough of Merton.
- The Council's reference is 02/P2274.
- The notice was issued on 11th February 2003.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single-storey rear extension to a ground floor flat.
- The requirements of the notice are to remove the single-storey rear extension.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) and (f) of the 1990 Act.

Summary of Decision: The appeal succeeds in part and the notice is upheld as varied in the terms set out in the Formal Decision.

The site and its surroundings

1. The appeal concerns a two-storey, semi-detached house situated on the northern side of Love Lane within a largely residential area. The house was converted into two flats in the 1980s. At the time of the conversion the property had a single-storey rear extension, apparently constructed as permitted development. This extension was built up to the common boundary with the adjoining property, 15 Love Lane. In about August 2002 the extension was demolished and replaced by a new structure in a similar location. A planning application to retain this structure was refused in November 2002, and the enforcement notice that is the subject of the appeal was served in February 2003.

The appeal on ground (a)

2. An appeal on ground (a) deals with the issue of whether planning permission should be granted for what is alleged in the notice. The starting point for the consideration of the appeal must be the development plan, which in the present case is the adopted Unitary Development Plan (UDP). The emerging Draft UDP is a further material consideration, although it clearly carries less weight. The parties have drawn my attention to policy H20 of the adopted UDP and to policies BE.21, BE.22 and BE.29 of the emerging UDP.
3. Policy H20 states that residential extensions will not be permitted where their outward projection would visually intrude on or cause an excessive loss of daylight to adjoining properties. Policy BE.21 aims to ensure that all buildings receive adequate daylight and sunlight, while policy BE.22 seeks to protect properties from loss of privacy and visual intrusion. Finally policy BE.29 makes clear that in considering proposals for alterations and

extensions, the Council will have regard to their impact on the amenities of neighbouring properties.

4. The Council has also adopted supplementary planning guidance (SPG) on residential extensions, alterations and conversions. This emphasises that issues relating to privacy and the daylight and sunlight enjoyed by neighbouring properties will be taken into account when dealing with proposals for rear extensions. The SPG identifies a procedure for determining aspect values when considering such proposals.
5. From my consideration of the matters raised at the hearing and in the representations, it is my opinion that the principal issue in the case is the impact of the extension on residential amenity.
6. The Council notes that the former extension had a depth of 5.1 metres and a maximum height of 3 metres, reducing to 2.5 metres at the furthestmost projection. By contrast the present extension has a depth of 5.5 metres and a flat roof with a height of 3.5 metres. In the Council's view this increase in the size of the extension has created an intrusive, overbearing form of development leading to a sense of enclosure and overshadowing of No. 15.
7. In my opinion this argument has considerable merit. It was clear at my visit to the site that the extension dominates the outlook from the rear ground-floor room at No. 15 and from the part of the garden of No. 15 which adjoins that room. As the rear gardens of Nos. 11 and 15 face north-west they receive little direct sunlight, and the change in the size of the extension has probably made little impact in that regard. Nevertheless, I consider that there must have been a significant reduction in daylight to the rear of No. 15, along with the visual impact of the larger structure.
8. I note that the appellant emphasises the extension would have been permitted development if the property had remained as a single-family dwelling and had not been converted into flats. However, since that is not the case, the planning merits of the development must be considered. In my view the scheme would clearly not accord with the aims of those policies of the adopted and emerging UDPs to which the Council has referred, and the retention of the extension would result in an unacceptable loss of residential amenity. The appeal on ground (a) must accordingly fail.

The appeal on ground (f)

9. An appeal on ground (f) deals with the issue of whether the steps required to comply with the notice are excessive, and lesser steps would overcome the objections. The notice at present requires the removal of the whole extension. However, the Council accepted that this requirement could be varied to require only the demolition of the part of the extension that exceeds the original building.
10. In considering this matter I have had regard to the advice in paragraph 2.34 of Circular 10/97 that enforcement notices should have specific steps to remedy a breach of planning control, and that they should not leave matters for future agreement between the parties. I was provided with a copy of the plans of the former extension. However, it is not clear whether such an extension would now satisfy the Building Regulations, and accordingly it may be impractical to require the appellant to modify the existing building to accord with these plans. Therefore, in my opinion it would be more appropriate for me to set out the

maximum depth and height to which the extension could be modified. Since the depth of the former extension was 5.1 metres, a similar figure could be used. The question of height is more complicated, as the height of the previous extension was not consistent, varying between 2.5 and 3 metres. I have concluded that a reasonable figure would be 2.7 metres. Moreover, as the appellant may prefer to remove the whole of the extension rather than to modify it, I will make the new requirement an alternative to, rather than a replacement of, the existing requirement. The appeal on ground (f) accordingly succeeds.

Conclusions

11. For the reasons given above and having regard to all other matters raised, I conclude that the requirements are excessive, and I am varying the notice accordingly, prior to upholding it. The appeal on ground (f) succeeds to that extent.


Formal Decision

Appeal Re 11 A, Love Lane, Mitcham, Surrey CR4 3AU

12. In exercise of the powers transferred to me, I direct that the enforcement notice be varied by the addition of an alternative requirement to read "Reduce the depth of the extension to a maximum of 5.1 metres and the height of the extension to a maximum of 2.7 metres".
13. Subject to this variation, I uphold the enforcement notice and refuse planning permission on the application deemed to have been made under Section 177(5) of the Act as amended.

Information

14. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.



Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Jean Bennett Planning Technician, London Borough of Merton

FOR THE APPELLANT:

Mr John Escott BA DipTP Robinson Escott Planning
MRTPI

INTERESTED PERSONS:

Ms Beverley Taylor 15 Love Lane
Mr Ross Hunt Owner of 11B Love Lane – 15 Poplar Avenue, Mitcham
CR4 CLH

DOCUMENTS

- Document 1 List of persons present at the hearing
- Document 2 Notification and circulation
- Document 3 Letters from interested persons
- Document 4 Appendices to appellant's statement
- Document 5 Appendices to Council's statement
- Document 6 Extract from the Council's Building Control records

PLANS

- Plan A Building Regulations plan of former extension