



Appeal Decisions

Site visit made on 16 April 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2019

Appeal A Ref: APP/T5720/C/18/3204768

22 St Georges Road, Mitcham, Surrey CR4 1EB

- 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 Asim Adam against an enforcement notice issued by the Council of the London Borough of Merton.
- The enforcement notice was issued on 7 May 2018.
- The breach of planning control as alleged in the notice is without the grant of planning permission the unauthorised erection of decking and fencing on the property.
- The requirements of the notice are: (i) Remove the fencing and decking from the property; and (ii) Remove from the property all surplus materials and debris arising for (*sic*) the compliance with step (i).
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision: The appeal succeeds in part, but otherwise the appeal fails and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Appeal B Ref: APP/T5720/W/18/3218702

22 St Georges Road, Mitcham, Surrey CR4 1EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr Asim Adam against the decision of the Council of the London Borough of Merton.
- The application Ref 18/P4176, dated 20 November 2018, was refused by notice dated 14 December 2018.
- The development proposed is described on the application form as a "single storey 6m rear extension".

Summary of Decision: The appeal is allowed and approval is granted in the terms set out below in the Formal Decision.

Appeal A

Ground (c) appeal

1. The ground of appeal is that the matters referred to in the enforcement notice do not constitute a breach of planning control. It is for the appellant to show

- that their appeal should be allowed, the relevant test to be applied to the evidence being on the balance of probability.
2. The decking projects from the rear elevation of the dwelling into the rear garden by around 5.3 metres and it reaches up to the boundaries with 20 and 24 St Georges Road (No 20 and No 24) on either side. Both main parties agreed that owing to the slope of the garden, the height of the decking varies from no higher than 0.3 metres adjacent to the dwelling to around 0.54 metres above ground level at the part furthest away from the dwelling. The fencing is around 2.65 metres high and runs along parts of both site boundaries with No 20 and No 24.
 3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Schedule 2, Part 1 Class E permits the provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool which is required for a purpose incidental to the enjoyment of the dwelling as such, subject also to the size, height and locational limitations at paragraphs E.1 to E.3. Class E paragraph E.1 (h) restricts the construction of, amongst other things, a raised platform.
 4. The GPDO Article 2 (1), states that a "building" includes any structure or erection including part of a building, but it does not include plant or machinery or any gate, fence wall or other means of enclosure. The decking in this appeal clearly amounts to a structure or erection; it could not accurately be described as an item of plant or machinery nor as a means of enclosure. There is nothing in the GPDO to suggest that decking should be regarded other than as a building. According to the Government's Technical Guidance¹, decking should be assessed against the conditions and limitations in Class E. The Technical Guidance describes decking in the context of it being a building. Therefore, it is reasonable to regard the decking as a building for the purposes of Class E.
 5. According to the GPDO Part 1 paragraph I, "raised" in the case of a platform means a platform with a height greater than 0.3 metres. The GPDO Article 2 (2) states that unless the context requires otherwise, the height of a building refers to its height as measured from "ground level", this being the level of the surface of the ground immediately adjacent to the building in question or where the surface of the ground on which it is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it. Article 2 (2) does not provide any indication that the height of decking should be measured differently to other buildings.
 6. No part of the decking exceeds 0.3 metres in height when measured from the highest part of the surface of the ground adjacent to it, this being the point at which to measure the height of the decking in line with Article 2 (2) above. Therefore, the decking does not amount to a raised platform as described in Part 1, paragraph I and it does not fall foul of the limitation at paragraph E.1(h) of Class E. Neither does the decking exceed any of the other limitations in Class E paragraphs E.1 to E.3. As a result, I find that the decking is permitted by the GPDO Schedule 2, Part 1, Class E. Moreover, as the decking is not a raised platform Part 1 Classes A and B are not relevant.

¹ Permitted development rights for householders DCLG April 2017.

7. The GPDO Part 2, Class A permits the erection, construction, maintenance, improvement or other alteration of a gate, fence wall or other means of enclosure subject to the height limitations at paragraph A.1. The fencing exceeds the 2 metre height limitation at Class A, paragraph A.1 (b). Therefore, the fencing cannot be permitted by the GPDO Part 2, Class A. The appellant did not seek to argue otherwise.
8. Consequently, the ground (c) appeal succeeds insofar as the decking is concerned as it has been shown that, on the balance of probability, its erection did not constitute a breach of planning control. The notice will be corrected to delete references to the decking in the allegation and the requirements. However, the appeal fails in relation to the fencing.

Appeal B

Procedural Matters

9. Notwithstanding the description of the proposed extension in the banner heading, the application form also described it as extending 4.5 metres beyond the rear elevation of the original dwelling as measured externally. The submitted plans showed the extension would be 4.5 metres in depth, with a roof overhang projecting a further 0.5 metres. Therefore, I have determined the appeal on that basis.

Main Issue

10. The main issue in this appeal is the effect of the extension on the living conditions of the occupiers of No 20 and No 24, having regard to outlook and light.

Reasons

11. The appeal dwelling is one half of a pair of two storey, semi-detached properties. The extension would span the full width of the dwelling's rear elevation, it would have an overall height of 3 metres and it would have the depth set out above.
12. No 24, the other half of the pair of dwellings, has a small kitchen window around a metre from the boundary with the appeal dwelling and French doors around 3-4 metres from the boundary. As the extension would adjoin the boundary with No 24, it would create a slightly more enclosed feel at the rear of that property, particularly in outward views from the kitchen and in part of the rear garden closer to the dwelling.
13. Nevertheless, the extension would have a reasonably modest depth given the scale of the dwelling and it would have a low profile roof. These factors would assist in keeping the apparent scale of the extension to a minimum when viewed from No 24. As the extension would be set well away from the French doors, it would not be an especially obtrusive feature in outward views from No 24's principal means of outlook to the rear at ground floor level. Moreover, No 24's rear garden is reasonably generous in size, extending well beyond the rear elevation of the dwelling. The extension would be adjacent to a small part of the garden. Consequently, the extension would not cause a harmful erosion in the level of outlook currently enjoyed by the occupiers of No 24 and it would not appear as an unreasonably oppressive or visually intrusive feature from that property.

14. The appeal dwelling and both adjoining properties are orientated so that their rear elevations face in a south-westerly direction. Given the relatively modest scale of the extension and its location on the north-west side of No 24, levels of daylight and sunlight enjoyed at the rear of No 24 would be substantially unaffected for large parts of the day. A slight reduction in daylight and sunlight together with an increase in overshadowing, especially in the kitchen and part of the rear garden adjacent to the extension, would only occur for a relatively short period during the evening. Consequently, the extension would not harmfully erode levels of daylight and sunlight currently enjoyed by the occupiers of No 24.
15. The appeal dwelling is separated from the adjoining dwelling at No 20 by a shared pedestrian pathway. There is a small window, a rear access door and windows either side in the rear elevation of No 20 at ground floor level. The extension would be set around a metre away from the closest part of No 20. This separation would assist in offsetting any increased sense of enclosure experienced at the rear of No 20 due to the extension. Also, the extension would be well away from the door and window openings at the rear of No 20, being around 2 metres from the small window and significantly further away from the access door and windows. Moreover, the extension would only be adjacent to a small part of No 20's generous garden. As a result, there would be no harmful erosion of the level of outlook currently enjoyed by the occupiers of No 20 and the extension would not appear as an unreasonably oppressive or visually intrusive feature from that property.
16. Being on the south-east side of No 20, the extension would cause some erosion in daylight and sunlight as well as an increase in overshadowing to parts of the dwelling and rear garden adjacent to the extension. However, such effects would largely be limited to the early part of the morning. Ground floor rooms at the rear of No 20 and its garden would still have a level of access to daylight and sunlight not dissimilar to that which exists at present for a substantial part of the day. As a result, the extension would not harmfully erode levels of daylight and sunlight currently enjoyed by the occupiers of No 20.
17. Consequently, I find that the extension would not cause an unacceptable reduction in the levels of outlook and light enjoyed by occupiers of adjoining residential properties and there would be no unacceptable harm to their living conditions.
18. Therefore, the extension accords with criterion in Policy 7.6 of the London Plan, as there would not be unacceptable harm to the amenity of surrounding buildings. The extension also accords with criterion in Policy DM D2 of the Merton Sites and Policies Plan (SPP), as it would ensure provision of appropriate levels of daylight and sunlight and quality of living conditions to adjoining buildings and gardens. Furthermore, the extension accords with criterion in SPP Policy DM D3, as it would ensure that visual disturbance does not diminish the living conditions of existing residents. Additionally, the extension accords with Policy CS14 of the Merton Core Strategy insofar as that policy seeks to protect residential living conditions.
19. The Council considered that the above matter aside, the extension satisfied the conditions and limitations of the GPDO Schedule 2, Part 1, Class A and I have not found any reason which would lead me to believe otherwise.

Conclusion

20. For the reasons given above I conclude that the appeal should be allowed.

Conditions

21. The GPDO Schedule 2, Part 1, Class A paragraph A.3 (a) requires the external materials of the development to be of a similar appearance to those of the existing dwelling. Paragraph A.4 (11) requires the development to be carried out in accordance with the approved details. Paragraph A.4 (13) requires the development to be completed before 30 May 2019, whilst paragraphs A.4 (14) and A.4 (15) require the developer to notify the Council in writing of the completion of the development as soon as reasonably practicable thereafter, such notification to include the name of the developer, the address or location of the development, and the date of completion. No further conditions are necessary.

Formal Decisions

22. Appeal A-it is directed that the enforcement notice be corrected by deleting the words "decking and" from the description of the alleged breach in paragraph 3 and the words "and decking" from the requirements at paragraph 5 (i) and the appeal is allowed insofar as it relates to the decking. Otherwise, the appeal is dismissed and the enforcement notice is upheld as corrected.

23. Appeal B-the appeal is allowed and approval is granted under the provisions of Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), for a single storey rear extension at 22 St Georges Road, Mitcham, Surrey CR4 1EB in accordance with the terms of the application, Ref 18/P4176 dated 20 November 2018, and the plans submitted with it, Refs THALAM 22/01 dated 20 November 2018 & THALAM 22/02 dated 20 November 2018.

Stephen Hawkins

INSPECTOR