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## Appeal Decision

Site visit made on 10 March 2014

**by Katie Peerless Dip Arch RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 25 March 2014**

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**Appeal Ref: APP/T5720/A/13/2205419**  
**82/82A Coombe Lane, London SW20 0AX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Selby John Ludolf against the decision of the Council of the London Borough of Merton.
  - The application Ref 12/P1299, dated 4 May 2012, was approved on 14 March 2013 and planning permission was granted subject to conditions.
  - The development permitted is the erection of a two storey rear extension providing ground floor retail storage and first storey 1 x bed self contained flat and a new shopfront.
  - The conditions in dispute are Nos. 5 and 8 which state that: (5) Before the development hereby permitted is first occupied, the windows to the first floor bedroom shall be glazed with obscure glass and fixed shut and shall be permanently maintained as such thereafter and (8) The use hereby approved at ground floor level shall be used only in conjunction with and ancillary to the main use of the ground floor premises.
  - The reasons given for the conditions are: (5) To safeguard the amenities and privacy of the occupiers of adjoining properties and to comply with policy BE.15 of the Adopted Merton Unitary Development Plan 2003 and (8) To protect existing amenity and to prevent the introduction of an independent use without planning permission being obtained from the local planning authority in accordance with policy MU.4 of Adopted Merton Unitary Development Plan 2003.
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### Decision

1. The appeal is allowed and the planning permission Ref 12/P1299 for the erection of a two storey rear extension providing ground floor retail storage and first storey 1 x bed self contained flat and a new shopfront at 82 Coombe Lane, London SW20 0AX, granted on 14 March 2013 by the Council of the London Borough of Merton, is varied by deleting conditions 5 and 8 and substituting for them the following conditions:  
  
(5) Before the development hereby permitted is first occupied, the window in the east elevation of the first floor bedroom shall be glazed with obscure glass and fixed shut and shall be permanently maintained as such thereafter.  
  
(8) The use of the ground floor of the extension hereby permitted is limited to a retail use as described in Class A1 of Part A of the Schedule to the Town and Country (Use Classes) Order 1987 (as amended).

### Application for costs

2. An application for costs was made by the appellant against the Council of the London Borough of Merton. This application is the subject of a separate Decision.

### **Main Issue**

3. I consider that the main issue in this case is whether the conditions are reasonable and necessary to protect the amenities of the surrounding area.

### **Procedural matters**

4. The Council has changed the description of the development from that on the application form, to the version set out in the bullet points above. The original application was for a *'Two storey extension to provide further retail space on ground floor with disable (sic) toilet, kitchenette and bin and refuse storage and change of use from office (B1) to residential and extension to provide an additional 1 x 1 bedroom flat with access from existing residential entrance plus introduction of 2 x rooflights in existing flat'*.
5. The appellant did not agree to the change of description, which was apparently prompted by the annotation *'storage'* on the ground floor extension on the application plan, although informed of it by the Council. In an e-mail of 20 July 2012, he confirmed that the *'application can remain as described'* and I take this to mean as originally made on the application form, as he claims. The Council has therefore granted planning permission for something that was not requested, or agreed to, by the appellant.
6. Since the appeal was lodged, the Council has conceded that the wording of condition 5 should not have referred to both windows in the bedroom of the new flat. The only window that it wishes to be obscure glazed and fixed shut is the small secondary window in the flank elevation facing east. This window could possibly overlook neighbouring residential properties but it is clear that the main bedroom window would have no impact on neighbouring residential amenity. I shall therefore amend the wording of condition 5 accordingly.
7. Also, since the appeal was lodged, the Government has issued its latest Planning Policy Guidance (PPG), which supersedes a number of Circulars and policy guidance documents, including the previous Costs Circular. However, I am satisfied that there is nothing in the cases already made by the parties that would be affected by, or would need to be amended in response to, the publication of the new PPG.
8. There is reference in the appellant's statement to an e-mail he sent to the Council dated 21 December 2012 and, similarly, the Council has referred to letters written to the appellant dated 13 June 2012 and 05 December 2012. However, despite asking the parties for copies of these documents, they have not been forthcoming. I have not, therefore, been able to take these documents into account in the determination of the appeal. .

### **Appeal scheme**

9. The permitted extension would occupy the yard at the rear of 82 Coombe Lane, which is a retail unit with residential accommodation above, on the corner of Coombe Lane and Durham Road. The ground floor of the space created would have a door linking it to the retail unit in the existing building. There would be a kitchenette at the end, with a door to an adjacent external bin store. The existing ground floor of No. 82 would have additional walls installed to create a staff/store area and WC. On the first floor, the new extension would form part of a one bedroom flat accessed from the existing staircase. There is already a 2 bedroom flat at this level which would remain, but a room presently used as an office would be incorporated into the new residential unit as part of the living/dining/kitchen.

10. The elevation facing Durham Road, to the west, would have a shopfront to match the adjacent unit with a window on the first floor to match those in No. 82. On the north, rear elevation, there would be 3 windows to the first floor flat, including one to the bedroom and is the subject of condition 5.

### Reasons

11. Correspondence between the appellant and the Council prior to the determination of the application indicates that the appellant was intending the extension to provide additional space for the ground floor retail unit at the existing property, currently occupied as a charity shop by the Princess Alice Hospice. However, it is clear from the Design and Access Statement that the possibility of the area being used as an independent unit was also envisaged.
12. The appellant has noted that, whilst it was the intention to offer the space to the adjoining premises, the development applied for was for '*further retail*' space, with no mention of it being used specifically for retail storage, as referred to in the modified application. He also notes that an '*intention*' is not necessarily a firm commitment to follow this course. The planning permission that has been granted includes a shopfront and separate entrance and it seems to me that this is a clear indication that the space was not envisaged as being only for ancillary storage.
13. The wording of Condition 8, where it states the use of the premises is to be only '*in conjunction with **and ancillary to** [my emphasis] the main use of the ground floor premises*' seems to be intended to restrict the use of this space to ancillary storage. However, the site is adjacent to other retail premises, the extension would be large enough to operate as an independent unit and the Council has not indicated how a separate retail use could adversely affect the amenities of the area.
14. The only policy referred to by the Council in the reason for attaching the condition, MU.4, relates to live/work units. This policy has now been superseded by policy CS12 of the London Borough of Merton LDF Core Planning Strategy July 2011 but, in any event, is not relevant to the proposed extension. The proposed retail space is shown as separate from the first floor flat which, even in the Council's amended wording, is described as self-contained. There would be no direct access to the living accommodation on the first floor and there is no suggestion in the application that a live/work unit is proposed.
15. Therefore, I find that a condition to restrict the new development to a use that is in conjunction with and ancillary to the existing retail unit is not reasonable or necessary. However, in order that there is clarification about the use of the ground floor extension, I shall reword condition 8 to reflect the wording of the application, as made by the appellant, limiting the use to class A1 retail, as in the adjacent unit.
16. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting conditions 5 and 8 and substituting reworded versions.

*Katie Peerless*

**Inspector**