



# Appeal Decision

Site visit made on 19 January 2010

by **Paul V Morris** DipTP MRTPI

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

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Decision date:  
26 January 2010

**Appeal Ref: APP/T5720/C/09/2114080**

**Land adjacent to 35 Marian Road, London SW16 5HT**

- 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 A S Beg against an enforcement notice issued by the Council of the London Borough of Merton.
- The Council's reference is 42733.
- The notice was issued on 7 September 2009.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of large three storey dwelling.
- The requirements of the notice are to:
  - (a) demolish the unauthorised dwelling;
  - (b) remove all debris and materials resulting from the demolition from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on grounds (a), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. The appellant is deemed to have made an application for planning permission for the development to which the notice relates by virtue of s177(5) of the 1990 Act.

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

## The notice allegation

1. I note that planning permission was granted on appeal for a two-storey two bed house on this site<sup>1</sup>. It is apparent from the Council's representations that enforcement action has been taken because the dwelling has been built not in accordance with the planning permission. To my mind, the allegation can be corrected to make this clear, and there would be no prejudice to the appellant as the appeal on grounds (a), (c) and (f) covers all the relevant matters.

## Ground (c)

2. The appellant claims that the erection of the third floor element is not prevented by an Article 4 Direction and is therefore permitted development.
3. I gather from the plans with the planning permission that the roof of the property was to have front and rear sloping roof faces to match the adjoining house, no.35, and the south-facing gable wall was to fit with this roof form. As built, the rear sloping roof face has been substituted by a flat roof extending from the ridge to the vertical line of the rear wall, with mainly windows on the

<sup>1</sup> APP/T5720/A/06/2028468 - 12.4.07

rear elevation below the flat roof. The south-facing side gable wall reflects this form. This amended design has resulted in a three-storey house.

4. The erection of the third floor element cannot be regarded as permitted development. The construction of the house in this form has taken place as a whole in one operation, and there are no permitted development rights associated with the erection a building such as this which does not conform to a planning permission.
5. No planning permission has been granted for the building in this form, and it is development in breach of planning control. The ground (c) appeal fails.

**Ground (a) and the deemed application**

6. The main issue is the effect of the development as built on the appearance of the local street scene.
7. In assessing whether planning permission should be granted, I have taken account of the fact that a planning permission was granted for a two-storey house, and the appeal decision dealt with matters relating to the character of the area, and the overall design in the context of the adjoining dwelling, no.35. The appeal decision found that the proposal would reflect the form, features and details of no.35, and would result in a building looking like a short terrace, and which would also be well proportioned. The decision to grant planning permission included conditions that the materials to be used in the construction of the external surfaces of the development shall match those used at 35 Marian Road, and no development shall take place until details of boundary treatment had been submitted and approved in writing by the Council.
8. The building as built differs markedly from the proposal subject of the planning permission. The yellow brick used for its construction bears no close resemblance to the London brick of no.35, even allowing for its newness. The rear, side and front elevations are all in clear view on this prominent corner site from various points in Marian Road, and this brickwork makes the building as whole appear stark and completely out of place. I acknowledge that there is mixture of London brick and rendered house buildings in the area, but these generally blend into an interesting street scene to which the appeal development is alien.
9. The application plans showed window and door heads on the important front elevation which would have matched those of no.35, but these have been substituted by courses of plain brickwork so that this elevation looks bland and featureless. Instead of being a matching addition to the pair of adjoining houses to form a short unified terrace, as was envisaged by the appeal decision granting planning permission, this appeal development looks like an ill-designed appendage.
10. This is confirmed by the fact that the upper part of the end gable wall has been constructed to take the rear roof form. Even without this addition, the side gable wall would have been a dominating feature in the street scene because of its position immediately beside the footway on this corner site. As it is, it appears overly bulky, contrived and intrusive.

11. The flat roof and third storey windows have eliminated what would have been a simple roof form which would have blended with the adjoining buildings and those of its neighbours. If this had been on a typical rear elevation in an area of terrace housing, generally out of close sight from most public views, the impact may not have been significant. However, it is in clear view from the road and the houses opposite, and, combined with the prominence and bulk of the side gable wall, its discordance with the appearance of the adjoining building is significant and damaging to the local scene.
12. The Council was also concerned about additional overlooking and loss of privacy for neighbouring properties due to the third storey windows. I noted on my visit that there is likely to be overlooking of the rear space behind the neighbouring house to the west, but I do not think that this would be substantially greater than would occur from the upper, rear windows of the development which was granted planning permission or, indeed, from those of the adjoining property, no.35. Whilst this objection is on some weight, I have attached much greater weight to the harmful effect on the street scene.
13. I concur with the Council that the building as built is in severe conflict with the London Borough of Merton Unitary Development Plan saved Policy BE.22, in particular, which seeks to achieve a high standard of design in new development.
14. The points raised by the appellant in support of the appeal development, relating to the principle of residential development, catering for housing need and the development of brownfield land, were taken into account in the previous appeal which resulted in a grant of planning permission for a two-storey house. I acknowledge those points, but the harm resulting from the development as built outweighs those considerations.
15. The ground (a) appeal fails.

**Ground (f)**

16. The appellant claimed that softening the external surface by way of planting and treatment to the texture and colour of the surface material would be sufficient to remedy the breach of planning control and the harm to amenity. Inasmuch as I can understand this point, following my findings on ground (a), I consider that the requirement to demolish the building is not excessive.
17. The appellant also argued that the dwelling could be allowed with a slightly reduced rear dormer. However, no such scheme is before me to consider, and, in any event, it would be a matter for the Council to determine.

**FORMAL DECISION**

18. I direct that the enforcement notice be corrected by deleting, in paragraph 3, the words: *'...the carrying out of development on the Land, involving the following (a) Erection of a large three storey dwelling'*, and inserting the words: *' , the erection of a dwelling not in accordance with a planning permission and its conditions for a two storey two bed house granted by appeal decision APP/T5720/A/06/2028468 dated 12 April 2007.'*
19. Subject to this correction, I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Paul V Morris*

Inspector