



The Planning Inspectorate

Room: 3/26a
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line: 0117-372-8067
Switchboard: 0117-372-8000
Fax No: 0117-372-6153
GTN: 1371-8067

teame1@pins.gsi.gov.uk
<http://www.planning-inspectorate.gov.uk>

Sam Amoako-Adofo
London Borough of Merton
Environmental Services
Department
Merton Civic Centre
London Rd
Morden
Surrey
SM4 5DX

Your Ref: 08/P3313
Our Ref: APP/T5720/C/09/2102858
Date: 21 September 2009

Dear Mr Amoako-Adofo

Town and Country Planning Act 1990
Appeal by Mr J K Patel
Site at 57 Pelham Road, London, SW19 1NW

I enclose a copy of our Inspector's decision on the above appeal.

Leaflets explaining the right of appeal to the High Court against the decision, our complaints procedures and how the documents can be inspected are on our website – www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm - and are also enclosed if you have chosen to communicate by post. If you would prefer hard copies of these leaflets, please contact our Customer Services team on 0117 3726372.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

pp Fran Littler

EDL1(BPR)





Appeal Decision

Site visit made on 27 August 2009

by **Phil Grainger** BA(Hons) MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsl.gov.uk

Decision date:
21 September 2009

Appeal Ref: APP/T5720/C/09/2102858

land at 57 Pelham Road, Wimbledon, London SW19 1NW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J K Patel against an enforcement notice issued by the Council of the London Borough of Merton.
- The Council's reference is 41932.
- The notice was issued on 17 April 2009.
- The breach of planning control as alleged in the notice may be summarised as follows: *the construction of a ground floor and first floor extension not in accordance with planning permission 07/P2488.* (The allegation is set out fully in Annex A.)
- The requirements of the notice are:
EITHER
(A) build the rear extension in accordance with the approved planning permission and approved plans bearing reference number 07/P2488
OR
(B) demolish the unauthorised rear extension at ground and first floor AND lawfully remove from the land all surplus materials and debris resulting from the above works.
- The period for compliance with the requirements is 6 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant considers that the notice should have included the option of demolishing only that part of the extension that exceeds the size permitted under the Town and Country Planning (General Permitted Development) Order [the GPDO] as it existed prior to October 2008. Although this seems to me essentially a ground (f) argument, and no ground (f) appeal was formally made, I have, nevertheless, had regard to this matter but, for the reasons set out below, consider that it carries little weight.
 2. I accept that prior to the recent changes to the GPDO a rear extension with a rendered finish would have been permitted development had it complied with the size limits, and I am aware that the appellant obtained a certificate of lawful development for works that included a rear extension. However, nothing that I have seen or read suggests that the works that have given rise to this enforcement notice and appeal were carried out in two distinct phases. Rather it appears that the extension was, as a single operation, built well beyond the 'permitted development' limits before the Council became involved and work was suspended for a time.
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3. In these circumstances I consider that once the extension exceeded permitted development limits the whole of the structure became unauthorised and that the breach of control would not be removed simply by reducing the extension to the size and form formerly allowed as permitted development. It would have been open to the Council to have required only partial demolition, but that was at their discretion. Moreover, offering the option of retaining the part of the development below the former permitted development tolerances would be appropriate only if it caused no harm to amenity, especially as the changes to the GPDO mean that an extension could no longer be rebuilt in the same form. I deal with the question of harm later, in the ground (a) appeal.
4. The appellant also considers that the first option included in the requirements is unrealistic as the lower part of the extension has been constructed of concrete blocks, not bricks. Despite this it is not clear from the information available to me that alteration of the extension, as opposed to its complete demolition and rebuilding, is wholly impracticable. In any event, this is not a case where it seems to me that including alternative requirements has left the appellant in any real doubt as to what he needs to do to comply with the notice. I consider therefore that it would be appropriate to retain the first option although it would be better worded to reflect more closely the wording of s.173(4)(a) of the Act.

The ground (a) appeal

5. In considering whether planning permission should be granted for the appeal development I consider the main issue to be the effect that it has on the character and appearance of the host building and the surrounding area.
6. No. 57 is a detached property within a residential area. It is in a relatively prominent position within that area being at the junction of Pelham Road and Montague Road. The area is typified by a variety of apparently Victorian dwellings but also includes some more modern buildings especially on Montague Road. The dwellings are often detached or semi-detached but there are also some larger, modern residential buildings. The appeal property is one of the older detached houses and its original attractive form is still visible, albeit somewhat obscured by the appeal works and a large dormer¹. For the most part its walls are finished externally in brick, as are most of the older buildings within the area.
7. The lower part of the appeal extension is externally rendered. This is the only rendering on the building and whilst there is some use of render within the wider area this is most frequent on modern buildings. Moreover, such rendering or painting as does occur is often on secondary elevations or has been used as a device to pick out particular features or parts of a building.
8. I saw two houses of apparently the same age as the appeal one where the lower half of a side wall has been rendered. However, those walls closely face another building; they are not in a prominent roadside position as is one side of no. 57. Nowhere in the area did I see render being used in such an apparently haphazard manner, unrelated to the form and design of the building, as is the case here, and especially not in such a prominent position. In my judgement

¹ I understand that this formed part of the works for which a certificate of lawfulness was issued.

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

P Grainger
INSPECTOR

ANNEX A

The breach of planning control as set out in the enforcement notice.

Construction of a ground and first floor rear extensions [sic] not in accordance with planning permission 07/P2488. The first floor extension has been built larger than approved. The rear extension should have been built in a stepped configuration but has instead been built flush or squared off on the Montague Road elevation. There are also variations in the configuration of windows in the rear and Montague Road elevations. These variations include the omission of windows on both the ground and first floor levels on the Montague Road elevation and the change in size and design of the rear windows/openings on the ground and basement levels. The application of render on part of the ground floor on the Montague Road elevation, which was shown as being in brickwork on the approved drawings, is inappropriate and out of keeping with both the appearance and symmetry of the building.