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# Appeal Decision

Site visit made on 23 January 2017

**by Katie Peerless Dip Arch RIBA**

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

**Decision date: 2 February 2017**

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**Appeal Ref: APP/T5720/X/16/3158517**  
**122 Byron Avenue, New Malden, KT3 6EZ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr N Harris against the decision of the Council of the London Borough of Merton.
  - The application Ref 16/P2317 dated 1 June 2016, was refused by notice dated [ ].
  - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is a ground floor rear extension.
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## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing existing operation which is considered to be lawful.

## Main Issue

2. I consider the main issue in this case is whether the extension complies with the condition A3(a) imposed by Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

## Reasons

3. An application as to whether prior approval for an extension of the same size and in the same position as the subject of the appeal was required has already been determined by the Council and it was agreed that it was not. The description of the extension given in that application stated that it would be of brick but, as built, it has been given a rendered finish.
  4. The Council has now concluded that the extension is not development permitted by the GPDO because it does not comply with condition A3 (a) which requires the materials used in any exterior work (other than materials used in the construction of a conservatory) to be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
  5. The Technical Guidance for Householders issued by DCLG in April 2016 notes that the condition is *'intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house, but does*
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*not mean that they need to be the same materials. For example the external walls of an extension should be constructed of materials that provide a similar visual appearance - for example in terms of colour and style of brick used - to the materials used in existing house walls.'*

6. The rear elevations of the terrace of which the appeal property is part are of yellow stock brick and at the site visit I saw no other examples of render on the rear of these dwellings. However the existing house is rendered on the first floor of the front elevation, as are others in the terrace, and the appellant has also drawn attention to other properties that can be seen from the rear garden of the house where render has been used on the elevations.
7. It is also the case that there is no mention in the GPDO to matching materials being limited to those on the elevation to which an extension is to be attached, with the wording referring to '*the exterior of the existing dwellinghouse*' and, in the Technical Guidance, to '*existing house walls*'. Although the condition in the GPDO relates only to the house to which the works are taking place, the Technical Guidance makes clear that the reason for the condition is to ensure that the extension is sympathetic to its surroundings. It seems to me that there is, therefore, an intention that some leeway is to be given by the condition, so that the appearance of neighbouring buildings, and how the works relate to this, can be taken into account.
8. In my opinion, whilst the extension does not match the rear elevation, it is seen in a context where other buildings are rendered and it does not therefore appear dissimilar to nearby development. There is also render on the front of the building which means that the material is not alien to the building as a whole. I consequently find that the extension does meet the wording of condition A.3(a) when given its literal interpretation and also does not conflict with the advice in the Technical Guidance.
9. I note that the appellants originally stated that the extension would be in brick but this does not mean that constructing the building in another material would automatically invalidate the prior approval. What is required is that the building, as constructed, meets the requirements of the attached conditions and, in this case, I have found that it does.
10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a ground floor rear extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*Katie Peerless*

**Inspector**

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 1 June 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The extension complies with Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 and the conditions attached thereto.

Signed

*Katie Peerless*

**Inspector**

Date **2 February 2017**

Reference: **APP/T5720/X/16/3158517**

***First Schedule***

A ground floor rear extension

***Second Schedule***

Land at 122 Byron Avenue, New Malden KT3 6EZ

## Plan

This is the plan referred to in the Lawful Development Certificate dated: **2 February 2017**

**by Katie Peerless Dip Arch RIBA**

**Land at: 122 Byron Avenue, New Malden, KT3 6EZ**

**Reference: APP/T5720/X/16/3158517**

Scale: NTS

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## NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.