
Appeal Decisions

Site visit made on 22 November 2016

by Alwyn B Nixon BSc MRTPI

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

Decision date: 13 December 2016

Appeal Ref: APP/L5240/C/16/3144313 78 London Road, Croydon CR0 2TB

- 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 Mohammed Mussa against an enforcement notice issued by the Council of the London Borough of Croydon.
 - The enforcement notice was issued on 7 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission, two dormer roof extensions (the "Unauthorised Roof Extensions") identified as "A" on the attached plan. Grey metal pinhole security shutters, protruding shutter box and guide rails to the front of the property (the "Unauthorised shutters, shutter box and guide rails") as identified as "B" on the attached plan.
 - The requirements of the notice are A) Remove the unauthorised roof extensions. B) Reinstate the roof form and materials to its former state. C) Remove the unauthorised shutters, shutter box and guide rails. D) Remove all resultant debris from the premises as a result of the above requirements A and C.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/L5240/C/16/3144314 78 London Road, Croydon CR0 2TB

- 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 Waheed Mohammed against an enforcement notice issued by the Council of the London Borough of Croydon.
 - The enforcement notice was issued on 7 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission, two dormer roof extensions (the "Unauthorised Roof Extensions") identified as "A" on the attached plan. Grey metal pinhole security shutters, protruding shutter box and guide rails to the front of the property (the "Unauthorised shutters, shutter box and guide rails") as identified as "B" on the attached plan.
 - The requirements of the notice are A) Remove the unauthorised roof extensions. B) Reinstate the roof form and materials to its former state. C) Remove the unauthorised shutters, shutter box and guide rails. D) Remove all resultant debris from the premises as a result of the above requirements A and C.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal Ref: APP/L5240/C/16/3144316
78 London Road, Croydon CR0 2TB

- 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 Junaid Mohammed against an enforcement notice issued by the Council of the London Borough of Croydon.
 - The enforcement notice was issued on 7 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission, two dormer roof extensions (the "Unauthorised Roof Extensions") identified as "A" on the attached plan. Grey metal pinhole security shutters, protruding shutter box and guide rails to the front of the property (the "Unauthorised shutters, shutter box and guide rails") as identified as "B" on the attached plan.
 - The requirements of the notice are A) Remove the unauthorised roof extensions. B) Reinstate the roof form and materials to its former state. C) Remove the unauthorised shutters, shutter box and guide rails. D) Remove all resultant debris from the premises as a result of the above requirements A and C.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal Ref: APP/L5240/C/16/3144319
78 London Road, Croydon CR0 2TB

- 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 Salim Mussa against an enforcement notice issued by the Council of the London Borough of Croydon.
 - The enforcement notice was issued on 7 January 2016.
 - The breach of planning control as alleged in the notice is without planning permission, two dormer roof extensions (the "Unauthorised Roof Extensions") identified as "A" on the attached plan. Grey metal pinhole security shutters, protruding shutter box and guide rails to the front of the property (the "Unauthorised shutters, shutter box and guide rails") as identified as "B" on the attached plan.
 - The requirements of the notice are A) Remove the unauthorised roof extensions. B) Reinstate the roof form and materials to its former state. C) Remove the unauthorised shutters, shutter box and guide rails. D) Remove all resultant debris from the premises as a result of the above requirements A and C.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Appeal Ref: APP/L5240/W/15/3134562
78 London Road, Croydon CR0 2TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Salim Mussa against the decision of the Council of the London Borough of Croydon.
 - The application Ref 15/00357/P, dated 29 January 2015, was refused by notice dated 24 July 2015.
 - The development is described in the application as "retention of re-built single storey rear extension to use as offices associated with front part of the building (A2 use) following demolition of dangerous/unstable single storey rear extension".
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Decisions

1. **APP/L5240/C/16/3144313:** The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. **APP/L5240/C/16/3144314:** The appeal is dismissed and the enforcement notice is upheld.
3. **APP/L5240/C/16/3144316:** The appeal is dismissed and the enforcement notice is upheld.
4. **APP/L5240/C/16/3144319:** The appeal is dismissed and the enforcement notice is upheld.
5. **APP/L5240/W/15/3134562:** The appeal is allowed in part and planning permission is granted for a single storey rear extension for use associated with the front ground floor part of the building (current Class A2 use) at 78 London Road, Croydon CR0 2TB in accordance with the terms of the application, Ref 15/00357/P, dated 29 January 2015, and the plans submitted with it, subject to the following condition:

The use of the permitted extension shall at all times remain ancillary to the subsisting authorised or lawful use of the main ground floor area of the premises. Use for purposes in association with the current Class A2 (financial and professional services) ground floor temporary use granted under the provisions of Class D in Schedule 2 Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 shall not continue beyond the expiry of the temporary period granted by those provisions.

The appeal is dismissed and permission withheld so far as it relates to the use of the ground floor of 78 London Road for Class A2 (financial and professional services) after the expiry of the present temporary period granted under the provisions of Class D of Schedule 2 Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Procedural Matters

6. The four appeals under section 174 are all against the same enforcement notice, and a single set of joint submissions has been made in respect of all of them. However, since the required fee in order for a grant of planning permission for the development in question has only been paid in respect of appeal APP/L5240/C/16/3144313, an appeal on ground (a) remains only in respect of that particular appeal. Since the basis of the submissions on grounds (f) and (g) are identical for the four appeals, I deal with these together, following my consideration of the ground (a) appeal.
7. An application for a partial award of costs against the appellant has been made by the Council in respect of appeal APP/L5240/C/16/3144313. This is the subject of a separate decision.

APP/L5240/C/16/3144313: Ground (a) and the deemed planning application

8. The Council issued the enforcement notice because it considers that the roof extension and the shutters, due to their location, design, scale, height, bulk

- and materials are incongruous features that have an unacceptable impact on local visual amenity and on the character and appearance of the building, neighbouring properties and on the area in general. Thereby, it is said, the development conflicts with policy SP4.1 of the Croydon Local Plan Strategic Policies 2013 document (CLP1), policy UD4 of the Croydon Replacement UDP (The Croydon Plan) 2006 Saved Policies and related Supplementary Planning Guidance (SPG), and Policies 7.4 and 7.6 of the London Plan 2011.
9. I am required to have regard to the development plan in reaching my decision, and to make my determination in accordance with the plan unless material considerations indicate otherwise.
 10. The enforcement notice is directed at two discrete elements of development carried out at 78 London Road. I deal with each of these in turn.
 11. The appeal property is a four storey building with ground floor currently in A2 office use via a 2 year temporary approval granted under Class D of Schedule 2 Part 4 to the Town and Country Planning (General Permitted Development) (England) Order 2015. The upper floors have a permitted residential use.
 12. 78 London Road has a ridged roof, running back at right angles to the brick-gabled street elevation. The roof development is described as two dormer roof extensions. It comprises a pair of flat-roofed "box", dormers, occupying much of the two opposing roof slopes and extending more or less to ridgeline height. By the time of my visit the internal stair access into the extended roof space had been sealed up. However, from my observations externally it was clear to me that the pair of roof dormers together form a sizeable extension to the roof of the building, which has radically altered its character and appearance.
 13. The gabled facade of No 78 forms a pair with No 76 next door. Together they comprise a noticeably attractive feature within the street frontage, with closely matching decorative brickwork detailing and fenestration, topped by gable features with centrally positioned oriel details. The roof dormer extensions sit almost immediately behind the front gable end of No 78, creating a prominent skyline box profile at ridge height which detracts from the architectural composition and appearance of No 78 and the symmetry that it shares with No 76. Whilst the rear elevation of No 78 is less publicly visible, the roof extensions have imposed a similar ungainly and over-dominant box-like form on the pre-existing roofline which significantly harms the building's character and appearance. I consider that the dormer extensions have a severe adverse effect on the character and appearance of the host building and the street view. My conclusion on this matter is consistent with the findings of a previous inspector in 2015 when dealing with a similar proposal at this address for flat-roofed dormers to each roof plane at ridge height¹.
 14. I find that the roof extensions conflict with policy SP4.1 of CLP1, which requires development to be of a high quality which respects and enhances Croydon's varied local character and contributes positively to its public realm and townscape. Their scale, form, appearance and effect on the host building run counter to the clear thrust of policies 7.4 and 7.6 of the London Plan, which are directed at ensuring that development respects, complements and enhances the built environment and acknowledges the preceding architectural styles in the locality. I do not consider that conditions could be imposed on the

¹ Appeal decision APP/L5240/A/14/2228235, paragraphs 19-20

development carried out which would reduce the harm it causes to a degree which would make it acceptable. Cosmetic changes, such as a different form of external cladding, would not alter the roof extensions' over-dominant appearance and inappropriate form.

15. I note the appellant's comments concerning other developments in the area. Whilst the recently-erected building on the northern side of No 78 presents a parapet outline to the street, this is consistent with that building's architecture and design as a whole. Other recent buildings in the locality have their own particular contexts. The effect of some of these buildings on the natural light entering the appellant's building is not relevant to my decision as to the planning merits of the development at which the enforcement notice is directed. Although the appellant has drawn attention to a roof extension on a building on the other side of London Road, I do not know the details of this development or the policies and circumstances surrounding its construction. In any case, the physical and architectural context of that development is different. None of these matters nor anything which I observed at my site visit amount to considerations which indicate a determination in respect of the roof extensions at 78 London Road otherwise than in accordance with the development plan.
16. By the time of my visit the security shutters, shutter box and guide rails identified in the enforcement notice had been removed. Internal shutters have apparently now been fitted instead. However, it is not in dispute that development took place as alleged in the notice. The appellant has not pursued an appeal on ground (b). Whilst the enforcement notice thus appears to have been complied with so far as this element is concerned, I am satisfied that the allegation in the notice was correct at the time it was issued.
17. Notwithstanding that the external shutters, shutter box and guide rails have been removed, the appeal on ground (a) against this part of the notice has not formally been withdrawn and the deemed application for planning permission remains before me. Whilst the development is no longer in situ the documentation before me includes photographs of the premises with the shutters, shutter box and guide rails in place. I have relied on this evidence to give consideration to ground (a).
18. The shutters were grey metal pinhole type shutters in three sections extending across the full width of the building. The metal shutter box was attached to the lower part of the fascia above the ground floor windows and doorway, and projected out from the building line over the footway below.
19. CLP1 policy SP4.1 requires development of a high quality, which respects and enhances local character and contributes positively to the public realm and townscape. Policy UD4 of The Croydon Plan's saved policies requires alterations to existing shopfronts to respect the scale, character, material and features of the building of which they form a part and of surrounding buildings. It permits security measures in the form of internal shutters, laminated glass or external open grille shutters only. The Council's adopted SPG on Shopfronts and Signs advises against solid external shutters, which it says can have a deadening effect on the character of the street, obscure the building at street level and attract graffiti.
20. Such considerations are relevant here. I conclude that the external security shutters, shutter box and guide rails identified in the enforcement notice are

development which is unduly harmful to the character and appearance of the street scene and contrary to development plan policies SP4.1 and UD4.

21. The appellant points out that other properties in the street, including No 76 next door, have solid externally mounted security shutters. However, the Council says that many shutters in the locality were installed prior to the current policy and are immune from enforcement action. The Council has taken similar enforcement action in respect of other non-compliant security shutters.
22. In these circumstances I do not regard the examples of earlier development which does not comply with the policies now adopted by the Council as good reason to perpetuate the poor practice of the past. Nor do I do not consider that conditions could be imposed which would reduce the harm caused to an extent which would make the development acceptable.
23. For the above reasons, the appeal on ground (a) fails and planning permission is refused.

APP/L5240/C/16/3144313, APP/L5240/C/16/3144314, APP/L5240/C/16/3144316, APP/L5240/C/16/3144319: Grounds (f) and (g)

Ground (f)

24. On ground (f) the appellants jointly submit that imposing demolition of the roof dormers in their entirety is far too excessive, and that simply reducing their size and materials would improve the outlook and would be a reasonable step to overcome the objections.
25. As I have indicated in the preceding section dealing with the ground (a) appeal, the roof dormers comprise a prominent and obtrusive feature at roof level which significantly compromises the roof form and appearance of the host building in views from locations at both front and rear of the property, causing significant harm in townscape terms. The steps required by the notice do not go beyond what is necessary to remedy the breach of planning control that has occurred. Cosmetic steps such as cladding to alter the development's external appearance would not change its inappropriate form, bulk and physical presence. No detailed specific measures concerning a reduction in size are put forward by the appellants as lesser requirements which could potentially be considered as practical and clear steps that the notice could require, and which would remedy the harm caused by the development
26. Given the extent to which the roof dormer extensions are visible from locations at both the front and the rear of the building, and having regard to their effect upon the character and appearance of the host building, I conclude that lesser steps than complete removal of the roof dormer extensions would not adequately remedy the harm caused by the development that has taken place.
27. In reaching my conclusions I have had regard to the principles established in case law cited by the appellant, including *Ahmed v. SSCLG, Ioannu* (eventually in the Court of Appeal) and *Miaris v SSCLG*. However, in this case there is no lesser or different form of the development which has already been permitted, to which reversion by steps other than removal of the unauthorised development in its entirety could be considered. Nor has any specific lesser step or scheme been put forward by the appellant for me to consider in relation to the size of the unauthorised roof extensions. I can see no obvious

alternative lesser steps in this case which I should consider in relation to the ground (f) appeals, beyond the purely cosmetic measures considered and discounted above for the reasons given.

28. Lesser steps are not proposed in respect of the security shutters, shutter box and guide rails, and this part of the notice has been complied with.

29. The appeals on ground (f) therefore fail.

Ground (g)

30. The security shutters, shutter box and guide rails have already been removed.

31. I recognise that there are practical access and safety considerations which need to be borne in mind as regards the dismantling of the roof dormers, the removal of the resulting material and the reinstatement of the former roof form and materials. However, the particular restrictions referred to are routine matters to contend with in a metropolitan situation, and the works required do not amount to a large scale operation. No coherent rationale is provided why the works concerned would require 12 months or more to be undertaken.

32. It is important that enforcement notices do not specify unduly long periods for compliance, so that harm caused by a breach of planning control is remedied promptly. In the circumstances of this case I consider that a three month period for compliance is not too short, and is reasonable.

33. The appeals on ground (g) therefore fail.

APP/L5240/W/15/3134562

34. The proposal was described in the application as *retention of re-built single storey rear extension to use as offices associated with front part of the building (A2 use) following demolition of dangerous/unstable single storey rear extension*. However, the proposal was described in the Council's decision notice as *retention of A2 use of ground floor and associated works making good of single storey rear extension for use as ancillary A2 offices (Amended Description)*. The appellant has adopted this revised wording in the submitted appeal. On the basis of the information before me I take the development for which permission is sought as comprising the erection of a single storey rear extension and the use of the extension in association with the ground floor financial and professional services (Class A2) use of the premises.

35. The application did not make reference to the fact that the current ground floor A2 use is a temporary use granted by reason of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The Council, in dealing with the application, has evidently interpreted it as also seeking permission to use the ground floor of 78 London Road for Class A2 purposes permanently. Whilst the original description of the development is not completely clear in this respect, the appellant has not contradicted the Council's interpretation of what is sought or intended. I have therefore included this in my consideration of the appeal.

36. I therefore consider that the main issues are: first, the acceptability of the extension as regards its physical form and its use ancillary to the lawful use of the ground floor of the premises; and second, the acceptability of permanent Class A2 (financial and professional services) use of the ground floor of 78

London Road, having regard to the implications of this for the retention of community uses/facilities/services in the locality.

37. The proposal concerns the ground floor of a four storey building on a main thoroughfare on the northern periphery of Croydon centre. At the time of my inspection the single storey rear extension had already been completed and its use had commenced. From my inspection it appears that the extension is principally providing staff kitchen and rest room facilities and a meeting room, ancillary to the main use of the ground floor as an estate agent's office.
38. The single storey extension has replaced structures which occupied a slightly smaller footprint at the rear of 78 London Road. Part of the previous structures had been damaged by fire. Although it has refused planning permission outright for development, the Council has voiced no objection to the physical form/extent of the works of reinstatement and enlargement which have taken place at the ground floor rear.
39. The ground floor of 78 London Road is currently in use as an estate agent's premises (Class A2 financial and professional services). However, it is in such use only as a result of an approval granted in January 2015 under the provisions of Class D of Schedule 2 Part 4 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Class D permits, subject to certain conditions, development consisting of a change of use of a building and any land within its curtilage from a use falling within Class A1, A2, A3, A4, A5, B1, D1 and D2 of the Schedule to the Use Classes Order to a flexible use falling within Class A1, A2, A3 or B1 of that Schedule, for a single continuous period of up to 2 years beginning on a certain stipulated date.
40. The provisions of the GPDO state that for the purposes of the Use Classes Order and the GPDO, during the period of flexible use the site retains the use class it had before changing to any of the flexible uses under Class D. It is also a condition of the approval of the 2 year temporary flexible use that the site reverts to its previous lawful use at the end of the period of flexible use.
41. Prior to the current use the last authorised use of the ground floor of the property was as a community based mental health day care/assessment facility, following permission granted in 1997. The Council considers that this is a use falling within Class D1 of the Use Classes Order Schedule; I have no reason to disagree.
42. Notwithstanding the current approval under the provisions of the GPDO for a temporary A2 use, therefore, the ground floor of 78 London Road retains its authorised Class D1 use under the Use Classes Order and there is no authorisation for any continuation of the A2 use of the ground floor beyond the expiry of the 2 year period.
43. The development plan comprises the Croydon Local Plan Strategic Policies 2013 document (CLP1) together with saved policies of the Croydon Replacement UDP and policies of the London Plan. CLP1 policy SP5.3 seeks to encourage the creation of healthy and liveable neighbourhoods, by protecting existing community facilities that still serve, or have the ability to serve, the needs of the community. Saved policy CS2 of the Replacement UDP resists the loss of community facilities including health and medical care facilities, unless it has been demonstrated that there is no need for them, or that there are no alternative community uses which could make use of the buildings or site.

Policy 3.16 of the London Plan states that the suitability of redundant social infrastructure premises for other forms of social infrastructure for which there is a defined need should be assessed before alternative developments are considered.

44. The Council say that the appellant has not provided any evidence that the site has been marketed for an alternative community use to replace the authorised community based mental health day care/assessment facility that formerly occupied the premises. The Council would usually expect the premises to have been marketed for an alternative community use for at least 18 months without any expressions of interest before it would consider another use for the site. Whilst the appellant says that the property remained empty until being purchased and used for the present purpose, I have no real evidence of any attempts made to market the premises for alternative community use or the outcome of such an exercise.
45. Whilst the estate agent's and housing solutions business that currently operates from the premises undoubtedly provides a local service, which may be of particular benefit to Arabic-speaking sections of the community, I do not regard the current use as falling within the scope of "community facilities" as described within the development plan.
46. The temporary approval of A2 use conferred by the GPDO does not constitute sufficient reason to disregard the clear requirement established by the above development plan policies to establish that there is no demand for a community use within the appeal premises before change to an alternative use is permitted. On this matter I note the Inspector's conclusions in July 2015² on a previous appeal concerning 78 London Road, and take a similar view. In the absence of any evidence to justify the loss of the premises as a community facility, the ground floor change of use to A2 use on a permanent basis would cause unacceptable harm to the supply of community facilities in the Borough and would be contrary to the provisions of CLP1 policy SP5.3, saved replacement UDP policy CS2 and policy 3.16 of the London Plan.
47. Given the current temporary 2 year approval granted by the GPDO for Class A2 financial and professional services use of part of the ground floor of 78 London Road, I find no objection to the use of the recently-completed rear ground floor extension in a manner ancillary to that use for the remaining temporary period. I therefore allow the appeal so far as it relates to the erection of the extension and its use ancillary to the lawful use of the main ground floor area, including the Class A2 use of the ground floor during the temporary period currently permitted under the GPDO. However, the appeal does not succeed so far as it relates to any use of the ground floor of 78 London Road for Class A2 financial and professional services for a period extending beyond that already permitted under the existing GPDO approval.
48. The Council also gave a second reason for refusal, concerning harm to the retail function and vitality of Croydon's Metropolitan, District and Local Centres. However, the evidence provided in support of this reason essentially relies on argument advanced in relation to a previous appeal involving a ground floor use of 78 London Road as two Class A1 retail shops. The Council argue that as retail is defined as a main town centre use then a sequential test should be applied, in accordance with National Planning Policy Framework paragraph 24.

² Appeal decision APP/L5240/A/14/2228235

49. I find that the Council's case in this respect is seriously undermined by the evident confusion, in the officer report on the application, the decision notice and the Council's appeal statement, between Class A1 (shops) and Class A2 (financial and professional services). In the circumstances I find that it has not substantiated this reason for refusal. However, this does not alter my conclusions concerning the main issues.
50. In the light of my decision to allow the appeal in part, I have considered the question of what conditions it is necessary to impose. Since the extension has already been built there is no need for a time limit for commencement of the development or compliance with plans. The external materials utilised in the development satisfactorily complement the existing building and no condition concerning these is needed. However, given my conclusions concerning the acceptability of permanent Class A2 use of the ground floor of 78 London Road, I shall impose a condition in order to define the scope of the permission granted in these terms.

Overall conclusion on appeals

51. For the reasons given, and having taken into account all matters raised, the appeals against the enforcement notice are dismissed and the notice is upheld; appeal APP/L5240/W/15/3134562 against the refusal of planning permission is allowed in part, in the terms set out in the formal decision above.

Alwyn B Nixon

Inspector