



Appeal Decision

Site visit made on 16 December 2019

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2020

Appeal Ref: APP/C5690/C/19/3228036

Land and premises to the rear of 148 - 150 Sydenham Road, London SE26 5JZ

- 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 Michael Patterson against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice, numbered ENF/17/00391, was issued on 20 March 2019.
 - The breach of planning control as alleged in the notice is the construction of a one storey dwelling house with associated roof terrace and external staircase.
 - The requirements of the notice are:
 1. Remove the single storey dwelling house with associated roof terrace and external staircase from the Land; and
 2. Remove all resultant debris, waste and equipment resulting from compliance with requirement 1 above from the Land.
 - The period for compliance with the requirements is 6 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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Decision

1. It is directed that the enforcement notice be varied by:

the deletion of

1. Remove the single storey dwelling house with associated roof terrace and external staircase from the Land
2. Remove all materials, debris, waste and equipment resulting from compliance with requirement 1 above from the Land.'

and the substitution of

1. Cease the use of the building for residential purposes.
2. Demolish the roof terrace and external timber staircase and permanently remove the kitchen and bathroom equipment, fixtures and fittings.
3. Remove all materials debris, waste and equipment resulting from compliance with step 2 from the Land.

in paragraph 5.

2. Subject to the variations, the enforcement notice is upheld.

The site and relevant planning history

3. The appeal property is an outbuilding sited to the rear of No's 148 and 152 Sydenham Road. The immediate area comprises a mix of commercial premises with residential units above. No.152 is currently used as a furniture shop and access to the rear is through a passageway and gate at the side of the shop. The building is single storey with a terraced area including decking, a balustrade and canopy on the flat roof and an external staircase to give access to the roof.
4. Planning permission was sought retrospectively for the use of the building as a dwelling (DC/18/108941). This was refused and then dismissed on appeal (APP/C5690/W/19/3219995), on 24 May 2019.
5. A further planning application to regularise the outbuilding was submitted for the construction of a single storey outbuilding, for use as office and storage purposes ancillary to the commercial use within 152 Sydenham Road, together with the removal of the roof terrace and external staircase (DC/19/111488). This application was approved on 14 May 2019, and after the notice was issued on 20 March 2019.
6. A number of conditions were imposed, including one restricting the use of the building to storage uses ancillary to No.152, and for the removal of the roof terrace, external staircase, balustrade, decking and canopy. This means that the building itself now has planning permission as an outbuilding for storage purposes.

Ground (a) – The deemed application

Main Issues

7. The appeal, under ground (a), can only consider the planning merits of the alleged development that has taken place. In this case, the allegation in the notice is for, amongst other things, the erection of a dwellinghouse, rather than an outbuilding required for ancillary office or storage. I saw from my site visit that the building was still residentially occupied, and the roof terrace and external stairs were still in situ. A balustrade, decking and a timber canopy appears to have since been constructed. However, as the notice relates to a one storey dwelling house, roof terrace and external staircase. I have accordingly considered the appeal on this basis.
8. I have had regard to the Council's reasons for issuing the notice and consider that the main issues are:
 - The effect of the development on the living conditions of occupiers with regard to size of accommodation, overlooking, outlook and privacy; and
 - The effect of the development on the character and appearance of the area.

Reasons

Living conditions

9. The site is located in a mixed commercial area with mainly shops and restaurants at street level with residential units at first and second floors. The building is located to the rear of the commercial shop, with access through a gated passageway from Sydenham Road. To the south there is a small yarded

area with several outbuildings, including one also understood to be used as a dwelling.

10. The subject dwelling contains a kitchen and living area, a bathroom and two small bedrooms. The external space is surrounded by the outbuildings and boundary wall, giving it a very enclosed appearance. I have had regard to the previous appeal where the acceptability of the development for residential occupation was considered. Whilst I have no internal measurements before me, I also have no evidence to suggest that the building has been extended, or the internal layout altered, since April 2019 when the previous Inspector visited the site. I share his concerns that the building is very small, falling short of the minimum acceptable standards. The internal layout adds to the confined and very cramped internal environment for residents.
11. Whilst I acknowledge that my visit was carried out in December, the lack of windows and available light from the highly enclosed external space, resulted in inadequate daylight to the interior of the building and the resultant need for artificial lighting. Moreover, these windows look out towards the side boundary which is in very close proximity, resulting in an extremely poor outlook for the dwelling. The poor internal living conditions place greater reliance on the available external amenity space. However, whilst the roof terrace provides some additional outdoor space, its elevated position means that it is significantly overlooked by the rear of the properties in Sydenham Road and the large building to the rear. This lack of privacy results in an unattractive and poor quality amenity space for the occupiers of the dwelling.
12. I note that the previous Inspector considered that the proposal would not harm the living conditions of neighbouring properties. However, that scheme differs from the one under consideration here, as it specifically excluded the roof terrace. It was clear from my visit, that the use of the roof terrace would allow clear and uninterrupted views into the rear gardens of the neighbouring properties. Accordingly, there is an unacceptable loss of privacy for those wishing to use the rear gardens of the surrounding properties.
13. For the above reasons, I find the development would provide unacceptable living conditions for the existing residents of the dwelling, and would result in significant overlooking for existing occupiers of the surrounding properties. The development would therefore conflict with policies DM32 of the Lewisham Development Management Local Plan (2014) (the LDMLP), policies 3.5 of the London plan (2016) (the LP) and policy 15 of the High quality design for Lewisham of the Core Strategy (2011) (CS). These policies in combination aim to ensure that all new development is neighbourly and provides satisfactory levels of privacy, space and outlook.

Character and appearance

14. The enforcement notice attacks the building, including the roof terrace and external stairs. The recent planning permission however allows the retention of the building for ancillary purposes. It is therefore the retention of the building, as a dwellinghouse, that I will consider.
15. No's 148 and 150 Sydenham Road form part of a terrace of traditional ground floor commercial premises with residential units above, set well back from the road. There remains a uniformity of design to the terrace, in terms of the fenestration, front facing dormers and architectural detailing.

16. In contrast the subject dwelling is of timber construction with a flat roof, used as a roof terrace. An external, very steep, timber staircase gives access to this platform. Access to the dwelling is through a passageway to the side of the commercial premises through large gates. The orientation of the dwelling means that it faces west towards an area that has the appearance of a fairly typical commercial rear storage yard.
17. The building has the external appearance of an outbuilding. This utilitarian design, with its flat roof construction, lack of architectural detail, is significantly at odds with other residential properties in the area. Whilst buildings in rear gardens and yards are not uncommon, the development has introduced a poorly designed dwelling into the small rear yard of the appeal property. This is not a feature commonly found in the area, where the residential properties are generally located above the shops and front the road with rear amenity space. Moreover, the domestic paraphernalia and activity associated with the dwelling, that is sited on the roof terrace, draws attention to the existence of the dwelling and further harms the character and appearance of the area.
18. For the reasons outlined above, I find that that the development has introduced an incongruous and poorly designed dwelling into a small rear yard location. The dwelling therefore causes significant harm to the character and appearance of the area and conflicts with policies DM30 and DM32 of the LDMLP. These policies seek to ensure that new housing development attains a high standard of design that responds positively to the site specific constraints and opportunities, as well as the surrounding area.
19. The appeal on this ground therefore fails.

Ground (f)

20. S180(1) of the Town and Country Planning Act 1990 Act (as amended) provides that where, after the service of a notice, planning permission is subsequently granted for the same development, or for some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission, but the notice does not cease to have effect altogether.
21. The notice issued by the Council clearly sought to remedy the breach of planning control. I note that the requirements of the notice do not specify that the residential use should cease. However, it is clear that the demolition of the building, staircase and roof terrace would have achieved that objective. Nevertheless, planning permission has since been granted for the retention of the building for ancillary purposes. That planning permission does not include the roof terrace or external staircase.
22. There is therefore, no longer the need to demolish the building in its entirety. Consequently, I consider that the requirements of the notice could be varied to reflect the current position, without causing injustice to the parties. However, in addition to the existing steps, I consider that it is necessary to require that the use of the building as a dwelling house ceases, including the removal of all of the kitchen and bathroom fixtures and fittings to meet that objective.
23. I therefore conclude that the appeal on ground (f) should succeed to this extent. I shall direct the requirements at paragraph 5 of the notice be varied to delete both steps 1 and 2 and substitute them with steps to require the use of

the building for residential occupation to cease; and the removal of kitchen and bathroom equipment, fixtures and fittings. I shall however, uphold the notice as varied.

Ground (g)

24. It is the appellants case that the time for compliance with the notice is too short and should be extended. I am mindful that the building is currently occupied residentially and therefore sufficient time is required to allow the occupant to find suitable additional accommodation.
25. However, I have no specific information about the personal circumstances of the occupier, or why a period of six months would be inadequate for alternative accommodation to be secured. Moreover, the requirements of the notice are now less onerous, in so far as, the building no longer needs to be demolished. Accordingly, I consider that a period of six months is a reasonable timescale to carry out the required steps as varied.
26. The appeal on ground (g) therefore fails.

Conclusion

27. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Hilary Orr

INSPECTOR