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## Appeal Decision

Site visit made on 28 January 2020

**by S Hanson BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2 March 2020**

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**Appeal Ref: APP/C5690/C/19/3233940**

**First and second floor, 97-99 Lewisham High Street and 2-4 Lewis Grove, Lewisham, London SE13 6BE**

- 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 Equity First Holding Ltd<sup>1</sup> against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice was issued on 7 June 2019.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the premises to use as eight self-contained flats.
- The requirements of the notice are: 1. Cease the use of the first floor and second floor of the premises as self-contained flats. 2. Remove kitchen fixtures and fittings from seven of the self-contained flats situated on the first floor and second floor of the premises. 3. Remove all bathroom fixtures and fittings from six of the self-contained flats situated on the first floor and second floor of the premises. 4. Remove bath and shower fixtures and fittings from the remaining two self-contained flats situated on the first floor and second floor levels of the premises. 5. Remove internal partitions installed at first floor and second floor levels of the premises to facilitate the current use of the premises as self-contained flats. 6. Remove all materials, debris, waste and equipment resulting from compliance with requirements 2-5 above.
- The period for compliance with the requirements is 6 (six) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (e) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

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### Decision

1. 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.

### The appeal on ground (e)

2. For an appeal to succeed under this ground, the appellant company should show that copies of the enforcement notice were not served as required by section 172 of the 1990 Act. The appellant argues that no notices have been received by the tenants and that the Council has provided no evidence of the issuing of the notices to the tenants. However, the Council provides a comprehensive list of addresses, including each tenanted flat, on whom the Council claims the enforcement notice was served.

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<sup>1</sup> The appellant company name is taken from the appeal form

3. There is no evidence to suggest that copies of the notice were not correctly served in accordance with the s172 of the 1990 Act. It is apparent that the appellant, occupier and any other interested party were aware of the notice because a timely appeal was made.
4. The appeal on ground (e) fails.

### **The appeal on ground (a) and the deemed planning application**

#### **Main Issue**

5. The main issue is whether the development provides a good standard of accommodation in terms of living conditions for existing and future occupants with particular regard to internal and external space.

#### **Reasons**

6. DM Policy 32 of the Lewisham Local Development Framework Development Management Local Plan 2014 (the DMLP) and Policy 3.5 of the London Plan 2016<sup>2</sup> (the LP) require development to meet the minimum space standards to conform with the Technical housing standards – nationally described space standard DCLG 2015 (NDSS). These standards ensure housing provides an appropriate level of residential quality and amenity. In this respect new housing should ensure accommodation meets the functional requirements of future residents by providing, amongst other things, a good size and with a dual aspect allowing main habitable rooms to receive direct sunlight and daylight and good ventilation.
7. To ensure new accommodation is of a good size, Table 2.3, which forms part of DM Policy 32 of the DMLP, provides the minimum internal space standards required for new housing developments (including conversions). These are consistent with the NDSS which requires a minimum gross internal area (GIA)<sup>3</sup> of 37 square metres (sqm) for a one person flat; a GIA of 50 sqm for a one bedroom/two people flat; a GIA of 61 sqm for a two bedroom/three people flat; and a GIA of 70 sqm for a two bedroom/four people flat.
8. I have not been provided with details of the numbers of occupants in each flat but based on the evidence before me, the residential accommodation provided by each flat falls short of the minimum space standards. Furthermore, three of the flats do not have access to private outdoor amenity space and there is no provision for cycle storage which is a requirement of Policy LTC12 of the Lewisham Town Centre Local Plan (the LTCLP)<sup>4</sup>. Notwithstanding that I have been provided with no evidence regarding private open space requirements, I am, nevertheless, not satisfied that the internal area alone within each flat would provide enough functional space for a good standard of accommodation. Consequently, due to the substandard internal floor area of the flats, the occupants would endure unsatisfactory living conditions.
9. Overall, given the deficiencies in the scheme, I conclude that the development at Nos 97-99 Lewisham High Street and 2-4 Lewis Grove does not provide an

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<sup>2</sup> Planning Enforcement Report 5 June 2019

<sup>3</sup> The Gross Internal Area of a dwelling is defined as the total floor space measured between the internal faces of perimeter walls that enclose a dwelling. This includes partitions, structural elements, cupboards, ducts, flights of stairs and voids above stairs.

<sup>4</sup> Planning Enforcement Report 5 June 2019

acceptable quality of residential accommodation, with regard to the size of the internal floorspace. Hence, the development is contrary to DM Policy 32 of the DMLP which, amongst other things, promote good-quality living conditions for the existing and future occupants. The proposal also conflicts with the overall amenity protection aims of Policy 3.5 of the London Plan 2016 (the LP) which requires the highest quality developments both internally and externally.

### *The fall-back*

10. There is a right under s57(4) of the 1990 Act, when an enforcement notice has been issued, to revert to the last use, provided it was a lawful use. Consequently, permitted development (PD) rights under the Town and Country (General permitted Development) Order 2015 (GPDO) as amended, are a material consideration in considering the planning merits of a proposal. Therefore, I will address the fall-back position regarding both possible former uses that have been put to me as part of the evidence.
11. Part 3, Class O of the GPDO enables development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Town and Country Planning Use Classes Order 1987 as amended (UCO), to a use falling within Class C3 (dwellinghouses) to be PD. This is subject to requirements at O.1 that amongst other things, the building must have been in a lawful B1(a) office use on 29 May 2013, or in the case of a building which was in use before that date, but was not in use on that date, when it was last in use. However, this procedure would be the subject of an application for a determination as to whether the prior approval by the Council would be required.
12. Part 3, Class M of the GPDO enables development consisting of a change of use of a building from a use falling within Class A2 (financial and professional services) of the UCO to a use falling within Class C3 of the UCO. This is subject to, amongst other restrictions, the cumulative floor space of the existing building changing use under Class M exceeding 150 sqm. The unchallenged calculations provided by the Council lead me to believe that the cumulative floor area of the appeals site would exceed 150 sqm.
13. Part 3 Class G (c)(i) of the GPDO provides for development consisting of a change of use of a building from a use for any purpose within Class A2 of the UCO to a mixed use for any purpose within Class A2 and up to 2 flats. This is subject to conditions, one of which requires some or all of the parts of the building used for any purposes within Class A2 of the UCO to be situated on a floor below the lowest part of the building used as a flat.
14. Although I acknowledge there could be a fall-back position, the conflicting evidence provided as part of the appeal demonstrates that it is unclear what the former lawful use of the appeal site is. In any event, even if there is a realistic prospect of a fall-back position being implemented, plainly the development is unacceptable given my finding on the main issue. I attach limited weight to any fall-back argument.
15. For the above reasons I find that the development does not provide an appropriate level of residential quality and amenity due to the deficiencies in the internal space within each flat. Accordingly, there is conflict with DM Policy 32 of the DMLP, Policy 3.5 of the LP and the NDSS

16. The ground (a) appeal therefore does not succeed.

**The appeal on ground (f)**

17. The appellant considers the requirements to remove internal partitions, fixtures and fittings throughout the first and second floors wholly excessive and that if the notice is upheld, the use alone should cease.

18. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred<sup>5</sup>. The second is to remedy any injury to amenity which has been caused by the breach<sup>6</sup>. In these cases, the purpose behind the notice is to remedy the breach of planning control that has occurred as a result of the change of use of the first and second floor of the building.

19. Section 173(5) of the 1990 Act gives the power to require the alteration of buildings for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, so that the land is restored to its condition before the change of use took place.

20. The internal walls, fixtures and fittings on the first and second floors are integral to, and part and parcel of, the material change of use of the first and second floor. There is no evidence that these were installed for a different purpose. If the appellants consider that it may be possible to keep certain internal fittings, or that they could put them back following compliance with the notice because they do not constitute a breach of planning control, that is a matter to be explored with the Council away from this appeal. However, I am satisfied their removal does not exceed what is necessary to remedy the breach. This can only be achieved by the cessation of the unauthorised use and the removal of the works that facilitated that use. There are no lesser steps that would achieve the statutory purpose behind the notices.

21. Therefore, the appeal on ground (f) must fail.

**Overall Conclusion**

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission.

*S Hanson*

INSPECTOR

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<sup>5</sup> Section 173(4)(a)

<sup>6</sup> Section 173(4)(b)