



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: 11 May 2020

Appeal Ref: APP/C5690/C/19/3233915

286 Lewisham High Street, London SE13 6JZ

- 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 The Company Secretary (Mendoza Limited) against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 20 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a two storey extension at first and second floor levels at the rear of 286 Lewisham High Street SE13, to provide 2no. one bedroom self-contained flats.
 - The requirements of the notice are (1) Remove the unauthorised two-storey development. (2) Make good all damage to the property resulting from compliance with requirement (1) above. (3) Remove all waste, materials, equipment and debris resulting from compliance with the above requirements of this notice from the property and its premises.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.
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Decision

1. It is directed that the enforcement notice be corrected by
 - 1) deleting the words "shown edged black and hatched on attached plan" under section 2 of the enforcement notice (the land to which the notice relates) and deleting the plan titled "Site Location Plan- Address 286 Lewisham High Street, SE13 6JZ" attached to the notice.
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

Procedural matters

3. The appeal form quotes the address as 286 Lewisham High Road. The correct address is 286 Lewisham High Street as referred to in the notice.
4. The plan which accompanies the notice is technically incorrect as it does not identify the property which is the subject of the notice. Nevertheless, the notice makes clear that it attacks land at 286 Lewisham High Street, SE13 6JZ. As the appellant has clearly received a copy of the notice and there is no apparent doubt as to the land which the notice relates, the appellant has not been

misled. I am therefore satisfied that the notice leaves no doubt as to the land subject of the alleged breach of planning control.

5. There are wide-ranging powers to correct or vary the notice subject to no injustice to either party and an inaccurate plan can be deleted altogether leaving the site to be described in words alone. To that end, I can correct the notice to omit the plan. No injustice would arise to either party in doing so.

Ground (a) – the deemed planning application

Main Issues

6. These are as follows: i) whether the development preserves or enhances the character or appearance of the conservation area with particular reference to the host dwelling and the non-designated heritage asset, ii) the effect of the development on the living conditions of the occupiers of neighbouring properties in terms of outlook, and present and future occupiers with regard to standards of accommodation.

Reasons

Character and appearance

7. The appeal site is located within the St Mary's Conservation Area (the CA) and sits in character area 3 'Lewisham High Street'. The high street is framed by a number of impressive period properties and the St Mary's Conservation Area Character Appraisal (2006) (the appraisal) refers to the significance of the area being, amongst other things, the turn-of-the-century buildings, the regular building height and plot widths. The host dwelling is referred to as 'Stonewalls', a c1900 building, originally the Castle Inn, with three storeys plus an attic storey, built in red brick with a balustraded stone gable in front of a pitched slate roof.
8. A CA's character derives from all the elements that combine to create its unique appearance and atmosphere. These elements include not only buildings but spaces between and around buildings, density of development and open space. To the rear of these significant buildings, there are additions and extensions of various scale and design, with some further additions at a lower level extending into the yard area.
9. The development is set back from Whitburn Road, viewed from the public realm through the gap in the road between the rear of No 276 Lewisham High Street and 3 Whitburn Road. Whilst public views are limited, the site is visible in private views from surrounding properties on both Lewisham High Street and Whitburn Road. For most parts, the development is viewed against the backdrop of the four storey c1900 Sainsbury's Depository building.
10. The Sainsbury's building at 15 Whitburn Road is within the CA, and I agree with the previous Inspectors¹ who concluded that the building should be considered a heritage asset, which contributes to the overall interest of the CA. The building is of interest for its age, its rarity within the Borough and its attractive industrial elevation to Whitburn Road. The original signage, notating its name, remains clearly visible at parapet level as does the top level of windows when viewed from the public realm. However, the sizeable scale of the appeal

¹ APP/C5690/W/16/3148084 and APP/C5690/W/17/3189515

development, particularly its height, obscures a significant amount, and interrupts important views of the building. As such, I consider the development causes harm to the significance of this non-designated heritage asset and, consequently, the wider CA. Given my findings I conclude that the development causes harm to this element and does not preserve or enhance the CA, notwithstanding the fact that the public views are limited.

11. The existence of the development of such a scale amid the backland area is considered to result in a form of overdevelopment of not only the application building, but of the CA generally. The development unbalances the relationship between the front and rear of No 286 and harms the traditional layout and scale of the character of this area to the rear of the prominent buildings along this part of Lewisham High Street and Whitburn Road. With the additional two floors of development, the structure to the rear of No 286 stands at three floors. Although lower than the height of the host dwelling, the development is neither a subservient or sensitive addition being of a height and depth that bears no relation to the form of its host or the surrounding development. The development is both prominent and conspicuous and jars against the impressive façade of the Sainsbury's building and the openness of the space enclosed by this building, the rear of the buildings fronting Lewisham High Street and the houses fronting Whitburn Road.
12. In the context of paragraph 196 of the National Planning Policy Framework (the Framework), the harm caused to the CA would be less than substantial. However, there are no identified public benefits, including the provision of two units of residential accommodation in the area, that would outweigh the less than substantial harm. This is a matter which weighs against allowing the development, noting that paragraph 193 of the Framework states that great weight should be given to the asset's conservation.
13. For these reasons, the development is considered to fail to make a positive contribution to area. I find that the development neither preserves or enhances the character or appearance of the CA. In this respect the proposal is contrary to Policy 7.8 of the London Plan (2015), Policy 15 of the Lewisham Local Development Framework, Core Strategy Development Plan Document (2011) (the CS). DM Policy 30 and DM Policy 36 of the Development Management Local Plan (2014) (the DMLP).

Living conditions

14. The appeal building comprises 2 one-bedroom flats with each occupying two floors. The development is set above the existing ground floor rear extension to the frontage property, 286 Lewisham High Street (No 286).
15. The addition of the development above the existing ground floor rear extension creates a substantial structure over three storeys, albeit with the second floor within the roof space. The Council's statement notes that the development is 6m away from the newly converted dwellings within the host building where the single aspect windows of the bedroom and living room of the existing flats numbered 2 and 4 directly face the appeal building. The positioning of these buildings leaves limited space between these facing elevations.
16. I find that the proximity of the two storey elevation of the appeal building facing towards the only windows providing outlook to the first floor flat (flat 2 in the host property) presents occupiers with an overbearing form of

development. This in turn results in a limited outlook and a sense of enclosure from the main living areas in the property. This provides for poor quality living conditions for the occupiers of this property.

17. However, I find no reason to disagree with the Inspector for the previous appeal² who considered that *'due to the positioning of the windows to flat 4 relative to the height of the proposed structure, an open aspect would still be achieved. I find that the proposed extension would have only a limited impact on the outlook and sense of enclosure to these windows and overall would not unacceptably impact on the living conditions of these occupiers'*.
18. The appeal building extends to the rear, significantly stretching beyond the rear building line of adjacent properties and close to the rear of properties on Whitburn Road. The combined effect of the depth of the side wall and the height of the appeal building creates an imposing level of built form close to the boundaries, particularly with No 3 and No 5 Whitburn Road (No 3 and No 5).
19. The appellant refers to the previous 2018 appeal decision, which determined that, due to the separation distance from the proposed windows to the properties on Whitburn Road, and as the proposed extension would be in the foreground of the side of 15 Whitburn Road (the Sainsbury's Depository building), the proposal would not have an unacceptable impact on the living conditions of occupiers of properties on Whitburn Road.
20. In reaching my view, I acknowledge that the Sainsbury's Depository building is a sizeable structure and there is a sense of enclosure, but the building is set back from Whitburn Road, and would have allowed for a level of openness. The appeal development, due to its scale and location, creates an oppressive sense of overdevelopment and enclosure to the occupiers of these properties, particularly No 3 and No 5. The outlook from the rear windows of these properties, and from their rear private open space is adversely impacted, aggravated by the expanse of blank brickwork and dark, vertically-hung roof tiles. The effect is particularly harsh due to their shallow rear gardens.
21. Turning to the living conditions for the present and future occupiers of the appeal development, the London Plan Policy 3.5, which is supported by Policy DM32 of the DMLP, sets out minimum space standards that should be applied to all new housing developments.
22. The development provides for two units of residential accommodation designed as 1 bedroom 2 person flats. Referring to the drawing (462-20-001_A1 Rev A), the accommodation is set across two floors with the living/dining/kitchen at ground floor and the bedroom at upper floor. The appellant has referred to the upper level as a "mezzanine floor". Regardless of the description used, the accommodation is arranged over two levels with a proportion of the floor area set aside for circulation. The Technical Housing Standards – nationally described space standard (2015) are organised by storey height to take account of the extra circulation space needed for stairs to upper floors, as would be the case for this development.
23. The floor area of these units is annotated as 50.52sqm (flat 1) and 54.1sqm (flat 2). These fall notably below the Technical Housing Standards which

² APP/C5690/W/17/3189515

requires such accommodation to achieve a minimum gross internal area of at least 58sqm. The development provides undersized accommodation and is considered to provide a poor standard of accommodation, which is not in accordance with the aims of Policy 3.5 of the London Plan and Policy 32 of the DMLP.

24. For the above reasons, the development causes significant harm to the living conditions of the occupiers of neighbouring properties as regards outlook. I also find that the development does not provide adequately sized rooms for present and future occupiers, resulting in inappropriate residential quality. In this respect the development is not in accordance with DM Policy 32 of the DMLP or Policy 3.5 of the London Plan and contrary to Policy DM31 of the DMLP and Policy 15 of the CS.

Other Matters

25. I note the appellant's comments referring to the fall-back position as mentioned by the Inspector for the previous appeal³. However, the Inspector's comments referred to the scheme allowed by an earlier Inspector in 2016 for a single storey rear extension at first floor level. This permission, not having been built in accordance with the approved plans, is no longer extant having expired in August 2019. Therefore, I afford this limited weight.

Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

S Hanson

INSPECTOR

³ APP/C5690/W/17/3189515 The development proposed is, at the rear of the site, to erect 2 x 1b2p residential flats over the first floor and second floor, which will be detached from the existing building.