



Appeal Decision

Site visit made on 1 September 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2020

Appeal Ref: APP/C5690/C/19/3236459

Land at 50 Muirkirk Road, London SE6 1BQ

- 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 Little Elms Daycare Nursery against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 19 July 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of two timber sheds in the area at the front of the premises as shown on the Photograph, attached.
 - The requirements of the notice are:
 - 1. Remove the timber sheds from the area at the front of the premises
 - 2. Remove all debris, waste and equipment resulting from compliance with requirement 1 above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. 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 as amended.
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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 as amended.

REASONS

2. The main issue is the effect of the two timber sheds on the appearance of the front of the site and the surrounding streets, taking into account their purpose.
3. The site is on the corner of Muirkirk Road and Penberth Road. The two storey semi-detached building was previously a doctors' surgery but the use of the property was lawfully changed to a daycare nursery post 2015. The building has been extended at the side and rear and air-conditioning units are affixed to its side elevation.
4. The two timber sheds, whilst each is modest in size, occupy much of the front garden. They are easily seen above the low brick boundary wall. They give the area at the front of the premises a cluttered appearance because of the lack of space between them and the main building and boundary walls. They detract from the appearance of the principal elevation of the building behind, which

- has a good degree of character from the generous bay windows below a front gable roof.
5. Muirkirk Road is a residential street, apart from business premises at the northern end. The semi-detached and terrace dwellings have retained their original character. Boundary walls and gates generally are low in height. Greenery and spaciousness to the front of dwellings remain as strong features even though front gardens have been paved and are used for parking vehicles and for keeping refuse bins. Unlike parked vehicles which come and go, the sheds are permanent and are not a characteristic feature in the street scene. Because of their siting on a corner the sheds are prominent in views from both Penberth Road and Muirkirk Road. They look very out of place on the frontage and are intrusive in the appearance of the street.
 6. The appellant, within the context of the ground (f) appeal, suggested painting the sheds or introducing a fence along the Penberth Road boundary to mitigate visual harm. However, the position of the sheds would stay the same and such measures would not address their physical form and poor relationship to the host building. The use of timber for the external material is not the reason for the visual harm. Painting the timber could have an adverse effect through choice of colour (no colour has been suggested), repainting or weathering. A higher boundary feature would be out of character and would add to rather than reduce the harm.
 7. Therefore the two sheds are harmful to the appearance of the front of the site and the surrounding streets. The use of planning conditions would not overcome the harm. The development is not sensitive to the local context and distinctiveness and in this respect fails to comply with Core Strategy Policy 15 (criterion 1a) of Lewisham's Core Strategy (2011) and DM Policy 30 of the Development Management Local Plan (2014).
 8. The appellant has explained that the sheds are used by parents to safely store buggies, which discourages the use of the car to bring children to the nursery and so contributes to the nursery's green travel plan. This function is a benefit, bearing in mind the location and accessibility of the premises. However, the appellant has indicated the sheds could be sited in the rear garden, although with the loss of play space. I noted that there is a side gate into the back garden that may facilitate access from Penberth Road. There is not the evidence to demonstrate that the loss of play space would be an undue constraint on the use of the property as a daycare nursery. Having regard to Core Strategy Policy 19 and DM Policy 32, there is nothing to show that the removal of the two sheds from the front area of the premises would threaten the continued use of the property as a daycare nursery.
 9. In conclusion, the sheds are not in accordance with the development plan when read as a whole and the benefit of their use is not sufficient to outweigh the direction provided by the plan. The two timber sheds are unacceptable and the appeal on ground (a) does not succeed.

Appeal on ground (f)

10. The issue is whether the requirements are excessive taking into account the purpose of the notice.

11. The requirement to remove the sheds from the front garden would remedy the breach of planning control and by so doing would overcome the injury to amenity. As explained when considering the planning merits, painting the sheds or introducing additional boundary treatment would not achieve the purpose of the notice. Relocating the sheds to the back garden would not be prevented by the notice. However, to vary the notice to include such a requirement would not be appropriate because new development would be involved and prejudice may be caused to the local planning authority.
12. The requirements are not excessive and the appeal on ground (f) fails.

Conclusion

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

Diane Lewis

Inspector