

Appeal Decision

Site visit made on 4 September 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Appeal Ref: APP/C5690/C/22/3306633

220 Perry Rise, London SE23 2QT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Stephen Goldberg, N & M Perry Rise Limited against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The notice was issued on 31 August 2022.
- The breach of planning control as alleged in the notice is the unauthorised change of use to a C4 HMO within an area subject to an Article 4 Direction and unauthorised rear roof extensions, without the benefit of planning permission.
- The requirements of the notice are to:
 1. Cease the use of the property as a C4 HMO; and
 2. Remove the rear roof extensions; and
 3. Make good all damage resulting from compliance with the requirements of this notice; and
 4. Remove all materials, debris, waste and other equipment resulting from compliance with the above requirements of this notice from the land.
- The period for compliance with the requirements is: 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (g) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

The Enforcement Notice

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.

2. The alleged breach of planning control in this enforcement notice ("the Notice") refers to the change of use to a C4 house in multiple occupation ("HMO"). However, only the making of a 'material' change of use of land constitutes an act of development under Section 55 of the 1990 Act. Therefore, this word should be inserted into the allegation in the interests of clarity. No injustice would arise because the grounds of appeal do not suggest that the use does not constitute development or that the intention of the Notice has been misunderstood.
3. The alleged breach of planning control also includes the words 'within an area subject to an Article 4 Direction'. The presence of such a direction might be a reason why the material change of use is unauthorised, but it does not need to be within the detail of the allegation. In the interests of clarity, it should be deleted and no injustice would arise to either party as both are aware of the direction.
4. The requirements of the Notice include, as a final step, the removal of materials, debris, waste and other equipment from the land. However, the term 'land' has not been defined within the Notice. Instead the land to which the Notice relates has been defined at section 2 as 'the Property'. Therefore, for consistency and clarity, the word 'land' in the 4th requirement should be replaced with the word 'Property'. Again, there is no suggestion that the requirements have not been properly understood, so no injustice would arise from this correction.

Ground (c)

5. Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. The onus of proof is on the appellant and the required standard of proof is on the balance of probabilities. There is no case made that the material change of use to an HMO does not constitute a breach of planning control. However, it is suggested that the roof extensions benefit from planning permission granted by the Town and Country Planning (General Permitted Development) Order 2015 (as amended) ("the GPDO").
6. There is no dispute that the GPDO does not permit roof alterations or extensions where they exceed the highest part of the existing roof. The appellant contends that the roof has not been raised, and if it has, the extent of such raising is *de minimis*.
7. A photograph has been provided showing the front of the building before it was extended. The ridge of the main roof can be seen to be above the height of that at the adjoining neighbour at No 218, and below that of the neighbour at No 222. The roof was topped with conventional ridge tiles. At my site visit, I could see that the ridge had been replaced with a vertical upward section, similar to that at No 222 and appeared to approximately match its height.
8. A drawing has been provided in connection with the ground (a) appeal suggesting a return to the pre-existing height. There is another drawing showing the present situation. Both drawings include Nos 218 and 222 for context and show a clear difference in heights of the proposed (pre-existing) and present situation.

9. The clear visual difference, and evidence provided on the plans, indicate that there has been a raising of the roof and, moreover, as it can be appreciated through observation, that it is material. Therefore, on the evidence available, it is more likely than not that the roof has been raised above the height of the pre-existing one. It has not been shown that it benefits from any planning permission, including that granted by the GPDO, and does therefore, constitute a breach of planning control. Accordingly, the appeal on ground (c) should fail.

Ground (a)

10. Ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the Notice, planning permission ought be granted. The main issues are the effect of the roof extensions on the character and appearance of the area; the effect of the material change of use on the provision of family housing; and whether the site is in an appropriate location for the use with regard to its accessibility by public transport.

Character and appearance

11. At the rear, large, bulky extensions appear to have been added to the building. However, they are in a context of a roofscape that includes many other similar structures and additions and, while it may have been beneficial for more articulation to have been provided between the main rear walls and the roof additions, they do not represent an uncharacteristic or harmful addition to the area when viewed from the rear, including Adamsrill Road.
12. At the front, the building is seen as part of a terrace of dwellings. The wider area includes many similar dwellings, most of which have simple road-facing elevations with traditional pitched roofs. While it is not a conservation area, nor within the setting of a listed building, this gives the area a unified character and appearance.
13. In this context, the raised roof at No 222 stands out as an unusual and somewhat awkward addition that does not reflect the established character. While the similar works at the appeal site reflect those, they also appear awkward and detract from the generally simple, traditional roofscape that can be appreciated from Perry Rise. Adding another similar feature would therefore undermine the established character and appearance of the area. In addition, the front facing part of the raised roof has been finished with two materials and the obvious joint line between them is of poor appearance, causing further harm.
14. For these reasons, I find that the extensions, due to their appearance from Perry Rise, harm the character and appearance of the area, contrary to those aims of DM Policy 31 of the Lewisham Development Management Local Plan 2014 (LP) that seek to ensure that extensions are of a high quality respecting and complementing existing buildings.

Family dwellinghouses

15. LP DP Policy 6 sets out that the Council will only consider the provision of new HMOs where, amongst other things, they do not result in the loss of existing larger housing suitable for family occupation. The appellant has

indicated how the pre-existing 3 bedroom dwelling had a third 'box' bedroom that fell significantly below the Nationally Described Space Standards (NDSS).

16. However, the NDSS are intended to inform the design quality of new dwellings and there is no particular evidence before me that they should be used to consider the suitability of existing ones for ongoing use. More importantly, it has not been shown why the accommodation would not be suitable for some families, so there is no obvious basis to conclude that a house with two large bedrooms and a box room, with a substantial private garden, should not be deemed as suitable for family housing. While it may be possible to easily revert to a single family dwelling use, that future possibility would not address the harm that is occurring now.
17. The reasons for issuing the Notice also refer to LP DM Policy 3, but that refers to the conversion of single family houses to flats which is not what has happened here. I do not, therefore, find it relevant to my consideration of this appeal. However, for the reasons given, I find that there has been a loss of housing suitable for family occupation and a consequential conflict with that part of DM Policy 6.

Public Transport

18. LP DM Policy 6 also sets out that the Council will only consider the provision of new HMOs where they are located in an area with a public transport accessibility level (PTAL) of 3 or higher. The site is within a PTAL 2 area. However, it is situated at the very edge of that, and less than a 1 minute walk from an area with a PTAL of 3. I observed that this nearby location includes a large amount of retail provision, but also significant public transport connections. Therefore, while there is a technical conflict with the relevant criterion of DM Policy 6, I find that no harm would arise in that regard in this particular case.

Other matters

19. I understand that the ward boundaries have recently changed and the ward within which the site now falls was not subject to a direction preventing changes of use to HMOs. I also understand that the appellant was not made aware of the direction when purchasing the property. However, the direction does apply to the property such that planning permission is required for the use. The direction's existence, and the appellant's initial lack of awareness of it, have little to do with the planning merits insofar as they apply to the above main issues. That there is not a particular concentration of HMOs around the appeal site, refuse can be adequately stored, and the HMO might be appropriately managed are matters that weigh neither for nor against the development.
20. The appellant has explained how, if the appeal were to be unsuccessful, they would correct the works such that they complied with the provisions of the GPDO. However, even if this were possible, such would result in a development that was not raised above the height of the pre-existing roof. Accordingly, the harm that I have identified to the character and appearance of the area would not arise in that scenario. As this alternative would be less

harmful to the present situation, the possibility that it might happen does not weigh in favour of allowing the appeal.

21. In serving an enforcement notice, Council's must be satisfied that it is expedient to do so. Whether or not it was, does not go to the matter of whether permission should be granted on ground (a), which I have assessed on its planning merits on the basis of the evidence presented to me. While enforcement action should be proportionate, I have no reason to find that, having found that harm has arisen, the notice should not be upheld.

Conclusion on ground (a)

22. There would be harmful conflicts with the development plan in respect of effects on the character and appearance of the area and the loss of family dwellinghouses. The lack of harm in respect of public transport accessibility is a neutral factor, such that I find that the development conflicts with the development plan, taken as a whole.
23. I have been invited to consider granting permission for some of the matters alleged, but as I have found harm in respect of both the works and material change of use, such would not be appropriate. Similarly, it may be possible that I could grant permission for a scheme with a lower roof height in accordance with plans that have been provided. However, as that would not overcome the harm in respect of the use that I have identified, I have not followed this course of action.
24. No material considerations have been shown to carry sufficient weight to warrant a decision otherwise than in accordance with the development plan. Therefore, the appeal on ground (a) should fail.

Ground (g)

25. Ground (g) is that the period specified in the Notice to comply with the requirements falls short of what should reasonably be allowed.
26. The use would result in the loss of permanent living accommodation for the occupiers of the site. I understand that it may take some time to find alternative accommodation, however there is no substantive evidence that this would take more than 6 months, nor that there are any circumstances particular to any of the specific occupants that might justify a longer period. Therefore, the appeal on ground (g) should fail.

Conclusion

27. 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 application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision

28. The enforcement notice is corrected by:

- In Section 3 'The Breach of Planning Control Alleged':

- Delete the words "Unauthorised change of use" and replace with the words "Unauthorised material change of use".

Delete the words "within an area subject to an Article 4 Direction".

In Section 5 'What you are required to do', step 4:

- Delete the word "land" and replace with the word "Property".

29. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

M Bale

INSPECTOR