



Appeal Decisions

Site visit made on 18 March 2025

by **Richard S Jones BA(Hons), BTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 May 2025

Appeal A Ref: APP/C5690/C/23/3322055

Appeal B Ref: APP/C5690/C/23/3322056

Appeal C Ref: APP/C5690/C/23/3322057

406-408 Lewisham High Street, London, SE13 6LJ

- Appeals A, B and C are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Thambithurai Uthayakanthan (Appeal A), Mr. Abraham Musoke of Agape Miracle Ministries (Appeal B) and Sri Matha Shruthi Laya Kshethram Institute of Fine Arts (Appeal C) against the same enforcement notice issued by the Council of the London Borough of Lewisham.
- The notice was issued on 19 April 2023.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of part of the property to a place of worship (namely, the basement and ground floor of the building).
- The requirements of the notice are to:
 - (1) Cease the use of any part of the property as a place of worship.
 - (a). For clarity, this includes (but is not limited to) the use of the property as a place of worship by Christ Apostolic Church, and by Institute of Fine Arts / Sri Matha Shruthi Laya Kshethram.
 - AND
 - (2) Remove the stage in the area marked A as shown in Plan 2, as well as the amplified audio equipment in areas marked B as shown in Plan 2.
 - AND
 - (3) Remove all materials, debris, waste and equipment resulting from compliance with Steps (1) and (2) of this notice from the land.
- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (d) 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.
- Appeals B and C are proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - Inserting the word “material” between the words “the” and “change” in the breach of planning control alleged in section 3.
 - Deleting the word “any” and inserting the words “(namely, the basement and ground floor of the building)” after the word “worship” in requirement (1) in section 5.

2. Subject to the corrections, the appeal is dismissed, 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 as amended.

Appeals B and C

3. It is directed that the enforcement notice is corrected as per Appeal A.
4. Subject to the corrections, the enforcement notice is upheld.

Preliminary Matters

5. The appellants' appeal statement refers to the appeals being made on grounds (b), (c) and (f), then later states that they are made on grounds (a), (c) and (d). I have assumed the latter to be correct as those grounds correspond with those ticked on the appeal form. For grounds (c) and (d), the onus lies with the appellants to make their case on the balance of probabilities.
6. The parties will be aware that I have also been appointed to determine appeals¹ against a separate enforcement notice which alleges the change of use of the first and second floors of the appeal property to seven self-contained flats. Those appeals are the subject of separate decisions.

The Enforcement Notice

7. The breach of planning control as alleged in the notice is the change of use of part of the property to a place of worship (namely, the basement and ground floor of the building). The requirements of the notice include ceasing the use of any part of the property as a place of worship. The allegation is therefore specific to parts of the building whereas the requirement is enlarged to any part of the building.
8. As, the requirement should logically follow from the allegation, it should be corrected to cease the use of part of the property as a place of worship (namely, the basement and ground floor of the building).

Appeals A, B and C on Ground (c)

9. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control.
10. The only submission made under ground (c) is that the established use of the church means that there is no planning breach since it has, over time, become legitimised as lawful development. Whilst I understand the point the appellants are seeking to convey, having regard to the provisions of s171B of the 1990 Act, there must be an initial breach of planning control in order for that breach to become immune from enforcement action through the passage of time. It is only a breach which can become immune.
11. In consideration of whether there has been a breach in this case, the appellant's response to the planning contravention notice (PCN), dated 22 November 2021, states that the place of worship is open on Friday evenings and Sunday lunchtimes, with 50 people attending the former and between 50 to 80 attending the latter. Such use is likely to result in significant comings and goings with

¹ Appeal References: APP/C5690/C/23/3322051, APP/C5690/C/23/3322052, APP/C5690/C/23/3322053 and APP/C5690/C/23/3322054

associated vehicular movements and parking demands, along with the potential for general disturbance to nearby residents.

12. The appellants do not show, or even seek to argue, that the change would not have resulted in a significant difference in the character of the activities from what had gone on previously, as a matter of fact and degree. Therefore, in the absence of evidence to the contrary, it is likely that the use of part of the building for places of worship would have resulted in a material change of use, amounting to a breach of planning control. The allegation should therefore be corrected to refer to a 'material' change, not least because a breach can only arise from a material change of use.
13. Under ground (a) the appellants state that "planning permission (or permitted development existing use) ought to be granted". I have assumed that as an intention to encapsulate the provisions of a ground (a) appeal, rather than a ground (c) argument that the breach of planning control benefits from permitted development rights conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Even if that is not the intention, no reference is made to the GPDO and any provisions contained therein which may apply to a change of use to a place of worship. Nor is it shown that the development already benefits from an express grant of planning permission.
14. The ground (c) appeals fail.

Appeals A, B and C on Ground (d)

15. An appeal under ground (d) is that at the time the enforcement notice was issued, it was too late to take enforcement action.
16. To succeed, the appellants need to demonstrate, on the balance of probabilities, that the material change of use of part of the property to a place of worship occurred ten or more years before the date of the enforcement notice, and then continued without material interruption for a period of at least ten years thereafter, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act. The material date is therefore 19 April 2013.
17. The appellants argue that the use has been ongoing since July 2008, so gained lawfulness in July 2018. That is consistent with the response given to the aforementioned PCN, which states that the place of worship started operating in July 2008, although I note the Council states that it did not receive that PCN response and questions its provenance.
18. The appellants have also provided a signed tenancy agreement for Nos 406 to 408B Lewisham High Street, between the Institute of Fine Arts/Shruthilaya Shangam/Sri Matha Shruthi Laya Kshetram (leaseholder) and Agape Miracle Ministries (tenant) dated 31 July 2008, for the period from that date until 30 July 2012. Three further signed tenancy agreements, entered into by the same parties, are provided covering the period from 31 July 2012 to 30 July 2024.
19. The Council argues that the tenancy agreements do not state the use of the property and therefore have little relevance in proving how the property has been used. However, Agape Miracle Ministries (the tenant) is highly likely to be an organisation involved in a place of worship, thereby corroborating the appellants' assertion that the property has been used for the same purpose.

20. The Council highlights that none of the appellants documents provide any account of how the property has been used on a day-to-day basis. Nevertheless, each of the tenancy agreements stipulate the permitted use is for Sundays only, between 11am and 3 PM. That is again consistent with a Christian place of worship, both in terms of frequency of use and the day of use.
21. The above evidence therefore points towards part of the appeal property, albeit unidentified, being used as a place of worship for ten or more years before the date of the enforcement notice and then continuing without material interruption for a period of at least ten years thereafter.
22. However, the Council has produced the response to its PCN from one of the appellants dated 24 April 2017, which states that the premises has never been used as a place of worship and never will be. A PCN may be served by a Council under s171C of the 1990 Act in order to formally investigate a suspected breach of planning control. It is an offence not to comply with it and to knowingly give false or misleading information.
23. The PCN response is signed by T Uthayakanthan of Miller Developments Limited, who confirms in a separate signed supporting letter that he has owned and managed the appeal property for 20 years. It is very likely therefore that Mr Uthayakanthan would have had first-hand knowledge of the activities being carried out at the appeal site at the time of completing the PCN response. In direct contradiction with the same, Mr Uthayakanthan's letter of May 2023 confirms that during the period since 2008 the rear function room has been rented out on a part time basis by the Institute of Fine Arts/Sri Matha Shruthi Laya Kshethram to carry out worship gatherings of up to 80 people. Consequently, there are two scenarios arising.
24. Firstly, if what Mr Uthayakanthan says in the PCN is correct, that up to the point of April 2017 the property had never been used for a place of worship, then the use would not have gained immunity from enforcement action in the period from 2008 to 2018, nor would there be sufficient time to gain such immunity between the period after April 2017 and the date of the enforcement notice in April 2023. Moreover, during that time an existing ground floor plan submitted with a 2022 application², appears to show part of the designated worship area (Area B fronting onto Lewisham High Street), as forming part of a restaurant.
25. Secondly, if, in the alternative, Mr Uthayakanthan's PCN response was incorrect, then that raises questions of deliberate concealment/positive deception. In such circumstances where a person has deliberately concealed a breach of planning control, the courts have found that the time limits in section 171B of the 1990 Act do not engage until the breach has been discovered³.
26. Moreover, it was held in the case of *Meecham*⁴ that an Inspector was entitled to take account of responses made by the appellant to PCNs, which gave incorrect information and thus supported a finding that the development had been deliberately concealed and was not immune from enforcement action. The claim that the PCNs related to a different breach of planning control to that alleged in the enforcement notice was rejected and that the PCNs and answers to them needed

² Ref: DC/22/124949

³ See *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15; *Jackson v SSCLG & Westminster CC*; *Bonsall v SSCLG & Rotherham MBC* [2015] EWCA Civ 1246; [2016] JPL 506

⁴ *Meecham v SSCLG & Uttlesford DC* [2013]

to be read as a whole, so the Inspector was entitled to take the responses into account, which included that land was not being used for the purpose alleged.

27. In this case, the PCN specifically investigated the use of the premises as a place of worship, at a time when the Council could have taken enforcement action, and the categoric response of one of the appellants is that the premises had never been used for that purpose. That scenario amounts to deliberate concealment depriving the appellants the benefit of the 10 year immunity period under s171B(3) of the 1990 Act.
28. Therefore, in the circumstances of either the first or the second scenario, at the time the enforcement notice was issued, it was not too late to take enforcement action, on the balance of probabilities.
29. The appeals on ground (d) fail.

Appeal A on Ground (a)

Main Issues

30. The main issues are:
- whether the appeal site amounts to an acceptable location for a place of worship;
 - the effects on parking/highway safety;
 - the effects on the living conditions of local residents with regards to general disturbance; and
 - whether sufficient information has been provided on employment matters.

Reasons

Location and parking

31. DM⁵ Policy 44 states that the Council's preferred locations for the development of public places of worship are the network of major and district town centres as defined in CS⁶ Policy 6. The Council confirms that the appeal site does not fall within any such centre and no evidence is provided by the appellant to dispute that. Consequently, the site is not within a preferred location for a public place of worship.
32. DM Policy 44 goes on to state that proposals for development in the major and district town centres and all other areas will only be considered in locations that are highly accessible to users through public transport and cycling and walking routes and that are able to source an adequate level of parking for users, without negatively impacting on local street parking or the accessibility of other local services.
33. The appellants do not dispute that the site has a Public Transport Accessibility Level (PTAL) rating of 3. PTAL is a measure of the accessibility of a point to the public transport network. Each area is graded between 0 and 6b, where a score of 0 is very poor access to public transport, and 6b is excellent. A PTAL rating of 3

⁵ Lewisham local development framework - Development Management Local Plan – Adopted 26 November 2014

⁶ Lewisham local development framework - Core Strategy - Development plan document – Adopted June 2011

therefore falls significantly short of the requirement of DM Policy 44 for a highly accessible location.

34. DM Policy 44 also requires all applications for places of worship to provide a travel plan to show how that policy and other transport issues can be mitigated. However, contrary to that policy requirement, no travel plan or transport information has been provided. Nor has the appellant provided any information regarding parking at the site. Although I saw the site was able to physically accommodate three vehicles from the Albacore Crescent access, it is unlikely that more than two could be independently used in the present configuration; a third would likely be blocked from exiting and/or entering the site if two cars were already parked in front of the gated access.
35. London Plan Policy T6.5 states that a minimum of two disabled persons parking spaces should be provided for religious buildings. Whilst in principle that may be achievable, there is no clarification on how that may affect other uses at the appeal property, including the parking and servicing requirements of the glazing business and the residential use of the upper floors, the lawfulness of which is a matter of contention between the parties.
36. I have limited information of the frequency and level of use of the part of the building fronting onto Lewisham High Street as a place of worship. However, as noted, the appellant refers to the use of the rear function room on Friday evenings and Sunday afternoons to carry out worship gatherings for up to 80 people. Given the site's PTAL rating of 3, it is very likely that such activity will generate significant movements by private car, which in turn will generate significant car parking demands.
37. I have no information, such as a parking survey, which demonstrates that could be safely accommodated within the surrounding streets. Based on my own observations, that is highly unlikely. Lewisham High Street is part of London's red route and there is a bus lane on both sides of the road. Albacore Crescent is part of a controlled parking zone and, at the time of my site visit, there was little or no available spaces on that road or in the surrounding residential streets.
38. Therefore, whilst the weekly frequency of use may be relatively low, the amount of people visiting the site at the same time, and the duration of use, is likely to significantly increase parking demand and to result in an increase in parking stress and associated annoyance and inconvenience for existing residents and businesses in the area.
39. The site does not therefore amount to an acceptable location for a place of worship having regard to the requirements of DM Policy 44 and is unable to accommodate appropriate levels of car parking so as to mitigate resultant transport issues in the area, most notably parking stress, contrary to London Plan Policies T6 and T6.5, CS Policy 14 and DM Policy 29.
40. Although the appellant has not demonstrated that the site could accommodate cycle parking provision in accordance with London Plan Policy T5 and CS Policy 14 (insofar as it relates to such provision), given the space available in front of the building it is very likely that could be achieved and is a matter which in principle could be satisfactorily resolved by way of condition.

Living conditions

41. The Council states that the places of worship within the property have seating for approximately 160 people. That is not disputed by the appellant. In any case, it is confirmed that between 50 and 80 people attend worship on Fridays and Sundays in the rear function room. Whilst the space fronting onto Lewisham High Street is smaller, the amount of seating is not insignificant.
42. Consequently, the number of people attending the places of worship will likely result in significant comings and goings and general disturbance to local residents during those times when they are likely to be home. The occupants most likely affected will be those immediately adjacent to the site in Albacore Road and the upper floors of the appeal property, should that be a residential use.
43. Against the above, the appellant has provided no information to show that the uses could avoid harmful effects on the living conditions of local residents, contrary to DM Policy 44. That states, amongst other things and in addition to the above, that all applications need to demonstrate that there will be no detrimental effect on local amenity through noise, hours of operation or any other environmental impacts.

Employment

44. Given the separation and relative position of the glazing business, it is unlikely that the use of the larger rear function room would unduly affect/hinder its operation. The space used for a place of worship fronting onto Lewisham High Street may affect the operation of that existing business through people congregating outside, but given its smaller size, coupled with the likely frequency of use, that would not be unduly so.
45. Nevertheless, DM Policy 44 also requires all applications for places of worship to demonstrate they are not causing a detrimental effect to employment or future employment space. No such information has been provided in this case, contrary to that policy requirement.

Other Matters

46. The third reason for issuing the enforcement notice also refers to conflict with CS Policy 15 (high quality design for Lewisham) and DM Policy 30 (urban design and local character). DM Policy 44 also states that all applications for places of worship will be required to be delivered to the highest design standards. However, I am not aware of any external design changes arising from the uses which would result in conflict with those policies.

Appeal A - Conclusion on Ground (a)

47. For the reasons given above, I conclude that the use of part of the property as a place of worship is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Appeals A, B and C Conclusions

48. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

Richard S Jones

INSPECTOR