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## Appeal Decisions

Site visit made on 10 June 2025

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

an Inspector appointed by the Secretary of State

Decision date: 11 JULY 2025

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### **Appeal A Ref: APP/C5690/C/23/3324354**

#### **Land at 58 Sunderland Road, LONDON, SE23 2PY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by London & Quadrant Housing Trust against an enforcement notice issued by the Council of the London Borough of Lewisham.
  - The notice was issued on 16 May 2023.
  - The breach of planning control as alleged in the notice is Without planning permission, alterations to the roof.
  - The requirements of the notice are: (1) Make all necessary changes to the roof to bring it in line with its previous condition. This includes (but is not limited to): The use of flat tiles for the roof; The use of flat / angular ridge tiles for the hip edge; Reinstating the decorative elements to the ridge tiles at the top of the roof; Reinstating the decorative ridge tile elements at the eaves line. [Please see the attached photo [Photo 1] of the previous roof for reference] AND (2) Remove all materials, debris, waste and equipment resulting from compliance with Step (1) of this notice from the land.
  - The period for compliance with the requirements is: 2 (Two) months.
  - The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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### **Appeal B Ref: APP/C5690/W/23/3328386**

#### **58B Sunderland Road, Forest Hill, Lewisham, LONDON, SE23 2PY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by L& Q against the decision of the Council of the London Borough of Lewisham.
  - The application Ref is DC/23/131374.
  - The development proposed is Retrospective application for re-roofing the property.
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### **Appeal A Decision**

1. It is directed that the enforcement notice is corrected and varied by:

- The deletion of all words in paragraph 5 of the notice from and including '(1)' to 'land' and substitution with the words:  
*'(1) Make all necessary changes to the roof to bring it in line with its condition immediately before the breach by:*
  - *Re-roofing the property with the use of flat slate tiles for the roof matching those in situ immediately before the breach;*
  - *Re-roofing the property with the use of flat ridge tiles for the hipped edges matching those previously in situ;*
  - *Reinstating the decorative elements to the ridge tiles at the top of the roof (the pierced terracotta ridge tiles with curved finials);*
  - *Reinstating the decorative ridge tile elements at the eaves line (the curved metal finials situated on the corners of the roof at eaves level).**[Please see the attached photo [Photo 1] for reference only as to the type of slate roof tiles to be matched and design of decorative features previously in situ]*

*[Please see attached photo [Photo 2] for reference only as to the design of the decorative ridge tile elements at the eaves line (the curved metal finials)]*

AND

(2). Remove all materials, debris, waste and equipment resulting from compliance with Step (1) of this notice from the land.;

- On the page of the notice headed 'Photo 1: 58 Sunderland Road' deletion of the words 'Photo 1' in the heading and substitution with the words 'Photos 1 and 2';
- On the page of the notice originally headed 'Photo 1: 58 Sunderland Road' deletion of the words '*how the property appeared prior to the works occurring*' and substitution with the words '*for reference only as to the type of slate roof tiles to be matched and design of decorative elements previously in situ.*';
- On the page of the notice originally headed 'Photo 1: 58 Sunderland Road' after the words 'October 2020' the insertion of the photograph 'Photo 2' annexed to this decision and below the newly inserted photo insertion of the wording '*Photo 2: for reference only as to the design of the decorative ridge tile elements at the eaves line (the curved metal finials)*';
- the deletion of '2 (Two) months' and its substitution with 'Nine (9) months' as the time for compliance.

2. Subject to the corrections and variations, the enforcement notice is upheld.

### **Appeal B Decision**

3. The appeal is dismissed.

### **Appeal A Preliminary Matters**

4. The appellant originally sought to make a ground (a) appeal but was notified by the Planning Inspectorate that s174(2A) of the Town and Country Planning Act 1990 ('1990 Act') precludes ground (a) appeals where an enforcement notice was issued after making a related application for planning permission but before the end of the determination period. As such, Appeal A proceeds on grounds (f) and (g) only and I shall therefore deal with the Appeal B planning merits appeal first.
5. In ground (f) representations the appellant submits that the notice requirements are imprecise. The Council's statement includes revised wording which the appellant has partially accepted. Since the outstanding concerns primarily relate to whether or not the requirements are excessive, I will deal with these under ground (f).

### **Appeal B**

#### **Preliminary Matters**

6. It is clear from submitted documents that the application was made on a retrospective basis. As such, while the application form and Planning, Design and Heritage Statement referenced smooth/flat profile roof tiles, I have assumed this reference to be erroneous given that the application plans show the ridged tiles currently in situ. This reflects how the Council dealt with the application.
7. The revised National Planning Policy Framework 2024 ('Revised Framework') came into force during the course of the appeal. The revisions made have not had a direct bearing on the issues which are central to these appeals.

## Main Issue

8. The main issue is the effect on the character and appearance of the host property and of the Perry Vale and Christmas Estate Conservation Area ('CA').

## Reasons

9. The Appeal B appeal property is a flat forming part of one of the 'Christmas houses' which were constructed by local Forest Hill builder Ted Christmas around the 1900s. This property is a detached building with a hipped roof and displaying the traditional materials and finely detailed exterior joinery which is characteristic of the high quality Christmas Houses craftsmanship.
10. The appeal property is located within the CA which represents a strong suburban example of high quality Edwardian architecture which the Perry Vale and the Christmas Estate Conservation Area Appraisal<sup>1</sup> ('CAA') describes as 'a planned and speculatively developed suburb with straight roads and regular plot sizes'. Sunderland Road, along with South Road and Church Rise are characterised by 'wide, ruler-straight streets of socially prestigious character, with avenues of street trees'. As explained in the CAA, the significance of the CA is also derived from the limited palette of external materials used, comprising principally 'warm red brick in Flemish bond, composition stone, roughcast, slate, red clay plain tiles and occasionally terracotta'.
11. The roofscape within the CAA refers to hipped roof forms as being 'the norm' within the CA. The Christmas Houses are generally roofed in red clay tiles which the CAA indicates is a common feature in the Queen Anne style. Numerous properties also display red clay ridge tiles, some with a pierced pattern, adding a sense of intricacy in design at roof level. The also CAA references central and flank chimney stacks, together with decorative clay ridge tiles and finials as characterising features.
12. Prior to the appeal development, the property had a traditional slate roof which featured pierced terracotta ridge tiles, curved finials and plain clay hip tiles. In the appeal development, the slate roof tiles have been replaced with grey concrete tiles and the decorative ridge tiles, hip tiles and finials have been removed.
13. The grey concrete tiles used have a starkly different appearance to the traditional slate roofing widely seen in the surrounding area by reason of their ridged profile, uniform colour and texture of their finish. While I appreciate that the colour will likely change with age, I have no detailed information on this nor as to how these concrete tiles will catch the light as they age.
14. The use of this modern roof covering is a visually jarring modern addition which sits uncomfortably in the context of the elegant craftsmanship in the property's exterior. Removal of the pierced terracotta ridge tiles, curved finials and plain clay hip tiles has also resulted in a loss of visual interest at roof level which also was a notable historic feature of this property. This harm is readily apparent in public views, particularly from the opposite side of the road.
15. I appreciate that the host property is not specifically highlighted in the roofscape section of the CAA, and that the previous roofing material was slate and not the red clay tiles which are noted to signify the Queen Anne style. However, within the CAA, the appeal property is identified as one of the celebrated Christmas Houses

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<sup>1</sup> January 2019

- and slate is identified as a typical roof material within the CA. The CAA also specifically highlights decorative roof design elements as characteristic features.
16. Further, in its management guidelines, the CAA advises as regards roof coverings that 'Where replacement is needed, as much historic material should be salvaged and reused as possible and replacement should be on a like for like basis'. As regards modern roof coverings, the CAA refers to the 'chunky' profile of concrete tiles and consequential difficulties in cutting and laying these at roofscape junctions. It is advised that even artificial slate is only likely to be acceptable on 'non-visible' roof slopes i.e. not on front or other roof slopes visible from the public domain.
  17. While the 'Redland 49' concrete tiles used may have a fairly long history of use across London, they are not characteristic of the CA. The absence of difficulties in laying these at roof junctions and lack of consequent structural issues does not counter the harm from the thick and obviously modern concrete tiles used. While photos show some damage to the previously existing slate tiles, there is no substantive evidence indicating that some of these could not have been re-used in conjunction with replacement slate tiles.
  18. The appellant references also a comment within the CAA that surveys showed 29% of properties in the CA have seen replacement roof coverings in non-traditional materials. While there are some limited examples of modern materials on properties within the CA including the adjacent property at 60 Sunderland Road, the Council has indicated that these did not have the benefit of planning permission and pre-dated the CA designation.
  19. The appellant also points to a small number of properties within the CA where decorative roof features have been removed (including again No 60) and that the CAA does not specifically identify this as a harmful change. Nevertheless, the CAA plainly acknowledges these as significant design features. In any event, I share the Council's view that these roof changes have detracted from the character of the CA and do not justify the appeal development.
  20. The fact that the appeal development does not entail works on other original parts of the property and that the characteristic layout of the CA remains unaffected does not mitigate against the harm caused by these modern roof works. Anecdotal indications of complaints about pigeons nesting in the previous roof and compliments on the new roofing also do not justify this unsympathetic development.
  21. Appeal representations reference flat concrete tiles albeit that this is not specifically suggested as an alternative scheme. In my view, a flat profiled concrete tile would potentially represent a modest improvement as against those currently in situ. However, on the available evidence, I am not persuaded that the texture and colour of such a roof covering would sit comfortably within the roofscape of the CA which is characterised by traditional clay and slate roof tiles.
  22. For the reasons outlined above, I conclude that the appeal development has had a harmful effect on the character and appearance of the host property and the CA. In the terms of paragraph 215 of the Revised Framework, I find that the development has resulted in less than substantial harm to the significance of the CA. This is at the lower end of the scale but per paragraph 212 of the Revised Framework, when considering the impact of development on the significance of a CA, great weight should be given to its conservation.

23. Other than the provision of a period of employment for the builders who carried out the works, which would likely have been no different if the replacement tiles had been slate, there is no indication of any public benefits arising from the appeal development. There are then no public benefits sufficient to outweigh the less than substantial harm caused to the significance of the CA.
24. For the reasons outlined, I find that the development does not accord with Policy 15 of the Council's Core Strategy (2011) which seeks to ensure that new development conserves or enhances the Borough's heritage assets. There is conflict also with Policies 31 and 36 of the Council's Development Management Local Plan (2014) which indicate that development proposals should respect the architectural characteristics and detailing of the original building and use materials that are appropriate and sensitive in their context, and that within conservation areas, it should be compatible with the special characteristics of the area.
25. Policy HC1 of the London Plan (2021) is also not complied with as regards development proposals being sympathetic to the significance of heritage assets. Guidance in the Alterations and Extensions SPD (2019) is also not followed since this indicates that the use of concrete tiles is not acceptable nor recommended for the replacement of any tiles on historic buildings.
26. In reaching this conclusion I have undertaken my statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. While I appreciate that the terms 'preserve' and 'enhance' do not mean that the CA should be protected from all changes, I have not found that the appeal development leaves the CA unharmed.

### **Other Matters**

27. The appellant's concerns as to the Council's handling of the enforcement process are not for me in dealing with these appeals.

### **Appeal B Overall Conclusion**

28. For the reasons given above, I conclude that the appeal development does not accord with the development plan taken as a whole and there are no identified material considerations that indicate the decision should be made other than in accordance with the plan. Consequently, Appeal B should be dismissed.

### **Appeal A – the appeal on ground (f)**

29. This ground of appeal is that the requirements of the notice exceed what is necessary.
30. S.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; the second is to remedy an injury to amenity which has been caused by the breach. I appreciate that the notice does not require reinstatement of the actual roof tiles and decorative features removed. Nonetheless, in my view, the fact that the notice requires that changes are made to the roof to bring it in line with its previous condition suggests that its purpose is to remedy the breach of planning control.



31. The appellant argued that the requirements as drafted in the notice were excessive since it would effectively require reinstating the roof tiles in their previously poor condition. It was submitted also that the photograph cross referenced by the Council depicted the condition around 2020 and so not immediately prior to the breach and a requirement to restore to this condition would also then be excessive. It was also suggested that there was imprecision in the requirements in the wording including but 'not limited to' and through a lack of specificity as to the steps specified as part of required reinstatement.
32. The appellant also makes some comments under this ground which relate to matters of planning merit. Where the purpose of the notice is to remedy the breach of planning control and there is no ground (a) appeal/deemed planning application, planning considerations cannot be introduced in a ground (f) appeal.
33. The Council proposed new wording during the course of the appeal as follows:

*'(1) Make all necessary changes to the roof to bring it in line with its last known lawful condition by:*

  - Re-roofing the property with the use of flat Welsh Slate tiles for the roof;*
  - Re-roofing the property with the use of flat ridge tiles for the hipped edges;*
  - Reinstating the decorative elements to the ridge tiles at the top of the roof (the pierced terracotta ridge tiles with curved finials);*
  - Reinstating the decorative ridge tile elements at the eaves line (the curved metal finials situated on the corners of the roof at eaves level).*

*[Please see the attached photo [Photo 1] of the last known lawful condition of the roof for reference]*  
*[Please see attached photo [Photo 2] showing the decorative ridge tile elements at the eaves line (the curved metal finials)]*  
*AND*

*(2). Remove all materials, debris, waste and equipment resulting from compliance with Step (1) of this notice from the land.'*
34. The appellant queries the use of the wording 'last known lawful condition' and I agree that it is clearer to refer simply to the condition immediately prior to the breach. It is submitted also that that there is ambiguity in the revised wording in that it requires changes to return to the previous condition but the detailed steps are instead 'seeking something that is materially similar' to the previous condition.
35. In my view, there is nothing inconsistent in the notice requiring changes to return the roof to its previous condition without a stipulation that the actual tiles and decorative elements which were removed are reinstated; this still reflects a purpose to remedy the breach since very frequently removed materials will no longer be available. The wording suggested does not either represent the notice improperly seeking an improvement as against the previous condition – it will simply require restoration to the condition existing immediately before the breach by re-roofing and restoration of decorative features. Very likely the appellant will not wish to return the roof to its precise former damaged condition. However, I can extend the compliance period to enable this to be explored.
36. The appellant also suggests that the stipulation of Welsh slate is unreasonable on the basis that this rules out other types of slate or concrete tiles. While the appellant cannot introduce planning merits arguments here, I note the Council comment that photos showed the previous tiles were only 'likely' to be Welsh slate.

It is therefore reasonable to amend the proposed wording to reference simply matching the slate tiles previously in situ. The appellant may wish to seek approval for an alternative form of slate but again an opportunity for exploring this can be provided by extending the time for compliance.

37. The appellant also objects to the cross-reference to photographs on the basis that 'it is not reasonable for compliance to rely on a photograph'. I do not consider that reliance is dependent on photographs since these are 'for reference'. That said, I can correct the wording to clarify that the photographs are only for reference as to the type of slate previously in place and design of features removed.
38. The ground (f) appeal succeeds in these limited respects.

### **Appeal A – the appeal on ground (g)**

39. The appeal on ground (g) is that the time for compliance falls short of what is reasonable.
40. The notice stipulates a two month compliance period. The appellant contends that a longer period is warranted due to: imprecision in the notice as originally drafted meaning that the appellant cannot source replacement materials; the need for planning permission for a replacement roof and the likely timescale for dealing with such an application; and supply chain problems in the UK construction industry. A period of 9 months is requested.
41. Imprecision in the notice will be resolved per the corrections suggested by the Council and further corrections I will make as explained in the ground (f) appeal above. I accept though that since the appellant will likely wish to explore the types of slate that might be acceptable with the Council and to seek planning permission for full re-roofing (as opposed to restoration to the precise previous condition which was a state of some disrepair). Likely sourcing materials and organising final procurement would need to occur following determination as to which form of slate is acceptable rather than concurrently with any application.
42. While the Appeal B application form may have indicated the works took only around one month to complete, there would be a lead in time for finding an appropriate builder with availability. The Council found materials to be available as at the date of its search but it is likely this could fluctuate. Taking into consideration also time to prepare and submit a planning application, along with time for determination, in my view the nine month compliance period suggested would offer a reasonable time for compliance while bringing ongoing harm to an end relatively swiftly. The ground (g) appeal succeeds.

### **Appeal A Overall Conclusion**

43. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall correct and vary the enforcement notice prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

*V Bond*

INSPECTOR

## Photograph

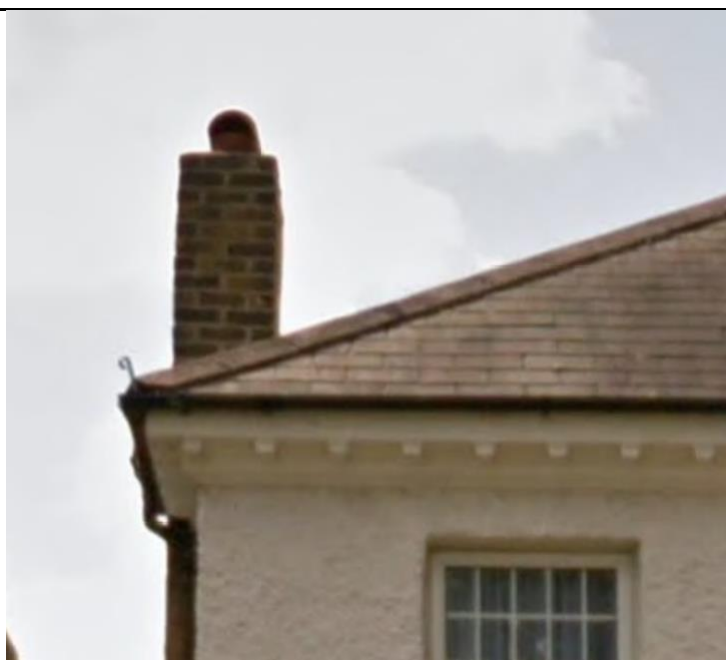
This is the photograph named as 'Photo 2' referred to in my appeal decisions dated: **11 JULY 2025**

by **V Bond LLB (Hons) Solicitor (Non-Practising)**

Land at: **58 Sunderland Road, LONDON, SE23 2PY**

Reference: **APP/C5690/C/23/3324354, APP/C5690/W/23/3328386**

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### Appendix 1

List of those who have appealed

| Reference | Case Reference         | Appellant                       |
|-----------|------------------------|---------------------------------|
| Appeal A  | APP/C5690/C/23/3324354 | London & Quadrant Housing Trust |
| Appeal B  | APP/C5690/W/23/3328386 | L&Q                             |