



Appeal Decision

Site visit made on 19 February 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 March 2026

Appeal Ref: APP/C5690/C/22/3290410

Land and buildings to the rear of 243-265 Bromley Road, London, SE6 2RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Eden Park Property Limited against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 15 December 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of 8 dwelling houses..
 - The requirements of the notice are:
 1. Remove the development constituting 1-8 Kanli Mews (Land and buildings rear of 237-265 Bromley Road, London SE6 2RA in its entiretyOR
 2. Implement the previously approved scheme in accordance with the plans of application DC/12/081982, and the details approved in DC/18/107454
 - The period[s] for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice be varied by extending the period for compliance from six to twelve months. Subject to this variation 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.

Preliminary Matters

2. The previous appeal decision to uphold the enforcement notice, with a particularly significant correction, was challenged by the appellant under s289. In essence, due to the directed deletion of one part of an either/or requirement, the appellant was denied the choice of reverting to a potential fallback position by way of implementing a previous planning permission (DC/12/081982) and the approved details thereto (DC/18/107454) rather than be faced with removing the development in its entirety.
3. The judge considered that the Inspector, with only limited information available to her on this matter, had not properly qualified her view that the development undertaken – the dwellings built have been occupied - had deviated from an earlier planning permission to such a degree that the option of revisiting the terms and conditions of the said permission were now unavailable to the appellant.
4. In effect, the judge found that the Inspector's approach had not grappled with the above issue fully and the main parties had not been given the opportunity to comment on the Inspector's findings on this matter. Accordingly, the Inspector's

approach was considered as having been procedurally unfair and, due to this error, the decision was quashed.

5. Accordingly, the decision was presented for redetermination. In the event, prior to me looking at the enforcement notice and its grounds of appeal afresh the views of both parties have been sought as to the implications of the judge's findings, and any material changes in circumstances. As regards the latter, in July 2025 the Council adopted a new development plan; the 'Lewisham Local Plan 2020-2040', and my redetermination of the deemed planning application has been made with regard to this.
6. The appellants, in their latest representations, have taken issue with the previous Inspector concluding that an assessment could not be made as to a planning application proposing a mixed use development at the site. Planning application ref DC/22/125525, submitted in February 2022 proposed the change of use to create four x 1 bed flats along with office space.
7. Section 70C of the 1990 Act (as amended) provides that Councils can decline to determine applications where granting planning permission would give permission for the whole or any part of the matters specified in a pre-existing enforcement notice as constituting a breach of planning control.
8. In the judgement of *Chesterton v Wokingham BC* [2018] EWHC 1795 (Admin) it was considered whether the Council had properly exercised its discretion under s70C. It was held that the statute was not concerned with differences between developments ie the subject of an enforcement notice and that proposed by way of a subsequent planning application, but instead with the existence of similarities.
9. Accordingly, the discretion is available where any part of a matter enforced against was involved, regardless of whether the application would also involve granting planning permission for matters which were not specified in the enforcement notice and regardless of whether the application would involve consideration of different planning merits.
10. In this particular instance the enforcement notice alleged the erection of eight dwellings, whereas the planning application which followed proposed the creation of four residential units, as the remaining four would be converted to offices. Accordingly, I am of the view that the discretion was available here to the Council, and I am unaware of any challenge on this regard. It would therefore be beyond my remit to assess the planning merits and/or impacts of the alternative scheme.
11. As such, my power to grant permission on the deemed planning application only extends to development which is part of the matters comprising the breach of planning control. On this basis I must agree with the previous Inspector's approach with regard to the appeal's limitations.

Background

12. Planning permission was granted in 2009, and subsequently renewed in 2012, for the demolition of existing garages on the appeal site and their replacement with a two-storey flat roof building to provide 8 units to be used for storage purposes. The appellant purchased the site midway through construction in 2018 and altered the building to provide eight houses.

13. The Council subsequently saw it expedient to issue an enforcement notice against the unauthorised material change of use.

The enforcement notice.

14. My first task is to ensure that the enforcement notice is in order and legally sound. Given the reasons why the s289 challenge proved successful I am satisfied that, irrespective of my decision, Requirement 2 should remain as an option available to the appellant should the fallback of implementing the previously approved scheme still be considered a viable possibility. This would be a matter for the appellant to assess and decide upon if the notice is to be upheld.

The ground (a) appeal – the deemed planning application

Main Issues

15. The main issues are the effect of the development on i) the character and appearance of the area; and ii) the living conditions of the existing occupiers, having regard to the standard of accommodation and the living conditions of neighbouring occupiers, having regard to privacy.

Reasons

Character and appearance

16. Policy QD1 of the Lewisham Local Plan (LLP) is a general design based policy which indicates that new development should reinforce local character and, essentially, in reflecting the housing design objectives of the London Plan (LP), should put people at the centre of a design-led approach. Here, the distinctive character and appearance of the area stems in part from the quality of the design and layout of all the nearby commercial uses and residential development, both traditional and more recently built. Accordingly, I consider that the immediate area is one of mixed character both in terms of use and architectural form.
17. The dwellings themselves are situated towards the end of a hard-surfaced, narrow strip of land to the rear of Nos 237 to 265 Bromley Road, a Victorian terrace with commercial units on the ground floor and flats at first and second floor level. Surrounding developments are largely residential with purpose-built flats of various age along Bromley Road and along side roads of well-designed Victorian and inter-war housing.
18. The original 2012 planning permission involved the erection of commercial units, and there has been no subsequent permission given for the introduction of residential flats with the building's wholesale conversion to this end. However, the backland development at appeal is something of a unique local design and is not visually unattractive in terms of the building's form and design and the facing materials used. Their siting, though, and consequences arising, are not ideal and I deal with this later in my decision letter.
19. The visual aspect aside paragraph 135 of the National Planning Policy Framework (the Framework) advises that developments should function well and add to the overall quality of the area for the lifetime of the development. Here, access to the appeal site is via a gate from Bellingham Road across an undefined hard surfaced area, which is the narrowest part of the site.

20. The eight small dwellings are set out in a continuous row, positioned further into the site in a linear form close to the eastern boundary at the widest part of the site, behind nos 251-265 Bromley Road. They have limited floorspace and are single aspect, comprising only two habitable rooms each with a kitchen/dining/lounge space on the ground floor and a bedroom with an en-suite bathroom on the first floor. Access is via individual doors although next to each door there are patio doors which provide light to the ground floor room. At first floor level there is a piece of glazing that spans more or less the full width and height of the room.
21. The hard-surfaced access driveway leading to the building is shared with rear service access to the commercial units along Bromley Road, and private motor vehicles park on its opposite side. In essence, there is no separate pedestrian access for the benefit of the appeal development. This is not an ideal arrangement for its residential occupiers.
22. It appears that there are no external private areas for the benefit of each of the occupiers. This contrasts with the design of the small gardens and balconies provided for occupiers of the flats at Prestige House, a modern development, adjacent to the entrance to the appeal site, off Bellingham Road.
23. Nonetheless, in terms of the use of the site I have also had regard to LLP policy QD6 which reflects the aims of LP policy D3 in seeking to optimise site capacity. This approach is consistent with national guidance by way of the National Planning Policy Framework (the Framework) which, in its section 11, promotes the effective use of land in meeting the need for homes and other uses; that said, ensuring that developments incorporate safe and healthy living conditions. The promotion of under-utilised brownfield land and buildings is important in this regard, and small dwellings such as these fill an important gap in the market.
24. However, although I am aware that this is a DPA and no documents were required to support and accompany the appeal in this regard, I am not convinced that the submission has been well illustrated and sufficiently promoted in an attempt to justify and maybe modify the development. In particular, I have not been provided with a Design and Access Statement, especially with regard to any alterations or measures possible that might be incorporated in an attempt to improve the scheme's workability in its contextual setting.
25. In certain instances, providing it is possible and acceptable on planning grounds, internal floorspace that comfortably exceeds minimum standards might be taken to offset inadequate lack of external amenity space. However, as things stand the development fares poorly when compared to Prestige House, its close neighbour, and does not add to the quality of the area.
26. I do, though, understand that a new planning application, concerned with alterations and extensions to the existing building was submitted to the Council in October 2025 and awaits determination. I have no further details of this proposal and have not seen any supporting documents to this end but, until such time as it is determined, the new proposal and its assessment must remain a matter between the applicant and the Council.
27. I must, therefore, conclude on this main issue that the development, as exists, is harmful to the character of the surrounding area and does not add to its overall quality. Accordingly, it is in conflict with the objectives and requirements of LLP policies QD1 and QD10.

Standard of accommodation, amenity and privacy

28. There is some crossover between the two main issues given that the size and integral facilities of the dwellings, constrained due to the narrowness of the site, have affected the character of the development.
29. Paragraphs 5.64 and 5.65 of the LLP say that the quality and standard of housing is a key issue in Lewisham, and the Council will apply the London Plan space standards when considering new housing proposals. In terms of policy, LLP policy QD8 is specifically concerned with high quality housing development and makes reference to the qualitative design aspects set out in LP policy D6.
30. LP policy D6 says that housing development should be of high quality design and provide adequately sized rooms with comfortable and functional layouts. Table 3.1 thereto specifies the minimum space standards for new dwellings and gives the prescribed gross internal floor areas (GIFA). For 1 bed/2person units spread over 2-storeys the minimum GIFA is 58 sqm, but each dwelling's GIFA here measures only 50 sqm. The floorspace is so limited that, from the floorplans, there is no available storage space. This represents a significant shortfall on the said minimum space standard.
31. Taken together, the above, along with LLP policy QD8, says that external amenity space should be incorporated in the form of level access to either a garden, terrace, roof garden or balcony and practical in terms of its shape and utility. Accordingly, it should provide a good degree of usable amenity for the occupiers. However, in this instance the appellant accepts that the requisite private external amenity space has not been provided. There is no space to the rear of the building to provide private amenity space and although a submitted layout plan shows a very small narrow strip to the front of each dwelling annotated as 'private amenity' space this is something of a misnomer given its size and positioning. It could hardly be termed as usable for the occupants.
32. Given the proximity of the dwellings' front elevations to there is also a lack of defensible space for the occupiers, although mews type developments can work with such an arrangement.
33. Due to the site's constraints the dwellings are all single aspect which, generally, is discouraged in policy terms. Dual aspects are obviously preferable, but I acknowledge that constraints in urban areas can often dictate and, subject to a scheme incorporating clear design merits on other factors, allowances can perhaps be made. The urban context can also mean that normal privacy distances which can guard against overlooking cannot be achieved and might be relaxed due to wider benefits. From my site visit observations, I am satisfied that this issue does not count against the development to any significant extent, and satisfactory levels of privacy would be maintained.
34. My main concern on this issue, instead, relates to the limited floorspace provision which constitutes a poor standard of accommodation that conflicts with the stated development plan policies, particularly LP policy D6 and LLP policy QD8. Accordingly, the scheme, as built, is not acceptable in planning terms.

Other Matter

35. The appellant makes reference to an apparent unmet need for new housing across Lewisham borough and cites the Council's latest Housing Delivery Test score which would indicate that targets are not being achieved. This may be the case, but it does not mean that sub-standard schemes with policy objections should be allowed.

Conclusions on the DPA

36. The development, the subject of the DPA represents, as it stands, an unacceptable form of development with shortcomings due to the dwellings' standard of accommodation, dictated to by the site's constraints. That is not to say that improvements and measures of mitigation could not be incorporated, but no alternative scheme is before me.
37. Nonetheless, although the building's demolition involving the loss of eight dwellings, as is required by the enforcement notice, might appear draconian, the development in its current form is contrary to adopted policies. In the absence of any viable proposals to modify the development the potential imposition of planning conditions on any planning permission granted would not just be inadvisable, but would likely be creating problems for the future.
38. In the circumstances, for the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The ground (f) appeal

39. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires either the removal of the development or for it to be altered to accord with a previous grant of planning permission. The purpose of the notice is to remedy the breach of planning control.
40. In appealing on ground (f) the onus is on the appellant to specify lesser steps, which in his view would overcome the objections to the development.
41. The appellant's updated representations say that there is no wish for the enforcement notice to be varied as per its required steps and, as such, requirement 2 should remain. I have already indicated that the either/or requirement is appropriate in the circumlocution notice stances
42. Requirement 3 which involves restoring the land to its condition before the breach of control took place is not excessive to remedy the identified breach of control. In fact, all the requirements stated are necessary to achieve the enforcement notice's purpose. No other credible lesser steps have been put forward, and the appeal on ground (f) fails.

The ground (g) appeal

43. The appeal under ground (g) is that the specified time period for compliance – in this case six months – is unreasonably short to comply with the required steps. In

upholding the enforcement notice there are certain factors to take into account. Firstly, given that there is a planning application to extend and alter the dwellings' design, the appellant will be awaiting the Council's decision. It is likely that the outcome of the current appeal could have a bearing on the Council's decision and also that further negotiations could ensue. Accordingly, I am mindful that this could take some time.

44. If the proposed development is allowed then the requirements of the enforcement notice will be overridden, but if it is refused then the appellant will need to decide which of the either/or requirements would be most appropriate in the circumstances.
45. I acknowledge that the occupiers would need to find alternative accommodation and there would likely be a considerable degree of upheaval. With this in mind, and on the basis that negotiations between the main parties might continue, I am satisfied that an extension of time to twelve months would be reasonable to conclude matters. The appeal, therefore, succeeds to this extent.

Conclusions

46. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

T C King

INSPECTOR