



## Appeal Decision

Hearing held on 14 and 15 November 2023

Site visit made on 15 November 2023

**by L Douglas BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15<sup>th</sup> January 2024**

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### **Appeal Ref: APP/A5840/C/22/3306846**

### **41C, 41D and 41E Sydenham Hill, in the North East corner of Beltwood 41 Sydenham Hill, London SE26 6TH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Greg Coram against an enforcement notice issued by the Council of the London Borough of Southwark.
- The notice was issued on 16 August 2022.
- The breach of planning control as alleged in the notice is: 'Without planning permission, construction of three terraced houses (within use class C3) and alteration of ground levels.'
- The requirements of the notice are: 5.1. Demolish the three terraced houses. 5.2. Fill in the basements of the three terraced houses. 5.3. Restore ground levels at and adjacent to the footprint of the buildings to their previous heights and turf the land. 5.4. Remove from the site of Beltwood 41 Sydenham Hill and properly dispose of all rubbish and debris resulting from the works set out within paragraph 5.1 to 5.3 above. 5.5 Cease any occupation of the three terraced houses.
- The periods for compliance with the requirements are: 12 calendar months after the notice takes effect for requirements 5.1 to 5.4; and 3 calendar months after the notice takes effect for requirement 5.5.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), and (g) of the Act. 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 of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.**

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### **Applications for Costs**

1. Applications for costs were made by the Council against the appellant, and by the appellant against the Council. Those costs applications form the subject of separate decisions.

### **The Notice**

2. The alleged breach of planning control refers to the erection of terraced houses and 'alteration of ground levels'. The notice requires, amongst other things, ground levels 'at and adjacent to the footprint of the buildings' to be restored to their previous heights. The Council explained that it would be unable to confirm whether this requirement has been complied with without assistance from a RICS Surveyor digging trial holes in agreed positions to explain and agree where changes in land levels may have been made.
3. The accuracy of existing and proposed plans drawn before the commencement of development cannot be relied upon, as explained below. Photographs taken before, during, and after construction works are of little help when trying to

ascertain land levels at those times due to their lack of detail. Having inspected the site and heard from all parties on these matters, it remains unclear where, and to what extent, it is alleged that land levels may have been altered.

4. Section 173(1)(a) of the Act sets out that an enforcement notice shall state the matters which appear to the local planning authority to constitute the breach of planning control. Subsection (2) explains that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are. Having considered all the evidence, the notice does not comply with the above. I am unable to describe in a reasonably clear manner any alteration of ground levels which may have taken place in breach of planning control at the site.
5. Section 176 of the Act provides me with the power to correct any defect, error or misdescription in the notice, or to vary its terms, if I am satisfied that doing so would not cause injustice to the main parties. Correcting the notice by deleting reference to the alteration of ground levels from the description of the alleged breach of planning control would not cause any injustice. It would leave the Council able to investigate and take further enforcement action against any unauthorised alteration of land levels which may have taken place.
6. No objection was raised to the deletion of the second and fifth requirements of the notice, which refer to the filling of the basements with unspecified content and the cessation of the occupation of the dwellings prior to their demolition. It is also unnecessary and vague for the notice to require all rubbish and debris resulting from compliance to be 'properly' disposed of. The notice could be varied to require the land to be restored to its condition before the corrected alleged breach of planning control took place and for all waste to be removed from Beltwood without causing injustice to any parties.
7. I shall therefore correct and vary the notice in the terms set out in my formal decision, by deleting reference to the alteration of ground levels from the description of the alleged breach of planning control and by varying the requirements of the notice. The appellant has confirmed that their appeal under ground (b) relates solely to the alleged alteration of ground levels. This ground of appeal therefore falls away.

### **Preliminary Matters**

8. Shortly before the close of the Hearing I was notified by a local resident that the Dulwich Estate is claimed to have an interest in the land. I was advised that the Dulwich Estate is aware of the notice and the appeal, but it was not aware of the dates of the Hearing. The Dulwich Estate has not made any submissions, and although it was not formally notified of the appeal by the Council, I am satisfied by the evidence I heard that it was aware of the appeal. I am not aware of any request from the Dulwich Estate to appear at the Hearing. I therefore see no injustice or prejudice by the Hearing proceeding as it did, or through this decision being issued.
9. The Council confirmed that it no longer has any objection to the alleged breach of planning control on fire safety grounds. I shall not therefore consider this matter further as part of the appeal under ground (a) and the deemed application for planning permission.

10. The Government published a revised National Planning Policy Framework (the Framework) after the Hearing had closed. I invited comments on this from the main parties and have taken those received and the Framework, as revised, into account when reaching my decision.

### **Ground (c)**

11. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the alleged breach of planning control does not constitute a breach of planning control. It is not disputed that the terraced houses comprise development requiring planning permission.
12. The appeal site forms part of Beltwood, the grounds historically associated with Beltwood House. Planning permissions<sup>1</sup> have been granted for development across the whole of Beltwood, which include the demolition of a former stables and worker's cottage and the erection of 3 residential units at the appeal site. The terraced houses the subject of the notice fall within the descriptions of development approved.
13. Works began on development approved by planning permission references 17/AP/3070 (the 2018PP) and 20/AP/1216 (the 2020PP). The 2020PP results from an application made under section 73 of the Act to vary condition 2 of the 2018PP and forms a standalone planning permission.
14. It is not disputed that at least part of Beltwood House has been incorrectly drawn on the plans approved as part of those planning permissions. In summary, with specific relevance to this appeal, the servants' wing on the eastern side of Beltwood House was plotted taller than it is. It is claimed that the roofs of the servants' wing had been incorrectly plotted approximately 600 millimetres (mm) higher on survey plans. The plans approved as part of the planning permissions therefore show a relationship between proposed terraced houses and Beltwood House which was, and remains, impossible to achieve.
15. The servants' wing includes 2 hipped roofs: one with higher ridge and eaves than the other. In the approved plans relating specifically to the terraced houses, they are shown to not exceed the height of the bottom of the eaves of the highest hipped roof of the servants' wing. The proposed south and north 'terrace house' elevation plans<sup>2</sup> are annotated to show the top of the parapets of the terraced houses (+54.47) would have been 30mm lower than the bottom of the eaves of the highest hipped roof of the servants' wing (+54.50).
16. The proposed 'main house' east elevation plan<sup>3</sup> shows the top of the parapets would have been roughly level with the bottom of the eaves of the lowest hipped roof of the servants' wing, despite the top of the parapets also being annotated '+54.47' on that plan. This error is also shown, without the annotations, on the proposed eastern site elevation plan<sup>4</sup>, which is referred to as an approved plan in the decision notice of the 2018PP.
17. The inconsistencies between the east elevation plans and the other approved plans are not explained by the errors in the initial survey. They are a further

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<sup>1</sup> The Council's refs: 17/AP/3070, 19/AP/1551, 20/AP/1216

<sup>2</sup> Drawing numbers 211 and 212

<sup>3</sup> Drawing number 133-B

<sup>4</sup> Drawing number 013-B

error on the proposed plans which form part of the 2018PP, even if those east elevation plans were intended to relate mainly or wholly to Beltwood House rather than the terraced houses.

18. Notwithstanding the above, there is a great deal of similarity between what has been built and what is shown on the approved plans. What has been built comprises 3 terraced houses of contemporary design with accommodation over 3 levels, first floor balconies to the front, and flat sedum roofs skirted by parapet walls. Fenestration sizes and positions appear consistent with what is shown on the approved plans, and brickwork finishes on all elevations are broadly similar. However, the parapet walls above the first floor windows appear significantly taller than those shown on the approved plans.
19. It was agreed by the main parties during my site visit that the northernmost dwelling measures 7.64 metres (m) in height from the ground floor level directly outside its front door. This compares with a measurement of between 7.91m and 7.96m indicated on Drawing No. 20129-13-E-1<sup>5</sup> ('the Existing North Elevation Plan'). However, it is not clear where the section on the Existing North Elevation Plan, regarding existing ground level datum points (8.36 and 8.41), was taken.
20. The Existing North Elevation Plan shows the top of the parapet walls to be 1.07m higher than the top of the eaves of the highest roof on the servants' wing. This appears consistent with the findings of a survey<sup>6</sup> commissioned by neighbouring residents, which explains the top of the parapets is 1.19m higher than the bottom of that eaves.
21. The evidence suggests the parapet walls of the terraced houses have been built 472mm taller than thought to be approved. The appellant's position was clarified at the Hearing, when it was claimed that the terraced houses have been built 312mm taller than what is shown on the approved plans forming part of the 2018PP and the 2020PP, irrespective of their surroundings.
22. It is not therefore disputed that the terraced houses as built are taller than the houses intended to be granted planning permission. Even if the margin of difference is as little as 312mm, which I doubt, this has notable implications for the appearance of the building. Specifically, the space between the top of the first floor windows and the top of the parapet walls appears to be much larger than what is shown on the approved plans. This is not a minor visual difference, and it has a significant effect on how the terrace is seen and experienced in its surroundings.
23. Even if I were to only consider the proposed houses shown on plans 211 and 212 in isolation from their surroundings, they show something very different overall in comparison to the terraced houses which have been built. This is on account of the variation in height and the proportion of each elevation taken up by parapet walls above first floor windows.
24. The terraced houses have not therefore been constructed in accordance with the plans specified at condition 2 of the 2018PP or those specified at condition 1 of the 2020PP. In any case, the significant errors on the approved plans

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<sup>5</sup> 'Existing Elevation No.1', Drawing No: 20129-13-E-1, dated 6 April 2021 by Arena Property Services Limited

<sup>6</sup> Terrain Geomatics report reference TGL/104/1312c dated 9 July 2021

forming part of the 2018PP and the 2020PP mean the terraced houses cannot be completed fully in accordance with those permissions<sup>7</sup>.

25. In conclusion, and as a matter of fact and degree, the terraced houses comprise development which does not benefit from planning permission. That development is in breach of planning control. The appeal under ground (c) therefore fails.

### **Grounds (a)/(f) and the deemed application for planning permission**

#### Proposed Amended Developments

26. Section 177(1)(a) of the Act provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Caselaw<sup>8</sup> directs that, so long as there is an appeal under ground (a), I must consider whether any proposed amended development would be part of the matters stated in the notice as constituting a breach of planning control and whether it should be permitted. Whether or not any proposed amended development amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker<sup>9</sup>.
27. The appellant initially put forward 3 proposed amended developments to be considered alongside the existing development as part of the appeal under grounds (a) and (f). In brief summary: Option 1 proposes a 172mm reduction in the height of the parapet wall of the terraced houses; Option 2 proposes a 472mm reduction; and Option 3 proposes a 960mm reduction.
28. At the Hearing the appellant 'withdrew' Options 1, 2, and 3 and put forward proposed amended developments described as Options V1, V2, and V3. Option V1 proposes the existing development, with the omission of roof mounted Heating, Ventilation, and Air Conditioning (HVAC) plant currently in place. Option V2 proposes a 300mm reduction in the height of the parapet wall of the terraced houses. Option V3 proposes a 472mm reduction. The HVAC plant is not shown on the plans forming part of Options V1, V2 and V3. The Council has expressed support for Option 3 as an alternative to the demolition of the terraced houses, but the appellant now considers Option 3 is not possible.
29. All of the proposed amended developments would form part of the matters stated in the notice as constituting a breach of planning control. The Council and local residents have raised concerns with what has been built at the appeal site, but the enforcement procedure should be remedial, rather than punitive.
30. Options 1, 2, 3, V1, V2, and V3 are obvious alternatives to the demolition of the whole terrace which may overcome the planning objections to the development at less cost and disruption<sup>10</sup>. While the appellant does not intend to rely on Options 1, 2, and 3, Option 3 remains part of the Council's arguments as an alternative to the demolition of the whole terrace. As such, Option 3 remains part of my deliberations.

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<sup>7</sup> *Choiceplace Properties Ltd v Secretary of State for Housing Communities and Local Government* [2021] EWHC 1070 (Admin),

<sup>8</sup> *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566

<sup>9</sup> *R (oao Banghard) v Bedford BC* [2017] EWHC 2391 (Admin)

<sup>10</sup> *Tapecrowns Limited v FSS & Anr* [2006] EWCA Civ 1744

31. The appellant claims that the HVAC plant was installed prior to the notice being issued and there is no evidence to dispute this. The HVAC plant is attached to, and provides a ventilation system for, each dwelling. I am satisfied that it forms part of the development the subject of the deemed application for planning permission. It is not shown on the plans for Options V1, V2, or V3, and does not therefore form part of those proposed amended developments.
32. I have seen the terraced houses and their surroundings, including views of them in the context of Beltwood House. I do not therefore need any further plans to assist me in my decision on the appeal under grounds (a)/(f). There is no need for details consistent with the Council's local validation list for planning applications to be submitted as part of the appeal.

### Main Issues

33. The main issues are:

- The effect of the development on the character and appearance of the area, with particular regard to the Grade II listed building, Beltwood House;
- The effect of the development on the living conditions of neighbouring residents, with particular regard to the outlook and privacy of residents at 6, and 18 to 26 Crescent Wood Road (CWR); and
- Whether a financial contribution towards the provision of affordable housing within the borough would be necessary to make the development acceptable in planning terms.

### *Character and Appearance*

34. Beltwood House is a Grade II listed building within the Dulwich Wood Conservation Area (CA). Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 require me to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses, and to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The main parties agree that the terraced houses do not harm the character or appearance of the CA, or the significance of the CA. I see no reason to find otherwise.
35. The 2018PP and the 2020PP were granted on the basis that the public benefits of those schemes would outweigh the less than substantial harm which would be caused to the significance of the listed building. Those public benefits included the preservation of plan form and historic fabric of the listed building, and it being brought back into use as multiple units of residential accommodation. This followed a period when Beltwood House had been in an unused state and placed on Historic England's Heritage at Risk Register.
36. The significance of Beltwood House is described in some detail in the Heritage Impact Assessment<sup>11</sup>. It is a large Victorian villa which was originally built in 1849-50 and extensively remodelled in 1914-15, within substantial grounds. It has a classical pedimented south elevation facing onto gardens, and a sweeping driveway leading from a gatehouse to its main portico entrance on

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<sup>11</sup> By Heritage Collective, dated August 2017

the west elevation. The listing description<sup>12</sup> for Beltwood House refers to its exterior possessing the predominant character of an early 20<sup>th</sup> century house in the late 17<sup>th</sup> century or 'Wrenaissance' manner with neo-classical detailing. In summary, the significance of Beltwood House lies in its historic and architectural interest as a Victorian villa of impressive scale and detailing with associated garden and grounds.

37. A former 2 storey stables and garage located to the east of the listed building are specifically mentioned in the listing description as not being of special interest. These were demolished, as permitted by the 2018PP and the 2020PP, prior to the erection of the terraced houses in similar positions.
38. The Framework advises that great weight should be given to conservation of designated heritage assets, and that any harm to their significance should require clear and convincing justification. Where less than substantial harm is caused by development to the significance of a listed building, that harm should be weighed against the public benefits of the development, including securing the optimum viable use of the listed building.
39. In views from the north and south, the blank side elevations of the terrace lack the attractive detailing of its west elevation. This emphasises the excessive brickwork above first floor windows on those elevations, which contrasts unsympathetically with the hipped roofs and external detailing of the adjacent listed building. Although those views are only available from within the grounds of Beltwood and a small number of properties to the north, they remain easily appreciable from those locations. In views from the neighbouring properties to the north, the extent of brickwork above first floor level windows creates an imposing elongated feature across the staggered north and east elevations.
40. The terraced houses exceed the height of the ridge of the lower hipped roof of the servants' wing, but there is a sizeable gap between their staggered west elevation and the listed building, and they are of significantly less mass and are smaller in scale than the listed building. They are subservient to the listed building and do not compete with or detract from its hierarchy of roof forms.
41. As a flat roofed contemporary building, the terrace is of a distinctly different architectural style to the listed building. Apart from its overly tall parapet walls, the terrace's otherwise high-quality restrained design features complement the more elaborate architectural details of the renovated Victorian villa.
42. It is the unsympathetic appearance of the extent of brickwork above first floor fenestration which reduces the overall design quality of the terrace. This poor design quality alongside Beltwood House causes a low level of harm to the setting of the listed building, without harming the character or appearance of the CA. This results in less than substantial harm to the significance of the heritage asset which would be long lasting if permitted. I assign great weight to that harm.
43. The overall design of the terrace would be much improved by Option 3 (960mm reduction) and Option V3 (472mm reduction), such that the above identified harm would be significantly reduced. There would be a fine difference compared to Option V3, but I do not consider Option V2 (300mm reduction) would be sufficient to improve the overall design of the terrace and reduce the

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<sup>12</sup> List entry number: 1385958, first listed 27 May 1993, last amended 8 February 2012

harm in a meaningful manner. There would be a clear, noticeable difference between a 472mm reduction and a 300mm reduction in the height of the parapets on all elevations.

44. It is not disputed that the public benefits of the terraced houses include the renovation and preservation of Beltwood House, it being brought back into use, and the provision of housing. Cumulatively, these benefits attract significant weight in favour of the development. The Council considered that the public benefits of the 2018PP and the 2020PP would have outweighed the harm those proposals would have caused to the significance of the listed building, but the terraced houses constructed are of an inferior design to the development shown in the standalone elevations intended to be permitted.
45. The great weight I assign to the harm caused by the existing design of the terraced houses to the significance of the listed building is not outweighed by the significant weight I assign to the agreed public benefits. The reduction of the unattractive expanse of brickwork above first floor fenestration proposed by Options 3 and V3 would sufficiently improve the overall design of the terraced houses to ensure that they would cause a much lower level of harm to the setting of the listed building. This would be appreciable from all angles, but especially from the western approach to Beltwood House, neighbouring properties to the north, and from Beltwood's gardens to the south.
46. The existing development therefore fails to preserve the setting of the listed building, contrary to Policy HC1 of the London Plan (2021) (LP), and Policies P13, P14, and P19 of the Southwark Plan 2019-2036 (2022) (SP). These require, amongst other things, development to respond positively to its character and context, and to conserve the significance of listed buildings. For the same reasons, Options V1 and V2 would also be contrary to those policies. The existing development preserves the character of the CA and does not harm its significance.
47. The low level of harm which Options 3 and V3 would cause to the significance of the listed building would be justified by the agreed public benefits. The overall development of Options 3 and V3 would therefore be sympathetic to the significance of Beltwood House and its appreciation within its surroundings, in accordance with Policy HC1 of the LP, Policy P19 of the SP, and the approach set out in the Council's Heritage Supplementary Planning Document (2021) and chapter 16 of the Framework. The proposed amended developments in Options 3 and V3 would also accord with Policies P13 and P14 of the SP.
48. The notice refers to Policy D4 of the LP and Policies P20 and P21 of the SP. Policy D4 is an overarching policy referring to the strategic delivery of good design across London. Policy P20 refers to development relating to or affecting conservation areas. Policy P21 refers to the conservation and enhancement of the significance of various heritage assets, but not listed buildings or conservation areas. The development is not in conflict with these policies.
49. Each of the terraced houses has a rooflight which opens outwards. The tops of those rooflights would likely be visible from outside the appeal site when those rooflights are open in Options 3 and V3. This would not add any harm to the setting of the listed building or the character or appearance of the area as they would form minimal projections, which would not be highly visible regularly.



50. Option V3 would cause less cost and disruption compared to Option 3. Even if Option 3 would be capable of being completed in a structurally safe manner, Option V3 would be acceptable in character, appearance, and heritage terms.
51. I have been referred to an appeal decision<sup>13</sup> for the redevelopment/renovation of Beltwood, which included a 'three-storey stable block development comprising four 5-bedroom and three 2-bedroom houses'. There are a number of pertinent differences between that and the terraced houses in Option V3, including in terms of architectural design, scale, footprint, and positioning. The findings in that appeal decision do not lead me to any different conclusions.

### *Living Conditions*

52. Land levels slope downwards gently from west to east and from south to north within the appeal site. Outside the site, land levels appear to drop more sharply in those directions. Land levels within the rear gardens of 18, 20, and 22 CWR are therefore lower than the ground floor level within the terraced houses and the rear patios of the terrace. The ground floor levels within the dwellings at those neighbouring properties are stepped down from their gardens. The living conditions of residents of those neighbouring dwellings, and residents of 6 CWR, are most affected by the terraced houses.
53. There is no dispute that the terraced houses are at least 25 metres from the nearest neighbouring dwelling, at 6 CWR. The terraced houses are set to the side of 6 CWR, out of the direct line of rear facing windows serving that dwelling. The tall boundary wall surrounding 6 CWR indicates any garden area between that dwelling and the terraced houses would likely be secondary to a large enclosed garden area adjacent to the highway to the north. The positioning of the terraced houses and their distance from the tall boundary wall of 6 CWR ensure that residents of 6 CWR retain an acceptable level of outlook.
54. The built form of the terraced houses, at a higher level than neighbouring properties, is a dominating feature in views from the rear gardens of 18 to 22 CWR. This is on account of the building's overall height and mass, with the terrace positioned at a staggered angle to those rear gardens. The blank north and east elevations of the terraced houses are seen from those neighbouring properties, punctuated only by first floor window openings far below the top of parapets. The finer architectural detailing of the building is not obvious in those views. Notwithstanding this, neighbouring properties retain reasonable degrees of openness and offer a good level of outlook to their residents.
55. There are restricted views into neighbouring properties from the terraced houses and their outside areas. The distances, angles, and likely frequency of such views through intervening planting mean they are very limited and do not cause unacceptable levels of perceived or actual losses of privacy.
56. Use of the roofs of the terraced houses other than as a means of escape in an emergency or for maintenance purposes would cause unacceptable perceived and actual losses of privacy to neighbours at 6 and 18 to 22 CWR. Emergency and maintenance access to the roofs would likely be fleeting and infrequent occasions. The use of the roofs could be controlled by a condition to prevent any unacceptable loss of privacy.

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<sup>13</sup> Appeal ref: APP/A5840/W/14/2228957

57. I have read and heard impassioned accounts from local residents about the effect the terraced houses have on their lives, including those affected by mental health conditions. There has been a significant change in the backdrop to the rear gardens of neighbouring properties and there is a lack of trust as to how the roofs of the terraced houses will be used.
58. However, all neighbouring residential properties retain good and acceptable levels of outlook and privacy. Despite being built on land at a higher level than the gardens and ground floor levels of neighbouring dwellings, there are sufficient separation distances between the terraced houses and neighbouring gardens and windows to avoid any unacceptable overbearing effects, sense of enclosure, loss of outlook, or loss of privacy. The terraced houses may be more intrusive to views from neighbouring properties than the former buildings which previously occupied the appeal site, but they do not impose unacceptable living conditions on any neighbouring residents.
59. Therefore, the terraced houses, subject to conditions, accord with Policies P14, P18 and P56 of the SP with regard to the living conditions of neighbours. These seek to avoid development which causes an unacceptable loss of privacy or outlook, or unreasonably compromises activities on neighbouring sites, amongst other things. They also accord with the Council's Residential Design Standards<sup>14</sup>.

#### *Affordable Housing*

60. Policy P1 of the SP sets out the Council's affordable housing policy for all development in the borough. It requires development that creates 9 homes or fewer to provide a minimum of 35% social rented and intermediate housing or a financial contribution towards the delivery of new social rented and intermediate homes, subject to viability. The policy states that the subdivision of sites or phasing of development which has the effect of circumventing these requirements will not be permitted.
61. No financial contributions toward affordable housing were secured as part of the 2018PP or the 2020PP on the basis that it would not have been viable to do so in addition to the renovation of Beltwood House and its grounds. The Council was therefore previously satisfied that the terraced houses, alongside the other dwellings and works proposed as part of the 2018PP and the 2020PP, were necessary to appropriately renovate Beltwood House and its grounds. A recent Development Cost and Value Report<sup>15</sup> (DCVR) has been produced, which shows that the redevelopment/renovation of Beltwood would result in a net loss if all dwellings were to be sold. This supports the view taken when the Council granted the 2018PP and the 2020PP.
62. Mr Crawford, a Quantity Surveyor for the appellant, explained in clear and basic terms that it would not be possible to provide an accurate breakdown of the construction costs for the terraced houses in isolation, as a single set of sub-contractors were used across Beltwood. Although this was challenged by the Council, no detailed explanation was provided as to why I should not accept Mr Crawford's qualified opinion on the matter.
63. The findings of the DCVR are not disputed. A single set of sub-contractors were used across the whole of Beltwood, mixing refurbishment, renovation, and

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<sup>14</sup> 2015 Technical Update to the Residential Design Standards (2011) Supplementary Planning Document

<sup>15</sup> By Cap X Solutions Limited, dated 9 December 2022

new-build costs. A single firm of Architects designed the whole redevelopment and renovation of Beltwood as a single project, on behalf of one party. Apart from the New Gatehouse, all other dwellings at Beltwood rely on a single access drive and share access to parking areas. There is also shared access to the gardens and common parts of Beltwood House. This leads me to question why it would be reasonable to assess the viability of the terraced houses in isolation from the rest of the redevelopment/renovation works at Beltwood.

64. I have considered the tripartite test set out in *Brandlord*<sup>16</sup> and endorsed in *New Dawn Homes*<sup>17</sup>. That would involve considering matters relating to: (i) ownership; (ii) what is/are the site(s) for planning purposes; and (iii) whether there is a single or combined form of development.
65. It was the Council's decision to identify the land to which the notice relates by the red line on the plan attached to the notice. That land forms the subject of the deemed application for planning permission, but it was, and remains, beyond the appellant's control to change the boundaries of that red line. Moreover, as confirmed by the above caselaw, land ownership and the red line identifying the land the subject of a planning application are not determinative on this issue. In any event, I was told that the appellant is the sole owner of the whole of Beltwood, most of the dwellings are being let, and none of the dwellings have been sold following changes in the housing market.
66. The terraced houses are occupied as separate dwellings and are physically separate from other dwellings at Beltwood. However, they inextricably form part of Beltwood and are experienced as one of a few high-quality modern features within the historic grounds of the Victorian villa. Even if all the individual dwellings at Beltwood comprise separate planning units, the land edged in red on the plan attached to the notice forms an intrinsic part of Beltwood, which includes various common areas.
67. There is no evidence to suggest the terraced houses were erected as part of a separate programme to develop the appeal site in isolation from the rest of Beltwood. It seems very likely that throughout the development process, the appellant would have had to consider the cost implications of all development at Beltwood together. Some parts of the redevelopment may be more profitable than others, but that would be offset by renovation works to Beltwood House and its grounds. This is borne out by the DCVR.
68. The appellant is unable to rely on the 2018PP or the 2020PP as fallback positions, but I cannot ignore the circumstances under which the terraced houses were constructed. This includes them forming part of the wider Beltwood redevelopment/renovation project which would not have been viable had an affordable housing contribution been required. A financial contribution towards the provision of affordable housing within the borough would not therefore be necessary to make the development acceptable in planning terms, and there is no conflict with Policy P1 of the SP.

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<sup>16</sup> R (Westminster City Council) v First Secretary of State and Brandlord Limited [2003] J.P.L 1066

<sup>17</sup> New Dawn Homes Limited v Secretary of State for Communities and Local Government & Tewksbury Borough Council [2016] EWHC 3314 (Admin)

Conclusion on the appeal under grounds (a)/(f) and the deemed application for planning permission

69. I have found that the terraced houses do not cause unacceptable harm to the living conditions of neighbouring residents and that a financial contribution towards the provision of affordable housing would not be necessary to make the development acceptable in planning terms. However, I have also found that the terraced houses harm the significance of the Grade II listed building at Beltwood House and that harm is not outweighed by the public benefits associated with the development. The terraced houses in their existing state are contrary to the development plan and there are no material considerations which indicate planning permission should be granted for them.
70. The proposed amended development in Option V3 would also harm the significance of Beltwood House, but the level of harm would be much lower. The harm would be outweighed by public benefits associated with the development. Option V3 would therefore accord with the development plan and there are no material considerations which indicate planning permission should be refused for that part of the breach of planning control, subject to conditions.
71. The appeal under grounds (a)/(f) succeed insofar as planning permission is granted and the deemed application for planning permission is approved in respect of the part of the matters stated in the notice as constituting a breach of planning control shown in proposed amended development Option V3, subject to conditions.

**Ground (g)**

72. As I have found that planning permission should only be granted for part of the breach of planning control, the notice will be upheld. It therefore remains necessary for me to consider the appeal under ground (g). To succeed under this ground of appeal, the appellant would need to demonstrate that the period specified in the notice for its requirements to be complied with falls short of what should reasonably be allowed.
73. The notice allows 12 months for the terraced houses to be demolished and the land to be restored to its former condition. However, the notice will cease to have effect so far as inconsistent with the planning permission being granted. It would not therefore be necessary to demolish the terraced houses in their entirety. The appellant explained that it would take approximately 6 months to commence works on Option V3 and at least 1 year to complete those works.
74. Considering the level of harm I have identified and the extent of works necessary, a period of 12 months would be reasonable to comply with the notice so far as consistent with the planning permission being granted. I will not therefore vary the period specified at paragraph 6.1 of the notice.
75. As I will be deleting the unnecessary requirement for the occupation of the terraced houses to cease, the separate period specified at paragraph 6.2 of the notice will be deleted.
76. The appeal under ground (g) therefore succeeds in part.

## Conditions

77. I have been provided with a list of suggested conditions which were discussed at the Hearing. In their suggested format, none of those conditions would meet the tests set out at paragraph 56 of the Framework with regard to the specific circumstances of the development being granted planning permission.
78. The necessary reduction works to the parapet walls will be required to be completed by the enforcement notice, which is upheld, as the top 472mm of the parapet walls would be inconsistent with the planning permission being granted. It is not therefore necessary to attach a condition requiring the commencement of development within a specific timeframe, as the notice will remain in effect and will only cease to have effect so far as inconsistent with the permission granted under the provisions of section 180 of the Act.
79. It is not necessary to attach any conditions relating to site contamination, bird/bat boxes, drainage strategies, arboricultural matters, landscaping, Japanese knotweed, means of enclosures, refuse storage, or car/bicycle parking. The dwellings have already been constructed and details in those regards relating to the whole Beltwood site have already been approved. As development commenced on works authorised by the 2018PP, the conditions attached to that planning permission remain enforceable, even though the terraced houses are incapable of being completed in accordance with it.
80. The plans provided are sufficiently detailed to allow me to reach the conclusion that planning permission should be granted for Option V3. They comprise a set of basement, ground, and first floor plans, a roof plan, and north, south, east, and west elevation plans. Another set of plans show the proposed amended development in the context of Beltwood House from the north, south, and west. All of these plans are clearly annotated to show how much the height of the parapet wall would be reduced by.
81. The main parties agreed during my site visit that the parapet walls measure 1.24m in height from the top of flashing surrounding sedum planting, and that the northernmost dwelling measures 7.64 metres in height from the ground floor level directly outside its front door. An east elevation of the terraced houses in the context of Beltwood House and sections would be unnecessary and would not add any further helpful detail in the interests of the setting of the listed building or enforcement. Approval of details of the copings would be necessary to ensure they are of an appropriate design and appearance.
82. Roof mounted photovoltaic panels are shown on the plans relating to Option V3. As the photovoltaic panels are yet to be installed, it would be reasonable and necessary to attach a condition requiring details of the panels to be approved, and for those panels to then be installed. This would ensure the development accords with Policy SI 2 of the LP and Policy SP4 of the SP, in respect of minimising greenhouse gas emissions.
83. The quality of the sedum roofs is unclear, and they may have failed to become appropriately established. They may also be adversely affected by the works necessary to complete Option V3, and they may need to be removed. It would therefore be reasonable and necessary to attach a condition requiring details of biodiverse roofs to be implemented and for a post-completion assessment to be submitted for approval, even if the existing sedum roofs are to be retained.

84. The north elevation of the terrace contains tall narrow windows at ground and first floor levels. They have been fitted with obscured glazing and locks. No unacceptable levels of overlooking would be possible from the ground floor window. The same cannot be said for the first floor window, if the obscure glazing were to be removed/changed or the window opened beyond an unknown degree. Even if the appellant is the only person with a key for that window, it would remain openable and capable of facilitating an unacceptable loss of privacy to neighbouring residents. It would therefore be reasonable and necessary to attach a condition requiring details of the obscured glazing and method of opening/fixing of the first floor north elevation window. This would be to protect the privacy of residents of neighbouring properties to the north.
85. Conditions 2 to 5 are therefore necessary to ensure details relating to photovoltaic panels, biodiverse (sedum) roofs, parapet wall copings, and the first floor north elevation window are submitted, approved and implemented so as to make the development acceptable in planning terms. It is not possible to use negatively worded conditions to secure the approval and implementation of these outstanding matters before development takes place. For this reason, there are strict implications and timetables for compliance because permission is being granted retrospectively. These conditions will ensure that the development can be enforced against if the required details are not submitted for approval within the specified period, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
86. It would be important to control the use of the roofs to protect the living conditions of neighbouring residents with regard to privacy. The stairs leading from first floor landings to the roofs offer a more formal route to those spaces than might otherwise be expected, and I note sales particulars referring to a roof terrace. A fixed stair access was approved as part of the 2018PP and the Council previously considered condition 23 of that planning permission was sufficient to protect the privacy of neighbours. Breaches of that condition could have resulted in formal enforcement action and criminal sanctions.
87. As experienced during my site visit, access through the rooflights is awkward. There are views of central London from the roofs, but the Council explained a parapet height of under 1m would be too low to provide a safe amenity space in compliance with Building Regulations. There would be other, less intrusive but more onerous measures to achieve compliance with Building Regulations. A condition which only controls the use of the roofs puts the onus on the Council to enforce any breaches of that condition and neighbours may unnecessarily feel the weight of having to monitor and report compliance. However, for the above reasons those spaces are far from well suited to use as amenity spaces and would be very difficult to be accessed by children. Condition 6 would therefore be reasonable and enforceable, and it is necessary to protect the living conditions of neighbouring residents with regard to privacy.
88. I observed no unacceptable levels of overlooking from the rear patios of the terraced houses. Conditions requiring details of privacy screening around these areas or any other means of enclosure would therefore be unnecessary.
89. The HVAC plant forms part of the breach of planning control referred to by the notice. In the absence of details relating to their noise emissions and effect on the living conditions of nearby residents, it is unclear whether acoustic

enclosures would be necessary to make any of the HVAC plant acceptable in planning terms. I am therefore unable to grant planning permission for the HVAC plant as part of the matters stated in the notice subject to conditions. The HVAC plant is not proposed as part of Option V3 and it would therefore be a matter for the appellant to seek a separate grant of planning permission. The HVAC plant would otherwise need to be removed from the dwellings in accordance with the enforcement notice, as it is inconsistent with the planning permission being granted.

90. The dwellings are said to have been constructed with appropriate insulation to ensure that internal noise levels meet the Council's recommended standards. This was not disputed. It is not necessary to attach a condition requiring that insulation to be retained, as it forms a fundamental part of the building and is extremely unlikely to be removed.
91. It would be reasonable and necessary to remove 'permitted development' rights for any extension, enlargement or other alteration of the dwellings to protect the living conditions of neighbours and the setting of Beltwood House. This is on account of the sensitive nature of the development within Beltwood, with regard to the terrace's close relationship with the Grade II listed building and neighbouring residential properties.
92. As I am only granting planning permission for the part of the breach of planning control stated in the notice as corrected, it is unnecessary to attach any conditions relating to ground levels. The planning permission being granted does not extend to any ground levels shown on the plans identified by Condition 1 as I have deleted reference to ground levels from the notice.

### **Overall Conclusion**

93. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the part of the three terraced houses shown in the plans relating to Option V3, but otherwise I will uphold the notice with a correction and variations and refuse to grant planning permission in respect of the other part of the three terraced houses not shown on those plans. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

### **Formal Decision**

94. It is directed that the enforcement notice is corrected and varied by:
- (i) deleting the text 'and alteration of ground levels' at paragraph 3.1 of the enforcement notice;
  - (ii) deleting the text 'Fill in the basements of the three terraced houses.' at paragraph 5.2 of the enforcement notice;
  - (iii) deleting the text 'Restore ground levels at and adjacent to the footprint of the buildings to their previous heights and turf the land.' at paragraph 5.3 of the enforcement notice;
  - (iv) deleting the text 'Remove from the site of Beltwood 41 Sydenham Hill and properly dispose of all rubbish and debris resulting from the works set out within paragraph 5.1 to 5.3 above' at paragraph 5.4 of the enforcement notice

and substituting the text 'Remove from the site of Beltwood 41 Sydenham Hill all rubbish and debris resulting from the works required to comply with this notice and restore the land to its condition before the breach of planning control took place';

(v) deleting the text 'Cease any occupation of the three terraced houses (the Unauthorised Development).' at paragraph 5.5 of the enforcement notice;

(vi) deleting the text 'Requirements 5.1 to 5.4, twelve (12) calendar months after this Notice takes effect.' at paragraph 6.1 of the enforcement notice and substituting the text '12 months'; and

(vii) deleting the text 'Requirement 5.5, three (3) calendar months after this Notice takes effect.' at paragraph 6.2 of the enforcement notice.

95. Subject to the correction and variations, the appeal is allowed insofar as it relates to the part of the three terraced houses shown in the plans relating to Option V3 and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the three terraced houses shown on the plans referred to by Condition 1 in the Schedule of Conditions attached to this decision at 41C, 41D and 41E Sydenham Hill, in the North East corner of Beltwood 41 Sydenham Hill, London SE26 6TH and subject to the attached Schedule of Conditions.
96. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the construction of three terraced houses and planning permission is refused in respect of the three terraced houses in their existing state at 41C, 41D and 41E Sydenham Hill, in the North East corner of Beltwood 41 Sydenham Hill, London SE26 6TH on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*L Douglas*

INSPECTOR



## APPEARANCES

### FOR THE APPELLANT:

George Mackenzie	Counsel
Greg Coram	The appellant
Lee Hulbert	The appellant's assistant
Lorenzo Pandolfi	Planning Consultant
Jonathan Edis	Heritage Consultant
Jenny Fleming	Architect
Alessio Cuzzo	Architect
Andrew Crawford	Cost Consultant

### FOR THE LOCAL PLANNING AUTHORITY:

Marrow Golden	Counsel
Philip Ridley	Planning Enforcement Officer
Tracy Chapman	Design and Conservation Team Leader

### INTERESTED PARTIES:

Gillian Daly	Local resident
David Frail	Local resident
Daphne Hunter	Local resident
Emma Williams	Local resident
David Morrison	Local resident
Andy Simmons	Dulwich Wood Ward Councillor
Jan Morrison	Local resident

## DOCUMENTS SUBMITTED AT THE HEARING

- The Council's suggested conditions
- The main parties' costs applications
- Plans for schemes described as 'V1', 'V2', and 'V3': A/1424 V1, A/1425 V1, A/1426 V1, A/1427 V1, A/207 V1, A/208 V1, A/209 V1, A/210 V1, A/211 V1, A/2012 V1, A/1424 V2, A/1425 V2, A/1426 V2, A/1427 V2, A/207 V2, A/208 V2, A/209 V2, A/210 V2, A/211 V2, A/2012 V2, A/1424 V3, A/1425 V3, A/1426 V3, A/1427 V3, A/207 V3, A/208 V3, A/209 V3, A/210 V3, A/211 V3, A/2012 V3
- British Fire Advisory Services letter dated 8 November 2023
- Energy Statement 'Supporting Document 5' by SRS Partnership, dated August 2017, reference 17-029-01-ES
- Dated decision notice for planning permission 17/AP/3070
- Transcripts for: Lever Finance Ltd v Westminster (City) London Borough Council [1971] 1 QB 222 (CA); R. v Basildon District Council ex p. Martin Grant Homes Ltd, (1987) 53 P. & C.R. 397; R. (on the application of Swire) v Canterbury City Council [2022] EWHC 390 (Admin); New Dawn Homes Limited v Secretary of State for Communities and Local Government & Tewksbury Borough Council [2016] EWHC 3314 (Admin); Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30; R (Westminster City Council) v First Secretary of State and Brandlord Limited [2002] EWHC 2725

(Admin); and R (Atwill) v New Forest National Park Authority [2023] EWHC 625 (Admin)

- Drawing numbers: 132 D, 133 B, 012 B, 013 B, 1424 A, 1425 A, 1426 A, 1427 A
- Various details relating to matters approved by the Council under application references 18/AP/3048, 18/AP/2252, 18/AP/3311, 18/AP/2253, 18/AP/2254, 18/AP/2650, 18/AP/2255, 18/AP/2651, 18/AP/2652, and 21/AP/1653, as set out in the document titled 'List of approved details' dated 15 November 2023

### **DOCUMENTS SUBMITTED AFTER THE HEARING**

- Responses on costs applications from the main parties
- The appellant's comments on the revised National Planning Policy Framework

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: A/207 Rev. V3, A/208 Rev. V3, A/209 Rev. V3, A/210 Rev. V3, A/211 Rev. V3, A/212 Rev. V3, A/1424 Rev. V3, A/1425 Rev. V3, and A/1426 Rev. V3.
  
- 2) The three terraced houses hereby permitted shall be demolished, all materials resulting from the demolition shall be removed, and the land shall be restored to its condition before the three terraced houses were constructed within 18 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - (i) Within 6 months of the date of this decision details of roof-mounted solar panels shall have been submitted for the written approval of the local planning authority and the details shall include 1:20 scale drawings to show the positions and profiles of the solar panels (notwithstanding the details shown on the plans referred to by Condition 1), the technical specification(s) of the solar panels, and a timetable for the implementation of those details.
  - (ii) If within 9 months of the date of this decision the local planning authority refuse to approve any of the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - (iv) The approved details shall have been carried out and completed in accordance with the approved timetable.
  - (v) Upon implementation of the approved details specified in this condition, the solar panels shall thereafter be maintained, retained, and remain in use.
  - (vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
  
- 3) The three terraced houses hereby permitted shall be demolished, all materials resulting from the demolition shall be removed, and the land shall be restored to its condition before the three terraced houses were constructed within 18 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
  - (i) Within 6 months of the date of this decision details of biodiverse (green/brown/sedum) roof shall have been submitted for the written approval of the local planning authority and the details shall include the mix of species (focused on wildflower planting, and no more than a maximum of 25% sedum coverage), substrate base depth, plans showing their positions and profiles, and a timetable for: (a) the implementation of those details; and (b) the submission of a post-completion assessment to confirm the biodiverse roof has been implemented to the correct specification.
  - (ii) If within 9 months of the date of this decision the local planning authority refuse to approve any of the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - (iv) The approved details shall have been carried out and completed in accordance with the approved timetable.
  - (v) Upon implementation of the approved details specified in this condition, the biodiverse roof shall thereafter be maintained and retained.
  - (vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 4) The three terraced houses hereby permitted shall be demolished, all materials resulting from the demolition shall be removed, and the land shall be restored to its condition before the three terraced houses were constructed within 18 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- (i) Within 6 months of the date of this decision details of parapet wall copings shall have been submitted for the written approval of the local planning authority and the details shall include 1:5 or 1:10 scale drawings of the coping showing their shape(s) and profile(s), their colour and finish, and a timetable for the implementation of those details.
  - (ii) If within 9 months of the date of this decision the local planning authority refuse to approve any of the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - (iv) The approved details shall have been carried out and completed in accordance with the approved timetable.
  - (v) Upon implementation of the approved details specified in this condition, the coping shall thereafter be retained.
  - (vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 5) The three terraced houses hereby permitted shall be demolished, all materials resulting from the demolition shall be removed, and the land shall be restored to its condition before the three terraced houses were constructed within 18 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- (i) Within 6 months of the date of this decision details of the first floor level north elevation window shall have been submitted for the written approval of the local planning authority and the details shall include its type of obscured glazing and its method of opening or method of being fixed shut. If any changes to the existing type of obscured glazing or method of opening are proposed, the details shall also include a timetable for the implementation of those details.
  - (ii) If within 9 months of the date of this decision the local planning authority refuse to approve any of the details or fail to give a decision within the

prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

(iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

(iv) The approved details shall have been carried out and completed in accordance with the approved timetable.

(v) Upon implementation of the approved details specified in this condition, the type of obscured glazing and method of opening/fixing of the first floor north elevation window shall thereafter be retained.

(vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) The roofs of the terraced houses hereby permitted shall not be used for any purpose other than as a means of escape during an emergency or for maintenance purposes. The roofs shall not be used as terraces or balconies and shall not be used for sitting out on or the placing of any items other than those associated with their sedum finishes and any ventilation plant.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement or other alteration of the terraced houses hereby permitted shall be carried out.