
Appeal Decision

Site visit made on 10 August 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/G5180/C/19/3243365

Land at 2A Pembroke Road, Bromley BR1 2RU also Known as Land at the First Floor Level, 24 Tylney Road, Known as Hope House, 2A Pembroke Road

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Miss Leonie Lawson on behalf of Bromley Massage and Therapy Centre against an enforcement notice issued by the London Borough of Bromley.
 - The enforcement notice was issued on 19 November 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the Material Change of Use of the part of the first floor to a D1 non-residential institution (for the provision of any medical or health service) a massage and therapy business.
 - The requirements of the notice are:
 - a) Cease the unauthorised use of the part of the above Land as a massage and therapy business as described in paragraph 3 above and,
 - b) Remove from the Land all equipment, any items and all material used in connection with the unauthorised use.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - deleting the allegation within section 3 of the enforcement notice (the matters which appear to constitute the breach of planning control) and its replacement with "Without planning permission, the material change of use of the part of the first floor to a Class D1 (non-residential institution) use comprising a massage and therapy business".
 - deleting the first requirement "a)" under section 5 (what you are required to do), and its replacement with: "a) Cease the unauthorised use of part of the first floor as a massage and therapy business as described in paragraph 3 above; and"

2. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Application for costs

3. An application for costs was made by the London Borough of Bromley against Bromley Massage and Therapy Centre. This application is the subject of a separate Decision.

Procedural Matters

4. Whilst the address in the banner heading above appears very long, it is taken from the enforcement notice, and I am required to replicate this as shown without discretion.
5. The allegation in the Enforcement Notice is poorly worded. However, the appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice completely unclear. It is necessary however to correct the wording of the allegation but retaining the effect of what the Council is trying to achieve. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to achieve this correction.
6. Requirements a) of the notice, under section 5 (What you are required to do) is poorly worded, in so far as this should precisely match the allegation. The allegation refers to the "Material Change of Use of the part of the first floor", whereas, requirement a) states "Cease the unauthorised use of the part of the above Land". It should therefore state "Cease the unauthorised use of the part of the first floor". My understanding of the notice is not affected by this minor error, and nothing within the appellants' submissions indicates to me that it has been misunderstood by them as a result. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

The appeal on ground (c)

7. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. The onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
8. Under this ground of appeal, it is contended that no breach in planning control has occurred since only internal works were carried out and that the activities should be permitted. The concept of material change of use is not defined in statute or statutory instrument and therefore it is a question of fact and degree in each case. For there to be a material change of use, there needs to be some significant difference in the character of the activities from what has gone on previously.
9. The Council's appeal statement indicates that the first floor of 2A Pembroke Road has historically been in use as Offices falling within Use Class B1¹. This has not been disputed by the appellant and the planning history for this site supports the Council's view, since a number of applications for prior approval

¹ Of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO 1987).

have been refused for the change of use of the first floor from Class B1 (a) offices to Class C3 dwelling houses².

10. The Council state that during an Officer site visit with the appellant on 5 June 2019, the Appellant advised Officers that the Massage and Therapy Centre operated between the hours of 10:00– 21:00 on Mondays to Fridays , 10:00 to 17:00 on Saturdays, and 10:00 to 16:00 on Sundays. The appellant also advised Officers that there were between 4 to 5 clients each day, with each session lasting approximately one hour. The website for the business³ further states that:

"We are a small but professional, private practice offering physical treatments for any work related or sports injuries. We provide high quality hands-on treatment. We have been serving the community of Bromley and surrounding areas consisting of athletes and everyday people for 5 years. Our speciality is sports and deep tissue massage. We also provide after care advice and treatment as treatment continues even after they left the treatment room."

11. The Council advise that they sent an email to the appellant on 6 June 2019, advising that the business was considered to fall within Use Class D1 (Non Residential Institution) of the UCO 1987 and that planning permission was required for the unauthorised change of use. The Appellant was invited at this stage to submit a planning application. The Council state that since no application was forthcoming, this resulted in the issuing of the Enforcement Notice.
12. Whilst the appellant states that the unit is in use as training business and the style can be changed to eliminate any contentious aspect, no further information has been submitted to support this statement or explain how the alleged change of use is not a breach of planning control. I also observed that the signage on the door at first floor level stated Bromley Massage and Therapy Centre, and advertises treatment for the following: Back pain; neck and shoulder pain; tension headaches; sciatica; repetitive strain injuries; chronic pains; post event soreness; sport injuries; muscle tension and stiffness and stress. The unit comprises a waiting room, kitchen, a small office/consultation room, and a treatment room with a massage table. From the evidence presented and from what I saw during my site visit, the character of the unit has changed significantly since the use of the unit by the current tenant is clearly a massage and therapy business, which would fall within Use Class D1 of the 1987 UCO. This change is materially different from the previous use as Offices falling within Use Class B1 of the 1987 UCO.
13. The appellant contends that she is fully qualified and has carried out the same work in another location within the Borough. However, these do not demonstrate that a material change of use of this unit has not occurred. Furthermore, the appellant's arguments relating to the planning merits of the business can only be assessed in an appeal made on ground (a). As the fee was not paid for the ground (a) appeal within the prescribed timeframe, this lapsed. Therefore, the planning merits arguments put forward in the appellants' case are of no relevance to this ground (c) appeal.

² Council refs: 14/03397 and ref. 17/05887, and Appeal ref: APP/G5180/W/18/3195296

³ <https://www.bromley-massage.co.uk>

14. On the balance of probability and based on all the evidence before me it appears that a material change of use has occurred. Planning permission is required for such a change of use. There is none in place and the change of use is not permitted development. There has therefore been a breach of planning control and the appellant has not discharged the onus on her to demonstrate otherwise.
15. Accordingly, the appeal fails on ground (c).

Conclusion

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

R Satheesan

INSPECTOR