



Appeal Decisions

Hearing Held on 29 June 2021

Site visit made on 30 June 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26th JULY 2021

Appeal A: APP/E0345/C/20/3262510 34 Eldon Terrace, Reading, RG1 6AL

- 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 Mr Paul Rowe against an enforcement notice issued by Reading Borough Council.
- The enforcement notice was issued on 23 September 2020.
- The breach of planning control as alleged in the notice is it appears to the Council that the development permitted under the planning permission dated 30th November 2004 under LPA Ref 04/00344/FUL (now 041115) has not been completed in accordance with the approved plans namely (amongst other things which are the subject of other Notices) the landscaping to the frontage of the Land. The creation of the hardstanding to the frontage of the Land is consequently unauthorised development which would not be granted planning permission.
- The requirements of the notice are:
 - (a) Remove the unauthorised hardstanding and replace it with hard landscaping and soft landscaping so that it complies with the approved plan 02.54.700 Rev A and;
 - (b) Make good any damage to the Land as a result of the works carried out under Paragraph 5 (a) above and remove from the Land all excess materials associated with the said works and in particular:
 - (c) Remove windows and patio doors in the rear basement elevations and brick up, forming a retaining wall as per the outline on 'Basement' of approved plan 02.54.202 Rev. D and 1522-PL-351 Rev. E, as indicated within the green zone on Plans A and B.
 - (d) Remove of c. 2m high close-board fence which currently divides the present rear (south) basement patio area(s) within location and for extent shown approximately as a yellow line on Plan A.
 - (e) Fill in the rear basement patio areas with structurally suitable material (hardcore then soil) finishing to line and level to natural ground level. Lay limestone paving as shown on approved plan 1522-PL-351 Rev. E including removal of the surrounding upstand dwarf wall and railings to natural ground level and make good with Buff Riven Limestone paving as per letter dated 19 July 2016 and as indicated within the area in the blue rectangle on Plan A.
 - (f) Remove present wooden fences/garden planters and cycle rack in frontal garden/parking area, shown in the approximate locations in orange on Plan A.
 - (g) Provide approval hard and soft landscaping layout as shown on approved plan 1522-PL-351 Rev. E including schedule of works thereon and provision of Silver Birch tree, as detailed in letter dated 19 July 2016. Provide cycle store as per letter dated 19 July 2016 and as on plan 1522-PL-351 Rev. E. These works areas shown light blue on Plan A.
 - (h) Removal of tarmacadam surfacing, and driveway/parking area to thereafter be laid as 'SureSet permeable paving' as set out in letter dated 19 July 2016, in accordance with the manufacturers'/suppliers' instructions and including lining of car parking spaces, within the land edged purple on Plan A.

- (i) Remove 2x fire escape stairs from frontal lightwells, including handrails and steps associated with these stairs and make good (re-render, re-paint, as necessary), as marked with the green diamonds on approved plan 1522-PL-351 Rev. E".
 - The period for compliance with the requirements is 10 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (e), (f) and (g) 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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Appeal B: APP/E0345/C/20/3262511

34 Eldon Terrace, Reading, RG1 6AL

- 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 Mr Paul Rowe against an enforcement notice issued by Reading Borough Council.
- The enforcement notice was issued on 23 September 2020
- The breach of planning control as alleged in the notice is without planning permission development has been carried out by the making of a change the use of the basement area of the building on the Land to two self-contained flats (currently numbered Flats 2 and 3).
- The requirements of the notice are cease the use of the basement areas as two self-contained flats and restore the basement areas to use ancillary to the authorised flats on the ground floor as required by Condition 12 of the planning permission dated 30th November 2004 (LPA ref 04/00344/FUL (now 04115)) as shown as storage on the approved plan – marked Plan B – attached hereto and in particular:-
 - (a) Remove kitchens for each of the basement flats in their entirety; Including all kitchen units and worktops, appliances and all built-in furniture
 - (b) Remove bathrooms fitments for each of the basement flats in their entirety; including all WCs, basins, showers and enclosures, baths, etc and all related fittings.
 - (c) Remove all dividing walls within the basement areas and provide clear space for communal ancillary storage for the area marked as 'STORAGE' as per approved plan 02.54.202 Rev. D
 - (d) Remove/disconnect all signage, buzzers/alarms/intercoms/video entry systems, etc. associated with the separate accessing/identification of the 2x basement flats as separate basement flats and remove the post-boxes pertaining to the basement flats (location as shown by the red star on Plan A)
 - (e) Remove separate electrical systems including consumer units for each of the separate basement flats.
 - (f) Remove/disconnect gas meter boxes, gas mains, cable TV/broadband services and any other services, where such have been installed for the specific purpose of servicing the separate basement flats, and such disconnected services thereafter to be made safe
 - (g) Remove any other separate electrical systems (security alarms, fire alarms, air conditioning systems, etc.)
 - (h) Remove separate heating/plumbing systems including boilers and all radiators and any water tanks (if installed) and remove boiler flues where these discharge into the basement patio areas, render, re-paint to match and make good
 - (i) Remove full-height doors to frontal lightwells and replacement with windows, cills, etc. as per approved plan 02.54.202 Rev. D and make good, in locations shown marked blue on Plan B
 - (j) Remove all carpets/floor coverings, leaving a level clear space for ancillary communal storage
 - (k) Submission of 4x keys to the Local Planning Authority to allow access to the ancillary communal storage areas as follows: easterly storage area keys to be provided to upper east side flats; westerly storage area keys to upper west side flats.
- The period for compliance with the requirements is 10 months.

- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/E0345/C/20/3262512

34 Eldon Terrace, Reading, RG1 6AL

- 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 Mr Paul Rowe against an enforcement notice issued by Reading Borough Council.
 - The enforcement notice was issued on 23 September 2020.
 - The breach of planning control as alleged in the notice is the relevant planning permission which is attached to this Notice and to which this Notice relates is the permission granted by the Council on 30th November 2004 for the *"Conversion of 79 London Road from offices to 4 self- contained flats, demolition of existing hall to the rear of the premises and its replacement with a two storey extension to provide 2 further self- contained flats, demolition of the car wash facility at 34 Eldon Terrace and its replacement with a 2 storey block of 4 flats, access and car parking, re-instatement of front boundary wall to 79 London Road, rationalisation of car parking, extensive landscaping and amenity space (re-submission of planning application 03/01290)"* under the then Council reference number O4/00344/FUL (now 041115). Condition 12 of the said planning permission requires the basement area to be used for purposes ancillary to the residential use of four approved self- contained flats. It appears to the Council that Condition 12 has not been complied with as the basement area has been converted to two self - contained flats without planning permission.
 - The requirements of the notice are (a) Cease the use of the basement area as two self-contained flats and (b) restore the basement area to use ancillary to the authorised flats on the ground floor as required by Condition 12 of the planning permission dated 30th November 2004 (LPA ref 04/00344/FUL (now 041115)) as shown on the approved plan 02.54.202 Rev D marked Plan B - attached hereto and (c) remove all resulting debris and materials from the Land.
 - The period for compliance with the requirements is 10 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A – Notice A

1. It is directed that the enforcement notice be corrected by deleting from paragraph 1 *"within paragraph (a) of Section 171A(1)"* and replacing it with *"within paragraph (b) of Section 171A(1)"*; and by deleting the allegation and replacing it with:

"the breach of planning control as alleged in the notice is the failure to comply with a planning condition. The relevant planning permission to which this Notice relates is the permission granted by the Council on 30th November 2004 for the "Conversion of 79 London Road from offices to 4 self- contained flats, demolition of existing hall to the rear of the premises and its replacement with a two storey extension to provide 2 further self- contained flats, demolition of the car wash facility at 34 Eldon Terrace and its replacement with a 2 storey block of 4 flats, access and car parking, re-instatement of front boundary wall to 79 London Road, rationalisation of car parking, extensive landscaping and amenity space (re-submission of planning application 03/01290)" under the then Council reference number O4/00344/FUL (now 041115). Condition 11 of the said planning permission states

No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme for both hard and soft landscaping. The submitted details shall include any pedestrian and vehicle circulation areas, surfacing materials, structures and ancillary objects (refuse bins, lighting columns etc). For schemes involving soft landscaping the submitted details should include schedules of plants giving the species, plant sizes, proposed numbers/densities and an implementation and maintenance programme. Other details shall include the proposed boundary between 79 London Road and 34 Eldon Terrace which should be formed by a brick wall in keeping with the setting of the Listed Building. Following approval by the local planning authority the hard and soft landscaping works shall be carried out in accordance with the approved details before any of the development is occupied and all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting season following the occupation of the buildings or the completion of the development, whichever is the sooner.

It appears to the Council that Condition 11 has not been complied with".

The notice should also be varied by deleting requirements (a), (c), (d), (e) and (i). Requirements (g) and (h) are varied by adding the words "insofar as is possible given the retention of the rear lightwell" to each requirement. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Appeal B – Notice B

2. It is directed that the enforcement notice be varied by deleting requirements (i), (j) and (k); deleting requirement (e) and replacing it with "*remove consumer units for each of the separate basement flats, and any separate wiring systems which pertain to the layout of the flats (cooker and boiler/heating circuits, etc) but excluding room lights*"; deleting requirement (g) and replacing it with "*remove any other electrical systems which were installed for the facilitation of the use of the basement as separate flats*"; and adding new requirements (i) "*remove all resulting debris and materials from the Land*"; (j) "*remove of c. 2m high close-board fence which currently divides the present rear (south) basement patio area(s)*" and (k) "*remove the fire escape stairs from frontal lightwells, including handrails and steps associated with these stairs and make good (re-render, re-paint, as necessary)*". Subject to these variations the appeal is dismissed and 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.

Appeal C – Notice C

3. It is directed that the enforcement notice be corrected by deleting from the allegation the words "requires the basement area to be used for purposes ancillary to the residential use of four approved self- contained flats" and replacing them with "*states 'the proposed basement area at 34 Eldon Terrace shall be used for purposes ancillary to the residential use of the development as 2 x 2-bedroom maisonettes and 2 x 1-bedroom flats only'*" varied by deleting requirement (c). Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Background to the Appeals

4. Planning permission was granted in 2004 (04/00344/FUL) for various works to buildings on the land including the conversion of an office building to flats that is now known as 34 Eldon Terrace. This has the appearance of a Victorian house that has been converted into flats and contains a basement. The basement was intended to be used for storage and a condition was attached to the planning permission to that effect.
5. After some delays the works were carried and an application was made in 2016 to discharge the conditions that required various schemes to be agreed. In fact a number of these were pre-commencement conditions which had not been discharged prior to works beginning. The Council decided to advise that the details supplied were acceptable but they could not technically discharge the conditions as they had already been breached by beginning development. The practical effect of this letter is however, that the conditions were discharged.
6. Sometime after that the basement was converted into 2 flats and an application was made to regularise the situation. This was refused in February 2018, a subsequent appeal¹ refused in December and the notices issued in 2019.
7. The two basement flats are essentially mirror images of each other and are accessed from an internal staircase. They are below ground at front and back. A relatively narrow lightwell at the front of the building already existed, but this has been extended sideways and provides light to the bedroom of each flat. To the rear of the building a new lightwell has been constructed across the rear of the two flats and provides light to the sitting room of each flat and a small sitting out area.

The Three Notices

8. It was agreed at the hearing that the landscaping scheme that was approved in 2016 has never been properly implemented and because of the works to create the rear lightwell it cannot now be completed. Therefore notice A should be a breach of condition notice. I consider this correction can be made without prejudice to the appellant as there is no doubt what the notice is referring to. However, the condition concerns landscaping and so the requirements should limit themselves to ensuring the proper landscaping as already agreed in 2016, is implemented. The appeal on ground (b) therefore falls away. However the requirements go beyond this dealing with works to the basement flats that should properly be part of notice B.
9. Notice B alleges a material change of use to 2 flats and contains a long list of requirements specifying how the return to storage should be undertaken. This is the correct place for a requirements (c) windows and doors, (d) fence in lightwell, (e) filling in rear lightwell and (i) removing fire escape from lightwell, all from Notice A. Again this involves a tidying up of the notice rather than introducing any new material and so there is no injustice in doing so. No objections to making such changes were made at the Hearing. A number of the requirements are in dispute and I shall deal with those under ground (f) below.

¹ APP/E0345/W/18/3208163

10. Notice C also attacks the creation of the 2 basement flats but via a breach of condition notice. The condition being no12 attached to the 2004 planning permission which stated "*The proposed basement area at 34 Eldon Terrace shall be used for purposes ancillary to the residential use of the development as 2 x 2-bedroom maisonettes and 2 x 1-bedroom flats only*". There is no dispute this condition has been breached. The requirements are simply to cease the use and restore the space to the condition shown on the original plans. The appellant accepted my view that this condition continued to bite as it was clearly worded as an ongoing restriction so the ground (c) appeal was not pursued. However, it was agreed the condition in question needed to be included in the allegation and I shall correct it to refer to the exact wording of condition 12.
11. The ground (e) appeal affects only notice A, and is that it was served under the wrong section of the Act. I have already determined that this should be corrected and in any event this is not a matter for ground (e) which is limited to the service of the notice on the parties. This leaves a ground (a) appeal for notice B and grounds (f) and (g) for notices A, B and C. I shall deal with notice B first as the future of the current landscaping is dependent on the success of otherwise of the ground (a) appeal for the material change of use.

The Appeal on Ground (a) – Notice B

12. The ground (a) appeal is limited to two issues. Firstly the amenity of the occupiers of the flats by way of adequate daylight, sunlight and outlook; and secondly the effect of introducing a plinth into the flats to help ameliorate any problems that flow from the first issue.
13. The only daylight available to the basement flats is from the front and back lightwells. The front lightwell is only 1.29m deep (that is from front to back) but the rear lightwell is deeper at 3.3m, which provides for a small patio. However, they both have a similar sized dwarf wall around the top forming a parapet and the main problem is the floor level is nearly 3m below the top of the parapet. The bedroom lightwell is thus narrow and somewhat below ground. No, or virtually no sunlight penetrates to the bedroom which is consequently at best gloomy.
14. The rear lightwell is wider and the sky can be seen above the parapet if you stand close to the windows and look up. There will be some direct sunlight for a limited period at this time of year when the sun is almost overhead but otherwise it relies on daylight. Even then the sunlight will only light the patio and will penetrate little into the living room.
15. The flats are long and narrow, so the large living space at the rear contains the living area by the patio and the kitchen/dining area further back, with the bathroom and hall separating this area from the bedroom at the front. I would suggest it would only be possible to read without the assistance of artificial light when sitting close in the bay window at the rear.
16. The appellant has suggested making a change to the floor level at the rear of the flats by introducing a plinth, two options were suggested, a plinth just by the window or one extending as far as the kitchen/diner, effectively raising the living room floor. At the same time the parapet will be removed to be replaced by a glass safety screen, letting in more light and the windows and French door heights will be raised in line with the new floor height and the windows will also

reach down to the ground. The effect will be to bring the top of the windows to be within half a metre of the top of the lightwell, whereas they are currently over 1.5m below. This will obviously improve the amount of daylight entering the room, although at the expense of lowering the ceiling height making the living area appear to be more cramped. But it will have little effect on the kitchen/diner, which will now have a step down to it and none on the bedroom. The plans include raising the floor level of the front lightwell but I am not sure how that helps but replacing the parapet with a glass screen will have some improvement.

17. The appellant has produced a daylight study which provides numerical figures to support my subjective opinion and is based on the potential improved situation described above. The BRE guidance on daylight for rooms suggest a minimum average daylight factor (ADF) of 1.5% for living rooms, 2% for kitchens and 1% for bedrooms. According to the study the average of the living space (that is the living room, kitchen and diner is 1.7%, which they characterise as happily between 1.5% and 2% required. I agree with the Council there is an element of sleight of hand in this calculation. The illuminance plans show it is very bright in the bay but this tapers off dramatically the further into the flat you go. The whole kitchen/diner is at or below 1% with most of the living area appearing to achieve levels between 3% and 1%. No measurements are provided for the bedroom, which is presumably below even these minimum standards. This is all evidence that was not available to the previous Inspector.
18. Although it is one large room, the fact that it is dark and gloomy at the back means the kitchen diner is considerably below the minimum standards required. This is not compensated for by the living area, which is only just acceptable. The appellant argues that a previous application showing a rejigged layout involving the ground floor and basement as one flat had bedrooms in the basement that were considered acceptable by the Council. However, I agree with the Council that this is different when the main living areas have good daylight and sunlight as they are at ground floor level. When the whole flat is below ground and only one small area receives adequate light, then dark bedrooms become more of a problem.
19. I also note there is no separate reading for the patio area, and again I agree with the Council that this is because this area will receive very little sunlight at all. The BRE guidance characterises that as the "worst situation".
20. Overall the BRE document says that a well lit room is 5% ADF and partly lit is 2%, hence the minimum standards mentioned above. I do not consider it acceptable for the whole flat (beyond a small area by the bay) to be at or below the minimum standards especially as there is no compensating outdoor space. This was confirmed by my site visit on a bright but overcast day when most of the flat was gloomy and dark, even taking into account the proposed improvements.
21. Policy CC8 of the Reading Borough Local Plan (2019) is the relevant development plan policy. It requires development not to create unacceptable living conditions for occupiers by way of access to sunlight and daylight. In my view the lack of access to adequate daylight is harmful and contrary to CC8.
22. I agree that introducing the proposed plinths would also make the flats less accessible and less flexible, but even without those considerations I consider

the development to be harmful and that that planning permission should not be granted. Various conditions were discussed, but these do not affect my conclusions above.

The Appeals on Ground (f) Notices A, B and C

23. Starting with notice A, it was agreed that requirement (a) could be removed as it referred to the wrong plan and duplicated the effect of requirements (g) and (h) which require the proper implementation of the landscaping plan. There was no dispute about (b) which was simply making good any damage, (d) which required the removal of the fence dividing the rear lightwell or (f) as the cycle rack was of poor quality. However, (c), (e) and (i) involved significant changes to the exterior of the basement flats, including filling in the rear lightwell. The same arguments were used for most of the requirements on notice B. The appellant argues they go beyond what is needed to remedy the breach, that is the material change of use. As long as the use ceases the rooms can remain for an ancillary use by the occupiers of the flats above as first envisaged. They could thus retain their windows and doors, lights, heating, shower, parts of the kitchen, etc, all of which could be useful depending on the eventual use.
24. The Council's argument was that all the changes needed to be undone in order to prevent a resumption of the use. I'm not sure this is true, but certainly it is quite normal for a enforcement notice to require the main changes to be reversed in order to return the rooms to their lawful use. The lawful use is defined by the condition as ancillary to the residential use of the flats above. The plans show this to be storage, but any ancillary use would be acceptable. The appellant suggests a gym, or study area, or laundry or separate lockable storage rooms for each of the flats. However, no plans have been provided for any of these options and I wonder how feasible many of them would be given the flats above are already leased or sold. To provide extra facilities for their use would surely involve changes to their leases or an increase in rents, and would also involve the appellant in potentially considerable further expense.
25. I am not convinced there are any realistic alternative uses that could be considered as a fallback other than simple storage, nevertheless, I do agree that some of the requirements are excessive to ensure the unlawful residential use does not recommence and some of the internal fixtures would be acceptable for a storage use. The external changes such as filling in the rear lightwell and removing the door to replace it with a window are unnecessary. The space will function perfectly well as storage with doors rather than windows, and if the rear lightwell is not to be filled then both front and rear could be used for storage purposes.
26. Internally, the lighting should remain as useful for storage but the internal divisions, kitchens, bathrooms, separate consumer units, gas supply and heating, signage and buzzers all need to go as their only purpose is to facilitate the unlawful material change of use. I accept the carpets can stay but the fire escape is redundant as the rooms are no longer inhabited. It was agreed that (k) should be removed as excessive.
27. The upshot of this is as follows. Notice A requirement (a) is deleted; (b) remains; (c) is deleted; (d) remains but is relocated to Notice B; (e) is deleted; (f) remains, (g) and (h) remain, subject to the proviso that it is insofar as is possible given the retention of the rear lightwell; (i) remains but is relocated to

Notice B. Notice B requirements (a), (b), (c) and (d) remain. (e) is varied to say *"remove consumer units for each of the separate basement flats, and any separate wiring systems which pertain to the layout of the flats (cooker and boiler/heating circuits, etc) but excluding room lights"*. Requirement (f) remains (there should be no problem identifying the correct meters etc); (g) is varied to say *"remove any other electrical systems which were installed for the facilitation of the use of the basement as separate flats"*. This was agreed at the Hearing. Requirement (h) remains; (i), (j) and (k) are deleted. Notice C, requirement (c) is deleted but added to notice B.

The Appeals on Ground (g)

28. The notices all have 10 months as the time for compliance. I think that Covid restrictions are less of an issue now than when the appeal was first made and as the main structural changes to the exterior do not need to be made there should be no problem getting contractors to deal with the internal arrangements within the timescale. Both the occupiers of the flats will lose their homes, but again 10 months is a reasonable time to find somewhere else to live, if only to rent in the short term.
29. It is also possible the appellant could produce firm proposals for an alternative use for the basement areas that might allow less changes to be made to their interiors and 10 months is plenty of time for that to be negotiated with the Council if necessary. There is no need to extend the compliance period.

Conclusions

30. I shall dismiss the appeals and uphold the notices subject to the corrections and variations described above.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Ben Temple – planning agent

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Dale-Harris – barrister

Richard Eatough – planning officer