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## Appeal Decision

Hearing (Virtual) Held on 20 July 2021

Site Visit made on 21 July 2021

**by AJ Steen BA(Hons) DipTP MRTPI**

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

**Decision date: 03 November 2021**

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**Appeal Ref: APP/T5150/C/20/3245458**

**10 Heather Road, LONDON, NW2 7ND**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr S Gilson or Sydon Investment Ltd against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 16 December 2019.
- The breach of planning control as alleged in the notice is:  
Without planning permission, the material change of use of the premises to flats ("the unauthorised change of use")  
AND  
Without planning permission, the erection of an extension to the rear of the premises ('the unauthorised development').
- The requirements of the notice are:
  - STEP 1 Cease the use of the premises as flats, and its occupation by more than ONE household.
  - STEP 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, en-suite bathrooms/shower rooms and toilets.
  - STEP 3 Demolish the unauthorised rear extension and remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised use and development from the premises.
  - STEP 4 Restore the internal configuration to the original layout before the unauthorised change of use took place. For the avoidance of doubt, this should include a kitchen, dining room and lounge on the ground floor, bedrooms on the upper floors, a bathroom on the first floor, and a WC on the ground floor.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. 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 Decision: The appeal is allowed and the enforcement notice is quashed.**

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### Preliminary Matters

1. The material change of use and erection of an extension both constitute a form of development as defined at Section 55 of the Town and Country Planning Act 1990 (the Act). Consequently, the enforcement notice would need correction to define the erection of the extension as "the unauthorised operational development" using the powers available to me under Section 176(1) of the Act. The parties agreed to this at the hearing. There would be consequential changes to the remainder of the notice resulting from this correction. I would also correct the inverted commas to be consistent between the two parts of the breach.

2. It was agreed at the hearing that the address should be amended with the deletion of "Flats 1-6" from the enforcement notice. I note that the number of alleged flats at the property is not specified in the breach of planning control. This was discussed at the hearing and correcting the notice in this way would not result in injustice to either the Council or appellant.
3. The appeals under grounds (b) and (c) relate to the two sections of the alleged breach of planning control. However, as these are described in a single notice it is possible that these are related and to distinguish them in this manner may not be possible. I have, therefore, considered them together in my decision.
4. My attention has been drawn to caselaw, including *Birmingham Corporation v Habib Ullah* [1964] 1 Q.B. 178, *Richmond LBC v Secretary of State for Environment, Transport and the Regions* and *Richmond-upon-Thames Churches Housing Trust* [2001] JPL 84, *Lipson v Secretary of State for the Environment* (SSE) [1977] JPL 33, *Murfitt v SSE* [1980] JPL 598 and *Somak Travel v SSE* [1987] JPL 630. I have taken these judgements into account insofar as they are relevant in coming to my decision. I note other appeal decisions have also been drawn to my attention, but I need to consider this case on its individual merits.

### **The Appeals on Grounds (b) and (c)**

5. Appeals on these grounds are, for ground (b), that the matters described in the notice have not occurred and, for ground (c), that "those matters" (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for these grounds is on the appellant, with the relevant test of the evidence being on the balance of probability.

### **Change of use**

6. The building comprises three letting rooms on the ground floor, two of which are in the extension, which is the subject of the operational development described in the enforcement notice, two on the first floor and a sixth bedroom within the roofspace. All of the rooms contain an "Elfin" kitchen with sink, two hobs and a fridge. The Council state that the rooms contained a microwave when they visited, although I understand these were provided by the individual occupiers rather than the appellant. The rooms on the ground floor and within the roof also have en-suite shower rooms. In addition, there is a kitchen with cooking facilities and washing machine and two shower rooms on the first floor that are accessible to all residents in the building.
7. As the first floor shower rooms are shared with the occupants of the whole of the building and not just the first floor bedrooms, those bedrooms are not self-contained. In addition, residents have access to the shared kitchen on the ground floor. On this basis, the rooms at first floor cannot be considered as separate flats.
8. The rooms on the ground floor and within the roofspace have kitchen areas and en-suite shower rooms such that these rooms can be occupied as self-contained units with all the necessary facilities for day to day living. However, they also have access to the other two shower rooms and kitchen. My attention was drawn to circumstances when the occupiers did use those rooms. In practical terms, therefore, they are not self-contained flats. Taking all this into account, the allegation that the building is in use as flats must be wrong.

9. I note that the appellant accepts that a material change of use did take place, but that it related to a change from use class C3 (dwellinghouse) to use class C4 (house in multiple occupation). The Town and Country Planning (Use Classes) Order 1987 in the interpretation of use class C4 states that a house in multiple occupation has the same meaning as in Section 254 of the Housing Act 2004. Section 254 of the Housing Act 2004 defines houses in multiple occupation for the purposes of that Act using several tests and the Council accepted that the building met the converted building test. Given my conclusion that the building comprises six rooms and that none are in use as self-contained flats, this indicates the use would fall within the definition of a house in multiple occupation under use class C4.
10. I note that the property is the subject of a house in multiple occupation licence under the Housing Act 2004 dated 5 October 2020.
11. Taking account of the above, I conclude that the building is not in use as flats. As a result, the material change of use alleged in the notice has not occurred.

#### Operational development

12. There is no dispute that the rear extension constitutes development within the meaning of Section 55 of the Act for which planning permission is required. A prior notification under Schedule 2, Part 1, Class A, Section A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) was submitted and the Council determined that prior approval was not required on 10 August 2017 under reference 17/2920. As a result, that extension would have been granted planning permission by the GPDO subject to the requirement at section A.4(11) of the GPDO to be constructed in accordance with the information provided.
13. The extension is of the same size and overall shape as shown in the information submitted with the prior notification. However, windows and doors have been provided in place of the patio doors proposed. In addition, the internal layout differs from that shown on the prior notification. That proposed a large room comprising TV, dining and kitchen areas, lounge and ground floor WC. However, the layout at the time the notice was issued comprised two bedrooms, each with an en-suite bathroom. That means the extension was not in accordance with the information provided at that point in time.
14. I note that the appellant suggested that the extension was constructed and the layout altered approximately four months later, with the "Elfin" kitchens fitted after that. The issue, therefore, is whether the extension was constructed in accordance with the information provided with the prior notification application and subsequently altered to its layout and appearance at the time the enforcement notice was issued.
15. The invoices supplied showed works to extend the building took place in 2017. The statutory declaration on behalf of the owner states that the built extent of the extension was constructed in accordance with the drawings submitted with the prior approval and the internal works to convert the building to a house in multiple occupation commenced on 20 March 2018. Photographs provided by the Council and dated 19 April 2018 appear to show the present layout of the property. A Completion Certificate under the Building Regulations for a rear extension and alterations including formation of en-suite at ground floor and ground floor WC was issued on 31 May 2018 immediately after a final visit to

the property. That description does not reflect the layout shown within the prior notification. I note another application for Building Regulations Consent relating to the installation of four shower rooms and associated works to provide the house in multiple occupation was registered by the Council in May 2018.

16. The evidence indicates that the building was constructed with the windows and doors instead of patio doors. As such, the external appearance was materially different from that shown in the information provided in the prior notification. It was not, therefore, in accordance with section A.4(11) of the GPDO.
17. The evidence indicates that the exterior of the extension was constructed initially. The internal works were completed later. This suggests that construction was not complete until the internal works were finished. In addition, the description on the Completion Certificate under the Building Regulations suggests that the extension was constructed with a layout other than that subject of the prior notification. Consequently, on the balance of probability I consider the internal layout of the extension was constructed other than in accordance with the information provided in the prior notification.
18. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, the extension does not comply with the requirement at section A.4(11) of the GPDO. As a result, it does not benefit from the planning permission granted by the GPDO under the prior notification process.
19. It has been suggested that internal works to a building do not comprise development, so do not require planning permission. However, in this case the issue is whether the extension was constructed in accordance with information submitted in an application for prior approval. I have concluded that the internal layout was part of the development comprising the extension. Consequently, this did require planning permission.
20. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.

## Conclusions

21. Taking account of all the above, it would appear that the rear extension was constructed to facilitate the use of the building as a house in multiple occupation under use class C4. As a result, the change of use and operational development appear to be linked. Whilst there are permitted development rights under the GPDO to both change the use of a building to use class C4 under Class L, Part 3, Schedule 2 of the GPDO and for house extensions as set out above, these are separate provisions. As a result, I consider that the allegations in the enforcement notice as a whole are incorrect.
22. I note that I could correct or vary the terms of the enforcement notice if that would not cause injustice to the appellant or the Council. In this case, this would comprise the extension of the house in order to change the use to a house in multiple occupation. However, that would mean a substantial change to the allegation. The appellant has not dealt with the matters alleged in the notice in that form, so would be put at a disadvantage if I were to make those changes.
23. In addition, the Council's case regarding the appeal on ground (a) is clearly made on the basis that the proposal is for flats. Policies relating to houses in

multiple occupation are different, and thus the Council would be likely to want to make out a different case if it were to oppose such a use. To proceed on the basis of the case put to me in relation to the allegation of flat use could also put the Council at a disadvantage.

24. For these reasons, I consider that both parties could suffer injustice were I to amend the notice to reflect the development as it has taken place. I note that the Council could serve another notice were they to consider a breach of planning control had occurred.

### **Formal Decision**

25. For the reasons given above I conclude that the appeal should succeed on grounds (b) and (c). The enforcement notice will be quashed. In these circumstances, the appeal under grounds (a) and (f), as set out in section 174(2) of the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not fall to be considered.

*AJ Steen*

INSPECTOR

### **APPEARANCES**

#### **FOR THE APPELLANT:**

|                            |                   |
|----------------------------|-------------------|
| Roger Birtles BA BPI MRTPI | Simply Planning   |
| Saif Gilson                | Sydon Investments |
| Khaled Elrifai             | Sydon Investments |

#### **FOR THE LOCAL PLANNING AUTHORITY:**

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| Nigel Wicks BTP MRTPI | Director, Enforcement Services Ltd engaged by<br>Planning Enforcement Manager, London Borough of<br>Brent |
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#### **DOCUMENTS SUBMITTED AT THE HEARING/INQUIRY:**

Document 1: London Plan 2020 Policy D6

Document 2: Draft Brent Local Plan Policies DMP1, BT2, BH11 and BH13

