



Appeal Decisions

Site visit made on 23 November 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 09 December 2021

Appeal Ref: APP/T5150/C/21/3270218 (Appeal A)

25 Ecclestone Place, Wembley HA9 8AB

- 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 Halil Kaculi against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/21/0072, was issued on 17 February 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a part two storey side, part two storey rear and single storey rear extensions*.
- The requirements of the notice are to:
 - (i) Demolish the unauthorised part two storey side, part two storey rear and single storey rear extensions; and
 - (ii) Remove all debris and items arising from this demolition, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal succeeds in part and the enforcement notice is upheld with corrections and variations.

Appeal Ref: APP/T5150/C/21/3272007 (Appeal B)

25 Ecclestone Place, Wembley HA9 8AB

- 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 Halil Kaculi against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/20/0127, was issued on 17 February 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the material change of use of the premises to three dwellings*.
- The requirements of the notice are to:
 - (i) Cease the use of the premises as three dwellings; and
 - (ii) Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all current kitchens, en-suite bathrooms/shower rooms and toilets. Rearrange the internal layout to 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 ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with variations.

Preliminary Matters

1. I sought the parties' views before conducting my site visit on matters concerning the allegations and requirements of each notice, and subsequently received a response from the Council. The notice in Appeal A alleges

development without planning permission, but a permission has previously been granted for the works described in the notice, and so an issue arises as to whether the development was lawfully commenced (if not lawfully completed). As to the notice in Appeal B, the steps effectively require the property to take the form of a single dwellinghouse, whereas the planning history revealed a previous use as two flats.

2. Therefore, subject to my findings on the ground (c) appeals, I will consider whether it is necessary to vary the requirements of either notice to achieve the stated purpose of remedying the breach of planning control.
3. I also sought clarity from the Council as to the approved plans under planning permission 17/3736. None was received and so I have proceeded on the basis that plans A101 and A102 dated August 2017 are those applicable to that permission.

Main Issues

4. The main issue in both appeals is whether the development alleged in each notice constitutes a breach of planning control.

Reasons

Appeal A

5. Permission (hereafter "the permission") was granted on 30 November 2017 under application no. 17/3736 to allow extensions and alterations to flats 25A and 25B Ecclestone Place. A lawful development certificate had been issued previously confirming the use of the property as two flats to be lawful.
6. The permission described "first floor side and single storey rear extension to include the replacement of the front shutter with new window and associated brushwork, and new entrance door to Flat 25A, and first floor rear extension with associated internal alterations to Flat 25B". The permission appears to have been largely a consolidation and extension of an earlier permission, 16/0887, allowing extensions, and the 'existing' plans for the 17/3736 application showed that some extensions had already been built at that point. However, if the plans were then accurate then, from the description of what was permitted, it appears that the permission was part-retrospective with the side extension having by that time already taken on a two-storey form.
7. A number of departures have since been identified by the Council. The internal layout is alleged to be of three dwellings rather than two flats. The materials of the extensions do not match the original building. The windows installed do not tally with those shown in the approved plans. All these matters, say the Council, mean that the 2017 permission has not been 'implemented' and further that it is now time-expired.
8. I have had regard to the remarks of Mr Justice Kerr in the case of *Hussain v Secretary of State for Communities and Local Government* [2017] EWHC 687 (Admin) particularly at paragraph 46. It is possible, he said, to commence a development for the purpose of section 56 (of the 1990 Act) and thereby meet a deadline forming a condition of the permission, and then later to deviate from the permitted works in a manner that later becomes an enforcement issue without retrospectively altering the fact that the commencement of the development had occurred for section 56 purposes.

9. At my site visit I saw that at least some elements of the permitted works have been undertaken in compliance with the permitted plans. The general dimensions of the extensions appear to comply with the permission. The side entrance door to Flat 25A appears to be in the right place. The rear extension appears to have been built to the appropriate dimensions, albeit that its finished appearance (tile hung) partly differs from the approved plan (showing brick; and the brick work does not match the original building). The Council witnessed building works in 2018.
10. On this basis I am satisfied that, notwithstanding any subsequent deviations from the detail of what was approved, the development authorised by the permission had commenced within the relevant time limit.
11. As a result it appears to me that the departures from the plans identified by the Council have occurred without compliance with conditions 2 or 3 of the permission, rather than having been carried out entirely without authorisation. Therefore the appeal on ground (c) partly succeeds.
12. The effect of my findings is that I shall correct the allegation in the notice to one that alleges development without complying with those planning conditions, and on that basis I find that some of the works do constitute a breach of planning control.
13. There is no appeal made on ground (f) but as a consequence of the above it follows that the existing requirements of the notice, requiring total demolition without any reinstatement, exceed what is necessary to remedy the breach of planning control. The Council have suggested that, if I should reach the conclusions that I have, a number of alternative steps could be imposed. Some of these suggestions amount to imposing planning conditions, which I am unable to do given the nature of the grounds of appeal.
14. The 1990 Act specifies that the purposes of an enforcement notice may be to remedy the breach of planning control, which is what the Council seeks here. To do so, the steps specified may be to remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. I have found that the breach, properly characterised, amounts to a failure to comply with conditions attached to the permission. Therefore I shall vary the requirements so to require, in the alternative to the total demolition required by existing Step 1, the carrying out of works so as to make the development comply with the terms and conditions of the permission.
15. I am mindful that there is no appeal on ground (a) seeking planning permission for any of the departures, and I cannot take the planning merits into account or make any findings as to whether what has been built is harmful. Instead I need to decide which matters do amount to departures from the permission. Taking the Council's points set out in paragraphs 3.1.4 to 3.1.6 of their appeal statement, I accept that there are departures arising from the layout, the materials and the windows. I am not however persuaded that there is a requirement to reproduce the concrete plinth at ground level as this is not shown on the plans.
16. Therefore I shall impose steps requiring the internal layout to be altered so as to comply with the relevant plans; the external facing materials to be removed and replaced with matching brickwork and then painted to match the existing;

to remove the windows and replace them with windows matching the existing and, in the case of the ground floor side windows, to relocate the window openings to as shown on the plans; and to replace the side door entrance to Flat 25A with a door matching the existing door to the front of the property.

Appeal B

17. There is no appeal on ground (b) which would be that the matters alleged in the notice have not occurred, although I understand this to be the appellant's general contention. From the information supplied it is clear that the matters have occurred, not least from the appellant's reply to the Planning Contravention Notice ('PCN') issued by the Council. This included drawings of the internal layout of the property as three flats. This appears to result from the subdivision of Flat 25B into each of its constituent floors, with separate tenancy agreements in place for each at the time of the PCN's return.
18. Section 55(3) of the 1990 Act declares for the avoidance of doubt that the division of a single dwellinghouse into two or more dwellinghouses constitutes a material change of use. It is not contended here that the change, if made, has not been material. Therefore the appeal on ground (c) will fail.
19. I have considered whether the notice requires correcting to allege the material change of use of Flat 25B only (from one dwelling into two). However, the partitions within the building are different on each floor and consequently it would be difficult to specify precisely the part(s) of the building to which the allegation relates. Additionally, the breach appears to have arisen in the course of (or resulting from) building works to the property as a whole. Therefore I shall uphold the allegation as presently made.
20. Again there is no appeal on ground (f) but I wrote to the parties in the light of my concern that the notice over-enforces by requiring a return of the property to one dwellinghouse rather than the two flats previously certified as lawful. The Council concede that this is the case, and suggest that the property be returned to the layout shown on drawings provided at the time the use of the property as two flats was certified as lawful.
21. Consequently I will vary the requirements of the notice to require either the reinstatement of the layout shown in the drawing no. SB/B328 of 12 June 2012 or to comply with the proposed drawing A102 attached to the 2017 permission, in substituting the present requirement effectively to return the property's layout to that of a single dwellinghouse.

Conclusions and Formal Decisions

Appeal A

22. For the reasons given above, I conclude that the appeal should succeed in part. The notice will be corrected in order to allege a failure to comply with planning conditions. It will also consequently be varied in order to secure compliance with the conditions of the permission. However I shall uphold the notice, with those corrections and variations.
23. It is directed that the enforcement notice be corrected by deleting "without planning permission" from Schedule 2 and inserting, after "extensions", "without complying with conditions imposed on planning permission 17/3736 granted on 30 November 2017".

24. Consequently it is also directed that the enforcement notice be corrected by the deletion of "section 171A(1)(a)" in the second line of the opening paragraph, and its replacement by "section 171A(1)(b)".

25. It is then directed that the enforcement notice be varied by adding, after the text of Step 1 of Schedule 4,

"AND"

26. It is then further directed that the enforcement notice be varied by adding, after the text of Step 2 of Schedule 4,

"OR

Step 3 Make alterations to the premises so as to comply with the terms (including conditions and limitations) of planning permission 17/3736 granted on 30 November 2017 consisting of:

- (i) Alter the internal layout of the premises to as shown on drawing A102;
- (ii) Remove the outer brick and tile work from the exterior facing walls of the extensions and replace with London stock brick and paint white to match the existing building;
- (iii) Remove the windows from the extensions and replace with windows to match the existing building;
- (iv) Relocate the window openings on the ground floor side to as shown on drawing A102;
- (v) Remove the side entrance door from Flat 25A and replace with a door to match the front door of the existing building.

AND

Step 4 Remove from the premises all debris, items and materials arising from compliance with Step 3."

27. Subject to those corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Appeal B

28. For the reasons given above, I conclude that the appeal should not succeed. However, variations will be made to the requirements of the notice, subject to which I shall uphold the notice.

29. It is directed that the enforcement notice be varied by deleting Step 2 from Schedule 4.

30. It is further directed that the enforcement notice be varied by adding, after the text of Step 1 of Schedule 4,

Step 2 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, and alter the internal layout of the premises EITHER by restoring it to the layout shown on drawing

no. SB/B328 of 12 June 2012 accompanying certificate of lawfulness application 12/1637 granted on 15 December 2015 OR to the internal layout shown on application drawing no. A102 accompanying planning application 17/3736 granted on 30 November 2017.

31. Subject to those variations, the appeal is dismissed and the enforcement notice is upheld.

Laura Renaudon

INSPECTOR