



Appeal Decision

Site visit made on 22 March 2022

by C Sherratt DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2022

Appeal Ref: APP/T0355/C/21/3268946

Land at 17 Rydings, WINDSOR, SL4 4HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Kamaljeet Sall against an enforcement notice issued by Royal Borough of Windsor and Maidenhead.
 - The notice was issued on 22 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a single dwellinghouse to 4 'studio' flats and 2 en-suite bedrooms with a shared kitchen on the ground floor; with operational development comprising the enlargement of the original dwellinghouse by erecting a single storey rear extension.
 - The requirements of the notice are to:
 - a) Cease the use of the premises as 4 'studio' flats and 2 en-suite bedrooms with a shared kitchen on the ground floor;
 - b) Permanently remove all fixtures and fittings that have facilitated the conversion of the original dwellinghouse on the ground floor, including but not limited to kitchens and en-suite facilities;
 - c) Demolish the enlarged part of the dwellinghouse comprising the single storey rear extension outlined in green;
 - d) Remove from the land all materials resulting from step (c);
 - e) Restore the building back to its original internal plan form to be used as a single dwellinghouse, as identified on the appended plan marked AJH1.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) 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.
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Decision

1. The enforcement notice is quashed.

Procedural Matters

2. An appeal initially made under ground (c) has been withdrawn.
3. The Council identify a number of errors in the notice, which are described as being 'minor' and correctable without causing injustice. I may correct any defect, error or misdescription in the notice under s176(1)(a) provided that I am satisfied that doing so will cause no injustice to the appellant or the local planning authority. In brief, the suggested corrections relate to policies and the time limits referred to in the reasons for issue.
4. The 4 and 10 year periods referred to in the notice, is a reference to the time limits for taking enforcement action which are set out in s171B of the Act. S171B(1) provides that where there has been a breach of planning control

consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which operations are substantially completed. S171B(3) provides that in respect of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

5. The description of the alleged breach refers to a material change of use 'with' operational development. The reasons for issuing the notice refer to the breach of control having occurred in the last 4 and 10 years, seemingly, in my view, clarifying that the notice is directed at both a material change of use and operational development, rather than a use with operational development that simply facilitates that use. The reasons go on to set out why the development including the extension is considered to be harmful.
6. The Council explains that 4 years was simply referred to in error. The Council's position is that the immunity period is governed by s171B(3), that being 10 years, as the development enforced against is a mixed use (Sui Generis by nature) and continues to enjoy a single planning unit; with the works of conversion and enlargement being carried out as a single operation directly facilitating the material change of use. If I were to correct the notice as suggested, the notice would clearly only relate to a material change of use with facilitating development which the Council say was always the intention.
7. A notice must enable the recipient of it to know what those matters are that constitute the breach and what they are required to do in order to comply with it. For the reasons set out previously, I consider the wording of the notice gives rise to some ambiguity. Furthermore, no reference is made to a mixed use in the description of the alleged breach.
8. There is disagreement between the parties about whether I could, if I were to correct the notice, consider the planning merits of the rear extension separate to the material change of use. If corrected, it follows that the ground (a) and deemed planning application would be for a material change of use of the property with an extension to facilitate that use only. The extension could only therefore be considered in that context. It would, in my view, therefore be beyond the remit of the ground (a) appeal to consider the planning merits of the extension in circumstances where the use might cease. I therefore agree with the Council that if the notice is corrected to clarify it is solely directed at a material change of use and facilitating development, then the planning merits of the extension cannot be considered in isolation and separate to the alleged use.
9. The appellant has also pleaded under ground (d) that it was too late to take any action against one of the 'studio flats' by virtue of the 4 year time period, and claims the rear extension is also immune by the 4 year rule relying on s.171B (1) and (2).
10. It seems to me that if I were to correct the notice as suggested by the Council, the case advanced by the appellant under ground (d) could not reasonably be pursued as ground (d) would be concerned with the mixed use only. It appears that these arguments were being advanced under ground (d) because the notice specified 4 years and it is not clear, from reading the notice as a whole, that this was no more than a typographical error.

11. In my view, the wording of the notice as issued leads to uncertainty and ambiguity. Notwithstanding there are references in the reasons for issue to the change of use 'facilitated by works of conversion, and enlargement' and 'the enlargement of the dwellinghouse that enables the change of use', the reference to both 10 and 4 years in the notice and the actual description of the alleged breach that does not clearly state that the extension facilitates the use, results in uncertainty. This is borne out by the different understandings of the main parties with the appellant's agent addressing the various grounds of appeal believing that the grounds could be brought independently in respect of the operational development. If I were to correct the notice, that would not be possible and so injustice would arise.

Conclusion

12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control.
13. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
14. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) 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.

C Sherratt

INSPECTOR