The Planning Inspectorate

Appeal Decisions

Inquiry held on 13/14 June 2023

Site visit made on 14 June 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2023

Appeal A Ref: APP/A5270/C/21/3273123
Premises known as 22 St Andrews Road, Acton, London W3 7NE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ijaz Khan (Power It Up Ltd) against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice, numbered 20EN0111(2), was issued on 25 February 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of a breeze block structure fronting St Andrews Road (marked with an 'X' on the attached plan), the removal of 2 first floor windows and bricking up of the window apertures (each marked with a 'Y' on the attached plan) and the creation of a self-contained unit in the ground floor left-hand side of the property (marked with a 'Z' on the attached plan).
- The requirements of the notice are to:
  A. Remove the breeze block structure located to the front of the property in its entirety;
  B. Remove the brick infills from the 2 first floor window openings and install windows that match the existing windows in terms of materials, design and proportion;
  C. Cease the use of the ground floor left hand side of the property as a self-contained residential unit;
  D. Remove the kitchen and drainage connection from the ground floor left self-contained residential unit;
  E. Remove the bathroom and drainage connection from the ground floor left self-contained residential unit;
  F. Remove the internal partitions and fixtures and fittings that facilitate the unauthorised creation of the ground floor left self-contained residential unit; and
  G. Remove all resultant debris.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.

Appeal B Ref: APP/A5270/C/22/3301872
Appeal C Ref: APP/A5270/C/22/3301873
Premises known as 22 St Andrews Road, Acton, London W3 7NE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal B is made by Mr Ijaz Khan (Power It Up Ltd) and appeal C is made by Mr Harwant Virk against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice, numbered 21EN0541(1), was issued on 26 May 2022.
- The breach of planning control as alleged in the notice is without planning permission the erection of a first floor rear infill extension, a half built single storey side extension

and the material change of use of the ground floor right hand side of the property to a self-contained residential unit and the first floor to two self-contained residential units.
- The requirements of the notice are to:
  A. Cease the use of the property as flats;
  B. Remove the kitchen and drainage connection from each self-contained residential unit;
  C. Remove the bathroom and drainage connection from each self-contained residential unit;
  D. Remove the first-floor rear infill extension;
  E. Remove the half built single storey side extension the location of which is marked as 'x' on the attached plan; and
  F. Remove all resultant debris.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Appeal D Ref: APP/A5270/X/22/3307097
22 St. Andrews Road, Acton, London W3 7NE
- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Ijaz Khan (Power It Up Ltd) against the decision of the Council of the London Borough of Ealing.
- The application ref 221551CPE, dated 7 April 2022, was refused by notice dated 10 June 2022.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the existing use of 4 flats established 7.8yrs 22a 22b 22c 22d.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by

   - The deletion of the phrase "….and the creation of a self-contained unit on the ground floor left-hand side of the property (marked with a 'Z' on the attached plan)" from Section 3 (the breach) and its substitution with:

     "….and the material change of use of the ground floor left-hand part of the property (marked with a 'Z' on the attached plan) to a use as a separate self-contained dwelling."

   - The deletion of the words "self-contained residential unit" and the substitution of the words "separate self-contained dwelling" in Section 5 requirements C, D, E and F.

2. Subject to the corrections the appeal is dismissed, 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.

Appeals B and C

3. It is directed that the enforcement notice is corrected by:

- The deletion of the phrase "…and the material change of use of the ground floor right hand side of the property to a self-contained residential unit and the first floor to two self-contained residential units." from Section 3 (the breach) and its substitution with:

  "…and the material change of use of the ground floor right hand side of the property to a separate self-contained dwelling and the first floor to two separate self-contained dwellings."

- The deletion of the words "self-contained residential unit" and the substitution of the words "separate self-contained dwelling" in Section 5 requirements A, B and C.

4. Subject to the corrections the appeals are dismissed, and the enforcement notice is upheld.

Appeal D

5. The appeal is dismissed.

Costs

6. An application for costs was submitted by the Council against the appellant before the Inquiry was closed. This is the subject of a separate decision.

Preliminary Matters

7. There were five appeals before me at the Inquiry. Two appeals had been submitted in respect of the notice issued in 2021 (the 2021 notice) by two separate appellants, Mr Khan, and Mrs Virk. However, Mrs Virk has withdrawn her appeal (Appeal Ref. APP/A5270/C/21/3273054).

8. The Council considers that I should not have regard for any of the evidence submitted by Mrs Virk herself in respect of the appeal which she has withdrawn, and the Council has provided me with a list of that evidence which it considered should be disregarded. I agree with the Council on this point, and I have not had regard to any document which was submitted by Mrs Virk unless it was also submitted by Mr Khan.

9. A Mr Virk is named as the appellant for Appeal C; however, this is an error, and the appellant is Mrs Virk as referred to above. The appellant for Appeals A, B and D, Mr Khan, said that she was no longer involved in any of the appeals and Mrs Virk did not attend the Inquiry. Appeal C has not been withdrawn and I have had regard to all of the submissions made by Mr Khan and Mrs Virk in respect of Appeals B and C.

10. The Secretary of State determined that in respect of Appeal A, the appeal on ground (a) and the Deemed Planning Application (DPA) would be dealt with under the written representations procedure. I have followed this procedure but have included my decision within this decision letter for completeness.

11. The Appeal Form for Appeal A sets out that the appeal is made on grounds (a) and (d). However, Mr Khan refers to works which are the subject of the notice

constituting permitted development. This amounts to an appeal on ground (c) and Mr Khan confirmed that he wished to include this ground in his appeal at the Inquiry. The Council had already had the opportunity to address the arguments made by Mr Khan and consequently there would be no injustice if I consider Appeal A also on ground (c).

12. Mr Khan was not represented, and he made his opening and closing remarks, presented his case and responded to cross examination by the Council's advocate under oath. The Council Witness also gave his evidence under oath.

13. The London Plan (March 2021) was adopted after the 2021 notice was issued. The Council has confirmed that the reference to policies in the London Plan (MALP) 2016 and the Publication London Plan (December 2020) in the notice have been superseded. Mr Khan had knowledge of the new policies as they have been referred to in the notice issued in 2022 (the 2022 notice).

The Enforcement Notices

The 2021 Notice (Appeal A)

14. The breach as described in the notice includes reference to '….and the creation of a self-contained unit in the ground floor left-hand side of the property (marked with a 'Z' on the attached plan)'.

15. Section 55 of the Town and Country Planning Act (the Act) establishes that the use as two or more separate dwelling houses of any building previously used as a single dwellinghouse involves a material change in the use (MCU). This is the act of development in this case. The parties had no objection to a correction of the notice to address this point and I shall make the following substitution for the phrase referenced above:

    '….and the material change of use of the ground floor left-hand part of the property (marked with a 'Z' on the attached plan) to a use as a separate self-contained dwelling'.

16. Consequential changes are necessary to the requirements to refer to a 'separate self-contained dwelling' instead of a 'self-contained residential unit'.

17. Such corrections to the notice would not give rise to injustice because both parties are clear that the notice relates to the formation of a self-contained dwelling/flat.

The 2022 Notice (Appeals B and C)

18. There is an inconsistency between the reference in the breach to 'self-contained residential units' and the first requirement which refers to the cessation of use of the property as 'flats'. As a result of my corrections to the 2021 notice there is also an inconsistency with that notice which now refers to a 'separate self-contained dwelling'.

19. I can resolve these inconsistencies by corrections to the notice to substitute the descriptions 'self-contained residential unit/s' and 'flats' with 'separate self-contained dwelling/s' in the breach and the requirements. Such corrections to the notice would not give rise to injustice because both parties are clear that the notice relates to the formation of self-contained dwellings/flats.

20. Notwithstanding the corrections I have made to both notices, as Mr Khan referred to the units within the building as flats throughout the Inquiry, I shall use the same description in my reasoning for consistency.

Ground (c) (Appeal A)

21. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

22. To achieve success on ground (c) the appellant must show that either there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.

23. In this the case the Mr Khan argues that the removal of two first floor windows and the bricking up of the window apertures as alleged by the notice constitute permitted development because the works relate to the side as opposed to the front elevation of the building. However, he has not provided any information to substantiate his view or reference to any relevant part of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

24. The Council's position is that Mr Khan is arguing that the building is in use as flats and flats do not benefit from permitted development rights in the same way as a single dwelling house. The Council also considers that the elevation in which the first floor windows referred to in the notice are contained is the principal elevation on the basis of an appeal decision (Appeal Ref. APP/A5270/C/20/324842).

25. Neither party has addressed the question of whether the removal of the two windows and the bricking up of window apertures amounts to development. In my view the alterations which are the subject of the notice amount to alterations to the building which have a material effect on its external appearance. Thus, the works amount to development under section 55 of the Act.

26. Under the terms of Class A of Schedule 2, Part 1 of the GPDO (Class A) the enlargement, improvement, or other alteration of a dwellinghouse is permitted development (PD) provided that the limitations and conditions of Class A are met. There is no distinction between whether the alterations are on the side or front of the dwelling.

27. The changes to the first floor windows are the subject of 2021 notice. This notice also relates to the formation of a single flat in the building. However, the alleged flat formed part of the ground floor of the building, and the works to the windows do not relate to that flat. The notice did not refer to the use of the remainder of the building.

28. To benefit from the PD rights under Class A Mr Khan would have to demonstrate that that part of building within which the windows are located was in use as a single dwelling house at the time when the works were carried out. His case on the appeals on ground (d) and for the LDC is on the basis that

the entire building has been in use as four flats since 2014. Consequently, he has not sought to demonstrate this.

29. As I have set out above the onus is in Mr Khan to provide evidence to support his appeal on ground (c). In this case, Mr Khan has not identified any relevant permitted development rights. To benefit from PD under Class A, Mr Khan would need to demonstrate that that part of the building which was not the flat was in use as a single dwelling house. His evidence does not do so.

30. For the reasons set out above the appeal on ground (c) should not succeed.

Ground (d) (Appeals A, B, and C)

31. An appeal on ground (d) is on the basis that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is also a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

The Operational Development

32. The 2021 notice refers to operational development in the form of the erection of a breeze block structure and the removal/bricking up of first floor windows. In order to achieve success on ground (d) the appellant must show that these works have subsisted for four years. The 2021 notice was issued on 25 February 2021. Therefore, the appellants must demonstrate that these works were substantially completed by 25 February 2017.

33. The 2022 notice also refers to operational development; a first-floor infill extension and a half-built single storey side extension. In this case the appellants must show that these works were substantially completed by 26 May 2018.

34. The appellants have not provided any evidence to demonstrate when the breeze block structure, the half-built side extension or the removal/bricking up of the windows were completed. Mr Khan says that the first-floor infill extension was part of a loft conversion application which he submitted in 2020 but no evidence is provided in relation to when these works were completed.

35. In the absence of evidence, the appellants have not demonstrated on the balance of probabilities that on the date when the notices were served no enforcement action could be taken in relation to the operational development which is described in the breaches.

The Material Changes of Use (MCU)

36. Appeal A relates to the formation of a flat within the ground floor left hand side of the building (the GFLH flat). Appeal B relates to a flat on the ground floor right hand side of the building (the GFRH flat) and two flats on the first floor of the building (the FFLH and FFRH flats).

37. The 2021 notice concerns the GFLH flat, and it was issued on 25 February 2021. The 2022 notice concerns the GFRH, FFLH and FFRH flats and it was issued on 26 May 2022.

38. In order to achieve success on ground (d) the appellants must show that in the case of the GFLH flat it was in use as a flat on 25 February 2017 and that that use has continued without interruption. In the case of the GGRH, FFLH and FFRH flats the relevant date is 26 May 2018.

39. Mr Khan stated at the Inquiry that the building has been in use as flats since 2014 but that they were managed by a property company who issued tenancy agreements which he had signed and employed contractors to carry out any necessary work to the buildings. The evidence suggests that Mrs Virk was directly involved in the property company.

40. Mrs Virk, the appellant for Appeal C was not present at the Inquiry but it was clear from the comments made by Mr Khan that they were in business together. 22 St Andrews Road (No. 22) is still in joint ownership although Mr Khan anticipates that this situation will change. Sometime in 2016 Mr Khan and Mrs Virk had a disagreement and this affected the way in which matters relating to the site were dealt with.

41. Mr Khan has submitted a General Affidavit (GA), which has been signed in the presence of a solicitor. Although the GA does not include sanctions, I made sure that Mr Khan was aware of those in taking an oath and giving evidence to the Inquiry. In his GA Mr Khan says, amongst other things that there are four flats in No. 22 and that they have been rented continually for 7.7 years. The GA is dated 16 May 2022.

42. A Statement of Truth (SoT) signed by Mrs Virk was also submitted. This document was not witnessed, and it also does not include any sanctions. Consequently, its evidential value is limited. However, it does state that Mrs Virk managed four flats at No. 22 for 7 years and 8 months prior to the date of the SoT (31 March 2022) which roughly aligns with the time period set out in Mr Khan's GA.

43. There is no evidence beyond the reference to Council Tax records and tenancy agreements, which I have addressed below, to corroborate Mr Khan's view that the flats have been established for more than 4 years or the 7.7 years referred to in his GA. However, I cannot simply dismiss Mr Khan's evidence because it is limited or uncorroborated. If there is no evidence to contradict his version of events or make it less than probable, and his evidence is sufficiently precise and unambiguous, it can and should be accepted.

44. The Council has submitted evidence which contradicts Mr Khan's view.

45. In July 2016 Mr Khan submitted a planning application to construct a building accommodating 6 flats in the garden of No. 22 (Council Ref. 164162FUL). The Council consider that the application form, existing plans, and subsequent appeal decision (Appeal Ref. APP/A5270/W/17/3169882) (the 2017 Appeal Decision) all point to No. 22 as being a single dwelling.

46. In October 2016 another planning application was submitted by Mr Khan for the construction of a single storey building with two flats including roof space for habitable use at No. 22 (Council Ref. 165346FUL). The application form has not been provided but the existing plans show a layout for a single dwelling with three bedrooms.

47. Mr Khan suggested that the existing plans which had been submitted in support of the applications were not necessarily contemporaneous with the layout of No. 22 at that time. He said that they were 'to the best of his knowledge at the time'. The existing plans are undated, so it is difficult to establish with any certainty when they were prepared.

48. Mr Khan said that in terms of the application form it was not possible to insert a zero in response to the question of the number of existing houses on the site. For that reason, he inserted a '1' but he said No. 22 did not form part of the applications.

49. Mr Khan said that at the time when the planning applications were made, and the 2017 Appeal Decision was issued No. 22 was in use as flats. The Inspector who was considering the 2016 Appeal sheds no light on the way in which No. 22 was being used. This is understandable given that his focus was on the proposed building. He describes the new building as being in the curtilage of No. 22, but this description could apply to any residential use.

50. The Council provided the evidence in respect of the planning applications in 2016 and say that this contradicts Mr Khan's argument that the flats have been in situ since 2014. However, taking Mr Khan's evidence at face value, the evidence from the 2016 planning applications does not do that.

51. The Council Witness confirmed that all of the photographs which have been provided to me in respect of site visits by him were taken during those site visits. This was in response to the contention by Mr Khan that the photographs could not be relied upon as they are not date stamped. The Council Witness's confirmation was given on oath, and I have no reason to doubt that he was telling the truth.

52. In December 2019 a site visit was carried out by the Council Witness following notification from the planning case officer and neighbours. Following that visit the Council say that a Planning Contravention Notice was issued to which it received no reply. However, an email was sent by Mr Khan stating that 'Mrs Virk is moving into 22 St Andrews Road this is why lawfulness certificate where not obtained of the 4 dawelling and hmo licence was (sic)'. Mr Khan also said that the property 'has been reverted back to a single dwelling'.

53. Another site visit was carried out by the Council Witness in January 2020. During that site visit the Council Witness met Mr Khan on the site and Mr Khan confirmed that this was the case at the Inquiry. Mr Khan told the Council Witness that the property was in use as a single dwelling.

54. Mr Khan said at the Inquiry that in his opinion Mrs Virk was 'frightened' by the Council asking questions about the use of the building. Consequently, she wanted to say that it was a single dwelling. Mr Khan's view was that, following his research, it could be demonstrated that the use of the building was capable of being established as four flats. Mr Khan wanted to pursue this approach with the Council.

55. In May 2020 the Council says that Mr Khan made a householder application for retention of roof extensions at No. 22 (Council Ref. 202043HH) (the May 2020 application). A copy of the application form has not been provided to me and

the client is named on the plans as Mrs Virk. However, the officer report makes it clear that Mr Khan was the agent.

56. Mr Khan stated at the Inquiry that he was familiar with planning procedures and that he had helped people to obtain planning permission. The May 2020 application was made as a 'householder' application which is for buildings in use as a single dwellinghouse; it is reasonable to assume that Mr Khan was aware of this type of application given his experience.

57. The plans which Mr Khan submitted with the May 2020 application show internal alterations to the building and an infill extension, at first floor, which provided stairs to serve the roof extension. The use of individual rooms is not identified on the plans.

58. In June 2020 another householder application was submitted (Council Ref. 202457HH) to retain the roof extensions in a modified form (the June 2020 application). In this case the proposed plans which are before me describe the uses of the individual rooms and show the layout as a two bedroom dwelling with loft space.

59. There is an inconsistency between Mr Khan's view now that at the time of the 2020 applications No. 22 was in use as four flats and the applications which rely on a use as a single dwellinghouse to make an application for 'householder' development. However, it is acknowledged in the Officer Report for the May 2020 application that the site was under investigation for use as a change of use from dwelling to studio flats. Thus, in themselves the May and June 2020 applications do not provide evidence one way or another of the use of No. 22 at that time.

60. However, the plans which accompany the May and June 2020 applications are significant in terms of the planning history of the property because they demonstrate that internal alterations may have been made to No.22.

61. Mr Khan argues that internal alterations do not require planning permission. Whilst in many situations this is the case, when the alterations change the apportionment of space within a building to different flats this can change the planning unit/s. That is a relevant consideration in this case.

62. The 2021 notice alleges the creation of a self-contained unit within No. 22 which is the GFLH flat. The shower room element of this flat is located within a narrow extension attached to No. 22. The 2022 notice relates to the other three flats. The GFRH flat also has facilities within the extended part of the building and the FFRH flat has acquired space within the first floor infill extension.

63. The Council alleges that these physical changes to the building were carried out during the period when Mr Khan is seeking to establish that the four flats which are the subject of the notices were in situ. Mr Khan did not dispute this point. Physical changes to the building and the apportionment of internal space could have the effect of changing the individual planning units within the building such that the flats which are the subject of the notice are not the same as the flats which Mr Khan says were present on the relevant dates.

64. It is not clear when the narrow ground floor extension was constructed and it is not referred to in the notices, but the first floor infill extension is referred to in

the 2022 notice. Notwithstanding, uncertainty about when the ground floor extension was completed, the potential changes to the individual planning units means that there is a lack of clarity about whether the particular flats which are the subject of the notices have been in situ for the full four year period required to achieve success on ground (d).

65. In October 2020 the Council Witness carried out another site visit. He found the GFLH flat was occupied, and the occupant said that she was the only person living in No. 22. The Council Witness was able to see that the FFRH flat was unoccupied and uninhabitable as a consequence of the works to provide stairs to the loft. These stairs are shown on the May and June 2020 application plans. He was unable to access the GFRH and FFLH flats.

66. In January 2021 another site visit took place. At that time the Council Witness thought the GFLH flat was occupied but was unable to gain access. He found the GFRH flat unoccupied and full of building materials and that the FFRH flat was a 'shell and looks like it (is) going to be refitted'. The Council Witness was unable to access the FFLH flat.

67. In February 2021 the Council Witness received confirmation that the resident was still living in the GFLH flat. It was shortly after that that the 2021 notice was issued in respect of the GFLH flat and other works. The Council Witness confirmed during the Inquiry that he did not consider that enforcement action could have been taken in respect of the other flats which Mr Khan contends were present in No. 22 at the time when the 2021 notice was issued.

68. In March 2021 Mr Khan applied for an LDC for four flats (Council Ref. 212706CPE), the application was refused, and no appeal was made.

69. In July 2021 another site visit was carried out and the Council Witness noted that the entire property was empty and undergoing refurbishment. He was accompanied by Mr Khan who told him that the intention was to wait for the consent for the flats before occupying them.

70. Mr Khan said at the Inquiry that the building underwent refurbishment between May and August 2021. However, the evidence submitted by the Council suggests that works to the building were carried out at least from October 2020. Furthermore, the notes and photos provided by the Council provide clear evidence that the FFRH flat was consistently not capable of being occupied between October 2020 and February 2021. Taken together with Mr Khan's statement regarding refurbishment, there was a period of 7 months when the FFRH was not occupied as a flat.

71. Turning to the information provided by Mr Khan in support of his appeal. This amounts to copies of tenancy agreements and documents regarding Council Tax. This evidence must pass the test of being precise and unambiguous if Mr Khan is to rely upon it to demonstrate that the flats were immune from enforcement action at the time when the notices were issued.

72. For the GFRH flat, which is Flat 22A for the purposes of the tenancy agreement, there are tenancy agreements which cover some of the period during which Mr Khan says the flat was rented out. During the four years preceding the date when the 2022 notice was issued (26 May 2018 to 26 May 2022) the tenancy agreements provided cover the period between May 2018 and January 2019.

73. For the GFLH flat, which is flat 22B, again there are tenancy agreements which cover some of the period identified by Mr Khan although the earliest agreement dates from a year later than that associated with Flat 22A. For the four year period preceding the date when the 2021 notice was issued (25 Feb 2017 to 25 Feb 2021) the tenancy agreements cover between November 2016 to November 2017 and May 2018 and November 2018.

74. The tenancy agreements in respect of the FFRH flat (Flat 22C) and the FFLH flat (Flat 22D) also cover part of the period identified by Mr Khan. For the four year period preceding the date when the 2022 notice was served (26 May 2018 to 26 May 2022) the tenancy agreements in respect of the FFLH flat cover almost the full four years, but the record in respect of the FFRH flat is more limited.

75. Mr Khan argues that the reason why the tenancy agreements do not cover the full period during which he says the flats were rented is because they were rolling tenancies. This could explain the lack of tenancy agreements to cover the full 7.7 years stated by Mr Khan or the four year period required to be shown to achieve success on ground (d). Also, the person named in the tenancy agreement for the GFLH flat (22B) which relates to the period ending November 2018 shares the same name as the person occupying the flat when the site visit was carried out in October 2020. This could be taken to show that this person continued to be a tenant on the rolling tenancy basis.

76. However, there are also errors within the tenancy agreements which the Council highlighted when Mr Khan was cross examined. For example, on a tenancy agreement relating to the FFRH flat (22C) dated 29 May 2017, the period of the tenancy is set out as 29 June 2018 to 28 December 2018. There is a similar error on a tenancy agreement dated 14 October 2014 relating to the GFLH flat (22B). Mr Khan did not provide a clear explanation for these errors, and he explained that he had simply passed on the information which the company which was managing the letting of No. 22 for him had provided.

77. The Council argues that tenancy agreements do not provide evidence of occupation of No. 22 as flats. In the absence of any supporting evidence in the form of statements from former occupiers of the flats, rent receipts or bank statements, utility bills/payments or other information, I consider that this proposition is correct.

78. Mr Khan said that this kind of information had been available but was no longer, following the closure of the property company. Furthermore, he said that he has asked former tenants for supporting statements, but they were too busy to provide them. However, notwithstanding these obstacles, the onus is on the appellant/s to demonstrate that the use as flats is immune from enforcement action and the tenancy agreements which Mr Khan has provided, on their own, do not do so.

79. Mr Khan is also relying on information in relation to Council Tax. He submitted a letter which is undated which he says is confirmation from the Council that Council Tax has been issued on the GFLH, GFRH, FFLH and FFRH flats since 21 June 2017.

80. The Council has provided a copy of a letter from its Local Tax Team which confirms that the FFLH flat has been registered for Council Tax since 21 June

2017 and is being billed for Council Tax purposes. The Local Tax Team advise that it confirmed to the owners that each of the four flats has been registered for Council Tax since 21 June 2017 on 6 July 2021. There is, therefore, no dispute between the parties that four flats at No. 22 have been billed for Council Tax.

81. Mr Khan also provides Council Tax Bills in respect of the FFLH flat and the GFRH flat. In relation to the FFLH flat the bill is for the 2020/21 Council Tax year, but it refers to the year April 2019 to March 2020 when it sets out that payments were made. There is then a refund on these payments.

82. In relation to the GFRH flat the bill is for the year 2021/22 and it refers to charges for that year. However, it also says the Council Tax balance for 2020/21 were the subject of Court proceedings.

83. In common with the evidence in the form of tenancy agreements the evidence on Council Tax is incomplete. There is no evidence of Council Tax having been paid, in fact in respect of the GFRH flat there is evidence of non-payment.

84. Mr Khan stated his opinion at the Inquiry that the decision to band No. 22 as four flats must have been made by the Valuation Officer having determined the flats were in existence before issuing Council Tax for each dwelling. He said that the Council must have got in touch with the property management company. However, there is no evidence to corroborate these statements.

85. From the Council's perspective its investigations have led it to assume that the banding arose from an application for licencing under the House in Multiple Occupation (HMO) regime by Mrs Virk. However, it has been unable to provide evidence of such an application or an HMO licence.

86. The Council argue that a determination that a building is in use as flats for the purposes of Council Tax banding is not made on the same basis as an assessment for planning purposes. The Council also says that the Valuation Office Agency will separately band a property if it contains facilities capable of separate use. A VOA leaflet has been submitted in support of this which refers to key points which are considered when assessing whether a property is formed of self-contained units. However, this information in itself does not undermine Mr Khan's position that the Council Tax banding is evidence of use as flats.

Conclusion - Ground (d) (Appeals A, B, and C)

87. In respect of the three flats which are the subject of the 2022 notice, the GFRH, FFLH and FFRH flats (22A, 22C and 22D), I have found that there were several months when at least one of the flats (FFRH flat) was unoccupied. This time period goes well beyond what could reasonably be regarded as associated with refurbishment works and the Council would not have been able to take enforcement action against the use of those three flats during that period.

88. There is evidence which points to the occupation of the GFLH which is the subject of the 2021 notice, during the significant periods when one or more of the other flats were unoccupied and substantial building works were ongoing at the property.

89. There is a high degree of ambiguity surrounding the use of No. 22 as a single dwelling house in the light of statements by Mr Khan to the Council during site visits and the information which he provided as agent when making applications to the Council. Furthermore, there is a lack of clarity around extensions and internal changes to the building which raise questions about whether the flats are the same as those which Mr Khan says have been in use for over four years.

90. The tenancy agreements do not fully cover the relevant periods. Whilst this could be explained by the 'rolling' nature of the tenancies, there are also errors in some of the agreements which have been provided which have not been explained by Mr Khan. There is also no supporting evidence to show that rent has been paid and no witness statements from tenants to establish their occupation and use of No. 22.

91. The Council Tax evidence demonstrates that for Council Tax purposes No. 22 has been considered to have been in use for four flats for over four years. However, there is a lack of clarity around whether or not the criteria used for that assessment apply to use as four flats under planning regulations. Furthermore, there is limited evidence to show that Council Tax was paid consistently on all four of the flats. In any event on its own evidence on Council Tax would be insufficient to establish lawfulness in the light of the inconsistency and gaps in other evidence.

92. In conclusion, the evidence which has been submitted in relation to both the GFLH flat and the GFRH, FFLH and FFRH flats, is neither unambiguous nor precise. Consequently, it does not demonstrate on the balance of probabilities that on the date when the notices were served no enforcement action could be taken in relation to the material change of use which is described in the breaches.

93. For the reasons set out above the appeals on ground (d) should not succeed.

Ground (a) and the Deemed Planning Application (DPA) (Appeal A only)

94. An appeal on ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The DPA is derived from the breach as it is set out in the notice, which I have corrected.

95. The description of development for the purposes of ground (a) and the DPA is as follows:

> 'The erection of a breeze block structure fronting St Andrews Road (marked with an 'X' on the attached plan), the removal of 2 first floor windows and bricking up of the window apertures (each marked with a 'Y' on the attached plan) and the material change of use of the ground floor left-hand part of the property (marked with a 'Z' on the attached plan) to a use as a separate self-contained dwelling'.

The Main Issues

96. The main issues are:

- The effect of the breeze block structure and the removal of windows and the bricking up of window apertures on the character and appearance of No. 22 and the surrounding area.
- Whether or not the self-contained dwelling (the GFLH flat) provides acceptable living conditions for current and future occupants.

Reasons

Character and appearance

97. No. 22 occupies a prominent position at the junction of St Andrews Road with Brassie Avenue. Although the building has been altered and there are remnants of earlier extensions, in its unaltered form it would have had a symmetrical frontage either side of the entrance door. It has a low wall on the St Andrews Road frontage such that the front face of the building is visible as part of the street scene including from the area of open space on the opposite corner of the junction.

98. The surrounding area is characterised by established dwellings generally in short terraces with a harmonious, rhythmic quality. There is extensive use of red brick with some painted render. No. 22 is a detached building, which is inconsistent with this character and consequently it has an imposing presence in the street scene. However, its symmetrical appearance, red brick boundary walls and render, have the effect of moderating this inconsistency.

99. It was agreed by the parties at the Inquiry that the breeze block structure, referred to in the 2022 notice had been removed. However, I noted during the site visit that a small part of the structure remains on site. Based on photographs provided by the Council the breeze block structure took the form of blocks upon and immediately behind the boundary wall fronting St Andrews Road. This is consistent with the remains which I saw on site.

100. The use of breeze blocks and the height and extent of the breeze block structure is at odds with the traditional red brick boundary walls and in its original form it would have obscured much of the ground floor frontage. As such it would have had an adverse visual impact on No. 22 and on the street scene of which it forms part.

101. Turning to the windows, the works which have been carried out damage the symmetrical appearance of the frontage as a consequence of the removal of the first floor left hand window. The removal of the first floor middle window introduces an area of blank wall above the front door which also puts the appearance of the building at odds with the regimented fenestration on nearby houses.

102. At first glance it appears that the upper left hand window has been replaced since the notice was issued. However, on closer inspection and having been inside the building, what has actually happened is that a fully glazed window frame has been attached to the outer skin of the building. I have regarded this as being an obvious alternative.

103. The attached frame does not have the same appearance as the other windows or the same reflective qualities. The presence of blockwork or brickwork behind it results in a disconnect with the activities inside the building

unlike other windows in the building and on the street. For those reasons the attached frame does not have the same effect on the building as a replacement fully functional window and it is not an acceptable alternative in terms of its visual impact.

104. For the reasons set out above the breeze block structure and the removal of windows and the bricking up of window apertures have a harmful effect on the character and appearance of No. 22 and the surrounding area. The development is therefore contrary to Policies D3 and D6 of the London Plan and Policies 7.4 and 7B of the Ealing Development Management Development Plan Document (the DPD). These policies, jointly, require development to respond to the site context and that it be of a high quality and ensure that development in existing built areas complements building pattern, materials and detailing and complements the building and context.

Living conditions

105. Policy D6 of the London Plan deals with housing quality and standards and sets out that housing development should provide adequately sized rooms. This requirement is reflected in Policy 3.5 of the DPD. The GFLH flat provides 28 square metres of floorspace on the basis of a measurement given by Mr Khan. This falls well short of the minimum space standard for a studio/one single bedroom one person dwelling.

106. Policy D3 of the London Plan requires a design-led approach to development proposals which deliver appropriate outlook and achieve indoor environments which are comfortable and inviting for people to use. In the same vein Policy 7B of the DPD seeks to ensure that new development achieves a high standard of amenity for all users.

107. On the basis of the evidence and my site visit I found the GFLH flat to be cramped reflecting the failure to comply with the minimum space standards. The kitchen is separated from the living/sleeping space, but it is very narrow and limited light is provided from an external door which provides no outlook. The w.c. and shower room also have limited light and means of ventilation. There is a comparatively large window serving the living/sleeping space, and this does provide light and fresh air, however it does not outweigh the other deficiencies of the living environment.

108. For the reasons set out above I find that the self-contained dwelling (the GFLH flat) does not provide acceptable living conditions for current and future occupants. The development is therefore contrary to policies D3 and D6 of the London Plan and policies 3.5 and 7B of the DPD

Conclusion - Ground (a) and the Deemed Planning Application (DPA) (Appeal A only)

109. The development does not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

Appeal D

110. The application for the LDC related to the use of No. 22 as four flats. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

111. Mr Khan's application was on the basis that all four flats were formed and have existed for the same length of time and that they are lawful because no enforcement action may be taken in respect of them. The onus is on the appellant to make out his case to the standard of the balance of probabilities.

112. Under s171B(2) of the Act, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

113. The LDC application is dated 7 April 2022. Therefore, Mr Khan must show that the use as four flats was established by 7 April 2018 and has continued without interruption until the date when the application was made.

114. My consideration of the appeals on ground (d) has addressed the time period 25 Feb 2017 to 25 Feb 2021 in respect of the GFLH flat and 26 May 2018 to 26 May 2022 in respect of the GFRH and first floor flats. These time frames cover the four year period during which Mr Khan must demonstrate No. 22 was used as four flats in order for an LDC to be issued.

115. I have concluded that it has not been shown that either the GFLH flat or, taken together, the other flats have achieved immunity from enforcement action. It follows that on the same basis Mr Khan has not demonstrated, on the balance of probabilities that No. 22 has been in use for four flats between 7 April 2018 and 7 April 2022.

116. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of four flats at 22 St Andrews Road, Acton, W3 7NE was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Sarah Dyer

Inspector

APPEARANCES

Mr Ijaz Khan	Appellant

For the Council:

Mr Roderick Morton	Advocate
Mr Alex O'Neill	Planning Enforcement Manager

DOCUMENTS SUBMITTED TO THE HEARING

By the appellant:

None

By the local planning authority:

Council Opening

Email from the Council's Local Tax Team dated 9 March 2023

List of documents referred to only by Mrs Virk and withdrawn with appeal 3273054

Pre-Inquiry Note – Council Response

Copy of site visit (30 September 2020) photos (Already submitted as Appendix 29)

Council Closing