



Appeal Decision

Site visit made on 15 November 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2024

Appeal Ref: APP/Y5420/C/22/3297331

198 High Road, London N22 8HH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Louie Kyriacou (Arima Properties Ltd) against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 16 March 2022.
 - The breach of planning control as alleged in the notice is the creation of a new dwelling at the rear of the ground floor of the property.
 - The requirements of the notice are:
 1. Cease the use of the ground floor for residential accommodation.
 2. Remove from the property the kitchens and any internal dividing doorways and partitioning facilitating the use of the ground floor for residential purposes.
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In section 3 the deletion of the alleged breach in its entirety and substituting instead the words "the material change of use of the property by the creation of a new dwelling at the rear of the ground floor".
2. Subject to the above corrections, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. Under section 176(1) of the Town and Country Planning Act 1990 ("the 1990 Act"), wide powers are available to me to correct any defect, error or misdescription in the notice, or to vary its terms. This is provided that the correction or variation would not cause any injustice to the appellant or the local planning authority.
4. The allegation does not precisely describe the development alleged to be in breach of planning control. It refers to the 'creation of a new dwelling' which is not clear whether it refers to operational development or a material change of use as per s55 of the 1990 Act. From the reasons in the notice and from the representations submitted, it appears that the intention was to allege a material change of use.
5. I consider that I can correct the allegation without injustice since there is nothing to suggest any confusion between the parties as to the intention of the notice in this regard. In particular, it is clear from the appellant's appeal

submissions that he has not been misled by the incorrect framing of the allegation and that the nature of the breach of planning control is understood. I shall therefore proceed on that basis and correct the notice so that it refers to a material change of use.

Procedural Matters

6. The appeal was originally made on grounds (b), (d), (f) and (g). In appealing on ground (b) the appellant contends that the breach of planning control alleged in the enforcement notice has not occurred. However, the appellant also refers to the definition of development under section 55 (1) of the 1990 Act and whether a material change of use has occurred.
7. As such, I consider that there is a hidden ground of appeal on ground (c), namely, that those matters stated in the notice (if they occurred) do not constitute a breach of planning control. This has a degree of overlap with the appeal on ground (b). As the Council has had sight of the points raised by the appellant and had opportunity to respond at final comments stage, I am satisfied that no injustice would be caused by me taking the approach that the appeal is also proceeding on ground (c). I have dealt with grounds (b) and (c) together.

Grounds (b) and (c)

8. To succeed on ground (b) the onus is on the appellant to show that what is alleged in the notice has not occurred as a matter of fact.
9. It is common ground between the parties that a dwelling exists at the rear of the ground floor of the property. This was also readily apparent from my visit. The appellant contends however that, whilst internal works have taken place which have resulted in the floorspace of the dwelling being reduced, the creation of a new dwelling has not occurred as a matter of fact.
10. The Council, whilst accepting that a residential unit at the rear of the ground floor of the property had become lawful due to the passage of time, consider that these internal alterations and subsequent reduction in floorspace has resulted in a new planning unit being created which requires planning permission.
11. It is clear that a dwelling exists at the rear of the ground floor of the property and that more recent internal works have taken place to alter the internal layout and size of that dwelling. Whether those works and alterations amount to development and a material change of use are matters which are addressed in the ground (c) appeal. Accordingly, the appeal under ground (b) fails.
12. An appeal under ground (c) is what is alleged in the notice does not constitute a breach of planning control. The definition of 'development' at s55(1) of the 1990 Act includes the making of a material change in the use of any buildings or other land. However, the concept of a 'material change of use' is not defined in statute or in any statutory instrument and is a question of fact and degree in each individual case. For a material change of use to occur there must be a significant change in the character of the use from what has taken place previously.
13. In order to ascertain whether or not a material change of use has taken place, it is first necessary to ascertain the correct planning unit. When applying the

three broad tests as set out in *Burdle*¹, I am satisfied that there are two separate planning units on the ground floor of the property. These are the retail unit fronting High Road and the dwelling to the rear. Both units are physically separate and each benefit from their own access. This does not appear to be disputed by the parties.

14. The area of dispute is focused on the internal works carried out which have resulted in more of the ground floor being incorporated into the retail unit, reducing the floorspace of the dwelling. Put simply, the retail unit has increased in size whilst the dwelling has decreased in size. Any material change in the size of the planning unit could amount to a material change of use and require planning permission.
15. The internal works carried out have seen the room formerly used as the dwelling's bedroom changed into a staff area associated with the retail unit. The door providing internal access from this room into the dwelling has been blocked up. This has had the effect of changing what was previously a one-bedroom residential unit into effectively a studio flat with its sleeping, living, and cooking facilities all contained within a single room.
16. Although planning permission HGY/2018/0518 ("the 2018 planning permission") was never implemented, the drawing titled 'Ground floor plan' submitted as part of that application showed the layout of the ground floor before the bedroom was changed into a staff area. Notwithstanding the loss of the bedroom, the internal layout otherwise remains unchanged. The measurements included on this plan show that the bedroom measured approximately 10.69sqm in area, the living and kitchen area around 13.31sqm, and shower room roughly 4.81sqm. The hallway, stairs, and cupboard also provide somewhere in the region of 4.77sqm. The loss of the bedroom has therefore resulted in the dwelling losing almost a third of its overall floorspace.
17. The internal changes have had no material effect on the external appearance of the property and cause no harm to the character and appearance of the area. Nevertheless, in *Richmond*² the Court held that the extent to which a use fulfils a legitimate or recognised planning purpose is a relevant factor in determining whether or not a material change of use has occurred. I therefore consider the Council's policy objection in relation to the size of the dwelling and the resulting impact on the living conditions of existing and future occupiers to be a material consideration.
18. The internal works have resulted in a dwelling with a floorspace which is greatly reduced from what previously existed, and one which falls significantly below the minimum internal space standards as set out in Policy D6 of the London Plan (adopted March 2021), Policy SP2 of Haringey's Local Plan Strategic Policies 2013-2026 (2017), and Policy DM12 of Haringey's Development Management DPD (adopted July 2017). Although not determinative in isolation, I consider that this policy conflict is indicative of the significant change in the size and character of the planning unit that has taken place. This has, in my view, created a new chapter in the site's planning history and a new dwelling.

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

² *Richmond upon Thames LBC v SSETR & Richmond upon Thames Churches Housing Trust* [2001] JPL 84

19. Having regard to all of these factors together I conclude, as a matter of fact and degree, that a material change of use constituting 'development' as defined at s55(1) of the 1990 Act has occurred. Since no planning permission has been granted for the development, it amounts to a breach of planning control. Consequently, the appeal on ground (c) fails.

Ground (d)

20. An appeal on ground (d) is that, at the date the notice was issued, no enforcement action could be taken due to the passage of time. To succeed, the appellant will need to demonstrate on the balance of probabilities that the use as a dwelling commenced and continued for a period of four years without interruption prior to the date the enforcement notice was served on 16 March 2022.
21. The appellant contends that a dwelling has existed at the rear of the ground floor of the property since 1996 and has provided a range of documentation seeking to demonstrate this. These include tenancy agreements, an electricity bill, energy performance certificate (EPC), and a deposit protection certificate. The Council acknowledge that a residential dwelling had existed at the rear of the ground floor of the property for such a time that it had become lawful, and from the evidence available to me I find no reason to disagree with that view.
22. However, for the reasons set out in the ground (b) and (c) appeal above, I have found that the internal works and alterations to reconfigure the ground floor of the property amount to a material change of use. Therefore, to succeed on ground (d) it will need to be demonstrated that these works took place prior to 16 March 2018.
23. As detailed above, the plans submitted as part of the 2018 planning permission showed the layout of the ground floor before the bedroom was changed into a staff area for the retail unit. In the appellant's submissions it is stated that the internal works, which involved changing the bedroom of the dwelling to retail use, were carried out following the approval of the 2018 planning permission on the 19 March 2018. Therefore, by the appellant's own admission the works took place within four years prior to the issue of the notice.
24. I acknowledge that much of the documentation demonstrates the presence of a residential unit on the ground floor of the property. However, there is no evidence to indicate that this documentation relates to the dwelling as existed after the internal works and alterations were carried out. The EPC³ provided does appear to relate to the dwelling after the internal works were carried out as it gives the total floor area of the dwelling as 23sqm. Nevertheless, the date of the EPC is given as 9 November 2018, which does not assist the appellant in demonstrating that the use had commenced and continued for a continuous period of four years prior to the issue of the notice.
25. The appellant has therefore failed to show, on the balance of probability, that the use as a dwelling commenced and continued for a period of at least four years without interruption prior to the issue of the enforcement notice. Accordingly, the ground (d) appeal fails.

³ Appendix E of the appellant's Statement

Ground (f)

26. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
27. The requirements of the notice are to cease the residential use of the ground floor and remove the kitchens and internal dividing doorways and partitioning that facilitate the residential use. I am satisfied, therefore, that the purpose of the notice is to remedy the breach of planning control.
28. The appellant claims that the notice is ambiguous as it does not state what the ground floor could be used for following the cessation of the residential use. However, there is no requirement for the Council to identify the lawful use of the site. All that is required of the notice is to identify the breach of planning control and the steps and time period required to rectify it.
29. It is also asserted that the notice is excessive as it in effect requires the appellant to carry out the 2018 planning permission which permitted the change of use from Class C3 (dwellinghouse) to Class A1 (retail). The notice however does not seek the implementation of the 2018 planning permission, but merely requires the residential use to cease.
30. Finally, the appellant considers that the steps are excessive as the proportionate remedy would be to restore the ground floor to its former layout, as shown on the plans submitted as part of the 2018 planning permission. That former layout included the previous dwelling which had become lawful due to it being established for a period in excess of four years.
31. However, as held in *Panton*⁴, that established use has now been lost through the formation of a new planning unit and the creation of a new chapter in the planning history on the site. As a result, the enforcement notice cannot require the ground floor to be restored to its former layout.
32. Since the purpose of the notice is to remedy the breach of planning control, the requirements of the notice are not excessive and no lesser steps other than those set out in the notice would achieve that purpose. Therefore, the appeal on ground (f) fails.

Ground (g)

33. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The notice specifies a period of six months after the notice takes effect.
34. The appellant argues that the compliance period is insufficient as the dwelling is currently occupied with a tenancy secured until 1 November 2022, and it would be unreasonable to expect that tenancy to be terminated. It is also stated that as works could not begin until the dwelling was vacated, a longer period would be required for contractors to carry out the works. A compliance period of twelve months has been suggested.
35. Clearly the tenancy agreement referred to by the appellant in his appeal submissions has now expired, and whilst it was apparent from my site visit that

⁴ *Panton and Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461

the dwelling was still occupied, I have no information as to any new tenancy agreement which may be in place. In any event, the appellant has not demonstrated why a six-month period would be insufficient for the use to cease or for the termination of any tenancy agreement. Similarly, whilst I accept that the physical works would likely be carried out after the dwelling was vacated, these works are modest and would not take a lengthy period to complete.

36. I have nothing beyond mere assertions to support the appellant's stance that compliance with the notice could not be achieved within the time afforded. It has therefore not been shown that the period falls short of what should reasonably be allowed. Accordingly, the appeal on ground (g) fails.

Conclusion

37. For the reasons given above I conclude that the appeal fails. I have therefore upheld the enforcement notice as corrected.

David Jones

INSPECTOR