



Appeal Decisions

Site visit made on 20 November 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Appeal A Ref: APP/Z5060/C/23/3326546

Land and premises at 204 Longbridge Road, Barking IG11 8SY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Iqbal Alam against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
- The notice was issued on 27 June 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use to an Estate Agency business (E(g)(i)).
- The requirements of the notice are to:
 - Cease the use of the premises as an Estate Agency business.
 - Remove all fixtures and fittings relating to the unauthorised use.
 - Remove all subsequent waste material from the premises.
- The periods for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Summary Decision: The appeal is allowed and the enforcement notice is corrected and quashed.

Appeal B Ref: APP/Z5060/X/22/3311100

Land at 204 Longbridge Road, Barking and Dagenham, Barking IG11 8SY

- 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 I Alam against the decision of the Council of the London Borough of Barking and Dagenham.
- The application ref 22/01522/CLUE, dated 8 September 2022, was refused by notice dated 26 October 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 change of use of partial ground floor of a single dwelling (C3(a) to an Estate Agent (E(g)(i)).

Summary Decision: The appeal is allowed.

Application for Costs

1. An application for costs was made by Mr Iqbal Alam against the Council of the London Borough of Barking and Dagenham. This application is the subject of a separate decision.

Procedural Matters

2. Rather than the lengthy description used in the LDC application form, the description of development in the heading above for Appeal B has been taken from the decision notice. This has been repeated by the appellant in their appeal form.

The Notice and the LDC Application

3. Before considering the grounds of appeal on Appeal A, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
4. In the case of Appeal B, the powers of correction include those set out in section 191(4) of the 1990 Act.
5. The appellant has made the case that the notice that is the subject of Appeal A is a nullity. In doing so he says that the signatory of the enforcement notice did not have the necessary authority to issue the notice. In support of his case he has provided two appeal decisions in which similar matters were considered by other Inspectors.
6. Whilst the appellant's evidence is noted, I am mindful of the settled caselaw that informs that an enforcement notice is only a nullity if the defect of the notice is evident on the face of the document. For this reason, I am unable to assess the background to the issue of the notice. There is a channel for such matters to be considered and that is through the Courts. I cannot, therefore, find the notice to be a nullity for the reason suggested. Whilst I have had regard to the approach of other Inspectors, I consider my approach to the appellant's claims to be correct in this case.
7. Moving on, part 1 of the enforcement notice states that there has been a breach of planning control falling within section 171A(1)(a) of the 1990 Act, which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'. As the notice does not allege a **material** change of use, it follows that the allegation would not constitute development for the purposes of section 55(1) of the 1990 Act.
8. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
9. Notwithstanding this, having regard to the notice as a whole, it is clearly directed at a material change of use. Furthermore, the appellant's evidence demonstrates that he has understood this. I am, therefore, satisfied that a correction to the notice to include reference to a material change of use would not cause injustice in this case.

10. I also intend to remove the word 'unauthorised' from the allegation. It is unnecessary as the allegation is of development without planning permission. Subject to my conclusions on grounds (d) and (f), I also intend to replace the words 'unauthorised use' in the second requirement with the description of the use that is alleged. These corrections are minor and do not materially change the effect of the notice. Accordingly, injustice would not be caused. They are, however, necessary in the interests of clarity and precision.
11. With regard to both the description of the development in the enforcement notice and that given for the LDC, I have two concerns. Firstly, the LDC description includes '(C3(a))' and both the LDC and the enforcement notice description include '(E(g)(i))'. The evidence suggests that this is reference to classes of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). The descriptions would be more precise if they referred to the relevant Class of the 1987 Order in full. They would also be more precise if they were to refer to an 'estate agent's office', which is a more accurate description of the use taking place.
12. Secondly, part 2 of the enforcement notice and the plan attached to the notice makes it clear that the land to which the notice relates is the whole of the property at 204 Longbridge Road. The allegation, as drafted, is of a change of use of the whole of this property. However, the LDC description refers to the use of only part of the ground floor as an estate agent. The extent of the use is highlighted in blue on the plan number E-GFP1 Rev.B submitted with the appeal. This is consistent with my observations at the site visit, where I saw the entrance hallway, w.c. and office accommodation within a part of the building that was physically and functionally separate to the remainder of the building.
13. The above does not appear to be disputed by the Council. Indeed, the delegated report prepared in respect of the LDC application does not question the accuracy of the plans submitted with the LDC application in terms of the extent of the use within the property for which the LDC was sought. In view of this, I am satisfied that, were I to correct the notice so as to target only the part of the ground floor of the property highlighted in blue on the plan number E-GFP1 Rev.B, injustice would not be caused.
14. On a final matter, the appellant suggests that the notice lacks precision as 'it is not clear what the LPA refers to as the 'additional kitchen' to be removed'. He also says that 'the fixtures and fittings referred to in the Notice are indistinguishable from those that are found in a dwelling'. The notice does not, however, require the removal of a kitchen and the notice makes clear that the only fixtures and fittings to be removed are those that facilitate the use alleged. I do not, therefore, find the notice to be either a nullity or invalid for these reasons.

Ground (d) and Appeal B

The Main Issues and Considerations

15. Appeal A is made on ground (d), which is that at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by the matters alleged.

16. As for Appeal B, section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. For the avoidance of doubt, this means that the planning merits of the development are not relevant to Appeal B and the main issue is whether the Council's decision to refuse to grant a LDC was well founded.
17. Despite the Council's reference to certain provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 in the delegated report for the LDC application, the appellant does not make the case that the change of use of part of the ground floor of 204 Longbridge Road was permitted by the Order. The appellant's case is that the use has become immune from enforcement action due to the passage of time.
18. Accordingly, for appeal (d) and the LDC appeal, the starting point is the date of the breach. In order to succeed, the appellant must show that, prior to the issue of the enforcement notice and the submission of the LDC application, the use that is the subject of both appeals had continued substantially uninterrupted for a period of ten years or more beginning with the date of the breach¹.
19. The test of the evidence in the case of both the ground (d) and Appeal B is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. This advice is relevant to the ground (d) appeal, as well as Appeal B.

Reasons

20. The appellant's evidence begins with a number of sworn affidavits. The first is from the appellant himself who says that he has used more than half of the ground floor of the appeal building as an office for his company, Georgie Bungle Ltd (formerly Alamco Ltd), trading as Alamo Estates. He says that this use began on 18 October 2010 and has continued thereafter.
21. This evidence is supported by four other sworn affidavits from the following individuals. Mohammed Imran Siddiqui says that he undertakes accountancy work for the business and has done so since 20 October 2010. He says that he visits the office weekly and that he also meets clients there.
22. Hussain Rifaat Ahmed says he worked for the estate agency on a consultancy basis for around 18 months between 2019 and 2021, working from the office at the appeal site. Muzaffor Murshed Ahmed says he was employed to work for the estate agency, working from the office for a period of around 18 months between 2013 and 2015. Both say that they believe the office remains at the site. Finally, Mohammed Foyssal Hussain says that he started working from a

¹ Section 171B(3) of the 1990 Act.

desk at the office for his own business in October 2010, but was then employed by the estate agency between April 2011 and September 2012.

23. Although these final three affidavits cover only short periods since 2010, they corroborate the evidence of the appellant and Mr Siddiqui.
24. In addition to this, I have been provided with annual accountancy invoices for book keeping, payroll, VAT returns, etc., as well as correspondence from HMRC covering most of the years from when the appellant says the office use commenced. They give the appeal site address and state either the trading name or one or other of the above-mentioned names of the estate agency.
25. There is also a large bundle of correspondence, builder's receipts, invoices, etc. that are dated throughout the period since 2010. They also give the appeal site address and one of the three names of the business referred to by the appellant. I acknowledge that the registered address of a business might well be different to the address from which the business operates. However, the documents do nothing but corroborate the appellant's claim that his business has operated from the office at the appeal site since 2010.
26. Of particular note is the Matrix invoice for works 'to create office space'. This is dated October 2010, when the appellant says the office use commenced.
27. The bundle includes BT phone and internet bills, various business gas and electricity bills², and a Business insurance invoice for the appeal site address. As they relate to services supplied to the appeal site, these assist more than the above-mentioned documents in corroborating a continuous office use since 2010.
28. The Council has pointed to the plans submitted with a prior approval application 17/00593/PRIOR6. Rather than an office, the Council say that the existing plan, dated January 2016, shows a living, kitchen and dining room at ground floor. I note, however, that the plan was submitted with an application for proposed operational development to the rear of the appeal building. It was not, therefore, produced for the purposes of demonstrating the use of the property at that particular time. Nevertheless, it is evidence that contradicts the appellant's claims.
29. Notwithstanding this, I am mindful of the significant weight that is carried by evidence provided in sworn affidavits, in view of the sanctions that could be imposed should these contain false or misleading evidence. Furthermore, the appellant's documentary evidence is nothing but corroborative of his claims and the evidence given in the affidavits. For these reasons, I find the appellant's evidence to be precise and unambiguous. Whilst the Council's evidence casts a small degree of doubt over the appellant's claims, it is not sufficient to demonstrate that his version of events is less than probable.

Summary

30. All things considered, I am satisfied that the appellant has discharged the burden of proof that is upon him. I find it more likely than not that the use of part of the ground floor of the appeal site as an estate agent's office commenced in October 2010 and that it has continued substantially

² All relate to the appeal site, bar one which relates to another property elsewhere. I assume that this has been included in error.

uninterrupted for more than a period of 10 years from that date. Accordingly, on the date the enforcement notice was issued and on the date the LDC application was made, the use was lawful.

Conclusions

31. From the evidence before me, I conclude that the ground (d) appeal on Appeal A succeeds. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (a), (f) and (g), and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not need to be considered.
32. I also conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of partial ground floor of a single dwelling (C3(a) to an Estate Agent (E(g)(i) was not well-founded and that Appeal B should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

Formal Decision - Appeal A

33. It is directed that the enforcement notice is corrected by:
- The deletion of the words 'unauthorised change of use to an Estate Agency business (E(g)(i)' in part 3 and their substitution with the words 'material change of use to a use as an estate agent's office, falling within Class E(g)(i) of Part A, Article 3, Schedule 2 of The Town and Country Planning (Use Classes) Order 1987 as amended of part of the ground floor shown highlighted in blue on the plan attached to this notice with the title "Enforcement Notice Plan - Ground Floor Layout Plan"; and
 - The addition to the notice of the plan attached at the end of this decision, which has the title "Enforcement notice Plan - Ground Floor Layout Plan".
34. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

Formal Decision - Appeal B

35. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

J Moss

INSPECTOR

by J Moss BSc (Hons) DipTP MRTPI

Appeal Reference: APP/Z5060/C/23/3326546

Extract of Drawing Number E-GFP1 Revision B

Architectural floor plan of a building with dimensions and labels. The plan shows a layout with two offices, a hall, and a staircase. Dimensions are provided in meters (m) and millimeters (mm). The plan is bounded by a boundary line and a front driveway. The building is located on Connaught Road, No. 204.

Labels and Dimensions:

- BOUNDARY LINE**: Indicated on the left side.
- FRONT DRIVEWAY**: Indicated at the bottom left.
- ENTRANCE**: Indicated at the bottom center.
- OFFICE**: Two rooms labeled "OFFICE".
- HALL**: A room labeled "HALL" at the bottom right.
- STAIRCASE**: A staircase located between the two offices.
- CONNAUGHT ROAD**: Indicated at the bottom right.
- NO. 204**: Building number indicated at the bottom right.

Dimensions (m):

- Overall width: 11.440
- Overall depth: 17.470
- Office 1 width: 3.250
- Office 1 depth: 3.340
- Office 2 width: 3.540
- Office 2 depth: 3.960
- Hall width: 3.540
- Hall depth: 3.440
- Staircase width: 1.000
- Staircase depth: 1.000
- Entrance width: 7.210
- Front Driveway width: 7.210

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The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 8 September 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plans with the title "Location Map" and "Location Map & Block Plan" attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

It has been demonstrated, on the balance of probability, that the use of part of the ground floor of the property as an estate agent's office commenced in October 2010 and has continued substantially uninterrupted for more than a period of 10 years from that date. The use was, therefore, lawful on the date the application for a certificate of lawful use or development was made.

Signed

J Moss

Inspector

Date: 13 February 2024

Reference: APP/Z5060/X/22/3311100

First Schedule

The use as an estate agent's office falling within Class E(g)(i) of Part A, Article 3, Schedule 2 of The Town and Country Planning (Use Classes) Order 1987 as amended of part of the ground floor of the property shown highlighted in blue on the plan attached to this certificate with the title "Ground Floor Layout Plan".

Second Schedule

Land at 204 Longbridge Road, Barking and Dagenham, Barking IG11 8SY

Notes

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plans

These are the plans referred to in the Lawful Development Certificate dated: 13 February 2024

by **J Moss BSc (Hons) DipTP MRTPI**

Land at: 204 Longbridge Road, Barking and Dagenham, Barking IG11 8SY

Reference: APP/Z5060/X/22/3311100

Scale: Not to scale



LOCATION MAP scale 1:1250

0 5 10 15 20 25 m
Metres @ 1:500 @ A0



BLOCK PLAN scale 1:500

LOCATION MAP
& BLOCK PLAN

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Ground Floor Layout Plan

Extract of Drawing Number E-GFP1 Revision B

Do not scale

