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# Appeal Decision

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**

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**Appeal Ref: APP/Z5060/C/23/3326547**

**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 28 June 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised subdivision of the property, to create self-contained unit of accommodation within the property.
- The requirements of the notice are to:
  - Cease the use of the property as a self-contained unit of accommodation.
  - Remove all alterations and fixtures enabling the creation of the self-contained unit.
  - Remove additional kitchen.
  - Remove all consequent waste material from the premises.
- The period 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.

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**Summary Decision: The enforcement notice is quashed.**

## 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.

## The Enforcement Notice

2. Before considering the grounds of appeal, 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.
3. I deal first with the appellant's case that the notice is a nullity. 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.

4. 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 do not, 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.
5. Notwithstanding the above, I still remain concerned that the notice is defective. In this regard, settled caselaw makes it clear that an enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it.
6. The land to which the notice relates is set out in part 2 of the notice as the 'land and premises at 204 Longbridge Road'. The land identified on the enforcement notice plan includes a two-storey semi-detached building, as well as a single storey outbuilding to the rear.
7. The two-storey semi-detached building has been sub-divided and accommodates an office on part of the ground floor. This is self-contained, with no internal connections to other parts of the building. Although not referred to in the enforcement notice, the use of this part of the ground floor of the building as an office is the subject of a separate enforcement notice (issued on 27 June 2023). This notice is the subject of a separate appeal<sup>1</sup>, which is also linked to an LDC appeal<sup>2</sup>. Those appeals have been determined by me in a separate decision.
8. An external side door in the building provides access to a small hallway that accommodates the stairs to the upper floors. The remainder of the ground floor of the building is set out as a self-contained unit of accommodation, which is accessed from a second door in the side elevation of the building. This is divided to accommodate a kitchen, shower room and w.c. and two separate rooms. The upper floors of the building are laid out to accommodate a kitchen and dining area, living room, bathroom, shower room and bedroom at first floor and a further two bedrooms and a shower room at second floor.
9. The layout and the use of the building, as I observed it, was such that the accommodation on the upper floors is physically and functionally separate to the office and unit of accommodation on the ground floor, which I have also described above as self-contained.
10. The outbuilding to the rear comprises a large open plan room, with kitchen facilities and a smaller room accommodating a w.c. and shower. This is the subject of a further enforcement notice, issued on 28 June 2023. This notice is also the subject of a separate appeal<sup>3</sup>, which has been determined by me in a separate decision.
11. The notice alleges 'the unauthorised subdivision of the property, to create self-contained unit of accommodation within the property'. The notice fails to refer to a material change of use, which is fundamental to an allegation of a breach of planning control relating to a use. Whilst correcting the notice in this regard

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<sup>1</sup> Appeal reference APP/Z5060/C/23/3326546

<sup>2</sup> Appeal reference APP/Z5060/X/22/3311100

<sup>3</sup> Appeal reference APP/Z5060/C/23/3326623

might not cause injustice, I have more fundamental concerns with regard to the allegation in this case.

12. There is no definition within the notice of what is meant by 'the property' in the allegation. It must, therefore, be the case that the allegation relates to the whole of the site at No 204 and not just part of it. As such, I am satisfied that the allegation of the sub-division of the appeal site is consistent with what I observed on site. Whilst I have seen reference to a mixed use, I cannot conclude that the appeal site is a single planning unit, occupied and used in such a way that the primary uses of the site are not physically or functionally separate. My observations were of at least three planning units within the appeal site.
13. However, the notice targets only a single self-contained unit of accommodation. Having regard to the various planning units I observed on site, the allegation of the creation of a single self-contained unit of accommodation is inaccurate. If the intention was to target only part of the appeal site, the notice does not identify the part of the site to which it relates.
14. If I were to look outside of the notice, which would be to look beyond what ought to be considered on the matter of nullity and invalidity, I am still not satisfied that the recipient of the notice would be reasonably certain of what he has done. I say this because, were I to disregard the parts of the appeal site that are the subject of the other enforcement notices, the remainder of the site as I observed it is occupied by not one, but two self-contained units of residential accommodation.
15. For the reasons given above, I find the notice to be defective on its face as the recipient of the notice cannot be reasonably certain of what he has done. In view of this, I have considered whether I am able to correct the notice. In this regard, I note from the planning history that the appeal site is likely to have previously been a single dwellinghouse and that at some point the site had been sub-divided in its use.
16. The evidence indicates that the sub-division has resulted in the use of part of the ground floor as an estate agent's office and the creation of at least two other units of residential accommodation. In determining the appeals relating to the office use, I have concluded that it is lawful. I cannot, therefore, correct the notice to make reference to the office use.
17. I could exclude from the effect of the notice the office accommodation. However, the evidence before me from the Council does not clarify the number of units of accommodation it says occupies the remainder of the appeal site. As such, I am not clear on the number of units the notice should refer to.
18. In addition to this, if I were to increase the number of units of accommodation referred to in the allegation, the notice would be more onerous and injustice would be caused to the appellant in these circumstances. Injustice would also result as the appellant's case on the grounds of appeal made has been prepared in respect of the allegation as put, rather than on some materially different alternative. I cannot be satisfied that his case might have been different or made on different grounds, had the notice correctly identified the material change of use that has occurred in this case.

## **Conclusion**

19. For the reasons given above, I conclude that the breach of planning control alleged in the notice is not correct and that I am not able to correct it. Even if I were, it is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act, since I cannot be certain that injustice would not be caused were I to do so. The enforcement notice is invalid and will be quashed.
20. In these circumstances, the appeal on grounds (a), (d), (f) and (g) set out in section 174(2) of the 1990 Act do not fall to be considered.

## **Formal Decision**

21. The enforcement notice is quashed.

*J Moss*

INSPECTOR