

Appeal Decisions

Inquiry Held on 3 and 4 September 2024

Site visit made on 4 September 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal A: Ref APP/P5870/X/24/3343563

Fenton Close (land rear of 13-25 Boundary Road), Wallington, Sutton SM6 0ES

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Phillips (MP Developments Ltd) against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2023/00790, dated 4 May 2023, was refused by notice dated 25 October 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is 4 new, 2-storey 4-bedroom detached dwellings with access, parking, garaging and amenity space.
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Appeal B: Ref APP/P5870/X/24/3343565

1 Fenton Close, Wallington, Sutton SM6 0ES

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Phillips (MP Developments Ltd) against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2023/00910, dated 30 May 2023, was refused by notice dated 25 October 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is a 2-storey, 4-bedroom detached dwelling.
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Appeal C: Ref APP/P5870/X/24/3343624

2 Fenton Close, Wallington, Sutton SM6 0ES

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Phillips (MP Developments Ltd) against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2023/00917, dated 30 May 2023, was refused by notice dated 25 October 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is a 2-storey, 4-bedroom detached dwelling.
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Appeal D: Ref APP/P5870/X/24/3343625
3 Fenton Close, Wallington, Sutton SM6 0ES

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Phillips (MP Developments Ltd) against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2023/00918, dated 30 May 2023, was refused by notice dated 25 October 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is a 2-storey, 4-bedroom detached dwelling.
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Appeal E: Ref APP/P5870/X/24/3343629
4 Fenton Close, Wallington, Sutton SM6 0ES

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Phillips (MP Developments Ltd) against the decision of the Council of the London Borough of Sutton.
 - The application Ref DM2023/00919, dated 30 May 2023, was refused by notice dated 25 October 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is a 2-storey, 4-bedroom detached dwelling.
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Decisions

1. Appeals A, B, C, D and E are each dismissed.

Application for costs

2. At the Inquiry, applications for costs (as regards Appeals B, C, D and E) were made by Mr Mark Phillips (MP Developments Ltd) against the Council of the London Borough of Sutton. These applications are the subject of separate Decisions.

Main Issues

3. The main issues in the appeals are whether or not the Council's refusals of the respective LDC applications were well-founded.

Reasons

4. Section 191(1)(b) of the Act is a statutory mechanism whereby a person may ascertain whether any operations which have been carried out are lawful. The application must describe the operations and a LDC should be issued where the local planning authority is satisfied of their lawfulness at the time of the application (the relevant dates therefore in these appeals being 4 May 2023 for Appeal A and 30 May 2023 for Appeals B, C, D and E).
 5. In the case of all 5 LDC applications under consideration, the application forms describe their respective dwelling (dwelling~~s~~ in the case of Appeal A, along with access, parking, garaging and amenity space) as being substantially complete.
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6. Further, the appellant's evidence is that by 16 August 2021 (almost 2 years before the LDC applications) the dwellings had been substantially completed in that the exterior walls and roofs had been completed, windows had been installed and the majority of plastering had been done¹. When what has been stated in total by the appellant² is considered along with Mr Grierson's evidence that, on a site visit on 2 June 2023 (shortly after the submission of the LDC applications) he found the dwellings to be complete, I find as a matter of fact and degree that all 4 dwellings were completed operations at the time of the applications³. Those applications sought to confirm that the operations benefited from planning permission⁴ and were therefore lawful.
7. As created and completed, the 4 dwellings each lack a substantial brick chimney stack extending from near eaves level up to the height of the ridge. Instead of such a significant and substantial architectural feature of character, the hipped roofs are bare in this regard and have been comprehensively tiled as part of unapproved completed roof schemes. What has been built results in a significant difference in the external appearance of the buildings from what was approved by planning consent constituting, as a matter of fact and degree, material deviations from the approved plans for the dwellings in the context of the scheme as a whole. And, significantly, accordance of the development with the approved plans was secured by condition. The parts of the roofs which have been tiled-over where the approved plans indicate chimneys could be subject to enforcement action, such as issue of a Breach of Condition Notice⁵.
8. For the purposes of the Act, as set out in section 191(2), operations cannot be lawful at any time if enforcement action may then be taken in respect of them. Clearly, the Council could take enforcement action as the completed operational development has not been carried out in accordance with the approved plans. The appellant raises the cases of *Rapose*⁶ and *Robert Hitchens*⁷ but they do not affect my findings as they concern development which has not been completed. The dwellings known as 1, 2, 3 and 4 Fenton Close – as carried out and completed – comprise unlawful operations. Accordingly, all appeals before me must fail – Appeals A, B, C, D and E.
9. As Appeal A does not succeed on the basis of my findings on the 4 dwellings, it is not necessary for me to address the issues raised concerning the lawfulness of other parts of the wider site subject to the application (for the appeal to have succeeded, the burden of proof was upon the appellant to demonstrate lawfulness on all aspects).

Conclusions

10. For the reasons given above I conclude that the Council's refusals to grant LDCs in respect of the applications made as regards appeals A, B, C, D and E were well-founded and that the appeals should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

¹ The appellant has also provided me with open legal advice dated 9 October 2023, notably submitted to the Council as additional evidence for the purpose of determining the LDC applications, in which it is unequivocally stated twice (at paragraphs 16 and 20) that the 4 residential units were *completed* (prior to 16 August 2021).

² LDC application forms; Sworn affidavit; Live oral evidence under affirmation; Contents of open legal advice.

³ I saw nothing on my site visit which challenged, undermined or contradicted that finding.

⁴ The planning history of the site is not repeated here, being set out in the Statement of Common Ground.

⁵ Section 187A of the Act.

⁶ *Rapose v London Borough of Wandsworth* [2010] EWHC 3126 (Admin)

⁷ *R(Robert Hitchens Ltd) v Worcestershire CC* [2015] EWCA Civ 1060

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Ashley Bowes (Landmark Chambers)

He called

Mark Phillips (Appellant)

Steven Pattie
(Chartered Town
Planner, Vail Williams
LLP)

FOR THE LOCAL PLANNING AUTHORITY: Brendan Brett (Francis Taylor Building)

He called

John Grierson
(Development
Management Planning
Officer)

INTERESTED PERSONS: Mr Steve Didd (neighbouring resident)

DOCUMENTS submitted at the Inquiry

- 1 Signed Statement of Common Ground
- 2 *Rapose v London Borough of Wandsworth* [2010] EWHC 3126 (Admin)