



Appeal Decision

Site visit made on 17 December 2024

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 JANUARY 2025

Appeal Ref: APP/T5720/C/23/3320544

Land at 59 Epsom Road, Morden SM4 5PR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Neil Jonathan Standley against an enforcement notice issued by the Council of the London Borough of Merton.
- The notice was issued on 24 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, the use of the outbuilding at the rear of the Land as a self-contained residential unit.
- The requirements of the notice are to:
 - a) Permanently cease the use of the outbuilding on the Land as a self-contained residential unit.
 - b) Permanently remove from the outbuilding all fixtures and fittings that facilitate the unauthorised use including cooking facilities, kitchen units, sinks, worktops, appliances, cooker and food preparation areas and cut the electric supply.
 - c) Permanently remove from the Land all materials and debris associated with the compliance (a) and (b) above.
- The period for compliance with the requirements is: six (6) months.
- 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 quashed.

Matters Concerning the Enforcement Notice

1. Part 1 of the Enforcement Notice (Notice) states that there has been a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (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'.
2. Whilst the Notice refers to 'a use of the outbuilding' it does not allege that a material change in the use of the land and building has occurred. It therefore follows that the allegation in the Notice would not constitute development in line with the meaning set out in section 55(1) of the 1990 Act. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. As 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 allegation set out in the Notice is, therefore, defective.
3. However, having regard to the appellant's case and the appeal under grounds (d) and (a), they have clearly understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction to the allegation to include reference to a 'material change of use' would not cause injustice.

4. In paragraph 5, step (b), the Notice requires the recipient to ‘permanently remove from the outbuilding all fixtures and fittings that facilitate the unauthorised use including cooking facilities, kitchen units, sinks, worktops, appliances, cooker and food preparation areas and cut the electric supply.’
5. Caselaw has established that where an enforcement notice attacks a material change of use it may also require the removal of works which are integral to and solely to facilitate the unauthorised use so that the land is restored to its condition before the breach¹. Accordingly, it is within the Council’s remit to require the removal of the cooking facilities that facilitate the alleged material change of use of the building as a self-contained residential unit. However, given its previous use as an incidental residential building, it is excessive to require the electrical supply to be disconnected.
6. In view of this, in paragraph 5 step (b) the words ‘and cut the electricity supply’ can be deleted. I am satisfied that a variation to the requirements in this regard would not cause injustice to either main party.

Preliminary Matters

7. Since the original decision, The Merton Local Plan 2024-2038 was adopted by the Council in December 2024 (Local Plan). This replaces the Merton Core Planning Strategy 2011 and Merton Sites and Policies Plan 2014, such that the policies cited on the Notice are no longer part of the development plan and have no weight. Therefore, the main parties were given time to provide observations on the changes to the Local Plan and I have considered the relevant replacement policies highlighted and set out within the recently adopted Merton Local Plan.
8. During the course of the appeal, the revised National Planning Policy Framework December 2024 (the Framework) was also published. However, there are no substantive changes relevant to this appeal, and no prejudice would be caused by my having regard to it.

The Appeal on Ground (d)

Evidence

9. The supporting evidence included with the ground (d) appeal includes two documents indicated as Statutory Declarations, one by Emanuele Terlizzi dated 7 January 2021 (Appendix A), and another by Mr Neil Jon Standley, dated 5 January 2021 (Appendix H). I will hereafter refer to them as SD1 and SD2 respectively.
10. SD1 is cosigned by a witness, but it is not indicated whether the witness is a solicitor, commissioner for oaths or notary public. Consequently, SD1 does not accord with the provisions of the Statutory Declarations Act 1835. However, it can still be considered as additional information and, for this decision, I will continue to refer to it as SD1. In terms of its content, the author indicates that he moved to the site in March 2016 and works to convert it into a self-contained property had been completed at that time. It goes on to indicate that he lived in the self-contained studio flat under the terms of his tenancy agreement until March 2019.

¹ *Murfitt v SSE* [1980] JPL 598; *Somak Travel v SSE & Brent LBC* [1987] JPL 630; *Newbury DC v SSE & Mallaburn* [1994] JPL 879

11. SD2 is a statement by the appellant, Mr Neil Jon Standley, it is dated and co-signed by a solicitor with her details, ensuring that it complies with the Statutory Declaration Act 1835. To summarise, SD2 states Mr Neil Jon Standley has owned 59a Epsom Road since July 2014. The garage was originally part of the house and was used for storage until September 2015. In September 2016, the garage space was insulated and converted into a habitable room. Following the completion of the works, Mr Terlizzi used the garage from March 2016 to March 2019 as a self-contained studio flat. At the end of Mr Terlizzi's tenancy, SD2 states that Ervis Daci moved into the flat and has occupied it since.
12. Appendix B to G includes copies of Tenancy Agreements, email correspondence and bank statements. They are associated with a tenant, Jessy Trechsler, occupying the site between 19 March 2019 and 19 March 2020, and then Ervis Davis and Alejandra Gonzalez Eusebio, between 7 March 2020 to 7 March 2024. For ease of reference, I have compiled a list and set it out below:
 - **Appendix B-** Tenancy Agreement between Jon Standley and Jessy Trechsler dated 17 March 2019 to 17 March 2020.
 - **Appendix C-** Email correspondence between Jessy Trechsler and Jon Standley dated 16 March 2019.
 - **Appendix D-** Bank Statements (Jon Standley) dated March 2019 to March 2020- monthly payments highlighted in yellow.
 - **Appendix E-** Email correspondence between Alejandra Gonzalez Eusebio and Jon Standley- 5 February 2020.
 - **Appendix F-** Tenancy Agreements x 4- between Neil Jonathan Standley and Alejandra Gonzalez Eusebio and Ervis Daci, dated between 7 March 2020 and 2 March 2024.
 - **Appendix G-** Bank Statements (Jon Standley) dated March 2020 to March 2023- monthly payments highlighted in yellow.
13. Furthermore, I have been provided with the information submitted with the two LDC applications for the use of the outbuilding as a self-contained residential unit, which were refused by the Council in 2021 and 2022².
14. In addition to the evidence submitted with the appeal, the refused LDC applications included correspondence and a quote of works by Raynes Park Construction dated 9 June 2016. The correspondence indicates a deposit had been paid for works at the site and states the date they intend to commence. The project is titled 'Annex conversion to Studio Flat' and lists the external and internal works to be undertaken at that time. I will hereafter refer to it as 'RPC invoice.'

Self-Contained Dwelling and Continuous Use

15. An appeal on ground (d) is that, on the date on which the Notice was issued, no enforcement action could be taken in respect of the use of the outbuilding as a self-contained dwelling. The appellant must demonstrate that the use as a self-contained dwelling began on or before 24 March 2019, and that the use continued for at least four years, without significant interruption. Any four-year period is relevant. The test in this regard is the balance of probability and the burden of proof is on the appellant.

² Council references 20/P3076 and 22/P1487

16. The concept of a material change of use is not defined in statute. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of activities from what has gone on previously. In making this assessment the starting point is to define the planning unit. The leading authority is *Burdle*³, which established that the planning unit is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
17. The appeal concerns an outbuilding in the rear garden of the property, 59a Epsom Road, which is currently in use as a house in multiple occupation. The outbuilding is a detached building, and it is physically separated from the main house by the length of the garden, the side elevation of the outbuilding and a fenced enclosure. There is a shared parking area enclosed by gates, but the outbuilding is separated from this by a fence and a pedestrian gate with a keypad-coded lock. The outbuilding is not accessible from the front of the 59a Epsom Road but can be accessed via the rear vehicle lane.
18. From what I saw, the outbuilding and main property are detached from each other with a good separation distance in between. They have separate accesses, and the accommodation in the outbuilding includes an open-plan kitchen and living room, a separate bathroom and a mezzanine floor as a bedroom. Albeit a small space, in my judgment, the outbuilding provides adequate facilities required for day-to-day private domestic existence and is functionally capable of being used independently without any interference with the main property. As such, the layout and facilities would suggest the outbuilding and the immediate area enclosed around it forms a separate planning unit to the main property.
19. In terms of use, SD1 and SD2 cover a period between 2016 and 2021 but they are not entirely consistent with the corroboratory evidence. For instance, the SDs state that the works to convert the outbuilding were completed before the first tenant occupied it in March 2016, but the RPC invoice indicates the conversion of the outbuilding took place in June 2016. SD2 also indicates that Ervis Daci has occupied the flat since March 2019, but a tenancy agreement submitted as evidence indicates Jessy Treschler occupied the flat between 17 March 2019 and 17 March 2020. Given these inconsistencies, I shall give the SD's limited weight.
20. Despite the inconsistencies set out above, in my judgement, there is still sufficient evidence to demonstrate, on a balance of probabilities, that the outbuilding has been continuously used as a self-contained residential unit for four years before the Notice was served. The RPC invoice and the building control certificate show that the works to install the necessary living accommodation had begun by June 2016 and were certified retrospectively by 1 May 2018. Further to this, there are five signed tenancy agreements⁴ together with bank statements showing regular payments to the appellant from the named tenants. The payment amounts are highlighted on the bank statements between March 2019 and the end of March 2023. The highlighted payments in match the named tenant and the agreed rental payment figure. I shall give this evidence significant weight.
21. In my judgement, the corroborating evidence submitted with the appeal is clear and precise in demonstrating, on a balance of probabilities, that the outbuilding had all the

³ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

⁴ Dated between 17 March 2019 and up to 7 March 2024

necessary facilities for day-to-day private domestic existence by May 2018. Also, it has been used continuously as a self-contained residential unit since at least 17 March 2019, without significant interruption, which is four years before the Notice was served on 24 March 2023.

22. I acknowledge that the outbuilding having a separate address and separate Council tax over the entirety of the relevant period would have supported the appellant's claims more robustly. I also have had regard to the two refused LDC applications and the fact that a Building Control Officer raised an unauthorised works case against the creation of a separate flat. However, based on the evidence before me, none of these matters, individually or cumulatively, contradict or make the appellant's version of events less than probable.
23. Since the outbuilding has all the necessary facilities for day-to-day living and was occupied for independent residential use continuously between 17 March 2019 and 24 March 2023, no enforcement action could be taken under the provisions set out in section 191(2)(a) and (b) of the 1990 Act.
24. Therefore, the appeal made against the Notice on ground (d) should succeed.

Other Matters

25. Issues such as noise, disturbance and increased activity in the alleyway arising from the use have been raised by an interested party. While I sympathise, the impact of the use on the living conditions of neighbouring residents are not relevant in the determination of a ground (d) appeal.

Conclusion

26. From the evidence before me, and on the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the Notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected, varied and quashed.
27. In these circumstances, the appeals 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 (as amended) do not need to be considered.

Formal Decision

28. It is directed that the enforcement notice is corrected and varied by:

In paragraph 3, delete the words 'the use' and substitute with the words 'the material change of use.'

In paragraph 5, step (b), delete the words 'and cut electricity supply.'

29. Subject to the corrections and variations, the appeal is allowed, and the enforcement notice is quashed.

M. P. Howell

INSPECTOR