



Appeal Decisions

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 A Ref: APP/P5870/C/23/3321260

Appeal B Ref: APP/P5870/C/23/3321261

Appeal C Ref: APP/P5870/C/23/3321262

Appeal D Ref: APP/P5870/C/23/3321263

91 Sutton Common Road, Sutton, SM1 3HN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Ms Sara Fatima Lutfullah, Appeal B by the Occupier of Flat 1, Appeal C by the Occupier of Flat 2 and Appeal D by the Occupier of Flat 3 against an enforcement notice issued by the Council of the London Borough of Sutton.
- The notice was issued on 29 March 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property on the Land from a single C3 dwelling house to use as three (3) self-contained flats by unauthorised sub-division of the property.
- The requirements of the notice are, restore the Land to the state it was prior to the breach of planning control by:
 - (i) Remove all kitchens along with their constituent elements including pipework from the land, except (1) one from the dwelling house.
 - (ii) Remove all bathrooms along with their constituent elements including pipework from the land, except (2) two from the dwelling house.
 - (iii) Remove all internal partitions from the dwelling that enable the unauthorised use.
 - (iv) Remove from the Land all material and debris arising from compliance with the requirements of the notice.
- The period for compliance with the requirements is : six (6) months.
- Appeals A, B, C and D are proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The enforcement notice is quashed.

Matters Concerning the Enforcement Notice

1. I have identified defects in the Enforcement Notice (Notice), which have caused me to consider the position with regard to the validity of the Notice or, indeed, whether it is a nullity.
2. S173(1), (3) and (4) of the Town & Country Planning Act 1990 (1990 Act) sets out the statutory requirements of an enforcement notice. s173(1) requires the enforcement notice to state the matters which appear to the local planning authority to constitute the breach of planning control; and the paragraph of s171A (1) within which the breach falls. s173(3) indicates an enforcement notice shall specify the steps which the authority requires to be taken, or the activities which the authority requires to cease, in order to achieve, wholly or partly, any of the following purposes. s173 (4) states those purposes are—
 - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by

restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach.

3. With the above in mind, the Notice states that the alleged breach of planning control is a material change of use of the property to three self-contained flats and falls within paragraph of s171A(1)(a) of the 1990 Act. Although paragraph 5 of the Notice requires the appellant to restore the property to its previous condition, by removing bathrooms, kitchens and partitions, it does not require the appellant to discontinue the alleged use. As the Notice does not require the appellant to discontinue the use of the property, it would not remedy the breach and conflicts with the purposes of the Notice in s173(4)(a) of the 1990 Act.
4. Further to this, s173(11) of the 1990 Act indicates that (a) where an enforcement notice could have required buildings or works to be removed or any activity to cease but does not do so (my emphasis); and (b) all the requirements of the notice have been complied with, then insofar as the Notice does not so require, planning permission shall be treated as having been granted by virtue of s73A of the 1990 Act. Therefore, compliance with the requirements would result in planning permission being granted for the use of the property as three flats. As the reasons for serving the Notice were due to the harm arising from the property's use as three flats, this outcome would also conflict with the reasons for serving the Notice.
5. For the reasons set out above, the Notice is not so hopeless to render it a nullity, but it is invalid and would need to be varied. Consequently, I have had regard to my powers under s176(1)(a) of the 1990 Act to correct any defect, error or misdescription in the Notice or, under s176(1)(b), to vary the terms of the enforcement notice. In each case, the test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
6. The appellant and Council were made aware of this issue and have provided observations on the matter. The Council considers that if the requirements are adhered to then the use of the flats will cease due to the incompatible layout and lack of facilities. Nevertheless, they would have no objection to a variation to the requirements if no prejudice were caused to the appellant. The appellant does not want to use the property as three flats as alleged, but considers the current requirements are sufficient to remedy the breach. However, if I were to impose an additional requirement to cease the alleged use, then this would result in a worse situation for her.
7. It would be difficult to use the property as three flats without the necessary subdivision and multiple kitchen and bathroom facilities. Nonetheless, as already indicated, when the requirements of the Notice are complied with, then planning permission would be granted for the alleged use as three self-contained flats. Consequently, the Notice would not remedy the breach of planning control and the unauthorised alleged use as three flats could resume once the requirements were carried out. Furthermore, any internal alterations to erect partitions and reinstall facilities required to resume the use could be carried out without the need for any formal planning permission.
8. In view of the above, in my judgement, it is necessary to vary the requirements to require the use to cease. However, if I were to vary the Notice and introduce a requirement to cease the alleged unauthorised use as flats, then this would widen the scope of the Notice and make it more onerous for the appellant. It

would also take away the deemed unconditional permission currently available to them through compliance with the Notice. While some corrections and variations can be made without causing injustice, in this instance, making the requirements more onerous and taking away an unconditional permission would cause injustice to the appellant.

9. It would therefore be appropriate to quash the Notice, and in doing so it would give the Council the opportunity to decide whether to exercise its powers under s171B (4) of the 1990 Act to take further enforcement action

Conclusion

10. For the reasons given above, I conclude that the requirements of the Notice are defective and would need to be varied to comply with s173 (4)(a) of the 1990 Act. It is not open to me to vary the errors in accordance with my powers under s176(1)(a) of the 1990 Act since injustice would be caused to the appellant if I were to do so. The enforcement notice is invalid and will be quashed.
11. In these circumstances, Appeals A, B, C and D on grounds (b), (f) and (g) set out in s174(2) of the 1990 Act as amended do not fall to be considered.

Formal Decisions

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Appeal D Ref: APP/P5870/C/23/3321263

12. The enforcement notice is quashed.

M. P. Howell

INSPECTOR